The SMALLEST Gesture

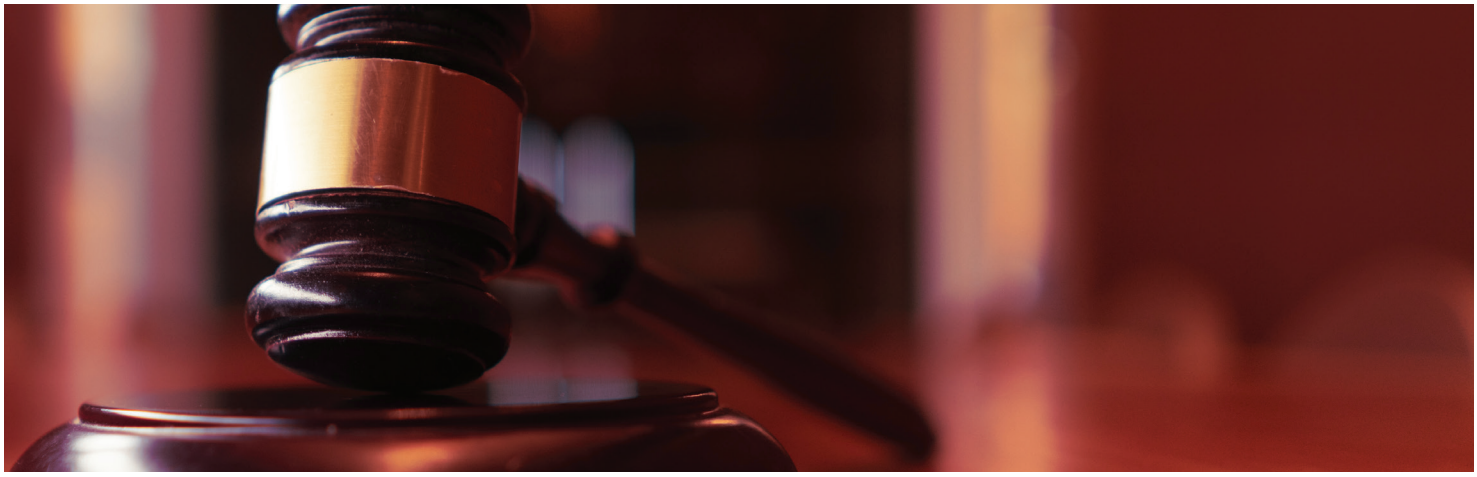
And a lasting impression

BY MICHAEL F. YOSHIBA, ESQ.

We recently welcomed a group of freshly minted associate lawyers to the law firm's litigation practice group. The newly sworn-in lawyers listened eagerly in anticipation of hearing tales of conflict, struggles and triumph that would help guide them to long and successful careers. They wanted to discover how we had learned to be strong advocates when representing their clients in courtroom battles. Anxiously leaning into the conversation, the associates were ready for a peek into the warrior mindset necessary for developing strategic chess moves to end victorious in litigation. But I had a very different story in mind, one that shaped how I practice law and litigation. I recalled for them a most memorable encounter with a seasoned and highly regarded lawyer that happened in the first few months of my law career.

An attorney in my office had fallen suddenly ill and asked me to cover an appellate court appearance that would be held in a few days. She explained that the matter was fully briefed, and she would give me the case file to review. I was a bit skeptical, as I had minimal courtroom experience, but she told me that there would be no arguments necessary, and I would be just appearing to receive the court ruling in this matter. I agreed and proceeded to review the case files, motion on calendar and supporting documents.

There were four or five cases on the calendar that morning, and we were last to be called. I briefly introduced myself to the other attorney, "Tony," before the hearing and exchanged pleasantries. We entered the courtroom and checked in with the court attendant. As this being my first time appearing in an appellate court, I watched Tony and followed his lead sitting in the reserved spots in the far recesses of the chamber in very firm-cushioned, well-worn leather seats.



Appellate courts are typically large, formal and cavernous spaces with high ceilings. This one was filled with dark redwood-stained walls, benches and tables. The lights especially illuminated the attorney lectern and where the justices sat. The three justices sat four feet higher than the attorney tables and behind a long ledge with an oversized appellate court logo in front. The atmosphere was an odd combination of museum and Ivy League lecture hall. Taking in the intimidating setting, I was relieved I was only there to accept the court's ruling, so I was comfortably uncomfortable.

As each case was called and the arguments were presented, my anticipation climbed. Seemingly random questions to the attorneys were posed by the dark-robed, gray-haired justices. The court questions had the attorneys presenting confident and concise replies or stammering to respond. Each case before us on calendar lasted between 5 to 20 minutes depending on the questions posed by the court and the presentation of the lawyers. Efficient court clerks brought out large stacks of files before each new matter was called.

That entire morning moved in slow motion, not unlike the feeling of eternity one gets when pedaling through the last few agonizing seconds of a ten-minute exercise bike session. Finally, case number four was done, and they called our matter. We walked and sat at our separate counsel tables. Each table was extraordinarily large, too wide and much too long for any other practical purpose. The justices greeted us, and we sat in still silence as they shuffled through their papers. My client was the "respondent," and the party that was opposing the relief requested by the "appellant." Feeing some jitters, I reminded myself that both parties had filed legal briefs and that we would submit the issues on the arguments contained in the briefing as I'd been instructed.

The appellant was asked if they would like to make a brief opening argument, and he accepted the offer. Tony stated that he would address the arguments in respondents' brief. When he finished, the court asked if I wanted to present any argument, and as I was instructed, I informed the court that we would submit on the arguments in the briefing. At that point, I was expecting the court to either make a ruling or take it under submission for a decision to be mailed to the parties. But to my surprise, one of the justices coldly turned in my direction and asked a pointed question about one of the obscure cases cited in the appellant's briefs. I was paralyzed. This was a case that I wasn't fully prepared to argue. The primary attorney handling the case hadn't indicated that this case citation was at issue or relevant to the matter being decided.

I stumbled through an explanation as to why the case was not important to deciding our issues. I managed to misquote some of the text in the briefing. And when the justice was seemingly ready to sternly lecture me, Tony intervened and asked to respond. He told the court that although my description of the case in question conflicted with the text, there was another case that cited my argument. He then proceeded to distinguish and explain why my argument was nonetheless not applicable. Both sides then rested, and the court took the matter under submission. Tony never mentioned that I was a new attorney or that I was filling in for another attorney.

As we walked out of the courtroom together, Tony told me that I had done well under the circumstances and that he didn't know how he would have handled the situation in reverse. In hindsight, Tony was a staunch advocate for his client, but he was also able to present his arguments in the most professional manner that simultaneously covered for a young lawyer. Tony's small gesture of kindness and compassion to someone he just met left an everlasting impression on me. This was the story I shared with the new associates about maintaining civility in the legal profession, advocacy and lawyering, and it is my hope that by passing along my anecdote, they will keep this lesson with them as they step into their careers. ✪

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