

Dealing With Doomsday Justice System Colleagues and Officials

For it to function properly, an independent judiciary and justice system must resist being a politicized one.

Daniel Pollack and Elisa Reiter | September 10, 2021



These are contentious, political times, with so many divisive issues: COVID-19, the economy, foreign policy, the environment, schools, sexuality, sports, etc. These divisions are taking a toll on families and friendships. They are also affecting the judicial workplace. When feelings and opinions on these issues approach extreme levels, and the people in the justice system espousing them insist on sharing their doomsday feelings with you — an attorney — what is an appropriate response? More specifically, what do you say so you don't jeopardize your client's case?

The answer: Practice saying different iterations of, “I can see that this is a subject you feel strongly about.” Or, “Your ideas regarding this issue are very interesting. Let’s finish our legal business first, and talk about these other issues later.”

Here are some other practical suggestions:

- Always be a good listener, but don’t encourage politicized conversations.
- The courtroom, clerk’s office, or anywhere else associated with the judicial system is not a law classroom where contentious discussions are encouraged.
- Avoid bringing up the names of polarizing figures. Controversial figures can lead to controversy.
- Stick to business. Straying from business can start out as a momentary distraction but can lead to inadvertent bad feelings and mistrust. The smallest verbal miscue can be taken out of context and put you and your client in a bad light.
- Know your audience. Saying the wrong thing even to a colleague of many years may land you in an uncomfortable position of backpedaling, explaining, and apologizing.
- Even when you send an email or text, think about how it will be understood by the recipient. What sounds light and breezy to you as the writer may be misinterpreted as an affront by the reader.
- Small disagreements are part of any relationship. You have an obligation to your client not to allow them to escalate into toxic confrontations.

These concerns apply not only to attorneys and clients, but to lay witnesses and to expert witnesses. How to steer clear? In Calming Upset People with EAR, (20-23) Bill Eddy suggests the following to implement his Empathy, Attention, and Respect (EAR) method:

Empathy:

Empathy is different from sympathy. With empathy, a person suggests that he or she has been in a similar situation at one time or could picture being in such a situation.

I understand how frustrating this can be.

I hear how difficult this is.

I know this is a hard time.

Attention:

By simply saying you will pay attention and then following through, upset people usually calm down immediately.

Tell me what's going on.

Tell me more, I want to understand.

I will listen as carefully as I can.

Respect:

Feeling disrespected is a common reason that people feel upset these days.

I can see that you are a hard worker.

I respect your efforts to solve this problem.

I respect your contribution to this project.

Body language and tone are also major components regarding how we project our own competence and how we wish to be perceived. A rushed or clipped tone may be attributed to a difficult morning at the courthouse, but if the person on the other end of the phone is a potential new client, how will they judge your ability to advocate for them may be

based on your gruff tone and the clear indication from your clipped cadence that you really have no time for them. Time is money. We must spend our time, and project our professional images, with a friendly tone and with open body language.

Do you have a propensity for shaking your finger to emphasize a point? Might doing so be taken as hostile by certain individuals in your office or at the courthouse? Whatever your personal political leanings, if your adversary takes everything the other person says as an offensive political statement, you are not enhancing your client's chances for victory or a beneficial settlement. Put politics aside. It's so easy to unfriend on social media; our differences should not thwart a settlement or provoke unprofessional behavior at trial.

While attorneys are supposed to advocate zealously for their clients, and different perspectives are to be expected, they should avoid taking sides in areas that are extraneous to the case at bar. To accomplish this, it is best for attorneys to clearly outline the purpose of any meetings or discussions. Fundamental communication skills like establishing meeting parameters and rules will allow the overall judicial system to function constructively.

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Daniel Pollack is a professor and an attorney at Yeshiva University's School of Social Work. Contact: dpollack@yu.edu. **Elisa Reiter** is Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization. She is a Senior Attorney with Underwood Perkins, P.C. in Texas. Contact: ereiter@uplawtx.com.