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WATCH WHAT YOU SAY (OR “DON’T SAY NOTHIN’ AT ALL”)

Occasionally, middle-of-the-night musings prompt me to jot onto a post-it or magazine sitting on the bedside table. One, meant to inspire my writing to you, said “I misplace remotes, hairbrushes, sunglasses and pens.” Those are all true, but I haven’t a clue how that was meant to evolve into a President’s Message. The latest, “Beautician v. Farmer,” makes perfect sense. It refers to my results of interest-aptitude testing from UT’s Career Center when I was trying to figure out what do with my undergraduate degree other than my careers of bartending and semi-professional steel dart throwing. Those results are actually somewhat spot-on. Playing with hair and make-up was a favorite teen pastime. Gardening remains one of my great joys.

Ultimately, a better choice for me was the law and the legal profession – those platforms critical to protecting freedom. So important is our work and the rule of law that our nation celebrates Law Day, established by President Eisenhower’s proclamation and later designated by Congress’s 1961 joint resolution for to be celebrated annually on May 1. One of my three focuses this year is returning to civil public discourse. We are bombarded with negativity from all sides – the press, social media, so-called entertainment, and sometimes, one another. Fortuitously for me, Law Day’s theme celebrates the cornerstones of a free, civil society: Free Speech, Free Press, Free Society.

In eighteenth century France, public disagreement with the king carried an almost certain death penalty. Voltaire, a citizen of the time, is mistakenly attributed for the powerful saying, “I may disapprove of what you say, but I will defend to the death your right to say it.” Even though those are not his words, he was an early, vocal proponent of free speech and thereby clearly placed himself at risk. For Americans, The First Amendment ensures “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” This constitutional right, I venture to say, is a right of all humanity. Happy to borrow from great minds and leaders, I share some of their sentiments:

- If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter. *George Washington*
- Hand in hand with freedom of speech goes the power to be heard, to share in the decisions of government which shape men’s lives. *Robert Kennedy*
- Without freedom of thought, there can be no such thing as wisdom – and no such thing as public liberty without freedom of speech. *Benjamin Franklin*
- Our liberty depends on the freedom of the press and that cannot be limited without being lost. *Thomas Jefferson*

Not all nations have been so fortunately led with the foresight to memorialize these human rights as in a constitution or other law. The United Nations tried to do so globally in its Universal Declaration of Human Rights that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Freedom of speech and freedom of the press are essential for transparency, disseminating information, exchanging ideas and thoughtful discussion as checks

on government power. Indeed, restricting speech and the press may be tantamount to restricting democracy. Look, for example, to the suppression of speech, and later to its protection, in the Civil Rights movement. Free speech was then and later recognized to include actions without words, ranging from burning draft cards to protest Vietnam to sitting in the front of the bus to protest segregation. Burning the American flag is protected, and Tennessee’s General Assembly has protected property owners’ placing political signs or flying the American flag as free speech.¹

On the other side of the coin, while speech and the press may be free, they also have great capacity for harm. Of course, the Supreme Court has recognized limits, such as in wartime, sharing state secrets, libel, slander, or shouting fire in crowded theater. But perhaps there should be more of the self-imposed kind. Heaven knows free speech may never seem more precious than when accidentally hitting oneself with a hammer. My concern though is for the propensity to exercise our speech to the point of drowning out the voices of others. There is knowing when to speak, when not to speak, how to say something and how not to say something.

Litigators live by the credo to never ask a question on cross-examination unless they already know the answer or the answer does not matter. And, “a good lawyer knows how to shut up when he’s won his case.”² Parents raise their children with various mantras, such as “Do unto others as you would have them do unto you,” “before saying something ask yourself ‘is it kind, is it true, is it necessary,’” or the advice

Thumper learned, “If you can’t say somethin’ nice, don’t say nothin’ at all.” The words “hate” and “dumb” were not looked well upon in Lochlin and Cynthia Caffey’s household.

Politics, college campuses and public circumspection of law enforcement efforts – where there should be open dialogue and exchange – are some of the most vociferous and vicious verbal battle grounds. The trampling of free speech, through the exercise of free speech, is very real. The legal profession, by its very nature in pitting one side against another, is not immune from falling into the same trap. Putting aside the liberty implications, consider just the effect on the interactions and relationships in our daily lives. Consider respecting the messenger, even if you do not agree with the message. Lawyers are charged with protecting our freedoms, but as servant leaders, also with leading by example.

I believe for the most part we do a pretty good job of that. We are sometimes opponents, but not necessarily adversaries. We literally “cross the aisle” in court rooms every day to shake the hands of colleagues. Keep crossing that aisle.



**WE HAVE FREEDOM OF
SPEECH, BUT YOU GOT TO
WATCH WHAT YOU SAY.
-TRACY MORGAN, COMEDIAN**

¹ See Tenn. Code Ann. §§ 5-5-114, 6-54-144, 66-27-602, and Tennessee Freedom of Speech Act, Tenn. Code Ann. § 2-7-143.

² Alan Dershowitz.