

Ethics Alarms

APRIL 8, 2010 · 1:08 AM

Apology: How I Became an April Fool and an Ethics Dunce

I'm not going to spin this. My conviction that the web hoax engineered by trial lawyer/blogger Eric Turkewitz violated the legal ethics rules was the product of a toxic mix of factors, prime among them being that I didn't review my own files. When I finally, after nearly two days of answering complaints when I should have been hitting the books, checked the Rules of an ethics bellweather state that I often work in but had not for longer than usual, I read this:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

...(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

This is an unusual version of Model Rule 8.4; indeed, the only other state to have adopted it (I think—I am no longer sure of much) is Wyoming. Yet it is a very useful variation of the Model Rule, because it eliminates all ambiguity about whether “dishonesty, fraud, deceit or misrepresentation” is meant to be as sweeping as it sounds. This formulation makes it clear that non-legal practice violations are covered, but that they have to reflect adversely on the lawyer's fitness to practice law to qualify.

I had been wallowing in obscure clues from other jurisdictions—Tennessee, for example, which has the ABA wording but an odd Comment that begins...

[4] Paragraph (c) prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Such conduct reflects adversely on the lawyer's fitness to practice law...

This could be taken to mean that *all* such conduct reflects adversely on fitness. The problem is, I don't believe that, and I don't believe that Tennessee means that.

The 8.4 version that I found was from...Virginia. Where I live. Where I have done more ethics CLE than anywhere else, beginning before the state even adopted the Model Rules format. Seeing this, two conclusions were unavoidable:

1. This is the predominant way jurisdictions think about 8.4. No state has rejected Virginia's approach, and several have referenced it in Legal Ethics Opinions on the topic of what kind of non-legal practice-related conduct is covered by the Rules—*not* subject to discipline, as I was arguing the past two days, but covered at all. The D.C. Bar has such an LEO, number 323, from 2004. I had a copy on file. The District of Columbia, where I'm a member of the bar.

2. I had made a big and inexcusable mistake, and compounded it by acting like the King of the Jerkwads.

Actually, I made about six big mistakes.

I object to web hoaxes of all kinds, at any time. I think, in this day and age, they are irresponsible. The intelligent way to make that point persuasively is with a really harmful, malicious web hoax. I decided to demonstrate my absolutism on this issue by intentionally picking a relatively innocuous web hoax...on April Fool's Day, no less.

I picked Eric's hoax, moreover, for another bad reason: I was rubbed the wrong way by his post criticizing the New York Times for falling for it. But that's not ethics, that's style. I let it warp my judgment.

I could...and should... have written the ethical commentary without referencing legal ethics at all. Here I was derailed by my own passion for an aspirational principle: I believe that lawyers should be seen as more honest, not less, than non-lawyers, and I think the Rules should say so. I believe this so strongly that I managed to talk myself into believing the Rules DO say so. But when I look over my file of lawyers disciplined or even criticized for non-law related conduct, the list contains nothing within a mile of Eric's press release in terms of innocence. The closest I could find was a post by a lawyer on a legal ethics mailing list claiming that Ann Coulter should be reported to authorities for joking that "someone should poison Justice Stevens' crème brulee." In my file, this was accompanied by another post detailing why this was an absurd claim.

By me.

So, with incomplete disregard for my accumulated research and my prior positions, I wrote that Eric's fiction was an ethics Rules violation. Then I compounded the blunder by focusing on the counter-arguments initially chosen by Eric, Carolyn Elephant, and Scott Greenfield, which were more emotional and abusive than analytical, rather than considering whether they had something to be emotional and abusive about. It was a good platform to write about how lawyers and others resort to rationalizations, and I took the bait...except that, rationalizations or no, they were on the right side of the key issue. This was not an ethics rules violation. I should have known that. I should have backed off, rather than arguing about it.

All I can do, at this point, is apologize, and learn. Or re-learn, because I did not follow my own best practices in this case. The blog is called Ethics Alarms, and it is about priming oneself to be ethically sensitive at the earliest possible stages of any situation. Mine were, for a host of reasons, down. They should have rung loudly when I:

- realized that I was working under too many deadlines to properly research and think through a

potential post.

- found myself being driven by emotion rather than reason
- contemplated accusing a lawyer of something that I would not like to be accused of myself
- found myself writing responses in defensiveness and annoyance rather than beginning by respecting the commenter and taking time to think carefully about what I was responding to
- forgetting a lesson I have had to re-learn many times in my life: when everyone is telling you that you are an asshole, it is usually is because you are acting like one.

The swift kick that got my alarms ringing all at once were my own words in response to my least favorite participant in the thread, who asked if it was just possible that I was wrong. My snap answer was, “Of course I could be wrong!” And, just like that, I realized that I had better find out if I was.

I’m not crazy about having to go on my own blog and announce that I have been careless, obtuse and unfair. Before I got into the ethics field, I don’t think I would have done it. Now, I really have no choice, because this is what I teach others to do when they do something wrong. It’s a whole lot easier to say than to do...another lesson there for me. Many people have gotten the wrong impression of me through this episode, their first impression in most cases, and that’s devastating to accept. Still, it is my own fault, and only mine. If given a chance, I am confident that I can make amends, and be better after this fiasco than I was before it.

Thank you for your patience. And once again, Eric, I am very sorry.

Update 1: Clark Hoyt, the New York Times “public editor” (a.k.a. ombudsman), has [written a column](#) that references the web hoax in question, and makes the larger point, also applicable to me and Ethics Alarms, that extra vigilance and care is now essential when writing on “*platforms where speed is everything and attitude sometimes trumps values like accuracy and restraint.*” I am committing that sentence to memory, writing it 100 times on my blackboard, and perhaps stapling it to my forehead.

Update 2: Well, it is now April 17, nearly two full weeks after I posted this apology, and, incredibly, several bloggers are still attacking it and me for my original mistake. This, after the blogger/attorney whose hoax I criticized graciously accepted my apology as sincere and complete, which it was.

Much of the continuing venom seems to be based on the fact that the apology enumerated the reasons why I think I made the errors I did, and the critics appear to be under the misapprehension that I did this to exonerate myself or make excuses. This is neither fair nor true.

Ethics Alarms is intended to examine what is unethical conduct and why we all engage in it occasionally. I have an obligation to extract as many lessons from *my own* mistakes as I do from the conduct of others. When I note, for example, that time pressure contributed to my failing to properly research the issue

under discussion, that is true, but it is no excuse, not in the least. Terrible mistakes are made under time pressure; I was just lucky that mine only unfairly described the ethics of a web hoax, because some mistakes, made for the same reason, kill people. The lesson and the error, however, is the same. It is irresponsible.

Other die-hard critics were infuriated that I ultimately deleted the posts that I had decided were unfair and erroneous, regarding this act as somehow cowardly or deceptive. I confess to not understanding their logic at all, if there is any. My objective on this site is to provide information, useful ethical analysis tools, and grist for productive debate, not to store misinformation, faulty analysis, and a permanent target for ill-motivated people to use to attack me personally. One indignant blogger demanded that “we” wanted to judge whether my characterization of the matter above was fair. Well, I think it is fair, and the individual I primarily apologized to seems to think it is too. That is enough for me.

The transparent unfairness of these relentless attackers is noteworthy. In the debate over my post, I was not the only one who made a careless and incorrect assertion. I was just the only one who apologized for it. Many stated, for example, that the Rules of Professional Conduct for lawyers only apply to the conduct of lawyers while engaged in the practice of law. This is wrong, and I showed that it was wrong; none ever acknowledged that I was correct, or that they were mistaken. Others made the classic error of asserting that the First Amendment makes all *legal* speech *ethical*, which anyone who knows the difference between law and ethics can figure out is dead wrong with just a minute of thought. Again, not one lawyer who claimed this acknowledged his mistake.

A couple of bloggers posted apparently considerate and supportive comments here in response to my apology, and then, once back in the cocoon of their own sites, continued to attack me in uncivil and personal terms. Nice. *Res ipsa loquitur*. Others wrongly claimed that in designating one act of a lawyer as unethical, I had intended to imply that the lawyer *himself* was unethical. That is not true, and is contrary to the philosophy of this blog, which holds that only the most extreme and egregious unethical conduct by an individual justifies such a general conclusion. These same critics, however, have adopted a general assessment of *me* because of one, admittedly stupid, mistake. That is unethical. It is a violation of the Golden Rule.

I know much of this goes with the territory. The immediate reaction to any criticism based on ethics is often a personal attack; I am used to it, though not to this degree and duration. I will, on occasion, make mistakes, just as I will be, rather more frequently, wrong. When I am either, and know it, I will acknowledge so, and if a particular person has been harmed or treated unfairly, I will apologize publicly and privately. I hope that, over time, Ethics Alarms attracts an audience that will understand that in trying to identify unethical (and ethical) conduct, I am attempting to lead people away from knee-jerk judgments, emotional reactions, bias, rationalizations and non-ethical distractions, toward some rough consensus about what kind of society we want to live in. Those who find all ethical judgments inherently offensive are welcome to their opinions, but frankly, I think they are part of the problem.

Other than the fact that it was unfair to Eric, the worst aspect of this mess was that it became about me, and Ethics Alarms is not supposed to be about me, though some refuse to believe that. It has been a distraction from the real work of the blog, and for that reason, I am closing Comments on this post with

this Note. Those who really think a two-week-old-and-counting excessive blog post, since retracted, about an April Fool's Day web hoax is still worth ranting about are free to continue, on their own sites.

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37 responses to “*Apology: How I Became an April Fool and an Ethics Dunce*”

Glenn Logan

April 8, 2010 at 7:52 am



Having had to do this several times on my own blog, I am well aware of the bitter taste of crow, no matter how well you prepare it.

One thing that you are right not to point out in your post, but that I will, is the fact that the people who came in here attacking your analysis, however flawed, with ad hominem, angry, and facially flawed comments were wrong as well – maybe not on the matter under discussion, but in their methods and analysis.

Concluding that a person is wrong in their analysis on a blog is not a license to attack them personally. It also does not entitle you to line up fallacious and nonsensical arguments rather than thoughtful and carefully reasoned ones. If you are going to be right on your conclusion, how hard is it to be thoughtful and respectful in your rebuttal?

I think we should all avail ourselves of the “teachable moment” (God, did I really write that?) here, and recognize that even when we are unfairly characterized by a flawed analysis, it does not justify letting slip the dogs of personal attacks and careless reasoning. For all the bloggers who are involved in this affair, you all know exactly what this feels like from the other side, and if you don’t — trust me, it is but a matter of time.

As far as Eric is concerned, I agreed with your analysis (even though I qualified it by admitting my lack of expertise on the ethics of the Model Rule). When we take a position that is wrong, even if it is merely agreeing with a wrong analysis, it has the effect of aiding an error and compounds any damage done. I could always have studied the matter more closely, or just kept my big mouth shut. I therefore apologize to Eric also, without reservation or qualification.

[Reply](#)

Antonin I. Pribetic

April 8, 2010 at 10:56 am



“Concluding that a person is wrong in their analysis on a blog is not a license to attack them personally. It also does not entitle you to line up fallacious and nonsensical arguments rather than thoughtful and carefully reasoned ones. If you are going to be right on your conclusion, how hard is it to be thoughtful and respectful in your rebuttal?”

Since you are not a lawyer, I will overlook the fact that you clearly lack any comprehension of the gravity of accusing a lawyer of unethical behavior. The personal and professional implications for Eric Turkewitz may have been devastating, particularly if none of his colleagues spoke up in his defense.

Yet, instead of trying to be objective, you continue to reinforce your own reactance and stubbornly cling to your own “appeal to authority” bias. By continuing to malign those lawyers who had the wherewithal to speak out against this flagrant and unmitigated attack on Eric Turkewitz’s professional reputation, you expose your ignorance behind a veil of pseudo-argumentation and calls for “reasoned” debate. There is no “ethical gray area” in this particular debate. Eric Turkewitz was right and Jack Armstrong was wrong. Full stop.

In the future, kindly leave the issue of legal ethics to those who actually live each day with trying to uphold the standards of the legal profession. The armchair analysis is tiresome. Eric Turkewitz accepted Jack Armstrong’s mea culpa, but a general apology to the legal profession is now overdue.

[Reply](#)

Jack Marshall

April 8, 2010 at 2:29 pm



Dear AP: I can't take umbrage at the harshness of any critique at this point, but I don't agree that owe the legal profession an apology. I do a great deal for the legal profession and work hard at it, not because it's the only thing I could do but because we have one of the most difficult professions when it comes to navigating ethical dilemmas, and while the rules are one tool, others are essential too. Legal Ethics literature is increasing at a rate several times what it was just a few years ago, and the speed of significant changes also is increasing. It is, I believe literally impossible to practice and to keep ahead of new thinking and trends in legal ethics, and it is a full time job for people like me to track it, try to make sense of it, and communicate it in a manner that will keep lawyers awake. There are some who denigrate that role, and I have my doubts about them, but I'm not interested in debating those doubts here. I am not in an armchair, and having abandoned the practice of law precisely because I found wrestling with the ethical conflicts and dilemmas too stressful, I have more respect for practicing lawyers than you could imagine.

My criticism of Eric, focused as it was on a particular act that largely speaks for itself, and mildly, made me look far worse than it made him. I acknowledge that. I do not think I dented his reputation in the least, but what I did could have, and I acknowledge that too. I think your characterization is excessive.

[Reply](#)

Antonin I. Pribetic

April 8, 2010 at 4:53 pm



Dear JM,

My reply comment was primarily directed at your admirer, Glenn Logan.

However, my suggestion that you consider offering up an apology to the legal profession was obviously misguided. You see, my intent was for you to consider the moral and pragmatic implications beyond the direct impact on Eric Turkewitz's professional reputation, which you lamentably continue to downplay.

An unsolicited apology to the legal profession might, or might not have rehabilitated whatever semblance of a reputation you still have in the legal community, of which you say you do a "great deal for" and "work hard at", in your own words.

Clearly, you no longer practice law, albeit you appear to promote your past experience as part of your overall expertise in the ethics field.

If you do still pay your membership dues and remain a member in the ABA and/or your state bar association, then may I collegially remind you that a lawyer's ethical duties are not limited to one's client, opposing counsel, or the Bench; but to the profession generally.

Section 7 of the Preamble to the ABA Model Rules should be your fail-safe button for any future "Ethics False Alarms":

"[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service."

Finally, there is an aphorism that will hopefully resonate with you in times of need: "the road to Hell is paved with good intentions". If that one doesn't fit the bill, there's always "those who live in glass houses, should not throw stones".

[Reply](#)

Jack Marshall

April 8, 2010 at 5:36 pm



Look, I am completely in sympathy with anyone who wants to bash me for this. Beyond that, however, your critique is not proportionate or fair. The best way to achieve section 7's goals is for everyone, not just me but every lawyer, to be open, and critical when we see, or think we see, problematic conduct in a colleague—or ourselves. I reject the glass house analogy, as do most ethicists. It's a rationalization to avoid the tough and unpleasant job of flagging misconduct or even dubious conduct. It requires perfection to participate in the policing and improvement process. I'm a peer, I "approbated", and this time I was wrong. If the process requires perfection, then it is a sham....and, by the way, it is very close to a sham. Lawyers are no better than any other professionals in self-policing, and you know that. My mistakes in this matter neither negate not outweigh my continuing contributions to my profession, and your arch accusations to the contrary are as unwarranted and unjust as anything I inflicted on Eric. I incorrectly, but at the time, sincerely said that an obviously small act of misrepresentation was a Rule violation...but I did not misrepresent the act itself. Obviously, nobody who knew about my call felt that it reflected badly on Eric at all.

You are deluded if you think that the suggestion that a lawyer violated a Rule automatically imparts some kind of infamy. Most, if not all, lawyers violate parts of rules at some point, and they know when it matters. Do you take more work than you can handle? Rule violation. Ever use delay as a tactic? Violation. Fight to keep your client from rejecting a good settlement? Violation.

I have done all I can do to apologize, not just to Eric but to others, explain where I went wrong, extract lessons from it, not make excuses, and move forward. But I'm sorry: despite this lapse, I know I am good at what I do, and I do not have to justify myself to you. Clarence Darrow talked a jury into acquitting him (when he was guilty) by arguing that the world would be more just with him in a courtroom than in a jail. He turned out to be right. And while nothing I do will make me more than a flea compared to Darrow, I think I am right that the legal profession will be better because of the issues I raise, the minds my seminars engage and ideals I advocate. And I'm not about to apologize for that. You have written me off because of two blog posts and a lot of hasty replies responding to over 70 comments, many of them personally abusive. How unfair, ungenerous, and illogical...and ill-informed. Did you know that I organized and developed the Trial Lawyers' litigation groups? Re-vitalized the Sections, against powerful opposition, probably costing me my job? Did you know that as head of the research arm at the US Chamber, I balanced the advisory committee sufficiently to turn what was supposed to be a pro tort-reform study into one that ended up questioning whether tort reform was really necessary? Yes, I'm sure some people will want to use two days of blunders on an intentionally non-legal blog to denigrate me. And they will owe me an apology, because they will be dead wrong.

[Reply](#)

Patrick

April 8, 2010 at 6:11 pm



Obviously, nobody who knew about my call felt that it reflected badly on Eric at all.

Wow.

Where I come from accusing a lawyer of violating his ethical codes is just about the worst thing you can say.

[Reply](#)

Jack Marshall

April 8, 2010 at 6:36 pm



Boy, Patrick—don't you think it depends? I listen to lawyers talk all the time about how they may have technical violations. Accusing someone of a substantive violation is something else. All I was trying to say is that nobody aware of what I was taking about thought badly of Eric, and even those who may, like me, have had problems with the hoax didn't feel that it reflected on him. I am not trying to minimize this: it was wrong to say what wasn't a Rules

violation was. But one inadvertent Rules violation is just not damning...even if it was one. That's all. Tell me what you want me to say.

[Reply](#)

Jack Marshall

April 10, 2010 at 1:51 pm



A second reply to this: saying a lawyer has engaged in unethical conduct and saying the lawyer is unethical are too extremely different things. I'd guess that every lawyer would admit to breaking a Rule or ten at some points in their career, including the most ethical, shining stars of rightness and virtue that the bar ever produced. The late, great, Johnny Cochran mentioned witnesses in his opening statement in the OJ trial that he never called—that's an ethics violation, though the Bar let it go.

He had an argument for why he could do it, I'm sure, but its an unethical practice. But Cochran was not an unethical lawyer. It is also far different to be told that one has violated a Rule that is likely to compel discipline, like the Safekeeping of Funds, than to be told that, for example, one is not properly training one's non-legal assistants in the lawyer;s ethical obligations (Rule 5.3, and many, many good lawyers neglect this, I believe). Its it an ethics violation? Yes. Are the lawyers unethical? NO...unless, perhaps, they continue to violate the Rules after they know they aren't following it. My mistake was referencing a Rule provision that I believed could be violated without requiring reporting or discipline, when the bulk of authority has come to assert that the 8.4 misrepresentation prohibition otherwise. In other words, my claim that this was a Rule violation was more serious than I intended, because I was misreading the Rule. I never intended to say or imply that Eric was an unethical lawyer, just that he had (mistakenly) crossed a line. If I cross an ethical line without knowing it, I want people to tell me.

Boy are they telling me.

[Reply](#)

Antonin I. Pribetic

April 8, 2010 at 9:52 pm



“True remorse is never just a regret over consequence; it is a regret over motive.”

~Mignon McLaughlin, *The Neurotic's Notebook*, 1960

[Reply](#)

Jack Marshall

April 9, 2010 at 7:01 am

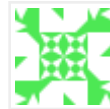


Well, I can prove him wrong then. I am absolutely remorseful, but I do not regret my motive at all. It's a facile sentiment rather than a perceptive one, in my opinion.

[Reply](#)

Glenn Logan

April 9, 2010 at 9:06 am



Hi Antonin: Thanks for the reply.

Yet, instead of trying to be objective, you continue to reinforce your own reactance and stubbornly cling to your own "appeal to authority" bias.

Do I, now? Which part of my unqualified apology to Eric constituted clinging to my "appeal to authority?" I was only commenting on the attacks made against Jack, which I found to be profoundly substandard for a lawyer, or anyone else.

Furthermore, I "maligned" only those people, lawyers or no, who put forth arguments that were either deliberately ill-conceived or downright obnoxious personal attacks. Now, you tell me that those obnoxious comments, many of a highly personal nature, must be excused from everywhere because of the "personal and professional" implications for Eric? Absurdity, thy name is Antonin.

I want to point out that Eric was, to his credit, not generally among those who engaged in the behavior I found objectionable. For him to be angry is understandable. For people like you, it is not. You were not the one against whom Jack's comment was directed, so it is highly suspicious that you should be so demonstrative.

There is no "ethical gray area" in this particular debate. Eric Turkewitz was right and Jack Armstrong was wrong. Full stop.

First, who is Jack Armstrong? Maybe you mean Jack Marshall? It's usually important, in my opinion, to know who it is you are attacking. Whoever Jack Armstrong is, I'm sure he is confused.

Second, "this particular debate" covers quite a lot of ground. My comments on the behavior of Eric were not specific to the Model Rules, as I am not really well versed in them, as you correctly point out. However, because Eric did not apparently violate the Model Rules does not in any way create the conclusion that what he did was right, ethical, or without

consequence.

One of the things that you should full well know is that being in compliance with a rule, law or other codified principle does not make one's conduct ethical. In my opinion as non-expert, Eric's actions in this matter were ethically dubious regardless of his compliance with the Model Rules. As I explained earlier, this is due to the fact that the public is conditioned to trust what lawyers say, and when one writes a deliberate falsehood that is not clearly intended to be a joke, it is an ethics problem. That's my opinion, not Jacks. Your mileage may vary.

In the future, kindly leave the issue of legal ethics to those who actually live each day with trying to uphold the standards of the legal profession.

"Shut up," you explain? How quaint. A tart reply leaps to my fingers, as it would with anyone forced to read an elitist bit of tripe like this, but I've become very good at biting my metaphorical tongue. I think Jack has apologized enough. I think you are making a mockery of yourself in your indignation, which is anything but righteous.

[Reply](#)

Antonin I. Pribetic

April 9, 2010 at 10:04 am



"In my opinion as non-expert, Eric's actions in this matter were ethically dubious regardless of his compliance with the Model Rules. As I explained earlier, this is due to the fact that the public is conditioned to trust what lawyers say, and when one writes a deliberate falsehood that is not clearly intended to be a joke, it is an ethics problem. That's my opinion, not Jacks. Your mileage may vary."

So, you are the managing editor of ASeaOfBlue.com, the SB Nation University of Kentucky Wildcats online community. I will blithely ignore your churlish and puerile response. I am, however, intrigued by your cognitive dissonance. It cannot be simple sycophancy, as you refuse to yield and concede defeat; stubbornly clinging to the abject falsity of your position. Even Jack Marshall grudgingly accepts that there was no ethical violation in any context; but, hey, you're entitled to your opinion no matter what anyone else says, right?

By the way, it is sophomoric to anchor your position on trivialities such as a misnomer. Even Jack Marshall didn't consider it necessary to comment upon, but bravo, well done.

I fully expect another churlish reply from you, whether or not your metaphorical tongue is kept firmly planted in your allegorical cheek, as it were. Regrettably, your own narcissism may not debride your spent arguments. Perhaps a choice basketball analogy would be an apt last word from you. I'm sure it will give you some comfort. Good luck.

[Reply](#)

Jack Marshall

April 9, 2010 at 10:36 am



Jeez...I'm trying to figure out who it is you remind me of. William F. Buckley? Gore Vidal? Jack E. Leonard? Ann Coulter? No...I'll get it...someone with the meanness *and* the snobbery. Chatsworth Osborn the Third? No, still not right...

The operative word is *violate*. My error...careless, stupid, forgetful, inexplicable, negligent, dumb, unthinking, unfair, unprofessional, absurd, reckless, jaw-dropping, uncharacteristic, embarrassing, humiliating, shameful and wrong...was to use it, because it means there is a rule, regulation, law or stricture or standard to violate. There's wasn't and said there was, mistakenly.

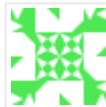
Are web hoaxes that are not obviously jokes unethical...as in "wrong," not the right thing to do? I believe that they are, but I can point to no authority settling the issue. Eric disagrees, and he's a smart and ethical guy, and there is no reason for him to constrain his conduct my ethical standards rather than his own. It is proper for me to try to change his mind, and proper for me to try to get others to agree with me.

There is nothing offensive about that, or improper, and just calling people names who disagree with you isn't an argument. Mere compliance with rules doesn't prove ethical conduct.

[Reply](#)

Glenn Logan

April 9, 2010 at 12:26 pm



It cannot be simple sycophancy, as you refuse to yield and concede defeat; stubbornly clinging to the abject falsity of your position. Even Jack Marshall grudgingly accepts that there was no ethical violation in any context; but, hey, you're entitled to your opinion no matter what anyone else says, right?

What position is it that I should yield to here? Your implicit argument that it was okay for people to raise ad hominem and personal attacks against Jack rather than simply rejecting the position he took and defending that rejection with reasoning rather than name-calling? Is it your position that those attacks are worthy of approbation? If so, that's a regrettable commentary on you, not on me.

By the way, it is sophomoric to anchor your position on trivialities such as a misnomer. Even Jack Marshall didn't consider it necessary to comment upon, but bravo, well done.

Generally, I don't. But when someone tells me I should shut up, I think taking a shot or two at your careless oversight (you did get his name wrong twice, after all) was justified. That was hardly the "anchor to my position," of course — you neglected even to attempt to rebut my position altogether, in favor of accusing me of sycophancy and cognitive dissonance. I wonder why you find it necessary to change the subject?

Regrettably, your own narcissism may not debride your spent arguments. Perhaps a choice basketball analogy would be an apt last word from you. I'm sure it will give you some comfort. Good luck.

Narcissism? Well, I admit that pride has always been my greatest failing and blind spot, as it is with many people. In the instant case, though, I find it remarkable that you didn't even touch my substantive argument, but merely upbraided me with invective and priggish snobbery. So in the end, instead of debating substance, you just hurl accusations of various unflattering things my way. Given the tenor of your comments, I can't say I'm surprised.

You wouldn't understand a basketball analogy. Such mundane and empty pursuits are far beneath the notice of one who resides in an ivory tower as tall as yours apparently is.

[Reply](#)

Antonin I. Pribetic

April 9, 2010 at 3:18 pm



Well, my blog post had Jack Marshall's name correct, days before I commented on this blog. Chalk it up to watching the Raptors game and listening to the color commentator with the name Jack Armstrong. But it is of no moment and I digress.

I have read all of your previous comments when the flamewar began, and let's just say that you were quick to rush to Jack Marshall's defense and support his position unequivocally: That's ok, you're entitled to exercise your First Amendment rights. Eric Turkewitz took the high road, which is commendable. In my jurisdiction,

however, you would not get away with accusing a lawyer of a breach of the Rules of Professional Conduct. It would be defamatory libel and actionable per se.

When you figure out what the elements of a logical argument are, then I will be happy to oblige you. Whether or not you employ deductive or inductive logic, your major premise was proven false, therefore, your conclusion is false. I don't expect you to change your mind. What I fervently hope you do consider and reflect upon, is to avoid using epithets or jumping on a bandwagon, unless you have done your own research. I am a trial lawyer first and an academic second. I do appreciate the "ivory tower" metaphor, insofar as I am 6'6" tall. Beyond that, let's call it a day. No one else is paying attention to this.

Now, over to you so you can get in the last word.

[Reply](#)

Antonin I. Pribetic

April 9, 2010 at 3:48 pm



P.S.

"Truzenzuzex is, as you can plainly see, an alien life form who's ancestors were of the phylum Arthropoda, known collectively as the Thrax. Created by the science fiction author Alan Dean Foster, Truzenzuzex, or Tru, is a character who appears in Foster's Flinx of the Commonwealth series. The Thrax are a peaceful and beneficent race which have formed an intimate bond with humanity, creating an amalgam known as the Humanx Commonwealth.

Tru is an Eint and First Philosph, or theoretical philosopher. His specialties are the history and trajectory of civilization and galactic anthropology. Along with his friend and former ship-brother, retired Chancellor Second of the United Church Bran Tse-Mallory, Tru explores the universe attempting to gain insight into the many mysteries which impinge upon the Humanx condition.

I chose Tru as my avatar because I fancy that, like he of Foster's imagination, my years have left me wiser and more amenable to reason and logic. Like Tru, I am no longer young, and I think the benefits of that fact outweigh the negatives..."

[personal information redacted]

[Reply](#)

Glenn Logan

April 9, 2010 at 5:15 pm



Hmmm.

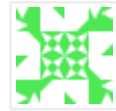
Is that "fair use?" 😊

Just kidding.

[Reply](#)

Glenn Logan

April 9, 2010 at 5:11 pm



I have read all of your previous comments when the flamewar began, and let's just say that you were quick to rush to Jack Marshall's defense and support his position unequivocally: That's ok, you're entitled to exercise your First Amendment rights.

I don't know, Antonin, maybe it's just me, but I distinctly recall disclaiming knowledge of the Model Rules in my first comment, and I went straight to my personal opinion that Eric's post was not ethical on the grounds that lawyers shouldn't be doing such things due to assumptions about their honesty. Disagree with that if you can, and I must assume you cannot, because you haven't even tried. You've been too busy accusing me of all sorts of other things to do so.

Furthermore, my support of Jack's position was based on his apparently solid reasoning. Nobody bothered to rationally attack his argument, and instead, they did what you are doing — attacked the messenger as wrong without providing any defense or rational justification to support that claim. Jack eventually had to go back and re-evaluate his entire argument based not on any reasoning by his detractors, but rather by a mere comment that suggested he "could be wrong."

Don't you find that troubling at all? It isn't as if you, or anyone else rationally rebutted Jack — instead, he was attacked personally with invective and vitriol. I would think at the very least that would be worthy of a "Yeah, that was bad." But no.

I have no First Amendment rights on this blog, and neither do you. My comments, and yours as well, are here only because the blog owner permits them to be. I presume, as a lawyer, you know that.

In my jurisdiction, however, you would not get away with accusing a lawyer of a breach of the Rules of Professional Conduct. It would be defamatory libel and actionable per se.

Well, I'll be sure to advise Jack not to move to Canada. In America, he's pretty safe from a defamation action, at least in this case.

When you figure out what the elements of a logical argument are, then I will be happy to oblige you.

No you won't. To do that, you'd have to stop your hyperventilating and excoriation of everything from my logic to "epithets" (Really, Antonin? Epithets? Where? Just wait, though, I'll oblige you.). That seems impossible for you, as does rational or respectful behavior. All that education has done for you is apparently fill you with bitter hubris, and rendered you incapable of having a polite conversation with anyone that disagrees with you or offends your elitist sense of piety. Perhaps, though, it is unfair of me to blame your education for an obvious character flaw.

So since you're giving me the last word, I'll just return the favor you graced me with on your very first comment to me (paraphrasing): Shut up and go away. In my world, we refer to people like you as "douchebags," and at 6'6", you'd qualify as a big one.

[Reply](#)

Antonin I. Pribetic

April 9, 2010 at 11:29 pm



Tsk tsk tsk. Glenn. I expected more from you, but you chose to insult me and call me a "douchebag". Defamatory, but since it's coming from someone described as a "paragon for journalistic ethics", you need to brush up on your defamation law. Here is one of a number of your choice quotes on the Web that

"I have steadfastly refused to repeat them here, or to allow others to do so. That is one thing that will never change. If we resort to rumormongering, we are violating the very spirit of fandom, in my opinion. You see, rumors

are always destructive. Rumors are absent context, and reject the idea of a presumption that a person's life outside work is their own. Rumors are worse than the worst imaginings of the Patriot Act's intrusion, because they needn't be the truth — they only need to be repeated....How would you feel if someone wrote your boss, not just asking but requiring him to dispel personal rumors about YOU....So take a good lesson from this, ladies and gentlemen. What you have here is a case of "where there's a rumor of smoke, there must be fire, so let's get the fire department and put it out whether it exists or not."

Your avatar choice tells me alot about you, Glenn. However, it's not science fiction that strikes a chord, it's more Frank Kafka's, The Metamorphosis.

You're welcome.

[Reply](#)

Antonin I. Pribetic

April 9, 2010 at 11:31 pm



P.S. Before you jump all over the typo, it's Franz Kafka...

[Reply](#)

Tim

April 9, 2010 at 11:39 pm



While we're on the subject of name calling – completely off-topic otherwise....

If I were an Arizona Diamondback's fan, I wouldn't refer to my team as the D-Backs. Seriously? I mean, that just gives fodder to your opponents to call them the D-Bags. As a Rockies fan, I often do.

And speaking of bags, why in the world would someone trying to drag down the Tea Party movement refer to the participants as "Tea Baggers"? How idiotic is that? If the world is made up of people who "tea bag" and people who get "tea bagged", which one would you want to be? I mean, honestly!

Thanks for reading my useless comment of the day! 😊

[Reply](#)

Tom Fuller

April 8, 2010 at 10:30 am



It's easier to quote than to think, so here's another entry from the Quotemeister:

“*Alas, to wear the mantle of Galileo it is not enough that you be persecuted by an unkind establishment. You must also be right.”

— Robert Park, speaking at an American Physical Society meeting

[Reply](#)

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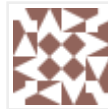
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Charles

April 9, 2010 at 2:12 pm



It is pretty lame to remove the intervening record of your self-defense and the comments thereto as part of your apology program. How can anyone judge for themselves how you characterize the events in your mea culpa?

[Reply](#)

Jack Marshall

April 9, 2010 at 8:06 pm



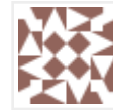
It is not lame. The ET incident was a detour in the purpose of this blog, which is to promote useful information and thought-provoking commentary. I am not obligated to keep text, that I have acknowledged was ill-considered and careless, to stay on-line so people who have no interest in ethics but enjoy pillorying a sincere individual who made a mistake can have sadistic fun. I have received too many “Oops! I posted something really vicious about you before I read your apology” messages. I don't care how anyone else would characterize the events. I have done so honestly, and what is ultimately important is what I and anyone else with an open mind learns from them. I left the posts up for more than a day so they could be read in context and to give some jackals a chance to mock me some more, and that was plenty. I take what I write seriously, and fix errors and

arguments as I learn about them. Why would I want to leave a post on line that doesn't contribute anything positive at this point, except to those who want to attack me? Why should I? I would edit an error out of an article or a book. My duty to you is to provide provocative ethics commentary, not to give you a stick to beat me with.

[Reply](#)

Charles

April 9, 2010 at 9:08 pm



If that's how you see it, that's how you see it. But you only get the final word on the story here. And your decision to only have the story seen in a self-serving way via a self-abasing apology that continues to take cheap shots at your (correct, remember) accusers (*jackals?* really?) is, indeed, lame. The rest of us get to have our say on [the outside](#). My take on your apology and its flaws is [here](#).

[Reply](#)

Jack Marshall

April 9, 2010 at 10:43 pm



How is a self-abasing apology self-serving, exactly? And I am not talking about my "accusers"—I am talking about the jackals, bloggers who have weighed in and denigrated me after I have done everything possible to set the record straight and make amends. I am talking about suggestions—based on nothing, completely unsupported by my professional and personal conduct, that my apology was anything other than an honest and open response to discovering that I was wrong. While the individuals who were most affected by my carelessness have been gracious and even encouraging, these people seem determined to make a big deal out of this as possible and to interpret every action, like you, in the worst and most flattering light.

My "accusers" were not and are not correct, in that they have said that I am a fool, a fraud, someone who doesn't know his business and who was "linkbaiting" or trying to hurt people, someone who only apologized because of fear. Those who disagreed with me were correct about two things: this was a minor issue, too minor to support the weight I placed on it, and the predominant and accepted reading of Rule 8.4 is that if dishonesty and misrepresentation in an activity unrelated to the practice of law are not at a level indicating unfitness to practice, then there is no violation of that Rule. Some of my "accusers" stated that 8.4 didn't apply to conduct outside the practice of law. They were wrong about that. Others claimed I was wrong that the Rules are not merely disciplinary in function, and they were wrong about that as well. I believe, though it is not a matter subject to proof one way or the other, that lawyers are obligated to meet a higher standard of integrity and honesty in everything they do. And they were wrong that I said the lawyer was unethical. I said the conduct was unethical, which is very different.

Frankly, I think anyone who continues to attack me (or anyone) after a complete and sincere apology, and that's what I wrote, based on a single incident, knowing little of the background and with no other experience or knowledge of what I do or have done, just looks petty and uncharitable. Glad I gave you some topics to fume on, but really, nobody can be harder on me (at least legitimately) than I am being on myself—I don't need any more assistance to feel bad, and I have to wonder about anyone who is so devoted to piling on a stranger.

[Reply](#)

Charles

April 12, 2010 at 1:08 pm



I meant to imply that your apology was alternatively self-serving and self-abasing, in calibrated amounts but did a poor job of it. Apologies for the ambiguity. And with that I take my leave.

[Reply](#)

Jack Marshall

April 12, 2010 at 1:43 pm



Thanks for the clarification, Charles. I won't disagree. I am hoping you will grant me the same margin for error—if there was anything self-serving in my mea culpa, it was not my intent: I am required to put everything here in the context of trying to extract lessons. We, I, make mistakes for reasons, and without reviewing the reason we're more vulnerable to making the same mistakes again. I don't want to make the same mistakes again, so I lay out the reasons and hope others can get some value from them. If that comes across as self-serving, so be it. That's not my intent, and I don't think it's the result either.

I hope you come back when we're talking about something more important than me.

[Reply](#)

Julian Hung

April 10, 2010 at 1:11 am



This immature 19-year old is so tempted to make a joke about lawyers and litigiousness right now.

Also, to Jack's credit (or maybe not, depending on your level of cynicism), he's apologized (on the old site) for mistakes he's made even when no major diplomatic incidents were started, as well as

occasionally posting a few rebuttals to his articles, with no snarky commentary attached. Also, he has put up things that he's sometimes found admirable about people he generally dislikes. Usually, I get the impression he's done some serious thinking on the issues, even if not always to my personal agreement.

On the positive side, the blawgosphere does take care of its own, though more in the style of an Old West posse. If I ever start a blog, I'll have to keep that in mind before I make any jokes about specific lawyer-related gaffes.

[Reply](#)

Ethics Bob

April 10, 2010 at 6:54 am



Jack, you got the ethics right (IMHO), even if you got the rules wrong. Your apology was classy and complete. Funny thing, I criticize some lawyers in my book for following rules assiduously while doing unethical things. I have only admiration for lawyers who worry about ethics IN ADDITION to rules.

I'll keep reading Ethics Alarms for thought-provoking writing about ethics.

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