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The Ethics of Civility

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I. Introduction

Our revered colleague, Phil Durst, passed away on October 1, 2019. He was only 62. Phil leaves a legacy of legal skill and expertise, humor, and art. He also leaves lessons he taught us through his actions, not his words, about the virtues and the effectiveness of practicing law with civility and decency.

Phil Durst was lawyer of the highest caliber. A 1982 graduate of the University of Texas School of Law, Phil was a civil rights and employment lawyer and a giant in the bar in Austin and statewide. As an adjunct professor at the UT Law School for 20 years he helped teach a generation of Texas lawyers. Phil helped plan this conference every year and almost always presented at this conference. He was an expert in his field and a highly effective courtroom advocate.

One of Phil's recurring presentations at this conference was his "What is it Worth" survey in which he created common hypothetical cases, distributed them to defense and plaintiff side attorneys, and asked us to value the case. What is it worth? He then presented the results, which were always illuminating. This exercise was just one of many ways Phil succeeded in bringing opposing viewpoints together and helping us understand each other. It also speaks to the trust that lawyers placed in Phil that defense lawyers – his frequent opponents – relied on Phil's integrity and his process of keeping their case values anonymous even concealing them from himself.

Phil supported and fought for causes like the Save Our Springs Alliance, the Texas Freedom Network, and the Equal Justice Center.

Phil had a sparkling sense of humor. Lawyers aren't typically funny. Phil Durst was world class funny. Every year his picture in the Austin Bar Association Directory was something ridiculous. Phil wearing a Mexican wrestler's mask. Phil acting out the famous scene from North By Northwest. Phil as George W. Bush on an aircraft carrier.



He refused to be introduced at this conference with a bland recitation of where he went to school and how many times he had been named a Super Lawyer. So he wrote his own introductions. They usually began like this, "Our next speaker insisted that I read the following statement." The joke was almost always on Phil. Here's the introduction Phil wrote for this conference last year, challenging the introducer's pronunciation – a gentle joking jab at the introducer:

Our next speaker has insisted that I read the following statement:

As many of you know, I am a big “list maker.” I love making lists like my favorite Billie Eilish songs or the cutest members of BTS (I like J-Hope) So, the other day I was making a list of the world’s coolest people and realized that with the death of Muhammad Ali, Philip Durst has moved up to be the 4th coolest person on earth, just behind:

#1) Nice Nailantei Leng’ete (the Kenyan activist dedicated to promoting women’s health and ending female circumcision)

#2) Malala Yousafzai (the Pakistani advocate for women’s education and the youngest winner of the Nobel Peace Prize)

#3) Milwaukee Bucks’s power forward Giannis Antetokounmpo; and then (#4) is Phil.

My new list puts Phil ahead of Yemini Human Rights defender, Radhya Almutawakel; Indian LGBTQ+ lawyer Menaka Guruswamy; Loujain Al-Hathloul of Saudi Arabia, Meghan Markle, and Millie Bobby Brown from Stranger Things.

And so, then it hit me: Oh my gosh! Emit high pitched scream. Philip Durst is the fourth coolest person on earth! And I know him.

Please welcome “#4”: Phil Durst

Phil used his sense of humor in the courtroom. In one of Phil’s last hearings in December 2018 involving three parties and several motions, it was not clear who would go first. So Phil simply stood up and announced to the Court, “Your honor, since I am the most handsome, I’ll go first.”

Phil’s business card bragged that his office was air conditioned.

Phil wrote a eulogy to be read at his own funeral. It was quintessentially Phil: hilarious and uplifting. It ended with Phil urging those in attendance to stand and dance while “I’m a Believer” by The Monkees was played over the synagogue’s sound system.

Phil was an artist. You probably have memories of Phil sitting around a conference table or in the audience at this annual event, appearing to knit or sew or crumble paper or tie things with string or cut with scissors. He was creating his beautiful collage art out of Starbucks cups or old law school book pages or Dum Dum wrappers.

Phil said of his collage art:

As quilts were traditionally made with scraps and left-over fabrics, I like to work with materials that have also been cast-off or designed for other purposes. I enjoy working with paint chips, old books, candy boxes, and other packaging that all have such beauty even though they were never designed to last. Such a tremendous amount of artistic talent, choice, and color goes into such ephemeral packaging that I like to preserve their beauty and vibrance.

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