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Profanity and Professionalism: A Multimedia Overview of Crossing the Ethical Line

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Disclaimers

- Warning: explicit material ahead!
- This presentation contains profanity and otherwise inappropriate language used in actual case opinions, transcripts, and briefs.
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Ethical Standards

- State Bar of Texas Rules
- Texas Lawyer's Creed
- Texas Code of Judicial Conduct

profane

/prə-feɪn, **adjective, verb**, -fanəd, -fan'ɪŋ

adjective

1. characterized by irreverence or contempt for God or sacred principles or things; irreligious.
2. common or vulgar.

verb (*used with object*)

3. to misuse (anything that should be held in reverence or respect); defile; debase; employ basely or unworthily.
4. to treat (anything sacred) with irreverence or contempt; violate the sanctity of: to profane a shrine.

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unprofessional

/ʌnpɹə fɛʃənəl/ , *adjective*

1. not professional; not pertaining to or characteristic of a profession.
2. at variance with or contrary to professional standards or ethics; not befitting members of a profession, as language, behavior, or conduct.
3. not done with professional competence, as a play staged or an opera performed by amateurs; amateurish.

Profanity in court proceedings

- Has it always been around?
- Has it always been unprofessional?

Fact witness testimony

“Then he proceeded to threaten me, tell me that I had better cooperate and if I didn't, he would blow my brains out, and there was various bad language.

When asked about the 'various bad language,' she replied that 'in all my statements I left the vulgar out.' She recalled that he said, instead of 'blow my brains out,' the words were, 'I'm going to blow your shit away.'”

Padgett v. State, 683 S.W.2d 453, 455
(Tex. App.—San Antonio 1983, no pet.)

Expert witness testimony

Texas Code of Criminal Procedure art. 42.014

The "hate crime" statute requires a showing of the defendant's "bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference."

Profanity in reported cases

“There are three kinds of lies:
lies, damned lies, and statistics.”

Popularized by Mark Twain

ass

[as] **noun** *Vulgar*

noun

1. a long-eared, slow, patient, sure-footed domesticated mammal, *Equus asinus*, related to the horse, used chiefly as a beast of burden.
2. any wild species of the genus *Equus*, as the onager.
3. a stupid, foolish, or stubborn person.

noun *Vulgar* .

1. the buttocks.
2. the rectum.
3. *Slang* . sexual intercourse.

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2012 Lexis search for variants of “ass”

More Than 3000 Results!

This search (**ass!**) has been interrupted because it will return more than 3000 results. Click the "Edit Search" button below to try again. You may want to try one or more of the following:

- Use more specific search terms or date restrictions.
- Use more restrictive connectors.
- Add other terms to your search. "Suggested Words and Concepts" are displayed on the search form when you click "Edit Search".
- Search Using Natural Language

[Search Using Natural Language](#)

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2024 Westlaw search for variants of “ass” – over 21,000 results

The screenshot shows the Thomson Reuters Westlaw Edge interface. At the top, the search bar contains 'adv: "ass"' and the jurisdiction is set to 'Texas'. The search results are categorized under 'Cases (1,364)'. A sidebar on the left lists various content types with their respective counts: Overview (15), Cases (1,364), Trial Court Orders (51), Statutes & Court Rules (28), Secondary Sources (10,000), Practical Law (1), Regulations (6), Public Records, Administrative Decisions & Guidance (1,813), Arbitration Materials (0), and Briefs (10,000). The main content area displays a search result for 'Peavy v. State', a case from the Court of Appeals of Texas, Houston (14th Dist.), dated December 12, 2002. The case summary includes the text: 'CRIMINAL JUSTICE - Terrorism. Evidence was factually sufficient to support defendant's conviction for terroristic threat.' Below the synopsis, there are three snippets of text, each containing the word 'ass' highlighted in yellow. The snippets are: 1. '...told victim "I ought to put a cap in your ass" as he was arguing with the victim and raised and...' 2. '...threat, saying "I ought to put a cap in your ass." V.T.C.A., Penal Code § 22.07(a) [3] 110 Criminal...' 3. '...told victim "I ought to put a cap in your ass," in combination with raising his gun in the air, and...'

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Overview 15

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Briefs 10,000

Cases (1,364)

Additional Relevant WestSearch™ Cases (4)

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1. **Peavy v. State**
Court of Appeals of Texas, Houston (14th Dist.). • December 12, 2002 • Not Reported in S.W.3d • 2002 WL 31769393

CRIMINAL JUSTICE - Terrorism. Evidence was factually sufficient to support defendant's conviction for terroristic threat.

▶ Show synopsis

< 1 - 3 of 9 snippets >

...told victim "I ought to put a cap in your **ass**" as he was arguing with the victim and raised and...

...threat, saying "I ought to put a cap in your **ass**." V.T.C.A., Penal Code § 22.07(a) [3] 110 Criminal...

...told victim "I ought to put a cap in your **ass**," in combination with raising his gun in the air, and...

shit

[shit] **noun, verb, shit or shat, shit·ting, interjection** *Vulgar*

noun

- 1.** excrement; feces.
- 2.** an act of defecating; evacuation.
- 3.** the shits.
- 4.** *Slang.* pretense, lies, exaggeration, or nonsense.
- 5.** *Slang.* something inferior or worthless.
- 6.** *Slang.* a selfish, mean, or otherwise contemptible person.
- 7.** *Slang.* narcotic drugs, especially heroin or marijuana.
- 8.** *Slang.* possessions, equipment, mementos, etc.; stuff.

shit

verb (used without object)

9. to defecate.

verb (used with object)

10. *Slang* . to exaggerate or lie to.

interjection

11. *Slang* . (used to express disgust, disappointment, frustration, contempt, or the like).

Idioms

12. give a shit, *Slang* . to care; be concerned.

13. no shit, (used to express amazement, incredulity, or derision).

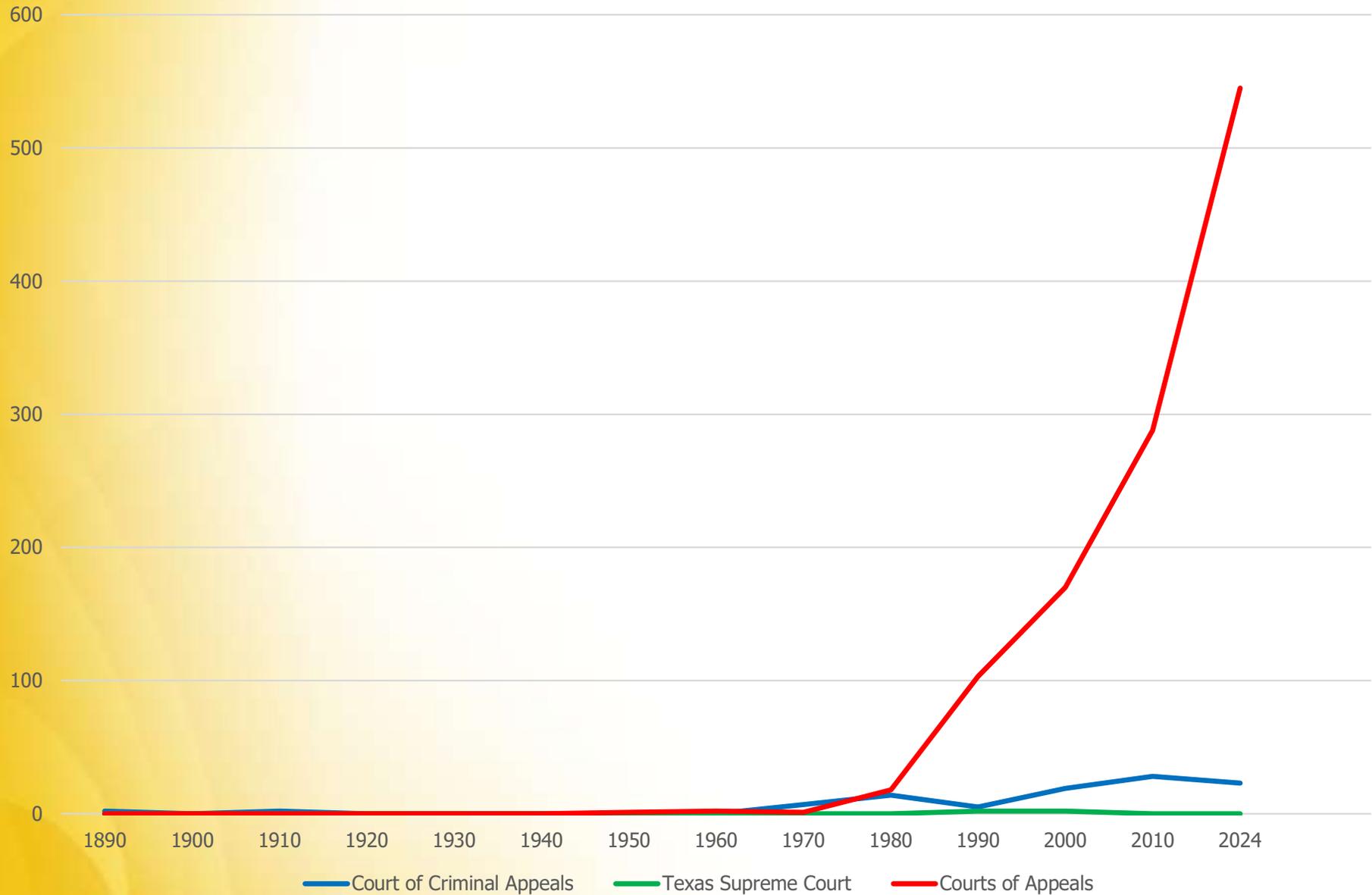
14. up shit creek, *Slang* . in a desperate or hopeless situation; in serious trouble. Also, up shits creek, up shit creek without a paddle.

First reported “Shit” in a Texas opinion

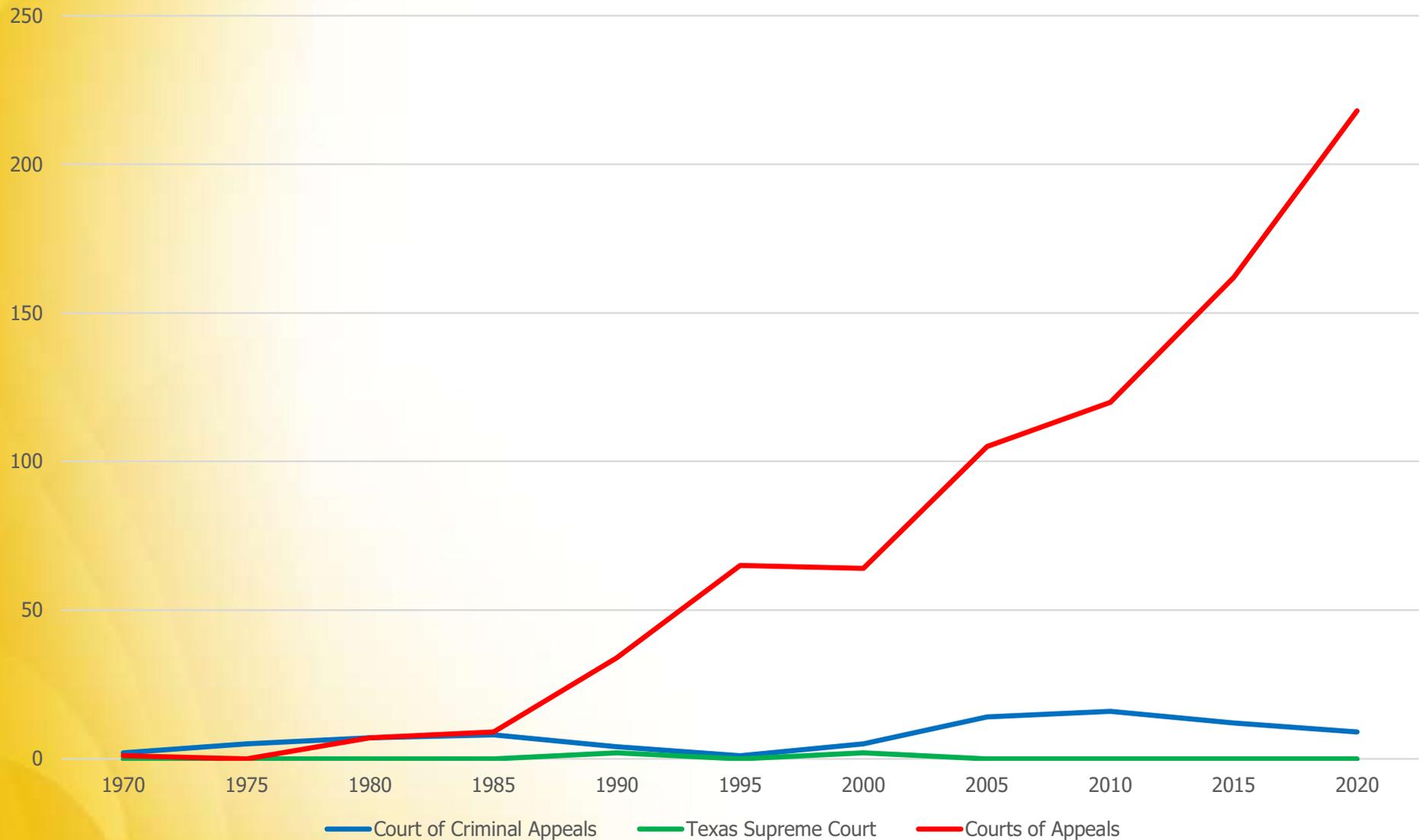
Tucker v. State, 28 Tex. Ct. App. 541 (Tex. Crim. App. 1890)

“The proof shows that the defendant, during the term of the District Court of Llano County, and while the ladies of Llano were assembled in large numbers in the basement of the court house, making preparations for a public entertainment, pinned or pasted to the backs of the coats worn by John Potts and James Sallee pieces of paper on which were written in large letters the words, ‘O Shit!’”

“Shit” appeared in 896 Texas opinions through 2024



“Shit” usage in opinions over the last 55 years



“Shit” references

Montgomery Indep. Sch. Dist. v. Davis, 34 S.W.3d 559, 575 (Tex. 2000) (administrative board made a factual finding that a teacher referred to a student as a “little shit”)

In the Interest of L.M.I., 119 S.W.3d 707 (Tex. 2003) (in context of termination of parental rights, a reference to how much a parent cared about the child)

fuck

[fuhk] **verb, noun, interjection** *Vulgar*

verb (used with object)

1. to have sexual intercourse with.
2. Slang . to treat unfairly or harshly.

verb (used without object)

3. to have sexual intercourse.
4. Slang . to meddle (usually followed by around or with).

interjection

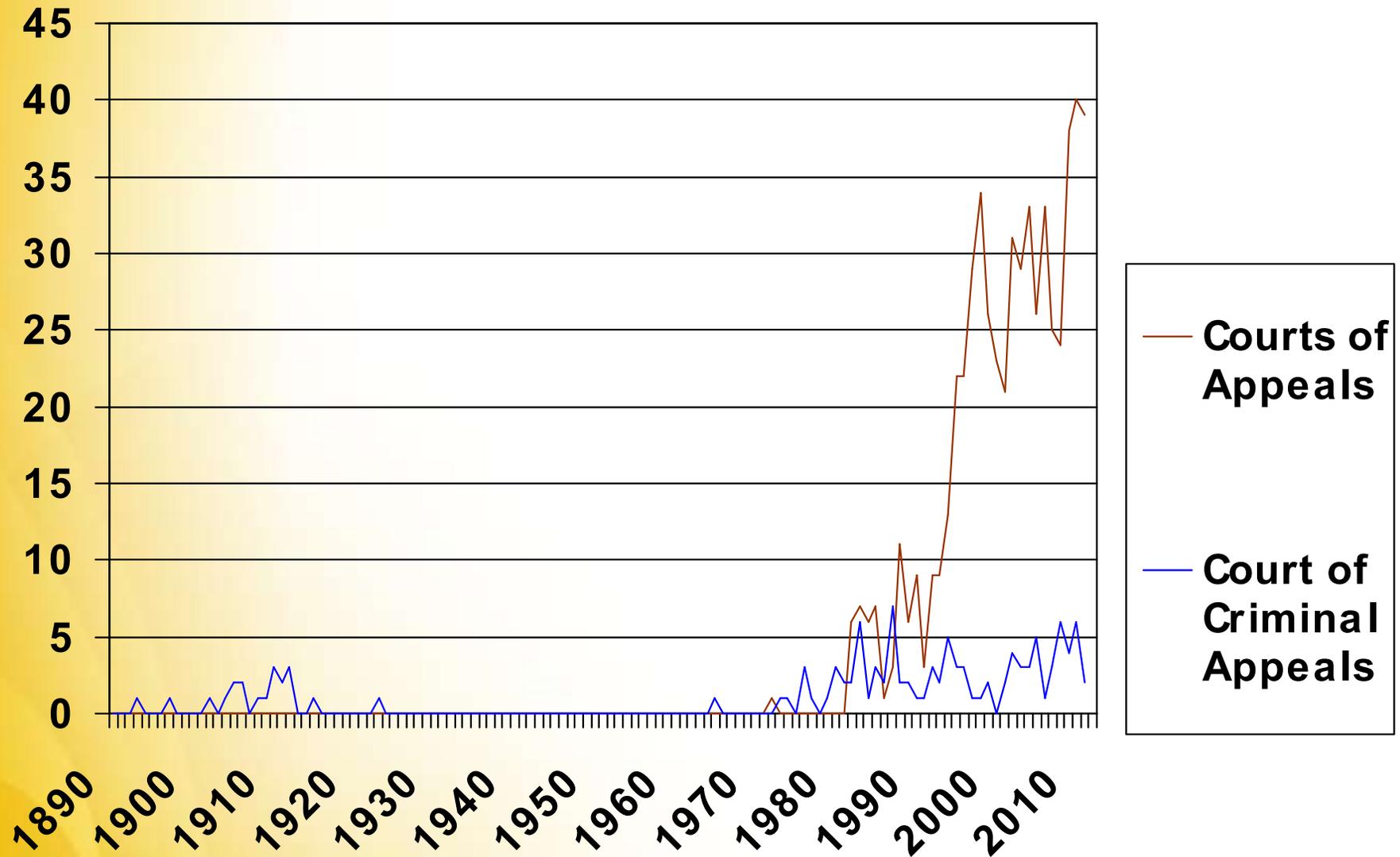
5. Slang . (used to express anger, disgust, peremptory rejection, etc., often followed by a pronoun, as you or it.)

noun

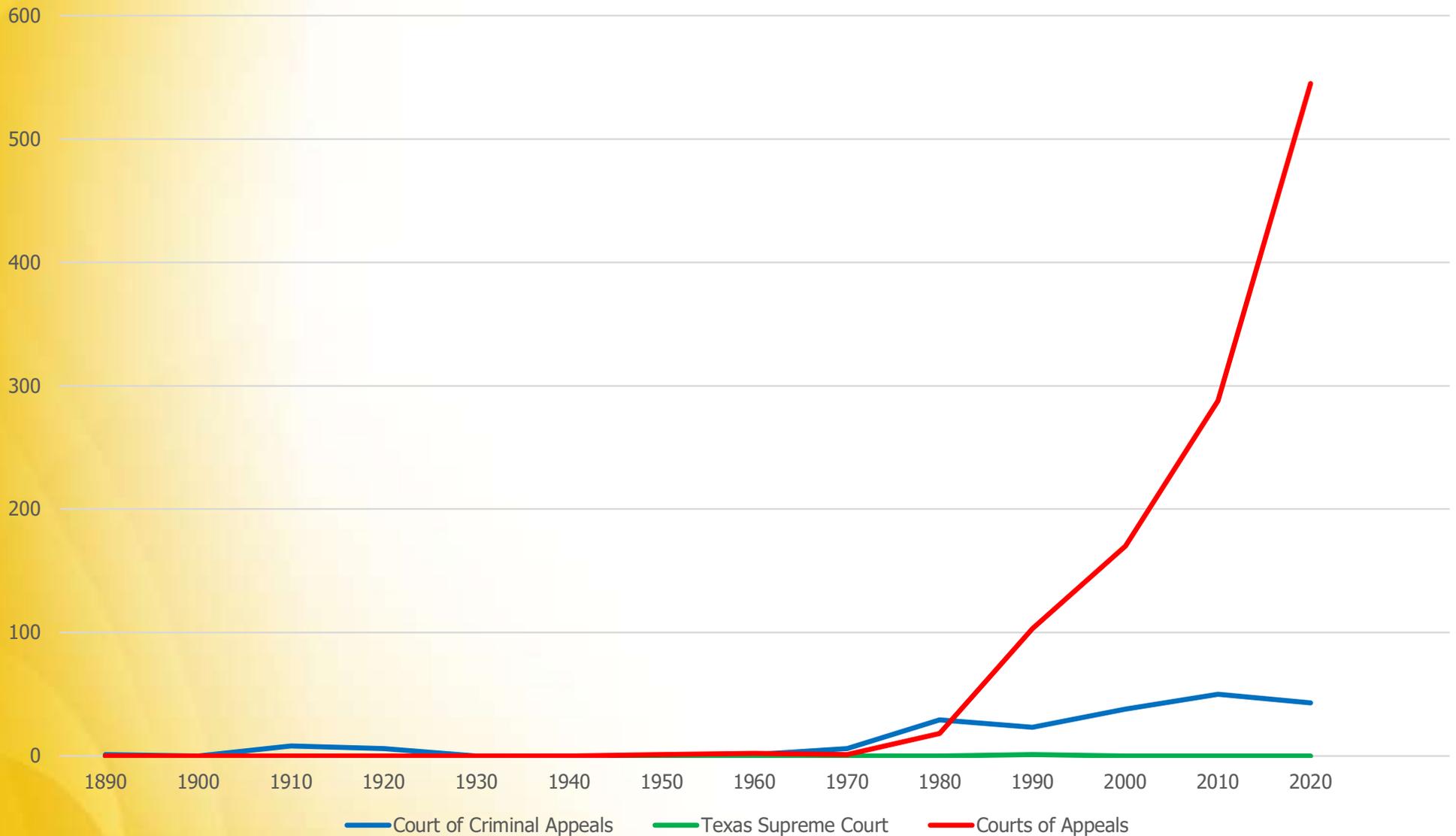
6. an act of sexual intercourse.
7. a partner in sexual intercourse.
8. Slang . a person, especially one who is annoying or contemptible.

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“fuck-” variants appeared in 712 Texas opinions through 2012



“fuck-” variants appeared in 1,331 Texas opinions through 2024



What changed?

Cole v. State, 32 Tex. Crim. 423 (Tex. Crim. App. 1893) (verbatim testimony from rape trial)

Hughes v. Board of Trustees, 480 S.W.2d 289, 291 (Tex. App.—Fort Worth 1972, writ ref'd n.r.e.)

Tutt v. State, 627 S.W.2d 529 (Tex. App. —Fort Worth 1982, no pet.) (repeating testimony)

What changed?

Q. Now, Dr. Van Cleef, it is necessary that I ask you if you will repeat verbatim, please, the profanities and obscenities that you say did take place, and that the students engaged in during the meeting.

A. You want me to say it exactly as they--

Q. Yes

A. The words as they used them--

Q. To repeat into the record the words which were used in reference to obscenities and profanity and that sort of thing.

A. The words, "mother fucker, fuck, shit, fucking shit, and white racist pig" were terms that were thrown out frequently.

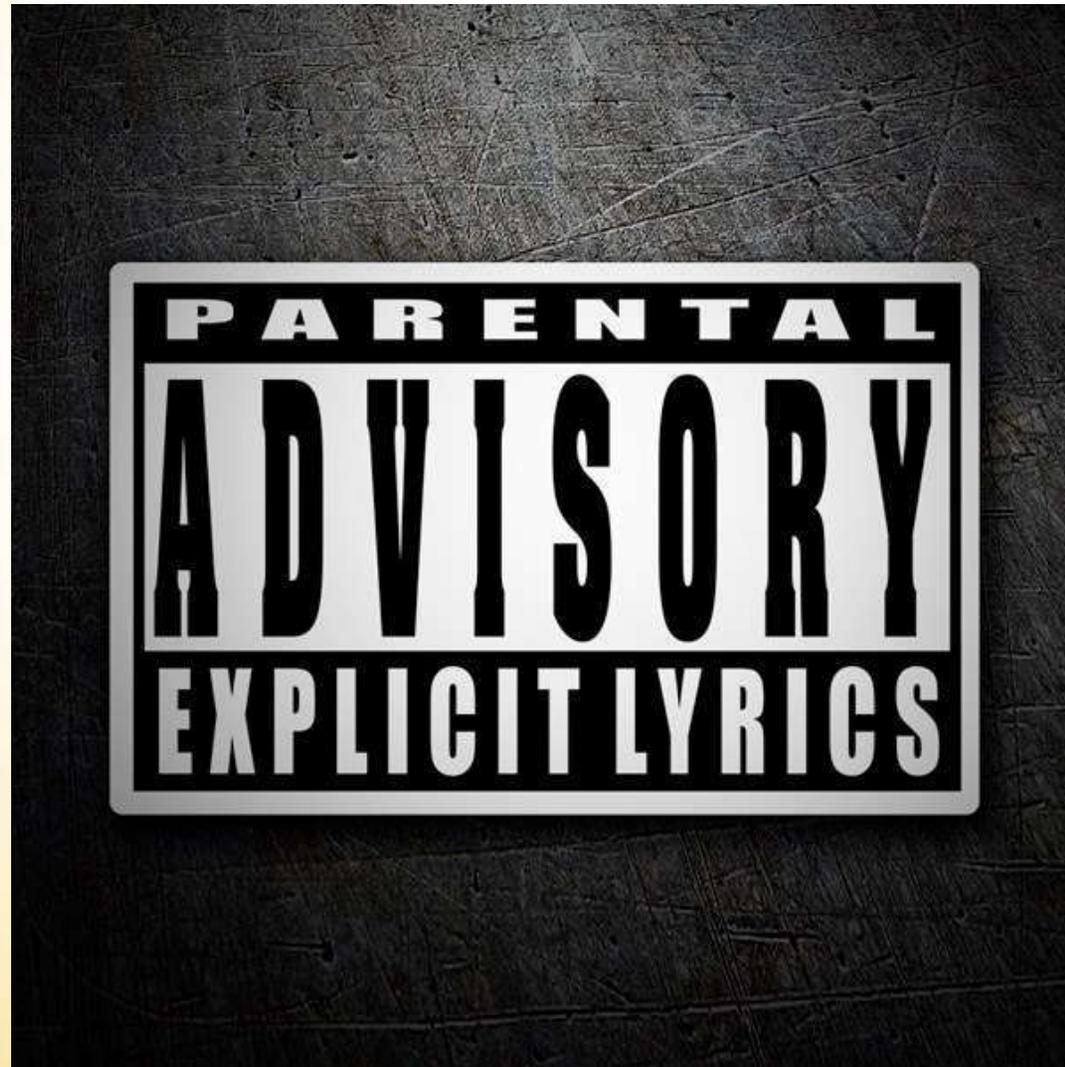
What changed?

Early 1980s saw a big jump in profanity reported in court cases

Profanity in music saw a big rise in the late '80s and early 1990s

Biggest jumps in social use of profanity occurred in 1995

What changed?



How does profanity impact the profession of law?

“Profane” – treating with irreverence or contempt; common or vulgar

“Unprofessional” - not befitting members of a profession, as language, behavior, or conduct.

Between Lawyers

Profane language – does profanity have a place in negotiation?

Between Lawyers

State Bar Rule 3.02

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

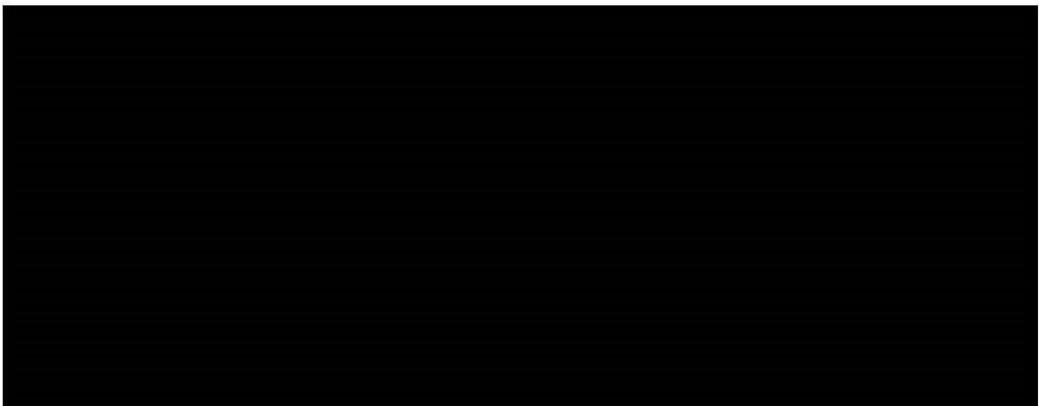
Lawyer's Creed III. 9.

I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior.

Between lawyers – in real life

CERTIFICATE OF CONFERENCE

This will certify that on the 23rd day of September, 2005, that undersigned counsel conducted a conference with Plaintiff's Counsel, [REDACTED]. Although never stating explicitly that she opposed the Motion For Sanctions, Plaintiff's counsel did state that the undersigned counsel and her client can "kiss my ass" and that she will see us at the courthouse. Therefore, this Motion is opposed.



Between lawyers – in real life

Q. [T]his is your loan file, what do Mr. and Mrs. Fitzgerald do for a living?

A. I don't know. Open it up and find it.

Q. Look at your loan file and tell me.

A. Open it up and find it. I'm not your fucking bitch.

Q. Take a look at your loan application.

A. Do it yourself. Do it yourself. You want to do this in front of a judge. Would you prefer to [do] this in front of a judge? Then, shut the fuck up.

GMAC Bank v. HTFC Corp., 248 F.R.D. 182, 187 (E.D. Pa. 2008)

Between Lawyers

Profane conduct and language – negotiation

Between Lawyers

State Bar Rule 3.04(c)(2)

A lawyer shall not, in representing a client before a tribunal, state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceedings or that will not be supported by admissible evidence

Between Lawyers

Profane conduct – to misuse or employ unworthily

Between Lawyers

State Bar Rule 3.04(a)

A lawyer shall not unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value, or counsel or assist another person to do any such act.

Between lawyers – real life

Chrysler Corp. v. Blackmon,
841 S.W.2d 844, 845 (Tex. 1992)

State Bar Rule 3.04(a)

A lawyer shall not unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value, or counsel or assist another person to do any such act.

As to the client

Profane conduct – competence

As to the client

State Bar Rule 1.15

A lawyer shall decline to represent a client or, where representation has commenced, shall withdraw...if the lawyer's physical, mental or psychological condition materially impairs the lawyer's fitness to represent the client

As to the client

Profane conduct – candor

As to the client

State Bar Rule 3.04(b)

A lawyer shall not...counsel or assist a witness to testify falsely.

As to the client

Profane conduct – strategy communication

As to the client

State Bar Rule 1.03(b)

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

As to the client – in real life

McFarland v. State, 928 S.W.2d 482, 506
(Tex. Crim. App. 1996)

As to the Court

Profane conduct – candor

As to the Court

State Bar Rule 3.03(a)(1)

A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.

As to the Court

Profane conduct – appearances

As to the Court

Texas Lawyer's Creed IV. 2.

A lawyer must conduct himself in Court in a professional manner and demonstrate respect for the Court and the law.

As to the Court – in real life

Filed
Cause No. F81-01988-FK

THE STATE OF TEXAS

2011 SEP 10 AM 10:10

§ IN THE CRIMINAL

VS.

§
§
DISTRICT CLERK
DALLAS CO., TEXAS

DISTRICT COURT # 4

JONATHAN BRUCE REED

§
§
DEPUTY

OF DALLAS COUNTY, TEXAS

MOTION TO DISMISS THIS PROSECUTION OR PRECLUDE THE DEATH PENALTY
BECAUSE, DUE TO DELAY, EVIDENCE HAS BEEN DESTROYED OR LOST,
IMPORTANT WITNESSES HAVE DIED, AND BECAUSE EXCULPATORY EVIDENCE
NO LONGER IS AVAILABLE

OR

HOW JONATHAN BRUCE REED WAS SCREWED BY THE STATE
IN HIS TWO PREVIOUS TRIALS,
AND HOW HE IS NOW INJURED TO THE POINT
WHERE HE CANNOT RECEIVE A FAIR TRIAL.

As to the Court – in real life

Case 6:09-cv-06126-TC Document 229 Filed 10/14/10 Page 3 of 3 Page ID#: 1214

PACER by false alleging damages to court staff. Once again, litigant HAS NO CHOICE but to conclude that the mootness of all pending motions DEMANDS that all unjustified harassment on behalf of C-word Klonoski needs to END IMMEDIATELY.

Litigant will file notice of appeal to the supreme court of the fraudulent judgment by cowfucker kozinski's whores next week. Litigant might wait until Monday to act on allegations above. But litigant might not. You never know what this litigant's gonna do.

Dated this 14th day of October, 2010.

BY:

/s/ Deborah E. Frisch

Deborah E. Frisch
3003 W. 11th Ave. PMB 168
Eugene, OR 97402
(541) 520-2929

From the Court

Profane conduct – impartiality

From the Court

Code of Judicial Conduct - Canon 3.B.(5)

A judge shall perform judicial duties without bias or prejudice.

From the Court

Profane conduct – dignity

From the Court

Code of Judicial Conduct - Canon 3.B.(6)

A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin...

From the Court – in real life

In re Thoma, 873 S.W.2d 477, 486 (Tex. Rev. Trib. 1994)

Judge: Well, here's what we'll do, we'll get Cook appointed on you, you come in here we'll have a hearing on that in open court and everything like that and you're not working and I'll waive it and nobody can say a damn thing. That way it's all over with, I'm talking about the probation part now, then you're off the hook on that.

Judge: Nothings gonna happen to you, and, you know, especially since it's just all family. And it's bullshit.

From the Court – in real life

In re Jimenez, 841 S.W.2d 572, 581 (Tex. Rev. Trib. 1992)

“When a police officer called a judge’s decision ‘chickenshit,’ it launched a remarkable series of events resulting in a police officer being accused of unprofessional conduct, perjury, and racial discrimination; a judge being admonished for violating rules of ethics; and ultimately, this appeal.”

Closing thoughts

Candor toward the client may sometimes involve profane language

Thank you.

Bryan Rutherford

MACDONALD DEVIN MADDEN
KENEFFICK HARRIS QUINN