

TO PROFESSOR CHARLES J. OGLETREE, JR.*

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In 1978, like all of the other members of that year's class of new staff attorneys at the Public Defender Service of the District of Columbia ("PDS"), Charles Ogletree settled down in the District of Columbia. Charles moved to the District of Columbia from Harvard Law School with his wife, Pamela, and his young son, Charles III.

PDS was the entry point for Charles Ogletree into the legal profession as an attorney. I am certain that his initiation into the legal profession was intense, swift and at times satisfying. At other times, it was marked by confusion and frustration. Some of those in the PDS class of 1978 would go on to become some of the finest attorneys and judges ever to practice law. Among these people were The Honorable Stephanie Duncan-Peters, Mark S. Carlin, Susan L. Schneider, Douglas J. Wood, James H. McComas, James Kline, Mary Lou Soller, Barbara Bergman, and The Honorable Rhonda Reid Winston. W. Gary Kohlman served as the Class of 1978's training director, and he was another outstanding trial attorney.

The competition and pace in Charles's first work as an attorney, by virtue of the talent and commitment of his colleagues, and the high bar set by the Training Director, must have been tremendous. Charles, in addition to being a talented young attorney himself, definitely learned a lot from his classmates and the Training Director. This is because, in the end, he turned out to be the best trial attorney to be trained at PDS.

When Charles completed his training, he was assigned to the Juvenile Trial Section of PDS, representing juveniles charged in the Superior Court of the District of Columbia with the commission of offenses or being status offenders. At that time, I was assigned as a judge in the Juvenile Branch of the Superior Court. As chance would have it, Professor Ogletree's first case was certified to me for trial. In most juvenile cases, the respondent either requested a consent decree to be placed on probation or entered a plea of involvement (guilt). The respondent in this case, however, asserted his right to a trial, and Charles represented this juvenile in the trial. I do not remember the name of this case, so I am relying on my memory and not the record; it is my recollection that the respondent was found guilty. I do very clearly recall that this young attorney was clear as to his theory and the law of this case, his direct examination painted a clear picture of his theory of the facts of the case, he supported his legal theory of the case with accurate citation of applicable law, his objections to and proffers of evidence were clear and correct. As I recall, this is one

* The editors of this collection inserted this title.

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of only two cases Professor Ogletree lost while a staff attorney with PDS. Judge Stephanie Duncan-Peters, who was a member of the PDS Class of 1978, said that “if you had him [Charles Ogletree] for a lawyer, more than likely you would be acquitted.”

In less than two years with PDS, Professor Ogletree graduated from trying juvenile non-jury cases to trying adult jury trial cases. One of the first adult jury trials in which he participated was *United States v. Wesley A. Oliver*, F-06464-78 (D.C. Super. Ct.). W. Gary Kohlman, Esq. (who had been training director for Charles Ogletree’s class) served as lead defense counsel in this case, and Charles served as second defense counsel. Actual trial responsibilities in representing the defendant were more or less shared equally between the two defense attorneys. The defendant was charged with introducing a female into prostitution. Commonly referred to as pandering, this is a very serious felony, and the United States prosecuted this case aggressively.

Throughout the trial, the defendant wore paint-splattered clothing. The defendant elected to take the stand to testify in his own defense and testified that he was not a “pimp,” but instead just a house painter. The defendant testified that: “I don’t know why these girls give me all this money. I’m just a house painter.” The United States called an expert on prostitution, [Ms.] “Sunshine,” and the government had provided protection for this witness, apparently, fearing that someone would attempt to intimidate her into not testifying or to change her testimony. “Sunshine” expressed her expert opinion that some of the defendant’s conduct, as reflected in the evidence including his own explanation, was consistent with the conduct of a “pimp” in relation to the business of prostitution and prostitutes. The lead investigator in the case was the then-leading Metropolitan Police Department detective in pandering cases, Detective Hagerty. The United States went to the unusual step of obtaining and protecting an expert in prostitution, “Ms. Sunshine,” to testify as to the *modus operandi* of prostitution.

Notwithstanding the very aggressive prosecution by the United States, on February 7, 1980, the jury returned a verdict of not guilty. During the trial, it was reported that the government’s expert witness was seen dancing one evening during the trial after court at a bar or restaurant with one of the jurors. After the jury returned its verdict, the jurors, defendant and defense counsel had a celebration party at a local establishment. Professor Ogletree learned some valuable lessons from this case that no doubt stayed with him over his career and that he has passed on to his students in the Harvard Trial Advocacy Workshop. Jurors are very attentive and observant during the course of a trial and as a group hear and see virtually everything defendants, witnesses and attorneys say and do during the course of a trial. The credibility, candor, and sincerity with which counsel presents during the course of a trial can provide credibility for a client where none exists otherwise. The lessons so forcefully and indelibly learned by Professor Ogletree during this trial have no doubt been passed on over the years to his students.

The jury’s strong power of observation was brought home to Professor Ogletree at a party many of the jurors, who have the option of speaking with lawyers at the conclusion of a case in the District of Columbia, attended following the trial. The jurors said that they were most impressed

with and persuaded by Professor Ogletree's honesty, sincerity, and candor. Professor Ogletree no doubt concluded that the jurors transferred his own credibility, candor, and sincerity to Mr. Oliver, so that they found creditable his highly questionable testimony that he was simply a house painter to whom girls, for some unknown reason, gave a lot of money. Professor Ogletree's presentation captivated the jurors from the beginning of the trial. He had done such a good job of driving his themes home that the jury could recite them. Some jurors even approached Mr. Oliver and jokingly asked him: "Let me hear you say one more time: 'I'm not a pimp.'"

The second case that I can remember Professor Ogletree losing in the Superior Court of the District of Columbia is *United States v. Percy L. Jeter, Jr.*, F-3804-80 (D.C. Super. Ct.). Professor Ogletree advanced to the point that he was lead counsel in this first-degree murder case. The indictment was filed on April 15, 1981. The defendant was arraigned on April 28, 1981, and entered pleas of not guilty to all counts. Professor Ogletree entered his appearance for the defendant on June 18, 1981, and trial commenced on January 20, 1982. On January 29, 1982, after eight days of trial, the jury returned verdicts of guilty as to first-degree felony murder and burglary-I.

Barry Tapp served as the prosecutor in the *Jeter* case, and he was a seasoned and very successful Assistant United States Attorney. During closing argument, this very seasoned and successful prosecutor argued in the first-person voice of the decedent. He opened his argument with: "I on behalf of Mr. Alameda [decedent] have an opportunity to speak to you." Immediately after the prosecutor ended his initial closing argument, Mr. Ogletree objected to this argument as improper prosecutorial misconduct, which was highly prejudicial and deprived his client of a fair trial and requested the court to declare a mistrial and grant to the defendant a new trial. The motion was denied and the jury returned verdicts of guilty.

More than two years later, the Court of Appeals for the District of Columbia agreed with Professor Ogletree, holding that the prosecutor's closing argument did constitute prosecutorial misconduct. The Court of Appeals held that the defendant's convictions were substantially swayed by the misconduct, so that substantial prejudice resulted from the misconduct and the convictions therefore must be reversed and the case remanded to the trial court for a new trial.¹ This was a high-profile case at the time it was tried, pitting the United States Attorney's Office for the District of Columbia against PDS. Counsel for the United States endeavored to present the very best evidence and argument possible to prove the defendant's guilt of the offenses charged beyond a reasonable doubt. Counsel for the defendant endeavored to persuade the jury that the government's evidence and argument did not rise to that level.

It was no doubt obvious to Professor Ogletree at the time that the prosecutor's argument, the victim-decedent himself to speak to the jury, was very effective. It was, perhaps, less obvious that this conduct was both improper and prejudicial. I am sure that Professor Ogletree was no doubt torn between engaging in some type of similarly effective, but probably

1. See *Hawthorne v. United States*, 476 A.2d 164 (D.C. App. 1984).

equally improper misconduct, on the one hand, or on the other, sticking to the rules of law and procedure and relying as a consequence on a less emotional and persuasive argument. I am sure that this case demonstrated for Charles Ogletree in a most dramatic manner that however great the motivation to win during the heat of a closely contested trial, by whatever means, counsel must always stand on the rules and laws of procedure and evidence. At the end of the day, justice will emerge therefrom, even if it requires about two years to do so. I am certain that Professor Ogletree has passed this lesson on to his students.

Upon remand, the *Jeter* case was reassigned to my docket on October 12, 1984. As a result, I had extensive experience with Mr. Jeter, and I observed the difficulty that defense counsel encountered in representing him. Mr. Jeter appeared to be very uncooperative with defense counsel and to deeply distrust defense counsel, the prosecutor, and the criminal justice system. On September 26, 1986, new counsel for Mr. Jeter filed a Motion To Withdraw as Counsel. This Motion stated, in part as follows:

4. Throughout the pendency of the post-remand proceedings in the case, the defendant has consistently expressed dissatisfaction with his attorneys—the lead counsel at the first trial [Charles J. Ogletree, Jr.], the appellate attorney, and previous and present trial counsel. He has consistently expressed a general distrust of all attorneys from the Public Defender Service.

5. At present, communications between counsel and the defendant have completely broken down. Through his frequent, abusive telephone calls to trial counsel, the appellate chief, the trial chief, and other attorneys at the Public Defender Service, he has expressed his dissatisfaction with the representation of the Public Defender Service. It is the request of the defendant, trial counsel, and the chief of the trial division of the Public Defender Service that the court appoint new counsel. Under the circumstances outlined above, counsel feels that it would be impossible to effectively represent the defendant at trial.

Professor Ogletree effectively represented Mr. Jeter, notwithstanding the extremely difficult circumstances. Professor Ogletree no doubt was motivated in his effective representation of Mr. Jeter by his deep-seated commitment to and belief in the principle that every defendant in a criminal case is entitled to forceful, vigorous, effective representation, however undesirable and obnoxious that person or her or his case might be. Such representation is essential to the constitutional requirement that each defendant must receive a fair trial before she or he can be found guilty of the commission of a crime. I am certain that Professor Ogletree has over the years instilled an understanding of and commitment to and belief in this principle in his many Harvard Law School students.

Professor Ogletree continued as a staff attorney with PDS, rising in 1982 to the position of deputy director. He was serving as deputy director in 1985 when then-director Frank D. Carter, left the Service. When Mr. Carter departed, Professor Ogletree became acting director of PDS and the Board began its search for a new director. Professor Ogletree had been a very successful staff attorney in representing persons charged with the com-

mission of criminal offenses and also a very competent administrator as deputy director. He therefore applied for the position of director, and people in the D.C. legal community generally assumed that the Board would select Professor Ogletree as its next director. Professor Ogletree was completely dedicated to the PDS mission of providing the most competent, professional, learned, and aggressive representation possible to indigent persons charged with the commission of criminal offenses in the District of Columbia. He wanted to improve PDS's ability to perform this mission as its leader.

The Board, however, for reasons still unknown, determined not to appoint Professor Ogletree director of PDS. Instead, in April 1985, the Board appointed a person who had no criminal defense experience, who served in the United States Attorney's Office for the District of Columbia, and who at the time of her appointment was a staff attorney in the United States Department of Justice. At the time, this appeared to send a wrong-headed signal, because the appointee represented somebody who structurally served as the PDS opponent. It felt like a slap in the face. The failure to appoint Professor Ogletree as director was a big disappointment to many members of the legal community, the staff and alumni of PDS, and of course to Professor Ogletree. Indeed, two staff attorneys of PDS filed an action as individual plaintiffs in the Superior Court to block the person chosen by the Board as director from taking office. The action alleged that the Board had acted illegally in violation of the "Sunshine" laws of the District of Columbia in selecting the person for director in a closed meeting not open to the public. A former PDS staff attorney said: "To alumni it was very upsetting that he [Professor Ogletree] did not get it."

Professor Ogletree, however, sought to defuse the disappointment and resentment of the staff, alumni and legal community resulting from the failure of the Board to select him to fill the director's position by openly assisting and cooperating with the new director. The new director said that Professor Ogletree invited her over to the PDS offices to start working on the transition. The staff was so disappointed that in addition to the civil action, the staff showed their disappointment openly and at times in an ugly manner. Placing the welfare of PDS and its continued ability to provide representation to indigent persons charged with the commission of crimes above his personal ambition, Professor Ogletree rose above his personal disappointment and insisted that his colleagues discontinue their ugliness. They did. This episode demonstrated Professor Ogletree's character: he could have displayed his justifiable anger, but instead he continued to work in a professional manner with the interests of the larger organization in mind. Professor Ogletree then left PDS in September or October of 1985 and entered private practice in the District of Columbia as a partner in the law firm of Jessamy, Fort & Ogletree. At that time Professor Ogletree also became a visiting professor at the Harvard Law School.

While in the private practice of law in the District of Columbia, Professor Ogletree provided representation for persons demonstrating in and around the Embassy of South Africa in the TransAfrica movement to end South Africa's apartheid system. Professor Ogletree represented many of the persons arrested and charged in these demonstrations, and it is believed that not a single one was convicted. TransAfrica's demonstrations

are generally credited with playing a major role in the eradication of apartheid from South Africa.

It is generally said, by those who know Professor Ogletree well, that the only job that he ever really wanted was the directorship of PDS and even to this day, if asked and answered, Professor Ogletree would agree. However, it is safe to say that the people of South Africa and the many Harvard Law School students that he trained to be trial advocates are immensely blessed and better off for his not having been chosen to be director of PDS. Sometimes things happen for a reason, and our world is better off for it.