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R E S I D E N T ' S
P A G E

Civility—*Persuasion With Integrity*

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Within the profession much has been written of late about the way we lawyers treat each other, the courts and tribunals that decide disputes, and the clients we serve. The problem is characterized as a growing lack of civility. Coincident with this debate, we are witnessing a growing lack of civil discourse in the media, in the political arena, and in forums of social intercourse too numerous to mention. What and why this phenomenon? And what, if any, response should we make to a bevy of voices that celebrate a Beavis and Butthead or Howard Stern approach to personal interaction? I suggest that the "in your face" attitude, laced with name calling and ad hominem attacks on those with whom we disagree, creates a playing field where no one wins; more important, everyone loses—the profession, our clients, and, unfortunately, the public interest.

The reputation of lawyers, traditionally (and proudly) bound up in service, problem solving, and healing, is in part a product of what is most visible to the consumer public. When we witness an increasing lack of respect and decency by lawyers toward other lawyers, clients, and judges; when we encounter judges who hesitate to intercede; when the results increase the cost and delay the resolution; is there any wonder why the public has changed its view of the profession?

From a vantage point where one sees the inestimable contribution of lawyers to the public interest, the betterment of our society, and the highest traditions of the bar on a daily basis, it is infuriating to see the confidence in our profession diminished by such brackish behavior. Yet, when one reads the reported surveys of public opinion, and the Seventh Circuit's committee report that the decline of civility is among the most important and compelling issues facing the profession today, it is clear that the problem is real. When one talks with respected colleagues who confront racial and gender mistreatment at the hands of other lawyers and judges, it is real. When prosecutors and defense attorneys

consistently attack the others' motives, it is real. And when lawyers yield to the demand of their clients for a "junkyard dog" approach to dispute resolution, it is real.

Getting down to basics, the root element missing in this equation is integrity—both personal and professional. The inability to deal with one another in a straightforward and result-oriented manner stems from a failure to appreciate what Professor Roger Fisher calls a "getting to yes" approach to transacting business and resolving disputes; or worse, failing to deal with a displaced anger that takes our eyes off the ball entirely. We end up proverbially "kicking the refrigerator," instead of coming to terms with the real issue, whether internal or external. When we fail to be honest with ourselves, it becomes difficult, if not impossible, to be honest with others.

The Bar has an important role to play in examining the issue of civility in the profession. We are mindful that, reduced to its essence, civility transcends the litigation arena and goes beyond characterizations of "Rambo style" or "scorched earth" tactics. It involves a greater understanding of the adversary system, notions of common sense and decency, and, importantly, the effect that the lack of civility has on the ultimate result. If Professor Stephen Saltzburg is correct, that "the goal of the adversary system is to apply substantive legal principles so that those who have rights may claim them and those who have liabilities must face them," persuasion becomes the gravamen of our professional effort. Applying a dose of common sense, a sprinkle of decency, and a pinch of ethical standards, the cornerstones of civility are, simply put, *persuasion with integrity*.

Under the leadership of Andy Marks and Joanne Doddy Fort, the D.C. Bar Task Force on Civility in the Profession will take, as Judge Leventhal used to say, a "hard look" at the meaning of civility and its application to the daily work of our multifaceted profession. The Board of Governors has charged the task force to examine how we train our law students to appreciate the relevance of civility to

the adversary system and the practice of law; how we train our lawyers, in law firms and government agencies alike, to represent and advocate the interests of our clients with a blend of zeal and persuasion, integrity and decency; how we influence our advocates and judges to treat each other with the respect and integrity worthy of our profession and to both abide by certain standards of conduct; and how we must prevail on judges to remedy civility abuses when they occur with measures that will disincentivize those who do not abide; and finally, how and when the profession should assert itself to assure that civility is our code, not a mere aspirational goal or a casualty of changing times.

The task force members include a broad range of conscientious, thoughtful, and respected men and women from the bench and bar. They include Judges Aubrey Robinson, Noel Kramer, and Bruce Mencher; Justice Department officials Web Hubbell and Irv Nathan; Professor Carol Izumi; and a number of practitioners from the public and private sectors: Bob Bennett, Michele Roberts, John Bates, Zachary Fasman, Jack Vardaman, Diane Brennehan, Harold Jordan, Ellen D'Alelio, Mitch Linde, Sherry Rhodes, Bob Sayler, Jack Scheuerman, Ken Mundy, and Ernest Sanchez. The task force will spend considerable time interviewing lawyers, judges, clients, and members of the community to determine the extent and type of this behavior and to fashion remedies to promote civility in the law schools, the courtrooms, and the law offices.

We represent a profession that works to serve others, to achieve the peaceful resolution of disputes, and to assure equal justice for all under the rule of law. How we approach these tasks is as important as the ultimate result, and it is time to take the hard look at ourselves. When we do, Roger Bacon's thinking in his time-honored work "Of Truth" is worth considering: "Certainly, it is heaven on earth to have a [person's] mind move in charity, rest in providence, and turn upon the poles of truth."