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WHAT HAPPENED TO CIVILITY, AND HOW DO WE FIX IT?

The erosion of civility in the legal profession is a hot topic. In April of this year, the American Bar Association released the results of its annual Survey of Civic Literacy, which found that 85% of the respondents said civility in today's society is worse than 10 years ago. And the respondents also named some culprits, which we'll address in just a minute. Many associations and groups in the legal world are making restoration of civility a top priority. Our current state bar president has made it his platform this year.

Let's start by defining what we're talking about. Here's a good definition:

"Civility is defined as polite, reasonable and respectful behavior that recognizes the humanity and dignity of others, allowing us to live together in communities."

And here's another one:

"Civility is about more than just politeness, although politeness is a necessary first step. It is about disagreeing without disrespect, seeking common ground as a starting

point for dialogue about differences, understanding biases and personal preconceptions, and teaching others to do the same.”

And one more:

“Civility goes beyond the act of being polite and showing regard for others. It includes the ability to disagree with others without disrespect, considering the opinions of others, valuing their positions, and truly listening.”

A good place to start our discussion is by recognizing probably the best thing about civility – it’s free. It’s been said that civility costs nothing and buys everything. President John F. Kennedy told us many years ago that civility is a strength, not a weakness.

The thought that civility in society is a good and desirable thing is not new. It’s been around for a long, long time. Way before any of us were born. Consider, for example, George Washington’s *Rules of Civility and Decent Behavior in Company and Conversation*. These rules were found in one of George Washington’s notebooks. It is believed that he wrote these out sometime before his

sixteenth birthday. But what's important to note is that he didn't come up with these rules. It's believed that he wrote them out just to practice his penmanship. The rules themselves are attributed to French Jesuits, who were a religious community, and they are believed to have been written in the year 1595. They cover lots of topics. Consider some of them:

1st Rule: Every action done in company ought to be with some sign of respect to that that are present.

6th Rule: Sleep not when others speak, sit not when others stand, speak not when you should hold your peace, walk not on when others stop.

22nd Rule: Show not yourself glad at the misfortune of another, though he were your enemy.

40th Rule: Strive not with your superiors in argument, but always submit your judgment to others with modesty.

48th Rule: Wherein you reprove another be unblameable yourself, for example is more prevalent than precepts.

49th Rule: Use no reproachful language against anyone; neither curse nor revile.

65th Rule: Speak not injurious words, neither in jest nor earnest; scoff at nothing although they give occasion.

82nd Rule: Undertake not what you cannot perform, but be careful to keep your promise.

110th Rule: Labour to keep alive in your breast that little celestial fire called conscience.

Most of us had our first lessons in civility as children. We had mamas and grandmamas and Sunday school teachers who taught us our manners. And good manners are important for civility. We learned to say please and thank you. If you were raised in the South, you said thank you ma'am or thank you sir. We learned to greet everyone we met politely, and if we crossed in front of them or bumped into them, we said excuse me. We learned customs and courtesies like holding the door for person behind you and giving up your seat to an older person and stopping for funeral processions.

Then, as we grew and went to school, we learned more about civility. Some of you may remember a book written by Robert Fulghum in 1988 called *"All I Need to*

Know About Life I Learned in Kindergarten.” Remember his words:

“Share everything.”

“Play fair.”

“Don’t hit people.”

“Put things back where you found them.”

“Clean up your own mess.”

And then, after kindergarten, and a lot more education, and the bar exam, we became lawyers. We are supposed to be professionals, which means more than having a J.D. degree and a passing score on the bar exam. We learned – and I’m quoting here from the preamble to the Rules of Professional Conduct – lawyers are required to demonstrate respect for the legal system and for those who serve it, which includes other lawyers. And we learned from pronouncements of our appellate courts that all lawyers should conduct themselves according to the highest standards of honesty, integrity, and civility.

And yes – we are also learned that we have to provide our clients with zealous representation. But didn't we all understand that "zealous" mean thorough and prepared and vigorous, not rude and snarky and condescending. It means playing by the rules, not taking cheap shots. It means respect, not name-calling. Here's what a California appellate court said about zealous representation in a 2019 case in which the issue was whether a default judgment should be set aside. The Court concluded that civility required that it be set aside, but this is what it said:

"We close this discussion with a reminder to counsel –all counsel, regardless of practice, regardless of age—that zealous advocacy does not equate with "attack dog" or "scorched earth," nor does it mean lack of civility. Zeal and vigor in the representation of clients are commendable. So are civility, courtesy and cooperation. They are not mutually exclusive."

I should point out that the requirement for civility doesn't just apply to lawyers. Consider Canon 3(A)(3) of the Canons of Judicial Ethics:

“A judge should be patient, dignified and courteous to litigants, jurors, witnesses and lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.”

All of us can think of lawyers who have been the model of both civility and zealous advocacy for years. They've done it right. So we all know it can be done. And the same is true for judges. We all know judges who were dignified and patient and courteous but held our feet to the fire and moved things along fairly and made tough decisions and did it right.

So what went wrong? How did we get where we are now? Where snarky, condescending emails have replaced straightforward, productive communication? Where lawyers can't disagree without being disagreeable? Where cheap shots are common, and not the exception? Where you may be hesitant to have a conversation with another lawyer for fear you're being recorded? Or fear that what you say will end up- often

misquoted- on Alacourt? It hasn't always been like this.
So what's changed?

The erosion of civility in our legal world seems to be just a subset of what's happening across the board in our country. The public relations firm Weber Shandwick publishes research about civility in America every few years. That's what it's called – Civility in American. The latest I could find was released in 2019. It reported that 93% of Americans think civility is a problem, with 69% calling it a major problem. The report lists lots of contributing factors – news media; politicians; conservatives; liberals; Hollywood celebrities; and the list goes on.

The top contributing factors, broken down by political affiliation, are as follows:

Republicans:

Social media/internet, the news media, and Hollywood celebrities

Democrats:

The White House, social media/internet; and politicians in general

Independents:

Social media; politicians in general; news media.

I think we can all agree that while social media has many good and valid uses, one of those is not promotion of civility – among any group.

Another reason for the erosion of civility in the legal world is the increased level of technology. While very helpful and considerably more efficient, it drastically reduces the in-person contact and communication between lawyers.

Neither social media or technology are going away-so what can we do to swing the pendulum back toward civility?

Suggestions:

- 1) Self-assess
- 2) Work on your patience.

- 3) Practice restraint.
- 4) Develop thick skin.
- 5) Maintain your sense of humor.
- 6) Own it when you blow it.
- 7) Never miss the chance to show a little grace.