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Civility in practice: Establishing a separate peace

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We have recently discovered that we are not civil enough with each other. From those to whom much is given, much should be expected, so even in the context of a fairly uncivil world, the critique may valid. Mentioning civility risks a misstep onto the third rail; for all the public approval we hear in response to any such call, the private whispering is closer to "What a wimp!" But the danger of letting the discussion get away from us outweighs the risk as we gravitate toward solutions to our social, political and economic problems that increasingly include figurative public stoning.

There are a several points about the profession and the world in which it exists that influence our level of civility. Consider, first, that we live in a world where civility is neither cultivated nor rewarded. We are reared at the bottom of a hierarchy, as children in adult-dominated homes, and educated in a hierarchy of children. We learn to absorb abuse of power by those stronger than us and we learn to exert power over those weaker than us. Unlike algebra and civics, these lessons are repeated as many times as necessary to get the point across.

When we finally get a measure of control over our own lives, the first thing we do is nest in networks of friends and co-workers, passive under those above us, dominant over those below us. In other words, commencing early and extending through what we might laughingly call maturity, we kiss up and kick down, rewarded for choosing wisely and ostracized for both failing to submit to power and showing mercy to the weak.

Another layer of difficulty is found in the opportunity for anyone — in or out of our profession — to fashion a rationale for jettisoning civility. It is not uncommon for us to deceive ourselves that stresses and pressures or a record of accomplishment entitle us to receive better than we give, but we pay a steep price for the indulgence. The former become whiners, inspiring others to return incivility for incivility. The latter become imperious and are soon walled off from accurate information by gaggles of subservient flatterers.

Witness also our ridicule and rejection of the bearer of new knowledge. Think of the reaction of his contemporaries to the theories of Galileo. Excommunication is pass. We have substituted "How do you know that?" followed immediately by "I've never heard of that!" betraying our Gumpian belief that ignorance is the superior value. That this should occur among lawyers is especially absurd, since our education was designed to prepare us for jolts. Who among us did not have to adjust intuition upon learning that a ton is not always a ton, and that each differs significantly from a tonne. And this is only the most famous of hundreds of examples. We train to flex, yet we fly to the safety of the familiar on a trail blazed long before we saw the front door of a law school.

A portion of our training actually works against civility. Our experience, if not our education, teaches us to control or to eliminate real-time introspection. We examine the words and actions of others for a living, and our focus is, for very good reasons, out, not in. Too much consciousness of self in a trial, or

even in a conversation with an adversary, diverts energy and attention. And so, we are often shocked to learn that someone has interpreted our seemingly pacific words as uncivil.

Throw in the discomfiting reality that, at one point or another, many of us learn that if the law is against us and the facts are against us, then the making of a lot of noise and maybe even the invasion of others' personal space can still get us to our desired destination, and the situation becomes a Rubik's cube, if not a Gordian knot. We allow incivility to pass the social Darwinism test so often and so thoroughly that we should wonder that we are not less civil.

As if what we share in common did not cause enough friction, our personalities pose additional hazards. Even differences in basic communication habits can grate. For example, some are comfortable with a range of idiom, while to others, idiom is not just unfamiliar, but a threat of unknown dimension that triggers fight or flight. And even the most benign humor can be received like a heat-seeking missile by those who do not share our sense of humor.

Even opposite styles that can both be described in positive terms can cause friction; the direct shock the solicitous, while the solicitous chew up the time and energy of the direct. And our terms are not always positive. Those who give their time and effort without compensation in order to nudge the world a millimeter or so in a desired direction are frequently called suckers. And in the opposite corner, those who expect and demand to exacting standards while refusing to act without receiving tangible benefit are frequently called dependents.

Consider also that we are more driven than average, so we carry more than our share of neuroses, phobias and little insecurities that run up against each other on a daily basis. There are lawyers who shake off almost anything and move on, while others feel and react to the smallest slight, perceived or real. There are those who just do the job without reference to personality and those who raise probing for weakness to a consuming obsession.

Some might disagree with the harsher characterizations above, but few who know me will fail to recognize, in both sides of each of the equations, my time-condensed self-portrait, and it would be vanity to suggest that those around me are less complex. So, the question is not whether there is a problem, but how to address it. Simply exhorting each other, a la Bill & Ted, to "Be Excellent to Each Other" will frustrate us into over-reaction and enforcement would lead to denying people their livelihood for tenuous or even cosmetic reasons.

It seems wise, then, to establish a separate peace. We have enjoyed the company of our fellow lawyers for some time. Each of us has a unique style, and each of us has developed an individual approach to the practice. It can be jarring to run smack into an oddity of speech or a defense mechanism, but we, for the most part, enjoy this movable feast of humanity in conflict, and we hope to continue enjoying it for some time to come. The "we" is appropriate because we all keep coming back when, by virtue of our proven intellect, diligence and education, we could all find something else to do.

So, for my part, I will simply, if unoriginally, follow the examples of the most effective attorneys I have known: Avoid starting sentences with the word "you;" avoid commenting, pro or con, on personal matters; avoid injecting idiom or humor into professional discussions; and try not to jump (pardon the momentary lapse), like a hungry carp, at every passing bit of bait. After all, deliberate incivility only accomplishes its purpose when it either intimidates or draws the other side into mutual incivility, and the incidental variety — well, everyone has the occasional off day.

And, of course, this approach works with or without cooperation, so others may analyze the risks and

rewards and conduct themselves as they see fit.

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