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Renewing Lawyer Civility

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Responding to concerns regarding erosion in lawyer civility, major efforts are underway to restore civility as the *modus operandi* of the legal profession.

The capacity of lawyers to wage legal battle against each other while treating the law and each other with courtesy and respect has long intrigued the popular interest. Shakespeare, for example, wrote in *The Taming of the Shrew*: "And do as adversaries do in law, strive mightily, but eat and drink as friends."[1] Despite periodic fluctuations and individual variations, an ideal of professional civility has generally characterized the practice of law. Members of the bar were generally known for maintaining a high level of respect and courtesy for each other. They treated their profession and its institutions with honor and dignity. A lawyer's representations to opposing counsel were considered inviolable. Rules of practice and procedure were generally viewed not as weapons of battle, but as instruments to facilitate cooperation and efficiency in dispute resolution and the ascertainment of truth. These were the images that not only formed the basis of client and public expectations, but also influenced persons considering whether to seek a career in the law.

Yet most observers would likely agree that there exists today a substantial civility deficit in the legal profession. This growing absence has recently received considerable attention.[2] Numerous causes are likely: client expectations based upon frequent media portrayal of excessively aggressive lawyer styles, increased competition from growing numbers of attorneys, increasing law firm size with the resulting loss of senior partner mentoring and role-modeling,

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1. WILLIAM SHAKESPEARE, THE TAMING OF THE SHREW act 1, sc. 2.

2. *See, e.g.*, Justice Arthur Gilbert, *Civility—It's Worth the Effort*, TRIAL, April 1991, at 106; *Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit*, 143 F.R.D. 371 (April 1991) [hereinafter *Interim Report*]; Roger S. Haydock, *Civility in Practice: Attorney, Heal Thyself*, 16 WM. MITCHELL L. REV. 1239 (1990); Presiding Justice Harold G. Clarke, *Professionalism: Repaying the Debt*, GA. ST. B.J., May 1989, at 170; AMERICAN BAR ASSOCIATION COMMISSION ON PROFESSIONALISM, ". . . . IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986) [hereinafter BLUEPRINT]; Thomas M. Reavley, *Rambo Litigators—Aggressive Tactics Versus Legal Ethics*, TRIAL, May 1991, at 63; Arlin M. Adams, *The Legal Profession: A Critical Evaluation*, 74 JUDICATURE 77 (1990).

new emphasis on advertising, increased numbers of colleagues with resulting relative anonymity, and institutional incentives for aggressive utilization of procedural rules.

Despite the adverse effect of these factors, lawyers, judges, and professional institutions are responding with significant efforts to restore and enhance the salubrious effect of civility upon the legal system, the administration of justice, and the public respect and esteem for the profession. This renewal of emphasis upon civility is reflected in recent efforts by the judiciary, in actions by bar organizations, and in the development of the American Inns of Court.

One of the most significant examples of new efforts to promote lawyer civility is the comprehensive program that was undertaken in the Seventh Federal Judicial Circuit. In 1991, its Committee on Civility completed a massive study reporting responses to a four-page questionnaire sent to over 1,500 attorneys and judges from Indiana, Illinois, and Wisconsin.[3] The Committee sought to gauge the status of civility in law, defined as "professional conduct in litigation proceedings of judicial personnel and attorneys,"[4] but "not limited to good manners or social grace."[5] The responses to this questionnaire demonstrated significant manifestations of incivility, particularly in discovery and deposition abuse, attorney misrepresentations, misuse of Federal Rule 11, personal attacks, and aggressive behavior.[6] Of the responding lawyers, forty-two percent asserted that a civility problem exists; forty-five percent of the responding judges agreed.[7] Interestingly, of the lawyers perceiving a civility problem, ninety-four percent targeted discovery "as the primary setting for uncivil conduct."[8] The Committee study lamented the "new breed of lawyers who perceive that they are required to fight about everything"[9] and to treat opposing counsel as the "'enemy' rather than 'an honored opponent.'"[10]

The Committee's Final Report,[11] published on June 9, 1992, included a discussion of the reaction to its Interim Report from "within and without the Seventh Circuit."[12] The Committee expressed satisfaction that the Interim Report had already achieved one of its major purposes, that of being a catalyst

3. *Interim Report*, *supra* note 2, at 378-79.
4. *Id.* at 377-78.
5. *Id.*
6. *Id.*
7. *Id.* at 379-80.
8. *Id.* at 380.
9. *Id.* at 389-90.
10. *Id.*
11. *Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit*, 143 F.R.D. 441 (1992) [hereinafter *Final Report*].
12. *Id.* at 443.

for change.[13] The Committee reported that of all the recommendations included in the Interim Report, the "greatest concern centered on the possibility that, if adopted, the Proposed Standards for Professional Conduct presented in the Committee's initial report, could create the potential for satellite litigation similar to that surrounding Federal Rule of Civil Procedure 11."[14] Attempting to assuage these fears, the Committee remarked, "as the Preamble clearly states, the Standards 'shall not be used as a basis for litigation or for sanctions or penalties.'"[15] The Committee further stated that its review of similarly adopted codes and standards in other jurisdictions failed to reveal the generation of satellite litigation; rather, the codes "stimulated discussion and new proposals for litigation practice, all of which result in subtle, gradual improvement."[16] The Committee's work culminated in the formal adoption and promulgation of Standards for Professional Conduct within the Seventh Judicial Circuit.[17]

Another significant judicial effort, recently undertaken by Georgia's Chief Justice Harold G. Clarke and his Commission on Professionalism, resolved to raise the professional aspirations of lawyers in the state of Georgia.[18] This Commission's efforts resulted in the creation of Supreme Court Rules,[19] Lawyer's Creed,[20] Aspirational Statements on Professionalism,[21] and

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13. *Id.* at 444.

14. Federal Rule of Civil Procedure 11 provides for the sanctioning of an attorney who signs a pleading, motion, or other paper without reading it; without inquiring as to whether it is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or without insuring that there is no improper purpose such as to harass or cause unnecessary delay or needless increase in the cost of litigation. FED. R. CIV. P. 11 (1992).

As of December 1, 1993, FED. R. CIV. P. 11 was amended. One of the significant resulting changes is the elaboration on what an attorney's signature on a pleading, motion, or other paper represents to the court. The revised Rule 11(b)(3) mandates that an attorney's signature certifies that "the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . ." Rule 11(b)(4) notes the parallel requirement that "the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."

Perhaps the most significant change in Rule 11 comes under 11(c), Sanctions. Whereas the previous version of Rule 11 provided minimal detail as to the imposition of sanctions on attorneys who violated it, the new Rule 11 provides methods for initiating sanctions as well as limitations on sanctions and their nature. Finally, the new Rule 11 does not apply to disclosure and discovery requests. FED. R. CIV. P. 11(d).

15. *Final Report, supra* note 11, at 446.

16. *Id.*

17. Originally published in the North Eastern Report (Second) Advance Sheets of March 10, 1993, but not included in subsequent bound volumes.

18. SUPREME COURT OF GEORGIA, CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM 1 (1990) [hereinafter CHIEF JUSTICE'S COMMISSION]

19. GA. CT. & BAR R. 9-101, 9-102.

20. GA. CT. & BAR R. 9-102.

Professional CLE Guidelines.[22] In discussing the work of his Commission, Justice Clarke commented:

> It seems to me that the spirit of the calling to the law practice needs to get more attention. We ought not to ignore the letter of the law and the letter of ethics, but we need also give attention to the spirit that's behind it, and maybe that is part of what professionalism is. Maybe once you've got slavish adherence to all the rules—the standards and the Code of Professional Responsibility—then the next thing is to not only adhere to them technically but to try to live up to the reasons behind them in a more philosophical way.[23]

Judges and courts are further promoting attorney civility with individual case decisions and through civility standards separate from, and in addition to, the state code or rules of professional conduct. For example, in *State v. Turner*,[24] the Kansas Supreme Court imposed public censure upon an attorney who verbally abused and improperly attacked opposing counsel during a civil proceeding.[25] Despite counsel's suggestions that "fidelity to his client's cause impelled him to employ harsh tactics,"[26] the court held that the state code of professional responsibility's Canon 7, although requiring an attorney to represent a client zealously within the bounds of the law, does "not countenance unrestrained zeal on the part of an advocate; his ardent zeal, commendable in itself, is to be exercised within the bounds of the law."[27] In another case,[28] the Fifth Circuit Court of Appeals sustained a trial court's decision to dismiss an action and to impose punitive attorney fees and costs because of counsel's failure to produce requested documents. The court noted: "A party should not be penalized for maintaining an aggressive litigation posture. 'But advocacy simply for the sake of burdening an opponent with unnecessary expenditures of time and effort clearly warrants recompense for the extra outlays attributable thereto.'"[29]

In a recent Indiana case,[30] the Court of Appeals addressed the practice of "opponent-bashing" through appellate briefs. Writing for the court, Judge

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21. *Id.*
22. CHIEF JUSTICE'S COMMISSION, *supra* note 18, at 17-23.
23. *Id.* at 27.
24. 538 P.2d 966 (Kan. 1975).
25. *Id.*
26. *Id.* at 970.
27. *Id.*
28. Batson v. Neal Spelce Associates, Inc., 805 F.2d 546 (5th Cir. 1986).
29. *Id.* at 550 (quoting Lipsig v. National Student Mktg. Corp., 663 F.2d 178, 181 (D.C. Cir. 1980)).
30. Amax Coal Co. v. Adams, 597 N.E.2d 350 (Ind. Ct. App. 1992).

William Conover discussed "whether cross-condemnation by each briefing counsel of their opposing counsels' off-record conduct, motivation, and supposed bad manners in the conduct of discovery, is appropriate material for appellate briefs."[31] He stated in part:

> Throughout the parties' briefs, they have launched rhetorical broadsides at each other which have nothing to do with the issues in this appeal. Counsels' comments concern their opposite numbers' intellectual skills, motivations, and supposed violations of the rules of common courtesy. Because similar irrelevant discourse is appearing with ever-increasing frequency in appellate briefs, we find it necessary to discuss the easily-answered question of whether haranguing condemnations of opposing counsel for supposed slights and off-record conduct unrelated to the issues at hand is appropriate fare for appellate briefs.[32]

Condemning the resulting waste of time, the court noted: "Material of this nature is akin to static in a radio broadcast. It tends to blot out legitimate argument."[33] Indiana appellate decisions have long recognized a court's plenary power to order a brief stricken from the court's files and to affirm the trial court without further ado upon "the use of impertinent, intemperate, scandalous, or vituperative language in briefs on appeal impugning or disparaging this court, the trial court, or opposing counsel."[34] In 1906, the Indiana Supreme Court held: "For discourteous and unprofessional language used by appellant's counsel in his brief on petition for rehearing, said brief is stricken from the files of this court, and the petition for a rehearing overruled."[35]

Delaware gives particular attention to civility. Attorneys seeking to appear *pro hac vice* are required by Delaware Supreme Court Rule 71(b) to certify and acknowledge that they are bound by, and have reviewed, the Delaware Lawyers' Rules of Professional Conduct and the Statement of Principles of Lawyer Conduct,[36] which includes a specific section requiring civility.[37]

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31. *Id.* at 351.

32. *Id.* at 351-52.

33. *Id.* at 352.

34. Clark v. Clark, 578 N.E.2d 747, 748 (Ind. Ct. App. 1991) (citing White v. Sloss, 198 N.E.2d 219, 220 (Ind. 1964)).

35. Shirk v. Hupp, 79 N.E. 490, 490 (Ind. 1906).

36. DEL. SUP. CT. R. 71(b).

37. Paragraph A(4) of Delaware Statement of Principles of Lawyer Conduct provides: Professional civility is conduct that shows respect not only for the courts and colleagues, but also for all people encountered in practice. Respect requires promptness in meeting appointments, consideration of the schedules and commitments of others, adherence to

Furthermore, the Delaware Supreme Court recently rebuked an out-of-state attorney for conduct during a Texas deposition that amounted to "such an astonishing lack of professionalism and civility that it is worthy of special note here as a lesson for the future—a lesson of conduct not to be tolerated or repeated."[38] Labelling the conduct as "outrageous and unacceptable,"[39] the court recognized that there was "no clear mechanism for this court to deal with this matter in terms of sanctions or disciplinary remedies at this time in the context of this case,"[40] as the opposing attorney had not applied to practice *pro hac vice* in Delaware. Ultimately, the court "welcomed" the attorney to come forth within thirty days "to show cause why such conduct should not be considered as a bar to any future appearance by [the offending attorney] in a Delaware proceeding.[41]

The expectation of civility may also be found in the oath that attorneys take upon admission to the bar. In Indiana this oath requires attorneys to "refrain from offensive personality."[42] A California statute imposes a similar obligation that lawyers "abstain from all offensive personality."[43] This statute has been applied to support a court's demand that, in the course of judicial proceedings, advocates conduct themselves in a courteous, professional manner.[44]

In addition to efforts by the judiciary, the organized bar has actively promoted improvement in lawyer civility. With the 1986 publication of *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, the American Bar Association Commission on Professionalism drafted an extensive list of recommendations representing "concrete ways in

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> commitments whether made orally or in writing, promptness in returning telephone calls and responding to communications, and avoidance of verbal [in]temperance and personal attacks. A lawyer should not communicate with a court concerning pending or prospective litigation without reasonable notice whenever possible to all affected parties. Respect for the court requires careful preparation of matters to be presented; clear, succinct and candid oral and written communications; acceptance of rulings of the court, subject to appropriate review; emotional self-control; the absence of scorn and superiority in words of demeanor; and conservative dress in court.

DELAWARE STATE BAR ASSOCIATION, STATEMENT OF PRINCIPLES OF LAWYER CONDUCT (1991).

38. Paramount Communications, Inc. v. QVC Network, Inc., No. 428,1993, 1994 WL 30181, at *18 (Del. Feb. 4, 1994). The offending attorney referred to opposing counsel by vulgar names and unleashed insults such as, "You could gag a maggot off a meat wagon." *Id.* at *19.

39. *Id.* at *20.

40. *Id.* at *21.

41. *Id.*

42. The Indiana Oath of Attorneys states in part: "I do solemnly swear or affirm that . . . I will abstain from offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged . . . ." ADMISS. DISC. R. 22.

43. CAL. BUS. & PROF. CODE § 6068 (West 1990 & Supp. 1993).

44. *In re* Grossman, 101 Cal. Rptr. 176, 179 (Cal. Ct. App. 1972).

which lawyers can inspire a rebirth of respect and confidence in themselves, in the services they provide, and in the legal system itself."[45] The Commission suggested reform at the law school level, promoting various specific tools for learning and practicing civility with students' first exposure to the profession.[46] The *Blueprint* also urged bar organizations to instill civility into new associates, mandate continuing legal education, emphasize the role of lawyers as officers of the court, and discipline attorneys who use false, fraudulent, or misleading advertising.[47] The Commission additionally urged that judges take a more active role in the conduct of litigation, imposing sanctions for the abuse of the litigation process.[48]

State and local bar organizations have also been strong proponents of improvement in lawyer civility. A sampling of the resulting codes and creeds illustrates the values and professional standards most often associated with civility.[49] Eighty-three percent of the codes include language reminding attorneys to abide by all promises, oral or written, to be honest before courts

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45. *See* BLUEPRINT, *supra* note 2, at 11.

46. *Id.* at 12.

47. *Id.* at 12-13.

48. *Id.* at 13-14.

49. To discern what are perceived to be the biggest problem areas of incivility, a look at various codes, creeds, and tenets of professionalism, courtesy, and conduct showed recurring patterns. These codes, coming from 24 different states, include: STATE BAR OF ARIZONA, A LAWYER'S CREED OF PROFESSIONALISM (1989); PULASKI COUNTY (ARKANSAS) BAR ASSOCIATION, CODE OF PROFESSIONAL COURTESY (1986); STATE BAR OF CALIFORNIA, STATEWIDE CODE OF PROFESSIONAL COURTESY (1989); BOULDER COUNTY (COLORADO) BAR ASSOCIATION, GUIDELINES OF PROFESSIONAL COURTESY (1990); DELAWARE STATE BAR ASSOCIATION, STATEMENT OF PRINCIPLES OF LAWYER CONDUCT (1991); FLORIDA BAR, IDEALS AND GOALS OF PROFESSIONALISM (1990); GEORGIA BAR, ASPIRATIONAL STATEMENT ON PROFESSIONALISM (1990); INDIANAPOLIS (INDIANA) BAR ASSOCIATION, TENETS OF PROFESSIONAL COURTESY (1989); IOWA STATE BAR ASSOCIATION, CODE OF PROFESSIONALISM (1991); JOHNSON COUNTY (KANSAS) BAR ASSOCIATION, CREED OF PROFESSIONAL CONDUCT (1988); LOUISVILLE (KENTUCKY) BAR, CREED OF PROFESSIONALISM (1989); LOUISIANA STATE BAR ASSOCIATION, CODE OF PROFESSIONALISM (1991); MASSACHUSETTS BAR ASSOCIATION, STATEMENT ON LAWYER PROFESSIONALISM (1988); MISSISSIPPI STATE BAR, MISSISSIPPI CODE OF PROFESSIONAL CONDUCT (1990); STATE BAR OF MONTANA, GUIDELINES FOR RELATIONS BETWEEN AND AMONG LAWYERS (1986); CAMDEN COUNTY (NEW JERSEY) BAR ASSOCIATION, CODE OF PROFESSIONALISM (1991); STATE BAR OF NEW MEXICO, A LAWYER'S CREED OF PROFESSIONALISM (1989); NORTH CAROLINA BAR ASSOCIATION, PRINCIPLES OF PROFESSIONAL COURTESY (1989); CLEVELAND (OHIO) BAR ASSOCIATION, A LAWYER'S CREED OF PROFESSIONALISM (1988); OREGON STATE BAR, STATEMENT OF PROFESSIONALISM (1990); PENNSYLVANIA BAR ASSOCIATION, WORKING RULES FOR PROFESSIONALISM (1989); NASHVILLE (TENNESSEE) BAR ASSOCIATION, STANDARDS OF INTRA-PROFESSIONAL CONDUCT (1987); VIRGINIA BAR ASSOCIATION, PRINCIPLES OF PROFESSIONAL COURTESY (1988); and SPOKANE COUNTY (WASHINGTON) BAR ASSOCIATION, CODE OF PROFESSIONAL COURTESY (1989). It is noteworthy that all of these codes were created in the last decade, perhaps indicating recent awareness of the civility crisis, or more appropriately, the shift in focus to the cure of the civility crisis.

and with opponents, and to accurately represent the law and the facts. Equally common are provisions striving to promote stipulations and out-of-court agreements on pre-trial matters. Simple rules emphasizing common courtesy are prevalent among the codes and creeds as well. Fifty-seven percent of the codes note that lawyers should be punctual; forty-eight percent remind counselors to promptly notify opposing counsel of cancellations. The vast majority of these professional statements also mention discovery in one way or another, mirroring the concerns expressed by attorneys and judges in the Seventh Circuit Interim Report. Such discovery concerns primarily discourage counsel from using discovery as a means of harassment and encourage conducting discovery by agreement without court intervention. Finally, fifty-two percent promote giving sufficient notice for depositions or determining attorney and party availability before scheduling depositions.

In addition to the foregoing areas, there appears to be particular attention paid to possible excesses in attorneys' exercise of their duty of zealous representation.[50] For example, A Lawyer's Creed of Professionalism, promulgated by the Board of Governors of the State Bar of Arizona, states: "I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interest as well as to the proper functioning of our system of justice."[51] Similarly, the Massachusetts Bar Association recommends that a lawyer refrain from engaging in advocacy excessive to effective representation.[52]

Particularly encouraging among the efforts to enhance lawyer civility is the recent organization and growth of the American Inns of Court (AIC). Created in 1980, the mission of the AIC movement "is to increase the excellence, professionalism, civility and ethical awareness of judges, lawyers, law

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50. Model Rule of Professional Conduct 1.3, Diligence, includes this statement in its Comment:

> A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client.

MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.3 (1992). Five codes that have attempted to limit this duty of zealous advocacy include: STATE BAR OF ARIZONA, A LAWYER'S CREED OF PROFESSIONALISM (1989); JOHNSON COUNTY (KANSAS) BAR ASSOCIATION, CREED OF PROFESSIONAL CONDUCT (1988); MASSACHUSETTS BAR ASSOCIATION, STATEMENT ON LAWYER PROFESSIONALISM (1988); CLEVELAND (OHIO) BAR ASSOCIATION, A LAWYER'S CREED OF PROFESSIONALISM (1988); and STATE BAR OF NEW MEXICO, A LAWYER'S CREED OF PROFESSIONALISM (1989).

51. STATE BAR OF ARIZONA, A LAWYER'S CREED OF PROFESSIONALISM (1989).

52. MASSACHUSETTS BAR ASSOCIATION, STATEMENT ON LAWYER PROFESSIONALISM (1988).

professors and students."[53] This mission is accomplished by having members (no more than sixty-five judges, lawyers, law students, and professors of various ages and skill levels) engage in mock trials, demonstrate appellate arguments, receive critical evaluation, share insights into the judicial process, and discuss ideas and experiences.[54] AICs are not fraternal orders, social clubs, continuing legal education classes, lecture series, or apprenticeship systems.[55] Rather, they are organizations utilizing features of each of these components dedicated to the improvement of the profession by promoting civility and skill. At the time of this writing, there exist 219 AIC units throughout the country, involving well over 10,000 attorneys. Indiana currently has four Inns of Court: in Evansville, the Brooks American Inn of Court; in Fort Wayne, Benjamin Harrison American Inn of Court; for Indiana University School of Law at Indianapolis, the Indianapolis American Inn of Court; and for the Valparaiso University School of Law, the Porter County American Inn of Court.

The personal relationships forged in AIC units enable values of professional civility to be transmitted in ways not otherwise available, particularly in areas characterized by numerous competing attorneys and ever-larger law firms. Membership in an AIC counteracts the anonymity that often breeds disregard for the "golden rule" incentive for civility. Monthly AIC meetings afford opportunities for informal sharing of aspirational anecdotes, mentoring, and the fostering of trust. The AIC movement provides a positive opportunity for re-emphasizing professional camaraderie instead of adversariness. The willingness of established attorneys and judges to join an AIC chapter attests to their sincere commitment to the importance of enhancing civility in the legal profession.

In addition to the progress resulting from actions of judicial bodies, bar organizations, and the American Inns of Court movement, lawyer civility may well benefit further from the expanding utilization of alternative dispute resolution techniques. As attorneys and clients increasingly discover that their objectives can be effectively and efficiently achieved without acrimonious litigation, the underlying values and benefits of civility will likely be rediscovered and reinforced. By 1992, twenty-seven states and the District of Columbia had formally incorporated comprehensive dispute resolution methods into their court systems, and nearly every state is experimenting in at least one of its courts with dispute resolution options.[56] In Indiana, over 900 people have become licensed mediators through intensive forty-hour training programs.

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53. HOW TO CREATE AN AMERICAN INN OF COURT (1992).

54. *Id.* at 3.

55. *Id.*

56. Judith M. Filner & Margaret Shaw, *Update: Development of Dispute Resolution in State Courts*, NIDR FORUM, Summer/Fall 1993, at 36.

The same trend is occurring in numerous other states. As more attorneys are educated as to the non-adversarial techniques of mediation and exposed to the beneficial outcomes that often result, they will likely be encouraged to implement a complementary degree of civility in their professional practices.

One potential resource for improvement in lawyer civility is the education provided by law schools. In remarks to the American Law Institute in Washington, D.C., on May 18, 1971, Chief Justice Warren E. Burger stated:

> I submit that with a gathering that includes some of the leading scholars, teachers, lawyers, and judges in the land, few subjects could be more relevant to discuss than the necessity for civility in the resolution of litigation in a civilized society.
>
> I suggest this is relevant to law teachers because you have the first and best chance to inculcate in young students of the law the realization that in a very hard sense, the hackneyed phrase "order in the court" articulates something very basic to the administration of justice. Someone must teach that good manners, disciplined behavior, and civility—by whatever name—are the lubricants that prevent lawsuits from turning into combat. More than that, civility is really the very glue that keeps an organized society from flying into pieces.
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> . . . I submit that lawyers who know how to think but have not learned how to behave are a menace and a liability, not an asset, to the administration of justice.[57]

It is encouraging to learn that significant voices in academia are urging attention to civility. In his speech at the 1992 Opening Convocation at Valparaiso University, President Alan F. Harre recognized the important "ability to hold views strongly and at the same time respect views that are diametrically opposed."[58] He observed:

> The secret to making this happen is civility. . . . Civility usually defined as politeness requires the capacity to listen and a sense of self-confidence as well as the qualities of courage, maturity, and personal integrity, and also reflects respect and appreciation for the humanity and ideals of the opponent. To be uncivil in disagreements usually reflects the opposite qualities. Every American institution of higher education faces a whole assortment of issues that provides excellent opportunities to practice civility and, in the process, enable

57. WARREN E. BURGER, DELIVERY OF JUSTICE 175 (1990).

58. Alan F. Harre, Civility in Discourse, Opening Convocation (Aug. 26, 1992) (transcript pamphlet available through Valparaiso University).

the institutions to resolve issues that arise.[59]

CONCLUSION

The diminution of lawyer civility is not an irreversible trend, despite continuing pressures from increased competition, media exaggeration of lawyer adversariness, and growth in law firm size, among other factors. To the contrary, recognition of these negative forces has inspired significant efforts to recapture the ethic of lawyer civility. With this renewal, attorneys should perceive their role as more to assure clients of access to the legal system than to seek a desired result at any cost. There will be a substantially enhanced recognition by lawyers that they can better serve clients by amicable transactions and dispute resolutions than by aggressiveness and intimidation. As collegial aspects of lawyering are enhanced, greater importance will attach to the value of reputation and the admiration of one's colleagues. Courts and bar associations, of course, need to provide inspiration and, where necessary, sanctions, to prevent wrongful profit and improper personal advantage to those who continue to engage in uncivil behavior. Both the carrot and the stick are needed. As lawyers and judges, we must also be mindful that the benefits of civility in our profession extend far beyond the personal comfort of ourselves and our colleagues. Rather, our interactions frame the public perception of the law as an institution.

We have chosen the law as a noble profession. But when lawyers abandon civility, they defame this nobility. The essence of lawyer civility is not just how we treat each other; it is how we treat the law as an institution and as our profession.

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59. *Id.*