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A New Professional Identity for Bench & Bar: Pour Rambo et Snidely un Képi Blanc

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**THE FUTURE OF CALLINGS—AN INTERDISCIPLINARY
SUMMIT ON THE PUBLIC OBLIGATIONS OF
PROFESSIONALS INTO THE NEXT MILLENNIUM:**

A NEW PROFESSIONAL IDENTITY FOR BENCH & BAR:

Pour Rambo et Snidely un Képi Blanc

Hon. Bernard E. Boland[†]

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I. INTRODUCTION

Somewhere in my mother’s attic, if she hasn’t sold it at a garage sale, is the worn and mildewed copy of *Beau Geste*,¹ which my aunt and uncle gave me for my twelfth birthday. It may even be the 1925 edition. Legionnaires Michael Geste and Major Henri Beaujolais were heroes of mine, along with Charles Lindbergh, Winston Churchill, and Dwight Eisenhower. The latter gave us wings and a

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1. PERCIVAL CHRISTOPHER WREN, *BEAU GESTE* (1925).

free world, but the noble Michael and the dashing Major Beaujolais gave us romance and mystery, and twelve year-olds need that too.

If Rambo had only been invented then, he could have joined the French Foreign Legion. And if he had, maybe we now wouldn't have to endure that silly *Laurel and Hardy* shtick about the Foreign Legion that's shown on late night television. Rambo would have worn a white képi and fought at Dien Bien Phu and maybe things would have been different; America would not have had a Vietnam, and maybe everyone wouldn't be so angry now.

The romantic and dashing legionnaires of *Beau Geste* were mercenaries without loyalty to any country or cause.² They would fight anyone, anywhere, for any cause.³ Ironically, the Legion of old could never be posted inside France; it was not permitted sanctuary within the borders of its adopted country.

It can be argued there is a parallel here with America's lawyers who are perhaps wrongly treated as cultural legionnaires and, in spite of the romance and mystery of their legend, they are commonly perceived as rogues.

Our 1990s lawyers, who advocate for both what is wretched and what is magnificent in American society, are the men and women in the arena. They are neither Rambos nor Snidely Whiplashes. However, as John Seigenthaler argues,⁴ in a popular culture adrift in cynicism, the lawyer, like other professionals, has emerged as a sinister and self-interested figure who, mistakenly, makes no effort to explain himself to the public.⁵ In the absence of an explanation, Seigenthaler predicts, the malignment and distrust of all professionals, including lawyers, will persist.⁶ The American lawyer has become a tortured figure in the popular culture. He and she have become the butt of jokes and villainously portrayed in the mass media and literature and on stage and screen. The once romantic and righteous lawyers portrayed in *To Kill a Mockingbird*⁷ and *The Verdict*⁸ are now mostly villains in the country's uncivil wars, and lawyers, like the French Foreign Legion and perhaps for the same

2. See generally *id.*

3. See generally *id.*

4. See John Seigenthaler, *The Future of Callings—An Interdisciplinary Summit on the Public Obligations of Professionals Into the Next Millennium*, 25 WM. MITCHELL L. REV. 61, 73-74 (1999).

5. See *id.*

6. See *id.*

7. *TO KILL A MOCKINGBIRD* (Universal Studios 1962).

8. *THE VERDICT* (Twentieth Century Fox Studios 1982).

reasons, are facing exile from polite society.

It matters not that lawyers' contributions—which include the U.S. Constitution and the Declaration of Independence—have advanced civilization over hundreds of years. They are presently reeling from relentless attacks by the public on their integrity and upon the very purpose of their existence. Within the last five years no less a figure than the Hon. Warren E. Burger, former Chief Justice of the U.S. Supreme Court, pronounced the legal profession at the “lowest ebb” in the history of our country.⁹ Popular news magazine *U.S. News & World Report* recently declared: “Outside of their profession, lawyers have become symbols of everything crass and dishonorable in American public life; within it, they have become increasingly combative and uncivil toward each other.”¹⁰

It's easy to blame lawyers: they are always on stage—in the arena so to speak. As well as public men or politicians, it could also have been lawyers that Theodore Roosevelt was describing in his poetic tribute to “*The Man in the Arena*,”¹¹ because lawyers are “marred” daily by the “dust, sweat, and blood” that comes with litigation, confrontation, and the incivility of public opinion.¹² Lawyers are not the aggressors in the siege currently laid against social civility. Where “[n]early every contentious legislative issue is litigated these days, flinging political grenades ranging from tort reform and workers' compensation to school finance and school choice,”¹³ lawyers are on the ramparts. And in spite of it all, most are reasoned, professional, and civil to each other, to their clients, and to the judges before whom they practice.

Lawyers are casualties of a popular and ephemeral nihilism that has afflicted all of our professions and institutions, and it is reflected in the law to no greater extent than in other cultural institutions. Moreover, given the unique and influential role of the legal profession, it has coped with a cultural renaissance without a breakdown in civility, and it has the opportunity, by adopting and clarifying the principles of the profession as they relate to the rep-

9. Warren E. Burger, *The Decline of Professionalism*, 61 TENN. L. REV. 1, 3 (1993).

10. John Marks, *The American Uncivil Wars: How Crude, Rude, and Obnoxious Behavior Has Replaced Good Manners and Why That Hurts Our Politics and Culture*, U.S. NEWS & WORLD REP., Apr. 22, 1996, at 66.

11. Theodore Roosevelt, *The Man in the Arena*, Address at the Sorbonne (Apr. 23, 1910).

12. *Id.*

13. Charles Mahtesian, *Bench Press*, GOVERNING MAG., Aug. 1998, at 18.

resentation of clients, to regain the esteem of a public that has always been steeped in a tradition of reverence for law.¹⁴

II. “[A] general level of atmospheric toxicity.”
—WILLIAM RASPBERRY¹⁵

There exists, according to *Washington Post* columnist William Raspberry, a “general level of atmospheric toxicity” about the country:¹⁶

[W]e need to reduce . . . our quick recourse to confrontation in every social or political disagreement

Social activists don’t just disagree . . . they speak and behave as though their opponents are the personification of evil: racist, sexist, market-worshipping pigs or irresponsible psychobabbling idiots whose sole aim in life is to throw money at imaginary problems. They’d have us believe that our world is divided between nonchalant baby-killers and bedroom-invading fetus worshipers.¹⁷

It’s apparent that for whatever reason—Vietnam, Watergate, Whitewater, Ruby Ridge, Waco or Monica Lewinsky—there isn’t much public respect for authority or for the establishment. It stands to reason that there would be even less respect for the time-

14. See DAVID LEBEDOFF, *CLEANING UP: THE STORY BEHIND THE BIGGEST LEGAL BONANZA OF OUR TIME* 135 (1997). Commenting about a judge’s entry into the courtroom, Lebedoff wrote:

Whenever this happens everyone rises and remains standing until the judge is seated. It is a very simple thing, more custom than duty, and it happens in every court and almost nowhere else. People stand for a President or a Pope, to salute their country or to express their faith. They stand for a judge because the true majesty of this land is the law.

Id.

15. William Raspberry, *From Plain Incivility to Savage Violence*, STAR TRIB. (Minneapolis), May 28, 1998, at 17A.

16. *Id.*

17. *Id.*; see also Martin F. Nolan, *Tolerance Seems to be Missing from Politics, Society*, BOSTON GLOBE, reprinted in LINCOLN STAR, Aug. 8, 1998, at 6B.

honored and traditional defenders of the establishment—the legal profession. If lawyers have been the scapegoats of an increasingly angry public, it follows that they would react and not unlikely that they would react by turning on each other—incivility is contagious, and expensive:

- Between 1990 and 1996 there were an estimated 10,600 incidents in which a person in a car *intentionally* injured or killed another person on the road, or intentionally damaged property with a vehicle in what is commonly termed “road rage,” an occurrence now so common that it has been accorded a dictionary definition.¹⁸ Drivers have used fists, feet, knives, tire irons, baseball bats, liquor bottles, batons, pepper sprays, and guns to resolve traffic disputes in numbers so alarming that the U.S. Department of Transportation is moving to launch a federal program to protect motorists.¹⁹
- A four-year study of on-the-job behavior attributes incivility in the workplace to decreased productivity and high employee turnover resulting in significant “organizational” and personnel costs to U.S. business.²⁰

In the writings of Alexis de Tocqueville on America in the nineteenth century, it is noted that incivility may be a part of the rugged individualism ingrained in the American character.²¹ Mark Twain once remarked that “there is no bath that will cure people’s manners,” but that “drowning would help.”²² If the names Howard Stern, Dennis Rodman, and Rush Limbaugh mean anything, it is apparent that bad manners aren’t unique to courtrooms. That the

18. See Dennis McCafferty, *Putting the Brakes on Road Rage*, USA WEEKEND, Aug. 16, 1998, at 4.

19. See *id.*

20. See Martha Waggoner, *Workplace Incivility Rising; Company, Not Culprit, Pays; Victims Reduce Quality, Amount of Work or Seek Jobs Elsewhere*, STAR TRIB. (Minneapolis), June 8, 1998, at 12D.

21. See generally ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Henry Reeve trans. & Phillips Bradley ed., Alfred A. Knopf, 1966) (1835).

22. Eric Adler, *Hey! Dummy! How About Showing a Little More Civility?*, STAR TRIB. (Minneapolis), Oct. 27, 1996, at 1E.

world is becoming meaner, pettier, and more intolerant is an everyday subject of news articles, editorial comment, and broadcasting. Shrill radio talk shows hosted by political and cultural polemicists such as Stern, Limbaugh, Oliver North and G. Gordon Liddy fill the airwaves.

Political competitors are no longer content with defeating opponents at the ballot box; if possible, they want to humiliate and even jail them. The American public has witnessed political discourse reach a new low in the last few years with resort to political indictments, appointment of special prosecutors, and shutting the federal government down in the interests of ideological brinkmanship. The resulting voter disaffection has resulted in voter turnout falling steadily for the past thirty years, according to the Committee for the Study of the American Electorate.²³ Among the culprits are "shifts in values toward self-seeking and personal choice; [and] a decline both in the quality of political rhetoric and belief in government."²⁴

Single issue politics has poisoned the political well to effectively discourage the ordinary citizen (those without an ax to grind) from stepping into the arena, and incivility and so-called SLAPP suits (selective lawsuits against public participation) discourage speaking up at public hearings held by local governments.²⁵ For example, in Cedar Rapids, Iowa, disgruntled voters disturb City Council meetings with loud humming and hissing.²⁶ In Lake Forest, Illinois, disagreements at the town council have led to smashed mailboxes and obscene telephone calls.²⁷ In Rockford, Illinois, a school board member grabbed a colleague by the throat during a disagreement.²⁸ And in Arizona, a tax protester shot and wounded a Maricopa County Supervisor.²⁹ The level of public discourse has become so uncivil that the National League of Cities has made the problem of unruliness at local government meetings its top focus.³⁰

23. See Steve Berg, *Special-interest Voters Grab Attention*, STAR TRIB. (Minneapolis), Aug. 3, 1998, at 1A, 3A.

24. *Id.*

25. See Editorial, *Silencing Citizens*, STAR TRIB. (Minneapolis), Aug. 16, 1998, at 26A.

26. See Dirk Johnson, *Civility in Politics: Going, Going, Gone*, N.Y. TIMES, Dec. 10, 1997, at A20.

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

While bad manners may be nothing new, their prevalence may be unprecedented, and if one can judge by the volume of literature addressing the topic, the competition, greed, stress, and pressure brought about by the rapid rate of change in the society at large has not left the legal profession unscathed.³¹

III. "*Majorities are everywhere conservative.*"

—AUTHOR UNKNOWN³²

We have become an increasingly intolerant and petty society. State legislatures clamor to create a cause of action for every actual and imagined insult and wrong, and scores of heretofore-undiscovered victims have emerged in every walk and endeavor. For example, Minnesota harassment laws,³³ enacted initially for the limited purpose of prohibiting stalking of women and harassment of abortion providers,³⁴ are drafted so broadly that they bring into local courts thousands of disputes the likes of which are disagreements between college roommates and neighbors. Not uncommonly they involve such things as college roommates arguing about wearing each other's clothing, and children chasing stray baseballs into the wrong neighbor's yard.³⁵ The rationale for continuing

31. The topic has furnished a wealth of legal writing and commentary in law review and journal articles only a few of which will be cited here. For recent contributions from the practicing bar in Minnesota, see Doug Peine, *Civil Strategies in an Uncivil World*, BENCH & B. MINN., Aug. 1998, at 38; Edward J. Cleary, *Free Speech, Civility, and Harassment*, BENCH & B. MINN., Feb. 1998, at 18.

32. While the author believes the quotation may be attributable to University of California, San Diego, professor and leftist guru Herbert Marcuse, circa 1968, a review of Marcuse's work failed to verify that the phrase may, with complete accuracy, be attributed to him. Nevertheless, in the author's opinion, the turn of phrase, with some irony, summarizes the current political (and judicial) climate, which appears to have come full circle in the thirty years since 1968.

33. See MINN. STAT. §§ 609.748—.749 (1996).

34. See Cassandra Ward, *Minnesota's Anti-stalking Statute: A Durable Tool to Protect Victims from Terroristic Behavior*, 12 LAW & INEQ. 613, 632-36 (1994).

35. These two examples refer to cases that came before the author following the enactment of Minnesota's harassment statutes. While memory of the issues remains strong, the file names have since been forgotten. However, Stephen Forstell, an attorney with the Minnesota Judicial Advisory Service, was helpful in gathering examples from other judicial districts.

The broad definition of harassment in Minnesota Statutes section 609.748 has resulted in Minnesota judges being besieged by meritless harassment cases. For example, in the Ninth Judicial District, a Cass County father, on behalf of his minor child, sued another child who, "was supposed to be my best friend until she finds new friends." Complaint at 1, *Johnson v. Grove*, (Minn. Dist. Ct. 1994) (No. C2-94-1132) (copy on file with the *William Mitchell Law Review*). Grove allegedly

without amendment the long arm of the law and the abandonment of the doctrine of *de minimus non curat lex*: the statute gives people who have poor problem solving skills an opportunity to help them solve their problems in court and develop better skills.³⁶ The current political climate rewards social incivility, and it relegates the shrill and the rude to the judicial branch.

Not long ago, an article reported by the Associated Press appeared in our local newspaper datelined Albuquerque, New Mexico.³⁷ It tells of the pretend playground marriage of ten-year-olds Cody Finch and Katie Rose Sawyer, which ended in divorce after Katie allegedly slapped Cody, and Cody allegedly punched Katie.³⁸ The case was filed in Albuquerque's domestic violence court after a commissioner ruled that the two fifth graders had a "continuing personal relationship."³⁹ Said Cody's mother, Jinx Finch, "[h]e was very much in love, for a while anyway."⁴⁰ Katie's dad commented that he hoped the case would show that all women need to protect

harassed Johnson by "constantly snapping her eyes at me" and "always calling me names." *Id.* In another case, also brought in Cass County, a mother charged a two and a four year old with harassing her eight, four, and two year olds by, *inter alia*, "chasing [her son] with a stick" and "throwing sand" in her daughter's face. Complaint at 1, *Shaugobay v. Beaulieu*, (Minn. Dist. Ct. 1995) (no court number was assigned) (copy on file with the *William Mitchell Law Review*). In other cases, "[n]eighbors [had gotten] into arguments regarding children or dogs running loose." Memorandum from Judge Warren E. Litynski to Stephen Forestall of Judicial Advisory Service (Feb. 26, 1997) (copy on file with the *William Mitchell Law Review*).

Judge Terri Stoneburner of Brown County has written to urge a narrowing of the definition of harassment in section 609.748 after hearing harassment cases involving:

Sr. high students breaking up from sexual relationships, talking about each other to other students, [and] confronting each other in [the] lunch room . . . Homeowners [filing harassment claims] against juveniles skateboarding on public streets in front of homes, [and] a daughter filing [a harassment case] against mother who was concerned her daughter had an eating disorder and who was asking others about the potential problem.

Memorandum from Judge Terri Stoneburner to Stephen Forestall of Judicial Advisory Service (Undated) (copy on file with the *William Mitchell Law Review*).

36. The comment is attributable to a state legislator whose name has, perhaps fortunately, been forgotten.

37. See *Playground Puppy Love Turns Sour*, ST. CLOUD DAILY TIMES, Apr., 29, 1997, at 8B.

38. See *id.*

39. *Id.*

40. *Id.*

themselves as children enter relationships at earlier ages.⁴¹

The law has become the reactionary and instantaneous cure for all annoyance and discomfort. The result is the emergence in law and in politics of a populism that dwarfs anything that has emerged since the rhetoric of the Non-Partisan League swept across the North Dakota prairies. Its gold standard is the creation of a crime or a statutory cause of action against all that is annoying: loud music, car radios, dogs without leashes, tobacco, overdue library books and video tape rentals, and even playground romances.

The Constitution is a document written to insure the rights of those harboring minority points of view. Indeed, it is the principal ally of unpopular people and their ideas, and its principal defenders are lawyers and judges. Many of those aided by affirmative action and government programs—through their activist lawyers, abetted by activist judges—sometimes find the United States Constitution to be both sword and shield for egalitarian public policies. For lawyers and judges not only represent the establishment; conversely, their hallmark is representing minority points of view, radicals, and sundry groups who are disagreeable to mainstream opinion. For institutions to reach out to those left behind in the scramble for the good life, for example immigrants, minorities, women, and the disabled, is no longer perceived as legitimate. What was once regarded as merely “leveling the playing field” is, in the public perception, the sponsorship of politically correct and politically suspect entitlements and evidence that institutions are no longer to be trusted.

Both lawyers and institutions appear to be at a low ebb of public popularity in what appears to be an increasingly majoritarian society. Coupled with a distrust of the establishment is a growing acceptance of the concept that one opinion is as good as another, a concept that may stem from the information revolution. Inasmuch as everyone has equal access to information, every opinion is potentially as good as any other. Unfortunately, no distinction need be made between information and analysis. Moreover, in academia, politics, and in law, too, there has emerged a majoritarian philosophy, frequently articulated in the opinions of the current United States Supreme Court, particularly those of the conservative cluster led by Justice Scalia.⁴² Its primary tenet is that the affairs of a de-

41. *See id.*

42. It may not be precise to classify Scalia as always a majoritarian as there are occasions, notably First Amendment issues, when he appears to stray. His seeming

mocracy must be regulated exclusively by the wishes of the political majority—whether right, wrong, moral, amoral, immoral or indifferent—and that those wishes are best determined by the actions of state legislatures. All questions of fact, law, morality, public policy, and even scientific fact are deemed the province of the popular vote. To their credit, ethical lawyers have always stood against the changing political winds and the tyranny of the majority. Now, the question is whether they can withstand the tyranny of the marketplace?

One of my favorite social comments is a 1985 Guindon cartoon in which police are shown surrounding a home and captioned: “Since everyone in America is barricaded and armed inside their houses, how do the police know whom to surround?”⁴³ It is one of those timeless observations. When I first clipped it, I thought it said something about the ubiquity of crime, the fear of the public, and perhaps our overreaction, and maybe it does. What I now see as most prominent is isolation. In the last few months, in quiet St. Cloud, Minnesota, we have had several (three or four) standoffs with police by citizens in their homes, most of which started with domestic or neighborhood disputes and escalated. A geometrically increasing population, multiple levels of larger and more intrusive government, and a greater intolerance of individual differences may be creating desperation to be left alone.

“Rude, abusive speech and action reflects belief in the need for an attitude,” and “some kind of protection against sly, sincerity-marketing politicians and boss-class crooks,” writes Benjamin DeMott in *The Nation*.⁴⁴ Obscene T-shirts and vulgar bumper stickers aren’t the worst of it. Maybe, the old playground chant that only “sticks and stones will break my bones” isn’t entirely true. Incivility has reached the extreme in a culture where people are assaulted for looking at someone or shot for cutting someone off in traffic. A recent *U.S. News & World Report* study indicates that almost ninety percent of all Americans believe that incivility is a serious national

captivity by the moral majority is discussed by Steven G. Gey, *Is Moral Relativism a Constitutional Command?*, 70 IND. L.J. 331, 364-67 (1995).

43. NEWS AMERICAN SYNDICATE, GUINDON (1985).

44. Steve Berg, *Rude, Coarse and Selfish: Got a Problem With That? A Renewed Interest in Teaching Good Manners Seeks to Stem the Erosion of Trust in Nearly Everything in American Society*, STAR TRIB. (Minneapolis), Mar. 9, 1997, at 1A (quoting Benjamin DeMott, *Seduced by Civility: Political Manners and the Crisis of Democratic Values*, NATION, Dec. 9, 1996, at 11).

problem.⁴⁵ A burgeoning spirit of meanness in the world encourages violence, blocks social reform, and tarnishes political debate, says University of Pennsylvania President Judith Rodin.⁴⁶ “These phenomena have produced an era in which the temptation to withdraw, to shut out the madness, to isolate ourselves is understandably great.”⁴⁷

In today’s society, it is too easy to become isolated, protected by answering machines and caller identification, dependent upon the Internet and chatrooms for human contact and devoid of human intimacy. And it may not only be computer nerds who are isolating themselves. Suburban homes and hobby farms are springing up at a rate that threatens agricultural counties and which is worrisome to those concerned with protecting a threatened environment and dwindling agricultural land. If the computer too easily lets people off from looking others in the eye, that may not be the worst danger it poses. It demonstrates a paradox: both too little and too much information can be a dangerous thing! The Internet offers unverified information indiscriminately to some of the world’s least analytical minds. It doesn’t distinguish between information and knowledge, nor does it analyze or provide wisdom, discipline, and values. It’s a kaleidoscope of fact without the filter of education.

The Internet and television news provides flashes of factoid and image without analysis epitomized by the miscreant barricaded in his mountaintop hideaway standing off local law enforcement and federal agents. He is hunched over an “entertainment center” containing a fax machine and computer. Black helicopters, the spaceship that was concealed by the Hale Bopp comet, the U.S. Navy missile that blew up TWA flight 800, the CIA invention of AIDS, and its plot to flood the inner cities with crack cocaine are all conspiracies brought to you by the Internet.⁴⁸ “Today,” writes Steven Berg, reporter for the *Star Tribune*, “the information circuits pulsate with all manner of tales that cast doubt on the conventional wisdom. For many, the paranormal has become normal and film

45. See Marks, *supra* note 10, at 66.

46. See Joseph F. Kirschke, *Panel Will Study Rise in Rudeness*, CHI. SUN-TIMES, Dec. 8, 1996, at 36.

47. *Id.*

48. See Steve Berg, *Information Everywhere, But Not a Drop of Knowledge—True or False: “Facts” Are the Digital Society’s Latest Fad Diet, But We Each Have Our Own Personal Realities. Democracy Is Threatened*, STAR TRIB. (Minneapolis), Apr. 24, 1997, at 21A.

maker Oliver Stone has become a historian."⁴⁹

If the proliferation of unadulterated knowledge casts doubt upon the conventional wisdom, what has it done to authority and to established institutions? Can too much democracy be a bad thing? University of Chicago political ethicist Jean Bethke Elshtain claims, "[i]t's kind of a free-for-all."⁵⁰ Whatever its cosmic importance, information chaos has made life harder for experts. Fewer people tend to believe what experts say. Indeed, the whole concept of authority seems in rapid retreat. Librarians, teachers, doctors, journalists, and others whose tasks involve assessing information are now challenged at every turn. And, while no institution or profession has fared well over the past thirty years—the government, the press, religion and education have all taken severe hits in public confidence—the legal profession has perhaps fared the worst. Those expressing confidence in law firms sunk to a low of seven percent of those recently polled.⁵¹

IV. *"The law is not a 'light' for you or any man to see by"*
—SIR THOMAS MORE⁵²

American lawyers approaching the millennium have a legacy unlike no other professional group in history. Lawyers, who comprised the majority of those who risked their lives, fortune and sacred honor to sign America's Declaration of Independence 223 years ago, have held an honored, powerful and unique place in American society and government.

The law is the only profession whose members, as officers of the court, are entrusted with the control of a co-equal branch of both the national and state governments. They have become the country's "secular priests," and theirs is a profession that at its best is a "calling" and at its worst a "call girl." Its symbiotic existence with good and evil is a mystery, which not unlike that surrounding the fall of Fort Zinderneuf, is both explainable and unsatisfying. And it is not only a mystery to the layman. The oft-heard quip at a social event, "how can you represent those people?," is not only asked by non-lawyers, and it is almost always a good question. As to

49. *Id.*

50. *Id.*

51. *See id.* (citing Pew Research Center for the People and the Press, Study (Mar. 1997)).

52. ROBERT BOLT, *A MAN FOR ALL SEASONS*, act 2, at 152 (1st Vintage Int'l ed. 1960).

the criminal law, the answer is easier—and most lawyers are used to answering it. Their answer is usually a variation of the language and the purpose of the “presumption of innocence” and the American romance with the “underdog.” Where the power of the government is amassed against the individual whose freedom or life is threatened, and who, regardless of race, creed or heinous act, is recognized as worthy merely by the fact of his or her humanity, it is not the alleged deed the lawyer defends, but the principles of a state pledged to human dignity. Usually, those who have held their liquor accept the answer, if only to be polite.

In the civil practice, answering the question isn't so easy. In the cases of corporate evildoers, chronic claimants or various other bottom-feeders that find their way to lawyers' offices, the common answer is, “someone has to represent Charley Chiseler. Besides, I'm ethically obligated, and if I don't, Charley will just go down the street and find a lawyer who will represent him without the compunction that I have and with even more zeal, and Charley will do even more damage.” The foregoing rationalization shouldn't pass the smell test. Most commentators parse the client and the problem and most, though not all, eventually conclude that lawyers need not represent pure evil.⁵³ Even Professor Rob Atkinson, who claims to be a dissenter from what he terms the “professionalism crusade,” concedes that “liberal legalism” is the current predominant legal culture and that it “entails the notion that the lawyer's proper role is derivative from and *subordinate to the goal of achieving just outcomes* through the existing legal system or its reformed successors.”⁵⁴

53. See, e.g., Teresa Stanton Collett, *Professional Versus Moral Duty: Accepting Appointments in Unjust Civil Cases*, 32 WAKE FOREST L. REV. 635, 640 (1997) (describing the “traditional American understanding of the voluntary nature of the client-attorney relationship, and the contemporary understanding of a limited duty to accept court appointments”); Teresa Stanton Collett, *Speak No Evil, Seek No Evil, Do No Evil: Client Selection and Cooperation With Evil*, 66 FORDHAM L. REV. 1339, 1352 (1998) (noting that Model Rule 1.2(b) “represents a repudiation of the idea that by agreeing to representation a lawyer necessarily joins in the intention and object of the client”) [hereinafter Collett, *Speak No Evil*]; Robert J. Muise, *Professional Responsibility for Catholic Lawyers: The Judgment of Conscience*, 71 NOTRE DAME L. REV. 771, 797 (1996) (stating that “mere access to the law is not a legitimate reason for advising or facilitating a client to do an objectively immoral act”).

54. Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 267 (1995) (emphasis added). Atkinson classifies lawyers into three groups: (1) neutral partisans (hired guns); (2) officers of the court (acolytes); and (3) moral individualists (vigilantes). See *id.* at 312. He concludes that the Type 2 practitioner, who he characterizes as moderating client representation

To the extent that the practicing lawyer is morally conflicted, much of her malady may be traced to the myth that the ethical lawyer must represent all comers, that the duty to represent the afflicted and scorned of society extends to the overreachers and sharp practitioners who are morally repugnant, and to the legal culture of "neutral partisanship," which, while not taught in law schools, may be tacitly approved. That there is sometimes a fine line between what is unpopular and what is inherently wrong or evil is undeniable and precisely why rules of professional conduct, at least in the United States, accord the lawyer the discretion to use her independent judgment. Unlike British barristers, American lawyers are not required to accept every client.⁵⁵ While lawyers may rationalize the duty to accept what Walt Bachman refers to as the "asshole client"⁵⁶ as a professional obligation, or the lesser of two evils (either I take his case or the Snidely Whiplash down the street will), it is not a morally neutral decision. Professor Monroe Freedman attaches moral consequences to the practitioner's rationalization: "*I do not consider the lawyer's decision to represent a client or cause to be morally neutral. Rather a lawyer's choice of client or cause is a moral decision that should be weighted as such by the lawyer and that the lawyer should be prepared to justify to others.*"⁵⁷ The essence of a lawyer's calling, according to ABA President Jerome J. Shestack, is similar to that of a parent—to serve the client

"with an infusion of public values," will soon come to realize that "if you are too scrupulous in turning down distasteful clients, you simply will not have enough paying clients to sustain a private practice." *Id.* at 313. While Atkinson claims with some piety to be a dissenter in what he terms the "professionalism crusades," his dissent appears to be a rather narrow quarrel with the means of the "crusade" rather than its ends. *See generally id.* He believes that it errs in applying formalistic expectations, regulation, coercion and the shunning of neutrality toward those with divergent viewpoints. *See id.* at 343. Atkinson takes issue with legal education for its often expressed favoritism for the Type 2 (the "acolyte") lawyer, claiming that the role of "liberal education" is to "foster critical examination" of all systems in a free marketplace of ideas. *Id.* at 336-38.

55. *See* Collett, *Speak No Evil*, *supra* note 53, at 1352-53.

56. WALT BACHMAN, *LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION* 122-24 (1995). Bachman categorizes the law as "a high-risk profession" citing (*sans* authority) high rates of depression, alcoholism, marital problems, divorce, and stress-related physical maladies such as heart attacks, ulcers, high blood-pressure, and strokes. *See id.* at 17. While his evidence is primarily anecdotal, it would undoubtedly be attested to by many that have spent a career in the practice of law.

57. Collett, *Speak No Evil*, *supra* note 53, at 1354 n.67 (emphasis added) (quoting Monroe H. Freedman, *Ethical Ends and Ethical Means*, 41 J. LEGAL ED. 55, 56 (1991)).

by saying "no."⁵⁸ "Much of the reason so many lawyers face malpractice suits is that [they] do not have the wisdom and fortitude to say 'no' to a client when 'no' should be said."⁵⁹

Unfortunately, as commentators have consistently pointed out, saying "no" to the client boils down to how much lawyers are willing to pay for peace of mind.⁶⁰ The fellow down the street who takes the case and the fee seldom, it seems, suffers much consequence. As Doug Peine points out with respect to civility:

One would like to think . . . that it eats away at their souls when they awaken at three in the morning. But the truth is, they probably sleep like babies, seraphic smiles on their faces, having persuaded themselves that at heart they . . . are simply pushing the envelope of the adversary system.⁶¹

If the literature is to be believed, the albatross weighing upon the legal profession is not only from its physical demands, nor is it even from the stress of winning and losing, because sometimes not losing is all that's required. Unfortunately, not losing isn't enough for many clients—those are the clients who are the creators of Rambo and Snidely Whiplash. The weight that is becoming too heavy for lawyers to bear is *the moral dilemma faced daily from those unreasonable clients who demand amorality at best and immorality at worst to achieve results*.⁶² "Because many clients want aggressive lawyers, at-

58. News Release from Jerome J. Shestack, President, American Bar Association addressed to State and Local Bar Associations (undated) (on file with the author).

59. *Id.*

60. See, e.g., Dale Ellis, *Headaches to Avoid: Survival Sometimes Means Learning to Say 'No' to Prospective Clients*, A.B.A. J., July 1994, at 78, 78 (noting that the wisest advice to new lawyers is Abraham Lincoln's advice to a young lawyer that "it's more important to know what cases not to take than it is to know the law").

61. Peine, *supra* note 31, at 38.

62. See BACHMAN, *supra* note 56, at 121-22. In *Law vs. Life*, Bachman wrote:

If lawyers can get beyond the rhetoric that their firms' clients are a large cut above the moral average and see them as they are, we may begin to reveal one of the root causes of disaffection with the law practice . . . [T]he kind of client who can obsessively dominate one's waking thoughts and keep him or her up at night, invade a marriage for weeks on end, rule the lawyer's very existence . . . no single term, scatological or not, better describes those people ultimately responsible for the explosion of litigation . . . over the last thirty years . . . This one word

torneys often feel that they must become combative and uncivil to survive in the marketplace.”⁶³

There’s a widespread belief among commentators that so debilitating is the demand to please and keep clients that the conflicting emotional needs and moral standards of lawyers have forced them to develop a mentally and emotionally unhealthy dual personality—one for the home, and one for the office or courtroom.⁶⁴ According to Walt Bachman, “A good lawyer, to be a ‘good person, must learn to lead a dual life.”⁶⁵ The lawyer has a professional need to be skeptical, to mistrust and to question; he has a need to be secretive, to maintain confidences; and he needs to hone the litigation skills of rationalization, argument, manipulation and assertiveness, which Bachman terms “hostility.”⁶⁶ These are traits that when transferred to personal relationships result in divorce and personal disaster.⁶⁷

In his analysis of fictional lawyers, Robert A. Creo holds out Atticus Finch, the heroic lawyer figure in *To Kill a Mockingbird*, as the quintessential professional who eschewed the dual life suggested by Bachman and other commentators: “Atticus Finch is the same in his house as he is on the public streets.”⁶⁸ Creo writes, “The willingness to have two faces, two lifestyles, seduces many lawyers,” and, he adds, “[f]or many attorneys life is a duality and the abyss threatening to swallow their personal humanity must appear to widen

... is ‘asshole.’

Id.; see also Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, The Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 707 (1998) (“Over the past decade or so, the pressure on novice lawyers to act unethically has increased substantially”). Schiltz’s thesis is that practitioners are so caught up in the pursuit of billable hours and the academy is so caught up in the pursuit of academic prestige—both a form of greed—that they have no time to mentor lawyers and adequately prepare and train them to practice law ethically. See *id.* at 706-09.

63. Kathleen P. Browe, Comment, *A Critique of the Civility Movement: Why Rambo Will Not Go Away*, 77 MARQ. L. REV. 751, 758 (1994).

64. See BACHMAN, *supra* note 56, at 74-85. It is too difficult to resist the comment that the reaching of any consensus by the law professors who usually author legal commentary is akin to an oxymoron.

65. *Id.* at 74.

66. See *id.* at 74-85.

67. See *id.*

68. Robert A. Creo, *An Essay on Professionalism: The Portrayal of Lawyers in Popular Fiction*, PITT. L.J., Jan. 1998, at 7, 9 (quoting HARPER LEE, *TO KILL A MOCKINGBIRD* 91 (1960)).

each day.”⁶⁹ Creo in his analysis of the character, Atticus Finch, draws on the work of Professor Thomas Shaffer of the University of Notre Dame Law School,⁷⁰ as does Patrick Schiltz when he also concludes that an attorney cannot afford dual personalities and, “[l]ike Atticus Finch, she knows that she ‘can’t live one way in town and another way in [her] home.’”⁷¹ Schiltz also echoes Bachman:

An attorney who experiences misery in her professional life can fight or flee—that is, she can fight to make her unhappy work situation better or she can flee it by rigidly separating her professional life from her personal life.⁷²

Like the Foreign Legionnaires of my boyhood daydreams, the lawyer too must sometimes escape his identity. Isolated by Fort Zinderneuf, surrounded by intrigue and hostage to conscience, perhaps even the slave of strong drink and the victim of shredded idealism, like Paul Newman in *The Verdict*,⁷³ lawyers look for answers by changing jobs, by seeking smaller firms, rural practices or judge-ships. Many drop out of the law practice altogether. They go into business, teaching, the government, even the clergy, anyplace where there is a place for those who are analytical, bright, disciplined, assertive, verbally gifted, self-confident, and, in the case of many who find the practice disagreeable, *sensitive*. The latter traits are valued credentials almost anywhere and on balance, no one is truly the worse off for a legal education. The rub sometimes comes when those who find the practice disagreeable are touted as morally superior to those who don’t. Those who are personally suited

69. *Id.*

70. *See id.* at 9 n.7 (citing Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181, 197 (1981)).

71. Schiltz, *supra* note 62, at 732 (quoting LEE, *supra* note 68, at 288). *See also* Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL ED. 247, 259-260 (1978). Cramton noted:

The role of the ‘hired gun’ forces the potential lawyer to visualize himself as an intellectual prostitute If the lawyer is going to live with himself, the system seems to say, he can’t worry too much about right and wrong. Many sensitive students are deeply troubled by the moral implications of this role

Id.

72. Schiltz, *supra* note 62, at 729.

73. *THE VERDICT* (Twentieth Century Fox Studios 1982).

by constitution, emotional chemistry, and character to endure and bear witness to the human destruction that is often a daily circumstance and sometimes a by-product of the practice of law, are neither less sensitive nor of lesser integrity; they may merely be able to achieve the emotional balance required to cope with that which is disagreeable. As to those who leave, no conclusions can be drawn about the character of those whose "cloistered virtue" has not been tested.

While it is true that lawyers have been changing careers and leaving the practice in great numbers, it is also true that there are far greater numbers of lawyers than there have ever been,⁷⁴ and that a significant number, in the vicinity of fifty percent, have traditionally eschewed the private practice of law.⁷⁵ Whether there is pro rata a greater number of dropouts from the practice, given the huge influx of people who entered the profession between 1970 and 1995, is difficult to tell. In the case of my law school class of 1973, numbering seventy graduates, I recently counted about one-half who are currently engaged in the practice of law. A night law school where many students entered having established careers in other fields would be expected to graduate fewer students who entered the practice of law, and my observation is hardly scientific. However, it also stands to reason that in the larger classes that came after ours, the supply of lawyers more than likely exceeded the demand for their services, and when the supply and demand curves reached equilibrium, it is perhaps safe to posit that greater num-

74. See Schiltz, *supra* note 62, at 725 n.53. It is estimated that from 1971 to 2000, the number of attorneys in the United States will have grown exponentially to approximately 1,005,842. See *id.* Both Schiltz and Bachman lament the exodus of attorneys from the practice of law, citing a sharp decrease in the number of attorneys who are satisfied with their lot and widespread depression. See *id.* at 728, nn.68-73. See also BACHMAN, *supra* note 56, at 12. Bachman writes:

Time and again, lawyers at the pinnacle of their careers telephoned me or came into my office (usually closing the door discreetly behind them so as not to be overheard) to reveal their secret aspirations for escaping from their lives in the law. The recurrent themes of these emotion-laden conversations were disillusionment, lack of satisfaction, and a sense of hand-wringing dismay over the direction the legal profession had taken.

Id.

75. NATIONAL ASS'N OF LAW PLACEMENT (NALP), EMPLOYMENT REPORT (1997) (estimating that about 55% of graduates in 1996 and 1997 went into private practice).

bers (maybe as many as fifty percent of graduates) ultimately found useful, and one hopes meaningful, work in other fields. This is all to say that it may not be either constructive or fair to beat ourselves up over the number of law graduates who for one reason or another have chosen to leave the practice in recent years. It certainly is unfair to conclude that a great moral meltdown forced their exit or that by their leaving they have left a moral vacuum among the remaining practitioners. After all, practicing law is hard work, and many look for easier ways to earn a living.

Not only is the law a “jealous mistress,” she can be also be both physically and mentally exhausting. My observation is that most who stick it out—particularly those who work in the courtroom—have exceptional stamina and make it a point regularly to exercise and stay physically fit. Finally, it’s difficult to shed copious quantities of crocodile tears for unhappy lawyers—as compared to unhappy anything else. In the generation before mine, most of the men in my family, and in my wife’s family, earned their living by physical labor, and most expressed hatred for their jobs. They stuck it out because that’s what was available to their generation.⁷⁶ It had nothing to do with moral dilemmas.

V. *“In matters of conscience, the loyal subject is more bounden to be loyal to his conscience than to any other thing.”*

—SIR THOMAS MORE⁷⁷

Clearly, an attorney who bonds with her calling, and who feels part of a great tradition is unlikely to dishonor it by acting either unethically or uncivilly, argues Patrick Schiltz.⁷⁸ Unfortunately, those attorneys exposed in law school to the prevalent attitude in the academy of “indifference or disdain” toward the practice of law, where it is contemptuously characterized as a commercial enterprise that “has no value other than as a means of earning money,”⁷⁹ are unlikely to be deterred by the law’s majesty when confronted by the temptation to cut corners, pad bills, or fail to disclose evidence damaging to one’s client. Nor are they likely to respond civilly to a myriad of other ethical dilemmas, or to the stress and pressure of litigation. “When we [law professors] treat our colleagues with

76. See Frances Coleman, *Those Who Defined a Century Can Tell Own Story*, STAR TRIB. (Minneapolis), Aug. 5, 1998, at 17A.

77. BOLT, *supra* note 52, act 2, at 153.

78. See Schiltz, *supra* note 62, at 734.

79. *Id.* at 778.

contempt simply because we disagree with them," writes Schiltz, "we teach our students to act uncivilly toward those judges and lawyers with whom they will have professional disagreements."⁸⁰

More onerous is the disdain for private practice—that it is a "dirty business"—that all too often radiates from the podiums of the academy. The Critical Legal Studies Movement founded in 1977, the progeny of legal academics, proselytized the cynicism and distrust of the law as an institution.⁸¹ The doctrine's adherents ("crits") taught that law was not a rational and neutral system of rules, but an instrument of social, economic and political oppression, contrived to insure the existing order.⁸² (Its "vast body of judicial decisions reflected little more than a sinister desire to perpetuate the class, gender, or racial advantages of the lawmakers.")⁸³ Among its followers were many of the more brilliant and influential law professors at the country's most elite and exclusive law schools. So powerful were the divisions and dissension it wrought among students and faculties that in the opinion of one legal writer it temporarily paralyzed the administration of Harvard Law School.⁸⁴ Critical Legal Studies combined with increased competition and hard economic times in the practice couldn't help but disillusion a generation of lawyers whose numbers reached "baby boomer" proportions by the early 1990s.

If contempt for private practice is prevalent in law schools and if the "neutral partisan"⁸⁵ is the predominant figure in the legal cul-

80. *Id.* at 779.

81. See Owen M. Fiss, *What is Feminism?*, 26 ARIZ. ST. L.J. 413, 423-24 (1994). "Cynicism and distrust—what Paul Ricoeur has called 'the hermeneutic of suspicion'—became the order of the day [in the 1970s] Possibly the most significant manifestation of this cynicism in the legal academy was the critical legal studies movement." *Id.*

82. See *id.* at 423-25.

83. EDWARD LAZARUS, *CLOSED CHAMBERS, THE FIRST EYEWITNESS ACCOUNT OF THE EPIC STRUGGLES INSIDE THE SUPREME COURT* 236-37 (1998).

84. See generally ELEANOR KERLOW, *POISONED IVY: HOW EGOS, IDEOLOGY AND POWER POLITICS ALMOST RUINED HARVARD LAW SCHOOL* (1994).

85. See Atkinson, *supra* note 54, at 304; Schiltz, *supra* note 62, at 711 n.15. Schiltz writes:

The neutral partisan does not judge whether her client is a good or bad person, or whether her client is right or wrong. Rather, she represents her client's interests to the best of her ability, and leaves it to the legal system to make judgments about her client.

Id.

ture, John Seigenthaler is right: the legal profession has some explaining to do. How did we let this happen and what are we going to do about it? I submit that regardless of the disillusionment of the undergraduates of the 1960s who later became lawyers (I was one of them) and of the disdain for the practice of law that may have been a part of the law school curriculum and the emergence of the “crit” professors and their disciples—who were everywhere in the minority—the vast majority of lawyers are nevertheless “acolytes” in Atkinson’s system of classification.⁸⁶

Perhaps more damaging than private greed and academic cynicism has been the inherent and omnipresent “Legionnaire’s Disease,” that romanticizes the mercenary (the Rambo and the Snidely Whiplash) among practitioners, and it instills in the student and novice lawyer the ethically tranquilizing rationale that if they are acting in the client’s best interests, no matter how ruthless and immoral the client, there need be no ethical qualms. The sobriquet in the academy for the mercenary, or “hired gun” is the “neutral partisan.”⁸⁷ According to Schiltz, “the culture of neutral partisanship is so deeply ingrained in practicing lawyers that few question it.”⁸⁸ Therein lies the poison pill in the practice of law: if lawyers aren’t responsible for the consequences of their client’s antisocial behavior (they aren’t), and if they are duty-bound to represent their clients zealously (they are), then it’s not too much of a stretch to rationalize their own unethical or uncivil behavior in representing their client. Since lawyers must represent those who need representation, then they need not be responsible. If the “neutral partisan” is the behavioral norm in advocacy, it is also, according to Bachman, the expectation in accepting employment:

The very core of American legal ethics authorizes—
some might even say the [sic] glorifies—the repre-

86. See Atkinson, *supra* note 54, at 304-12. It may have crossed the reader’s mind that for the author, who lives and works in St. Cloud, Minnesota, to categorize the vast majority of lawyers as “acolytes” may betray a sheltered existence outside the big cities where the Rambos and Snidelys abound in large numbers. On reflection, I don’t think so. Legal practitioners are a small community and litigators make up a much smaller community. I almost always know which lawyers are likely to ruin my day, and I can usually narrow the identity of the author of a dubious claim or pleading down to a very few lawyers in the community. My colleagues in large cities tell me they can do pretty much the same.

87. Atkinson, *supra* note 54, at 304.

88. Schiltz, *supra* note 62, at 709 n.6.

sentation of a client whose conduct one finds unlawful, injurious or morally offensive The obligations imposed by legal ethics inevitably cause the lawyer's behavior to diverge on some occasions from personal morality.⁸⁹

Can the lawyer committed to a goal of "just outcomes" accept Charley Chiseler on the rationale that if she does not take Charley's money, someone else will? If Charley really has an evil purpose, there should not be a question. Charley is "unacceptable under both the standard conception of lawyering and under the duty of Christian lawyers to avoid evil."⁹⁰ If the lawyer has a duty not to do evil comparable to the physician's duty not to do harm, how can it be reconciled with the lawyer's equally compelling duty not to deny legal representation to the unpopular idea or client? To deny minority opinions and imaginative claimants access to the legal marketplace is also wrong professionally and morally.⁹¹ Part of the romance of lawyering is fighting the good fight for the oppressed as did Atticus Finch for Tom Robinson and Boo Radley. It was, rightly or wrongly, what pointed us toward law school. Advocacy is the congenial and undeniable force that courses through the veins of every litigator.⁹²

VI. "*The credit belongs to the person actually in the arena*"
—THEODORE ROOSEVELT⁹³

From the literature of the past twenty years lamenting the decline of civility in the practice of law, one must attribute at least some of the churlish conduct at bench and bar to the conflicted and melancholy lives of the law's practitioners, employing the general theory that unhappy people are difficult to work and get along with. While the latter is true *arguendo*, there is no empirical evidence that there is or has been a burgeoning incivility, of a greater proportion than that of the general populace, afoot in the court-

89. BACHMAN, *supra* note 56, at 40-41.

90. Collett, *Speak No Evil*, *supra* note 53, at 1360-61.

91. See MINN. R. PROFESSIONAL CONDUCT Rule 1.2 cmt. (1996) ("Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval").

92. See Leonard Pertnoy, *Order In The Court*, 43 SYRACUSE L. REV. 1159, 1162-63 (1992).

93. Roosevelt, *supra* note 11.

rooms and law offices of the land. All is opinion, and all is anecdotal. In my experience, being in the courtroom daily for more than twenty-five years, I have noticed only an increase in the volume, not the intensity of litigants. While lawyering in the past quarter century has brought about much change with which to be unhappy about, I have observed there to be no disproportionate increase in mean lawyers—none that is measurable or observable anyway. When measured against the arbitrageurs of the business world, the peddlers of junk bonds, those who manage insurance claims, political careerists, television news reporters, and the Philistines who try to run us off the highways with increasing frequency, lawyers are a rather well-mannered and sensitive lot, despite the harsh realities that face them in practice.

The life of an attorney, particularly a new attorney, is often not a happy one. Even those from elite schools who enter elite law firms at salaries that approach six figures are faced with crushing debt from student loans that leave them no way out of a rat race where the pressure to bill hours, attract clients and spend long, sensory-depriving hours at the office makes them miserable.⁹⁴ Moreover, the life of the graduate of the lower tier law schools, often with an identical student loan, is subject to the same uncertainty and exhausting schedule, but works for typically one-third to one-half the salary.⁹⁵ Aside from long hours, financial insecurity, and the pressure to bill hours and build a client base, the emotional toll of lawyering, from its confrontational nature to the responsibility for the client's welfare, makes agonizing demands upon the human condition:

The lawyer, who is professionally responsible for pulling countless levers . . . often feels the heavier weight of stress than the client who suffers the actual loss. It seems to be part of the human . . . condition that the burden of responsibility for preventing something bad from happening . . . to others, is often worse than the painful occurrence itself.⁹⁶

Lawyers and judges go to work everyday to pain and misery. Neither courthouses nor law offices are happy places, and lawyer-

94. See Schiltz, *supra* note 62, at 723.

95. See NATIONAL ASS'N OF LAW PLACEMENT, *supra* note 75.

96. BACHMAN, *supra* note 56, at 19.

ing is all too often dirty work:

- Hundreds of times a day throughout every state and every county prosecutors will look a bruised and tearful victim in the eye and explain why his or her case can't be prosecuted.
- Everyday personal injury lawyers will tell someone who is grievously injured that they don't have a claim, that there's no insurance coverage, or no liability, and that they'll have to live with the pain and their medical bills.
- Sometimes proud and industrious business owners have to be told that they have exposure to a potentially bankrupting negligence claim, or that their insurance doesn't cover a fire or flood that puts them out of business.
- There's the divorce and custody wars; telling husbands and wives that in a no-fault state they can't keep their mate from leaving. Moreover, trying to explain the economic hardship of divorce—the necessity of supporting two households on the same income that barely made ends meet for one. And breaking the bad news about custody, joint custody, and visitation.

Considering the foregoing, the fact that lawyers are as polite as they are is remarkable. Litigation, the stress from a front row view of human misery and the added pressures of demanding clients and senior partners, the constant clamor to meet deadlines and to rack up large numbers of billable hours take their toll. Lawyers are nevertheless as polite if not more so than the society in which they operate and the public they represent.

The broad brush that paints lawyers with a lack of civility does so inaccurately and indiscriminately. It isn't a lack of civility that plagues our existence and diminishes the respect of the public. Instead, we lack the will to stand fast against the temptation of the increasing and often indecent demands of the competitive market; like so much else in life, this is too often about money.

If lawyers are going to combat the cynicism that, according to John Seigenthaler, has become a shroud covering the legal profession in self-interest and suspicion, it must exile its mercenaries from polite company and dispel the notion, beginning with law students, that any cause, and any means to win is okay if its proponents have the cash. The myth must be dispelled that lawyers in civil actions must represent every fast buck artist, schemer and chiseler that darkens their office door. There must come a day when, if Charley Chiseler gets his hat and goes down the street, it's okay—it's just possible that Rambo and Snidely won't be there anymore.

