

# Civility IN SOCIETY AND THE LAW

## *Reasonable (and great) expectations*

by Frank Overton Brown Jr.

Among the purposes of the SLC are "...to uphold the honor of the profession of law, to apply the knowledge and experience of the profession to the promotion of the public good, and to encourage cordial discourse and interaction among the members of the Virginia State Bar." Encouragement and promotion of civility are ongoing efforts of the SLC in working toward our purposes.

Civility means courtesy or politeness. Civility derives from the Latin "civitas," which is the same word from which civilization comes. Professor P. M. Forni of The Johns Hopkins University, an expert in civility, says, "Although we can describe the civil [people] as courteous, polite, and well mannered, etymology reminds us that they are also supposed to be good citizens and good neighbors." This reminder brings us to the illuminating thought that providing pro bono legal services is an aspect of civility.

Civility does not stand alone. It is supported by humility—an acknowledgment that none of us possesses all knowledge and wisdom, that we all can benefit from listening to others, by being respectful and effective listeners. The complementary obverse of this is being respectful and effective speakers by not turning disagreeable in the face of disagreeable conduct. Many of us have been taught since our youth that "A soft answer turneth away wrath." There is merit in that proverb. Recently many of us have had our memories refreshed by a scene in the movie "Good Night, and Good Luck" (about Edward R. Murrow), regarding the nationally televised exchange in 1954 between two lawyers—Senator Joseph R. McCarthy and Joseph N. Welch, then a sixty-three-year-old senior lawyer with the Boston firm Hale and Dorr. McCarthy's conduct was decidedly uncivil, and, Welch's conduct in response was decidedly, memorably and effectively civil. We all know in what ways society remembers each of these men.

The Honorable Paul L. Friedman, a U.S. District judge states for the District of Columbia, in his article entitled, "Taking the High Road: Civility, Judicial Independence and the Rule Of Law", published in the *NYU Annual Survey Of The American Law*, Vol. 58:187, observed:

This civility issue is not just about etiquette and manners. Unfortunately, incivility is a trend that is becoming culturally institutionalized and accepted in some quarters, and it threatens the pursuit of justice in very real ways. The rise in incivility has resulted from a number of recent developments. First, society has changed. There is less civility in public discourse generally, in politics and government, on television, certainly in the sports world, and in the media. *Many lawyers have grown up in this environment, and they do and will practice what they see all around them unless they are told by the more experienced among us that it is unacceptable.* [emphasis added] This only works, however, if senior lawyers have not themselves abandoned traditional notions of civility and professionalism and if judges also accept responsibility for changing the tone. Lawyers need to remind themselves and teach their juniors new to the profession—and judges need to and should remind both—that personal attacks, name-calling and invective will not be tolerated as the means to the end. Second, many current lawyers see the legal profession as a money-making venture at least as much as it is a calling dedicated to high standards of professionalism and service. Lawyers feel pressured to get and keep clients

in an environment where clients now follow a “shopping around for lawyers” mentality. In this economically-driven, result-focused marketplace, clients are especially demanding and many expect hired guns to do their bidding—or they will find others who will.... In terms of the tone of our profession, lawyers must be reminded that they can be advocates for their clients without assuming their clients’ personalities, antipathies and tactics. Lawyers provide their skills, their seasoned judgment, and their advice. They provide their ability to reason, to engage in rational discourse, and to present analytically sound arguments. Perhaps most important, they offer to clients their own professional reputations....

Our professional reputations are built over a career, one day at a time, one interaction after another, in our families, in our communities and in our legal profession. Ours is an honorable profession. Roscoe Pound, Dean of the Harvard Law School from 1916 to 1936 wrote that “[t]here is much more in a profession than a traditionally dignified calling. The term refers to a group... pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood.” Of course, our honorable profession is a means of livelihood; otherwise most of us would not be able to be part of it, but someone once observed that the coin in which we as professionals are really paid is in the respect of those whom we respect. It is respect of the bench, respect of the bar, and respect of those whom we serve.

In addressing newly admitted attorneys on November 1, 2004, Justice Peter T. Zarella of the Connecticut Supreme Court said: “The practice of law has historically been referred to as a noble profession. The increase of incivility and unprofessional behavior, however, has tainted the public’s view of lawyers, and so we must join forces to restore nobility to our profession through our civil treatment of, and respect for, everyone who has a role in the legal process, whether we are on the same side—or the opposing side—of a dispute. We must be adversaries without being enemies. We must return to a practice of taking the high road with fairness, courtesy and simple good manners. We must mend fences rather than trample them.”

It is promising to note that law schools, with the encouragement of senior lawyers (see “The Roles of Law Schools and the Judiciary in Promoting and Maintaining Civility, Ethics and Professionalism,” by G. Marshall Mundy and Vicki L. Wiese, in *Virginia Lawyer*,

December 2003, Volume 52, Number 5) are incorporating the promotion of civility in their missions. Two good examples are the Duke University School of Law and The Marshall-Wythe School of Law at the College of William & Mary. Duke’s mission is: “to prepare students for responsible and productive lives in the legal profession. We train our students to be excellent lawyers, equipped for any number of different careers, and committed to the values of hard work, integrity, personal responsibility, *civility* [emphasis added], tolerance, respect, and service.” Marshall-Wythe states: “We are a school where powerful teaching and powerful scholarship are prized in practice as well as rhetoric, where collegiality and *civility* [emphasis added] flourish even while high standards of performance are defined and expected....”

Virginia Chief Justice Leroy R. Hassell Sr., in conjunction with the VSB Conference of Local Bar Associations, has sponsored Solo & Small-Firm conferences that drew hundreds of lawyers to Abingdon, Harrisonburg and Williamsburg. Chief Justice Hassell followed each conference with a Town Hall Meeting, at which any lawyer in the audience had the opportunity to stand and to raise with the Chief Justice and VSB leaders questions or concerns regarding the legal profession or the administration of justice in Virginia. These sessions have been remarkable examples of collegiality and civility. The lawyers have raised difficult issues in thoughtful and respectful ways. The Chief

Justice listened attentively, responded directly and clearly, and indicated what follow-up action he would take. Bar leaders have done the same. I have attended all three Town Hall meetings; they represent great examples of cordial discourse, civility and collegial interaction among members of the Virginia State Bar. We should be proud of them.

SLC Board members Edward R. Slaughter Jr. and Homer C. Eliades are currently studying issues related to civility (and incivility) in society and the legal profession. They are engaged in a dialogue with a noted academician in this regard, and we expect to hear insightful, constructive and useful things from them over the next year.

Civility means many things to many people. Civility is certainly an aspect of professionalism. It may have been instilled in us as we were growing up; it may have been encouraged in us by teachers, a code, a standard of professional conduct, or a civility oath. It may be in our very nature. It may have been developed in us by a mentor. I have come to realize that civility and incivility are really habits. Incivility is a bad habit. Civility is a good habit. It will manifest itself in very small ways that will build to very great results—one interaction at a time. The most effective form of discipline is self-discipline. Let us all follow the good habit of civility and, thereby improve our society and our profession.

## C·I·V·I·L·I·T·Y

### LET US REMEMBER THAT CIVILITY IS NOT A SIGN OF WEAKNESS.

— GOVERNOR TIMOTHY M. KAINE,  
INAUGURAL ADDRESS,  
WILLIAMSBURG, VIRGINIA  
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