**The Civility Promise for the Legal Profession Lecture Notes**

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**I: Definitions of civility**

1. Professor P.M. Forni defines a civil person as “someone who cares for his or her community and who looks at others with a benevolent disposition rooted in the belief that their claim to well being and happiness is as valid as his or her own.”

P.M. Forni: *Choosing Civility* (2002)

1. Professor Stephen Carter suggests that:

* Civility requires that we sacrifice for strangers, not just for people we know.
* Civility has two parts: generosity, even when it is costly, and trust, even when there is risk.
* Civility assumes that we will disagree; it requires us not to mask our differences but to resolve them respectfully.
* Civility requires that we listen to others with knowledge of the possibility that they are right and we are wrong.
* Civility requires that we express ourselves in ways that demonstrate our respect for others.

Stephen Carter: *Civility*: [*Manners, Morals, and the Etiquette of Democracy*](http://www.amazon.com/gp/product/0060977590?ie=UTF8&tag=juddsbookreviews&link_code=as3&camp=211189&creative=373489&creativeASIN=0060977590) (1998)

1. Incivility is “mild aggressive behaviors that are characteristically disrespectful or rude.”

Christine L. Porath and Amir Erez,

*Organizational Behavior and Human Decision Processes* 109 (2009) 29

1. Examples of incivility include:

* Interrupting conversations
* Not returning phone calls or emails
* Taking credit for others’ efforts
* Passing blame
* Not saying “please” or “thank you”
* Not listening
* Sending bad news through email
* Showing up late or leaving meetings early
* Excluding others from a network or team
* Avoiding someone
* Throwing temper tantrums
* Using a demeaning or condescending tone
* Talking loudly in common areas
* Spreading rumors or gossip
* Texting or emailing during a meeting or conversation
* Showing little interest in another’s opinion

Christine Pearson and Christine Porath, *The Cost of Bad Behavior:*

*How Incivility Is Damaging Your Business and What to Do About It* (2009), 2 and 12

**II: The price we pay for incivility**

1. Incivility lowers motivation for the targets of incivility in the workplace:

* 48% intentionally decreased their work effort.
* 47% intentionally decreased time at work.
* 38% decreased work quality.
* 80% lost time worrying about the incident.
* 63% lost time avoiding the offender.
* 78% said their commitment to the organization declined.

Christine Pearson and Christine Porath, *The Cost of Bad Behavior:*

*How Incivility Is Damaging Your Business and What to Do About It* (2009), 55

1. Incivility decreases cognitive performance, creativity, and helpfulness:

Targets of “one-time, low-intensity” incivility had impaired ability to concentrate and focus. Their short-term memory was also impaired as they recalled twenty percent less. In one study, sixty-one percent performed lower on verbal tasks and produced half as many creative ideas as those who had not been the target of incivility. Incivility decreases helpfulness. In one study, prior to an incident of incivility, ninety percent of the participants helped pick up something that was dropped; whereas, after they became the target of incivility, only thirty-five percent offered to help.

Christine Pearson and Christine Porath, *The Cost of Bad Behavior:*

*How Incivility Is Damaging Your Business and What to Do About It* (2009), 57-58

1. Incivility vicariously impacts witnesses:

Porath and Erez found that participants who witnessed the rude response performed lower than the control group on the anagram test and on the brick test — producing fewer and less creative uses. In addition, they demonstrated lower citizenship behavior; 50% of the controls agreed to volunteer as compared to only 26% who witnessed the rude response. Further analysis suggests that those in the control group were three-times more likely to volunteer. As was expected, the participants who witnessed the rude response had higher levels of dysfunction ideation: Not only did they generate more dysfunctional uses for the brick, such as hitting someone in the head or breaking a window, but in unscrambling “remdue” to spell “demure” they were 7 times more likely to spell “murder” than the control group.

Christine L. Porath and Amir Erez,

*Organizational Behavior and Human Decision Processes* 109 (2009) 33-34

1. Incivility costs when good people leave the company:

12% of workers leave their workplace because of incivility. O’Melveny & Myers estimated that one partner’s incivility cost the firm over $2.8 million. Over the course of a few years, the firm lost six attorneys and two paralegals.

Christine Pearson and Christine Porath, *The Cost of Bad Behavior:*

*How Incivility Is Damaging Your Business and What to Do About It* (2009), 1, 93-95

1. Incivility compromises our health:

Incivility undermines physical and mental health; increases stress, and contributes to psychological dis-ease. People under psychological distress are less likely to behave civilly.

* Lawyers are 3.6 times more likely than any of the other 104 occupational groups to suffer depression.

Eaton, Anthony, Mandel, Garrison (1990). *Occupations and the Prevalence of Major*

*Depressive Disorder*. Journal of Occupational Medicine, 32(11), 1079-1086.

Benjamin, Darling & Sales (1990). *The Prevalence of Depression, Alcohol Abuse, and Cocaine*

*Abuse Among United States Lawyers*. International Journal of Law and Psychiatry, 13(3), 233-246.

* 15% of women attorneys experience obsessive compulsive disorders as compared to 2% of non-attorneys; 16% experience depression as compared to 14% for non-attorneys; 20% experience anxiety as compared to 4% of non-attorneys; and 71% experience alcohol problems as compared to 8% of non-attorneys. 21% of male attorneys experience obsessive compulsive disorders as compared to 2% of non-attorneys; 21% experience depression as compared to 9% for non-attorneys; 30% experience anxiety as compared to 4% of non-attorneys; and 67% experience alcohol problems as compared to 20% of non-attorneys.

Beck, Sales & Benjamin (1996). *Lawyer Distress: AlcoholRelated Problems and Other Psychological*

*Concerns Among a Sample of PracticingLawyers.* Journal of Law and Health, 10, 1-60.

**Symptoms of depression**

* mixture of anxiety, depression, and hostility
* thoughts of killing self
* feeling so unhappy that you cannot shake it
* dissatisfied or bored with most aspects of life
* nicotine use
* disrupted sleep — never feeling sufficiently rested
* increased social isolation
* limiting normal exercise patterns

**Symptoms of addiction**

* managing sleep with substances
* feeling guilty about use of alcohol or drugs
* substance-use-related problems between you and loved ones
* neglecting your obligations for longer than a day
* no memory of time period during use
* increased social isolation
* limiting normal exercise patterns

**Symptoms of hostility**

* holding persistent negative, hostile, or cynical thoughts
* chronic impatience when waiting
* expressing frequent irritability
* disconnecting from others
* being rigid in relationship interactions
* suffering continual fatigue
* A high percentage of disciplinary problems are alcohol related
* 27% of disciplinary problems and 60% of malpractice complaints are alcohol related
* Another study found that 50-75% of disciplinary problems are alcohol related

Green (1988). Half of Malpractice and Lawyer Discipline Complaints Stem from Substance Abuse.

Annual Meeting of National Conference of Bar Presidents.

Spillis (1991). An Overview of Lawyer Assistance Programs in the United States: Report of the

ABA Commission on Impaired Attorneys. Chicago: ABA

Association of American Law Schools Committee Report (1994). Report of the AALS Special Committee on Problems of Substance Abuse in Law Schools, Journal of Legal Education, 44, 35.

**III: The benefits of civility**

Civility:

* + increases work productivity, performance, and creativity
  + saves time and money
  + decreases stress
  + promotes better relationships
  + serves justice

**IV: Factors that contribute to incivility**

* Dissolving of community
* Indulgent parenting — children not taught to be respectful
* Politics — divisive and poor role models
* Media — magnifies conflict and controversy
* Stressful and overloaded lifestyle
* Societal norms — economic pressures; getting caught in spiral of rudeness and disrespect
* Lack of loyalty
* Demographics—baby-boomers replaced by generation Xers

**V: Foundations of civility**

1. Consciousness fosters civility:

Emotional intelligence and mindfulness increase our awareness of our own feelings and triggers; enhance an awareness of our impact on others; facilitate our ability to set boundaries; and enable us to live in congruency with values and life’s purpose.

* Emotional intelligence is the ability to perceive, understand, and manage one’s own emotions as well as to understand and respond to others’ emotions.

Daniel Goleman, *Emotional Intelligence: Why it Can Matter More Than IQ* (1995)

* A practice of mindfulness can help counteract the tendency of lawyers to be excessively egocentric and adversarial, and it promotes greater balance in one’s personal and professional life to support health and well-being by reducing feelings of “stress . . . isolation, emptiness, and absence of meaning, and [making less likely] the rendering of inadequate or inappropriate services.” It also enhances ability to concentrate and to develop emotional intelligence competencies such as self-awareness, self-regulation, motivation, empathy, and social skills.

Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to*

*Law Students, Lawyers, and Their Clients*, 7 Harvard Negotiation Law Review, 1, 3, 48 (Spring 2002).

1. Creativity fosters civility:

Creative process provides a vehicle for mindfulness, stimulates whole brain activity, expands perspective, and supports effective problem solving.

* Research suggests that the right side of the brain is visual and processes information in an intuitive and simultaneous way, looking first at the whole picture then the details (soft thinking). The other hemisphere — the left brain — is verbal and processes information in an analytical and sequential way, looking first at the pieces then putting them together to get the whole (hard thinking). The right side of the brain is often associated with characteristics such as intuition, imagination, emotions, feelings and artistic creativity. The left side is more usually associated with planning and organization, logic, analytical thinking and deduction. The right side of the brain is sometimes referred to as the ‘artist’, whereas the left side is regarded as the ‘judge’.

http://www.journeytoexcellence.org.uk/resourcesandcpd/research/summaries/rsfosteringcreativity.asp

* Effective advocacy requires us to see the situation from the perspectives of all involved; to convey the human, personal, and emotional experience of the client; and to anticipate the others’ issues.

Tolman, Jeff, *Looking at the World Through Other People’s Eyes*, WSBA Bar News March 2011

1. Community fosters civility:

Community engagement revives civic humanism; promotes psychological well-being; and builds positive social skills.

* Altruism and service increase sense of meaning, self esteem, and satisfaction with one’s daily activities; and living up to one’s potential.

Constance Flanagan and Matthew Bundick, *Civic Engagement and Psychosocial   
Well-Being in College Students*, Liberal Education*,* Vol. 97, No. 2

* Helping others triggers activity in the parts of the brain that are involved in pleasure and reward. Serving others may produce the same sort of pleasure as gratifying a personal desire. When groups compete, it’s the cohesive, cooperative, internally altruistic groups that win.

David Brooks, *Nice Guys Finish First*, New York Times, A27, May 16, 2011

* Collective action and the sense of common purpose can build social trust; increase one’s faith   
  in humanity; help us broaden perspectives and see the best in others.

Constance Flanagan and Matthew Bundick, *Civic Engagement and Psychosocial*

*Well-Being in College Students*, Liberal Education*,* Vol. 97, No. 2

**VI: Strategies to foster civility**

1. Organizational strategies to foster civility:

* Set zero-tolerance expectations
* Look in the mirror
* Weed out trouble before in enters your organization
* Teach civility
* Train employees and managers how to recognize and respond to signals
* Put your ear to the ground and listen carefully
* When incivility occurs, address it promptly
* Take complaints seriously
* Don’t make excuses for powerful instigators
* Invest in post departure interviews

Christine Pearson and Christine Porath, *The Cost of Bad Behavior:*

*How Incivility Is Damaging Your Business and What to Do About It* (2009), 138-151

1. Personal strategies to foster civility:

* Tai Chi
* Eight Rules for a Civil Life

1. Slow down and be present in your life.
2. Listen to the voice of empathy.
3. Keep a positive attitude.
4. Respect others and grant them plenty of validation.
5. Disagree graciously and refrain from arguing.
6. Get to know the people around you.
7. Pay attention to the small things.
8. Ask, don’t tell.

P.M. Forni, *The Civility Solution: What to Do When People Are Rude,* p. 29

1. Interpersonal strategies to foster civility:

* Microsoft’s list of civil behaviors

* Listen to understand others’ perspectives without interrupting
* Integrate diverse perspectives when making decisions
* Communicate critical feedback respectfully
* Consider the experience and knowledge of others
* Do not disparage others
* Assume the best motives in others
* Ask difficult questions to discover answers, but never to demean
* Never act in a manner that could be perceived as threatening, intolerant, or discriminatory
* Demonstrate more interest in finding the right answer than in defending a position
* Maintain objectivity when conflict arises

Christine Pearson and Christine Porath, *The Cost of Bad Behavior:*

*How Incivility Is Damaging Your Business and What to Do About It* (2009), 131

* SIR (State, Inform, Request) Sequence in response to incivility
* State the facts.
* Inform the other person of the impact he or she had on you.
* Request that the hurtful behavior not be repeated.

Do so politely, firmly, and unapologetically. And do it sooner rather than later.

P.M. Forni, *The Civility Solution: What to Do When People Are Rude*, p. 29 & pp. 69-72

* Difficult conversation checklist

Step 1: Prepare by Walking Through the Conversation

* + Sort out What Happened.
  + Where does your story come from (information, past experiences, rules)? Theirs?
  + What impact has this situation had on you? What might their intentions have been?
  + What have you each contributed to the problem?
  + Understand Emotions.
  + Explore your emotional footprint, and the bundle of emotions you experience.
  + Ground Your Identity.
  + What’s at stake for you *about you*? What do you need to accept to be better grounded?

Step 2: Check your Purposes and Decide Whether to Raise the Issue

* + Purposes: What do you hope to accomplish by having this conversation? Shift your stance to support learning, sharing, and problem-solving.
  + Deciding: Is this the best way to address the issue and achieve your purposes? Is the issue really embedded in your identity conversation? Can you affect the problem by changing your contributions? If you don’t raise it, what can you do to help yourself let go?

Step 3: Start from the Third Story

* + Describe the problem as the difference between your stories and consider both as a legitimate.
  + Share your purposes.
  + Invite them to join you as a partner in sorting out the situation together.

Step 4: Explore Their Story and Yours

* + Listen to understand perspectives. Ask questions. Acknowledge the feelings behind the issues. Paraphrase to see if you’ve got it. Try to unravel how you got to this place.
  + Share your own viewpoint, your past experiences, intentions, feelings.
  + Reframe, reframe, reframe to keep on track. From truth to perceptions, blame to contribution, accusations to feelings, and so on.

Step 5: Problem-Solving

* + Invent options that meet each side’s most important concerns and interests.
  + Look to standards for what should happen. Keep in mind mutual caretaking.
  + Talk about how to keep communication open as you go forward.

D. Stone, B. Patton, S. Heen, *Difficult Conversations [How to Discuss What Matters Most]*, pp. 233-4