Civility: The Preservation of Access to Justice

by Ronald R. Ward

An immigrant person who does not speak English, or speaks it only with limited facility, facing an unwarranted and unlawful eviction and having no place else to turn, musters the courage to approach a courthouse counter, unaware that the clerk cannot give legal advice. The clerk — all too human in his reality — under the increasing pressure wrought by decreased justice system funding, an ever-increasing workload, and a line of people stretching out the door, responds abruptly and impatiently. The person is alarmed, fearful, dispirited — and walks away. She never seeks legal advice and she and her family are ultimately evicted from their home.

For many in our society, the mere act of entering a courthouse is something to be feared, let alone availing oneself of the potential justice to be acquired there. Those persons can include, but are not limited to: parents who desire custody of their children; people with developmental disabilities (including our children) to which they are legally entitled; families who are denied essential support services (e.g., health insurance for their children) to which they are legally entitled; people with developmental disabilities who are unlawfully evicted from their housing; and many others.

There are myriad reasons that may spawn a barrier to access to justice; lack of education, unawareness of rights, inadequate economic means, inequality of economic resources, and, yes, the incivility at times found within the justice system itself.

Incivility of legal counsel — manifested by those who think that to be obnoxious, or abusive, or intimidating is to be effective — can rank high in the primacy of obstacles to the attainment of access to justice.

Most of us came into the law envisioning it as what it is: a noble profession that improves people’s lives; resolves disputes peaceably; improves the quality of life; and is a vehicle to heal the community. It is not intended to be an incivility vehicle which brutalizes everything it touches: clients, judges, and other lawyers. Our societal role as problem-solvers, advocates, guardians, teachers, counselors, and leaders requires us to seek justice and find reasonable solutions to conflict for all.

Public trust and confidence in our courts is critical to our nation’s civic health. Our courts must be fair, open, and protective of the rights of every individual, and they must be perceived by the public to be so. Sadly, this is increasingly not the case. Ongoing surveys indicate it is not just specific groups of people who see inequality. It is the public at large.

Even so, people from all over the globe continue risking everything, even their very lives, to reach American shores. One of the primary reasons (aside from economics) is their perception of this justice system and the access to equal justice which it offers. People do — and should — expect the very best of all of us, lawyers and judges alike, in terms of our competence, humanity, civility, and our commitment to equal justice; and we should be ever ready to provide this and no less.

In January 2010, I read an article in which Kent Hickey, principal at Seattle Prep School, talked about caris personalis, Latin for “care for the person.” He said, “The words are meaningless unless they are lived, even if living them out is difficult or unpopular. When we voice a commitment to caris personalis, but then pick and choose to whom we should extend our care, then I would question our real commitment to this principle.” I respect and embrace Mr. Hickey’s sentiment. It compellingly applies to the concept of equal justice and the question of whether we as a society will achieve recognition of our shared humanity; whether we will achieve the reality that each person in this country has equal worth. It often starts with civility.

Lawyers are leaders in this society and will continue to be, to the degree we focus on our role as problem-solvers, on serving our clients and society, and on the core values of the profession. Those core values are truth, integrity, and honesty. We need an ongoing unified commitment from lawyers to advance the interests of the profession, with primacy on achievement of access to justice. We can advance access to justice by doing pro bono work, by considering the economic costs of litigation, and by treating all parties with care and respect as we work towards fair outcomes. We have an obligation to our clients and to the justice system to search for justice. We must use consciousness, creativity, and community to foster and maintain the civility that will spawn the truth and assure the success of our quest.

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