Civility in Practice
The Comprehensive Law Movement as a Natural Response

BY JOSEPH SHAUB

Starting around 1960, and continuing through the 1980s, the practice of law was marked by the ascendancy of litigation as both the engine of economic growth in the profession and the prevailing ethic. Competent, smart, hard-working, and, above all, tough — these were the values which permeated our professional world. Aggressive was good; results (measured in monetary terms) were paramount. Adversarial litigation exploded as a practice form, and with it came the concomitant rise in interpersonally destructive behavior. The oft-referenced rise in incivility among lawyers was both striking in its metastatic growth and often shocking in its brazenness. Isolated voices would express concern about the law’s shift from a “profession” to a “business” and its effect on the well-being of both the lawyers and the clients they served, but, during this time, they remained just that — isolated. But in the late 1980s and early 1990s, these voices coalesced into what law professor Susan Daicoff has called the “Comprehensive Law Movement.”

If there is one driving force behind this movement within our midst, it is the recognition that law should not be an instrument for inflicting avoidable personal (and interpersonal) damage in the service of reaching specific “legal” objectives. Indeed, one theme these approaches share is that when we lower the heat generated by adversarial conflict, we can arrive at more satisfying solutions for our clients. It is about the ascendency of civility in how we conduct our affairs — not just to be “nice” but to achieve effective results. The various “vectors” of this Comprehensive Law Movement include:

- **Collaborative Law**: 20 years ago, Stu Webb, a Minnesota family lawyer, conceived of Collaborative Law. The primary principle is that the last place to resolve disputes between wounded, divorcing individuals is in an adversarial litigation process. In Collaborative Law, all professionals and the clients sign a contract abandoning litigated adjudication. Instead, they agree to use neutral professionals to help manage their emotional challenges, making parenting decisions, and untangling their financial community.

- **Therapeutic Jurisprudence (TJ)**: In 1990, law professors David Wexler and Bruce Winnick wrote about the various psychologically destructive consequences of legal action. They explicitly joined the social sciences of law and psychology in an effort to enhance the therapeutic possibilities inherent in both legal process and result. Starting in the mental health courts, TJ (the subject of more than 600 articles and 18 books) has significantly impacted such diverse practice areas as workers’ compensation, sexual orientation law, and business negotiation.

- **Transformative Mediation (TM)**: In 1994, law professor R. Baruch Bush and communications professor Joseph Folger introduced this concept in *The Promise of Mediation*. Transformative Mediation seeks to fashion resolutions that reach beyond a settlement of the legal issues between parties. TM, at its highest expression, explores the power of empathy and forgiveness, making mediation a vehicle for growth and reconciliation.

- **Restorative Justice (RJ)**: More than 25 years old, RJ was founded in the criminal justice system. It is an avenue for healing between the criminal offender, the victim, and their community. It focuses not on adjudication of guilt and sentencing, but rather upon dialogue, future problem-solving, and, critically, the offender’s acceptance of accountability for his/her conduct and the damage which has resulted. RJ seeks to heal the deep rift which arises from the commission of criminal acts.

- **Holistic Justice (HJ)**: About 20 years ago, attorney Bill van Zyverden founded the now International Alliance of Holistic Lawyers. This seeks to promote peaceful advocacy... encourage compassion, reconciliation, forgiveness and healing.” HJ emphasizes the spiritual elements of dispute resolution.

- **Humanizing Legal Education**: Among numerous law professors calling for change, Professor Lawrence Krieger authored an influential research report on the destructive impact of the law school environment on the well-being of law students in the early 2000s. He helped found the Section on Balance in Legal Education in the Association of American Law Schools, which seeks to encourage and support avenues for law students to strengthen their resources for dealing with stress and deepen their interpersonal skills.

Back in 1974, we used to talk about law school as training to become “high-speed legal tools.” This led to troubling blindness to a fundamental truth — we lawyers are people. Our clients are people, too, with dreams and troubles and a fundamental need for connection. During the last 20 years, our colleagues, by the thousands, have striven to sculpt a new and different profession which is wiser and more civil — not because it is nicer, but because it is a return to our roots as lawyers as counselors and supporters of our clients’ lives and endeavors.

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