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## The "Rambo" Problem: Is Mandatory CLE the Way Back to Atticus?

James A. George

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# The “Rambo” Problem: Is Mandatory CLE the Way Back to Atticus?

*James A. George\**

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He has served as National President of the American Board of Trial Advocates, Chair of the Admiralty Law Section of the Association of Trial Lawyers of America, and as a member of the Board of Trustees, American Inns of Court Foundation where he served for one term as National Vice-President.

The author was the recipient of the A. Sherman Christensen Award on October 9, 1996 in a ceremony conducted in the Well of the United States Supreme Court. The Award is given each year to the member of the American Inn of Court Foundation who at the local, regional, or national level has provided distinguished, exceptional, and significant leadership to the American Inn of Court movement.

He is listed in the *Best Lawyers in America* and *The Bar Register of Preeminent Lawyers*, and has recently completed a second term as Chair of the Professionalism and Quality of Life Committee of the Louisiana State Bar Association. As a result of that service and in recognition of his efforts in helping to launch the first series of Law School Professionalism Programs in 2000, he received The President’s Award of the Louisiana State Bar Association in June 2001.

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*The Law*  
*in the 50s, it was a calling;*  
*in the 70s, it was a profession;*  
*in the 80s, it became a business;*  
*and if we don't watch out*  
*by 2000, it will be a racket.<sup>1</sup>*

## I. INTRODUCTION

Something has gone terribly, tragically wrong in American society today.

That is as precise a description as I can muster about the signs we see everyday that things are going generally awry in a society in which:

- A young boy steps into a restroom and murders two of his classmates in cold blood and then injures a number of others—because he was bullied.
- The class then spends a week talking about all the problems this poor young boy suffered at the hands of “the bullies” but the names of the murdered boys are never mentioned.
- Two girls get into an argument and one of them pulls out a pistol and shoots the other.
- There are so many different kinds of “rage” in this country today we now have different names for them. It’s not just anger anymore, it’s “road rage,” “runway rage,” “hotel lobby rage,” etc.

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1. Celia Johnstone, President, Canadian Bar Association, August 1992.

- Reports of high school and grammar school shootings, and knifings are becoming almost commonplace.
- The question of the coarsening of American society in general was the subject of numerous columns, articles, and essays in major publications in the period immediately preceding the submission of this paper, with titles such as "The Matter of Manners," "Athletes and Role Models," and "Prole Models."
- The most popular "singer" (and that term is used advisedly) in today's culture picked up a handful of Grammys for songs that promoted killing, of, for instance, his mother and gays, and was embraced by one of the leaders of the gay community who commented that he was "only joking" in his lyrics.
- Two weeks later, a fifteen year old threatened to kill students at his local high school, but then told his fellow students and one adult that he was "only joking." Shortly thereafter, the scene described in the first paragraph occurred and it turned out he was *not* "only joking."

And, we are deluding ourselves if we do not admit something is wrong with our profession, perhaps because we reflect the society we serve.

So, because some years ago leaders of the Bench and Bar could see the process of deterioration was rapidly accelerating, they started to push for more emphasis on Professionalism. This resulted in many states requiring some form of annual instruction in that area, in addition to the usual Ethics requirement.

In a recent book about the quality of life of lawyers—or the lack of same—the author spoke of "dependable verities,"<sup>2</sup> which existed in the legal profession before the mid-sixties:

Not long ago, the concept of professionalism was well understood. It represented a consensus about what it meant to be a lawyer, and it functioned as a kind of cultural glue. In *A Nation Under Lawyers*, Harvard law professor Mary Ann Glendon points out that the concept, as promoted by bar leaders, remained quite stable and clearly understood until the mid-1960s.

That understanding included certain "dependable verities," Glendon notes: that associates who did good work would become partners; that those who did not would be let

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2. Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (1999).

down easily; that partnership was a reasonably secure status; that independence from clients' "could and should be asserted when the occasion required; and that economic considerations would be subordinated, if need arose, to firm solidarity" or to ideals of proper conduct. "Today's lawyers," Glendon goes on to say, "are wandering amidst the ruins of those understandings."

To the lawyers left wandering this landscape of shattered assumptions, all the talk about professionalism seems like so much hot air, for none of the fretting, none of the warnings, none of the hearkening back to the good old days, has helped much.<sup>3</sup>

A prominent Federal District Judge in Miami, Judge William Hoeweler, was quoted in the same work with his observation on how the current cultural changes have caused us, as a profession, to "lose touch":

I think one of the basic problems of our profession and all professions is a loss of individual spirituality. This may offend some people, but when I read about the history of this country and the way our Constitution was formed. . . . I think about the reasons why lawyers do what they do. And for a lot of them, it is because they have no compass that is directing them. They have no internal direction. And that's becoming more and more pervasive. . . . And this is something we never talk about. We would like to relegate this to the parlors of homes and so forth. But it is a problem that we've got to address and think about. We have lost touch. And I don't care what kind of spiritual values you have—whatever you are is unimportant—but the fact that we are living in an increasingly technological and material world which has no time or room for these thoughts is, I think, one of the deepest problems that we as lawyers face.<sup>4</sup>

The author describes mandatory professionalism Continuing Legal Education as the legal profession's "current obsession with professionalism."<sup>5</sup> It is termed a "prominent symptom" of the dichotomy which now characterizes the profession—"there is no place for the life of the spirit, only for the life of the mind."<sup>6</sup>

I have no answers to these far reaching issues, as my service of several years in the thick of "the professionalism movement," as it

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3. *Id.* at 12.

4. *Id.* at 13.

5. *Id.* at 12.

6. *Id.*

has come to be known by some (and not always in a complimentary way), teaches that there are few clear and satisfying solutions—only more questions.

This paper will attempt to explore a number of those questions and will discuss, in the process of this examination, the history of the deterioration of civility at the Bar which gave impetus to the growth of the Professionalism movement, specifically, the distinction between the concept of Professionalism and those surrounding Legal Ethics. In addition, the arguments, pro and con, whether the Organized Bar should be involved in promoting “good manners” in the first place, and the role of the Courts in this process will be analyzed. Finally, some examples of specific programs which have been put in place to enhance standards of Professionalism, civility, and excellence in various states will be explored.

## II. “PROFESSIONALISM”—IS IT JUST ETHICS UNDER A NEW RUBRIC?

To say that any attempt to give a clear and concise definition of “Professionalism” would be a daunting task would be to utter the understatement of the year, and no such attempt will be made here. However, it is helpful to peruse the numerous Codes of Professionalism which have been promulgated across the country and to note a number of parallel thoughts running through those codes as to the nature of the concept we are dealing with, however vague and illusory it might be. The Order of the Supreme Court of Texas and the Court of Criminal Appeals contains the following observations about the proud history and tradition of the legal profession:

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.<sup>7</sup>

The ideas expressed in that Order are similar to one of the more recognized definitions of a “profession” by Dean Roscoe Pound of Harvard, in which he said it is characterized by: “[P]ursuing a learned art as a common calling in the spirit of public service.”<sup>8</sup>

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7. Order of the Supreme Court of Texas and the Court of Criminal Appeals, *The Texas Lawyer's Creed—A Mandate for Professionalism* (Nov. 7, 1989), available at <http://www.txethics.org/resources.asp>.

8. Roscoe Pound, *The Lawyer From Antiquity to Modern Times* 5 (1953).

A concise statement is also found in an excellent article authored by one of the leaders of the Professionalism movement in the Louisiana State Bar, Frank X. Neuner, in which he also touched upon the differences between "Professionalism" and Ethics:

Professionalism is not comprised of a single trait or attribute, but is instead a combination of elements. These elements include "ethics and integrity, competence combined with independence, meaningful continuing learning, civility, obligations to the justice system, and pro bono service." . . . The basic distinction between ethics and professionalism is that rules of ethics tell us what we must do and professionalism teaches us what we should do. Stated another way, professionalism can be described as living by the "Golden Rule" or what we should have learned in kindergarten. Although fairness and good manners are certainly part of professionalism, the notion of professionalism is a much broader concept.<sup>9</sup>

Perhaps the most often cited sentence describing the differences between the two concepts was penned by Justice Benham of the Georgia Supreme Court in the 1992 case of *Evanoff v. Evanoff*: "[E]thics is that which is required and professionalism is that which is expected."<sup>10</sup>

The difficulties encountered in grappling with this ephemeral and elusive group of ideals was most effectively summarized in a paper delivered by the President of the Louisiana State Bar Association, Michael H. Rubin, at a recent seminar:

There has been a rampant rise in regard for the concept of "professionalism." It is not merely that an hour of "professionalism" credit has been mandated by the Louisiana Supreme Court. Across the country, voluntary lawyer organizations as well as courts have created non-binding "codes of conduct" or "codes of civility" or "lawyer's creeds" or "codes of professionalism." This mushrooming mound of aspirational goals, ubiquitous promises of mannered behavior, and grand phrases indicate that the legal profession deems itself to be in a crisis. But, what is the nature of the crisis and why does it require the reaction that has been engendered?

A basic problem is in the use of the term "professionalism." The Louisiana Supreme Court Rules do not define "professionalism" and no standard definition is

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9. Frank X. Neuner, Jr., *Professionalism: Charting a Different Course for the New Millennium*, 73 Tul. L. Rev. 2041, 2042-43 (1999).

10. 418 S.E.2d 62, 63 (Ga. 1992).

available. Indeed, pursuing the outlines of those who have spoken in the past few years on professionalism on behalf of the Bar Association, one comes up with a lack of agreement as to any particular and limited definition; the reaction is more akin to the famous statement of Justice Potter Stewart, who, in speaking of pornography, said "I know it when I see it."

On the other hand, there are those who argue that the entire concept of professionalism is illusive and self-defeating, an admission by the Bar of the failure to have its members behave, on their own, as is appropriate. Contrast these views to those who advocate that professionalism can and should be taught, that professionalism is what you ought to do while ethics are what you are required to do.<sup>11</sup>

With these general, if shadowy and hazy, principles in mind, it is appropriate to examine a sampling of some typical incidents which many believe, taken together, impelled the Organized Bars of many states to move toward mandatory CLE in Professionalism as, at least, a small step in the direction of instilling basic precepts of courtesy and manners in our profession.

### III. THE PERCEIVED NEED FOR THE ORGANIZED BAR TO BE DIRECTLY INVOLVED IN THE EFFORTS IN ENHANCING STANDARDS OF CIVILITY AND COURTESY AT THE BAR

The former president of the Texas State Bar Association, David J. Beck, recently observed:

Many of us yearn for "the good old days" of lawyer professionalism. That may be a time, however, just before the period of our last clear recollection. Historians have been perplexed when trying to locate any "golden age of professionalism," or a period when lawyers as a group uniformly placed public concerns over private.<sup>12</sup>

However, in a quite nostalgic article appearing a few years ago in the American Bar Journal, the author recalled a conversation he had in the mid-1970s with Edward L. Wright, a most distinguished member of the Arkansas Bar and a former president of the American Bar Association. In an article bearing the memorable title "Planes,

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11. Michael H. Rubin, *Mistaking Professionalism For Something That It Is Not*, Paul M. Hebert Law Center Alumni Seminar 1-2 (Oct. 8, 1999) (transcript on file with author).

12. David J. Beck, *Exploding Unprofessionalism—Fact or Fiction*, 61 Tex. B.J. 534 (June 1998).



Trains and Civility," he recalled the early days when "much of the Arkansas legal profession then was concentrated in Little Rock, so lawyers and judges would have to travel to handle matters pending in state courts outside of the city."<sup>13</sup> He continued:

A Little Rock judge presided in the state court in Hot Springs on alternate Tuesdays. On alternate Mondays at 2 p.m., the judge and lawyers having matters before him the next morning would board a train in Little Rock for a leisurely journey to Hot Springs. Upon arrival, they would all register at the same, small rooming house. In the evening, all would share a meal in the rooming house's dining room.

Next morning the judge would call his calendar, and the lawyers who had been so convivial the previous evening were as adversarial on behalf of their clients as if they had been strangers. Following the court session, the judge and lawyers would share lunch and return together to Little Rock on an afternoon train.

When Wright told that story, I considered it an interesting and nostalgic glance back at a style of practicing law that had slipped into history. In the ensuing years, however, I have wondered whether today's lawyers' ready access to jets—whisking them at all times to distant points on business matters—might not have a connection to some of the problems the legal profession is currently experiencing.<sup>14</sup>

And, of course, no discussion of "the good old days of professionalism" would be complete without at least a brief reminiscence of the hero of all trial lawyers, Atticus Finch of the classic novel *To Kill A Mockingbird*.<sup>15</sup> It is impossible to recall the moving jam-packed courtroom scene, right after Tom Robinson had been found guilty by the jury and Judge Taylor had completed polling the jury, without feeling there really were "good old days" and wishing they could return. As we all remember, Atticus Finch's children, Scout and Jem, were in the balcony watching the proceedings. Atticus went over, put his hand on Tom's shoulder, whispered something in Tom's ear, took his coat off the back of his chair, and then pulled it over his shoulder. He left the courtroom down the middle aisle. Scout was looking down from the balcony and said that she "followed the top of his head as he made his way to

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13. Charles H. Wilson, *Planes, Trains and . . . Civility*, 76 A.B.A. J. 77 (Jan. 1990).

14. *Id.*

15. Harper Lee, *To Kill a Mockingbird* (1960).

the door. He did not look up.”<sup>16</sup> An elderly gentleman standing beside her started nudging her and said “Miss Jean Louise, stand up. Your father is passing.”<sup>17</sup> Anyone who professes to be a real trial lawyer cannot possibly read that passage without yearning for the days when lawyers were regarded with such reverence and respect.

As a “wake-up call” to those who do not believe there is a civility crisis, the following passages are set forth—not to shock, but to demonstrate real-life examples of some of the most uncivil and unprofessional conduct one can find anywhere.

The case of *Carroll v. The Jaques Admiralty Law Firm*,<sup>18</sup> is one of the more egregious examples of gross language and conduct on the part of counsel in a deposition. The case involved an action by a former client against an attorney alleging negligent misrepresentation. The opinion indicates there was an unusually high degree of acrimony between the parties, as clearly manifested in the deposition which gave rise to the sanctions involved in this case. At the videotaped deposition of the attorney-defendant, he threatened and cursed at Carroll’s attorney (who proved to be the epitome of professionalism and civility before the day was over) in the following exchange:

*Question*        So, you knew you had Mr. Carroll’s file in the—

*Answer*         Where the f— is this idiot going?

*Question*        —winter of 1990/91 or you didn’t?  
[Defendant’s Counsel]: Nonresponsive.  
Objection, objection this is harassing. This is—

*The Witness:*   He’s harassing me. He ought to be punched in the g—damn nose.

\* \* \* \*

*Question*        How about your own net worth, Mr. Jaques?  
What is that?  
[Defendant’s Counsel]: Excuse me. Object also that this is protected by a—

*The Witness:*   (Interrupting) Get off my back, you slimy son-of-a-bitch.  
[Plaintiff’s Counsel]: I beg your pardon, sir?

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16. *Id.* at 214.

17. *Id.*

18. 926 F. Supp. 1282 (E.D. Tex. 1996), *aff’d*, 110 F.3d 290 (5th Cir. 1997).

*The Witness:* You slimy son-of-a-bitch [Shouting].  
[Plaintiff's Counsel]: You're not going to cuss me, Mr. Jaques.

*The Witness:* You're a slimy son-of-a-bitch [Shouting].<sup>19</sup>

The District Court, relying on its inherent power under Rule 83(b), imposed sanctions in the amount of \$7,000.00, calculated under the following formula:

[This figure] was calculated by assessing fines of \$500 for each of the four times Jaques referred to Plaintiff's counsel as either an "idiot" or an "ass"; \$1,000 for Jaques's suggestion during the deposition that Plaintiff's counsel "ought to be punched in the g-damn nose"; \$1,000 for each of the three times Jaques called Plaintiff's counsel a "slimy son-of-a-bitch"; and \$1,000 for Jaques's parting words to Plaintiff's counsel.<sup>20</sup>

The Court of Appeal for the Fifth Circuit, making it clear that there was no due process issue involved, because Jaques had been placed on notice of the nature of the sanction hearing, affirmed the sanction order. The Fifth Circuit then made the following observations which are particularly appropriate to the questions addressed in this paper:

After acknowledging that he should cautiously invoke the inherent power to sanction, the court ruled that sanctions were appropriate. The court found that Jaques's behavior of hurling "vulgar and profane words" at Carroll's counsel and threatening Carroll's counsel with an act of physical violence constituted bad faith:

This abusive behavior disrupted the litigation (1) by forcing counsel for the Plaintiff to terminate the deposition and (2) by displaying blatant disrespect and contempt for the judicial processes of this court. Jaques's language was extremely offensive, threatening, and contumacious. No court can effectively dispose of cases when a party engages in such repugnant conduct in the course of pretrial discovery.<sup>21</sup>

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19. *Id.* at 1286.

20. *Id.* at 1293.

21. 110 F.3d 290, 293 (1997).

The Court also made the following comments about the duty of an attorney, who is also a litigant, as an officer of the Court, to abide by a "heightened standard of conduct":

Third, the court did not abuse its discretion in considering Jaques's conduct as constituting bad faith. "We find entirely appropriate the court's expectations of a heightened standard of conduct by a litigant who is also an attorney." This court "adheres to the well established doctrine that '[a]n attorney, after being admitted to practice, becomes an officer of the court, exercising a privilege or franchise.'" "As officers of the court, attorneys owe a duty to the court that far exceeds that of lay citizens." It is not acceptable for a party—particularly a party who is also an attorney—"to attempt to use the judicial system . . . to harass an opponent in order to gain an unfair advantage in litigation." Neither is it a violation of his First Amendment right to be so sanctioned.

The finding of bad faith is predicated on a single point: Jaques knew better. Even if he was tired, hypoglycemic, and feeling put-upon by repetitive and, in his view, irrelevant questioning—assumptions which are each dubious, as the district court observed—his condition was no excuse for abusive, profane, and pugnacious behavior in his deposition. Such conduct degrades the legal profession and mocks the search for truth that is at the heart of the litigation process. To assert, as does Jaques, that using vile language and fighting words during the course of an interrogation under oath do not constitute bad faith is almost as disrespectful of the legal process as his deposition conduct. Jaques's words and actions in the deposition did nothing to further its purpose and, indeed, subverted it to prevent his answering the questions asked. Through his counsel, Jaques could have acted within the rules to object to questions he thought improper. Profanity and threats are not a good faith substitute for either answering the questions or properly objecting.<sup>22</sup>

Another discussion which has acquired great notoriety as an example of some of the most egregious conduct on the part of an attorney seen in any reported case is found in the *addendum* to the decision of the Delaware Supreme Court in the case of *Paramount*

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22. *Id.* at 293-94 (citations omitted).

*Communications, Inc. v. QVC Network, Inc.*<sup>23</sup> Again, it is impossible to fully appreciate the truly egregious nature of counsel's conduct in this case without reading the offensive testimony:

*Answer* [Mr. Liedtke] I vaguely recall [Mr. Oresman's letter] . . . I think I did read it, probably—

*Question* (By Mr. Johnston [Delaware counsel for QVC]) Okay. Do you have any idea why Mr. Oresman was calling that material to your attention?

*Mr. Jamail:* Don't answer that.  
How would he know what was going on in Mr. Oresman's mind?  
Don't answer it.  
Go on to your next question.

*Mr. Johnston:* No, Joe—

*Mr. Jamail:* He's not going to answer that. Certify it. I'm going to shut it down if you don't go to your next question.

*Mr. Johnston:* No. Joe, Joe—

*Mr. Jamail:* Don't "Joe" me, asshole. You can ask some questions, but get off of that. I'm tired of you. You could gag a maggot off a meat wagon. Now, we've helped you every way we can.

*Mr. Johnston:* Let's just take it easy.

*Mr. Jamail:* No, we're not going to take it easy. Get done with this.

*Mr. Johnston:* We will go on to the next question.

*Mr. Jamail:* Do it now.

*Mr. Johnston:* We will go on to the next question. We're not trying to excite anyone.

*Mr. Jamail:* Come on. Quit talking. Ask the question. Nobody wants to socialize with you.

*Mr. Johnston:* I'm not trying to socialize. We'll go on to another question. We're continuing the deposition.

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23. 637 A.2d 34 (Del. 1994).

*Mr. Jamail:* You don't run this deposition, you understand?

*Carstarphen:* Neither do you, Joe.

*Mr. Jamail:* You watch and see. You watch and see who does, big boy. And don't be telling other lawyers to shut up. That isn't your goddamned job, fat boy.

*Carstarphen:* Well, that's not your job, Mr. Hairpiece.

*Witness:* As I said before, you have an incipient—

*Mr. Jamail:* What do you want to do about it, asshole?

*Carstarphen:* You're not going to bully this guy.

*Mr. Jamail:* Oh, you big tub of shit, sit down.

*Carstarphen:* I don't care how many of you come up against me.

*Mr. Jamail:* Oh, you big fat tub of shit, sit down. Sit down, you fat tub of shit.<sup>24</sup>

However, in a case which graphically illustrates the widely divergent views of various courts concerning their inherent power to curb behavior which would have been considered almost barbaric a couple of decades ago, the United States Court of Appeal for the Third Circuit vacated sanctions imposed upon an attorney who repeatedly used the "F" word in a deposition. In *Saldana v. Kmart Corporation*,<sup>25</sup> decided on July 23, 2001, the Court—noting the fact, which proved to be dispositive, that none of the conduct complained of occurred in the presence of the Court—found that the following conduct did not warrant sanctions under the inherent power of the Court:

[W]e find that the quality and quantity of the transgressions found by the District Court—four uses of the word "fuck," two in telephone conversations with attorneys and two in asides to attorneys during depositions, and a post-verdict letter in which Rohn concurred with a juror who described an expert witness as a "Nazi"—simply do not support the invocation of the Court's inherent powers. Stated differently, we agree with Rohn that her use of language, while certainly not pretty, did not rise to the level necessary to trigger sanctions, at least under the Court's inherent powers.<sup>26</sup>

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24. *Id.* at 53-54.

25. 260 F.3d 228 (3d Cir. 2001).

26. *Id.* at 237.

The key to the decision—a reading of the inherent power of the Court diametrically opposed to that of the Fifth Circuit in the *Jaques* case—is found in the following passage:

The language complained of in this case did not occur in the presence of the Court and there is no evidence that it affected either the affairs of the Court or the “orderly and expeditious disposition” of any cases before it . . . nothing “egregious” is evident here. Indeed, the District Court described itself as a “kindergarten cop” refereeing a dispute between attorneys.<sup>27</sup>

It is interesting to note that part of the District Court’s Sanction Order reversed by the Third Circuit ordered the attorney, Ms. Rohn, “to attend a legal education seminar on civility in the legal profession.”<sup>28</sup> The nullification of that portion of the District Court’s punishment is perhaps the most unfortunate aspect of the Third Circuit’s inexplicable action, as it is respectfully submitted Ms. Rohn represents the classic profile of an attorney who most needs to spend at least a few minutes per year considering basic principles of civility, courtesy, manners, traditions, and Professionalism.

In an interesting footnote to the opinion, in which the Court expressed “dismay” at the argument presented by counsel moving for sanctions against Ms. Rohn, the Court discussed the case of *In re Tutu Wells*, “a case in which, among other things, the attorney in question during a status conference before the court ‘made an obscene gesture, pantomiming masturbation’ while a woman attorney was making a presentation on behalf of her client.”<sup>29</sup>

For those members of the Bench and Bar who are still not persuaded there are real and deep problems with lawyer incivility, two articles by Professor Jean M. Cary of Campbell University School of Law, which recount many more instances of such conduct, are highly recommended. One, however, is forewarned to have a strong stomach while reading some of the actual transcripts she has compiled. In her article entitled “Teaching Ethics and Professionalism in Litigation: Some Thoughts,” referring to her earlier article,<sup>30</sup> she cites just a few examples:

A couple of years ago, I compiled research on the reported cases of lawyer-to-lawyer incivility during depositions. I was

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27. *Id.*

28. *Id.* at 236.

29. *Id.* at 236 n.9 (citing *Harthman v. Texaco*, No. 1989-107, 1994 U.S. Dist. LEXIS 21104 (D. V.I. Dec. 12, 1994)).

30. Jean M. Cary, *Rambo Depositions: Controlling an Ethical Cancer in Civil Litigation*, 25 Hofstra L. Rev. 561 (1996).

shocked by the taunting, rude, and demeaning epithets lawyers hurled at their opposing counsel while speaking "on the record" The presence of the court reporter did not appear to deter this behavior.

For instance, the undisputed transcript in one disciplinary proceeding revealed the respondent calling his opposing counsel a "lying son-of-a-bitch," "asshole," "child and a punk," "fat slob," "f-ker," and "c-ksucker." In another proceeding, the respondent verbally attacked his opponent with a religious slur in the middle of the deposition. In yet another case, the plaintiff, who was also an attorney, accused the opposing attorney of being "so scummy and so slimy and such a perversion of ethics or decency because you're such a scared little man." During a deposition in another case, an attorney "threw the contents of a soft drink cup on the plaintiff's attorney and grabbed him near or around his neck, restraining him in his chair." Needless to say, that deposition ended prematurely.

Unfortunately, this outrageous behavior of one attorney towards another attorney does not appear to be limited to the deposition room. Attorneys are attacking each other both verbally and physically in the hallways outside court, in judicial chambers, and even in the courtroom. The Fourth District court of Appeal of Florida recently affirmed the thirty-day contempt of court sentence against an attorney who called opposing counsel "a f-king c-t" and threatened that he would "see her later" during a conversation in the hall outside the Courtroom immediately following the granting of her Motion for Directed Verdict. Similarly, the Supreme Court of Indiana imposed a sixty-day suspension on an attorney who struck opposing counsel at the end of a meeting in judicial chambers. A Massachusetts Superior Court judge fined an attorney \$500, the maximum fine allowable in a summary contempt proceeding, for "[u]sing abusive and vulgar language with an opposing attorney within earshot of the Court, during a motion session, and while within the bar enclosure."

Not only do attorneys attack other attorneys, but in a few reported cases, they also attack the judge as well. The Florida Supreme Court upheld a six-month suspension of an attorney who was so angry after a ruling by a judge that he stood and shouted his criticism, waved his arms, challenged the judge to hold him in contempt, and banged on the table. Ten days before the incident in open court, this same attorney, after receiving an unfavorable response to a question over the



telephone, had said to the judge's judicial assistant, "You little motherf—; you and that judge, that motherf— son of a b—." The judicial assistant was so upset by the incident that she had to leave the office early that day. In 1998, the Supreme Court of New Jersey ordered disbarment of an attorney whose pattern of abuse and intimidation extended beyond opposing counsel to witnesses and even to the judiciary.<sup>31</sup>

A review of the conduct of the attorneys involved in cases such as the ones discussed in this paper<sup>32</sup> as well as, the response of some courts, or lack thereof, leaves one with a sense of incredulity that members of a once learned and honorable profession could behave in such a barnyard manner. The impact of such widespread incivility on the public was summarized in an article appropriately entitled "Civility—Without It We All Lose":

The public certainly does not gain from uncivil behavior. Clients are often forced to pay additional and unnecessary fees and penalties for their abusive lawyers' obnoxious conduct. Worse, such behavior encourages an already cynical public to shun the legal system and support measures that would put restrictions on the activities of lawyers generally, and perhaps allow non-lawyers to take over some of the functions traditionally limited to our profession.<sup>33</sup>

The impact upon us, as members of the Legal Profession was discussed with great poignancy recently at an Opening of Court Ceremony in Louisiana by one of the most highly respected Judges of the United States Court of Appeal for the Fifth Circuit, Judge John M. Duhé:

Forty-three years ago I joined a grand and noble profession which assured that, if I worked hard and treated the court, counsel opposite, witnesses and my clients with dignity and respect, I probably would never be rich, but I would live comfortably, be a respected member of my community, and even admired by some. I cannot say with confidence that you can look forward to the same thing. In fact, our noble, genteel and respected profession is now tarnished and is despised by many of the same people I could expect to look up to and

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31. Jean M. Cary, *Teaching Ethics and Professionalism in Litigation: Some Thoughts*, 28 Stetson L. Rev. 305, 305-08 (1998).

32. It should be noted this discussion has only attempted to sample a few of the numerous cases involving such conduct.

33. Victor W. Santochi, *Civility—Without It We All Lose*, For the Defense, June, 2001, at 44.

respect it and me for my role in it. Of course, it does now offer the opportunity for great wealth that was not available when I began. But consider the price we have paid: A survey some years ago showed that 60% of the people who had recently used the services of a lawyer did not trust lawyers; that lawyers ranked just below used car salespersons among those the public thought it could trust.

Not only the public is affected. I listen to lawyers every day who decry the way they are treated by other lawyers and by some judges. You tell me regularly that it is no longer "fun" to practice law; it is vicious, and unnecessarily contentious; that the "search for the truth" has become the game of the "hide the ball."<sup>34</sup>

Although millions of words have been written about the collapsing image of the legal profession in the last few years, it does bear at least briefly repeating that we have reminders around us every day of the low ranking we have in American society.

One interesting indicator is a listing of the titles of books published recently about the legal profession, including the following:

- *Why Lawyers . . . Lie & Engage in other Repugnant Behavior*<sup>35</sup>
- *The Betrayed Profession*<sup>36</sup>
- *The Lost Lawyer: Failing Ideals of the Legal Profession*<sup>37</sup>
- *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming Society*<sup>38</sup>

Surveys serve as another interesting indicator illustrating the level of dissatisfaction and deterioration of quality of life among lawyers consistently revealing facts such as the following:

- 19% of lawyers are dissatisfied with their lives.
- 24% would not become lawyers again.
- 46% do not desire to remain in law practice for the remainder of their careers.

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34. Judge John M. Duhé, United States Court of Appeal for the Fifth Circuit, Remarks on the Occasion of the Opening of the Seventeenth Judicial District Court in Franklin, Louisiana, Oct. 3, 2000 (on file with the author).

35. Mark Perlmutter, *Why Lawyers and the Rest of Us Lie & Engage in Other Repugnant Behavior* (1998).

36. Sol M. Linowitz, *The Betrayed Profession: Lawyering at the End of the Twentieth Century* (1994).

37. Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993).

38. Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming Society* (1996).

- 8-12% have symptoms of serious psychological or physical ill health.
- 24% exhibited symptoms of depression at least three times per month during the past year.
- 36.6% felt depressed or very unhappy during the past few weeks.
- 42.5% felt very lonely or remote from other people during the past few weeks.
- 11.2% had thoughts of committing suicide at least one or two times per month during the past year.
- 16.6% consume at least three to five alcoholic drinks per day.<sup>39</sup>

The American Bar Association has issued three major studies on professionalism—or, more accurately, the causes of the decline in professionalism—over the last ten to fifteen years. The first study was conducted in the mid-eighties, the second one in the early nineties and most recently in 1996.

In the 1996 study, the American Bar Association set forth some thoughts which are helpful in looking for causes of the collapse of collegiality in the bars of many of our cities:

- (a) The loss of an understanding of the practice of law as a “calling.”
- (b) Changes in economics of the practice of law which has converted law practice from a profession to a business—making it more difficult for lawyers to devote significant amounts of time to public service activities and generating a growing sense of dissatisfaction with law practice as being incompatible with personal values and goals
- (c) Perceived excesses of the adversarial process, including the loss of civility, permitted by the existing rules governing litigation.
- (d) An undermining of the traditional independent counseling role of lawyers.
- (e) Concerns about the competency of lawyers and their compliance with applicable ethical codes.<sup>40</sup>

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39. American Bar Association, *The Report of At The Breaking Point: A National Conference on The Emerging Crisis In the Quality of Lawyers' Health and Lives—Its Impact on Law Firms and Client Services* (1991).

40. Professionalism Committee, American Bar Association Section of Legal Education and Admissions to the Bar, *Teaching and Learning Professionalism* 3-4 (1996).

Although many causes have been attributed to the decline in civility and courtesy, in this trial lawyer's mind, one major player stands out—Rambo!

#### IV. RAMBO

The Rambo style of litigation was best summarized in an article appropriately entitled "Changing Law Schools to Make Less Nasty Lawyers" as including, "such practices as refusing to return phone calls, grant routine extensions of deadlines, or even shake hands in court, along with more abrasive and hostile behaviors such as vulgarity and name calling, shouting, temper tantrums, or even occasional fisticuffs during depositions."<sup>41</sup>

Having conducted presentations for the Committee on Professionalism and Quality of Life of the Louisiana State Bar Association over the past few years, I have noted at least one mention about Mr. or Ms. Rambo and Rambo litigation in general, along with the debilitating effects of such litigation techniques on everyone concerned—including, Mr. or Ms. Rambo. And, again, it must be noted, there exists a connection between this type of outrageous conduct and what many see as a collapse of ideals and standards of courteous conduct in our society in general. While examples abound, one cannot view the horrible incidents at schools across the country including Jonesboro, Arkansas; Paducah, Kentucky; Pearl, Mississippi; Columbine High School in Littleton, Colorado and many others, without feeling there is an over-arching collapse of values throughout our entire society.

The point was well summarized by Mr. Schechter when he described the train wreck of discourteous and rude conduct we see in American society today:

A generation or more ago, students were sent out into a much more genteel profession. Even if they saw abundant examples in school of rank incivility, once out in practice they quickly learned that such behavior was unacceptable. The world into which we send students today is very different. As one recent newspaper editorial summarized the landscape, "[a]dults disrupt graduation ceremonies, movies, sporting events and concerts—threatening anyone who complains. Radio talk-show hosts snarl with vulgarities at callers who don't share their views. Politicians resort to

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41. Roger E. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 Geo. J. Legal Ethics 367, 379 (1997) (footnotes omitted).

name-calling when their stands on issues fail to ignite support. Professional athletes throw punches at opponents." In a largely uncivil world, students may arrive at the law school door unsure whether the profession aspires to something better.<sup>42</sup>

#### V. JUDGE RAMBO

While many examples could be cited, one of the best collections of observations about rude conduct on the part of members of the Bench is found in the report published by the Committee on Civility of the Seventh Federal Judicial Circuit in the Chicago area. This report represents the results of one of the most extensive efforts to review the civility crisis conducted in this country.<sup>43</sup> Although the comments quoted below from that report are about judges in that particular area, they could apply to members of the Bench in many other areas, as well. Some of the comments made by practitioners about judges in that report include the following:

- Rude, arbitrary treatment of lawyers; impatience; unwillingness to give adequate time to complex matters.
- Judges no longer are treating attorneys with respect like they once did. The courts seem to resent the lawyers.
- Some federal judges seem more interested in "putting down" attorneys than practicing judicial temperament.
- Judges are unusually rough with lawyers, threatening, scolding, ignoring arguments.
- It was once a pleasure to litigate in federal court. Judges and attorneys were very "civil" on the whole. The decline in civility on the judicial side seems to arise out of a general disrespect for practitioners, almost a presumption that attorneys are trying to engage in misconduct at the court's expense. This attitude is expressed on certain benches and in pretrial matters. Unfortunately, it filters down. Lawyers begin to apply the same presumption to each other. Many of us prefer to operate with the opposite presumption—that our colleagues, both bench and bar, deserve civility unless they demonstrate that they are unworthy of it. This judicial attitude makes civility exceedingly difficult.
- Judges seem to blame attorneys for the judges' heavy caseloads. Judges aggravate the problem of lawyers' incivility by becoming impatient with both sides, no

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42. *Id.* at 382 (citations omitted).

43. Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit, 143 F.R.D. 371 (1991).

matter which side caused the dispute. Uncivil lawyers know that judges do not want to spend time to "get to the bottom of disputes," and exploit that fact.<sup>44</sup>

Additionally, the survey also set forth several interesting quotations by judges about their judicial colleagues:

- The judges, like the lawyers, are a mixed lot. Some are peevish and rude. There also is an even more pervasive problem among judges who believe that their schedules—not the lawyers'—are all that matters.<sup>45</sup>
- The failure of the bench and bar to abide by the Golden Rule disserves us all. Failure to use the telephone to avoid wasting court or counsel time is inexcusable. All should be taught lawyer courtroom etiquette showing how one can disagree without being disagreeable.<sup>46</sup>

A number of states, in an effort to address these problems, are enacting "codes of civility" to apply specifically to members of the Bench. Louisiana has recently adopted such a creed, entitled the "Code of Professionalism in the Courts," the preamble to which states:

The following standards are designed to encourage us, the judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of professionalism and civility, both of which are hallmarks of a learned profession dedicated to public service.<sup>47</sup>

Additionally, the Louisiana Judicial College requires that all judges undergo one hour of professionalism refresher courses each year, and positive results have been reported as a result of this new requirement.

I appeared as a panelist at the most recent session, along with Frank Neuner and Professor Tom Richard, and shared these personal observations with the new Judges:

I close with a few observations about what Judges can do to help us all struggle through this problem. Based upon my personal experience, one of the main suggestions I could make to anyone ascending the Bench would be to give

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44. *Id.* at 401-02.

45. *Id.* at 402.

46. *Id.* at 403.

47. Amendment to Rules of the Supreme Court, Part G, New Section 11, adopted August 5, 1997, reported in West's Louisiana Cases, 697-698 So. 2d XXXIX, XL.

lawyers the benefit of good faith when they bring disputes—almost in all instances discovery disputes—to the Court for resolution and not treat lawyers, as many Judges with whom I have dealt have done, as if they were children fighting in a school yard. Sad to say, but one has to admit that a number of them *are* like children fighting in a school yard, and these are the Rambos who each of you already know from your practice and who you will learn more about in your time on the Bench, but I am talking about the vast majority of hard working, sincere and conscientious lawyers in the trenches, who, I can assure you from personal experience, only bring a discovery dispute to a Court for resolution as an absolutely last resort. It is inappropriate and demeaning to treat lawyers of this caliber as if they are wasting the Court's time because in nine times out of ten, that is the last thing they want to do.

Additionally, as has been pointed out in another article I ran across, Judges should become very proactive in enforcing standards of civility and courtesy and professionalism in their courtroom because, as noted in some of the articles I have talked about, especially the one entitled "Prole Models," if you do not do it, who will?<sup>48</sup>

In an article entitled "Civility in the Practice of Law—Must We be 'Rambos' to be Effective," the author made this observation about the role of the Judiciary in a publication of the American College of Trial Lawyers:

If lawyers are the first line of promoting civility, the judges are the second line and a very important one. It is no secret that some lawyers will go as far and take as much advantage as they can. If the judge presiding over a proceeding in which such a lawyer is participating takes control early and forcefully, much of that type of tactic would be avoided.

I had occasion to see Judge D. Kelly Thomas of Maryville, Tennessee [a small town in East Tennessee] effectively illustrate that principle a couple of years ago. A prosecutor in his court made a remark which was personal in nature, casting aspersions on his adversary. Judge Thomas immediately stopped the proceedings and admonished the prosecutor, saying that he was not going to tolerate that kind of conduct in his courtroom. The prosecutor was an

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48. New Judge's Training Session, Sponsored by the Louisiana Judicial College, New Orleans, Louisiana (Feb. 21, 2001) (on file with author).

honorable attorney who probably had been just caught up in the emotion of the moment, but he did not take that approach again, at least not that day.

The judge sets the tone of the courtroom. If the judge is short tempered and uncivil, he or she invites incivility. If the judge is firm in refusing to tolerate personal attacks and incivility by either side, an atmosphere conducive to a more orderly and civil trial will be created.<sup>49</sup>

Also, in an article published about ten years ago but still highly relevant to this discussion, an attorney and professor in Los Angeles published a detailed critique of the "sad fact—that too many judges simply do not care enough, or for some reason are repelled by the concededly distasteful task of having to police their courtroom."<sup>50</sup> This article, quoting chapter and verse from a number of reported cases, excoriated the Bench for what the author termed "a fastidious expression of distaste for policing the courtroom, if not a *de facto* abdication of judicial responsibility."<sup>51</sup> The District Court judge decidedly expressed such distaste in the *Saldana* case when he said he felt like he was playing the role of a "kindergarten cop."<sup>52</sup> The article contained the following rather pithy comments about the role of the judge in curbing Rambo litigation techniques:

The primary moral blame for courtroom excesses must, of course, be placed squarely on the misbehaving lawyers. That, however, is not quite the end of the story. The name of the game is litigation. Lawyer misconduct of this type takes place in courtrooms which are the domain of judges. Judges formulate and administer the rules by which litigation is conducted. Judges control litigation and set the tone and norms of acceptable courtroom behavior. They are the one branch of tri-partite government that can interdict misconduct within their own domain anytime they choose. But all too often they simply do not.

Lawyers are partisan and have large stakes in the outcome of litigation. Thus, while it may be deplorable, it is only to be expected that some of them will succumb to the temptation to cut corners. That is why we have rules governing lawyers' conduct. Judges, on the other hand, are supposed to be neutral and committed to nonpartisan public interest. They are the

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49. Robert W. Ritchie, *Civility In The Practice Of Law—Must We Be 'Rambos' To Be Effective?*, Tenn. B.J., Jan.-Feb. 1998, at 14, 21-22.

50. Gideon Kanner, *Welcome Home Rambo: High-Minded Ethics and Low-Down Tactics in the Courts*, 25 Loy. L.A. L. Rev. 81, 82 (1991).

51. *Id.* at 84.

52. *Saldana v. Kmart Corp.*, 84 F. Supp. 2d 629, 640 (D. V.I. 2001).



government officials charged with the administration of fair, even-handed justice, and their job is to enforce the rules. It is therefore indefensible for a judge to wash his or her hands of the problem, let the litigation process seek its lowest tolerable level, and then say—as *de facto* did the California Supreme Court in *Sabella*—that the end justifies the means. That is nothing short of a surrender to the barbarians among us.

Such concerns are not only important to the litigants, but to the courts as well. Because courts are physically the weakest branch of government, judges must scrupulously cultivate a public perception that what transpires in their courtrooms under their eyes represents a relentless quest by dedicated people for fairness and even-handed enforcement of rules by which all must live. This they must do to maintain public respect indispensable to long-term successful court operations. True, in an imperfect world this can only be an ideal to be strived for. Nonetheless, when judges cease such striving and permit self-styled Rambos to transform their temples of justice into jungle habitats, they trifle with the very foundations of their stature in society.

Judges ask that we pay homage to them by rising when they enter a courtroom, by addressing them as “Your Honor” and the like. A judge is the only official in the American system of government who can summarily imprison a citizen for no more than being rude in dealing with him or her. To justify that level of adulation and power, judges owe us something in return. At a minimum they owe us a fair roll of the dice, untainted by tolerance of abuse, intimidation and deception. They owe us—you should pardon the expression—justice. That can be an elusive commodity at times, but Americans are entitled to the judicial best in its pursuit. If that is not the essence of the judicial function, then what is?<sup>53</sup>

However, lest these comments be subject to the criticism that they come from a “mere” jaded trial lawyer, some of the most telling comments on this subject come from a Federal District Judge deciding a discovery dispute a few years ago. In that case, *Harp v. Citty*, the Court dealt with a motion for sanctions against an attorney whose conduct the court found to be “intransigent” and held that sanctions were “manifestly appropriate.”<sup>54</sup>

In its opinion, the Court provided one of the best descriptions of the problems caused by many Judges’ attitudes toward reining in Rambo-types, in commenting about members of the Bench:

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53. Kanner, *supra* note 50, at 95.

54. *Harp v. Citty*, 161 F.R.D. 398 (E.D. Ark. 1995).

("And why beholdest thou the mote that is in thy brother's eye, but perceiveth not the beam that is in thine own eye" St. Luke 6:41, K.J.V.)

A common complaint among members of the trial bar is that courts do not expeditiously rule on pre-trial motions—especially discovery motions—sometimes not until after the discovery deadline date.

Judges are wont to decry the lack of civility and cooperation amongst the members of the trial bar. The judiciary, however, is not without blame. For some reason too many judges have no trouble restraining their enthusiasm for resolving discovery disputes (this puts it mildly). Obviously, if a party wants to obstruct and delay, the inability to get a decision on a discovery dispute assists the obstructor. Members of the bench should keep in mind that the word "judge" is a verb as well as a noun.

Furthermore, some courts apparently operate under the philosophy that, "If I have to hear a discovery dispute, someone is going to have to pay." This attitude strikes the court as being at least a tad shy of judicious. Good, reasonable lawyers will have legitimate discovery disputes, and the court should quickly resolve those disputes so that the litigation can progress with all due speed. No sanctions should attend in these circumstances.

On the other hand, when an objection or instruction not to answer is essentially without merit and the court, when it conducts a hearing, simply orders the offending party to produce the requested information (ofttimes scolding *both* parties for not cooperating), the obstructive party loses nothing, but defeats spontaneity and gains attorney's fees. Courts should meet obstructive tactics with stern measures if they expect to deter such conduct.<sup>55</sup>

#### VI. ARGUMENTS AGAINST INVOLVEMENT BY THE ORGANIZED BAR IN EFFORTS TO ENHANCE STANDARDS OF CIVILITY: "THE CIVILITY POLICE"? ZEALOUS ADVOCACY?

The "other side" of the argument may be briefly stated as follows: any attempt by the Organized Bar to force attorneys to "make nice" with each other, and with the Bench, presents a real impediment to a lawyer's duty of "zealous advocacy," or, as phrased somewhat differently in the Louisiana Rules of Professional Conduct, Rule 1.3, "reasonable diligence and promptness."<sup>56</sup>

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55. *Id.* at 402.

56. Louisiana Rules of Professional Conduct Rule 1.3 (2000) (adopted by the

Of the many discussions presenting this argument, perhaps the most strident views were presented in an article appearing in the National Law Journal, entitled, fittingly, "Be Civil? I'm a Litigator!"<sup>57</sup> There, the author, a practitioner in Illinois, sets forth his scorched-earth, take-no-prisoners view of litigation practice and attacks everyone involved in the effort to raise standards of civility in our profession:

So, I get annoyed, and sometimes genuinely infuriated, at these self-anointed civility police who lately have pitched their tents at our local bar associations. Seemingly every lawyers' group in America now has a "civility" committee chock full of patriotic citizens scolding their fellow practitioners into the belief that our highest duty is no longer to win for our clients, but rather to be nice to our adversaries.

Whose side are they on? If these people are too timid or embarrassed to be tough lawyers, they really ought to find other jobs.

For my money, many of these civility committees are just stalking horses for legal wimpiness.

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Here's what I propose: Every bar group that has a "civility" committee should also be required to have a "zealous civility representation" committee to teach lawyers how to be aggressive in pursuit of victory. Either that or just abolish all "civility" committees.

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When lawyers become a bunch of clubby back-scratchers, clients' interests take a beating in the name of professional congeniality. If these groups are truly in the business of helping us become better lawyers, then they ought to drop this push for mandatory friendliness and help us do the winning we're paid to do.<sup>58</sup>

It is respectfully submitted that the key to this apparently extremely zealous advocate's views may well be found in the opening paragraph of his article, which can only be described as a screed against the entire professionalism movement:

I'm a trial lawyer. If you're my opponent, I don't care if you like me, or find me witty or engaging. We're not going out to

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Louisiana Supreme Court in 1987).

57. Shawn Collins, "Be Civil? I'm A Litigator!" Nat'l. L.J., Sept. 20, 1999, at A21.

58. *Id.*

dinner. We are not friends. All you really need to know about me is this: I'll beat you if there's any way the rules will let me.<sup>59</sup>

Too bad, if this author may be permitted a personal observation, as some of the most satisfying friendships I have ever experienced were with those adversaries for whom I formed a deep and abiding respect in the course of hotly contested civil actions, as a result of which we did, repeatedly in some cases, "go out to dinner" and become friends. Does this make me a "legal wimp"? I hardly think I could have gotten to this point in a career as a trial lawyer if that had been the case, although others such as clients, opposing counsel, and judges would have a better answer in view of my obvious bias.

The arid view of the practice of law expressed by the gentleman from Illinois is the exact opposite of no less an authority than William Shakespeare, who advised rivals to "do as adversaries do in law—Strive mightily, but eat and drink as friends."<sup>60</sup> Obviously, I vastly prefer The Bard's approach.

This concern has also been addressed, albeit from a different point of view, in the article "Welcome Home Rambo: High-minded Ethics and Low-down Tactics in the Court."<sup>61</sup> The author, speaking from a lifetime of experience as a practicing lawyer and law professor, sounded these baleful notes of concern about where this scorched-earth policy could take our profession:

As long as those described by the late Raymond Stanbury (certainly no hothouse-flower in the courtroom) as "the buccaneers of the profession" know that the worst they are risking by such tactics is a mild (and probably unpublished) "tut-tut"—knowing that a verdict they obtain that way is impregnable against any attack except the impossible height of *proving* that the victim would have won otherwise—they are going to be tempted to employ misconduct as a regular weapon of advocacy. And they will yield to the temptation.

Indeed, a case may be made (however distastefully) for the proposition that they *should* do so. After all, the advocate's first duty is *to his client*, not to fairness or the dignity of the profession or anything of that sort. He must utilize all lawful means to advance his client's interest. Current decisions seem to conclude that misconduct *is* a lawful means unless it can be proved that, absent misconduct, the opposite result would have been reached. Therefore, any

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59. *Id.*

60. William Shakespeare, *Taming of the Shrew*, act 1, sc. 2.

61. Kanner, *supra* note 50.

lawyer who knows that there is a reasonable possibility that his client could win even without misconduct, is acting lawfully when he fortifies that possibility by embracing misconduct.

Such is a horrifying and cynical view of an honorable profession and the state of judicial administration, but it is unmistakably coming over the horizon.<sup>62</sup>

A couple of stories related, in most moving words, by the late Judge Thomas Gee of the Fifth Circuit Court of Appeal, and his co-author, effectively counter the efficacy of any idea that civility and camaraderie lead ineffably toward "legal wimpery" and a less than ethical clubbiness. In their article "The Uncivil Lawyer: A Scourge at the Bar," the late Judge Gee recalled these scenes from a kinder and gentler era in our profession:

The truth is that today, and for whatever reason, the behavior and ethics of the bar—or of certain segments, at any rate—are at low ebb. We've offered various guesses at what has caused this repellant circumstance, and doubtless these and other causes are to blame. But things have not always been so, nor need they remain this way.

Only forty years ago one of us, as a fledgling litigator, found himself at the unexpectedly sudden end of a jury trial with a secretary taken too ill to type his proposed special issues and instructions for submission to the court. Distraught, he mentioned his contretemps to opposing counsel, who immediately asked for the handwritten issues and, without fanfare, had his secretary type up all forty in proper form and handed them to him as they re-entered the courtroom after the lunch hour. An hour and a half later they were arguing enthusiastically, one against the other, before the jury.

A few years on, by common affection, three lawyers rode together from Austin to Corpus Christi and back to a hearing on an important motion for summary judgment—Ireland Graves and one of us on one side, Dan Moody, Sr. on the other. Eight hours of reminiscing about old times in the central Texas law practice were scarcely interrupted by the two-hour hearing—at which Governor Moody prevailed—after which we all climbed back into Judge Graves's Cadillac and headed home, resuming the really serious business of the day. What a shame that a tape recorder wasn't present.

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62. *Id.* at 105.

A thousand stories like these crowd forward from 30 and 40 years ago—not heroic, not remarkable, only action after gracious action between members of the bar—each falling somewhere on the scale between courtesy and gallantry. Where are their counterparts today? And why (a somewhat different question) do lawyers engage in scurrilous behavior? How can we get them to stop it?<sup>63</sup>

Surely, no one would suggest, at least not with a straight face, that these lawyers on that trip from Austin to Corpus Christi and back, because they were collegial adversaries, were not some of the finest lawyers in the State of Texas at that time.

#### VII. HAVE WE BECOME A BUSINESS, NOT A PROFESSION? TECHNOLOGY RULES?

Stories of the five p.m. fax motions on Friday afternoon along with the three-thousand annual billable hour requirement (is that humanly possible?) for young associates are heard every time lawyers, especially in major urban centers, gather for those collegial times which so concern opponents of the professionalism movement. In my experience of listening to younger members of the bar, it appears the “issue” has disappeared as one hears discussion of the attributes of a “profession” less and less each year.

In an article written in 1996 the authors noted the effect of the impersonal technology of the time on civility:

Modern technology—cellular phones, computers, fax machines, express-courier services, and even airplanes—likewise corrodes civility. That corrosion takes place in law offices and dinner tables alike:

“In the past, manners helped keep distance between people who lived close together. But the modern world has done more than enough to distance us from each other. We move about behind the closed door of metal vehicles; we live and eat in separate quarters. We don’t need to be distanced any more at the table.”

And for lawyers, we don’t need to see each other all that much, with our various modern devices. Armed with our machines, we function just fine as faceless paper-producers—something our predecessors could not be. We all too rarely see the faces behind the faxes and voice-mail messages. So maybe we don’t need those manners that

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63. Thomas G. Gee & Bryan A. Garner, *The Uncivil Lawyer: A Scourge at the Bar*, 15 Rev. Litig. 177, 192 (1996).

everyone used to need to keep peace and harmony in their day-to-day dealings.<sup>64</sup>

Since that article was published, we can now add e-mail to the list of ways we can speed our insults to the other side, further magnifying the "decline in the warmth that once characterized relations in the legal profession."<sup>65</sup>

The impact of bottom line mentality on this significant shift in perception was well summarized by Professor Schechter in his article "Changing Law Schools to Make Less Nasty Lawyers":

In a sense, all of the ills cataloged thus far relate to professionalism. A true professional does not file baseless lawsuits, verbally abuse opponents, or neglect his or her obligation to devote some time each year to public service. In a narrower sense, however, the word "profession" is often used by lawyers as an antonym for "business," and there is considerable current sentiment that the practice of law has become much more like a business, with negative effects on both the public and bar.

The law-as-business critique focuses in a large measure on the increased financial pressures that confront many firms. The allegation is that the increased emphasis on the bottom line has eroded loyalties, created a ruthless competitiveness, and even triggered an ethical race to the bottom by hungry practitioners who seek only to advance their immediate financial self-interests. As one academic analyst put it:

"The legal profession is becoming increasingly competitive and intense. This makes it more difficult for lawyers to be honest with their clients or their colleagues. They must work outrageous hours in order to produce work more quickly than ever before. In addition, lawyers face intense pressure to bring in business. The sub-culture of the law firm does not put much emphasis on truth as a value. In large firms, earning money is valued above all else. Lawyers give up their private lives, consoling themselves with lavish salaries, perks, and fringe benefits. The structure of the work in large law firms places large firms on a collision course with many humanistic values such as truthfulness and altruism."

Within the profession, this means that levels of job satisfaction are low and the sense of insecurity is high.

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64. *Id.* at 183.

65. *Id.*

Outside the profession, this situation can only reinforce the usual image of the greedy lawyer whose sole motivation is money and who is willing to cut ethical corners to maximize profits.

One might attribute any increased emphasis on billable hours and business-getting in the last decade to a whole host of reasons. First, the sheer growth in numbers of lawyers inevitably produces some intensification of competitiveness. Coupled with that development has been the ever increasing freedom of members of the bar to advertise. In addition, general economic circumstances have made corporations more cost conscious. This has led them to abandon long-standing traditional relationships with law firms in favor of aggressive shopping for lower fees, and the firms were left to respond accordingly or to starve. Or, it might just be that the legal profession adopted the culture of the acquisitive eighties.<sup>66</sup>

The impact of this relatively recent phenomenon extends far away from those directly involved in what many see as nothing more than a rat-race in the big firms. This competitive zeal leads to all manner of totally unnecessary paper churning, motion practice, and other wasteful activity which finds its apex in the taking of sometimes seemingly endless and duplicative depositions as a means of stacking up those precious billable hours.

#### VIII. SO WE HAVE A PROBLEM—WHAT ARE WE DOING ABOUT IT?

##### *A. Mandatory Professionalism CLE and Professionalism Orientation Programs in the Law Schools*

What are “we,” meaning many Bar Associations and other organizations across the country, doing about it? A *lot* actually!

“We” are attacking the problem on many fronts and with an amazing variety of approaches. One of the keys to much of this effort seems to be the idea of so-called “pervasive professionalism education” in the Law Schools so forcefully espoused by Professor Deborah Rhode of Stanford Law School. Her ideas are well summarized in the Neuner article discussed previously:

Law schools must actively promote and teach ethics and professionalism as part of their curricula. Some schools have

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66. Schechter, *supra* note 41, at 389-90.



adopted pervasive ethics as part of their curricula, which is a step in the right direction.

Professor Deborah Rhode of Stanford University Law School has argued in favor of "pervasive ethics," which "integrates professional responsibility issues throughout the core curricula." Professor Rhode points out that most law schools limit professional responsibility to a single course, which minimizes its importance and thwarts the interaction of professional responsibility issues throughout the law school curriculum. She believes that "[m]oral responsibility is a central constituent of all legal practice, and needs to occupy an equally central place in law school curricula."

We need to ensure that students who come to law school with lofty ideals leave with those same lofty ideals and that students who attend law school for less noble reasons are exposed to these lofty ideals throughout their law-school curriculum. The only way to do this is to make professionalism an integral part of the law school experience.<sup>67</sup>

Her ideas were first set out in a 1992 article in which she stated:

Recent psychological research indicates that significant changes occur during early adulthood in individuals' basic strategies for dealing with moral issues. . . . Through interactive learning, such as problem solving and role playing, individuals can enhance skills in moral analysis and build awareness of the situational factors that skew judgment.<sup>68</sup>

Following these ideas, several states have followed the lead of the Georgia Professionalism Project, in which that state's Supreme Court, in 1990, ordered the nation's first mandatory CLE program on Professionalism in the United States. Approximately eighteen states, including Louisiana in 1992, have also adopted similar programs. The Louisiana Rule defines professionalism as follows:

Professionalism is knowledge and skill in the law faithfully employed in the service of client and public good . . . [and entails] what is more broadly expected [of attorneys]. It includes, but is not limited to, courses on (a) the duties of

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67. Neuner, *supra* note 9, at 2050 (citing Deborah L. Rhode, *The Professional Responsibilities of Professional Schools: Pervasive Ethics in Perspective*, in *Teaching and Learning Professionalism* 25, 26 (1997)).

68. Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. Legal Educ. 31, 46 (1992).

attorneys to the judicial system, courts, public, clients and other attorneys, (b) competency, [and] (c) pro bono [obligations].<sup>69</sup>

Last year, Louisiana again followed Georgia's lead in instituting another major effort aimed directly at first year law students, The Professionalism Orientation Programs in the Law Schools. Patterned after similar, and highly successful, programs in both Georgia and Mississippi, the initial programs in August 2000 received positive reviews from the students. This program brought together volunteer lawyers and Judges from all over the State to give freely of their time for a cause which has been felt to be extremely beneficial—to *all* concerned.

The format of the programs called for a brief opening statement by the Chair of the Committee, introducing the Chief Justice, or Justice of The Louisiana Supreme Court, whose address was followed by comments by the President of the Louisiana State Bar Association. Then, breakout sessions were held in which small groups of students were led in discussions of various problems presented through the vehicle of hypothetical situations by volunteers. So many positive responses for some law schools were received that not all of the members who offered their services could be utilized in some cases. This overabundance of volunteers clearly serves as one of the most gratifying aspects of the entire program and assists in refuting the cries of those in the Bar who would argue that there exists such a collapse in the standards of professionalism that there is no reason to be optimistic these standards will ever return to their previous levels. It should be noted that every single attorney or Judge who participated offered to return.

Additionally, one of the unanticipated benefits of these programs has been to draw at least some portions of the law faculties of the various law schools across the state closer to the Bench and Bar. In this author's opinion, any program which accomplishes this long-overdue objective is most worthwhile.

### *B. The American Inns of Court*

The American Inns of Court is the fastest growing legal movement in the United States today, with about 330 Inns (Chapters) across the country. Patterned after the Inns of Court in England, the initial idea came after Chief Justice Warren E. Burger spent two weeks in England as a member of the Anglo-American Exchange. The history of this creation, as well as the genius behind

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69. La. Rules for Continuing Legal Education 3(c).

its monthly programs, is well summarized in an article by a former Trustee of the Foundation, Joryn Jenkins of Florida:

In 1977, Chief Justice Warren E. Burger spent two weeks in England as a member of the Anglo-American Exchange. He was particularly impressed by the collegial approach of the English Inns and by the way the Inns passed on to new lawyers the standards of decorum, civility, ethics, and professionalism necessary for a properly functioning bar. Following his return, Chief Justice Burger authorized a pilot program that could be adapted to the realities of practice in the United States.

Former Solicitor General Rex Lee and Senior United States District Judge A. Sherman Christensen founded the first American Inn in 1980. The Inn was affiliated with the school of law at Brigham Young University in Provo, Utah. The number of American Inns increased slowly at first, but the growth of the movement accelerated in 1985, when the American Inns of Court Foundation was established.

American Inns are designed to improve the skills, the professionalism, and the legal ethics with which the bench and the bar perform their functions. Inns help lawyers become more effective advocates, with a keener ethical awareness, by providing them the opportunity to learn side-by-side with the most experienced judges and lawyers in their communities. Inn objectives are as follows:

1. To establish a society of judges, lawyers, legal educators, law students, and others to promote excellence in legal advocacy in accordance with the Professional Creed of the American Inns of Court;
2. To foster greater understanding of and appreciation for the adversary system of dispute resolution in American law, with particular emphasis on ethics, civility, professionalism, and legal skills;
3. To provide significant education experiences that will improve and enhance the abilities of lawyers as counselors and advocates and of judges as adjudicators and judicial administrators;
4. To promote interaction and collegiality among all legal professionals to minimize misapprehensions, misconceptions, and failures of communication that obstruct the effective practice of law;
5. To facilitate the development of law students, recent law school graduates, and less experienced lawyers as skilled participants in the American court system;
6. To preserve and transmit ethical values from one

generation of legal professionals to the next; and

7. To build upon the genius and strengths of the common law and the English Inns of Court and to renew and inspire joy and zest in legal advocacy as a service worthy of constant effort and learning.

The Inn program is the heart of the monthly meetings. At each meeting, usually after breaking bread, a group of members (the "pupillage") puts on a program, which involves practical legal skills with an emphasis on ethics, civility, and professionalism in lawyering. A program is generally a demonstration or presentation of principles, skills, techniques, and relationships involved in trial or appellate proceedings or in activities preliminary to courtroom appearances, although there is no set format. The program also incorporates opportunities for critique and discussion.

The most important aspect of the presentation is creativity and originality. Programs are prepared by the pupillage teams, usually one team per monthly program. It is not necessary for every pupillage member to have a speaking role in the program, although everyone in the pupillage usually has a contribution, whether it is research, writing, design, or demonstration, to ensure that the program is instructive and interesting.

Program assignments are prepared by the programming committee during the summer before the Inn year. Although the general topics are usually assigned, the format is not. Panel discussions, demonstrations, game-show formats, skits, or small-group discussions are ways in which a program can be presented. Some of the most memorable programs have been those involving frank and spirited disagreements among Inn members. Humor is also an effective teaching tool.

Audience participation is very important. Whatever the format, the pupillage should allow for discussion at least every ten minutes or so, usually by a "freeze-frame" technique to stop the action periodically, to permit other Inn members to make comments or to ask questions.

Another crucial aspect of the Inn's focus is the monthly pupillage meetings. The meetings take place at lunch, at breakfast, or after work, both in preparation for that pupillage's demonstration, and simply to encourage the relationships that develop among the pupillage's members.<sup>70</sup>

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70. Joryn Jenkins, *An Open Palm Holds More Sand Than A Closed Fist*, 28

### *C. Other Programs Promoting Professionalism*

A number of other initiatives were outlined in the National Action Plan on Lawyer Conduct and Professionalism of the Conference of Chief Justices, published in 1999:

#### *Significant Changes in the Promotion of Professionalism*

Five states have implemented mentoring programs to assist in the promotion of professionalism within the legal profession. One state reported that its mentoring program is voluntary and extends to law schools, while other states have indicated that their mentoring programs involve attorneys newly admitted to the bar. Five states also reported revisions to their state rules of professional conduct. One state indicated that its rules were rewritten to make them responsive to contemporary standards of professional conduct. Alaska requires a signed affidavit indicating that all bar members have read and are familiar with the Alaska Rules of Professional Conduct.

Five states reported already implemented or proposed professionalism courses and/or seminars for attorneys newly admitted to the bar. Four states indicated their use of conferences and seminars, lasting approximately three to four hours, as a forum to address professionalism issues.

Other states reported the use of professionalism handbooks, creation of a commission on Professionalism, law office management programs, creation of a Standing Committee on Professionalism or other bar sections and seminars. Interestingly, two states indicated the creation of staff-run *centers* for professionalism to enhance the professionalism of law students, members of the bar, and the judiciary. Miscellaneous comments of systems used to promote professionalism included course additions to CLE, the use of grievance committees and task forces, Inns of court programs, sections added to the bar, and non-CLE courses.

#### *Plans or Proposals for Changes in the Promotion of Professionalism*

The majority of states reported that there are no plans or proposals for changes in the way that professionalism is promoted (10 states). Three states reported changes or expansions in mandatory professionalism courses and another three states are considering formal mentoring programs. One respondent noted that importance of a Peer Review Program

that handles issues that do not rise to the level of ethical violations. That program provides counseling and continuing advice on acceptable behavior as necessary. Miscellaneous proposals included legal education conclaves, cooperative efforts from the bar, law schools and the judiciary, and the use of fewer law office management seminars to concentrate on office consultations. The Utah Bar Commission is currently evaluating different methods of licensing lawyers. Proposals include a three-year licensure as well as more CLE professionalism courses.

Changes to current systems of educating on professionalism are intended to remedy many instances of improper conduct and behavior exerted by attorneys. An Arizona respondent indicated that the bar needs to establish an appreciation for appropriate standards of civility and respect between lawyers, lawyers and their clients, and lawyers and the judiciary. A Colorado respondent commented that the expansion of professionalism training to all lawyers is intended to reach the limited number of attorneys that are believed to cause the most problems. Ohio commented that its initiatives are intended to address judges' failure to insist on professional behavior by attorneys, and law schools' failure to provide law students with adequate professional skills. Texas noted that changes needed to take place because of the rudeness, poor behavior and lack of manners exerted by legal professionals.<sup>71</sup>

#### IX. THE REAL CHALLENGE—BALANCING CIVILITY WITH THE ETHICAL OBLIGATION OF ZEALOUS ADVOCACY

In many professionalism discussions over the past year, members of both the Bar and the Bench have expressed concern about "the line" between the aspirational goal of professionalism and the ethical obligation of zealous advocacy. One reason this comes up so frequently, in this author's opinion, is the greater incidence one finds in the last few years of Rambo litigators who will take advantage of every gesture of courtesy and professionalism and exploit those gestures as signs of weakness.

However, the advice given in an article appearing in a recent issue of the newsletter of the American Inns of Court Foundation, "The

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71. Conference of Chief Justices, A National Action Plan on Lawyer Conduct and Professionalism: Report of the Working Group on Lawyer Conduct and Professionalism 35-36 (adopted Jan. 21, 1999), *available at* <http://ccj.ncsc.dni.us/Natlplan.html>.

Bencher," is an excellent collection of pointers. In an article appropriately entitled "Professionalism Pays," the author develops the thesis that *professionalism is good business*.<sup>72</sup>

He notes that most unprofessional conduct signifies the attorney lacks confidence in his or her ability, or in the case, and also notes, most significantly, that judges "keep book" on lawyers who act unprofessionally. He also observes that it "is less stressful to practice in a more professional setting. Dealing with jerks is stressful. Acting like one must be as well."<sup>73</sup>

Another observation he makes, certainly tracking my personal experience, is that the Rambo lawyer's offensive conduct galvanizes the opposing counsel so much that the case cannot possibly resolve short of a bitter trial.

However, perhaps the most telling observation is that "the lawyer you litigate against today may be a judge some day. How do you want him or her to remember you?"<sup>74</sup>

#### X. CONCLUSION—PERSONAL INTEGRITY, REPUTATION AND TIMELESS VALUES

We tend to think that the great sport of ridiculing the legal profession is relatively new, but this phenomenon has been with us a long time. It has been noted that in 1776—the same year Thomas Jefferson and other attorneys were signing the Declaration of Independence—the speaker of the Yale Law School graduation, Timothy Dwight, "castigated lawyers for greed" and urged the graduates "to shun legal practice like 'death or infamy.'"

While it is sincerely hoped these brief observations might offer some assistance in finding that ever-elusive "line" that we must try to balance every day, perhaps the best example of maintaining a sense of civility in the face of grotesquely unprofessional conduct is found in the case of *Carroll v. The Jaques Admiralty Law Firm*.<sup>75</sup> There, Mr. Carroll's attorney, in the midst of being subjected to unbelievable personal attacks, made this memorable statement:

*"You can cuss your counsel. You can cuss your client. You can cuss yourself. You're not going to cuss me. We're stopping right now."*

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*"We'll resume with Judge Shell tomorrow. Thank you."*

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72. Raymond T. Elligett, Jr., *Professionalism Pays*, 13 *The Bencher* 12 (1999).

73. *Id.*

74. *Id.*

75. 926 F. Supp. 1282 (E.D. Tex. 1996).

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"Good evening, sir."<sup>76</sup>

If we could all maintain our balance in the face of ruthless attacks, as did this particular attorney, our profession would indeed be a better and more civil one.

I suggest it is not to put too fine a point on it to say that reputation for civility, integrity, honor, diligence, professionalism, and excellence—and the constant, day-in-day out, hard work required to preserve such a reputation is what the professionalism movement is all about. That subject has never been treated more eloquently than in a commencement address at Washington and Lee Law School by Jerome P. Facher, the famed defense lawyer portrayed by Robert Duvall in the movie *A Civil Action*. His advice to this group of new lawyers was as follows:

Loss of reputation is the greatest loss you can suffer. If you lose it, you will never recover it.

Whether other lawyers or judges or clerks or commissioners trust you and take your word, whether you are straight with your clients (and everyone else), whether principles and people matter to you, whether your adversaries respect you as honest, fair and civil, whether you have the guts to stand up for what you believe—these are some of the hallmarks of integrity.

Personal integrity is at the heart of every law career. You can't get it out of a computer—or from a law book—or from a commencement speaker.

You have to live it and practice it every day with every client, with every other lawyer, with every judge and with every public and private body.

And if your reputation for integrity is alive and well so will your career and so will your well being.<sup>77</sup>

This discussion started with a reference to just one of the positive programs being sponsored by the Louisiana State Bar Association, the Professionalism Orientation Programs at the various law schools in the state. At the opening session at the LSU Law School on August 11, 2000, the President of the Louisiana State Bar Association, Phelps Gay, made these inspiring remarks to several lawyers-to-be:

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76. *Id.* at 1286.

77. Jerome P. Facher, Commencement Speech, May 14, 2000 (quoted with permission of the author, copy on file with this author).



Your reputation starts now. You have a clean slate. To switch metaphors, you stand at the foothills of a great career in a wonderful profession; whether you will climb to the top of the mountain depends in large measure on your willingness to become a “professional”; and to practice professionalism from day one—yes, even in law school—in the way you prepare for class, cooperate with your classmates, abide by the school’s honor code, and respond to your teachers with respect and dignity. It is remarkable how fast your reputation will spread; and if it doesn’t spread in the right direction, you really can’t get it back. But if your reputation becomes one of integrity, civility, diligence, and a search for excellence; if you can be taken at your word; if you can be trusted—for after all that is what we lawyers do—we are ‘entrusted’ with the affairs of a client—then ‘the rest’, as they say, will fall into place. Clients will come; judges will give you their respect; other lawyers will mention your name in a favorable light; and you are likely to enjoy a long and successful career.<sup>78</sup>

Although most lawyers and Judges I encounter on a day-to-day basis have a deep hunger and longing for a return to those great ideals which at one time made this a noble and learned profession, it is easy to get so overwhelmed with the constant streaming of savage attacks against us that we lose sight of our history, our traditions, our greatness, our heritage. We should, I submit, spend a little less time fending off the effects of the Rambos in our midst so we can spend a little more time remembering what some of the giants who have gone before have said about our profession, such as the great Constitutional scholar and lawyer, John W. Davis: “We build no bridges. We raise no towers. We construct no engines. We paint no pictures. But, we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts, we make possible the peaceful life of men in a peaceful state.”

We need to remind ourselves, as well, of the overarching need to keep working at the inestimable values of civility, the importance of which was described in Professor Walter Berns’ magnificent recent book *Making Patriots* in the following inspiring words:

But speech implies a listener—one speaks *to* someone—and, as well, the willingness to be a listener in return. In a word,

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78. Phelps Gay, President of the Louisiana State Bar Association, Remarks on Professionalism Orientation Programs in the Law Schools at Paul M. Hebert Law Center (Aug. 11, 2000) (on file with author).

speech implies conversation and, in the political realm especially, deliberation. It is a means of arriving at a decision, of bringing people together, which requires civility and mutual respect; and in a polity consisting of blacks and whites, Jews, Muslims, and Christians, liberals and conservatives, and peoples from every part of the globe, civility and mutual respect are a necessity. So understood, speech is good, which is why the Constitution protects it.<sup>79</sup>

And, to use a term Berns quotes from Thomas Paine, we should stand up for our profession in the face of the often ludicrous, sadly, often well-founded, attacks and not be “summer soldiers” and “sunshine patriots” where our profession is concerned.

To me, the essence of what we are striving for in the so-called professionalism movement has never been better described than in a brief talk I heard a few years ago in New Orleans at the Annual Meeting of the American Inns of Court Foundation. In his remarks, Judge (and later Dean) Howard Markey, at the time the Chairman of the Board of Trustees of the Foundation, spoke of his dream that the American Inns of Court would multiply and spread across the nation, becoming accessible to all members of the Bench and Bar. He said that if that day ever came, we might begin to hear, in common usage, the phrase “ethical as a lawyer.”

I can think of no loftier goal for our profession.

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79. Walter Berns, *Making Patriots* 138 (2001).

