

To Be or Not To Be: Civility and the Young Lawyer

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I. INTRODUCTION

For the past several months, I have tuned into several courtroom television shows. These programs usually go by the name “Judge so-and-so.” Given the sheer number of these programs on television, they must be popular. Even the foreign language channels have embraced the trend—*Viva la lawsuit!*¹ Although a product of Hollywood, the producers assert that the parties are “real,” the disputes “real,” and the judge, a “real” judge. In my teenage years, such programs were rare, and my TV exposure to the legal process was limited to Perry Mason. Mr. Mason was the model esquire—always a winner, always a gentleman. I have experienced numerous ups and downs while observing these courtroom TV proceedings, and I do not mean cheerful or spiteful emotions tied to certain participants prevailing or losing. Rather, I speak of the TV plaintiff, defendant, or judge yelling at one another to “shut-up,” “listen-up,” “wise-up,” “wake-up,” “sit-down,” or the participants asserting that the other is a “screw-up” or a “let-down.” I often wonder if I am watching a courtroom proceeding or a boardroom scene with Donald Trump in NBC’s hit reality show *The Apprentice*. In lieu of “I find for the plaintiff,” perhaps the TV judge will soon proclaim “Defendant—you’re fired!”

I give an account of my experience watching uncivil courtroom TV shows to compare it with professionalism in the legal process and to illustrate the unique position in which young lawyers stand with respect to civility issues. Although one of the fundamental goals of our legal system is to resolve disputes peacefully, rationally, and efficiently, and to eschew uncivil, abrasive, hostile, or obstructive conduct during the process,² the behavior of some within the profession seems more aptly fit for a Hollywood courtroom TV show rather than a forum of order and civility.³

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¹ Although I would like to take credit for this clever phrase, the Honorable Bruce S. Jenkins, United States District Court for the District of Utah, gave me the idea. See Bruce S. Jenkins, “*Is That a Fact?*”—*Evidence and the Trial Lawyer*, 12 UTAH B.J. 19, 19 (1999) (after comparing the workings of the three branches of our government, Judge Jenkins proclaimed: “*vive le difference*”).

² See Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit, 143 F.R.D. 441 (1992); Justice Michael J. Wilkins, *Supreme Court Adopts Professionalism Standards*, 16 UTAH B.J. 31, 31–32 (2003).

³ Although there is “an increasing lack of civility among litigating lawyers in our courts,” Paul L. Friedman, *Taking the High Road: Civility, Judicial Independence, and the Rule of Law*, 58 N.Y.U. ANN. SURV. AM. L. 187, 187 (2001), such behavior, of course, is nothing new. See, e.g., *Green v. Elbert*, 137 U.S. 615, 624 (1891).

For example, one can read of attorneys who, among other things,⁴ employ foul and profane language,⁵ engage in dilatory⁶ or “Rambo” tactics,⁷ name-calling,⁸ and other belligerent behavior.⁹ One commentator, after assessing

⁴ Other uncivil conduct includes sarcastic or terse questions by counsel or the judge; head shaking and pained facial expressions during opposing counsel’s arguments; hardball, slash and burn tactics; and sarcastic, vituperative, scurrilous, or other disparaging remarks. See Rhesa Hawkins Barksdale, *The Role of Civility in Appellate Advocacy*, 50 S.C. L. REV. 573, 574–76 (1999); see also Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657, 658–59 (1994) (noting other forms of uncivil behavior such as “escalating rudeness among attorneys . . . discovery abuse, misuse of Rule 11 motions, repetitive filings of frivolous claims, advancement of meritless legal positions, flagrant disregard for judicial authority . . . and the abandonment of common courtesy”).

⁵ See *Saldana v. Kmart Corp.*, 84 F. Supp. 2d 629, 637–41 (V.I. 1999) (sanctioning counsel for continually saying the F-word). For another egregious example of uncivil behavior, consider the following colloquy between a witness (who was a lawyer being sued by a former client) and the plaintiff’s counsel during a taped deposition:

[PLAINTIFF’S COUNSEL]: So, you knew you had Mr. Carroll’s file in the—
 [THE WITNESS]: Where the f*** is this idiot going?
 [PLAINTIFF’S COUNSEL]: –winter of 1990/91 or you didn’t?
 [DEFENDANTS’ 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.
 . . .
 [PLAINTIFF’S COUNSEL]: How about your own net worth, Mr. Jaques? What is that?
 [DEFENDANTS’ COUNSEL]: Excuse me. Object also that this is protected by a—
 [THE WITNESS]: Get off my back, you slimy son-of-a-b****.
 [PLAINTIFF’S COUNSEL]: I beg your pardon, sir?
 [THE WITNESS]: You slimy son-of-a-b****.
 [PLAINTIFF’S COUNSEL]: You’re not going to cuss me, Mr. Jaques.
 [THE WITNESS]: You’re a slimy son-of-a-b****.
 [PLAINTIFF’S COUNSEL]: 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.
 [THE WITNESS]: You’re damn right.
 [PLAINTIFF’S COUNSEL]: We’ll resume with Judge Schell tomorrow. Thank you.
 [THE WITNESS]: Come on. Let’s go.
 [PLAINTIFF’S COUNSEL]: Good evening, sir.
 [THE WITNESS]: F *** you, you son-of-a-b****.

Carroll v. Jaques Admiralty Law Firm, 110 F.3d 290, 292 (5th Cir. 1997). For two other examples of uncivil depositions, see *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 53–54 (Del. 1994) and *Marvin E. Aspen, The Search for Renewed Civility in Litigation*, 28 VAL. U. L. REV. 513, 513–14 (1994).

⁶ See, e.g., *Canady v. Erbe Elektrodizin GMBH*, 307 F. Supp. 2d 2, 3 (D.D.C. 2004) (noting that the defendants’ wrongful withholding of documentary evidence was a “textbook example of how Rambo-style litigation tactics prevent the just and speedy determination of a case”).

⁷ “Rambo” tactics can be defined as “discovery abuse, overzealous advocacy, excessive zeal, zealotry (‘the ‘z’ words’), incivility, frivolous lawsuits, and other forms of unprofessional or unethical conduct.” Allen K. Harris, *The Professionalism Crisis—The ‘z’ Words and Other Rambo Tactics: The Conference of Chief Justices’ Solution*, 53 S.C. L. REV. 549, 551 (2002); see also Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547, 550 (1998); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1424–25 (1997); Bryant Garth, *From Civil Litigation to Private Justice: Legal Practice at War with the Profession and its Values*, 59 BROOK. L. REV. 931, 940–41 (1994); Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509, 563 (1994).

⁸ E.g., *Smith Prop. Holdings, L.L.C. v. United States*, 311 F. Supp. 2d 69, 76 n.8 (D.D.C. 2004)

civility in the legal profession, proclaimed “[l]awyers have altered the art of argument as a form of discourse into a battle, made trial a siege, and litigation a war.”¹⁰ A legal warfare reality TV show? Take note, Hollywood, you may have your next hit series.

Unfortunately, uncivil behavior is not confined to attorneys.¹¹ Some judges present counsel with derogatory questions from the bench and others insert brusque comments in their judicial opinions.¹² In the same vein, one well-known federal appellate judge criticized, in a law review article, a fellow circuit judge’s style and creativity.¹³ Examples like these

(“The Court feels compelled to comment on part of plaintiff’s counsel’s litigation tactics, which the Court can term as nothing other than petty name-calling, hollow claims of bad faith, and mean-spirited invectives. Throughout its pleadings, plaintiff’s counsel makes personal attacks against the government . . .”).

⁹ *E.g.*, *Mullaney v. Aude*, 730 A.2d 759, 761–62 (Md. Ct. Spec. App. 1999) (male attorney calling the opposing female counsel a “babe” during a deposition). Many argue that the uncivil behavior is an extension of the prevailing attitudes and norms within society. Consider the following statement from the former dean of Yale law school:

Is the spirit of civility dying in America? Many people think so. They say that our public discourse has become intemperate and mean; that tolerance and generosity are now rare in political debate; that the process of lawmaking is increasingly dominated by a ruthless partisanship whose expressions are barely distinguishable from physical violence; that candidates today ignore their opponents’ ideas and attack their personalities instead, with *ad hominem* arguments of the cruelest and least charitable kind; that our whole public life has become degraded and harsh. The symptoms of this, they say, are visible wherever we look: in the venomous provocations of radio talk show hosts; in the lewd curiosities of the tabloid press; in the personal assaults that today pass for campaign advertising; in the sarcasm and anger of political argument generally.

Anthony T. Kronman, *Civility*, 26 CUMB. L. REV. 727, 727 (1995–1996); *see also* Friedman, *supra* note 3, at 193–94 (noting that civility problems stem from a rise in incivility in areas such as society, politics, television, the sports world, and the media).

¹⁰ Kara Anne Nagorney, Note, *A Noble Profession? A Discussion of Civility Among Lawyers*, 12 GEO. J. LEGAL ETHICS 815, 817 (1999).

¹¹ *See generally* James A. George, *The “Rambo” Problem: Is Mandatory CLE the Way Back to Atticus?* 62 LA. L. REV. 467, 486 (2002) (“The decline [of civil behavior in] the judicial side seems to arise out of a general disrespect for practitioners . . .”); Peter A. Joy, *A Professionalism Creed for Judges: Leading by Example*, 52 S.C. L. REV. 667 (2001). Chief Justice Berger, aware of the potential for uncivil behavior amongst judges and the significant role courts play in the civility charge, urged his colleagues to always conduct themselves with courtesy and respect:

[C]ivility is relevant to judges, and especially trial judges because they are under greater stress than other judges, and subject to the temptation to respond in kind to the insolence and mad manners of lawyers. Every judge must remember that no matter what the provocation, the judicial response must be [a] judicious response and that no one more surely sets the tone and the pattern for courtroom conduct than the presider.

Warren E. Burger, *The Necessity for Civility, Remarks of The Honorable Warren E. Burger, Chief Justice of the United States at the Opening Session—American Law Institute*, 52 F.R.D. 211, 215 (1971).

¹² *See* Barksdale, *supra* note 4, at 579.

¹³ *See* Richard A. Posner, *Judges’ Writing Styles (And Do They Matter?)*, 62 U. CHI. L. REV. 1421, 1437–45 (1995). After Judge Posner launched a “surprise eight-page strike” on Judge Wald, she replied: “Oh my. I had thought the Federal Judiciary—or some of it at least, including by its own proud proclamation, the Seventh Circuit—was the last refuge of courtesy in our increasingly mean-spirited society. Surely not on the evidence of this article.” Patricia M. Wald, *A Reply to Judge*

have led many to declare a civility “crisis”¹⁴ within the profession and have prompted warnings from many that “if incivility . . . becomes culturally institutionalized and accepted, it threatens the pursuit of justice in very real ways, as well as the credibility of the justice system, judges and the courts, and ultimately the rule of law itself.”¹⁵

Amidst the crisis stands the young lawyer. Having little to no exposure to such issues in law school,¹⁶ new attorneys naturally “look to those more experienced to learn how to be effective, prosperous and long-lasting,”¹⁷ and will, as Judge Friedman observed, “practice what they see all around them because that’s how the world they have come to know seems to function.”¹⁸ Indeed, young lawyers will likely adopt the attitude and practices of senior attorneys, “even [if it is] against their better judgment.”¹⁹ Noting the impressionability of young attorneys and the civility crisis that the profession faces, it is imperative that new lawyers begin working towards a courteous career. Commentators have recognized this need for years, as evidenced by the numerous articles in the literature addressing the civility “crisis,” urging law schools to focus heavily on civility issues to prepare law students for the issues they will face in the real world.²⁰ Additionally, law firms train young lawyers on civility in the practice,²¹ the bar holds mandatory CLE courses to help young lawyers with civility issues,²² and the judiciary provides guidance and leadership to the practice on the importance of civility.²³ All this, in part, because, as the

Posner, 62 U. CHI. L. REV. 1451, 1451 (1995). Ironically enough, the Seventh Circuit began the civility reform by first promulgating a set of civility standards. Many consider the Seventh Circuit the leader of the battle. See Wilkins, *supra* note 2, at 31 (noting that the “Seventh Circuit’s standards have become a model for other courts and bar associations”).

¹⁴ See, e.g., Christopher J. Piazzola, *Ethical Versus Procedural Approaches to Civility: Why Ethics 2000 Should Have Adopted a Civility Rule*, 74 U. COLO. L. REV. 1197, 1199–1236 (2003).

¹⁵ Paul L. Friedman, *Civility, Judicial Independence and the Role of the Bar in Promoting Both*, 2002 FED. CTS. L. REV. 4, 4 (2002).

¹⁶ See *infra* notes 37–44 and accompanying text. One seasoned attorney put it this way: “Today’s law school graduates are in the same situation we were all in when we graduated. We didn’t have a clue about how to practice law.” Jack W. Burtch, Jr., *The Mentor Challenge in Changing Times*, 15 EXPERIENCE 10, 10 (2004).

¹⁷ Thomas R. Mulroy, Jr., Editorial, *Civility, Mentors and the ‘Good’ Old Days*, CHI. LAW., Sept. 1991, at 14.

¹⁸ Friedman, *supra* note 15, at 4.

¹⁹ Marvin E. Aspen, *Overcoming Barriers to Civility in Litigation*, 69 MISS. L.J. 1049, 1055 (2000).

²⁰ See generally Raymond M. Ripple, *Learning Outside the Fire: The Need for Civility Instruction in Law School*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 359 (2001).

²¹ See Aspen, *supra* note 19, at 1055.

²² See, e.g., *State Bar of Texas Annual Committee Reports*, 62 TEX. B.J. 702, 713 (1999) (“Suggestions for increasing awareness among members of the Bar include adding a mandatory civility CLE component; adding information on the concept of cooperative partnering to the professionalism course offered by the Texas Center for Legal Ethics and Professionalism, ‘A Guide to the Basics of Law Practice,’ and educating the law schools so they can cooperate in teaching the underlying concepts. The focus of this effort is increased civility among the state’s lawyers.”).

²³ See generally Joy, *supra* note 11. In the same vein, one commentator suggested that judges

chief justice of the Maine Superior Court stated, “the tradition of civility that used to be transmitted to young lawyers is [now] gone.”²⁴

Part II of this article briefly discusses the civility problem and examines why courtesy has declined within the profession. Part III then looks at the numerous pressures young lawyers face today and demonstrates how these demands, when coupled with a young attorney’s lack of experience, can lead to the formation of uncivil behavior in new lawyers. Part IV then discusses the importance of civility in the practice of law and looks at the numerous ways the bar and bench are attempting to promote courteous and civil behavior. This part goes on to review the virtues of civil behavior and demonstrates the value in pursuing a courteous and civil career as an attorney. Part V will conclude with an invitation to the young lawyer to pursue a career of courtesy and civility and to reap the benefits such a career brings.

It should be noted from the outset that this article will not engage in a lengthy discussion regarding what civility is, why it is important, or how it can benefit the individual and practice; there are other excellent articles on those subjects.²⁵ Nor will this article attempt to proffer a cure to the civility ills that plague the profession. Rather, this article simply seeks to demonstrate the unique position in which the young lawyer finds him- or herself with respect to the current civility issue and hopes to point out some of the virtues inherent in pursuing a practiced rooted in civility.

II. CIVILITY AND MODERN-DAY PRACTICE

Civility can be characterized as treating others—opposing counsel, the court, clients, and others—with courtesy, dignity, and kindness.²⁶ Despite the obvious benefits of civility to the legal profession,²⁷ today, many avow

visit law schools and develop ethics criteria with the faculty, teach classes, give speeches, and offer internships or clerkships stressing civility. See Nagorney, *supra* note 10, at 823.

²⁴ See Thomas E. Humphrey, ‘Civil’ Practice in Maine, 20 ME. B.J. 6, 7 (2005).

²⁵ See generally John C. Buchanan, *The Demise of Legal Professionalism: Accepting Responsibility and Implementing Change*, 28 VAL. U. L. REV. 563 (1994); Eugene A. Cook, *Professionalism and the Practice of Law*, 23 TEX. TECH. L. REV. 955 (1992); Colin Croft, Note, *Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community*, 67 N.Y.U. L. REV. 1256 (1992).

²⁶ Any attempt to define civility or professionalism will fall short in one form or another. As the chief justice of the Wyoming Supreme Court said:

Although many codes or creeds of professionalism have been developed, and scores of states and federal jurisdictions have adopted resolutions and rules on professionalism or civility, including the United States District Court for the District of Wyoming, defining professionalism is difficult. It’s a bit like defining pornography; as Justice Stewart famously opined, pornography is difficult to define, but “I know it when I see it.”

John M. Burman & William U. Hill, *Professionalism and Leadership*, 27 WYO. LAW. 16, 17 (2004) (citations omitted).

²⁷ See *infra* notes 49–54 and accompanying text.

that civility is anachronistic or incompatible with the modern day practice of law. “It is not the way it was twenty years ago,” asserts one partner in a large firm. “Tough. Get with it. Law is a business.”²⁸ Some equate acting civilly with being a “push over,” being “faint of heart,” and “weak,”²⁹ while others proclaim that the only way to successfully litigate is through the use of aggressive and belligerent tactics.³⁰ One “naysayer,”³¹ in dismissing the value and role of civility, said that he

get[s] 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.³²

This attitude can be found in other “slash and burn”³³ tactics, such as “seasoned practitioners in our field [who] often exploit a young associate’s naïveté by pushing the hardball tactics to an unprofessional extreme in order to gain tactical advantages.”³⁴ A few, in what may be an attempt to justify or explain uncivil behavior (perhaps their own), have gone as far as claiming that civility problems do not exist and that the purported troubles within the legal profession are “created” and perpetuated by the elite.³⁵ To

²⁸ See Austin Sarat, *Enactments of Professionalism: A Study of Judges’ and Lawyers’ Accounts of Ethics and Civility in Litigation*, 67 *FORDHAM L. REV.* 809, 809 (1999); see also Friedman, *supra* note 3, at 193 (“[M]any current lawyers see the legal profession as a money-making venture . . .”). The “business” approach to legal services began in the seventies and burgeoned in the eighties. See Bryant Garth, *From Civil Litigation to Private Justice: Legal Practice at War with the Profession and its Values*, 59 *BROOK. L. REV.* 931, 940–42 (1994) (noting that up until the seventies, “law firms were no longer so prepared to assert the ethics of the profession and turn down legal business and litigation once deemed unproductive or frivolous. They had to compete to survive . . .”). The legal practice was once thought to be a “public service,” see, e.g., Clarence Thomas, *A Return to Civility*, 33 *TULSA L.J.* 7, 10 (1997), but the driving principle today is the bottom line; see, e.g., Sandra Day O’Connor, *Professionalism*, 76 *WASH. U. L.Q.* 5, 6 (1998).

²⁹ See Thomas J. Vesper, *Civility is Not a Sign of Weakness: Handling Conflict with Opposing Counsel*, 1 *ANN. 2001 ATLA—CLE* 897 (2001); see also Barksdale, *supra* note 4, at 577.

³⁰ Cf. Barksdale, *supra* note 4, at 573 (in discussing the civility question, Judge Barksdale asked: “Is it [uncivil behavior] the armor that must be worn to survive the unceasing battles of modern life? Some might think that—I do not.”).

³¹ Naysayers, as popularly used in this context, refers to those who believe civility is unimportant. E.g., Marvin E. Aspen, *A Response to the Civility Naysayers*, 28 *STETSON L. REV.* 253 (1998).

³² Shawn Collins, *Podium: Be Civil? I’m a Litigator!*, *NAT’L L.J.* Sept. 20, 1999, at A21. Unfortunately, Mr. Collins fails to realize that you can be civil and zealously represent your client. Cf. Sandra Day O’Connor, *Professionalism*, 76 *WASH. U. L.Q.* 5, 9 (1998) (“It is *not* always the case that the least contentious lawyer loses. It is enough for the ideas and positions of the parties to clash; the lawyers don’t have to.”).

³³ See Barksdale, *supra* note 4, at 574.

³⁴ Katherine A. Staton, *Professionalism and Civility in the Practice of Aviation Law—The VORS and GPSS Which Guide our Practice*, 64 *J. AIR L. & COM.* 871, 882 (1999).

³⁵ See, e.g., Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?*, 59 *TEX. L. REV.*

lawyers who espouse such ideas, winning is not everything—it is the only thing.³⁶ To be or not to be: according to these few, civility is out of the question.

III. UNDER PRESSURE

Many young lawyers, having little to no exposure to civility issues in law school,³⁷ may come to believe that they need to follow the example of their senior colleagues, even if such behavior is against the new lawyers' sense of how they ought to act.³⁸ They may believe that they must aggressively litigate, or that it is proper to respond in-kind when faced with uncouth behavior from opposing counsel or the court.³⁹ Indeed, young lawyers may believe that they need to act uncivilly, "because that's how the [legal] world they have come to know seems to function."⁴⁰ New attorneys may legitimately wonder if they can act civilly and succeed given the realities of modern day practice. They may truly come to think that they must participate in the "uncivil one-upmanship"⁴¹ to zealously represent a client, believing, as one naysayer put it, "[c]lients want Rambo[,] not Bambi."⁴²

These critical civility issues are compounded by many of the unique pressures (considered unprecedented by some)⁴³ that young attorneys face in today's legal world: impressing colleagues and clients, billing many hours, learning the practice, and establishing a reputable name.⁴⁴

639, 653 (1981) ("All occupations in a capitalist system seek to control the markets in which they sell their labor."); see generally Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259 (1995); Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657 (1994); David J. Beck, *Exploding Unprofessionalism: Fact or Fiction*, 61 TEX. B.J. 534, 540–41 (1998) (arguing that the purported increase in uncivil behavior "may be nothing more than a complex change in societal values, rather than a decline in professionalism").

³⁶ See Sarat, *supra* note 28, at 815.

³⁷ See William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 222–23 (1996) ("Expressions of dissatisfaction among students have been mirrored by the bar, where concerns over legal education have increased in recent decades. Some of these concerns have focused on the increasing emphasis placed on purely theoretical scholarship: '[T]hree years of observing the intemperate clashes among professors adhering to conflicting schools of thought does little to advance a student's understanding of ethical practice and the importance of dealing with adversaries candidly and courteously.'" (quoting Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191, 2213 (1993))).

³⁸ See Aspen, *supra* note 19, at 1054.

³⁹ *Id.* at 1051.

⁴⁰ See Friedman, *supra* note 15, at 3.

⁴¹ See Aspen, *supra* note 19, at 1051.

⁴² Dane S. Ciolino, *Redefining Professionalism as Seeking*, 49 LOY. L. REV. 229, 238 (2003).

⁴³ See Aspen, *supra* note 19, at 1054.

⁴⁴ Professor Pang notes some of the other numerous pressures lawyers face:

Lawyers are faced daily with the most important problems in people's lives: the weakness of a marriage, the potential loss of a child, the challenge of a serious accident, the threat of imprisonment or death, the vulnerability of a business, the loss of a job, the protection of a home, the provision for one's future, the challenge to

Somewhere between a young attorney's longing to impress a senior partner and the pressure to win at all costs, a new lawyer's desire to practice law with civility and respect may take a back seat to these previously unseen pressures. Indeed, young attorneys may feel compelled to take on the attitude and behavior of the senior attorneys if it means impressing his or her colleagues. Furthermore, as Judge Friedman pointed out, the young attorney, not knowing any different, may believe that he or she is doing nothing wrong.

To be, or not to be: despite the foregoing, consider the following answers to this question.

IV. 'TIS NOBLER TO BE

Although uncivil behavior is becoming the norm, the bench and the bar have gone to great lengths to stress the importance of civility. Numerous state supreme courts, in addition to the American Bar Association, have fashioned codes of professional conduct to emphasize the role and importance of civility in the legal profession.⁴⁵ In addition, courts, both state and federal, are taking the time to identify and reprimand uncivil behavior in judicial opinions.⁴⁶ On the lecture circuit, civility has become a popular topic;⁴⁷ several organizations, such as the American Inns of Court, have been formed to promote civility and professionalism. And many within the practice are pleading for the return of civility.⁴⁸ These codes, opinions, articles, and groups demonstrate the value of civil behavior and the desire of the majority to cultivate this characteristic.

There are good reasons to support the efforts of those who stress civility in the practice as it is quite clear that zealous advocacy, success, and civility are not incompatible—indeed, they are complimentary. For example, it has been noted by many that civil behavior “secure[s] the just,

one's rights.

Furthermore, the expectations for lawyers are as overwhelming as these tasks are endless. When the situation seems hopeless, the lawyer must provide hope. When the world seems flawed, the lawyer must provide justice. When the work is complex, the lawyer must provide perfection. When the work is routine, the lawyer must make the client feel special. When the client is objectionable, the lawyer must make the client feel accepted. Our public demands integrity. Our colleagues are paid to combat us. As layer piles upon layer, any lawyer is going to want to scream, “Enough already!”

Calvin G.C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in a Law School Clinic*, 35 WILLAMETTE L. REV. 241, 274–75 (1999) (quoting Randy Lee, *The Immutability of Faith and the Necessity of Action*, 66 FORDHAM L. REV. 1455, 1458–59 (1998)).

⁴⁵ See Wilkins, *supra* note 2, at 31.

⁴⁶ See MODEL CODE OF PROF'L RESPONSIBILITY, available at <http://www.abanet.org/cpr.profcode.shtml> (March, 2004).

⁴⁷ “Nearly eight years have passed since the Committee on Civility of the Seventh Federal Judicial Circuit issued its final report. Since then civility has been a popular topic on the legal lecture circuit. . . .” Aspen, *supra* note 19, at 1049.

⁴⁸ See generally Buchanan, *supra* note 25.

speedy, and inexpensive determination of every action”⁴⁹ and “fosters respect for other[s], promotes cooperation, instills a sense of community [and] makes relationships better,”⁵⁰ thus “[enhancing] both the daily experience of lawyers, and the reputation of the bar as a whole”⁵¹ Civil behavior benefits the lawyer and the client as attorneys build reputations before tribunals in which they practice.⁵² Ultimately, civility enhances the public’s trust in the strength and integrity of the judicial process.⁵³

Most importantly, civility is considered by many to be the measure of a true professional. Consider the value that many well-known and accomplished individuals within the profession have placed on civil behavior. Justice Anthony Kennedy remarked that “[civility] is the mark of an accomplished and superb professional”⁵⁴ And Judge Rhesa Hawkins Barksdale of the Fifth Circuit has stated that “[civility] is the mark of a true lawyer—a true professional.”⁵⁵

To be or not to be: according to these seasoned professionals, civility is the ultimate question.

V. CONCLUSION

Having identified the unique position of the young attorney, it is imperative that young lawyers be cognizant of the civility crisis that plagues the profession. Despite the pressures new attorneys face in an increasingly uncivil landscape, pursuing a career founded on courtesy benefits both their own goals and the aims of our judicial system. Without civility, everyone suffers—attorneys, clients, and, most importantly, the integrity and strength of the process at every stage. If new members of the bar are apathetic about the civility dilemma, we will see only a continued

⁴⁹ FED. R. CIV. P. 1; *see also* Sofia Adroque, “*Rambo*” *Style Litigation in the Third Millennium—The End of an Era?*, 37 HOUS. LAW. 22 (2000) (“Practicing civility is also the most efficient and economical way to litigate cases.”).

⁵⁰ Janet Stidman Eveleth, *Where Has Civility Gone?*, 36 MD. B.J. 2, 10 (2003).

⁵¹ *See* Wilkins, *supra* note 2, at 31. It is well documented that the “win-at-all-cost” approach has directly contributed to the high dissatisfaction rates amongst attorneys. *See* Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1345–46 (1997). Furthermore, uncivil behavior has been directly tied to the negative public perception of the legal profession, society’s pessimistic view of lawyers as a whole, and the delaying or denying of justice. *Id.*; *see also* Canady v. Erbe Elektromedizin GmbH, 307 F. Supp. 2d 2 (D.D.C. 2004).

⁵² *See* Friedman, *supra* note 3, at 193–94 (noting that lawyers “offer to the clients their own professional reputations and the integrity and credibility with the courts that they have established over time”).

⁵³ N. Lee Cooper & Steven F. Humphreys, *Beyond the Rules: Lawyer Image and the Scope of Professionalism*, 26 CUMB. L. REV. 923, 935 (1996) (“[Uncivil behavior] is absolutely terrible for the public image of lawyers and brings with it [the issues] that accompany low public regard for lawyers and lack of confidence in the justice system.”).

⁵⁴ Anthony M. Kennedy, *Law and Belief*, 34 TRIAL 23, 25 (1998).

⁵⁵ *See* Barksdale, *supra* note 4, at 577.

decline in civility and frustration of the legal process.⁵⁶

To be or not to be: young attorneys, ask yourselves the question, lest you perpetuate Hollywood's version of dispute resolution. For "Rambo may succeed in the theater, but he self-destructs in the courtroom."⁵⁷

⁵⁶ See, e.g., Frank X. Neuner, Jr., *Professionalism: Charting a Different Course of the New Millennium*, 73 TUL. L. REV. 2041, 2046 (1999) (noting that "incivility is contagious").

⁵⁷ Thomas M. Reavley, *Rambo Litigators: Pitting Aggressive Tactics Against Legal Ethics*, 17 PEPP. L. REV. 637, 655 (1990).