

WHY CIVILITY?

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“Some men see things as they are and say, ‘Why?’ I dream things that never were and say, ‘Why not?’”

— Robert F. Kennedy¹

INTRODUCTION

I spent the last fifteen years writing about civility, presenting on civility, and promoting civility for lawyers. Why have I devoted over a decade and a half to studying and advocating for civility in the legal profession? Why civility? The answer to the question of why civility likely coincides with the reason why *Toledo Law Review* decided to dedicate an entire symposium to civility and professionalism—“Civility is the cornerstone of the legal profession.”² This brief Article highlights a number of my experiences as a practitioner and as a law professor that illustrate both the importance of civility and the costs of incivility to help answer the question of why civility.

Part I of this Article provides a definition and brief overview of civility. Part II of this Article describes how my experiences as a practicing lawyer for nearly a decade and as a law professor for a decade and a half led me to focus a great deal of my scholarship and speaking engagements on advancing civility in the legal profession. This Article concludes that civility is essential to the practice of law for every lawyer, and more states should adopt mandatory civility beyond the handful of states that already require civility from their lawyers.

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1. *Bobby Kennedy: Quotes from a Life*, L.A. TIMES (June 5, 1988, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-1988-06-05-mn-6454-story.html>.

2. Md. L.B.R., app. E (2025).

Notably, professionalism and civility are often used interchangeably, and both terms commonly refer to conduct that goes beyond the lowest common denominator of behavior required to avoid sanctions under the rules of professional conduct. David A. Grenardo, *Making Civility Mandatory: Moving from Aspired to Required*, 11 CARDOZO PUB. L. POL’Y & ETHICS J. 239, 245-47, 290 (2013).

I. DEFINITION AND BRIEF OVERVIEW OF CIVILITY

Any article on civility should include a definition and brief overview of what civility means in the legal profession. Civility in the legal profession is defined as “‘treating others...with courtesy, dignity, and respect,’ as well as demonstrating ‘cooperation, honesty, and restraint.’”³ Professor Donald Campbell derived ten core concepts of civility in the legal profession by analyzing the civility codes of thirty-two different state bar associations:

- (1) recognize the importance of keeping commitments and of seeking agreement and accommodation with regard to scheduling and extensions;
- (2) be respectful and act in a courteous, cordial, and civil manner;
- (3) be prompt, punctual, and prepared;
- (4) maintain honesty and personal integrity;
- (5) communicate with opposing counsel;
- (6) avoid actions taken merely to delay or harass;
- (7) ensure proper conduct before the court;
- (8) act with dignity and cooperation in pre-trial proceedings;
- (9) act as a role model to the client and public and as a mentor to young lawyers; and
- (10) utilize the court system in an efficient and fair manner.⁴

With this basic definition and understanding of what civility means in the context of practicing law, I turn to my experiences as a practitioner and a law professor that led me to focus on civility these last fifteen years as an academic.

II. CIVILITY: A PURSUIT BORN OF EXPERIENCE

A. *Life as a Litigator*

I practiced law for nearly a decade in Los Angeles and Houston at three Big Law firms—Jones Day, DLA Piper, and King & Spalding. My practice focused on corporate civil litigation. Throughout my career as a lawyer, I also handled a fair amount of pro bono cases because a lawyer ought to represent those who lack the resources to pay for an advocate. Some of the pro bono clients I represented included, among others, domestic violence victims, the developmentally disabled, and First Amendment litigants. I worked on pro bono cases at each of my firms, and I also served on the Pro Bono Committee of my office at DLA Piper. I learned from pro bono work some of my first lessons in civility—perhaps the most important being that the dignity of a client does not hinge on wealth or social standing. I treated my pro bono clients in the same way that I treated my fee-paying clients. If every lawyer embraced pro bono work, then they would likely feel the

3. David A. Grenardo, *Civility Rules: Debunking the Major Myths Surrounding Mandatory Civility for Lawyers and Five Mandatory Civility Rules That Will Work*, 37 GEO. J. LEGAL ETHICS 167, 172 (2024).

4. Donald E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99, 107, 109 (2011).

deep fulfillment that comes from helping others without expecting any monetary reward.

When I joined the legal academy, I wanted to write about topics that I felt were essential to the practice of law. My first thought was pro bono because all lawyers have a responsibility to provide legal services to those who cannot afford it.⁵ In addition, I found my purpose and passion for being a lawyer in the pro bono work I did. Moreover, there has always been an access to justice issue in this country, which means there are many people who need lawyers but cannot afford them. Impressing upon law students and lawyers that their legal expertise is required to help bridge that gap would have been a worthwhile endeavor. Upon my initial review of research in that area, however, my arguments and fervor for the topic were already captured in the existing scholarship.

My second thought about what I should focus my scholarship on landed on civility. Just as I received fulfillment through working on pro bono cases, I took great pride in maintaining civility in the practice of law (although I did slip once as described *infra*). Civility is something that I believe all lawyers and professors can attain. I know how demanding the practice of law was (and is)—the deadlines, the client expectations, the firm expectations, and the strain put on relationships because of the time necessary to be a good lawyer. I was aware of the deleterious effects that come with being a lawyer, such as increased rates of depression, anxiety, suicide, and substance and alcohol misuse.⁶ Incivility in the legal profession can contribute to or exacerbate those maladies. I knew first-hand how a case could become a nightmare if opposing counsel was obstreperous and rude. At the same time, I also knew the joy of having a great relationship with opposing counsel and how that can make the practice of law much more enjoyable.

Every lawyer, if they have practiced long enough, can envision the name of an opposing counsel appearing on their iPhone or caller ID that will make the lawyer's blood boil. I had a case in which every time I saw opposing counsel, he would tell me that he was going to get me sanctioned by the court we were appearing in and by the State Bar. Finally, I asked him if he greeted all of his opposing counsel on other cases with the same threatening refrain, and he said, "Yes, and I actually like you, David."

I had a deposition one time when opposing counsel repeated every single objection to every question I asked. Those objections included, among others, asked and answered, harassing the witness, calls for privileged information, compound, vague and ambiguous, calls for a legal conclusion, mischaracterizes

5. MODEL RULES OF PRO. CONDUCT r. 6.1 (A.B.A. 2025) ("Every lawyer has a professional responsibility to provide legal services to those unable to pay.").

6. See Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 48 (2016) (describing a study finding that 20.6% of licensed, employed attorneys engage in "problematic drinking" compared to their non-attorney, highly educated peers scoring at a lesser 11.8% on the same measure, and also finding that 28% of attorneys reported experiencing mild or higher levels of depression and 19% reporting mild or higher levels of anxiety); Jessica A. Mahon Scoles, *Can I Bring Myself to Court?: Teaching Presentation Style in the Trial Advocacy Classroom*, 49 VT. L. REV. 1, 6 (2024) ("[A]ttorneys have higher suicide rates than the general population...[and] suicide is the third leading cause of death for attorneys.").

the evidence or mischaracterizes the witness' testimony, calls for speculation, relevance, and assumes facts not in evidence.⁷ I even told opposing counsel we could agree that every time he objected it would include the full panoply of objections so he would not need to repeat every single one of them for every single question I asked, but he insisted on stating each objection separately, whether the objections were applicable or not. His unnecessary objections made the deposition much longer than necessary. The longer the deposition, the more our clients had to pay us to be there.

In another case, I could not even get opposing counsel to agree on a deposition date for their witness. I needed to bring a motion to compel simply to obtain a date to take the deposition. I wrote a motion, a reply to the opposition, prepared for the hearing, and flew out to the hearing, which was halfway across the country, to argue the motion. All of these efforts cost the client money. The court granted a deposition date based on my motion. The court also granted my motion for sanctions against the opposing party and opposing counsel for their failure to work with me in setting a deposition date.

Several weeks later, when my flight finally arrived in the state where the deposition would take place, I received a message on my Blackberry (meaning this occurred in the Stone Age) from opposing counsel that the attorney scheduled to defend the deposition was sick and the deposition would need to be postponed. I knew there were other attorneys at the firm representing the plaintiff in the case, including the attorney who messaged me, that could ably defend the deposition. I immediately called the lawyer who sent me the message, and I began yelling at him and berating him. I do not curse, but there were a lot of "gosh darns" and "dad gummits" thrown around. And I told him (1) that I have two young sons at home, (2) that I do not like to leave them, (3) that I had to file a motion to compel just to get that deposition date, and (4) that, when I land after traveling across states to take the deposition, he tells me the deposition is postponed. I concluded by saying that I knew he is a father, and a good one, so how could he do this to me? My behavior, whether you believe it was justified or not, was completely unprofessional and uncivil. My tone, volume, and improper use of personal information in that phone call embarrassed me. I called him back the next day and apologized. That is the only time in all my practice that I can recall ever raising my voice with opposing counsel, and I am not proud of it.

On the other hand, I had plenty of experiences with opposing counsel that were pleasant, and I could honestly call some of those attorneys my friends. Regardless of the case, the first time I spoke to opposing counsel I tried to spend the first fifteen or thirty minutes just getting to know them—where they grew up, what their family is like (which is how I knew opposing counsel in the story above was a father), what they enjoy doing outside of the practice of law—and I would share those things about me with them. I faced a particular opposing counsel in several contentious cases, but after I left the practice of law for teaching, she reached out to me to be a reference for her in her job search because we had

7. In state court cases in California, detailed objections during depositions were typical in practice, while in some jurisdictions, "Objection, form," sufficed for many of the objections listed above.

established such a great relationship. There is no doubt that we attacked each other's arguments in court and the merits of the other's case, but we never attacked each other personally. A lawyer who zealously advocates for one's client focuses the attacks on opposing counsel's arguments and evidence, and the lawyer presses for discovery necessary to present the client's case. Such a lawyer can be described as a tenacious but respectful advocate.

Former Associate Justice of the Supreme Court of the United States Sandra Day O'Connor once said, "More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase the effectiveness of our system of justice, and improve the public's perception of lawyers."⁸ My legal experience confirmed Justice O'Connor's observation.

The preceding personal real-world examples illustrate several of Justice O'Connor's points. When I was dealing with a threatening lawyer on the other side, there was not much pleasure in the practice of law. Conversely, when I faced an opposing counsel who acted with civility, then I could focus on the merits of the case, which made the practice of law more enjoyable. Our justice system was not working effectively when clients had to spend more money than necessary on their lawyers either because of an elongated deposition or because of a completely avoidable motion to compel. Also, when courts are forced to hold hearings on motions to compel and motions for sanctions because counsel cannot simply agree on deposition dates or other basic aspects of discovery, then the parties are wasting the court's precious time and resources. The court should instead be primarily hearing substantive motions, such as summary judgment motions, or presiding over trials.

Although none of my stories above became public, if the public had heard about them then the public's perception of lawyers would have been diminished as Justice O'Connor noted. When lawyers act uncivilly and stories are written about those events, the public's perception of lawyers declines. The American Bar Association (ABA) Journal typically highlights some egregious tales of lawyer incivility that raises eyebrows of even the most battle worn attorneys, let alone the public. For example, a lawyer allegedly said, "Judge - - thank you. F---ing c---," at the end of a Zoom hearing, in which she ruled against his client.⁹ Although the lawyer claimed that he believed the Zoom hearing had ended, a Michigan court of appeals upheld the lawyer's \$7,500 fine and contempt holding based on the lawyer's gender slur aimed at a female judge.¹⁰

In another instance, a Manhattan lawyer slapped opposing counsel at a deposition and then sued the slappee for over \$1 million claiming assault and slander.¹¹ The slappee, co-chairperson of Paul Hastings' employment practice,

8. Sandra Day O'Connor, *Professionalism*, 76 WASH. U. L.Q. 5, 8 (1998).

9. Debra Cassens Weiss, *Lawyer Reportedly Tells Judge 'Thank You' Followed by Slur in Remote Hearing*, A.B.A. J. (Oct. 9, 2025, at 12:58 CT), <https://www.abajournal.com/web/article/fine-upheld-for-lawyer-who-used-c-word-when-he-thought-zoom-hearing-was-over> [https://perma.cc/L5GC-LKR4].

10. *Id.*

11. Debra Cassens Weiss, *Suit Claims Lawyer Slapped Paul Hastings Partner Because of Violent Finger Shaking, Spittle-Spewing*, A.B.A. J. (July 12, 2012, at 12:20 CT), <https://www.abajou>

allegedly yelled at the slapper so closely that spittle from the slappee's mouth landed on the slapper's face, hence the purported assault.¹² According to the complaint, the slappee also insulted the slapper by calling him "uncivilized, ignorant and incompetent," amounting to slander.¹³ At the time of the yelling and spittle-spewing, the slappee also allegedly engaged in violent finger-wagging towards the slapper, all of which led the slapper to do that which slappers do—slap.¹⁴

Granting extensions or agreeing not to oppose counsel's request to continue a hearing or trial falls under conduct embodying civility in the practice of law.¹⁵ After conferring with the client, I always tried to grant extensions or not oppose a request for a continuance as long as the extension or continuance would not prejudice my client. In one instance, opposing counsel said that her son was sick so she needed more time to complete the discovery responses. I granted that extension. Lawyers gain little by refusing an extension, and they demonstrate courtesy when they accommodate a fellow member of the bar. The instances in which a client would be prejudiced by an extension, though one can likely imagine one, are few.

Another time, opposing counsel told me that the client was on vacation and could not help complete the interrogatory responses, so I again granted an extension. If I did not give opposing counsel that extra time, then opposing counsel would have sent me incomplete or deficient discovery responses. The incomplete responses would have required that I write a meet-and-confer letter stating why the responses were incomplete or deficient. My meet-and-confer letter would be followed either by opposing counsel's response to my meet-and-confer letter or the revised discovery responses once they had enough time to complete them. By granting opposing counsel the extension of time, I saved my client's money by not having to write a meet-and-confer letter, and we still obtained the discovery we needed.

Over a decade ago, I spoke on a panel regarding civility in which I heard an unforgettable story from one of the other panelists. The panelist had a request from opposing counsel who wanted to continue (postpone) a trial date because opposing counsel's wife was sick. The panelist said that he spoke with his client and agreed not to oppose the request to continue trial. About a month later, close to the date of the rescheduled trial, opposing counsel made the same request—do not oppose the motion to continue trial because his wife was sick. The panelist went through the same procedure and agreed not to oppose the request for a continuance, which was again granted by the court. On the eve of the third trial setting, opposing counsel made the same request for the same reason, but this time the panelist thought opposing counsel was playing games with him and taking advantage of

nal.com/news/article/suit_claims_lawyer_slapped_paul_hastings_partner_because_of_violent_finger_ [https://perma.cc/5BVD-5X5E].

12. *Id.*

13. *Id.*

14. *Id.*

15. *See* Campbell, *supra* note 4, at 107, 109 (explaining that one of the most common civility concepts includes the obligation to "recognize the importance of keeping commitments and of seeking agreement and accommodation with regard to scheduling and extensions.").

him. The panelist said no, and the third trial date stood. When the counsel and parties showed up on the morning of the first day of trial and the judge called their case, opposing counsel stood up and asked the court, “Can we postpone the start of the trial until this afternoon so I can attend my wife’s funeral?” The panelist looked broken telling the story. The moral of the story is: Treat others how you would like to be treated. I never knew when I was going to need an extension or a continuance because of circumstances beyond my control. In those instances, I hope opposing counsel would show some restraint and cooperation, just as I showed them.

My life as a litigator provided concrete instances why civility should be my focus in academia. My experiences as a law professor have only reinforced the need to spread the message of civility far and wide.

B. Life as a Law Professor

When people ask me what it was like to move from litigator to law professor, I tell them that it was great for two reasons. First, as a law professor, I am the smartest person in the room until I open my mouth. And, second, there is no opposing counsel when I teach.

What I have witnessed first-hand as a law professor is that some law students come to law school genuinely believing that they must act like jerks to be effective lawyers.¹⁶ They see this behavior from lawyers in movies, on television, and in the news. In my 1L Contracts class, I make students I call on stand up to represent either the plaintiff or defendant in the cases we are covering. The students are in the third row from the back of the class in stadium-style seating, with one student on the far-left side of the room and the other on the far-right side. Sometimes the students start facing each other (instead of me) and begin looking like they are getting ready to finish the argument in a skirmish after class in the parking lot. When students start to attack each other personally, I remind them of the need for civility and how these attacks take us away from the merits of the case. I tell them that in court they address the judge (which is the role I am playing in class) as opposed to opposing counsel. Thus, I sometimes need to reprogram law students to understand the importance of civility and the costs of incivility.

Convincing law students that civility is critical for their success as lawyers requires honest conversations with law students. When I teach civility to law students, I ask them what kind of lawyers they think clients want.¹⁷ They know we are talking about civility that day, but law students demand and provide honesty. They always say, “A client wants a lawyer who wins.” They are absolutely right. I also tell students that clients want a lawyer who will fight for them. I quote the

16. Similarly, when I spoke at the Pennsylvania Conference of State Trial Judges Annual Meeting several years ago, a number of judges commented to me about how much difficulty they have with pro se litigants. According to several judges I spoke with, these litigants behave uncivilly because that is what they believe effective attorneys do based on what they have seen in the media and entertainment.

17. David A. Grenardo, *A Lesson in Civility*, 32 GEO. J. LEGAL ETHICS 135, 156 (2019). I taught Professional Responsibility for ten years, and I would teach a lesson on civility. I also guest lecture or present to law students on the topic of civility.

beginning of the Cobra Kai mantra to describe how I believe lawyers should practice: strike hard, strike first. And keep striking. I advise my law students to attack, attack, attack—attack the evidence of the opposing party’s case and the merits of opposing counsel’s arguments, but do not attack opposing counsel or the opposing party personally. I let students know that they can be aggressive, zealous advocates while maintaining their civility, and I point them to the ABA Model Rules of Professional Conduct (Model Rules).¹⁸

The Model Rules represent the lowest common denominator of behavior required by lawyers to avoid sanctions from a state disciplinary bar, as opposed to the higher standards of conduct that lawyers and law students should hold themselves to in the practice of law. Nevertheless, even the Model Rules recognize that zealous advocacy and civility are in harmony. The preamble of the Model Rules states that a lawyer has an obligation to zealously “protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.”¹⁹ Moreover, Comment 1 to Rule 1.3 regarding diligence provides that even though a lawyer must be dedicated and committed to act on behalf of their clients, “[a] lawyer is not bound...to press for every advantage that might be realized for a client..., [and a] lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.”²⁰ My articles on making such civility mandatory seek to take these principles out of the fringes of the Model Rules and ensure that lawyers follow them or they would be subject to consequences.²¹

I also ask students what type of lawyers they want to be and what type of lawyers they want to face as opposing counsel.²² I inform law students that most cases settle and do not go to trial. If a lawyer has been obstreperous and a complete jerk to opposing counsel throughout the litigation and now must settle a case with opposing counsel, then that may make the settlement negotiations more difficult and more costly. If a lawyer is too uncivil, then the lawyer could be disqualified from representing a client in a case.²³ And if it is a close case, then the judge or jury could find for the more professional lawyer’s client instead of the uncivil lawyer because decisionmakers prefer professionalism and civility.²⁴ Moreover, if

18. See MODEL RULES OF PRO. CONDUCT (A.B.A. 2025).

19. *Id.* pmb1. ¶ 9.

20. *Id.* r. 1.3 cmt. 1.

21. See Grenardo, *supra* note 2, at 261; Grenardo, *supra* note 3, at 181.

22. Grenardo, *supra* note 17, at 156.

23. See, e.g., *Bedoya v. Aventura Limousine & Transp. Serv. Inc.*, 861 F. Supp. 2d 1346, 1370 (S.D. Fla. 2012) (disqualifying a lawyer who insisted on having depositions at the busiest and noisiest Dunkin Donuts in town, where the lawyer played Angry Birds and drew male genitalia during those depositions, and he appeared at those depositions in a t-shirt and shorts).

24. See, e.g., Kevin Dubose & Jonathan E. Smaby, *The Power of Professionalism: Civility as a Strategy for Effective Advocacy*, 79 TEX. BAR J. 432, 433 (2016); Jayne R. Reardon, *Civility as the Core of Professionalism*, A.B.A. (Sep. 18, 2014), https://www.americanbar.org/groups/business_law/resources/business-law-today/2014-september/civility-as-the-core-of-professionalism/ [https://perma.cc/GVD7-N6DX].

opposing counsel is fighting everything in discovery and being uncivil and uncooperative, then it will cost a lawyer's client more money to litigate that case. Explaining to law students how civility and incivility can affect them, pragmatically and practically speaking, can help law students understand why civility will be essential for them as lawyers.

When I taught in Texas and encouraged my law students to act with civility as lawyers, I inevitably got the following retort from some students: what about Joe Jamail? Joe Jamail was a highly successful trial lawyer from Texas, who might be internet famous for his *Texas Style Deposition* in which he threatened to fight the deponent during a deposition.²⁵ Those who knew Joe Jamail all say the same thing: he was brilliant, well-prepared, and seemed fearless, and he had the ability to develop an incredible rapport with juries.²⁶ I argue that he was not successful because he was uncivil, but he was successful in spite of his incivility.

Early on as a law professor, my research led me to discover that only a handful of states required civility from its lawyers—Arizona, Florida, Michigan, and South Carolina.²⁷ New Jersey also mandates civility.²⁸ After communicating with the chief disciplinary counsel of several of those state bars, I realized many of the advantages of mandatory civility.²⁹ In addition to the advantages already discussed (saves clients' money, avoids wasting the court's time and resources, improves how the public views lawyers and the legal system, and reduces attorney stress and anxiety while allowing the attorney to concentrate solely on the merits of the case), mandatory civility provides accountability to all lawyers, transactional and litigation, for uncivil conduct.³⁰

Also, one of the significant advantages of mandatory civility includes the ability to catch health and wellness issues, as well as other debilitating issues. For

25. IOWAPUBLICDEFENDER, *Texas Style Deposition* (YouTube, June 28, 2007), <https://youtu.be/ZIxmrVbMeKc?si=iY16Dpa-t1v-IU47> [<https://perma.cc/ZP7K-ZQPG>].

26. Janet P. Hansen et al., *Keynote Presentation: Lessons from the Life and Practice of Joe Jamail*, 64 S. TEX. L. REV. 289, 293, 296-99 (2025).

27. Grenardo, *supra* note 2, at 253.

28. N.J. RULES OF PRO. CONDUCT r. 3.2 (2019) (“A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and *shall treat with courtesy and consideration all persons involved in the legal process.*”) (emphasis added).

The Supreme Court of New Jersey has proclaimed, “[A]ttorneys are required to act with common courtesy and civility at all times in their dealings with those concerned with the legal process. Should an attorney fail to abide by these requirements, discipline should be imposed.” *In re Vincenti*, 554 A.2d 470, 474 (N.J. 1989).

New Jersey state and federal courts have relied on Rule 3.2 to mandate civility and sanction incivility. *See In re Ziegler*, 970 A.2d 1041, 1041-42 (2009) (citing N.J. Disciplinary Rev. Bd., No. 08-344, 3 (2009)) (sanctioning attorney with a public reprimand who made the following statement, among others, to a client's wife—an Indian national—in a domestic relations matter: “I’m going to cut you up into bits and pieces, put you [into] a box and send you to India and your parents won’t recognize you.”); *Fineman v. Armstrong World Indus., Inc.*, 774 F. Supp. 266, 276 (D.N.J. 1991) (granting motion for a new trial because lawyer violated Rule 3.2 by calling defense counsel liars in closing argument and inferring in closing argument that one defense attorney either counselled a witness to lie or engaged in sexual misconduct with a witness).

29. For a full discussion of the advantages of mandatory civility, *see* Grenardo, *supra* note 3, at 181-84.

30. *See id.*

instance, when a lawyer starts yelling or screaming at opposing counsel during a deposition or phone call or after a hearing, a complaint might be made to the state bar. Disciplinary counsel can then call that lawyer to ask what is happening. Disciplinary counsel, according to the ones I communicated with in mandatory civility states, sometimes learn that the lawyer lashed out because they just lost a loved one, they are experiencing alcohol or substance misuse issues, or they just lost their only paralegal or legal assistant. Instead of punishing the lawyer with a private or public reprimand or some other sanction, disciplinary counsel can send the lawyer to a diversion program such as grief counseling, lawyer assistant programs or lawyers concerned for lawyers, anger management programs, or office management programs.³¹ Mandatory civility rules allow disciplinary counsel to catch these issues before they manifest in irreparable harm to the lawyer or others without having to penalize these lawyers who are suffering.

My research as a law professor also led me to the conclusion that incivility is truly a systemic issue in our country and in our legal profession. A 2023 ABA study found that 85% of Americans believe incivility is worse than it was ten years ago.³² Studies also suggest that incivility is increasing in the workplace.³³ Incivility also exists throughout the legal profession.³⁴

The California Civility Task Force, composed of leading judges and lawyers from across the state, published its report in 2021 that found incivility permeates the legal profession in California.³⁵ In a 2024 survey, the Illinois Supreme Court Commission on Professionalism found that approximately one in four lawyers surveyed experienced bullying, a form of incivility, in the last year.³⁶ Also, the study estimated that 10,000 lawyers in Illinois have left a job due to bullying.³⁷ In a 2021 survey, again conducted by the Illinois Supreme Court Commission on

31. *Id.* at 182.

32. A.B.A., *ABA Survey of Civic Literacy 2023*, A.B.A.: MEDIA RELS. & STRATEGIC COMM'NS DIV. 9 (2023), https://www.americanbar.org/content/dam/aba/administrative/public_education/2023-aba-survey-civic-lit-report.pdf [<https://perma.cc/4R8C-TVXA>].

33. Beth Greenfield, *Shaming, Ignoring, Gossiping, Gaslighting: HR Experts Say 'Workplace Incivility' Is on the Rise*, FORTUNE WELL (June 14, 2024, at 15:00 ET), <https://fortune.com/well/article/workplace-incivility-gaslighting-gossip-disrespect/> [<https://perma.cc/6W68-E7C3>] (detailing how incivility in the workplace is on the rise); Christine Porath, *Frontline Work When Everyone Is Angry*, HARV. BUS. REV. (Nov. 9, 2022), <https://hbr.org/2022/11/frontline-work-when-everyone-is-angry> [<https://perma.cc/KU22-4PEH>]; *Civility Index: Q1 2025 Results*, SHRM 8 (Mar. 2025), [shrm-q1-2025-civility-index-abstract.pdfshrm-q1-2025-civility-index-abstract.pdf](https://perma.cc/8DLY-LD76) [<https://perma.cc/8DLY-LD76>] (finding persistent levels of incivility in the workplace).

34. See Stephanie A. Scharf & Roberta D. Liebenberg, *Bullying in the Legal Profession: A Study of Illinois Lawyers' Experiences and Recommendations for Change*, ILL. SUP. CT. COMM'N ON PROFESSIONALISM 9-12 (Oct. 2024), https://civility.wpenginepowered.com/wp-content/uploads/2024/10/2Civility_BullyingReport_Full_FN.pdf [<https://perma.cc/Q6Z2-2YN8>]; *Beyond the Oath: Recommendations for Improving Civility*, CAL. CIVILITY TASK FORCE 2 (Sep. 2021), <https://caljudges.org/docs/PDF/California%20Civility%20Task%20Force%20Report%209.10.21.pdf> [<https://perma.cc/JQ7M-ZTKZ>].

35. *Beyond the Oath: Recommendations for Improving Civility*, *supra* note 34, at 2 (stating that the legal profession in California suffers from a "scourge" of incivility).

36. Scharf & Liebenberg, *supra* note 34, at 24.

37. *Id.* at 53.

Professionalism, 54% of lawyers reported that they had experienced “uncivil or unprofessional behavior from another lawyer in the last six months.”³⁸

The more I recognized civility as a systemic issue in the legal profession, the more I felt compelled to advocate not just for civility, but also for mandatory civility. I cannot knowingly send law students into a legal environment that can be toxic and cause serious harm to individual lawyers, clients, and the court system. If I can improve the environment in which these law school graduates work, then I must do my best to try to create that better environment. As a result, I devoted much of the last fifteen years to arguing for mandatory civility in my scholarship and speaking engagements.³⁹

CONCLUSION

John F. Kennedy (JFK), perhaps equally adept as his brother in asking questions to make a point, posed several questions in his famous speech at Rice Stadium in Houston, Texas. JFK, in advocating for the US’s efforts to go to the moon, asked, “But why, some say, the moon? Why choose this as our goal? And they may well ask why climb the highest mountain. Why, 35 years ago, fly the Atlantic? Why does Rice play Texas?”⁴⁰ Much like his brother, JFK answered his own questions elegantly and powerfully:

We choose to go to the moon. We choose to go to the moon in this decade and do the other things, not because they are easy, but because they are hard, because that goal will serve to organize and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win, and the others, too.⁴¹

We should choose to advocate for civility, and mandatory civility, not because it is easy, but because it is hard. As society becomes increasingly uncivil, efforts to promote civility in the legal profession remain counter-cultural. Nevertheless, we

38. *Survey on Professionalism: A Study of Illinois Lawyers 2021*, NAT’L CTR. FOR PRINCIPLED LEADERSHIP & RSCH. ETHICS 2 (2021), <https://civility.wpenginepowered.com/wp-content/uploads/2021/12/ILSCCP-Civility-Survey-Report-2021.pdf> [<https://perma.cc/5MUJ-NDCA>]. Despite the foregoing statistics, there is generally a lack of good data on civility in the legal profession. More specifically, there is a lack of good data in mandatory civility states because, among other things, civility complaints can be dismissed without notice to the public and not all disciplinary decisions regarding civility (or other violations) are made public. The Illinois Supreme Court Commission on Professionalism consistently produces the best data on civility, but its data focuses on the state of Illinois. We need more reliable data on the topic of civility, and that data will likely need to come from voluntary surveys of lawyers and judges from different states, including mandatory civility states and other states.

39. In previous full-length law review articles, I argued for mandatory civility and propose particular civility rules that state bars should adopt. *See* Grenardo, *supra* note 3, at 181; Grenardo, *supra* note 2, at 261.

40. *John F. Kennedy Address at Rice University on the Space Effort*, RICE UNIV. (Sep. 12, 1962), <https://www.rice.edu/kennedy> [<https://perma.cc/D5M2-XJH6>]. I agree with the late JFK that Rice playing the University of Texas (at Austin) in football is hard—when I played football at Rice (between 1995 and 1998), we never beat Texas.

41. *Id.*

are willing to accept the challenge of changing our profession for the good in a systemic way. By hosting this symposium, *Toledo Law Review* has joined in this effort to advance and promote civility in the legal profession. We are unwilling to postpone this task as civility continues to erode in our legal profession and society. And we intend to prevail in this effort.