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Self-Discipline, Faith, and Civility: Promoting a Civil Society and Lawyer Professionalism

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ARTICLE

Hon. Douglas S. Lang

Self-Discipline, Faith, and Civility: Promoting a Civil Society and Lawyer Professionalism

Abstract. All lawyers are bound to assiduously adhere to the *Law*, including the strictures of legal ethics, professionalism, and all secular law. Moreover, lawyers of faith must adhere to the tenants of their faith as a way of life. The principles of those two sets of imperatives are not only compatible, they are inextricably intertwined. Together, they compel lawyers to treat others civilly and with respect and dignity. This paper demonstrates that lawyers, particularly Catholic lawyers, must unselfishly and civilly live their lives in a way to combat the scourge of incivility in the legal profession and in society. All of that requires self-evaluation and self-discipline to thwart incivility. In order to make a difference, lawyers must assure that others comprehend the critical importance of civility in all aspects of human interaction. That can and must be passed on by education, that is, by mentoring of both beginning and experienced lawyers.¹ The Golden Rule sums it all up, “Do unto others as you would have them do unto you.” *Luke* 6:31.

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1. “I wish that I knew what I know now [w]hen I was younger.” *FACES, OH LA LA* (Wb Music Corp. 1973).

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I. EVALUATING CIVILITY OF CONDUCT BY RELIGIOUS AND LEGAL NORMS

Certainly, everyone recognizes uncivil conduct by others when we see it.² However, if each of us is honest about it, there is an obstacle when it comes to evaluating one's own conduct. We may simply see ourselves as we would like to be seen as contrasted with how others see us. That is, until we do a thorough self-audit.

Self-audit or discernment is mandatory. It is rare that others will proffer a candid evaluation of another's conduct and approach to life. An effective method of prompting self-evaluation used by some religious thoughtful leaders is to ask this question: If you were indicted for being, for instance an observant Jewish person, an observant Muslim, a devout Christian/Catholic, or the like, is there enough evidence to convict you?³ Modifying that a bit, one could stimulate a self-audit regarding civility by asking: If you were indicted for being a skilled, ethical, and civil lawyer, is there enough evidence to convict you? Those questions are ones that can only be answered by each of us individually.

The premise of this article is that the standards for that self-audit of a lawyer's conduct must be both religious and legal. Those standards are inexorably intertwined. No lawyer can live a civil, ethical, and faithful life without adhering to both. The self-evaluation requires deep contemplation of those criteria.

2. See Sandra Day O'Connor, *Professionalism*, 76 WASH. U. L. Q. 5, 10 (1998) (stating "you know it when you see it" in regard to the difficulty in codifying civility standards); see also *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1963) (Stewart, J., concurring) (addressing how Justice Stewart could determine if something constituted pornography by saying, "I know it when I see it . . ."); O'Connor, *supra* 2, at 10 n.28 ("Professor [Geoffrey] Hazard warns that additional professional norms without more 'may only intensify the civil wars now edemic in the profession.'" (citing Geoffrey Hazard, *Civility Code May Lead to Less Civility*, NAT'L L.J., Feb. 26, 1990, at 13, 14)).

3. See John Roberts, *Remembering Billy Graham*, JOURNAL-ADVOCATE (Feb. 22, 2018), <https://www.journal-advocate.com/2018/02/22/remembering-billy-graham/> [<https://perma.cc/KX5G-A3QX>] (attributing this question to Christian author David Otis Fuller and as used frequently by Rev. Billy Graham).

II. THE REMEDY FOR INCIVILITY—FAITH AND RESPECT

A. *Incivility—A Contagious Disease*

Incivility is an overwhelming and contagious disease. It has spread like an epidemic in society and certainly in the legal profession. Once a person treats another to uncivil treatment, the recipient of that incivility is likely to pass it on unless moderated by the personality trait of honesty-humility.⁴ Uncivil treatment is simply thoughtless reactions to thoughtless actions. It is “tit for tat.”⁵ There is a remedy. That is the counteractive force of civility. As discussed in this Article, that force of civility must be built upon at least two sets of principles. First, and in particular for lawyers, are the principles of the law. Those principles include oaths of attorney, professionalism creeds, disciplinary rules, and the rules of law applied by the courts. Second, and even more important, are our principles of faith. Those two sets of principles are not theoretical or academic. They are standards to which lawyers must adhere.

One dilemma that must be addressed in effecting civility is that scholars, and some in our general society, differ as to the meaning of the term and its analogue, “incivility.” Some commentators argue incivility cannot be boiled down to a single definition. They contend each individual has a different definition and the definition derives from “the eye of the beholder.”⁶ Other scholars, who refer to the study of incivility as “the science of incivility,” find no difficulty in defining incivility as “rude, condescending, and ostracizing acts that violate workplace norms of respect, but otherwise appear mundane.”⁷ Others like the late Justice Sandra Day O’Connor saw no need to quibble over a precise definition. She once said, “civility is hard to codify

4. Merideth Thompson et al., *We All Seek Revenge: The Role of Honesty-Humility in Reactions to Incivility*, 17 J. BEHAVIORAL & APPLIED MGMT. 50, 60 (2016).

5. C.C. Rosen et al., *Who Strikes Back? A Daily Investigation of When and Why Incivility Begets Incivility*, 101 J. APPLIED PSYCH. 1620; see also Soo-Hye Han et al., *Is Civility Contagious? Examining the Impact of Modeling in Online Political Discussions*, 4 SOCIAL MEDIA + SOC’Y, July–Sept. 2018, at 1, 2–3 (“[H]eighted emotions caused by incivility can actually encourage others to jump into the conversation with uncivil comments of their own.”).

6. Gina Masullo Chen et al., *We Should Not Get Rid of Incivility Online*, SOCIAL MEDIA + SOC’Y, Apr. 2019, at 1, 2.

7. Lilia M. Cortina et al., *Researching Rudeness: The Past, Present, and Future of the Science of Incivility*, 22 J. OCCUPATIONAL HEALTH PSYCH. 299, 299 (2017).

or legislate,” but “you know it when you see it. . . . It’s possible to ‘disagree without being disagreeable.’”⁸

Courts have taken a position similar to that of Justice O’Connor. In a lawyer discipline case, the South Carolina Supreme Court addressed a lawyer’s contention that the term “civility” was too vague to discipline him for violation of the oath of attorney that promised civil conduct. That court simply said, “[A] person of common intelligence does not have to guess at the meaning of the civility oath. We hold . . . that the civility oath is not unconstitutionally vague.”⁹ In a similar vein, the Michigan Supreme Court addressed the argument of a lawyer regarding the unconstitutional vagueness of the concept of civility saying,

[T]hese rules are designed to prohibit only “undignified,” “discourteous,” and “disrespectful” conduct or remarks. The rules are a call to discretion and civility, not to silence or censorship, and they do not even purport to prohibit criticism. The wisdom of such rules was recognized by United States Supreme Court Justice Potter Stewart in his concurring opinion in *In re Sawyer*, 360 U.S. 622, 646, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959), in which he remarked, “A lawyer belongs to a profession with inherited standards of propriety and honor, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards.”¹⁰

In the final analysis, no particular definition is required. We do know it when we see it. The principles of our faith and the law point directly at civil, respectful conduct without necessarily defining it. Those criteria complement each other regarding our conduct. Writings applicable to our faith explain civility in many passages of scripture, essays from theologians, and directives from the Holy Father. However, although not a specific definition, the obvious meaning of civility is found in the Golden Rule, “Do unto others as you would have them do unto you.” *Luke* 6:31.

8. O’Connor, *supra* note 2, at 10.

9. *In re Anonymous Member of S.C. Bar*, 709 S.E.2d 633, 637 (S.C. 2011).

10. *Grievance Adm’r v. Fieger*, 719 N.W.2d 123, 135 (Mich. 2006); *see also* *Fieger v. Michigan Supreme Court*, 553 F.3d 955, 957 (6th Cir. 2009) (stating how Fieger brought a declaratory judgment action against the Michigan Supreme Court and Supreme Court Justices, challenging the constitutionality of the rules under which he was disciplined. The district court enjoined enforcement of the rules. The Sixth Circuit concluded Fieger did not have standing, the trial court’s orders were vacated, and the case was remanded with directions to dismiss the case.).

B. *Lawyers' Responsibility for Societal Incivility*

A primary consideration is whether lawyer incivility is significant enough to raise concern. However, most commentators appear to agree that incivility in the legal profession is rampant and destructive.¹¹

Some commentators even contend that lawyers have contributed significantly by their incivility to societal decay by failing in their responsibility as “civics teachers;”¹² that is, as authority figures for society in general and their clients in particular. That failure to act as proper civics teachers, stems from what the commentators describe as individual lawyer’s self-centered approach to life and practice.

The self-centered lawyers apparently have the view that “obligations to the spirit of the law and the community are only what they can get away with within the bounds of the law.”¹³ While these same commentators did not refer to the offending lawyers’ flawed conduct as excessive, “zealous advocacy,” that certainly is one prevalent variety of self-centered incivility. Such excess can include immorality such as intentional silence in the face of

11. See Steven Chung, *Why It Is Difficult to Achieve Civility in the Legal Profession*, ABOVE THE L. (Dec. 11, 2019, 12:45 PM), <https://abovethelaw.com/2019/12/why-it-is-difficult-to-achieve-civility-in-the-legal-profession/> [https://perma.cc/Q9FD-AZXT] (“While we pay lip service to achieving civility in the legal profession, the adversarial nature and the high stakes involved sometimes make it difficult. Opposing counsel chooses to take the low road for a number of reasons. But instead of complaining about it, you will have to learn how to deal with it.”); cf. *Today's Lawyers Are More Civil, But Not to Everyone, Commission Survey Says*, 2CIVILITY (Dec. 9, 2021), <https://www.2civility.org/todays-lawyers-are-more-civil-but-not-to-everyone-commission-survey-says/#:~:text=December> [https://perma.cc/T8BQ-6TVR] (“The vast majority of lawyers (89%) surveyed indicated that the attorneys they engage with are civil and professional.”); Jayne R. Reardon, *Civility as the Core of Professionalism*, BUS. L. TODAY (Sept. 18, 2014), https://www.americanbar.org/groups/business_law/publications/blt/2014/09/02_reardon/ [https://perma.cc/HT38-2VDX] (explaining the efforts to address and curb incivility in the legal profession and bring a rebirth of civility and professionalism to the field).

12. See Russell G. Pearce & Eli Wald, *The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 U. ARK. LITTLE ROCK L. REV. 1, 5 (2011) (“[L]awyers have contributed to the civic malaise, in and outside of the legal profession. No matter how lawyers view their role, they do serve as civics teachers who explain the appropriate responsibilities of citizenship both in their everyday practice and in their civic leadership.”).

13. *Id.*

a known misrepresentation by a client.¹⁴ Intentional misrepresentations are likely to be violations to the disciplinary rules.¹⁵

Having identified lawyer's culpability, the same commentators assert lawyers change their personal approach to the practice of law and their life to what they call a "relational self-interest, which recognizes an obligation to the public good . . ."¹⁶ Whether or not one agrees lawyers have significantly contributed to societal incivility, the legal profession's interpersonal civility and professionalism itself certainly has deteriorated.

So, the deplorable state of civility (or incivility) in our society and the legal profession being, to most, an established fact, one wonders what can be done about it. For sure, there must be change. However, the dilemma is how that is to be accomplished. It is certain that change will not occur by the tap of a magic wand. Rather, it will require individual self-discipline, mentoring and education, and individual decisions about how each person can make a difference.

The source of generating civility, whether described as secular or faith based, is morality. That is where we must begin to build civility. As one commentator has observed:

Civility is . . . morality: adherence to the bonds of society. Incivility is its opposite: anomie, the loss of the limits of those social bonds. That loss means

14. See *In re Austern*, 524 A.2d 680, 682–83 (D.C. 1987) (concluding the attorney violated his professional responsibility by concealing a material fact that aided his client with a sham transaction); see also Paula Schaefer, *Harming Business Clients with Zealous Advocacy: Rethinking the Attorney Advisor's Touchstone*, 38 FLA. ST. U. L. REV. 251, 255 (2011) ("[A] popular conception of zealous advocacy is that it obligates an attorney to suspend personal morality in favor of zealously pursuing the client's agenda. Adherents to this view believe that lawyers must act with unmitigated zeal on behalf of their clients regardless of any personal moral issues with the client's aims.") (footnotes omitted).

15. See TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 4.01, reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A. (Tex. State Bar R. art. X, § 9) ("In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client."); see also *Flume v. State Bar of Texas*, 974 S.W.2d 55, 61 (Tex. App.—San Antonio 1998, no pet.) (describing the facts in a disciplinary case where a lawyer "obtained a file-stamped copy of an unsigned TRO on October 11, 1991, filed in the date for a hearing for October 23, 1991, and had a process server deliver this document with a file-stamped copy of a petition for divorce to Mr. Ringel as he arrived from an out-of-town trip at the San Antonio airport. As a licensed attorney, Flume knew that she was serving a non-lawyer an ineffective TRO containing a hearing date. She, nevertheless, did so with the intention 'to slow him down.'").

16. Pearce & Wald, *supra* note 12, at 4.

that society loses its cohesion. Since cohesion is the cement that holds society together, the presence of anomie in itself becomes a barometer of societal decay.¹⁷

We need not search for the source of that “morality” in civility. It is found in our faith. The morality of civility is the sanctity of respect for others. Our faith teaches us “The Golden Rule.” The Golden Rule is immutable. Unfortunately, it is too often disregarded even in our faith.

III. THE PURSUIT OF CIVILITY—CATHOLIC SOCIAL TEACHING, LEGAL ETHICS, AND PROFESSIONALISM

In order to curb societal decay, the morality of civility must increase and prevail. Civility in personal interaction and in the face of unbridled incivility is difficult to sustain. Happy talk about civility will not make a difference. Rather, a muscular offensive of civility must be initiated. That will only come about when lawyers individually and intentionally engage to not only treat everyone with civility and respect, but to refuse to passively tolerate uncivil conduct. Civil conduct must become the demeanor and spirit of choice. It can become an anti-contagion, an antidote, to incivility.

Accordingly, there are at least “Three Steps” each lawyer must take to effect meaningful change in the environment of incivility in the practice of law and our society.

First, **Introspection and Self-Discipline**. Lawyers must recognize their own failings. Then, they must set goals to exercise self-discipline in what they do and what they say in furtherance of civility. Acrimony and “cheap shots” are certainly uncivil and unproductive.

Second, **Education and Mentoring**. There must be more practical, hands-on education and mentoring by every lawyer of conscience. This must be accomplished by more than bar association and law school efforts. We, the rank-and-file lawyers, must teach our beginning lawyers how to conduct themselves to effectively represent their clients and overcome incivility. By mentoring individual beginning lawyers, we will demonstrate how the beginning lawyers can be effective, successful, and avoid becoming “sand in the gears” of justice.¹⁸

17. Robert C. L. Moffat, *Incivility as a Barometer of Societal Decay*, 1 FLA. PHIL. REV. 63, 70 (2001).

18. See *Karton v. Ari Design & Constr., Inc.*, 276 Cal. Rptr. 3d 46, 55 (Cal. Ct. App. 2021) (describing how the profession “exists to help people resolve disputes” and incivility will wear down on this system).

Third, **Individual Decision of How to Make a Difference.** This is a corollary to the first two steps. The profession must spend less time focused upon and talking about the hypothetical “boogie man” of incivility; the anonymous, faceless “other guy” unprofessional lawyer that we contend needs to change. So, civility must be presented less abstractly and more tangibly. Each lawyer must answer the question: “What are you going to do to make a difference?” Answering that question and proceeding toward a personal goal will require deliberate planning, self-discipline, and perseverance. Those are qualities that are sorely lacking in many lawyers and members of our society today.

Adherence to two systematic canons, one of faith and one of professional practice, will assist lawyers in performing the “Three Steps.” First, the Seven Themes of Catholic Social Teaching (CST).¹⁹ The Seven Themes of CST, among other things, direct the faithful to actively engage in selfless, positive, civil action in all aspects of human conduct. Second, the professional creeds and oaths by which all lawyers are bound must be adhered to conscientiously and actively. Those rubrics require lawyers to act and perform their duties with civility, respect, and honesty.

These two bodies of principles fit hand in glove. They espouse ethical and respectful treatment and service to others. Self-interest is notably absent from them. They are founded in morality. These rubrics direct action. For instance, the Third Theme of CST, Rights and Responsibilities, directs in part, “Corresponding to these [human] rights are duties and responsibilities—to one another”²⁰ Add to that the Golden Rule that directs one to “do unto others.” Also, the Texas Oath of Attorney is a solemn pledge that states in part, “*I will conduct myself with integrity and civility*”²¹ The lesson of these principles of civility cannot be plucked out of thin air. Action is required. We cannot stand idly by and allow incivility to continue the destruction of rational thinking and our society.

19. CST is based solidly upon Scripture, the *Catechism*, and pronouncements of the Vatican and the United States Council of Catholic Bishops (USCCB).

20. *Rights and Responsibilities*, UNITED STATES COUNCIL OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/rights-and-responsibilities> [https://perma.cc/MGZ6-F228].

21. OATH OF ADMISSION, STATE BAR OF TEX., https://www.texasbar.com/AM/Template.cfm?Section=New_Lawyer_Forms_and_Fees1&Template=/CM/ContentDisplay.cfm&ContentID=29062 [https://perma.cc/SU6V-77G6].

IV. CATHOLIC SOCIAL TEACHING THEMES²²

CST themes are not often discussed in connection with what lawyers call professionalism of which civility is central. However, those themes should be.²³

Adherence to the principles of CST is centered on conscious, self-disciplined action, just as is civility. “Social doctrine is the proclamation of faith made by the Magisterium in the face of social realities. Gathered in a compendium, this defen[s]e is translated into indications, counsels and exhortations by which the Church encourages her faithful to be responsible citizens.”²⁴ CST is not merely a set of motivational messages. Rather, the “exhortations” contained in CST are “incitements” to action.

22. Be assured that other faiths are steeped in directives that require civility. For instance, Rabbi Mark S. Miller has said the following:

Judaism teaches that each time you embarrass a human being you thereby diminish G-d, the Creator of that human being. Inflicting psychological damage upon another person through verbal terrorism is, in some regards, worse than causing physical damage, for physical pain may lessen over time, whereas the pain of public humiliation may not.

Rabbi Mark S. Miller, *Judaism Teaches the Importance of Civility*, THE ORANGE CNTY. REG. (July 29, 2015, 12:00 AM), <https://www.oregister.com/2015/07/29/judaism-teaches-the-importance-of-civility/> [<https://perma.cc/33TG-8SRQ>]. As to Islam, the Quran advocates peace and cooperation among nations. *Surah Al-Mumtahanah* 60:8, states, “[God] does not forbid you from those who do not fight you because of religion and do not expel you from your homes—from being righteous toward them and acting justly toward them.”

23. As to application of CST to lawyers’ lives, see Jennifer M. Mone, *Catholic Social Teaching and American Legal Practice: A Practical Response*, 30 FORDHAM URB. L.J. 299, 303 (2002) “The synthesis of faith and the profession of law can be found in two areas: in the lawyer’s discretion, and in the lawyer’s relationships and interaction with others in the day-to-day work life.” See generally Avery Cardinal Dulles, S.J., *Catholic Social Teaching and American Legal Perspective*, 30 FORDHAM URB. L.J. 277, 278 (2002) (explaining how Catholic social theory can make a significant contribution to the legal field); Gregory A. Kalscheur, S.J., *Ignatian Spirituality and the Life of the Lawyer: Finding God in All Things—Even in the Ordinary Practice of Law*, 46 J. CATH. LEG. STUD. 7, 28 (2007) (“The light shed by the life of Ignatius illuminates an extraordinary openness to finding God in everyday life. This is an extraordinary way of living in which all of us can participate in our ordinary practice of the law.”); cf. The practice of law is not the only profession that should apply CST. Consider CST in the practice of medicine. See William G. White, *A Catholic Perspective on Health Care Reform*, INSIDE THE VATICAN, <https://insidethevatican.com/magazine/a-catholic-perspective-on-health-care-reform/> [<https://perma.cc/C8RX-RWYV>] (“[R]estoring the Hippocratic ethic of dedication only to the patient, and independence of physicians from the stranglehold of large institutions, will provide patients with the assurance that their needs and only their needs are the basis for their personal physician’s recommendations.”).

24. *What Is the Social Doctrine of the Church*, OPUS DEI, <https://opusdei.org/en/article/what-is-the-social-doctrine-of-the-church/#:~:text=Social%20doctrine%20is%20the%20proclamation,faithful%20to%20be%20responsible%20citizens> [<https://perma.cc/X4KP-7VJL>].

The general propositions of the Seven Themes of CST are set out in the following summaries:²⁵

1) The Life and Dignity of the Human Person

“The Catholic Church proclaims that human life is sacred and that the dignity of the human person is the foundation of a moral vision for society.”²⁶

Scripture: “Love one another, contribute to the needs of others, live peaceably with all.” *Romans* 12: 9–18.

Papal Pronouncements: “Human persons are willed by God; they are imprinted with God’s image. Their dignity does not come from the work they do, but from the persons they are.” ST. JOHN PAUL II, CENTESIMUS ANNUS ON THE HUNDREDDTH YEAR ¶ 11 (1991).

2) The Call to Family, Community, and Participation

“The person is not only sacred but also social. How we organize our society—in economics and politics, in law and policy—directly affects human dignity and the capacity of individuals to grow in community.”²⁷

Scripture: “Those who love God must love their brothers and sisters.” *1 John* 4:19–21.

Papal Pronouncements: “Subsidiarity respects personal dignity by recognizing in the person a subject who is always capable of giving something to others.” POPE BENEDICT XVI, CARITAS IN VERITATE CHARITY IN TRUTH ¶ 57 (2009).

25. *Seven Themes of Catholic Social Teaching*, UNITED STATES COUNCIL OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/seven-themes-of-catholic-social-teaching> [<https://perma.cc/NE2A-V8Q4>].

26. *Life and Dignity of the Human Person*, UNITED STATES COUNCIL OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/life-and-dignity-of-the-human-person> [<https://perma.cc/SQ9J-DESP>].

27. *Call to Family, Community, and Participation*, UNITED STATES COUNCIL OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/call-to-family-community-and-participation> [<https://perma.cc/NG6J-99ZY>].

3) Rights and Responsibilities

The Catholic tradition teaches that human dignity can be protected and a healthy community can be achieved only if human rights are protected, and responsibilities are met. Therefore, every person has a fundamental right to life and a right to those things required for human decency. Corresponding to these rights are duties and responsibilities—to one another, to our families, and to the larger society.²⁸

Scripture: “Just as you did it to the least of these, you did it to me.” *Matthew* 25:31–46.

Papal Pronouncements:

In human society one man’s natural right gives rise to a corresponding duty in other men; the duty, that is, of recognizing and respecting that right. Every basic human right draws its authoritative force from the natural law, which confers it and attaches to it its respective duty. *Hence, to claim one’s rights and ignore one’s duties, or only half fulfill them, is like building a house with one hand and tearing it down with the other.*

ST. JOHN XXIII, PACEM IN TERRIS PEACE ON EARTH ¶ 30 (1963) (emphasis added).

4) Options for the Poor and Vulnerable

“A basic moral test is how our most vulnerable members are faring. In a society marred by deepening divisions between rich and poor, our tradition recalls the story of the Last Judgment (Mt 25:31-46) and instructs us to put the needs of the poor and vulnerable first.”²⁹

Scripture: “Blessed are the poor, theirs is the kingdom of God.” *Luke* 6:20–23.

Papal Pronouncements: “Love for others, and in the first place love for the poor, in whom the Church sees Christ himself, is made concrete in the

28. *Rights and Responsibilities*, *supra* note 20.

29. *Options for the Poor and Vulnerable*, UNITED STATES CONFERENCE OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/option-for-the-poor-and-vulnerable> [<https://perma.cc/KGU5-RU7D>].

promotion of justice.” ST. JOHN PAUL II, CENTESIMUS ANNUS ON THE HUNDREDTH YEAR ¶ 58 (1991).

5) The Dignity of Work and the Rights of Workers

“The economy must serve people, not the other way around. Work is more than a way to make a living; it is a form of continuing participation in God’s creation.”³⁰

Scripture: “Practice integrity in your work.” *Luke* 3:10–14

Papal Pronouncements: “Work is a good thing for man—a good thing for his humanity—because through work man *not only transforms nature*, adapting it to his own needs, but he also *achieves fulfillment* as a human being and indeed, in a sense, becomes ‘more a human being.’” ST. JOHN PAUL II, LABOREM EXERCENS ON HUMAN WORK, ¶ 9 (emphasis in original).

6) Solidarity

“We are one human family whatever our national, racial, ethnic, economic, and ideological differences. We are our brothers and sisters’ keepers, wherever they may be. Loving our neighbor has global dimensions in a shrinking world. At the core of the virtue of solidarity is the pursuit of justice and peace.”³¹

Scripture: “If one member of Christ’s body suffers, all suffer. If one member is honored, all rejoice.” *1 Corinthians* 12:12–26.

Papal Pronouncements:

[Solidarity] is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a firm and persevering determination to commit oneself to the

30. *The Dignity of Work and the Rights of Workers*, UNITED STATES CONFERENCE OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/the-dignity-of-work-and-the-rights-of-workers> [https://perma.cc/S4AH-9C84].

31. *Solidarity*, UNITED STATES CONFERENCE OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/solidarity> [https://perma.cc/D7VB-ZGLU].

common good; that is to say, to the good of all and of each individual, because we are all really responsible for all.

ST. JOHN PAUL II, SOLLICITUDO REI SOCIALIS ON SOCIAL CONCERN ¶ 38 (1987).

7) Care for God's Creation

“We show our respect for the Creator by our stewardship of creation.”³²

Scripture: “Humans are commanded to care for God's creation.” *Genesis* 2:15.

Papal Pronouncements:

The environment is God's gift to everyone, and in our use of it we have a responsibility towards the poor, towards future generations and towards humanity as a whole. . . . Our duties towards the environment are linked to our duties towards the human person, considered in himself and in relation to others. It would be wrong to uphold one set of duties while trampling on the other.

POPE BENEDICT XVI, CARITAS IN VERITATE CHARITY IN TRUTH ¶¶ 48, 51.

Each theme directs that it is not oneself that is the most important part of society. Rather, CST, Scripture, and pronouncement of the Holy Father direct we must act to support and treat with dignity our family, friends, and all members of our society. Further, each address human dignity, responsibility, respect, and civility. Those are the basics. Again, that is the message of the Golden Rule, “Do unto others as you would have them do unto you.” *Luke* 6:31.

32. *Care for Creation*, UNITED STATES CONFERENCE OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/care-for-creation> [<https://perma.cc/QSE7-9V8N>].

V. THEMES OF ACCEPTABLE LAWYER CONDUCT

Acceptable lawyer conduct is not directed only by secular rules that are cited below. The obligation of lawyers to conduct themselves honestly, with dignity, and respect for others is directed by a higher authority, the *Word of the Lord*. A lawyer's conduct must always be in accordance with the *Golden Rule*.

If you have read and are at least trying to understand the themes of CST, you are on the right track to doing what we all swore we would do when we became lawyers, essentially, to do the right thing.³³

For instance, our Texas oath of attorney says:

I . . . do solemnly swear that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that *I will conduct myself with integrity and civility in dealing and communicating with the court and all parties*. So help me God.³⁴

Most prominent in that Oath are the following:

- “*So help me God.*”
- “*I will honestly demean myself.*”
- “*I will conduct myself with integrity and civility in dealing and communicating with the court and all parties.*”³⁵

Upon reciting this type of oath, the Lord has been promised the lawyer will act honestly, with integrity, and civility. That does it. It is the ultimate promise. However, on this earth, disciplinary rules are also needed to assure lawyers conform to specific standards of conduct.³⁶

33. See *infra* notes 34–49 where elements of the Oath of Attorney and the Texas Lawyers' Creed are cross referenced with CST.

34. OATH OF ADMISSION, *supra* note 21; see TEX. GOV'T CODE ANN. § 82.037 (emphasis added) (codifying the Texas Oath of Admission for new lawyers).

35. OATH OF ADMISSION, *supra* note 21.

36. See TEX. DISCIPLINARY RULES PROF'L CONDUCT pmbL ¶ 10 (“10. The Texas Disciplinary Rules of Professional Conduct are rules of reason. The Texas Rules of Professional Conduct define proper conduct for purposes of professional discipline.”); see also MODEL RULES OF PROF'L CONDUCT pmbL ¶ 19 (AM. BAR ASS'N 2024) (“Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process.”).

Every jurisdiction requires lawyers to take an oath swearing to uphold the laws.³⁷ Many include the promises cited in the Texas oath. Scores of jurisdictions, as well as voluntary legal professional organizations, have elaborated upon the lawyers' specifically identified obligations stated in oaths by promulgating *voluntary, aspirational* "creeds" similar to the Texas Lawyer's Creed.³⁸ It is not an overstatement to say that lawyers' obligations regarding honesty, integrity, and civility are viewed as being universal.³⁹ Nevertheless, while the creeds that describe acceptable lawyer conduct are aspirational, the jurisdictions that have promulgated them expect lawyers to voluntarily adhere to the stated principles.⁴⁰

Practicing law is a privilege.⁴¹ It is a unique opportunity. Relatively few members of society obtain the license to practice law. However, when a

37. Carol R. Andrews, *The Lawyer's Oath: Both Ancient and Modern*, 22 GEO. J. LEGAL ETHICS 3, 4 (2009).

38. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM. *See generally* Douglas S. Lang & John Montgomery, *Civil Conduct: A White Paper on Increasing the Professionalism of Lawyers*, 78 TEX. B.J. 714 (2015) (encouraging civility oaths and professional development tactics to strengthen the professionalism of lawyers); *see also* CONFERENCE OF CHIEF JUSTICES, COMMENDING TO THE CONFERENCE OF CHIEF JUSTICES THE AMERICAN CIVIL TRIAL BAR ROUNDTABLE POLICY PAPER ON INCREASING THE PROFESSIONALISM OF AMERICAN LAWYERS RESOLUTION 1–2 (Jan. 28, 2015), https://ccj.ncsc.org/__data/assets/pdf_file/0013/23413/01282015-american-civil-trial.pdf [<https://perma.cc/EEZ8-EYK9>] (describing the activities pursued to increase professionalism for lawyers in the United States).

39. David A. Grenardo, *A Lesson in Civility*, 32 GEO. J. LEGAL ETHICS 135, 140 (2019) ("Despite episodes of incivility in varying degrees in the legal profession, the professional norm remains civility." (internal citations omitted)).

40. *See* Carol R. Andrews, *The Lawyer's Oath: Both Ancient and Modern*, 22 GEO. J. LEGAL ETHICS 3, 4 (2009); THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM ("These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reenforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence."); *see also* PNS Stores, Inc. v. Rivera, 379 S.W.3d 267, 276–77 (Tex. 2012) ("The Lawyer's Creed, however, is aspirational. It does not create new duties and obligations enforceable by the courts beyond those existing as a result of (1) the courts' inherent powers and (2) the rules already in existence.").

41. It is often said, practicing law is a privilege not a right. There are many historical cases that say exactly that. *See generally* James J. Booker, *The "Right" to Practice Law*, 1 DUKE B.J. 249 (1951) ("[A] law license is 'something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he [the lawyer] can only be deprived by the judgment of the court, for moral or professional delinquency.'"); *see also* Ostroff v. New Jersey Supreme Court, 415 F. Supp. 326, 328 (D. N.J. 1976) ("Quite clearly the practice of law is not a matter of grace, . . . but of right for one who is qualified by his learning and his moral character." *Baird v. State Bar of Arizona*, 401 U.S. 1, 8, 91 S. Ct. 702, 707, 27 L. Ed. 2d 639 (1971), citing *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 239, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957). This 'right', however, has never been among

privilege is bestowed upon a person, there is a corresponding duty that arises. That maxim is not only secular. St. John XXIII said this about corresponding duties, “[O]ne man’s natural right gives rise to a corresponding duty in other men; the duty, that is, of recognizing and respecting that right.”⁴² Just as rights give rise to corresponding duties to others, the same applies when one obtains privileges.

Likewise, the Texas Lawyer’s Creed emphasizes a lawyer’s duties to others. It says in part:

“I. OUR LEGAL SYSTEM

A lawyer *owes to the administration of justice personal dignity, integrity, and independence*. A lawyer should always adhere to the highest principles of professionalism.⁴³

1. I am passionately proud of my profession. Therefore, “*My word is my bond*.”⁴⁴
2. I am responsible *to assure that all persons have access to competent representation regardless of wealth or position in life*.⁴⁵
3. *I commit myself to an adequate and effective pro bono program*.⁴⁶

those held to be ‘fundamental’ under the Constitution, nor do any of the cases suggest that it should be.”); *see also Ex parte Garland*, 71 U.S. 333, 379 (1866) (“The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.”); *cf. Bradwell v. State of Illinois*, 83 U.S. 130, 132 (1872) (explaining how a woman was not denied her constitutional rights by the state who denied her the right to be admitted to the bar because she was a woman. When the Supreme Court of Illinois denied Bradwell’s application to practice law, it reasoned “[t]hat God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth.” *In re Bradwell*, 55 Ill. 535, 1896 WL 5503, at *3 (Ill. 1869).”).

42. *See Rights and Responsibilities*, *supra* note 20 (citing ST. JOHN XXIII, *PACEM IN TERRIS PEACE ON EARTH* ¶ 30 (1963)).

43. “Practice integrity in your work.” *Luke* 3:10–14

44. *Id.*

45. *See Options for the Poor and Vulnerable*, *supra* note 29 (“A basic moral test is how our most vulnerable members are faring. In a society marred by deepening divisions between rich and poor . . .”).

46. *Id.*

4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.⁴⁷
5. I will always be conscious of *my duty to the judicial system*.⁴⁸

In fact, some court jurisdictions, notably the United States District Court for the Northern District of Texas in the *Dondi* opinion, have made it known that not only will they require civil conduct,⁴⁹ they will enforce civil conduct by the court's inherent powers to control the activity in the courts.⁵⁰ That rule not only still exists in that district, it has been adopted across the United States.⁵¹

47. See *The Dignity of Work and Rights of Workers*, *supra* note 30 (citing "Practice integrity in your work." *Luke* 3:10–14).

48. THE TEXAS LAWYER'S CREED—A MANDATE FOR PROFESSIONALISM.

49. See *Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 289 (N.D. Tex. 1988). The court announced that it would not tolerate uncivil behavior and imposed new standards of conduct for practice in its district: the Dallas Bar Association's Lawyer's Creed and Guidelines of Professional Courtesy. The Dallas creed and guidelines—which expressly provide for civil conduct—preceded the Texas Lawyer's Creed and remain part of the fabric of the court's rules of conduct. Finally, the court made it clear:

We think the standards we now adopt are a necessary corollary to existing law, and are appropriately established to signal our strong disapproval of practices that have no place in our system of justice and to emphasize that a lawyer's conduct, both with respect to the court and to other lawyers, should at all times be characterized by honesty and fair play.

Id. at 288–89.

50. See *id.* at 287 ("We are authorized to protect attorneys and litigants from practices that may increase their expenses and burdens (Rules 26(b)(1) and 26(c)) or may cause them annoyance, embarrassment, or oppression (Rule 26(c)), and to impose sanctions upon parties or attorneys who violate the rules and orders of the court (Rules 16(f) and 37).").

51. See *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct, to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001-7*. The guidelines are derived from the decision rendered in [*Dondi*.?]; *In re Armstrong*, 487 B.R. 764, 773 (E.D. Tex. 2012) ("The implication that the Northern District encourages an attorney to advance claims the attorney knows are baseless is especially ironic. The standards of conduct governing conduct in the Eastern District of Texas, set out in Eastern District Local Rule AT-3, are those enumerated in [*Dondi*.?]; *In re Mortg. Analysis Portfolio Strategies, Inc.*, 221 B.R. 386, 389 (Bankr. W.D. Tex. 1998) ("Under Local Rule 1001(g) all counsel are to observe the standards of conduct set out in [*Dondi*.?]; see also *In re Anonymous Member of the S.C. Bar*, 709 S.E.2d 636, 636–38 (S.C. 2011) (disciplining a lawyer for conduct prejudicial to the administration of justice and violation of the lawyer's oath that includes "civility").

A lawyer's obligations of honesty, integrity, and civility are universally recognized as simply "doing the right thing."⁵²

VI. THE THEMES OF CATHOLIC SOCIAL TEACHING, OATH OF ATTORNEY, AND THE LAWYERS' CREED—A CURE FOR INCIVILITY (IF ACTUALLY PRACTICED)

We all know there are many horrible things going on in the world today. War, murder, genocide, horrific political fights, you name it. We can do little individually to stop those things, but we do have the ability to at least treat every person, regardless of that person's station in life, with civility. That is, as directed by CST, the Oath of Attorney, and the Lawyer's Creed, we must act civilly and accord them dignity and respect. Simply stated, "if actually practiced," civil conduct can make a difference.

First, consider that the common daily dose of incivility shows up everywhere, on television, radio, on the street, and in our personal interactions. One writer commented about how civility, specifically respect, has seemingly disappeared from common word usage.

There is [a word], which seems to have disappeared from our vocabulary: 'Respect.' This word loomed large in my childhood. We used to sign letters, 'Respectfully yours.' 'Respect your elders' was a frequent admonition. I wonder if the decline in this word's usage correlates with the loss of the behavior it represents.⁵³

Incivility also shows up in common everyday interaction where people simply treat each other with disdain. In addition, people show little, if any, respect for the downtrodden.⁵⁴

Unfortunately, many lawyers are abusive to each other. Apparently, those uncivil lawyers consider abusive, uncivil behavior to be "zealous advocacy." Of course, that is absurd. Such behavior has been labeled appropriately by

52. MARK TWAIN & CHARLES NEIDER, *THE AUTOBIOGRAPHY OF MARK TWAIN* (2000) ("It is never wrong to do the right thing.").

53. Natasha Josefowitz, *Civility and Respect—Two Words That Are No Longer in Use Today*, SDNEWS.COM (May 1, 2022), <https://sdnews.com/civility-and-respect-two-words-that-are-no-longer-in-use-today/> [<https://perma.cc/4UV8-TAA3>].

54. See *Call to Family, Community, and Participation*, *supra* note 27 ("We believe people have a right and a duty to participate in society, seeking together the common good and well-being of all, especially the poor and vulnerable."); *Options for the Poor and Vulnerable*, *supra* note 29.

some judges as “sand in the gears” of justice.⁵⁵ Abusive behavior by lawyers is simply uncontrolled, irresponsible reaction. That evidences the absence of the ability to responsibly exercise discretion, a critical skill of any lawyer.⁵⁶

As stated above, incivility infects our society like a contagious disease. People tend to react to uncivil conduct, i.e., name calling, prejudice, self-centeredness, by responding in kind to their attacker or even others.⁵⁷ However, when we respect and accord dignity to people, that civil, respectful treatment emanates out from us to the people we help and beyond. Acts of civility and respect counteract incivility. They are medicinal.

VII. STRATEGIC ACTION TOWARD CIVILITY

A. *Criticism of Incivility is Insufficient*

Criticism about the uncivil conduct of lawyers and the failure of lawyers and judges to curb incivility is not new. Criticism is necessary, but criticism alone is abjectly insufficient.

Those who have offered their criticisms cite unnecessarily acrimonious behavior as, among other things, the cause of the waste of clients’ time and money.⁵⁸ Chief Justice Warren Burger went beyond citing the effects of incivility. He forcefully rebuked lawyers and judges for their failure to curb incivility. He saw this inattention as a contributing factor to the growth of universal incivility even in 1971. He urged the following:

It may seem strange to some that such obvious truths as these[] should be uttered. But perhaps *our failure to state them more often and practice them more faithfully has brought us to the need—the need as I see it at least—to discuss so simple and elementary a subject as the necessity for civility* in all the affairs of men—and especially

55. *Karton v. Ari Design & Constr., Inc.*, 276 Cal. Rptr. 3d 46, 55 (Cal. Ct. App. 2021).

56. *See* Mone, *supra* note 23, at 303 (explaining faith impacts how attorneys interact and treat one another).

57. *See* C.C. Rosen et al., *Who Strikes Back? A Daily Investigation of When and Why Incivility Begets Incivility*, 101 J. APPLIED PSYCH. 1620 (2016); *see also* Han et al., *supra* note 5, at 1, 7 (revealing people exposed to incivility responded by voicing their frustration with the incivility); Thompson, *supra* note 4, at 60; Diane Kalen-Sukra, *Understanding the Root Causes of Incivility, Bullying, and Toxic Culture*, MUNICIPAL WORLD (Apr. 2019), <https://www.municipalworld.com/feature-story/incivility-root-causes/> [<https://perma.cc/V7PR-DTHB>].

58. *Karton*, 276 Cal. Rptr. 3d at 56.

men of the law. Our failure is collective and our responsibility total. *The solution must be one shaped and executed by lawyers, law professors and judges.*⁵⁹

It is logical to presume that the dearth of effective efforts, now as in 1971, to change the culture are blocked by complacency that has worn each of us down because of the incessant bombardment of uncivil behavior. Psychologists refer to this syndrome as a type of coping or defense mechanism.⁶⁰

So, we can talk about cultivating civility. We can even talk a lot about that, but talk is “cheap.” Lip service merely uses up oxygen. Real action, concerted effort is required to make a difference.

Now is the time to begin. The first two steps, described above, mindful awareness of one’s own conduct and related self-control in refusing to personally exhibit incivility, are within the sole control of each lawyer. This challenge is certainly not asking too much of any lawyer.

Lawyers are already obligated to exercise self-discipline to conform to the ethical requirements of the disciplinary rules and the “oath of attorney.”⁶¹ The Texas Disciplinary Rules of Professional Conduct demand such discipline in myriad ways, but among the most obviously self-dependent is competence, which requires a degree of introspection and awareness of one’s strengths and weaknesses:

59. Warren E. Burger, *Excerpts From the Chief Justice's Speech on the Need for Civility*, N.Y. TIMES (May 19, 1971), <https://www.nytimes.com/1971/05/19/archives/excerpts-from-the-chief-justices-speech-on-the-need-for-civility.html> [<https://perma.cc/873W-3UCL>] (emphasis added).

60. See Mariagrazia Di Giuseppe et al., *Stress, Burnout, and Resilience Among Healthcare Workers During the COVID-19 Emergency: The Role of Defense Mechanisms*, 18 INT'L J. ENV'T RSCH. & PUB. HEALTH, May 14, 2021, at 1, 2 (“In addition to conscious coping mechanisms, individuals rely on unconscious operations known as defense mechanisms, which can mediate reactions to traumatic experiences and protect the individual from the awareness of feelings and thoughts of internal conflicts and external stressors.”).

61. See TEX. GOV'T CODE § 82.037 (requiring each person admitted to practice law in the state to take an oath); see also *State Bar of Texas Oath and Swearing In*, TEXAS NOTARY LIVE, <https://img1.wsimg.com/blobby/go/912235a6-e26c-464b-8cfa-02424844a995/Texas%20State%20Bar%20Oath%20of%20OfficeForm.pdf> [<https://perma.cc/RK9J-HDNX>] (“I . . . do solemnly swear that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that *I will conduct myself with integrity and civility in dealing and communicating with the court and all parties.* So help me God.”) (emphasis added); see also *Oath of Admission to The Florida Bar*, THE FLA. B., <https://www.floridabar.org/prof/regulating-professionalism/oath-of-admission/> [<https://perma.cc/Y496-6G3C>] (providing a similar “oath” to the State Bar of Texas); *Attorney's Oath*, THE STATE BAR OF CAL., <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Attorneys-Oath> [<https://perma.cc/6Q3L-XVE6>].

Rule 1.01. Competent and Diligent Representation (a) A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence⁶²

Oaths are not complacent recitations. Just as Rule 1.01 demands competence, an oath is a demand on oneself. It is “a solemn attestation of the truth or inviolability of one's words.”⁶³ Oaths of attorneys typically require, among other things, that lawyers conduct themselves civilly, i.e., “I will conduct myself with integrity and civility”⁶⁴

Likewise, the Catechism of the Catholic Church makes a demand in the same vein as Rule 1.01 and the Oath. The Catechism demands respect. It says, “Respect for the reputation and honor of persons forbids all detraction and calumny in word or attitude.”⁶⁵

VIII. MOBILIZING FOR CHANGE

The “Three Step Plan” requires lawyers of conscience to take action, not merely to talk about action. As Jill Switzer, a wise and experienced California lawyer, made clear: “Everyone is pleading to ‘tone down the rhetoric.’ Who should set the tone? Why not us?”⁶⁶

Ms. Switzer has focused on the source of the needed action. It is “us.”

The first of the Three Steps, **self-discipline** is the key. Cultivating self-discipline will require awareness, mentoring, and hard work.

Aristotle identified how discipline can affect the way people treat others. He observed, “anybody can become angry—that is easy . . . but to be angry with . . . the right person, and to the right amount, and at the right time, and for the right purpose, and in the right way—this is not within everybody's

62. TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT R 1.01 (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”).

63. *Oath*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/oath> [<https://perma.cc/4NA3-H6FX>].

64. *See supra* note 51 and accompanying text (identifying several state oaths).

65. CATECHISM OF THE CATHOLIC CHURCH 600, ¶ 2507 (1992).

66. Jill Switzer, *Incivility and Rudeness In the Legal Profession*, ABOVE THE L. (Oct. 31, 2018, 4:59 PM), <https://abovethelaw.com/2018/10/incivility-and-rudeness-in-the-legal-profession/> [<https://perma.cc/F9VP-RF17>].

power”⁶⁷ Even the undisciplined can learn.⁶⁸ The discipline lawyers must exercise to make a difference requires most to “self- re-wire.”

Self-discipline also requires “restraint” and “responsibility.” As to restraint, “civility works as a filter that selects for expression what is fitting in both content and form for a particular situation, person, and purpose. Civility is a buffer between our primitive expressive impulses and the delicate threads of social life.”⁶⁹ Responsibility demonstrates a concern for the community showing that “we are aware that our communication has consequences; that is, the potential to positively or negatively affect others.”⁷⁰

Unfortunately, all too often, too many lawyers do not care. Many are complacent about civility or even happy with their customary uncivil behavior. Those lawyers appear totally unaware of any concept that “dignity of the human person is the foundation of a moral vision for society.”⁷¹ However, we cannot tolerate the incivility of others. We cannot sit idly by as “social loafers”⁷² passing off the responsibility to exercise self-control and mentoring to others.⁷³

To assure change, lawyers must address the second of the Three Steps, **“Education and Mentoring.”** Each lawyer must focus on mentoring beginning lawyers since they, hopefully, are not irreversibly infected with the legal profession’s incivility contagion. The concept of civility must be engrained into all lawyers, but especially beginning lawyers, to impress on them, repeatedly, that incivility is “sand in the gears” of justice.⁷⁴

67. Jan L. Jacobowitz, *Negative Commentary—Negative Consequences: Legal Ethics, Social Media, and the Impact of Explosive Commentary*, 11 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 312, 352 (2021) (quoting ARISTOTLE, THE NICOMACHEAN ETHICS bk. II, at 111 (T.E. Page et al. eds., H. Rackham trans., Harvard Univ. Press rev. ed. 1934) (c. 384 B.C.E.)).

68. See Mark Muraven, *Building Self-Control Strength: Practicing Self-Control Leads to Improved Self-Control Performance*, 46 J. EXPERIMENTAL SOC. PSYCH. 465, 465 (2010) (“Self-control performance may be improved by the regular practice of small acts of self-control.”).

69. Shelley D. Lane & Helen McCourt, *Uncivil Communication in Everyday Life: A Response to Benson’s ‘The Rhetoric of Civility,’* 3 J. CONTEMP. RHETORIC 17, 21 (2013) (citing Jamie Harden Fritz, *Civility in the Workplace*, Spectra 47, 2011, at 13).

70. *Id.*

71. *Seven Themes of Catholic Social Teaching*, *supra* note 25.

72. Social loafing is “the tendency for individuals to expend less effort when working collectively than when working individually.” See Michaëla Schippers, *Social Loafing Tendencies and Team Performance: The Compensating Effect of Agreeableness and Conscientiousness*, 13 ACAD. OF MGMT LEARNING & EDUC. 62, 62 (2014) (reviewing the impact of social loafing on team performance) (citations omitted).

73. *Life and Dignity of the Human Person*, *supra* note 26 (citing *Romans* 12:9–18 (“Love one another, contribute to the needs of others, leave peaceably with all.”)).

74. *Karton v. Ari Design & Construction, Inc.*, 276 Cal. Rptr. 3d 46, 55 (Cal. Ct. App. 2021).

Then, the third of the Three Steps: **Individual Decision of How to Make a Difference**, must be addressed. Each lawyer must resolve not to knuckle under to incivility. The adage “don’t let ‘em get your goat,” as colloquial as the saying is, certainly applies.⁷⁵ All lawyers must be mindful of St. Luke’s instruction, “Practice integrity in [our] work.”⁷⁶ Then, the lawyer must dig in with resolve and a stated purpose to build civility.

A. Mentoring is the Foundation for A Culture of Civility

Each lawyer must resolve to teach civility. That requires affirmative, impactful, out-facing action to mentor beginning lawyers. Summoning lawyers to mentor is not asking for a sacrifice of one’s health or treasure. Civility can be taught and learned. Individual lawyers must teach.⁷⁷ Effective mentoring is assuredly an antidote for incivility.

Mentoring is teaching. Typically, a mentoring relationship is between a more senior individual, the mentor, and a less experienced person, the mentee. The mentor uses life experience and acquired knowledge to guide the development, growth, or entry of the mentee into future life stages or career paths.⁷⁸

In that teaching process, mentors address at least two specific subjects. The first subject is career instruction. That subject typically focuses on the career development of the mentee related to networking, coaching, protecting and challenging work practices of the mentee, and career progress. The second subject is psychosocial. That subject focuses on role modelling,

75. “[J]ust hold your head high and keep those fists down. No matter what anybody says to you, don’t let ‘em get your goat. Try fighting with you head for a change . . . it’s a good one, even if it does resist learning.” See HARPER LEE, *TO KILL A MOCKINGBIRD* 82–85 (1960) (describing Atticus Finch counseling his daughter, Scout, that she might hear ugly talk at school about him defending Tom Robinson, an African-American man).

76. *The Dignity of Work and Rights of Workers*, *supra* note 30 (citing *Luke* 3:10–14).

77. “Civility is about the character of who we are. In practice, civility brings core values to life in one’s behavior. History suggests that civility can be taught and learned. Embracing civility begins with confronting oneself: What are the core values that have guided my life? What principles do I stand for?” Richard Bowman, *Civility Can Be Taught and Learned*, 140 *EDUCATION* 80, 85 (2020).

78. See NATIONAL ACADEMY OF SCIENCES, *The Science of Mentoring Relationships: What Is Mentorship?*, in *THE SCIENCE OF EFFECTIVE MENTORSHIP IN STEMM* 1–20 (Angela Byars-Winston & Maria Lund Dahlberg eds., 2019) (providing a summary of effective mentorship in STEMM and presenting nine recommendations for intentional mentorship).

counselling relating to the mentee's sense of competence, effectiveness, and self-worth.⁷⁹

Some capable, potential mentors may have mixed feelings about engaging in mentoring. They might envision that mentoring requires the investment of boundless hours on pedagogy. However, that is not required.

First, lawyers must not be deterred from mentoring because they are concerned they will have to mentor scores of beginning lawyers. A mentor just needs to mentor one beginning lawyer at a time.

There are plenty of lawyers to do this work. According to a 2022 American Bar Association survey, over 1.3 million lawyers live in the United States.⁸⁰ However, the number of lawyers only increased “6.6%—from 1,245,205 in 2012 to 1,327,010 in 2022.”⁸¹ According to the National Association for Law Placement, the number of law school graduates in the class of 2021 was 35,712.⁸² Assuming a fairly moderate increase in the number of graduates annually,⁸³ those numbers mean the ratio of practicing lawyers to new lawyers is approximately 35 to 1. So, mentors can be matched easily with beginning lawyers.

Second, the decision to mentor is one specific way to personally commit to make a difference. Lawyers of conscience must never allow inertia to block their engagement in mentoring. As Shakespeare wrote, **“In delay there lies no plenty.”**⁸⁴ So, inaction results in capitulation to incivility.

79. See Santiago De Ossorno Garcia & Luke Doyle, *The mentoring relation as an interpersonal process in EDUCATE: A qualitative case study of mentor-mentee perspectives*, 5 RSCH. FOR ALL 20, 30 (2021) (suggesting mentoring training can enhance the psychological aspects of a mentorship relationship).

80. “There are more than 1.3 million lawyers in the United States, and that number has barely changed in the past decade, according to the 2022 ABA National Lawyer Population Survey.” *ABA Survey Finds 1.3M Lawyers in the U.S.*, AM. BAR ASS'N (June 20, 2022), <https://www.americanbar.org/news/abanews/aba-news-archives/2022/06/aba-lawyers-survey/> [https://perma.cc/3LYA-EN63].

81. *Id.* (indicating this number is a net number that accounts for those who leave the practice for any reason).

82. NALP, CLASS OF 2021 NATIONAL SUMMARY REPORT 1 (2020), <https://www.nalp.org/uploads/Research/Classof2021NationalSummaryReport.pdf> [https://perma.cc/3VQC-MF88].

83. For instance, 2019 through 2021 graduating class numbers have increased moderately. See NALP, CLASS OF 2019 NATIONAL SUMMARY REPORT 1 (2020), https://www.nalp.org/uploads/Classof2019NationalSummaryReport_.pdf [https://perma.cc/U2Q7-2QK5] (revealing a total number of graduates for 2019 was 33,954); NALP CLASS OF 2020 NATIONAL SUMMARY REPORT 1 (2021), https://www.nalp.org/uploads/NationalSummaryReport_Classof2020.pdf [https://perma.cc/77U7-HYDV] (revealing a total number of graduates for 2020 was 34,420).

84. WILLIAM SHAKESPEARE, *TWELFTH NIGHT*, act 2, sc. 3, l. 51.

Third, mentoring is not a complex engagement. As Robert Frost has said about mentoring, “I am not a teacher, but an awakener.”⁸⁵ While mentoring is a type of teaching, it is more than anything else about sharing with a mentee one’s successes, failures, ideas, and experiences. Such discussions will “awaken” the mentee.

Meetings between mentor and mentee are easy to prepare for and schedule. Mentoring can be accomplished in a series of meetings for coffee or lunch. Further, mentoring lessons need not be elaborate. Preparation is as straight forward as preparation for any informal meeting. A simple search on the internet will offer up scores of articles that suggest topics.⁸⁶ Mentor and mentee can easily make a plan of topics and move through them.

Further, the tenants of civil conduct are not academically complex. They are really no different in substance from what we all learned about self-discipline by the time we graduated to first grade: (1) Don’t lie; (2) Don’t steal; and (3) Don’t hit anyone.⁸⁷ Those rules can be easily translated to a lesson that a lawyer’s responsibility is to show respect to everyone.⁸⁸ After all, as Justice Kennedy asserted, the core of civility is respect. That does not mean we teach new lawyers to be “pushovers.” We teach them to tenaciously and forcefully represent their clients, but they must do so with dignity, honor, respect, and civility.

Additionally, effective mentoring must present graphic examples. For instance, the mentor must teach a mentee that being a “jerk” is not productive for a client’s cause nor for a lawyer’s effectiveness. The Fall 2011 issue of the *ABA Journal*, *Dealing With Jerks: What Goes Around Comes Around*, defines a jerk “as one of those ‘few attorneys for whom getting under their

85. Robert Frost, *I am Not a Teacher, But an Awakener*, GOODREADS, <https://www.goodreads.com/quotes/50818-i-am-not-a-teacher-but-an-awakener> [https://perma.cc/F3WH-9JSW].

86. See *Suggested Mentoring Topics and Experiences*, AM. INNS OF COURT FOUND., https://home.innsofcourt.org/AIC/AIC_For_Leaders/AIC_Achieving_Excellence/AE_Mentoring/Inns_of_Court_Model_Mentoring_Program_Suggested_Topics.aspx [https://perma.cc/7PFM-S6BD] (listing a variety of mentoring topics); *About*, NAT’L LEGAL MENTORING CONSORTIUM, <https://legalmentoring.org/about/> [https://perma.cc/MS93-YTMB] (providing resources and support to legal mentoring programs).

87. ROBERT L. FULGHUM, ALL I REALLY NEED TO KNOW I LEARNED IN KINDERGARTEN 6–7 (1989).

88. See *State Bar of Texas Oath and Swearing In*, *supra* note 61 (“I . . . do solemnly swear that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties. So help me God.” (emphasis added)).

adversary's skin seems more important than the result they achieve for their client."⁸⁹

Beginning lawyers must learn that uncivil conduct is not the accepted norm. In fact, mentors must teach that uncivil behavior demonstrated by arrogant, rude, or abusive behavior likely grows out of inexperience or a lack of confidence. A jerk's conduct usually comes back to haunt the jerk. Judges, and most clients, have distain for that conduct.⁹⁰ It must be made clear to mentees that judges can easily recognize the impropriety and waste involved in the use of "hard ball," rancorous tactics.⁹¹

With the guidance of mentors, a beginning lawyer will learn to tenaciously and forcefully represent clients while presenting as a professional because "[t]he American legal profession exists to help people resolve disputes cheaply, swiftly, fairly, and justly."⁹² Also, the mentor must guide the beginning lawyer by repeatedly emphasizing the metaphorical statement that "[i]ncivility between counsel is sand in the gears."⁹³ There is no doubt "the most effective ways of addressing incivility entail bringing lawyers together for training and mentoring."⁹⁴

89. Amber Pershon, *Dealing With Jerks: What Goes Around Comes Around*, AM. BAR ASS'N (Dec. 15, 2011), <https://www.americanbar.org/groups/litigation/committees/woman-advocate/practice/2011/dealing-with-jerks/>.

90. Wendy R.S. O'Connor, *You Don't Have To Be a Jerk: The Case for Civility in the Profession*, CIVIL LITIG. UPDATE, Winter/Spring 2017, at 4, 5.

91. See *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1263 (9th Cir. 2010) (providing an example of judges calling out incivility in practice). The Ninth Circuit Court of Appeals chastised lawyers and the district court for failing to fairly address a simple request by counsel for a mere three-day extension of time to file a response to a motion. That court observed:

Our adversarial system relies on attorneys to treat each other with a high degree of civility and respect. See *Bateman*, 231 F.3d at 1223 n.2 ("[A]t the risk of sounding naive or nostalgic, we lament the decline of collegiality and fair-dealing in the legal profession today, and believe courts should do what they can to emphasize these values."); *Peterson v. BMI Refractories*, 124 F.3d 1386, 1396 (11th Cir. 1997) ("There is no better guide to professional courtesy than the golden rule: you should treat opposing counsel the way you yourself would like to be treated."). Where, as here, there is no indication of bad faith, prejudice, or undue delay, attorneys should not oppose reasonable requests for extensions of time brought by their adversaries. See Cal. Attorney Guidelines of Civility & Prof. § 6.

Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1263 (9th Cir. 2010).

92. See *Karton v. Ari Design & Construction, Inc.*, 276 Cal. Rptr. 3d 46, 56 (Cal. Ct. App. 2021) (emphasizing how civility is both ethically good and socially).

93. *Id.*

94. Reardon, *supra* note 11; see also Lang & Montgomery, *supra* note 38, at 714 (stating mentoring can encourage professionalism in young lawyers).

Scripture is in accord. Mentoring is always efficacious. It is fair to say Saint Paul mentored the Philippians regarding faith and conduct⁹⁵ as evidenced by his letter which said, “Whatever you have learned or received or heard from me, or seen in me—put it into practice. And the God of peace will be with you.”⁹⁶ Also, the United States Council of Catholic Bishops (USCCB) affirms the essential role of mentoring when it announced, “A good mentor models faith and accompanies others on their journey to making life choices.”⁹⁷

B. *Mentors Must Serve as Examples of Civility and Reason*

1. The Relevance of Mentoring by Example

The key component of teaching civility is to serve as an example of civil conduct. Chief Justice Warren Burger suggested that over fifty years ago. He argued that lawyers must be “exemplars” of civility:

I suggest the necessity for civility is relevant to lawyers because you are the living exemplars—and thus teachers—every day in every case, and in every court and your worst conduct will be emulated perhaps more readily than your best. When you flout the standards of professional conduct once, your conduct will be echoed in multiples and for years to come and long after you leave the scene.⁹⁸

Then Chief Justice Burger continued by alluding to the inaction of lawyers and judges as a contributing factor to the growth of incivility even in 1971. He urged the following:

It may seem strange to some that such obvious truths as these[] should be uttered. But perhaps our failure to state them more often and practice them more faithfully has brought us to the need—the need as I see it at least—to discuss so simple and elementary a subject as the necessity for civility in all

95. *Ephesians* 4:31–32 (“Let all bitterness, and wrath, and anger, and clamour, and evil speaking be put away from you, with all malice: and be ye kind one to another, tenderhearted, forgiving one another, even as God for Christ’s sake hath forgiven you.”).

96. *Philippians* 4:9; *see also Proverbs* 15:22 (“Plans fail for lack of counsel, but with many advisers they succeed.”).

97. *How to Mentor*, UNITED STATES COUNCIL OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/vocations/educators-and-youth-leaders/best-practices/how-to-mentor> [<https://perma.cc/2DA2-C2E5>].

98. Burger, *supra* note 59 (emphasis added).

the affairs of men—and especially men of the law. Our failure is collective and our responsibility total. The solution must be one shaped and executed by lawyers, law professors and judges.⁹⁹

2. Mentoring is “Paying Back”

As one positive minded commentator explained, teaching or mentoring civility is “pay back” for the education previous mentors provided:

There are three stages in your professional life: You learn, you do, you pay back. You should role model in your firm, or outside your firm. Pick one or more young lawyers and start teaching them or showing them, not just evidence and advocacy, but civility. It may be time-consuming, but it's worthwhile. Think about the legends who mentored you—realize how warmly you feel when you think about them. It would be nice to give someone else the privilege of feeling that way about you.¹⁰⁰

There is nothing particularly difficult about doing what Josefsberg, the author of the above quoted article, suggests. All it really requires is for lawyers to unwrap themselves from their own self interests. Each lawyer has the responsibility as an officer of the courts to preserve the rights of citizens under the law.¹⁰¹

So, those lawyers and judges who understand the obligation of pay back cannot simply wring their hands, shake their heads in despair, and talk to each other about the scourge of incivility in the profession. They all must do more. That “more” is to teach beginning lawyers about their responsibility and to no longer tolerate incivility.¹⁰² Incivility is the way of bullies. No lawyer or judge should just let it go. That in itself would be an uncivil act.

IX. CONCLUSION—DEEDS NOT WORDS ARE REQUIRED

There is hope, but that hope is only viable if lawyers and judges act. As Judge Carl Horn has said,

99. *Id.* (emphasis added).

100. Robert C. Josefsberg, *The Topic Is Civility—You Got a Problem with That?*, 71 FLA. B.J. 6, 10 (1997) (emphasis added).

101. *See* TEX. GOV'T CODE § 82.037 (requiring lawyers to swear to uphold the Constitution).

102. *See* Pearce & Wald, *supra* note 12, at 5.

Certainly many trends and pressures pull against us and it is not extreme to recognize ours as a profession ‘in crisis.’ And yet, *if individual lawyers in increasing numbers are spurred to principled, conscientious action*—and if law schools, firms, bar organizations, and the courts will support and cooperate, [] *the legal profession’s best days just might still lie ahead.*¹⁰³

Judge Horn is correct. Lawyers of conscience must do the “right thing.” We must lead. The job cannot be left for the hypothetical and amorphous “someone else” to take up the charge. This challenge is a loud declaration that now is the time for passion to displace complacency and for that passion to fuel the battle against the tyranny of incivility. Now is the time to disperse the medicinal effect of civility on the scourge of incivility.

As it has been said, *“The best way to get something done is to begin.”* *Annon.* Make the move. Teach by example. Teach by counsel. But teach. Civility is the contagion we need. It epitomizes the Golden Rule, “Do to others as you would have them do to you.”¹⁰⁴

103. CARL HORN, *LAWYERLIFE: FINDING A LIFE AND A HIGHER CALLING IN THE PRACTICE OF LAW* 19 (2003).

104. *Luke* 6:31.

