

A Message from the President

By *The Honorable Stephen L. McIntosh*

Abraham Lincoln was known to discourage litigation if at all possible and to settle disputes. One day a man came to Lincoln asking him to bring suit for \$2.50 against an impoverished debtor. Lincoln tried to dissuade him, but the man was determined to exact his revenge. When he saw that the creditor was not to be put off, Lincoln asked for and got \$10.00 as his legal fee. He gave half of this to the defendant, who thereupon willingly confessed to the debtor and paid up the \$2.50, thus settling the matter to the entire dissatisfaction of the irate plaintiff.

Civil is defined as polite, but in a way that is cold and formal, relating to citizens, relating to what happens within a state or between different citizens or groups of citizens; to be civilized, courteous, well-mannered, gracious. *Discourse* is defined as serious speech or piece of writing, a serious discussion about something between people or groups; a conversation, discussion, communication, speech, talk, chats. *Rude* is defined as ill-mannered, disagreeable or discourteous in manner or action, offensive to accepted standards of decency, lacking refinement or social skills; to be impolite, discourteous, uncouth, offensive, foul, boorish, disrespectful.

Every day I have a front row seat to what one of my law professors called America's second favorite indoor sport, litigation. The mass of humanity that descends on the Franklin County Justice Center each day is tremendous. There are all manner of disputes being decided. The stress upon litigants with much to gain or lose financially, the friends and family impacted by the outcome of a particular case or those facing the loss of their freedom is a reality every day within these walls.

Yet within this environment attorneys are expected to have a civil discourse with each other to discuss the relative merits of their case. While the definition of civil includes the word cold and formal, in our context it connotes the attorney's responsibility to communicate without personal or emotional attacks but rather with a dispassionate level of professionalism. It is the attorney's responsibility to take his or her client's emotions which naturally are wrapped up in the moment and convey those emotions passionately, skillfully and civilly.

Television has unfortunately turned every case into a life and death struggle between attorneys in which anything goes in one's representation of a client. Shows such as *Law and Order* or *The Practice*, to name a couple, give the impression that for an attorney to represent the interest of his or her client he or she must personally attack or denigrate the opposing counsel. To do so shows how committed you are as an attorney.

Much of the political discussion which is shown on television is not civil but clearly falls within the rude category. Unfortunately this type of discourse has become acceptable behavior for persons with differing viewpoints or representing different interest.

Nonsensical, emotional and irrational arguments are made in an attempt just to get the other side to shut up.

As attorneys we must never allow the enormity of our responsibility to our clients justify the type of offensive exchanges we see on television dramas or political discussions. Despite the situation, the stakes or the stress of the moment we should always be above that type of discourse.

After trials I generally have an opportunity to talk with jurors and will receive feedback about their experience as jurors. It is interesting the number of times comments are made about the trial and how the attorneys presented themselves. Jurors once commented that they thought it inappropriate when the attorneys addressed each other by first name. They thought it poor decorum for a matter of such significance. Several jurors once remarked about a closing argument that started at an extremely high decibel level and then increased. They found it distracting. I have had jurors who have remarked as to how rude it was for an attorney to begin questioning a witness with his back to the witness. Jurors have commented about inappropriate dress, improper etiquette, and rudeness to opposing counsel or witnesses.

This tells me that jurors expect more from us in how we present ourselves in court, despite what they may see on television. Most embrace the awesomeness of the responsibility placed upon them as jurors and have high and sometimes unrealistic expectations regarding the attorneys trying the case. I believe they expect a civil discourse.

Some clients probably view it differently, which gets us back to Abraham Lincoln. Many times clients want their attorney to be the "junk yard dog," or attorneys see a benefit in presenting themselves that way in front of their client. Lincoln could have easily taken a retainer, sued and received judgment on an uncollectable debt. It is idealistic to expect a result like Lincoln's all the time. However, I have had conferences where an attorney has advised his or her client against a scorched earth take no prisoner strategy. I have conducted pretrials, status conferences or meetings with attorneys with the goal of a fair resolution in the midst of a lawsuit with contentious clients or criminal case with difficult parties.

Throughout the halls, courtrooms and conference rooms within the justice center attorneys, your colleagues, are engaging in a civil discourse in representing their clients. They recognize its benefit. Despite all the pressure to do otherwise they step up in professional and respectful ways to enhance the image of who we are and what we do each day.



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