LAWYERS AND CIVIL DISCOURSE: RESPECT AND CIVILITY AS A MATTER OF PROFESSIONAL IDENTITY

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Introduction

The topic of free speech and civil discourse is one of the central issues in contemporary America. It has become a truism that political polarization has become more pronounced than at any time in memory. Survey data repeatedly confirms that Americans are more divided along political lines than at any time in many generations.¹ I believe that polarization in our politics is a reflection of deeper problems. We are facing deep fissures in society itself. Many people across the political spectrum dismiss out of hand others who do not share their views or their backgrounds, and the ways we talk about others who are not part of our group reveal little empathy or respect. There are not many conversations across the political divide, and when we do address those who do not share our views the language is often angry and accusatory. These trends are posing fundamental threats to the social fabric. Indeed, I am convinced we are facing dire threats to the rule of law and to American democracy itself—although even that assertion may be treated by some as evidence of the partisan divide. The root causes of these divisions are many, and there are no simple solutions. But the stakes could not be any higher.

I certainly do not have all the answers, but I am convinced there are certain values that contemporary American society needs. These include respect for the dignity and equality of all persons, empathy and openness to those from different backgrounds and with other perspectives and views, respectful disagreement without personalizing disputes, and commitment to the truth. These values happen to be core values of the legal profession at its best. My thesis in this essay is that lawyers have a crucial leadership role to play in working toward a more civil and respectful society. If lawyers

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internalize and really live out the core values of civility and respect, they can serve as models for the rest of society.

Lawyers are leaders in society. In the words of the Preamble to the American Bar Association Model Rules of Professional Conduct, lawyers are “public citizen[s] having special responsibilit[ies] for the quality of justice.”

Although the Model Rules may seem a prosaic touchstone, the ideal of the lawyer as “public citizen” with public responsibilities holds much promise. I would note in that regard that it is quite fitting that this symposium is hosted by Baylor Law School. This school and its faculty have led the way in recognizing the importance of lawyers as leaders, in helping lawyers embrace their leadership role, and in promoting the development of leadership in law students. The textbook, Fundamentals of Lawyer Leadership, by Baylor Law Professors Teague, Fraley, and Rispoli, is leading the way to a new appreciation of all the ways lawyers can and should offer leadership.

Professional Identity Formation and Standard 303(b)(3)

I was asked to speak at this symposium, I believe, because I have been among the community of law teachers who write and speak about “professional identity formation.” Until recently, that phrase played little role in legal education. But in 2022, the American Bar Association adopted a new accreditation standard for law schools that made the concept important for all law schools. New Standard 303(b)(3) reads:

(b) A law school shall provide substantial opportunities to students for:

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(3) the development of a professional identity.

The Standard itself does not define what a “professional identity” is, but Interpretation 303-5 provides more guidance:

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2 MODEL RULES OF PROF. CONDUCT pmbl. (AM. BAR ASS’N 1983).
5 ABA STANDARDS AND RULES OF PROT. FOR APPROVAL OF L. SCHS. (AM. BAR ASS’N 2022).
6 Id. Standard 303(b).
Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.7

Law schools will apparently have wide discretion in how to help students develop their professional identities, but what identity includes is defined pretty clearly. Development of professional identity must include a focus on the values of the legal profession and the special obligations lawyers owe to clients and to society.

In some ways, Standard 303(b)(3) requires something quite new for legal education. “Professional identity” is not a phrase that most law students would have encountered during their legal education, except for in a handful of schools, and in those only recently. But on the other hand, law schools have always shaped their students’ emerging professional identities. Indeed, law school is a powerfully transformative experience. As Educating Lawyers, the influential Carnegie Report on legal education, put it:

For better or worse, the law school years constitute a powerful moral apprenticeship, whether or not this is intentional. Law schools play an important role in shaping students’ values, habits of mind, perceptions, and interpretations of the legal world, as well as their understanding of their roles and responsibilities as lawyers and the criteria by which they define and evaluate success.8

Although many urge that law students are adults whose values are fully formed and relatively immutable once they come to law school, Educating Lawyers insists otherwise:

Although some people believe that law school cannot affect students’ values or ethical perspectives, in our view law school cannot help but affect them . . . . The core idea is at once simple and profound: the ensemble effect of professional schools’ various educational practices is greater than the sum of the particular pedagogies taken in

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7Id. Interpretation 303-5.
CIVILITY AS PROFESSIONAL IDENTITY

In other words, identity formation is happening whether or not we legal educators intend to engage in formation—and even if we are unaware of it.

Standard 303(b)(3) requires that we legal educators must be deliberate in the choices we make. The standard requires us to be self-aware of the transformative effect law school has on students, and to help students form the right kind of professional identity. Our goal should be to set our students on the path toward becoming ethical and effective lawyers who fulfill the public purposes of the profession, and who also thrive in their chosen careers.

As made clear in Interpretation 303-5, the values and obligations of lawyers must be at the center of professional identity formation. In my view, the new Standard is a wonderful opportunity for law schools to re-examine the core values of the legal profession. The Interpretation refers to “intentional exploration” of those values, which is certainly necessary, but I would submit we should not stop at exploration. The word “identity” indicates this development must be personal for each student. The task for legal educators is to help students cultivate and internalize the values of the profession. One way to think of this process is that the values of the profession should become dispositions. It is not sufficient for lawyers to understand at a cognitive level that lawyers are fiduciaries; lawyers must develop a fiduciary disposition, in which they develop the habit of putting the interests of others before their own. It is not sufficient for lawyers to be aware of the obligation to improve access to justice for those on the margins; lawyers should develop a servant mentality in which they are motivated to improve society and the justice system.

As we help our students internalize the values of the profession, the goal is not to replace students’ core values, purposes, and characteristics with a

9 Id.


11 Id.


13 ABA STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. Interpretation 303-5. (AM. BAR ASS’N 2022).

14 Id.
new professional identity. Our task is to help students integrate those professional values with the values and characteristics they bring from their other identities in life. It is morally dubious and psychological unhealthy to live a divided life, in which one’s professional commitments are in conflict with deeply held personal values. Ideally, students will develop a healthy, integrated identity. The goal is to live authentically, staying true to one’s own values and beliefs, while also living out the professional values of client and public service and improving the quality of justice.\textsuperscript{15}

It is certainly true that as educators we must “meet students where they are.” There is really no other way to reach students. I am suggesting, however, that we do not leave them there. Our pedagogy ought to have a teleology, a goal, of graduating students who are committed to the core values of the profession. I am convinced that it is possible to do that while respecting the individuality of each student.

\textit{Professional Identity and the Core Values of the Legal Profession}

As I hope I have made clear, implementing Standard 303(b) requires law schools to focus on the values of the profession. The Standard itself does not define those values. We lawyers can argue about definitions and boundaries for those values—as well we should—but I would submit that the basic principles are not really controversial.

So, what are those values? Lawyers’ obligations are succinctly stated in the first sentence of the Preamble to the ABA Model Rules of Professional Conduct: “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”\textsuperscript{16} This sentence sets forth the core values, in three broad categories. First is the recognition that lawyers are almost always representatives of clients. As such their obligations include: duties of competence and diligence;\textsuperscript{17} duties of confidentiality;\textsuperscript{18} duties of loyalty, including avoiding conflicts of interest;\textsuperscript{19} duties to keep clients

\textsuperscript{15}See Patrick Emery Longan et al., The Formation of Professional Identity, The Path from Student to Law 1–5 (2d ed. 2023) (providing a discussion of the need to integrate professional identity with personal identity).
\textsuperscript{16}Model Code of Prof. Conduct pmbl. (Am. Bar Ass’n, 2023).
\textsuperscript{17}Id. r. 1.1, 1.3.
\textsuperscript{18}Id. r. 1.6.
\textsuperscript{19}Id. r. 1.7–1.10.
informed and to abide by their wishes on the goals of the representation; and duties of trustworthiness regarding client funds and property.  

Second are obligations to the legal system. Being an “officer” of the legal system requires that lawyers practice with fidelity to the law and its institutions. This duty includes: litigating within the bounds of the law; candor to the court; avoiding frivolous claims; avoiding misrepresentations of fact or law, etc.

The third category, “public citizens having special responsibility for the quality of justice,” is perhaps not as obvious as representing clients and serving the legal system. But the concept of “public citizen” holds particular promise in thinking about lawyers’ opportunity to contribute to a more civil society. Lawyers do indeed have a collective obligation to serve the public interest. Society has granted a monopoly to members of the profession. In return lawyers owe duties to ensure that the legal system provides access to justice for all, including those who cannot afford to pay for legal services. Individual lawyers have an obligation to do their fair share of pro bono work. In addition to monopoly status, the profession has been given the privilege of self-regulation; that regulation must always serve to protect the public, rather than the interests of the profession or individual lawyers. And because lawyers have a “special responsibility to improve the quality of justice,” they have an obligation to improve the justice legal system, including bringing about needed reform of the law and working to overcome systemic racism and other injustices.

These values described above—representing clients faithfully and competently, working within the law and supporting legal institutions, and ensuring that the legal system provides equal justice for all—are among the

20 Id. r. 1.2, 1.4.  
21 Id. r. 1.15.  
22 Id. pmbl.  
23 Id.  
24 Id. r. 3.3.  
25 Id. r. 3.1.  
26 Id. r. 4.1.  
27 Id. pmbl.  
28 Id. r. 6.1.  
29 See id.  
30 Id. pmbl.  
31 See generally LONGAN ET AL., supra note 15 (discussing each of the special obligations lawyers owe to clients and to society in much more detail).
values of the legal profession referred to in Standard 303(b)(3) and Interpretation 303-5. And these are the core values that legal educators should seek to cultivate in their students.

I realize that some people (I am thinking of certain law professors and law students I have known) are skeptical that law schools have any business dictating values to students. But law school is a professional school, and a central part of our mission is to graduate competent, ethical attorneys. Although lawyers can certainly disagree and argue about the scope and precise definitions of these values, in broad terms these values should not be controversial. We should not want lawyers who cannot and will not represent their clients faithfully and competently. We should not want lawyers who undermine the rule of law. And we should not want lawyers who are not committed to equal justice under law for all persons.

Civility as a Value of the Legal Profession

In addition to the values discussed above, civility is often discussed as an important value of the legal profession. Civility was a central concern of the professionalism movement that began in the 1980’s and continues to the present. In 1986, the American Bar Association Commission on Professionalism issued a report, a “Blueprint for the Rekindling of Lawyer Professionalism.” The ABA Blueprint was the beginning of the modern professionalism movement, which spawned numerous codes, creeds, and statements of professionalism as well as more than a dozen state commissions on professionalism and mandatory professionalism continuing legal education in a handful of states.

The most prominent theme of the professionalism movement is civility. The professionalism creeds and codes emphasize the need for civility more than any other value. Proponents of civility insist that lawyers should

32 ABA STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 303(b)(2), Interpretation 303–5 (AM. BAR ASS’N 2023) (“Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society.”).

33 Id. Standard 301(a).


35 ABA COMMISSION ON PROFESSIONALISM, “. . . IN THE SPIRIT OF PUBLIC SERVICE:” A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986).

36 See generally Sammons, supra note 34 (providing an insightful early history of the professionalism movement).
cooperate in the attempted resolution of disputes, and that when there is unresolved conflict, that disagreement should be expressed without being rude and disrespectful and without personal attacks.\(^{37}\) Often I have heard this urging of civility expressed as a critique of “Rambo” litigators.\(^{38}\)

The obligation to be civil is not expressed as directly in the Model Rules as are duties to clients, duties to the law and legal system, and the obligation to serve the public.\(^{39}\) Advocates of greater professionalism often emphasize that the duties of professionalism, including most prominently civility, are (and should remain) aspirations rather than disciplinary obligations.\(^{40}\) Sometimes the concept is expressed thus: the rules of conduct are the floor that lawyers must not fall below, but the ideals of professionalism, including civility, are the ceiling to which lawyers should aspire.

I am convinced that the professionalism movement made valuable contributions.\(^{41}\) But I will also confess that I was somewhat skeptical of the emphasis on civility. Much of the rhetoric of professionalism reflects a nostalgia for an imagined past in the practice of law. The nostalgia for the old

\(^{37}\)Badgerow, supra note 34, at 43, 45, 47–48.

\(^{38}\)A second theme of the professionalism is anti-commercialism. Most commonly, this is phrased as a complaint that the practice of law has become a “business” rather than a profession. This concern is often reflected in a critique of lawyer advertising. For a discussion of both the anti-commercialism and civility themes of professionalism movement, see Timothy W. Floyd, The Practice of Law as a Vocation or Calling, 66 FORDHAM L. REV. 1405 (1998).

\(^{39}\)See LONGAN ET AL., supra note 15, at 123–24 (“[C]ivility is not directly regulated by any of the Model Rules of Professional Conduct, although there are a few references to it scattered around the rules. The Preamble mentions ‘the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests . . . while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.’ Comment 3 to Rule 1.3, concerning diligence, provides in part: ‘A lawyer’s duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer’s client.’ Model Rule 8.5(e) provides that it is misconduct to engage in conduct that is prejudicial to the administration of justice. A few states have, in recent years, begun to treat civility as a disciplinary matter, and some courts have dealt with it under their inherent power, but in the 1980’s, when the modern professionalism movement began, there was nothing, or next to nothing, that directly prohibited incivility.”) (quoting MODEL CODE OF PROF. CONDUCT pmbl., cmt. 3 to r. 1.3 (AM. BAR ASS’N 2023)).


\(^{41}\)In the interest of full disclosure, I have been a participant in the professionalism movement; I served for several years on a State Bar Professionalism Committee, and I have spoken at numerous CLE programs on professionalism.
and better times could easily come across as longing for the days when lawyers were mostly white males from a certain social background. And the concern that newer lawyers did not know how to behave and interact with other lawyers was particularly suspect when those newer lawyers for the first time included women, people of color, and persons from different socio-economic backgrounds.\footnote{See Amy R. Mashburn, \textit{Professionalism as Class Ideology: Civility Codes and Bar Hierarchy}, 28 \textit{Val. U. L. Rev.} 657, 669–70 (1994).} Many suspected that calls for civility may have been a cover for saying to people with new perspectives and different backgrounds to keep your mouth shut and do not interfere with the status quo.\footnote{Id.}

For these reasons, although I have always seen the benefits of civility, I shared some of the skepticism of civility as a core professional value.\footnote{For views of others who are skeptical of “professionalism” and the emphasis on civility, see Rob Atkinson, \textit{A Dissenter’s Commentary on the Professionalism Crusade}, 74 \textit{Tex. L. Rev.} 259 (1995), Russell G. Pearce, \textit{The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar}, 70 \textit{N.Y.U. L. Rev.} 1229 (1995), and Thomas L. Shaffer, \textit{Lawyer Professionalism as a Moral Argument}, 26 \textit{Gonz. L. Rev.} 393 (1990–1991).} But over the past few years, I have changed my mind. I am convinced that civility really ought to be a core value for the legal profession. There are several reasons for this change. First, I have recognized that incivility, more than calls for civility, can be deployed as a strategy by those in power to belittle and further marginalize those on the margins.\footnote{Jason A. Springs, “Next Time Try Looking It Up In Your Gut!!”: \textit{Tolerance, Civility, and Healthy Conflict in a Tea Party Era}, 94 \textit{Soundings} 325, 338 (2011).} Much incivility reported in judicial opinions reflects sexist and racist attacks by lawyers.\footnote{LONGAN ET AL., supra note 15, at 127–28.} Although incivility may sometimes be a useful tool for those who challenge the status quo and demand greater equality, increasing incivility leads ultimately to greater divisions along lines of gender and race.\footnote{Id.}

A second reason I have come to appreciate civility is the uncivil behavior and language that so dominate our public discourse today. Especially since the rise of Donald Trump to political prominence, rude and insulting language and personal attacks have been on the increase. Certainly, Donald Trump did not cause our partisan divide. But he is the foremost example of public incivility, both because of the prominence of his statements and
conduct and the remarkable degree in which his communications embody this phenomenon.

I have a great deal of trepidation in citing President Trump as an example. In our highly partisan times, I fear I may immediately lose many members of my audience for taking a partisan position. But his use of name-calling and insulting language are unprecedented in recent political history.\textsuperscript{48} And there is at least anecdotal evidence of a causal connection between the rise of Donald Trump and increasing incivility of lawyers. A lawyer in a November 2016 deposition was asked to stop saying insulting things.\textsuperscript{49} The lawyer responded, “At this point in time, a man who insults on a daily basis everybody he does business with has now been elected president of the United States. The standards have changed. I will say what I want.”\textsuperscript{50}

\textit{Civility as Respect}

Respect for the Dignity of All

The most significant reason I am convinced of the value of civility is a broadened view of what civility means. The word “civility” can conjure the image of going to a tea party and making sure you use the right silverware. But civility includes much more than etiquette or politeness. A better word for the concept is \textit{respect}. In a recent article entitled \textit{Incivility as Identity},\textsuperscript{51} Professor Melissa Mortazavi offers an insightful defense of civility as a professional value.\textsuperscript{52} Her principal thesis is that some lawyers adopt incivility as a matter of identity, to react and position themselves within sociopolitical norms, thereby affirming their political, class, and gender identities.\textsuperscript{53}

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\textsuperscript{49}Id.
\textsuperscript{50}Id.
\textsuperscript{52}Id. at 953 (“Civil conduct by lawyers supports effective client-driven practice. Civility is not about being ‘nice’ or ‘polite’ for its own sake but to facilitate the exchange of ideas and facts, to support the execution of law, and the exercise of the clients’ rights. Incivility is inherently obstructionist. It communicates no substance and disserves clients by perpetuating a cycle of hostility that can needlessly increase costs and fees.”).
\textsuperscript{53}Id. at 939.
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One of her insights is that the word “civility” is a weak term that is freighted with stale notions of class and gender.\(^{54}\) Instead, she recommends that the values associated with civility are really about respect.\(^{55}\) I agree completely that the professional value of civility should be recast as “respect.” Civility at its best means respect for the dignity and the worth of everybody you encounter. Respecting someone’s fundamental human dignity will necessarily have a profound impact on how we speak to them. When we respect someone, we listen before we judge, contradict, or dismiss. We will not judge people based on our assumptions about who they are; instead, we try to see them as the unique individuals they are. We exercise empathy, that is, doing our best to understand people from their perspective. At their best, lawyers should treat others they encounter in their work with this kind of respect.

Respect for the Truth

In addition to focusing on how lawyers treat other people, advocates for more civility in the legal profession have also focused on truth and fair process.\(^{56}\) The professionalism movement has been critical of “Rambo” litigators, lawyers who make unsubstantiated and frivolous claims in order to gain strategic advantage.\(^{57}\) This critique is also based on respect, in the sense that these lawyers lack respect for the truth and for fair process. Lawyers must have a fundamental respect for the truth and for the fair processes that allow everyone to be heard. If lawyers respect truth and fair process as a core value, they make assertions and arguments based on facts. They are prepared to support assertions with evidence. They offer reasons for positions rather than trying to prevail though bullying or power plays. When they disagree, they do not respond with insults or personal attacks.

Ironically, persons who use insulting and degrading language are sometimes hailed as being truthful, of “telling it like it is” without concern for alienating people. In our deeply divided culture, it can feel righteous to call out those on the other side of an issue. But offensive name-calling is not the kind of truthfulness I am talking about. Some people believe that

\(^{54}\) Id. at 971.
\(^{55}\) Id.
\(^{56}\) See id.
“political correctness” or “wokeness” has gone too far. But that is no excuse for deliberately using language that is meant to offend or insult.

Civil discourse depends upon patience and forbearance; it is not necessary to attack every time we hear something with which we disagree. Before we rush to attack and condemn, we should do our best to understand. Offering grace to those with whom we disagree can be healthier and more productive than reflexive argument. It may be that incivility is often a mask to cover fear and insecurity. Understanding another’s motives for bad behavior can be more productive than escalating the conflict. Exercising patience to work through the conflict may be the most effective strategy to resolve it.

Although patience and forbearance are virtues, respect for the truth sometimes requires more. If we respect truth, we must sometimes criticize and hold to account those who spread falsehoods that are harmful to the public good or cause harm to specific people. The example of Rudolph Giuliani can be instructive. Giuliani’s actions regarding the 2020 presidential election results, specifically with respect to election workers in Atlanta Georgia, are an object lesson in the failure to respect the truth.

Giuliani was a leader in the efforts to overturn the 2020 presidential election results on behalf of President Trump. Although he made numerous false claims about alleged fraud in the voting and the counting of votes in Georgia and in several other states, I will focus on the claims Giuliani made against Ruby Freeman and Shaye Moss, two election workers in Fulton County, Georgia. Giuliani claimed that video surveillance from election night showed election fraud. He singled out Moss and Freeman by name, accusing them of shooing away observers and then stuffing vote-counting machines with “suitcases” of fake ballots and a thumb drive of electronic data. Giuliani’s attack on Moss and Freeman was wide-ranging, stating they were “surreptitiously passing around USB ports as if they were vials of heroin or cocaine.” The Georgia Secretary of State thoroughly

59 Id.
60 GA. SEC’Y OF STATE, INVESTIGATIONS DIV., SEB2020-059, REPORT OF INVESTIGATION: FULTON COUNTY-POLL WORKER FRAUD 1 (2020).
61 Id.
62 Id.
investigated these claims and found that none of the accusations against them were true. The supposed suitcases were regular ballot boxes, and the purported USB drive was a ginger mint.

Giuliani has paid a price for these falsehoods. His license to practice law has been suspended based on this conduct and similar allegations of voter fraud in the states. And he has been found liable for defamation in a suit brought by Freeman and Moss, with a jury verdict in the amount of 148 million dollars.

I bring up the example of Giuliani in part because his conduct was so egregious. His conduct reveals a fundamental lack of respect in both senses I have discussed. His allegations had no factual basis, revealing blatant disrespect for the truth. He also showed no respect for Ms. Freeman and Ms. Moss as human beings and as civil servants.

More importantly, the Giuliani example reveals the influence that uncivil conduct by lawyers can have. His false allegations against Freeman and Moss incited an avalanche of vile and hateful communications to them, including numerous death threats. Giuliani attempted to disavow the threats and communications, claiming that he had nothing to do with the persons who

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64 GA. SEC’Y OF STATE, supra note 60, at 9–10.
66 In re Giuliani, No. 2021-00491, slip op. at 1, 17 (N.Y. App. Div. June 4, 2021) (According to the court which issued the opinion suspending him from practice: “The hallmark of our democracy is predicated on free and fair elections. False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of a free society. When those false statements are made by an attorney, it also erodes the public’s confidence in the integrity of attorneys admitted to our bar and damages the profession’s role as a crucial source of reliable information. It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice. Where, as here, the false statements are being made by respondent, acting with the authority of being an attorney, and using his large megaphone, the harm is magnified. One only has to look at the ongoing present public discord over the 2020 election, which erupted into violence, insurrection and death on January 6, 2021 at the U.S. Capitol, to understand the extent of the damage that can be done when the public is misled by false information about the elections. . . . This event only emphasizes the larger point that the broad dissemination of false statements, casting doubt on the legitimacy of thousands of validly cast votes, is corrosive to the public’s trust in our most important democratic institutions.”) (citations omitted).
68 Hsu, supra note 65.
69 Id.
made the threats. But his status as a prominent lawyer, one who claimed to be acting on behalf of the President of the United States, magnified his lies about them. As Freeman said after the trial:

I want people to understand this: money will never solve all of my problems. I can never move back to the house I called home. I will always have to be careful about where I go, and who I choose to share my name with. . . . I miss my home, I miss my neighbors, and I miss my name.71

Giuliani said immediately after the trial, “I don’t regret a damned thing.”72

Cultivating the Virtue of Respect and Civility in Law Schools

This Symposium, on The Power of Speech: Creating Environments in Which Free Speech and Civil Discourse Thrive, recognizes that both “free speech” and “civil discourse” should be valued, and that we should work toward environments that support both. In this conclusion, I offer a few thoughts on how law schools can cultivate a culture of respect and civility.

My first point is that we legal educators should not shy away from teaching values. Law school is not a value-free zone, nor should it be. Indeed, legal education has always conveyed certain values.73 If we are to perform our primary mission of preparing competent, ethical attorneys, our students must develop an appreciation of and commitment to certain professional values, values that are non-negotiable. Lawyers must be committed to providing faithful and competent representation to their clients. Lawyers owe their clients competent and diligent representation, and they owe loyalty that is untainted by other commitments.74 That representation must be “within the bounds of the law,” so that zealous advocacy must not include misrepresentations of fact or of law, or making frivolous and unsupported claims.75 And lawyers as a group, because they have been entrusted with monopoly status, must exercise the privilege of self-governance for the

71 Id.
72 Id.
73 See Sullivan et al., supra note 8.
74 Model Code of Prof. Conduct pmbl. (Am. Bar Ass’n 2023).
75 Id.
benefit of the public, and they should work to ensure equal access to justice for all.

These values and commitments are necessary for lawyers to fulfill their role for their clients and to society; law schools must do all they can to ensure that graduates understand and are committed to these values. New Standard 303(b)(3) makes clear that is the law schools’ responsibility, and legal educators should willingly embrace their role in fostering those values in their students.76

Likewise, respect for human dignity, and respect for truth and the rule of law, are also fundamental professional values, at least as fundamental as the values set out in the Preamble to the Model Rules. These principles are at the core of our democracy and our legal system. The rule of law is predicated on respect for the individual and respect for the fairness and integrity of legal processes.77 And lawyers, as officers of the legal system and public citizens having a special responsibility for the quality of justice, must be committed to respect for persons and respect for the truth.

Indeed, these values are not just values for the legal profession; they are central to our national identity. As Abraham Lincoln so eloquently insisted in the Gettysburg Address, the United States of America was founded upon and dedicated to a certain proposition: the equal dignity of all persons before the law, and the possession of individual rights for all.78 Individual rights and equality are fundamental American values, and they are also the central values of the legal system that lawyers are committed to support. Accordingly, law schools should not hesitate to make clear to students that respect for human dignity and respect for truth and fair process are also non-negotiable values for the legal profession. We can do more to educate students about these fundamental values in the curriculum.

But it will require more than making students aware of the value of respect. The key is to cultivate an inner commitment to and disposition toward respect. How can we cultivate this commitment? It is easier said than done! Preaching and exhortation, especially if seen as coming from a superior position, are not likely to work—and may even be counter-productive.

78Abraham Lincoln, Gettysburg Address (Nov. 19, 1863).
The best way to cultivate respect is to demonstrate it. We need to be intentional about modeling the kind of discourse and respect for the truth and respect for others that we think all lawyers ought to have. One of the most effective ways to cultivate any virtue is to practice it. Clinics and other experiential education play a vital role in helping students learn to practice with respect for persons and with respect for the truth. Clinical teachers and supervising attorneys are powerful role models for students. If they demonstrate respect toward clients, judges, and adversaries, students get the message.

But the task of cultivating respect cannot be delegated to experiential courses in the second and third year. If we want students to treat others with respect, we must show them respect throughout the law school experience. Curriculum and pedagogy throughout the law school must be intentional about these values. This can be a challenge, especially for teachers in the first-year curriculum. Law school is difficult and demanding because the practice of law is difficult and demanding. Students need to develop habits of dedication and commitment to excellence early on if they are to practice law with dedication and excellence. But as we are demanding much of our students, we should never be demeaning to individual students or to groups. Of course, building a culture of respect is not just a function of what goes on in the classroom. The entire law school has a role to play in demonstrating certain values that we share as a community, that we respect the dignity of each student and that we reject hateful and insulting conduct.

At the same time, students who exhibit lack of respect can be held to account. Name calling, personal attacks, and making accusations without support are unacceptable. In this regard, students need to understand the special responsibilities of lawyers. Persons in our society may have a First Amendment right to utter falsehoods or to engage in hateful or insulting speech. But lawyers are in a different position. Lawyers may not put in a pleading or say in court something that they know is not true. Court rules and disciplinary rules put limits on lawyers’ rights to say things that are hateful or demeaning to other people. Rudolph Giuliani did not have a First Amendment right to make false statements about election fraud when those statements defamed certain individuals. He did not have a First Amendment

80MODEL RULES OF PRO. CONDUCT r. 3.3 (AM. BAR ASS’N 2023).
81FED. R. CIV. P. 11(a)(1).
right to make those false statements in courts and other public forums on behalf of a client.

One of the most effective ways to instill the value of respect is through exemplars and role models. I have discussed Giuliani as a negative example; it can be helpful to see the consequences of a failure to abide by professional values. Positive role models can be even more effective, inspiring students to model themselves after those exemplars. At our law school, all first-year students are required to read *Just Mercy*.\(^\text{82}\) I have had conversations about Bryan Stevenson with scores of students over the years, and almost without exception they are inspired and encouraged to see that a lawyer can fight against injustice while continuing to treat people with respect and empathy.

**Conclusion**

It is easy to despair or grow cynical about possibilities for more civil discourse, empathy, and understanding in contemporary American society. The trends all seem to point to increasing hostility, personal attacks, and distrust. But we must resist cynicism and despair. Lawyers at our best can model the kind of respect for people and for truth that we need to move beyond current divisions. In the phrase that is often attributed to that great lawyer Mohandas Gandhi, we must become the change that we wish to see.\(^\text{83}\)

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\(^\text{83}\) Although Gandhi may or may not have actually said “be the change you wish to see in the world,” the idea behind this injunction is very much in tune with Gandhi’s philosophy.