

## Practical Tools for Promoting a More Civil Approach to Law

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*“I remember going to court...I felt like I was a piece of meat and the sharks were swimming around me and taking little pieces out of me. And then I remember we had a break and one of the attorneys said, “I don’t know why you’re taking this personally.”<sup>3</sup>*

This quote from a social worker exemplifies what is often at the root of interpersonal conflicts between social workers and lawyers in the child welfare system. In their 2008 article *Legal Ethics and High Child Welfare Worker Turnover: An Unexplored Connection*, Frank Vandervort and his colleagues at the University of Michigan argue that a contributing cause of high social worker turnover in juvenile court is the differences in ethical codes of social workers and lawyers. Defining the client, duties of confidentiality, role identity, and approach and overall framing of interventions are four examples of differences that can lead to misunderstandings, increase stress, and impede the administration of justice even when both the lawyer and the social worker are operating in a civil and ethical manner.<sup>4</sup>

Ethical codes and professional standards differ between lawyers and social workers on issues as fundamental as what constitutes a “client”. Social workers have a broad definition of “client” that can simultaneously include the child, family, and society at large<sup>5</sup>. Lawyers, on the other hand, have a very narrowly defined client: typically a single person or entity.<sup>6</sup> A lawyer’s duty of loyalty to a single client continues even after the death of that client. Likewise, the duties and standards differ as to confidences. Social workers are expected to fully disclose all facts in a case, particularly those that impact the safety of children and other family members. A “good” social worker, is generally seen as one who brings all relevant information to the table. A social worker that “hides the ball” is often seen as being detrimental to the case. In contrast, lawyers are held to strict notions of confidence – prohibiting them at times from disclosing material facts that would have significant implications in a case. Lawyers owe a strict duty to “maintain client secrets” that allow for few exceptions.<sup>7</sup> Although there are exceptions to this, most courts draw these exceptions very narrowly and only in the most extreme situations is disclosure of any kind permitted. Role identity also differs as to whether and if one ought to act as an advocate versus collaborator. Although all social workers must act as advocates (at times forcefully), and all attorneys understand that collaboration is part of effective advocacy, the primary duty and hence starting place of each professional is different. Social workers generally approach cases as collaborators. They typically have a family systems perspective where greater impact is placed on how individual actions impact all parts of the system; hence they place a greater premium on collaboration. Lawyers, on the other hand, are first and foremost advocates for their clients. This difference in perspective is also reflected in how they approach a case and frame an intervention. As a whole, social workers are typically more concerned with optimizing outcomes; their goal is to maximize the entire system. Social workers are trained to focus on individual and family systems and objectives – the operative question being “how can we work together

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<sup>4</sup> *Id.* at 554.

<sup>5</sup> The NASW Code of Ethics preamble notes that the term *Clients* “is used inclusively to refer to individuals, families, groups, organizations, and communities.” National Association of Social Workers, Code of Ethics Preamble (2008), available at <https://www.socialworkers.org/pubs/code/code.asp>

<sup>6</sup> See ABA Model RPC 1.7.

<sup>7</sup> See ABA Model RPC 1.6.

to create an optimal outcome for everyone involved,”<sup>8</sup> and they set objectives in the case accordingly. In contrast, because our legal system is predicated on individual rights, lawyers are trained to focus on their clients’ enforceable rights. Thus, lawyers approach the situation by identifying and advising with regard to what an individual client is entitled to as a matter of law.

These ethical and professional differences often times cause friction especially when we forget the constraints imposed upon us by our individual roles in the system. Given that professionally our ethical codes compel us to view even common situations from different lenses, are we simply doomed to unhappiness and high worker turnover? Probably not, but the issues are not likely to get better unless they are given attention. Some suggestions for improvement include understanding how individual roles might drive behavior, “working on” the system,<sup>9</sup> encouraging the court systems we work in to become “learning systems”, and promoting a more civil work environment.

Understanding the roles and constraints of others in your system may diffuse tensions by clarifying expectations and explaining some behavior. For example, the social worker quoted at the beginning of this article might have thought that the lawyer seemed nice until they got into court. But with the greater understanding that the lawyer’s questions stemmed from his or her duty to advocate for the client, that social worker might not have been upset or confused by what happened in court. Likewise, a lawyer who can appreciate the constraints and varied objectives of the social worker or supervisor, is more inclined to exercise patience and creativity in pursuing their client’s cause and can understand that some outcomes are not the result of the social worker’s personal preferences or even professional judgment so much as a product of the constraints and duties they face on a daily basis. Another benefit of understanding roles and constraints of the ethical frameworks of the people with whom we work is that such an understanding may help to differentiate the person from the role and hence improve working relationships.

Understanding that sometimes social workers would like to pursue remedies not consistent with policy, but have to do so to avoid risking their livelihood, and understanding that lawyers must advocate for their client’s wishes in all but the most extreme circumstances may help to explain individual behaviors. In short, when we are in individual roles in a case, we may be significantly constrained as to what end we are obligated to pursue. Gaining a clear understanding of these roles and sharing expertise within your group is another way to help promote a more civil and effective workplace.

When we “work in the system”, such as when we are working on a specific case, we are typically more limited in our options. In essence, we must “play the part” we are expected to play in the large system, and our options are often more constrained. For example parents’ attorneys are ethically constrained to advocate for their clients’ stated interest, social workers and agency attorneys are compelled to take positions required by policy, and judicial officers are, in many cases, as much constrained by their authority as they are empowered by it. By comparison, if we gather together to “work on the system” such as developing and implementing system improvement efforts, operations meetings, etc., we have the option for more frank conversations, greater creativity, and a loosening of the role we must play. To be clear, we cannot abandon our ethical obligations, but often times when issues are addressed on a systemic level, we open up degrees of freedom to act in individual cases and support structures that promote better decision making. But even if we take the time to “work on the system,” we cannot escape working “in the system” as well. Even with the best systems in place, there will be times when behavior in the system is a challenge.

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<sup>8</sup> See Preamble at note 3.

<sup>9</sup> The distinction of working “in” a system vs. working “on” a system was first introduced to author Jaasko-Fisher by Eric Allenbaugh of Allenbaugh and Associates. See <http://www.allenbaugh.com/>

In addition to increasing our understanding roles and ethical constraints of others in the system, and to developing strategies to “work on” the system, we can increase effectiveness and create better outcomes by creating learning systems. A learning system entails creating regular opportunities to learn together.<sup>10</sup> It is critical that this learning happen *together* rather than in individual silos. Learning as a core group not only ensures everyone is operating with the same information, but also it builds community and gives us an opportunity to understand how others view the information presented. Such learning efforts provide a chance to dispel myths, problem solve, and improve implementation efforts that everyone can support. Even in cases where one group or another cannot support a particular program or action, issues related to the conflict can be more efficiently and justly resolved when everyone is presented with the same information and has an opportunity for open and honest dialogue to better understand why a particular entity is supporting a given position. In the end, it is an opportunity to promote greater understanding which promotes a more civil workplace.

Finally, promoting a culture of civility in our work can help us to find greater satisfaction with our work, help us better serve our clients, and help us find solutions that are in the best interest of justice. Our jobs as advocates in the child welfare system are hard enough as is – most people in society do not want to even read about many of the issues we deal with, let alone be immersed in them on a daily basis – so BE NICE TO EACH OTHER! But civility goes beyond simply being nice. As one scholar addressing whether politeness was a virtue noted: “Politeness is a poor virtue, if it is actuated only by fear of offending good taste, whereas it should be the outward manifestation of a sympathetic regard for the feelings of others.’ Thus Politeness is only a virtue if it is accompanied with sincerity.”<sup>11</sup> But not only is civility a matter of sincerity, it is a practiced skill. It can be taught, and its benefits can be realized both individually and in a system. Civility is good for business, personal health, and the pursuit of justice. A civil process promotes better outcomes for children and families, and increases the likelihood that you will remain a productive professional over the long term.

### What do we mean by “civility”?

Civility, defined as acting with respect for self and others, enhances the practice of law, benefits the parties involved in the legal system, and supports the pursuit of justice. Justice Sandra Day O’Connor states that “[p]ersonal relationships lie at the heart”<sup>12</sup> of lawyers’ work and this “human dimension remains constant”<sup>13</sup> . . . [C]ivility can only enhance the effectiveness of our justice system, improve the public’s perception of lawyers, and increase lawyers’ professional satisfaction.”<sup>14</sup> Justice Steven Gonzalez makes an important distinction between what he calls “true civility” and “false civility.”<sup>15</sup> He explains that there cannot be “one rigid definition of civility”<sup>16</sup> because true civility depends on “the context, cultural factors, and on so many other things.”<sup>17</sup> Apparent politeness alone, for example, using polite words with a patronizing or insincere tone, does not necessarily indicate respect. “It is the

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<sup>10</sup> For more about becoming a “learning system” see Peter M. Senge, *The Fifth Discipline: The art & practice of the learning organization* (2006).

<sup>11</sup> Chenise S. Kanemoto, *Bushido in the Courtroom: A case for virtue-oriented lawyering*, 57 S.C.L. Rev. 357 (2005) at 365 citing Nitobe Inazo, *Bushido: The Soul of Japan* (2002) at 65.

<sup>12</sup> Sandra Day O’Connor, *Professionalism*, 78 Or. L. Rev. 385, 386 (1999), available at <http://law.uoregon.edu/org/olrold/archives/78/oconnor.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 387

<sup>15</sup> Steven González, *True Civility Requires More Than Being Polite*, Wash. Bar News, Sept. 2012, at 25, available at [http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News\\_Events/Publications/Bar%20News/2012%20Full%20Issues/201209SeptemberBarNews.ashx](http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/~media/Files/News_Events/Publications/Bar%20News/2012%20Full%20Issues/201209SeptemberBarNews.ashx)

<sup>16</sup> *Id.* at 26

<sup>17</sup> *Id.*

substance that brings dignity and true civility to our courts and to our system.”<sup>18</sup> True civility, Justice Gonzalez argues, is not only fair to all parties involved and in the interests of justice, but also has professional benefits for the advocate: it enhances a lawyer’s reputation “as a true officer of the court.”<sup>19</sup>

### **What is the price we pay for incivility?**

Incivility is not simply a matter of failing to be nice. Defined by one leading expert as “mild aggressive behaviors that are characteristically disrespectful or rude”<sup>20</sup> uncivil behavior can include things like rudeness or lack of courtesy, interrupting conversations, not returning phone calls or emails in a timely manner, taking credit for others’ efforts, showing up late or leaving meetings early, excluding others from a network or team, using a demeaning or condescending tone texting or emailing during a meeting or conversation, and showing little interest in another’s opinion.<sup>21</sup> Incivility in its various forms cost all of us in terms of economics, health and well being, and ultimately in the legal profession incivility hampers our ability to promote justice.

From a business perspective, incivility costs money. In terms of work performance, those who are the target of uncivil behavior experience decreased effectiveness, helpfulness, reputation, motivation, creativity, and overall job performance.<sup>22</sup> Studies suggest that targets of incivility reduce their time at work, spend less time doing their work when there, and have a lowered commitment to their organizations. In a survey conducted by Christine Porath and associates, employees were asked how they responded when they were the target of incivility in the workplace. They reported their response to workplace incivility as follows:

- 48% intentionally decreased their work effort.
- 47% intentionally decreased the time spent at work.
- 38% intentionally decreased the quality of their work.
- 80% lost work time worrying about the incident.
- 63% lost work time avoiding the offender.
- 66% said that their performance declined.
- 78% said that their commitment to the organization declined.
- 12% said that they left their job because of the uncivil treatment.
- 25% admitted to taking their frustration out on customers.<sup>23</sup>

Targets of incivility also see direct impact on their work performance. Studies demonstrate impact on performance even for employees who felt targeted by one time, low intensity acts of incivility. Based on nearly a decade of research on the issue, Porath and Pearson report that of the employees identified as targets of incivility, 50% reported a reduction in creative ideas, 61% performed lower on verbal tasks and 20% had a reduction in recall.<sup>24</sup> But the direct targets of incivility are not the only ones to experience the negative consequences of incivility.

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 28

<sup>20</sup> Christine L. Porath and Amir Erez, *Overlooked but not untouched: How incivility reduces onlookers’ performance on routine and creative tasks*, 109 *Organizational Behavior and Human Decision Processes*, 29 (2009).

<sup>21</sup> Christine Pearson and Christine Porath, *The Cost of Bad Behavior: How Incivility Is Damaging Your Business and What to Do About It* (2009), 2 and 12.

<sup>22</sup> Christine Porath and Christine Pearson, *The Price of Incivility: Lack of respect hurts morale – and the bottom line*, January-February 2013 *Harvard Bus. Rev.* 115 (2013), 117.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Incivility not only negatively impacts the target, but also it has a negative impact on witnesses of the incivility. For example, exposure to incivility reduces volunteerism, leads to dysfunctional ideation, and a reduction in creativity and productivity.<sup>25</sup> A study examining the degree to which observing a minor incivility impacted student's willingness to be helpful was conducted as follows: Students were given the opportunity to help norm a personality inventory for extra credit in a college psychology class. They were told that to receive the extra credit, they merely needed to show up for the test at the appointed time and complete the inventory. They were cautioned that the one thing they could not do was be late for the test. If any student appeared late for the test they would not be permitted to sit for the test and would not get extra credit. In the control group, all students appeared on time for the test, and upon exit, the test proctor "accidentally" knocked some books off the proctor table – 90% of the students stopped to help the proctor by picking up books.<sup>26</sup> In the test group, an experiment confederate arrived late. The proctor advised the late student he could not take the test but added "What is it with you undergrads here at XXX [university name]? You always arrive late; you're not professional. I conducted this type of study at other universities, and I can tell you that students here at XXX leave a lot to be desired as participants." Again, upon leaving the room the proctor "accidentally" knocked books of the table, but this time only 38% of the student stopped to help.<sup>27</sup>

Similarly, in a 2007 study conducted by Porath and Ezra, participants were asked to unscramble the anagram "remdue".<sup>28</sup> The correct answer to the puzzle is "demure", however, some participants erroneously unscrambled the puzzle to "murder". The issue with this error is that there simply are not the correct letters to spell murder (murder requires 2 "r"s as opposed to 2 "e"s). Participants who had been exposed to a minor incivility preceding administration of the test were 7 times more likely to make this error.<sup>29</sup> This test is one of many that demonstrate how exposure to incivility may not only impair cognitive functioning, but also may create an inclination to less social behavior.

The studies addressing the impact of observing acts of incivility are of particular relevance in jurisdictions with open courtrooms where parents, social workers, and perhaps even youth observe the court proceedings. Even if incivilities are not directed at that person, there is an impact on all of the individuals observing the bad behavior. In short, the capacity of the system to efficiently distribute justice is diminished and the costs for the poor results we get are inflated by the bad behavior.

The price we pay for incivility includes inefficiency, impaired cognitive functioning, and incivility costs money. The law firm O'Melveny & Myers estimated that 1 partner's incivility cost the firm over \$2.8 million.<sup>30</sup> Over the course of a few years, the firm lost 6 attorneys and 2 paralegals as a result of the partner's actions.<sup>31</sup> Incivility is tolerated at times with the notion that the person behaving badly is "the rainmaker." However, when we balance the revenue brought in by the uncivil rainmaker against that which they cost, it seems unlikely that such an individual is a net benefit to the firm.

Uncivil behavior is often tolerated and even justified in other ways within the legal profession as well. We see it justified in the litigation context in particularly with a logic akin to the idea that "litigation is war" or the idea that working in a litigation environment requires the mental toughness to tolerate

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<sup>25</sup> See Porath (2009) supra note 20 and Christine L. Porath and Amir Erez, *Does Rudeness Matter? The effects of rude behavior on task performance and helpfulness*, 50 *Academy of Management Journal* 1181 (2007).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Porath and Erez (2007) supra note 25.

<sup>29</sup> *Id.*

<sup>30</sup> Pearson and Porath (2009) supra note 21.

<sup>31</sup> *Id.*

incivility and not be so “thin skinned.”<sup>32</sup> But a closer look at the profession seems to suggest that this approach is a poor one for both lawyers and their clients. Lawyers as a class, it turns out, are not as tough and resilient as they might think. In reality, as a profession, lawyers are more susceptible to mental health and addiction issues.

As a profession, lawyers are at heightened risk for mental health and addiction issues. When compared to general population, lawyers suffer increased levels of depression, obsessive-compulsive disorders, anxiety, and alcohol problems.<sup>33</sup> One study notes that as profession, lawyers are 3.6 times more likely to be depressed when compared to 104 other occupational groups.<sup>34</sup> Another study documents that lawyers have a prevalence rate of obsessive compulsive disorder nearly ten times that of the general population and suffer from anxiety at four times the rate of the general populace.<sup>35</sup> Perhaps most disturbing is a study conducted by Benjamin, Sales, and Beck, which reported that 71% of female lawyers in the study reported having issues with alcohol use whereas the prevalence rate in the general population is only 8%.<sup>36</sup> Likewise, male lawyers reported at 67% compared to only 20% of males in the general population.<sup>37</sup> But why does this occur? Does the profession simply attract those prone to such conditions or is some other dynamic at play?

Although there are a number of possible explanations for the state of lawyers as a profession, leading theories suggest that it is due to the acculturation process of law school combined with continuing practice conditions. Typically, law students as a whole are actually healthier than the general population. However, law schools often promote an environment where students are given high workloads with inadequate time to complete the work, isolated from friends, family, and other psychological resources, and saddled with high student debt and diminishing chances to make an adequate return on their law school investment. Similar environments are found post graduation in the halls of large corporate firms and small “kitchen table” solo practices. Our compromised position as a profession is exasperated by incivility. Perhaps equally important is the impact that such conditions have on our ability to render our ultimate “product” – justice.

Incivility also compromises perceptions of justice. Lawyers and non-lawyers see justice differently. When asked how they knew whether justice was served in a case, the majority of lawyers said justice is served if they believe the *outcome of the case was fair*; whereas the majority of non-lawyers consider justice being served where *the procedure was fair*.<sup>38</sup> In general, non-lawyer participants in the legal system want to give their views, tell their stories, and share in the discourse of the case. Although they might not be pleased with the outcome when they lose, as long as they have been given the opportunity to provide their voice, they feel the system was fair and justice was served.<sup>39</sup> Thus, how we administer justice is of great importance to societal views of whether justice is served and ultimately whether the

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<sup>32</sup> O’Connor supra note 12 at 386.

<sup>33</sup> See generally: Connie J. A. Beck, Bruce D. Sales, and G. Andrew H. Benjamin, *Lawyer Distress: Alcohol-related problems and other psychological concerns among a sample of practicing lawyers*, 10 *Journal of Law and Health*, 1, 60 (1996) and G. Andrew H. Benjamin, Elaine J. Darling & Bruce D. Sales, *The prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers*, 13(3) *International Journal of Law and Psychiatry*, 233 (1990).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> David B. Rottman, *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys, Part I: Findings and Recommendations* (2005), available at [http://www.courts.ca.gov/documents/4\\_37pubtrust1.pdf](http://www.courts.ca.gov/documents/4_37pubtrust1.pdf) (last visited Apr. 18, 2014).

<sup>39</sup> Paula Lustbader, *Listening from the Bench Fosters Civility and Promotes Justice*, forthcoming in the *Seattle Journal of Social Justice* 2015

public feels the profession as a whole is serving its role in society. Although outcomes are important, when it comes to notions of justice, lawyers may seem to put too much emphasis on what is done in a case and not enough emphasis on how the results were reached. For example, in a study by Sheet and Braver of gender differences in satisfaction with divorce settlements, women were more satisfied with settlements because through mediation they perceived that they had control over the process.<sup>40</sup>

Another study conducted in Red Hook, New York, found that 86% of the defendants thought the court process was fair, “regardless of race, socioeconomic status or disposition of the case.”<sup>41</sup> The most significant factor in the perception of fairness was that the judge “treated them with respect, helpfulness, and objectivity.” The next significant factor was that court actors (judge, attorneys, court officers) treated them with respect and communicated clearly. It was noted that the court and attorneys at Red Hook “clearly explained the proceedings, answered questions, and listened to what the defendants had to say”.<sup>42</sup> Given that the public views justice not only in terms of outcomes, but more importantly focuses on the process by which the outcome is obtained, civility can play a key role in perceptions of justice and legitimization of the judicial process. As officers of the court, lawyers are the public face and stewards of the justice system. Specifically, a more civil legal system helps to keep the focus on the merits of the case, enhances access, promotes faith in the system, and ultimately leads to better, more just outcomes. One way to promote a more civil legal system is to engender a culture that focuses on consciousness, creativity, and community.

### **Consciousness**

Consciousness is the first pillar of civility. It involves being aware of both yourself and others. Consciousness is central to the development of mindfulness, facilitates our ability to practice discernment, promotes values congruence as a measure of your intentions against your actions, a concept key to a happy, healthy professional life. Being conscious develops our emotional intelligence because it increases our attention on our interactions with others and enhances awareness of our impact on them. All of which enables us to respond rather than react to situations. Thus consciousness is key to having a centered presence that allows you to be proactive as opposed to reactive in your interactions with others.

Being conscious of yourself and understanding your own personal feelings and triggers can be key to improving relationships with clients, opposing parties, and the court in general. Perhaps the simplest way to think of “triggers” is to consider how you react when *that person* calls or someone uses *that word or phrase* that you just can’t stand. Often these triggers put us in a position of reacting to a situation rather than responding to the issue. The difference between reacting and responding is sometimes subtle, but important. It is similar to when a doctor gives you a prescription for a health concern – you want your body to respond to the medication in a positive way rather than react negatively to the medication, such as when you experience the negative consequences of a drug allergy. Being conscious of your own feelings and triggers gives you the opportunity to pause and choose to respond with an appropriate tool rather than simply reacting in a way you might later regret.

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<sup>40</sup> Virgil L. Sheets & Sanford L. Braver, *Gender Difference in Satisfaction with Divorce Settlements*, 45 *Family Relations*, FAMILY RELATIONS, July 1996 at 336, available at <http://www.questia.com/library/journal/1P3-10059304/gender-differences-in-satisfaction-with-divorce-settlements>.

<sup>41</sup> Somjen M. Frazer, *Defendant Perceptions of Fairness at the Red Hook Community Justice Center* (from *The Impact of Community Court Model on Defendant Perceptions of Fairness*, Center for Court Innovation, Sept. 2006), <http://www.courtinnovation.org/research/defendant-perceptions-fairness-red-hook-community-justice-center?url=research%2F11%2Fall&mode=11&type=all&page=4> (last visited Apr. 18, 2014).

<sup>42</sup> *Id.*

Making conscious decisions however is not always as easy as it might sound. In addition to having to cope with factors such as time pressure, fatigue, and stress, we are also unconsciously impacted in a number of ways by psychological phenomena such as implicit bias, priming, and vicarious trauma. As human beings, we are all subject to bias, both conscious and implicit. Many of these biases serve us well and are simply a cognitive phenomenon that allows us to efficiently navigate our day-to-day world. But unexamined bias also leads us to make mistakes, misunderstand our options, and pre-judge people and events in a way that negatively impacts our practice and in some cases our client's choices. One of the simplest and best tools for combating implicit bias is simply slowing down our decision making process and making our decision making process more explicit to ourselves and more transparent to others. Likewise, the phenomenon of priming causes us to be led to conclusion about what we believe we see, hear, and ultimately know.

Being conscious of how others may be experiencing the situation is critical to civil, effective advocacy. Oftentimes, being curious about how another is experiencing our interaction with them leads to better, more civil interactions as does taking the time to understand others' intentions and needs. This consciousness of the other opens options for resolutions, creates mutual respect and trust as part of the process, and allows attorneys to better see mutually beneficial resolutions for themselves and their clients.

Ultimately, enhanced consciousness makes us better lawyers by allowing us to better understand the issues our clients bring more clearly from multiple perspectives. Greater consciousness also allows us to better understand the human, personal, and emotional experience of the client. In times of crisis, it allows the lawyer to sit calmly and centered amidst the client's crisis, being both fully engaged and at the same time separate and distinct from the client so as to render advice that is both emotionally sensitive to the situation and at the same time professionally and legally sound.

## **Creativity**

The second pillar of civility is creativity. Civil and effective advocacy requires all parties to see the situation from the perspectives of all involved; to convey the human, personal, and emotional experience of the client; and to anticipate others' needs, issues, and challenges. Creative processes include making art or music, dancing, writing, gardening, experimenting, taking a different route, or doing anything that enables us to suspend or quiet the cognitive control centers of our brains. In two studies using magnetic imaging of jazz musicians and rappers, researchers compared the brain images of when the subjects played a simple melody or rapped lyrics from pre-set music to the brain images of when they improvised. In both studies, researchers found that when engaged in a creative process of improvisation, the jazz musicians and rappers showed decreased activity in the executive functioning and inhibition parts of the brain and increased activity in the sensorimotor and language areas, as well as those areas that involve introspective thinking.<sup>43</sup> When we can suspend our cognitive control centers, such as when we daydream, we activate the areas of the brain that house unconscious forms of information processing.<sup>44</sup> This allows us to expand beyond our habits of thinking about and ways of interpreting stimuli. Engaging in creative processes promotes civil advocacy because it supports consciousness and self-awareness, fosters being in a state of flow, expands perspective, and supports effective problem solving.

In a study measuring creative responses to the question of what can you do with a brick, then comparing the brain images of those subjects, researchers found that the subjects with a higher level of creative responses had activated parts of the brain identified with consciousness and self-awareness.<sup>45</sup>

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<sup>43</sup> [http://www.ted.com/talks/charles\\_limb\\_your\\_brain\\_on\\_improv?language=en](http://www.ted.com/talks/charles_limb_your_brain_on_improv?language=en); *see also*

<http://www.brainfacts.org/In-Society/In-Society/Articles/2014/Unlocking-Creativity-in-the-Brain>.

<sup>44</sup> <http://www.brainfacts.org/In-Society/In-Society/Articles/2014/Unlocking-Creativity-in-the-Brain>.

<sup>45</sup> *Id.*

An essential state of consciousness to support creativity is flow. Mihaly Csikszentmihalyi defines flow as “a state in which people are so involved in an activity that nothing else seems to matter; the experience is so enjoyable that people will continue to do it even at great cost, for the sheer sake of doing it.”<sup>46</sup> In this state, people feel a “strong, alert, in effortless control, unselfconscious, and at the peak of their abilities.”<sup>47</sup> Flow states are not associated with subjective feelings, instead “the essence of flow is the removal of the interference of the thinking mind... Absorption in a task indicates the absence of the self, and a merging of your awareness into the activity you are engaged in.”<sup>48</sup>

The state of flow, in and of itself, promotes civility because there is a connection between flow and conscientiousness. In a 2012 study, researchers found that “those who were more dutiful and persevering also tended to report higher levels of flow in their daily lives. This association is probably due to the fact that conscientiousness is positively related to other variables that are also associated with flow, such as social problem solving, life satisfaction, subjective happiness, positive affect and intrinsic motivation. Conscientious individuals are also more likely to spend the time practicing to master challenging tasks, conditions which make flow more likely.”<sup>49</sup>

Creativity supports civility also by expanding perspectives. Creative process involves looking beyond our first impression of stimuli to discover other ways of seeing and interpreting. Think about a kaleidoscope. Contained in the cylinder are the same shapes, colors, and forms, yet each turning of the cylinder reveals a different pattern. Just recognizing that there is more than one pattern is significant in the process of expanding perspectives. Over time, we can develop not only this awareness, but we can create a habit of looking for yet another pattern. This allows us to address our own biases and assumptions, become more curious about perspectives of others, and see more possibilities.

Finally, because creativity facilitates consciousness and expands our perspectives, it supports creative problem solving. By suspending the cognitive regions of the brain and activating the unconscious forms of information processing regions, we can widen our inquiry to more holistically determine the problem and find more solutions. For example, think of the toy for toddlers where there is a ball with different holes cut into shapes such as a star, circle, square, oval, and there are blocks in those shapes. The toddler puts the right shaped block into the right shape into the ball. Lawyers are trained to look for the legally significant facts that fit into the shape of a specific element of statute. But human problems don't come in neat shapes. The facts are messy and overlap and there are some facts that are left on the floor because there is no element of a statute that matches them. Yet, those facts might be equally or more important to the client or situation, or they might contain the key to a resolution. Through creative process we can suspend our cognitive regions and open our minds to a broader range of potentialities. In so doing, we are more likely to act civilly, find resolutions that best serve the parties, and support the interests of justice.

## **Community**

The third pillar of civility is community. As humans we live a shared inter-dependent existence. When he discusses his work with the Truth and Reconciliation Commission, Archbishop Desmond Tutu often speaks of Ubuntu, a South African humanist philosophy. He explains that we exist only in relation to other. He elaborates that our humanity is inextricably tied to each other, that we need to see ourselves in others, and that each of us needs the other to be the best he or she can be because that is the only way each of us can be the best we can be. When we operate with this awareness, we strive to understand others

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<sup>46</sup> Csikszentmihalyi, *Flow: The Psychology of Optimal Experience*, 1990, p.4

<sup>47</sup> <http://www.pursuit-of-happiness.org/history-of-happiness/mihaly-csikszentmihalyi/>

<sup>48</sup> *Id.*

<sup>49</sup> [http://www.huffingtonpost.com/scott-barry-kaufman/consciousness-and-flow\\_b\\_1108113.html](http://www.huffingtonpost.com/scott-barry-kaufman/consciousness-and-flow_b_1108113.html)

in order to build and strengthen our community. Doing so improves our health and increases positive social skills. All of which leads to greater civility which can enhance the experience and outcome for our clients.

Working to serve and strengthen our community is a fundamental value. Civic Humanism, rooted in the 14th and 15th centuries, is a founding value of our country, and is a core aspect of civility. Put in its simplest form, Civic Humanism posits that humans are free, autonomous beings, able to make choices for themselves, and with this freedom comes a con-commitment duty to serve the common good for the collective. Being of service for the common good fosters civility because it promotes physical and psychological well-being and builds positive social skills. Research shows that serving others decreases stress hormones and that even witnessing helping behavior can boost the immune systems of college students.<sup>50</sup> According to the Dalai Lama, long term happiness comes from being of service to others' well-being.<sup>51</sup> Because helping others activates the parts of the brain that are involved in pleasure and reward, serving others may produce the same sort of pleasure as gratifying a personal desire.<sup>52</sup> Altruism and service increase a sense of meaning, self-esteem, and satisfaction with one's daily activities and feelings of living up to one's potential. They also increase feelings of connectedness and reduce feelings of isolation and depression.<sup>53</sup> Moreover, collaborating with others can build social skills. Collective action and the sense of common purpose can build social trust, increase one's faith in humanity, and help to broaden perspectives and see the best in others.<sup>54</sup> Volunteers exhibit positive emotions and social skills such as openness, agreeableness, and extraversion.<sup>55</sup>

A strong sense of community has many positive benefits for both the profession and the individual lawyer. In a 2015 study of lawyer happiness, differences in lawyers such as firm size, salary, and law school made little difference in lawyer happiness. The one statistically significant factor was whether lawyers felt they were being of service to a cause bigger than themselves.<sup>56</sup> Given the high stress associated with the practice of law, staying connected to others both within and outside the practice is critical for a lawyers' mental health. A lawyers' position in the community also improves if there is a willingness on the part of the lawyer to help explain what that role is and how it may constrain action (i.e. duty of confidentiality, duty as advocate, etc.). Finally, it is critical that a lawyer maintain a community within the law – someone who the lawyer can dialogue with about the practice of law; someone who can fully understand what it means to practice law. Isolation is a key accelerator of depression, substance abuse, and suicide. Having a community to reduce isolation is central to a lawyer maintaining a civil, sustainable practice.

## Conclusion

Whether acting as lawyers, judges, social workers, or parents, we are all an integral part of the child welfare legal system. As such, to be of our highest service, we must understand the context of the broader community we serve as well as help others understand our role in that community. As mentioned previously lawyers, judges, and social workers not only play different roles in this system, but each have different expectations of the others, and each have different professional obligations and ethical

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<sup>50</sup> Constance Flanagan and Matthew Bundick, Civic Engagement and Psychosocial Well-Being in College Students, *Liberal Education*, Vol. 97, No. 2

<sup>51</sup> <http://www.ucanews.com/2011/12/02/dalai-lama-offers-key-to-happiness>

<sup>52</sup> [http://www.nytimes.com/2011/05/17/opinion/17brooks.html?\\_r=0](http://www.nytimes.com/2011/05/17/opinion/17brooks.html?_r=0)

<sup>53</sup> Constance Flanagan and Matthew Bundick, Civic Engagement and Psychosocial Well-Being in College Students, *Liberal Education*, Vol. 97, No. 2

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Lawrence S. Kreiger and Kennon M. Sheldon, *What Makes Lawyers Happy?: A data driven prescription to redefine professional success*, 63 *George Washington L. Rev.* 554 (2015).

considerations. By learning to see and appreciate that each of us are at once autonomous human beings and highly interconnected parts of a larger system, we can maximize both individual and system potential, more effectively work together, and behave in ways that promote civility so as to promote more just outcomes for the children and families we serve.