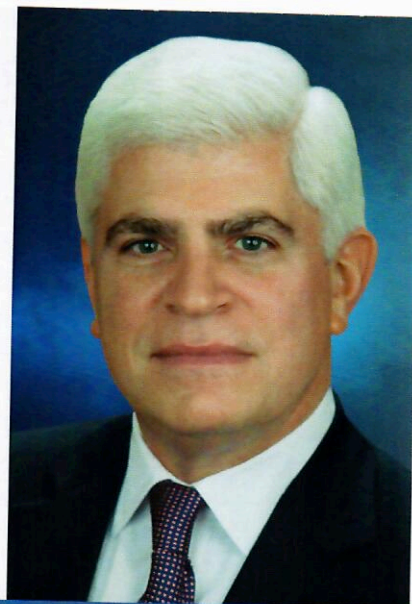


# The Coarsening of American Discourse

Should we lawyers remain silent?



## PRESIDENT'S MESSAGE

MICHAEL MILLER

As Americans mourn the death of Senator John McCain, it is well worth remembering how Senator McCain was able to express profound differences with colleagues without demonizing those with whom he differed. His ability to disagree without being disagreeable was an enduring gift to our nation and stands in striking contrast to the current environment, in which the American public discourse has coarsened and deteriorated into shrill and mean-spirited hostility.

Of course, John McCain was not the first to appeal for civility in public discourse. Samuel Johnson, William Penn and George Washington all spoke or wrote about the value and importance of civility. John F. Kennedy in 1961 stated to our nation: "So let us begin anew – remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof . . . Let both sides explore what problems unite us instead of belaboring those problems which divide us." And in 2012, while Governor of Indiana, Vice President Mike Pence noted, "We cannot do democracy without a heavy dose of civility."

We tell children that it is important to have good manners and that respect for others and common courtesy are fundamental to good character. We teach law students – and remind attorneys – that as lawyers we are expected to act in a decorous manner, and that civility and courtesy are fundamental to professionalism. Yet today in the legal profession, combativeness and angry confrontation seem to be as commonplace as civility and courtesy.

The New York State Unified Court System adopted non-binding standards of civility in 1997. The preamble to these standards states that they "set forth principles of behavior to which the bar, the bench and court employees should aspire. . . ." The guidelines are "intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum, and to confirm the legal profession's rightful status as an honorable and respected profession where courtesy and civility are observed as a matter of course."

Surely the expectation was that these well-intentioned standards would help foster greater civility, courtesy and good manners in both bench and bar. However, it seems clear that the effort has had only limited success.

In a recent President's Message, I wrote about the dangers that certain words and phrases pose, and the special duty we lawyers have to protect and defend our cherished Constitution – a duty to which each of us has sworn an oath. I received many responses, both positive and negative, most of which were thoughtful, courteous, and respectful. However, some expressed deep hostility and anger, and included *ad hominem* personal attacks. It is unworthy of members of our profession – and dangerous – to choose the path of incivility and insults. We lawyers know and must do better.

It's not just attorneys, either. General public discourse has deteriorated and we are all diminished as a result. Before he passed away, Senator McCain wrote a letter to the American people which he intended to be read

# NEW YORK STATE BAR ASSOCIATION Journal



Reprinted from  
OCTOBER 2018



# President's Message

after his death. "We weaken our greatness when we confuse our patriotism with tribal rivalries that have sown resentment and hatred and violence in all the corners of the globe," McCain wrote. "We weaken it when we hide behind walls, rather than tear them down, when we doubt the power of our ideals, rather than trust them to be the great force for change they have always been."

Provocative and divisive words and thuggish in-your-face political tactics have even given rise to violence. Congressman Steve Scalise was shot and badly wounded on a baseball field by someone who was energized by heated political speech. Participants in a bible study group at a church in South Carolina were murdered by a young man inspired by divisive and ugly rhetoric. An individual emboldened by a movement promoting racial division plowed his car into a crowd protesting against a white supremacist rally in Charlottesville, Virginia, killing one young woman and severely injuring several others.

"We are secluding ourselves in ideological ghettos," Senator McCain observed in his final book, *The Restless Wave*. "We have our own news sources. We exchange ideas mostly or exclusively with people who agree with us, and troll those who don't. Increasingly, we have our own facts to reinforce our convictions and any empirical evidence that disputes them is branded as 'fake.'"

Senator McCain observed that: "Paradoxically, voters who detest Washington because all we do is argue and

never get anything done frequently vote for candidates who are the most adamant in their assurances that they will never ever compromise with those bastards in the other party."

We live in perilous times. Left unabated, the coarsening of our public discourse will only worsen. We lawyers have a high and noble calling and we can lead the way, to show by word and conduct that it *is* possible to disagree without being disagreeable. We can – and must – show that it is possible to have fierce and profound differences without anger or hostility and without demonizing our opponents or questioning their integrity or patriotism.

It will be difficult, at times very difficult. We must show that, as President Kennedy noted, "civility is not a sign of weakness." We must serve as a model for how society should debate difficult issues with respect and courtesy.

We can do better, and we *must* do better. Future generations will look back on us and at this moment. Let them say that at a time when discourse had deteriorated in profound and dangerous ways, we lawyers rose to the occasion. Let them say that by our example of respectful advocacy and debate, we helped restore the civility and mutual respect that is an essential element of our democracy. This is our moment. *Carpe diem!*

---

**MICHAEL MILLER** can be reached at [mmiller@nysba.org](mailto:mmiller@nysba.org)