

A Lesson in Civility

By Matt Valenti

When someone asks me what kind of law I practice, I tell them "civil litigation." Even most non-lawyers can grasp the difference between civil and criminal law. But unfortunately, a certain number of actual lawyers seem indifferent to the fact that "civil" law also has another meaning apart from its difference with criminal law.

The irony of "civil" practice is that oftentimes, some of those who practice it are not, well, civil. They can act nasty during depositions, refuse to extend simple courtesies to opposing counsel, play fast and loose with the truth and make motions for sanctions at the drop of a hat. Although I've been in practice less than a year, I've already seen plenty of examples of this — some of them directed at me. As a new lawyer, I could chalk these experiences up to some kind of professional hazing ritual, had I not also seen experienced lawyers — even judges! — be on the receiving end of this kind of behavior.

My local bar association recently held a seminar on civility and professionalism, in honor of the late Jay Wheeler, a highly esteemed member of the San Diego bar who understood the double meaning of "civil" litigation. Although I never had the pleasure to meet Wheeler or see him in action, the stories told about him during the seminar were inspiring, and the packed audience was evidence of the genuine affection my local legal community felt for him. I will consider my career as a lawyer a success if at the end of it I deserve even a fraction of the respect and admiration felt for Wheeler by his colleagues.

Of the many suggestions made during the seminar about how to improve attorney civility, one that I found interesting came from a somewhat surprising source: a law school dean. Of course, this wasn't your average law school dean, it was Erwin Chemerinsky, the founding dean of UC Irvine School of Law (and a frequent Forum contributor). Chemerinsky faulted law schools for their failure to provide law students with the kind of practical training that would, among other things, teach them how to be civil as lawyers. As he put it, it's not enough for law schools to say, "We're teaching students how to think like lawyers." They need to also teach students how to *act* like lawyers, because being civil — to your adversary, to the court, and also to all the other players in the legal world, from court reporters and paralegals to the Cal Express delivery guy — is an active pursuit. It's not something that can be simply talked about briefly in a professional responsibility class, but something that must be experienced to be understood. What

Chemerinsky is suggesting is that the parts of law school that are now optional — summer internships, clinical experience, and the like — should be mandatory.

Chemerinsky's view makes a lot of sense. I learned firsthand the importance of civility and professionalism as a summer intern in my second year of law school. I was at the public defender's office, in the juvenile delinquency section, doing the kind of practical work that Chemerinsky would require of every law student. Under the supervision of an experienced lawyer, I was allowed to represent clients in court and in many ways, act just as a lawyer would. This gave me plenty of opportunities to succeed — or fail — just as a "real" lawyer does.

One morning I was in court arguing for the immediate release of my juvenile client, who had been picked up for a parole violation. If the judge agreed with me, he'd be released for the next two weeks until his next court appearance. If I failed to convince the judge to let him go, he'd be spending the next two weeks in juvenile hall. Not exactly a life or death argument, but two weeks of imprisonment is not something to scoff at, either.

I was passionate. I felt my cause was just, and I was confident the judge would agree. But while arguing, I unintentionally stated that

my client was still living with his parents, when in fact he had been living with his girlfriend for the last month — a fact that I knew but somehow forgot.

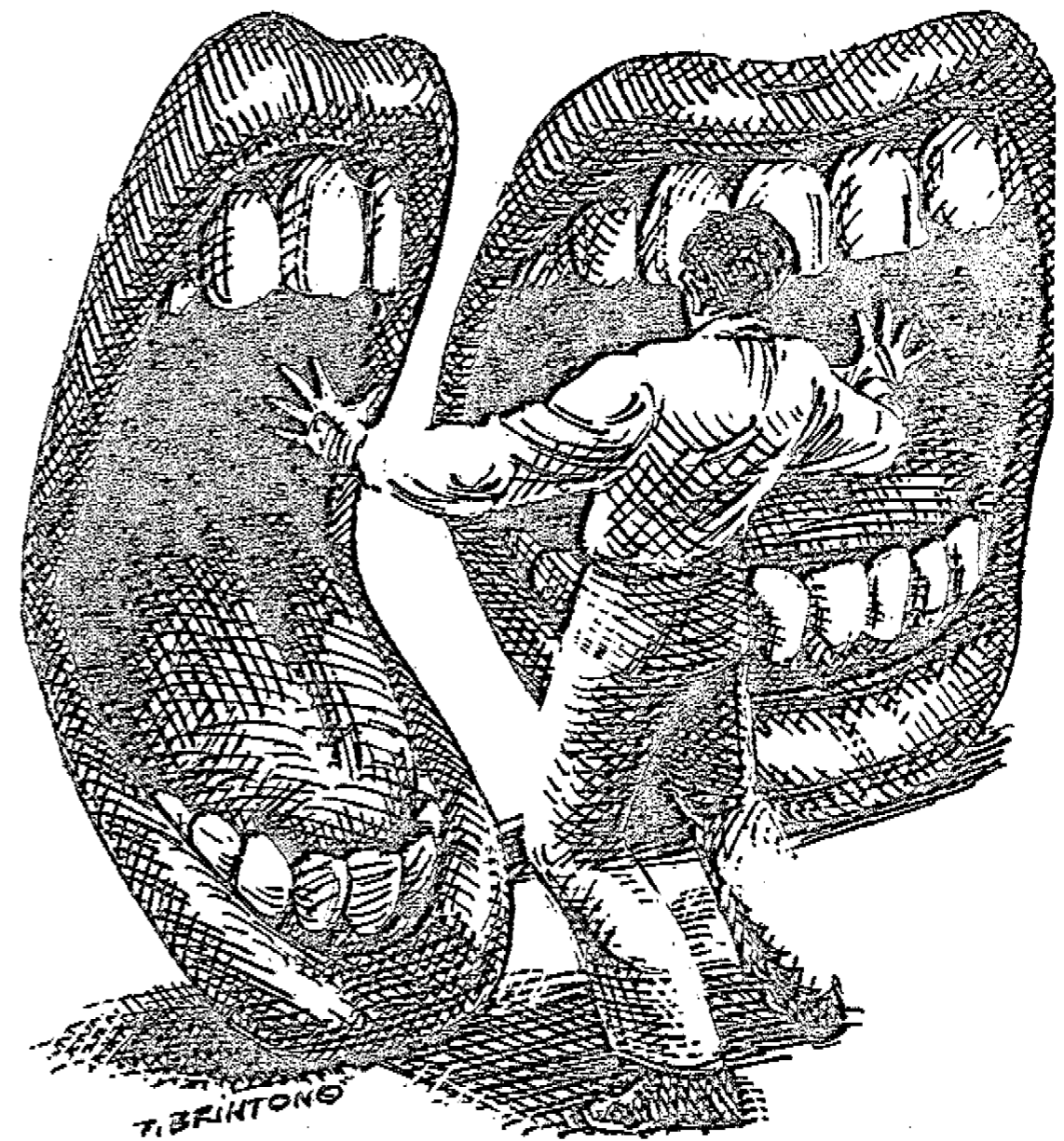
But the judge didn't forget. After I was finished arguing, he looked at my client and said, "I hope you brought your toothbrush." As I watched my client being led away in handcuffs, the judge turned to me with a scowl, crooked his finger, and said, "Mr. Valenti, come here." As I approached the bench, I wondered if he was going to ask me if I brought my toothbrush, too.

"Mr. Valenti, you just made a false representation to this court about where your client has been living."

I stammered that it was an accident, that somehow in the heat of the moment, I forgot the facts.

"This court takes that behavior very seriously," he went on, still giving me the same stern look I saw him give many times to criminal defendants. I stammered some more, apologized profusely, and wondered if my future as a lawyer was over.

Of course, for some reason, I wasn't drummed out of the profession. After that incident, the judge and I got along fine. For the rest of the summer, every time I'd enter his courtroom, he'd announce in a tone of mock seriousness, "Look out everyone, Mr. Valenti's here." Although he forgave my lapse of professionalism, he didn't forget it. And neither did I, which is what made that experience so much more valuable than a theoretical talk about professionalism in a



lecture hall.

It will be interesting to see how Chemerinsky implements his views as the dean of the new UC Irvine law school. Giving law students more opportunities to roll up

their sleeves and work in the legal field before they graduate will help turn out more competent lawyers, more self-assured lawyers, and hopefully, more civil lawyers. We can't all be as well regarded by our

peers as the late Jay Wheeler. But we can try. And we can start trying in law school.

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