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president's message

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Lawyers Impacting Politics Through Conflict Resolution



When I visit a new doctor for the first time, and complete the new-patient intake form, in the blank for "occupation" I often write "conflict-resolution specialist." That's because I find that healthcare professionals react differently when they realize they're treating a lawyer. The use of the term "conflict-resolution specialist" is not just careful lawyer-talk designed to convey a totally true statement without providing the information sought, it also happens to be an apt description of our profession. Whether we are seeking to solve problems through litigation, prevent them through transactional work, or just guide a client through an uncontested court process like Probate or Bankruptcy, we are all conflict-resolution specialists.

The better lawyers amongst us have learned that the most aggressive approach to a solution is only occasionally the best approach. A transactional lawyer can easily draft a highly biased document that creates a very lopsided power balance in favor of her client at the expense of the other party. But, this hyper-aggressive approach renders no benefit if it causes the other party to walk away from the transaction or, worse still, to regret signing the contract and thereby prevent the business relationship from thriving.

Similarly, any litigator that needs a document from an opposing counsel knows how to draft discovery requests and eventually obtain an order to compel. When the two lawyers have an adversarial relationship, that process typically takes at least ninety days and probably requires at least five hours of attorney time. The client is almost always better served by a lawyer that maintains a professional, collegial relationship with opposing counsel so he can place a six

minute telephone call to opposing counsel and obtain the same document in a day or two. Certainly there are circumstances when we have to do things the hard way, but I would suggest that the ability and effort expended to avoid the hard way, through conflict resolution, often provides the client the best possible service.

The reason most successful law practices use this approach is because there are at least two sides to every story in real life. In fiction, on the other hand, we regularly encounter "bad guys" that act in evil ways because they are inherently evil. Those people are rare or perhaps even nonexistent in the real world. Most of us do what we think is "right" ~ or at least justifiable ~ even if our decision leaves others at a disadvantage. While all experienced lawyers know this, many non-lawyers do not think this way. The natural human reaction seems to be to vilify our perceived adversaries.

As lawyers, we see our clients react this way all the time. Initially, our clients come to us about a disagreement with another person. But, in time, that disagreement often leads to frustration with the perceived flaws of the other person. If litigation ensues, the cost to the client and increased level of frustration results in a growing dislike not only of the opposing party but also of the opposing counsel. Skilled professionals recognize the need to overcome this frustration and the resulting bitterness in order to provide some line of communication and to make progress toward resolution of the disagreement. Even when disputes between bitter, diametrically opposed parties must be resolved by a neutral third party's decision, a lawyer's ability to focus on actual issues allows for eventual conflict resolution.

My concern is the vast number of individuals currently involved in politics and policy making in our country who fail to recognize these basic principles of conflict resolution. The level of political discourse has become tremendously bitter and nasty because these individuals have been conditioned to vilify their perceived adversaries as if they were fictional "bad guys." People that are skilled at manipulating rhetoric, including politicians and political commentators of all viewpoints, exploit this conditioning. When combined with our competitive two-party system, these rhetoricians treat political discourse like a spectator sport. We seem to make policy choices based on the personalities of the people proposing or opposing those choices rather than on the merits of the policy. In their zeal to win the political game, these people have lost sight of the fact that political discourse is not about winning or losing but about setting goals and crafting policies to achieve those goals.

Some partisans have ceased to recognize that those who disagree with them politically share their selfless motivation to do what they think is right for society. When we define our political adversaries as evil and their goals as the product of evil, compromise becomes impossible. Then, supporters of a rejected goal or policy see themselves as subject to evil rulers and the process of political discourse has failed.

The government would be in a much better position to set goals and craft policies if politicians and political activists toned down their rhetoric and distanced their policymaking roles from the aggressive means used to acquire those roles. Past bar leaders have encouraged lawyers to seek elected office in an attempt to achieve the goal of greater civil-

ity in the political process. I wholeheartedly support that effort. Of course, I would be naive to pretend that some politically active lawyers did not contribute to the hateful decline of public policy discourse. Instead of utilizing their problem-solving skills to resolve conflicts and craft policy, some lawyers-turned-politicians utilize another legal skill: the ability to persuasively manipulate rhetoric to drive the opinions of others, in exactly the way I discussed above. So, I support the efforts of other bar leaders to encourage increased political participation by lawyers in order to enhance civil discourse, but recognize that there are also lawyers that exacerbate the problem.

The fairly extreme effort of changing your career path from lawyer to elected leader might be laudable, but isn't really necessary for us to bring more civility to political discourse. Our professional position and legal knowledge makes us leaders in our community without election. When we discuss politics with others we have an obligation to do so with our legal reasoning and conflict resolution skills in place. If you believe that a particular policy proposal is flawed, consider stating your specific problems with that poli-

cy and avoiding the temptation to insult or demonize anybody who disagrees. You could even take civility a step further. For example, before stating your position, you could acknowledge that people who disagree with your policies or even your goals are still doing what they think is right.

Additionally, you could encourage people in political discussion not to reduce their complex opinions to sound bites and name calling, but instead to ferret out their beliefs and positions that underlie the sound bites and names. The media customs of the last few decades forced politicians to reduce their ideas to sound bites and thirty-second commercials, but most political discourse can and should occur at a substantially more relaxed and contemplative pace. We do not have to cede our democracy to shallow media types that seem incapable of complex thought and serious analysis. Under the current scorched-earth model of political discourse, there is no attempt to achieve consensus. Instead, people force others to take unyielding positions, even though agreement could be reached on some of the underlying issues. In this model, the decision to make a statement is based entirely on

the emotional impact of that statement without any real concern as to the truth of the statement.

Lawyers should not adopt that model, but should alter their political discourse to the sort of discourse we engage in with each other for the benefit of our clients. In this alternate conflict-resolving model, the truth of your statements is paramount and the practical ramifications of decisions are more important than the emotional and rhetorical impact of those statements. Finally, we all recognize that scorched earth tac-

tics result in, well... scorched earth. That is of no value to anyone in the future and inhibits the mutual respect needed to advance society and to address other problems side-by-side with those whom we have disagreed in the past.

If you are reading this article, then you have probably voluntarily chosen to join the Bar Association of Metropolitan St. Louis because it offers the opportunity to become a better conflict-resolution specialist and to provide better service to your clients in this and other ways. Membership is a hallmark that can communicate to the world that you value professionalism. Thank you and congratulations on your decision to follow the professional traditions recognized by our association since U.S. Grant was president.

If you are reading this and are not a BAMSL member, but you value the professionalism that membership represents and desire the opportunity to better serve your clients, please consider joining. You can easily join online at www.bamsl.org. Please be aware, however, that online membership to BAMSL was not available until sometime after U.S. Grant left the White House.

If you are not a member of BAMSL and think I'm a crazy caitiff for not realizing that the best way to practice law is always maximum aggressiveness, I still hope you will consider joining or at least coming to an event or two. You will not only be in a better position to serve your clients by offering alternatives to the "scorched-earth" method, but you may find you are in a position to enhance your own quality of life and level of professional satisfaction. At the very least, you may accidentally enhance the quality of life and professional satisfaction of your opposing counsels.

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