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REPORT

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GENDER EQUALITY

IS PART OF THE CIVILITY ISSUE



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At a recent ABTL joint board retreat, there was a session dedicated to a discussion of civility in the legal profession. Toward the end of a several-hour discussion, it was posited that any discussion of civility in the legal profession must include a discussion about the very different treatment that women receive compared to their male colleagues. While gender discrimination is obviously a serious issue in society as a whole, the legal profession should lead in the effort to eliminate gender bias. Rather than viewing gender discrimination as an entirely separate issue, we treat it here as a subcategory of incivility in the legal profession. With that in mind, we explore the persistence of unequal

treatment of women in the law and make suggestions for promoting civility and respect in the profession.

Gendered Incivility in the Legal Profession

Despite the record numbers of women graduating from law school and entering the legal profession in recent decades, as well as the increase in women judges and women in leadership positions—not to mention the “Me Too” movement—women in the legal profession continue to encounter unfair treatment. In a 2018 survey of more than 7,000 women in the profession, half reported that they had been bullied in connection with their employment, and a third reported that they had been sexually harassed in the workplace. In addition, unequal

treatment does not cease once a woman joins the judiciary. For example, a 2017 study conducted at the Pritzker School of Law at Northwestern University concluded that female United States Supreme Court justices are interrupted three times as often as their male counterparts.

Incivility can take many forms. The most common category consists of disrespectful behaviors, ranging from mild discourtesy to extreme hostility. Examples include condescension, interruption, profanity, and derogatory comments of a gendered nature, such as comments about an attorney’s pregnancy or appearance.

Common complaints by women lawyers include being interrupted inappropriately or “talked over” while speaking, jokes and comments that are sexist, and comments that trivialize gender discrimination.

Other common examples reported by women lawyers include being professionally discredited. The misbehavior includes implicit or explicit challenges to their competence, being addressed unprofessionally (such as with terms of “endearment”), being critiqued on their physical appearance or attire, and being mistaken for nonlawyers (such as court reporters or support staff). A judge reported, “People tell me all the time I don’t look like a judge even when I’m in my robe at official events.” An attorney recalled an incident in which, when she stated her appearance on behalf of a shopping mall owner, the judge remarked that she was dressed as though she had just come from a shopping trip to the mall.

Less frequent—but still reported with regularity—are the most obvious forms of gender-based incivility, such as sexually suggestive comments or sexual touching.

The conclusion is inescapable that sexism is alive and prevalent in the legal profession, and that sexism finds its expression in incivility. The underlying reasons for sexism are varied, but among the obvious culprits with respect to the practice of law are that women remain underrepresented, particularly in leadership roles; there are fewer women than

men on the bench; and there are enduring stereotypes with respect to the proper role of women in society.

The Costs of Incivility

The ramifications of incivility must not be trivialized as just part of the fabric of everyday life. Research shows that incivility makes people less motivated and harms their performance. One study showed that medical teams exposed to rudeness performed worse not only in all their diagnostics, but in all the procedures they did. This was mainly because the teams exposed to rudeness didn't share information as readily as others, and they stopped seeking help from their teammates. There is no reason to believe this dynamic is limited to the medical field.

Incivility causes individuals to feel less satisfied with their work, to cut back on their efforts at work, and to experience greater job stress. Incivility siphons energy away from workplace tasks, and sometimes it causes employees to leave their jobs.

When incivility shows up in the courtroom, in the presence of jurors and others who pass through the court system, it diminishes respect for and confidence in the legal system. To quote Justice Sandra Day O'Connor, "When people perceive gender bias in a legal system, whether they suffer from it or not, they lose respect for that system, as well as for the law."

Promoting Civility in the Profession

While the demographics of the bench and bar have evolved over recent decades, sexism has proved difficult to dislodge. After all, the Rules of Professional Conduct proscribe sex discrimination, but it persists anyway. Working toward gender parity will help eliminate disparate treatment of women in the law, and will lead to enhanced civility in the profession.

On a more personal level, there are things each of us can do, through our own actions and in setting expectations with those around us. We can begin by simply being mindful. When someone makes an inappropriate casual remark or joke, we can simply refuse to engage. But we should not just be silent. While there is no need to turn every situation into a cause célèbre—it's probably counterproductive to do that—if you have a personal rapport with the individual who behaved unprofessionally, a private moment together can be a powerful way to advocate your values of civility.

If you are subjected to abusive behavior, or are a witness to it, come forward. The primary deterrent of reporting is fear—fear of damaging one's professional image, fear of harming a client's case, or fear of antagonizing a judge. It takes courage to blow the whistle, particularly when the wrongdoer wields power. Thankfully, however, we have seen a sea change in recent years, and women are now less reluctant to come forward. The courts and law firm leadership should strive to provide attorneys with safe and effective mechanisms to report mistreatment.

While we need to address uncivil behavior, it is also essential to recognize and take note of the civil behavior that we want to promote. If a colleague handled a difficult situation with grace and restraint, commend them on how well they handled it, and point it out to others. In doing so, you will help promote a culture of civility.

The Benefits of Civility

Apart from basic decency, there are other benefits to civility. Lawyers who behave with civility report higher personal and professional rewards, and conversely, lawyer job dissatisfaction is often correlated with unprofessional behavior by opposing counsel. Also, in the Internet era, a lawyer's reputation for civility is more vital than ever—a single uncivil outburst may haunt an attorney for years.

Lest you worry, nice guys do not finish last. In a biotechnology firm, a study showed that those who were seen as civil were twice as likely to be viewed as leaders, and they performed significantly better. Individuals who were viewed as civil were also seen as being important, powerful, and competent. If you're civil, you'll also be more effective.

Each of us can be more mindful and can act, when the opportunity arises, to promote civility. In doing so, we can help eliminate general incivility—as well as gender-related incivility—in the legal profession. At the same time, we also enhance our own well-being and sense of satisfaction with our chosen field.

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