

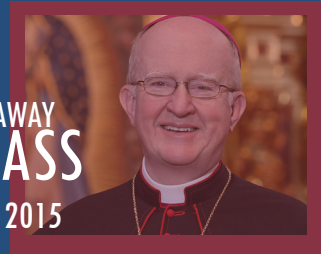
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ST. THOMAS MORE SOCIETY OF ORANGE COUNTY

SEPTEMBER 2015

VOLUME 20 ISSUE 8

3 WEEKS AWAY
RED MASS
OCTOBER 5, 2015



The Surprising
Persistence of
Attorney Incivility
SEAN MURRAY



St. Thomas More
and Planned
Parenthood
GREGORY WEILER



You are invited.

RED MASS

Join us
October 5, 2015



We are honored to welcome Bishop Kevin Vann to his third Red Mass in Orange County and seek his blessing on the dedication and mission of our local legal community.

Red Mass begins at 6:00 p.m.
The complimentary dinner reception is at 7:00 p.m.

Holy Family Cathedral
566 S. Glassell St
Orange, CA 92866
(714) 639-2900

Questions about Red Mass should be directed to Bill Malecki at bmalecki@yahoo.com

Sponsorship opportunities for Red Mass should be directed to Fabio Cabezas at fabiocabezas@cox.net

ad.
veritatem

The St. Thomas More Society of Orange County is an independent organization sponsored by lawyers and judges who are practicing members of the Roman Catholic Church.

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IDEALS OF ST. THOMAS MORE

The legal profession is a high calling with corresponding responsibilities to society. The principal objective of every lawyer is to promote and seek justice. Catholic Lawyers pursue the truth in both their spiritual and professional lives. The duty of a Catholic lawyer is to remain faithful to Jesus Christ, His Church and its teachings at all times despite the personal consequences.

THE OBJECTIVES OF STMS

- encouraging its members to live a Christian life and apply the principles and ideals exemplified by St. Thomas More in their lives and encourage same in the legal profession.
- promoting and foster high ethical principals in the legal profession generally and, in particular, in the community of Catholic lawyers.
- assisting in the spiritual growth of its members.
- encouraging interfaith understanding and brotherhood.
- sponsoring the annual Red Mass for elected and appointed officials and members of the legal profession.

MEMBERSHIP IN STMS

Each member of the Society is committed to:

- strive to live an exemplary Christian life and apply the principles and ideals exemplified by St. Thomas More in their daily lives and encourage same in the legal profession.
- attend monthly meeting of the Society and provide personal support to the St. Thomas More Society.
- attend and support the Red Mass.

LAWYER'S PRAYER

Give me the grace, Good Lord,
to set the world at naught;
to set my mind fast upon thee
and not to hang upon the blast of men's
mouths;
to be content to be solitary;
not to long for worldly company
but utterly to cast off the world
and rid my mind of the business
thereof.
- ST. THOMAS MORE

EDITOR@STTHOMASMORE.NET

Become a Red Mass Sponsor
by either printing this page
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on this page to be taken
to the Red Mass
Sponsorship webpage.



**Yes, I'd like to support the 2015 Red Mass as a
Red Mass Sponsor!**

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- ☐ Music \$3000
- ☐ Honoraria \$1500
- ☐ Worship Aids \$1000
- ☐ Ad - OCBA \$1750
- ☐ Ad - OC Catholic \$1000
- ☐ Invitations \$1500
- ☐ Reception Hall \$1000
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- ☐ Cathedral \$750
- ☐ Awards \$500
- ☐ Beverages \$500

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alone or both name(s) and firm or company name

Please mail your check made out to STMSOC to:

Murphy, Murphy & Murphy, CPA's
5665 Plaza Drive, Suite 350
Cypress, CA 90630

Please direct any questions to:

Fabio Cabezas, President
fcabezas@bwslaw.com

Bill Malecki, Red Mass Chairperson
bemalecki@yahoo.com

We continue a short series of articles on civility and professionalism in the practice of law. You can find the first article in the series (“The Mandate for Civil Behavior”) in the *August 2015 issue of the Ad Veritatem*.

THE SURPRISING PERSISTENCE OF ATTORNEY INCIVILITY



image via

If there is a hell to which disputatious, uncivil, vituperative lawyers go, let it be one in which the damned are eternally locked in discovery disputes with other lawyers of equally repugnant attributes.¹

Civility has again become a hot topic in the legal profession. Last summer the California Supreme Court supplemented the oath taken by new California attorneys to require “dignity, courtesy and integrity” in the practice of law.² Shortly thereafter, the California Bar Association issued detailed civility guidelines for attorneys.³ And just last month, Judge David Belz exhorted attorneys to civility in the pages of this publication.⁴

Why has the issue of attorney civility again come to the fore? That attorneys should conduct themselves in a civilized manner should be beyond dispute. Certainly few attorneys are willing to publicly defend obnoxious, strident, vulgar and otherwise boorish behavior. And the principles of decorum that attorneys so famously disregard have been firmly established for millennia. In the first century B.C., Cicero

urged his son to act with courtesy and avoid anger in dealing with others:

[W]e have a most excellent rule for every phase of life, to avoid exhibitions of passion, that is, mental excitement that is excessive and uncontrolled by reason; so our conversation ought to be free from such emotions: let there be no exhibition of anger or inordinate desire, of indolence or indifference, or anything of the kind. We must also take the greatest care to show courtesy and consideration toward those with whom we converse.⁵

Most of us heard something similar from our own parents, though perhaps phrased more sharply.

But while the principles of good conduct are venerable and widely accepted, attorneys continue to flout them, to the point that the legal profession is teetering on the brink of disrepute. In 1998, Justice Steven Stone noted “with dismay the ever growing number of cases in which most of the trappings of civility ... are lacking.”⁶ Things have hardly

(CONTINUED ON PAGE 5)

¹ *Krueger v. Pelican Prod. Corp.*, No. CIV-87-2385-A (W.D. Okla. Feb. 24, 1989) (Judge Wayne E. Alley).

² Rule 9.4 of the California Rules of Court.

³ California State Bar Association Civility Guidelines, available at: http://ethics.calbar.ca.gov/Portals/9/documents/Civility/Atty-Civility-Guide-Revised_Sept-2014.pdf.

⁴ *The Mandate For Civil Behavior*, Hon. David Belz, *Ad Veritatem* (August 2015).

⁵ *De Officiis*, Loeb Classical Library, Harvard University Press, vol. XXI, §136 (1913) (tr. by Walter Miller).

⁶ *Townsend v. Superior Court*, 61 Cal. App. 4th 1431, 1438 (1998).

THE SURPRISING PERSISTENCE OF ATTORNEY INCIVILITY

(CONTINUED FROM PAGE 4)

improper motives to their opponents, or subject them to *ad hominem* attacks. Indeed, it seems almost fashionable to begin sentences in legal briefs with a caustic introductory clause – a sort of rhetorical cheap shot – before returning to the matter at hand. One sees sentences beginning with “in a desperate attempt to obfuscate the issue, ...” or “raising yet another frivolous argument, ...” or the like. A particularly gifted rhetorician began a sentence with: “[n]ever one to miss an opportunity to deny a party the right to a fair and impartial hearing on the merits, the County....”⁸ The authors of such petty mean-spiritedness should be reminded that they practice their profession in a court of law, not on a middle-school playground.

According to the middle-school-playground mentality, any disparaging comment may be included in a legal brief provided the author deems it witty. Wit, apparently, can transform an ugly insult into a benign “zinger” which brightens the judge’s dreary work of trudging through tiresome evidence and legal analysis. But these witticisms are completely gratuitous, and often utterly offensive. For example, one “zinger” sought to discredit the testimony of a 15-year-old victim of sexual abuse by joking that, with an IQ of 44, the child was “more akin to a broccoli than a single celled amoeba.”⁹ The attorney went on to characterize the girl’s testimony as “meaningless mumble” and “little more than word salad.” That an attorney or *any human being* can speak this way about a child – especially one who has been abused – highlights the gravity of the legal profession’s continuing civility crisis.

Some of the incivility that plagues the practice of law today can negatively affect the substantive issues in a case. One example is the use of rude or intimidating behavior in depositions to bully a witness or opposing counsel. Many attorneys will actually defend such conduct as “zealous

improved since. Attorneys still adopt sarcastic and condescending tones in their communications with opposing counsel.⁷ They regularly impute bad faith or

advocacy.” One unrepentant offender freely admitted that he seeks to “get an edge on [his] advocacy” so that the witness will become “uneasy.”¹⁰ Unlike rudeness in briefs and letters, which judges may simply disregard, bullying during depositions has the potential to affect the factual record in a case and thus undermine the administration of justice.

There is reason to hope that the golden age for boorish lawyers is coming to a close. More states are adopting civility guidelines and encouraging judges to incorporate those guidelines into standing orders. And courts are increasingly relying on such orders and their inherent powers to sanction incivility:

Our profession is rife with cynicism, awash in incivility. ... For decades, our profession has given lip service to civility. All we have gotten from it is tired lips. We have reluctantly concluded lips cannot do the job; teeth are required. In this case, those teeth will take the form of sanctions.¹¹

Monetary sanctions are becoming more common,¹² and incorrigibly uncivil attorneys have been denied admission *pro hac vice*.¹³

Sanctions should be not necessary to curb ill-mannered attorneys; it should be obvious that incivility makes for ineffective advocacy. Judges are, as a group, a particularly intelligent and genteel species of attorney. They often make significant material sacrifices because they are committed to the ideals that underlie our democracy and its judicial system. They move in a *milieu* of formal manners, where attorneys stand before speaking and

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(CONTINUED ON PAGE 6)

7 *Moore v. Dan Holdings, Inc.*, No. 1:12CV503, 2012 WL 5182922 at *6 (M.D.N.C. Oct. 18, 2012).

8 *395 Associates LLC v. New Castle County*, 2005 WL 3194566 at *2 (Sup. Ct. Del. Nov. 28, 2005).

9 *In re S.C.*, 138 Cal. App. 4th 386, 421 (2006).

10 *Huggins v. Coatesville Area School Dist.*, No. 07-4917, 2009 WL 2973044 at *3 (E.D. Pa. Sept. 16., 2009).

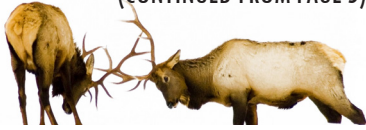
11 *Kim v. Westmoore Partners, Inc.*, 210 Cal. App. 4th 267, 293 (2011) (Bedsworth, J.).

12 *E.g., Chadwick v. Graydon*, No. B183488, 2006 WL 1688379 at *6-7 (Ct. App. 2nd Dis. June 21, 2006).

13 *E.g., Kohlmeier v. Nat’l R.R. Passenger Corp.*, 124 F. Supp. 2d 877 (D.N.J. 2000).

THE SURPRISING PERSISTENCE OF ATTORNEY INCIVILITY

(CONTINUED FROM PAGE 5)



arguments and instead favor a snarling beast that spits venom in every letter and every legal brief? Uncivil advocacy is stunningly foolish.

Judges understand that attorneys who vociferously accuse their opponents of bad faith or misconduct are often more guilty of such misconduct than their opponent. “The good person out of the good treasure of his heart produces good, and the evil person out of his evil treasure produces evil, for out of the abundance of the heart his mouth speaks.”¹⁴ A liar will accuse everyone else of lying because he thinks it only natural to behave that way.

In the end, the primary concern of every court is to reach the correct and just result under the law. Counsel are only useful to the extent they articulate a well-reasoned and well-founded analysis of the factual and legal issues the court must decide. Attorneys are therefore valuable who state the facts and characterize the evidence accurately, and who reason clearly and dispassionately. As King Solomon explained long ago, “[w]hoever restrains his words has knowledge, and he who has a cool spirit is a man of understanding.”¹⁵ The strident lawyer who makes exaggerated and unjustified

preface their arguments with “may it please the court.” How can anyone think that such men and women will ignore the merits of the parties’

accusations against his opponent will, in all likelihood, also play fast and loose with the facts and the law. An uncivil attorney simply does not inspire confidence.

For Catholics and other Christians, there are reasons to behave civilly besides the ineffectiveness of uncivil advocacy and the prospect of sanctions. We have a moral obligation to be honest, to uphold justice, and to treat others with respect. This moral obligation is embedded in human nature and, as part of the natural law, binds all men. But the scriptures also expressly require integrity not only in our actions, but also in our words:

Show yourself in all respects to be a model of good works, and in your teaching show integrity, dignity, and sound speech that cannot be condemned, so that an opponent may be put to shame, having nothing evil to say about us.¹⁶

Likewise, Christianity takes a dim view of the disparaging comments and ad hominem “zingers” that are the stock-in-trade of the uncivil lawyer. Matthew writes:

But I say to you that everyone who is angry with his brother will be liable to judgment; whoever insults his brother will be liable to the council; and whoever says, “You fool!” will be liable to the hell of fire.¹⁷

Now that is a sanction well worth avoiding.

Perhaps the legal profession’s civility crisis will finally be resolved by a combination of high-minded exhortations, strict sanctions, and the example set by the many fine attorneys now practicing law. However it happens, it cannot happen too soon. Uncivil behavior by attorneys is damaging the profession and the public’s confidence in our legal system and the administration of justice. ♦

¹⁴ The Bible, Luke 6:45.

¹⁵ The Bible, Proverbs 17:27.

¹⁶ The Bible, Titus 2:7-8.

¹⁷ The Bible, Matthew 5:22.

SEPTEMBER MEETING



Speaker: Ira Liston
Topic: Human Trafficking in Southern California
Day: Wednesday, September 16
Time: 12:00 p.m.
Location: Advanced Depositions
 17752 Sky Park Circle, Ste. 100
 Irvine, CA 92614

Ira Liston works in the **Public Law Center's** Immigration Unit, where he represents survivors of human trafficking. Mr. Liston's work focuses on providing direct legal representation, advocacy,

and educating the public about human trafficking in and outside of Orange County.

To read more about Mr. Liston, please [click here](#).

SAINT THOMAS MORE AND PLANNED PARENTHOOD

GREGORY N. WEILER

Okay. We are Catholic lawyers and judges in the middle of 2015. As usual, the law is leading the way in a cultural transformation which is startling in its breadth. What would St. Thomas More, the preeminent lawyer of his day, do?

How would St. Thomas react if he was barred by the power of the monarch from associating with, let's say, the Boy Scouts America?

What would St. Thomas More do if the highest court in the land imposed upon the citizenry the right to homosexual marriage?

Now, a really hard one: What would St. Thomas More do if he had viewed the eight recently released tapes of the Planned Parenthood executives laughingly facilitating the sale of unborn children, "legally" killed by writ of the highest court in the land?

These are not hypothetical questions, but rather questions that I pray each of you ask yourself daily.

Last Saturday morning while returning from an overnight campout with my grandson, we approached the location of one of the nationwide Planned Parenthood protests.

My 7-year-old grandson asked why there were people lined up along all the streets. I asked if he knew what abortion is—he responded "No." I said, well, ask your Mommy about it some time.

Being seven, he demanded an immediate answer.



I said, "Well, some ladies decide to kill the babies in their tummies and go to a doctor to do it. That's abortion."

He responded incredulously: "Is that for *real*?"

I said "Very sad, but for real."

He responded, "That's so mean."

From the mouths of babes.

Even though it is inconvenient, even though you may be confirmed pro-lifer, a Catholic who lives and breathes the faith that every human life has God-given dignity, please view the Planned Parenthood videos. Such viewing is necessary to bring to life that incredible barbarity that 40 years and untold invisible millions make an abstraction. I was personally inspired, reinvigorated and challenged to rejoin the fight for human dignity for all, with renewed vigor.

St. Thomas, please pray for us, that we members of the legal profession, those uniquely able to fight in that arena in which the forces of darkness have recently prevailed, do not become discouraged, that we have the courage and energy to engage these evils even when everything seems stacked against us.

PAX ~ GNW ♦

IMMACULATE HEART RADIO



Immaculate Heart Radio has launched AM 1000 to reach all of Orange County and continue the expansion of the Christ Cathedral Campus. In January, 2015, Bishop Kevin Vann flipped the switch alongside Doug Sherman, President of Immaculate Heart Radio at a luncheon dedicated to the launch.

This is an opportunity for the diocese

potentially to reach over 6 million people with the message of Christ's love. The launch of the station was well received with parishioners from across the diocese tuning in daily. Much of the station's programming has emphasized the universal Catholic Church while focusing on local parishes as well. ♦