



Civility: Carl von Ende

Rough Transcription of Remarks on Civility Federal Bar Association Presentation of Cook/Friedman Award June 24, 2010

Thank you to the Federal Bar Association and its members. It's a great honor to receive an award named for Judges Cook and Friedman, two judges who exemplify civility from the "other side of the bench." It's also a great honor to share this award with the two previous recipients, Ed Kronk and Larry Campbell, two good friends of mine and outstanding lawyers. I was afraid I'd have to share the award with Armando Galarraga, the Tigers' pitcher who was deprived of a perfect game by a mistaken call at first with two out in the ninth inning. He certainly displayed admirable civility under difficult circumstances in the sporting context. But, I hear he received a red Corvette instead.

About a year ago, Lloyd Semple, the Dean of the University of Detroit Law School, invited me to speak at the annual dinner of the Murphy Honor Society. I chose to speak to the students about civility. I asked them to look to the left and to the right at the other third year students with whom they had struggled, studied and celebrated through three difficult years of law school. I asked them why, in five more years, when all of them had gone on to practice at Dykema, the U. S. Attorney's Office, Plunkett Cooney and elsewhere, these same friends would have turned into liars and deceivers. They looked surprised at my question. I told them that I was concerned that this is the way they would describe their former classmates in briefs filed with our courts.

One of the benefits of my senior status with my firm is that I get to read a lot of briefs prepared by younger lawyers. I ritually strike out words and phrases like "disingenuous," "half-truths," and "seeks to mislead the court." Not only are terms like these offensive to our opposing counsel, they denigrate the court as well. Saying that an opponent "seeks to mislead the court" suggests that, without our pointing it out, the judge would be too obtuse to pick it up. I tell young lawyers, and anyone else who will listen, that it is no mistake to leave room for the judge to be more disappointed in opposing counsel than you are. Indeed, if your criticism of opposing counsel is too vivid, you run the risk of setting the bar too high. In other words, if the judge does not share your degree of condemnation, you may well lose.

Words like "incorrect," "erroneous," or "without merit" are plenty sufficient to inform the court that our client disagrees with an assertion of fact or law made by an opposing party. Remember that litigation is a contest between litigants assisted by lawyers. It is not a contest between lawyers. The great majority of lawyers work diligently and ethically to assert positions of merit. Civil behavior by lawyers assists in the resolution of disputes. It enhances, rather than retards, advocacy.