

CIVILITY • INTEGRITY • PROFESSIONALISM



Bringing Civility to the Table

Five attorneys gather for a roundtable talk about the need for cornerstones of the CIP campaign

As part of the San Diego County Bar Association's Civility, Integrity and Professionalism campaign, *San Diego Lawyer* invited five attorneys to a roundtable discussion on civility and professionalism in the law. The panel, composed of in-house and outside counsel, represented a wide range of practice areas and a wealth of experience as attorneys, leaders and mentors. The participants: Michael Attanasio, a partner with Cooley Godward Kronish LLP; William Boggs, a partner with DLA Piper; Javade Chaudhri, General Counsel for Sempra Energy; Darragh Davis, General Counsel for Petco Animal Supplies and President-Elect of the San Diego chapter of American Corporate Counsel; and Kenneth Fitzgerald, a partner with Latham & Watkins LLP (which hosted the roundtable session). Sherry Bahrambeygui, a managing member of the Price Group, LLC and a partner with Hosey & Bahrambeygui LLP, acted as moderator for the discussion.

Sherry Bahrambeygui: Have you seen a trend in terms of the general concept of civility, integrity and professionalism in our profession?

William Boggs: We have seen a decline, and I think one of the reasons we are having this roundtable is to address exactly what the problem is, what the causes of the problem are and maybe what some of the solutions are. Thinking back to when I started practicing in the '70s, people considered it a service profession, not so much a business, and there were no *L.A. Law* or *Boston Legal* shows or *Michael Clayton* movies diminishing the public's perception of the profession.

Bahrambeygui: I think the general consensus is we feel we are headed in the wrong direction, and the goal is obviously to turn the tide. Do you find it is generally easier to maintain the level of professionalism you believe is appropriate when representing a company that has in-house counsel?

Michael Attanasio: Yes. The degree of sophistication does come into play there, and often, as we will hear from panelists who are in-house counsel, they have a substantial level of experience that dates back to other law firms and the same types of issues that outside counsel deal with every day. This makes the process of explaining certain tactics to employ, or certain tactics that shouldn't be attempted, an easier process than trying to explain them to a client who doesn't have that experience and may be looking at things only from a strategic business standpoint without reference to the legal framework or professionalism.

Bahrambeygui: Do you come across occasions where you are getting pressured by your in-house counsel to up the ante or to engage in litigation tactics that you believe are not up to par with what you believe the profession should uphold? And if so, how do you deal with that?



From left: Alidad Vakili, Michael Attanasio, Sherry Bahrambeygui, Javade Chaudhri, Kenneth Fitzgerald, Darragh Davis, William Boggs

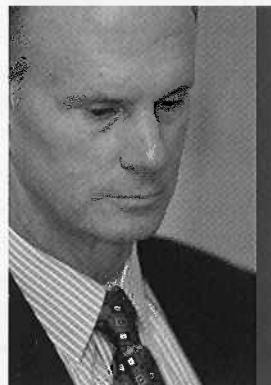
Kenneth Fitzgerald: Well, I have found that in-house counsel who've worked as litigators are the easiest clients to deal with, because they have been in the position we have all been in: where you have needed a favor from opposing counsel or you have had a very busy schedule, and you have got schedule conflicts, and you need some help from the other side. Or they understand that everything you do and everything you communicate is not only directed to your immediate audience, it is ultimately directed, potentially, to a jury or to a court—and because they understand that, I have found it is rare that I will be asked to do something not in keeping with the values of civility and integrity and professionalism.

Bahrambeygui: Does in-house counsel oftentimes provide somewhat of a buffer between outside corporate counsel and the ultimate client, the corporation, to take the heat if your client is telling you, "I want all guns blazing," and "Don't hold back"? Is that part of in-house counsel's role, in terms of trying to enable corporate counsel to litigate in a professional manner?

Darragh Davis: I think there are a couple of roles served there. One is interpreter of the advice in a way that the client can understand, appreciate and want to follow it, and also as a diplomat to some extent, if the advice may at the outset sound unpopular.

Javade Chaudhri: I agree. From a manage-

ment challenges. We try to achieve certain goals in an efficient, effective and, I hasten to add, ethical way, and we all know there are sometimes short-term goals or wins that can be achieved, but at what cost, and so many of us will never actually go there. Nasty litigation tactics can be such short-term advantages.



"We see it all the time: People say things in e-mail they would not say to the person directly."

—William Boggs

ment perspective, we have to wear two or three different hats. For example, in addition to serving as the general counsel, I am part of our six-person management committee that addresses the corporate strategic and manage-

I learned my philosophy of the practice from some incredibly wonderful people when I first started practice in Washington, D.C., in 1980. We would transact business in various third-world countries where, if you wanted



to, you could go rip off the local people, because they were not as sophisticated as the overseas investors. But our philosophy was that if you rip somebody off, it would come back to bite you, because we were in a relationship we hoped would last an eternity. Relationships require civility, trust and fairness. The only way to obtain the trust of the people sitting across the table was to make them appreciate that we saw this as a long-term partnership, where we wanted a reasonable rate of return consistent with the added

there are benefits to maintaining high levels of professionalism that outweigh any kind of advantage you may gain in litigation—if we look in the long run—but let's talk about some reality, as well. Is there anyone here who hasn't dealt with an attorney whose sheer rudeness, obstreperousness and aggressiveness hasn't caused you to want to somehow get him or her out of your life?

Fitzgerald: I don't think I have ever seen that play out. I have never seen rudeness and obnoxiousness and difficulty by oppos-

and the e-mail communication flood, and how that has affected disputes, increase in disputes or other issues in discovery.

Atanasio: I think that across the board, the phenomenon of e-mail for all of our communications has created more informality, less consideration about how one communicates, and certainly it is true in the context of dealing with opposing counsel, who is coming at this from a sharp-elbows perspective to begin with. The ability to use e-mail and other rapid forms of communication deteriorates the civility, deteriorates professionalism and creates opportunities for nastiness that may not have been as prevalent when one had to take the time to actually draft a letter, perhaps get help from someone to finalize the letter and send it off. I have seen the immediateness of e-mail after a telephone call or another event create many communications that did not live up to what we ought to be striving for, in terms of the profession.

Boggs: I totally agree with Mike about the negative impact e-mail has had on civility and professionalism, and it goes even further. It is a means of communication that is causing many people to not talk to each other. It is much easier to just quickly send that e-mail, and then all the bad things he was describing happen because of the sloppiness, informality and the emotion that gets into that. We see it all the time: People say things in e-mail they would not say to the person directly.

"I would start with the premise that the practice of our profession inherently involves a mix of ideals and pragmatism."
—Darragh Davis



risk of being in Mongolia or Uganda, not an effort to extract some short-term benefit.

Bahrambeygui: Those of us who are sitting around this table may have self-selected our perspective on what should be done with the profession, what has been happening to the profession and what standards we should hold ourselves to. I think we can all agree

ing counsel get a real advantage. If anything, it is either neutral or it backfires. One of the things I sometimes have to tell clients when I have a real jerk on the other side is "Just let them hang themselves; let them be jerks."

Bahrambeygui: On the topic of discovery disputes, I'd like to ask if you have seen an escalation of that, by virtue of technology



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—Kenneth Fitzgerald

Bahrambeygui: Do you believe there is a generational divide, in terms of the standards to which lawyers hold themselves in our current professional community—older lawyers versus younger lawyers, more recent graduates, partners? Do you see a trend in that regard, either from an in-house counsel's perspective as looking at a plaintiff's counsel that may be a newer lawyer or one that is less experienced?

Chaudhri: I believe it's a more complex or multidimensional issue, and things have changed. But I have to come back to something Bill said about starting to practice in the '70s. I started in the '80s, and as Bill was saying, there was a sense among lawyers that it was an honorable

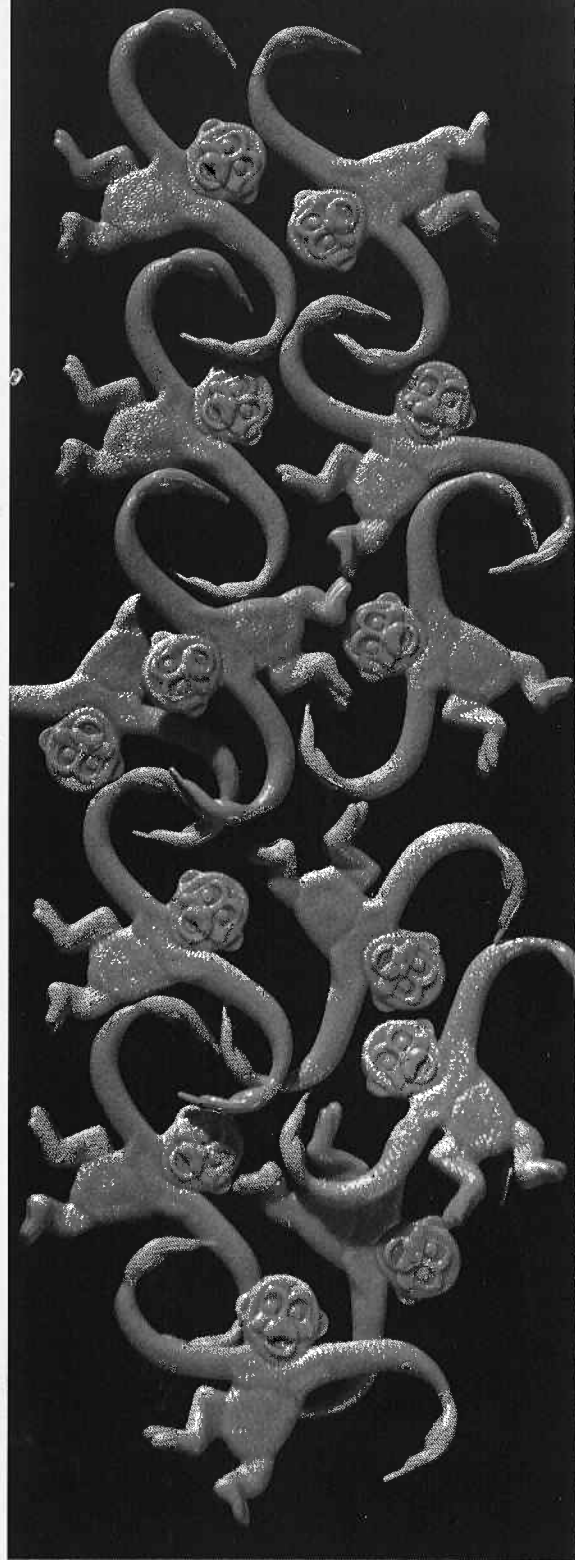
profession. And although we might have these sometimes less than ideal and often quite adversarial interactions, whether it was litigation or a transaction, ultimately you are trying to be part of the solution to a problem, and you are doing something for the greater good of society.

Boggs: I view it as one of the challenges we have, because I agree that the younger generation just entering the legal profession may not view the profession with the same amount of respect. There is less formality in the way they dress. There is less formality in the way they communicate. They observe less loyalty in the profession. We have become a business. Lawyers move from place to place.

That isn't the cause of the problem we identified earlier—which is less civility, less professionalism, ethically challenged lawyers and clients—but it is making solving the problem maybe more difficult. We have observed that the problem began to manifest itself certainly by the '80s, well into the '90s, and it is kind of rampant now, resulting in numerous efforts to address the problem. For example, as a result of the work of a number of committees, in the last 20 years 47 states have adopted more than 150 sets of professionalism, civility, standards and guidelines. That hasn't solved the problem, or we wouldn't be sitting here today.

Bahrambeygui: I want to ask you to imagine yourselves as doctors, and your patient is the legal profession in San Diego. The patient has been diagnosed with symptoms of unprofessionalism, incivility, obstreperousness and maybe a secondary diagnosis of lack of ethics. I would like to hear what your prescription would be for that patient.

Attanasio: With respect to our responsibility, the big-firm responsibility, we need to continue to lay the seeds with the younger lawyers who don't get to court



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enough, who don't see enough of what it really means to be in this profession. They will see that and interact with the judges and more experienced, older lawyers, and hopefully those seeds will be sown.



"Although we might have these sometimes less than ideal and often quite adversarial interactions, ultimately you are trying to be part of the solution to a problem, and you are doing something for the greater good of society." —Javade Chaudhri

Boggs: We are going to get the behavior that we reward, and we, as a profession, need to continue to reward good behavior. In San Diego, we do that through the Dan Broderick Award for professionalism, civility and ethics and effective lawyering, and that's just a fabulous local reward to tell the public and the Bar and practicing attorneys, "This is the kind of lawyering that we prize and we want." Within the corporations, they need to reward and set the tone from the CEO down, not just within the legal department. That would be my prescription: to have society, the profession and the law firms set the tone for the kind of behavior we want to see, by rewarding it.

Davis: I would start with the premise that the practice of our profession inherently involves a mix of ideals and pragmatism. I would then approach all the major known rainmakers in town and beyond, those who have the biggest books of business, and I would ask them to make it known publicly that they make civility, integrity and professionalism a criteria of referring business elsewhere when they must refer, when they have a conflict—ask them to commit to that, provide examples of those principled behaviors that impress them and their clients generally, and make all this known to younger attorneys who need not only the

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philosophic impetus but also the pragmatic, economic impetus to display these behaviors.

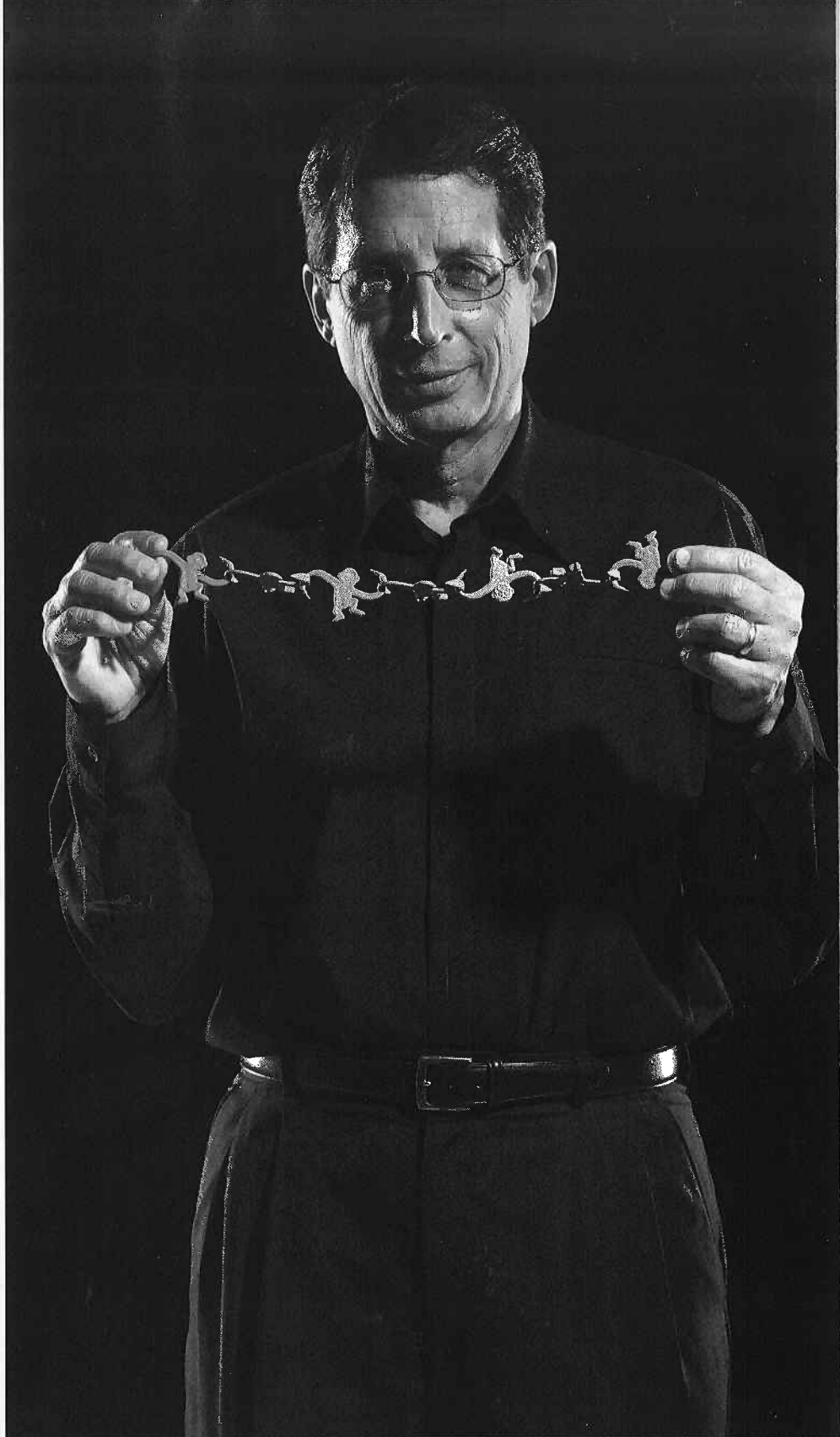
Chaudhri: It seems to me we cannot look at this thing just in the narrow confines of San Diego by definition, because we are just a piece of a larger puzzle. If there were better role models all around, that would have a beneficial effect. In the meantime, one of the specific things that a large number of general counsels, including myself, around the country take very seriously is that we select and perpetuate our relationships with outside counsel based on their attitude about inclusiveness or diversity. I am not looking for quotas or goals but the general attitude on inclusiveness of a particular law firm. The second is their attitude to civic-mindedness, including pro bono work. I believe civility and professionalism are implicit to that concept.

Fitzgerald: I would just say, "Celebrate civility." The more examples we have where we put the people who embody these values on a pedestal and we celebrate them, that gives more education and inspiration to people than we can accomplish on a day-to-day basis with our busy schedules. ↖

This marks the first of a two-part roundtable discussion series on the topic of civility, integrity and professionalism. Next month, we explore the perspective of the bench, as the SDCBA's Campaign on Civility, Integrity and Professionalism continues. Judges are on the front line when it comes to witnessing the qualities of lawyers. In the upcoming issue, we will hear from a distinguished panel of members of the federal and state benches and get an inside view of their thoughts and beliefs on this topic.

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