

PROFESSIONALISM

THE “RAMBO” PROBLEM
IS MANDATORY PROFESSIONALISM CLE THE WAY BACK TO ATTICUS

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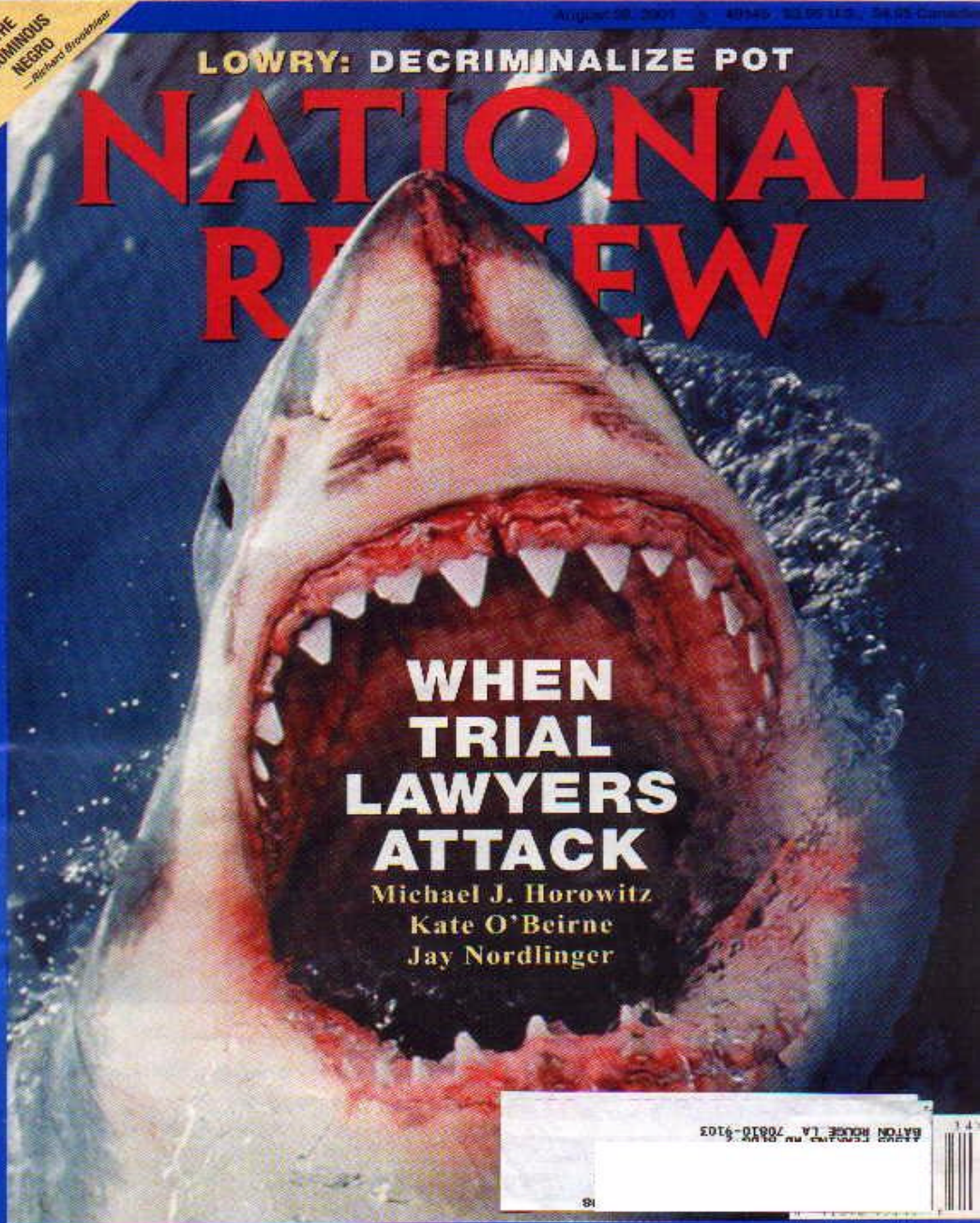
Dean Henry George McMahon American Inn of Court Meeting
Baton Rouge, Louisiana
December 5, 2002

THE
NUMEROUS
NEGRO
—Richard Brodwin

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LOWRY: DECRIMINALIZE POT

NATIONAL REVIEW



WHEN TRIAL LAWYERS ATTACK

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Key point to recall in this discussion – reason for the founding of the American Inns of Court was to represent “an intimate amalgam and interaction of Judges, master lawyers, less experienced barristers, law students and law professors designed to directly enhance the ethical and professional quality of legal advocacy in America”

Also important to remember that the Mission of the American Inns of Court is to foster excellence in Professionalism, Ethics, Civility and legal skills for Judges, lawyers, academicians, and students of the law in order to perfect the quality, availability and efficiency of justice in the United States.

Preview of Areas to be Discussed:

- *Something's Wrong with American Society in General*
- *Good Old Days-ism ?*
- *Planes, Trains and Civility*
- *Atticus*
- *Quality of Life?*
- *Rambo*
- *Balancing Civility with Zealous Advocacy (Zealotry?)*
- *Integrity, Reputation and Timeless Values*
- *What Are We Doing to Help – Law School Orientation Programs*

The Law

*in the 50s, it was a calling;
in the 70s, it was a profession;
in the 80s, it became a business;
and if we don't watch out
by 2000, it will be a racket.*

Celia Johnstone, President
Canadian Bar Association
August 1992

Something tragically wrong in society today

Post September 11, 2001 disruptions across all segments of American Society.

General Collapse of societal standards of decency reflected in recent survey performed by Public Agenda – 79% said lack of respect and courtesy in American society is a serious problem.

Memorial for Senator Wellstone reflected both this phenomenon and the American public reaction to it when they went to the polls a week later.

In an article entitled “How Our Age Dumbed Down Even Invective” the author discussed the prevalence of foul language in pop music and public discourse and made this statement.

“Some might call all of this stuff hate speech. I would call it a meltdown into the moronic”

New kinds of rage in American society every day!

Deterioration of traditional values in the legal profession have reflected that trend.

Judge Hoevler: “One of the basic problems of our professions is a loss of individual spirituality”

“We have lost touch”

“The fact that we are living in an increasingly technological and material world which has no time or room for these thoughts is one of the deepest problems that we as lawyers face”

What is Professionalism and how does it differ from Ethics?

Georgia Supreme Court: “Ethics is that which is required and Professionalism is that which is expected”

A Proud Profession- STILL!

- Drowning in “lawyer jokes”
- Tend to forget our history
- Great icons of our nation have been lawyers
- Adams, Jefferson, Madison, Marshall, Lincoln, Roosevelt

1939 Article in Texas Spoke of Chivalry in our Profession

- Author spoke of collegiality and camaraderie of lawyers-
- “No profession is so imbued with the *chivalry of combat* as the law.”

From the Virginia Bar Association Creed of Civility

- “Civility is neither a relic of the past nor a sign of less than fully committed advocacy”
- “Civility is simply the mechanism by which lawyers can deal with daily conflict without damaging their relationship with their fellow lawyers and their own well-being”

“A Temple of Justice”

- Compare the cynicism we see all around us today with a statement of a Federal Judge in an article last year-
- Courtroom etiquette, like good manners anywhere, is as much instinctive as learned.
- As a lawyer, I regarded any courtroom as a special place. I saw [it] as a temple of justice, where civility and courtesy are presumed.

“Good Old Day-ism?”

- Excessive emphasis on “The Good Old Days”?
- “Planes, Trains and Civility”
- “Every Trial Lawyer’s Icon”

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TO KILL A MOCKINGBIRD

Harper Lee



Atticus Finch

- Courtroom scene at the conviction of Tom Robinson
- “Miss Jean Louise, stand up. Your father is passing.”
- “It is pleasant to recall ‘The Good Old Days’ when lawyers were regarded with such reverence.”

**Stark Contrast to the
Present Days of
Rambo Litigators as
Illustrated in the
Following Cases**

“Carroll vs. Jaques”

- 1997 decision of the 5th Circuit Court of Appeals
- Egregious conduct on part of attorney
- Attorney sanctions for totally repugnant conduct

The Fifth Circuit imposed a sanction of \$7,000.00 calculated by assessing fines of \$500.00 for each of the four times Jacques referred to Plaintiff's counsel as either an idiot or an ass.

\$1,000.00 for Jacques' suggestion during the deposition that Plaintiff's counsel "ought to be punched in the G-damn nose"

\$1,000.00 for each of the three times Jacques called Plaintiff's counsel a "slimy son of a bitch" and \$1,000.00 for Jacques' parting words to Plaintiff's counsel.

“Paramount Communications, Inc. vs. QVC Network, Inc.”

- Gross language by big name Texas lawyer
- One of the best discussions in any reported case on the general principles of Professionalism and the need for “Civility in Discovery.”

In the *Principe* case out of New York in 1992 the Court sanctioned an attorney who continually referred to his female adversary with phrases such as “be quiet, little girl” and “I don’t have to talk to you, little lady” – the Court defined this kind of conduct as “a paradigm of rudeness, and condescend, disparage and degrade a colleague on the basis she is female.”

In the *Van Pilsun* case out of Iowa the Court dealt with a lawyer who repeatedly restated defense counsel's questions in order to "clarify" them – the Court characterized this conduct as "Rambo litigation" and, in ruling that all further depositions in that case would take place in the United States Courthouse in the presence of a discovery master, stated:

"the acrimony between counsel, necessitates the provision of day care for counsel, who like small children, cannot get along and require adult supervision."

In *Saldana v. Kmart Corporation*, the Court let a lawyer “off the hook” who had used gross language in dealing with her adversary

In a recent case, however, a “Rambo Lawyer” was ordered to pay over \$59,000.00 in sanctions for using gross language and filing frivolous suits.

For those of you who still do not think this is a problem, I refer you to the literally unbelievable language you will find in the article I have quoted in pages 481 and 482 of my Louisiana Law Review article – a graphic demonstration of how gross language has become in some depositions.

Judge John Duhe: "I listen to lawyers every day who decry the way they are treated by other lawyers and by some judges. You tell me regularly that it is no longer 'fun' to practice law; it is vicious, and unnecessarily contentious; that the 'search for the truth' has become the game of 'hide the ball'"

Deteriorating Civility Equals Deteriorating Quality of Life

- “19% of lawyers are dissatisfied with their lives.”
- “24% would not become lawyers again.”
- “24% exhibited symptoms of depression at least three times per month during the past year.”
- “36.6% felt depressed or unhappy during the past few weeks.”
- “16% consume at least three to five alcoholic drinks per day.”

ABA Studies in the Decline in Professionalism

- Money
- The Chase for Money
- Greed
- Change in Perception of the Practice of Law
from that of a Profession to that of a
Business

“RAMBO”

- The Major Cause of the Decline in Civility and Courtesy at the Bar



“Welcome Home Rambo!”

- Refuses to return phone calls
- Refuses to grant routine extensions of deadlines
- Refuses to even shake hands in court
- Engages in vulgarity and name calling, shouting, temper tantrums or even the occasional fisticuffs during depositions

“Judge Rambo”

- *“- an opinion by Federal Judge Bill Wilson in Little Rock involving a discovery dispute decried Judges’ refusal to assist in discovery disputes: “judges are wont to decry the lack of civility and cooperation amongst members of the trial bar. The judiciary, however, is not without blame. For some reason, too many Judges have no trouble restraining their enthusiasm for resolving discovery disputes (this puts it mildly).”*

“The Other Side”

The other side of the coin is that there is a serious ethical dilemma in pushing litigators to “make nice” and that it may be contrary to the obligation of zealous advocacy we all have.

“Be Civil? I’m a Litigator!”

- “I get annoyed, and sometimes infuriated at the self-anointed ‘civility’ police...”
- “Many of the civility committees are just stalking horses for legal wimpery.”
- “Every bar group that has a ‘civility committee’ should also be required to have a ‘zealous client representation’ committee...”

Some commentators agree with this school of thought, claiming that Civility, while important, is a “second level” virtue. Condemning zealous advocacy as unethical or irrational is a grave error which should be exposed before it spreads.”

Zealous advocacy is the buzz word which is squeezing decency and civility out of the law profession. Zealous advocacy is the doctrine which excuses, without apology, outrageous and unconscionable conduct so long as it is done ostensibly for a client, and, of course, for a price.

This school of thought holds that you are a “legal wimp” if you go out and have a drink with your adversary after a tough day of trial!

Shakespeare: “do as adversaries do in law-Strive mightily, but eat and drink as friends.”

Judge Gee's article: "Modern Technology – cellular phones, computers, fax machines, express-courier services, and even airplanes [modern update: add e-mails] – likewise corrodes civility. That corrosion takes place in law offices and dinner tables alike."

**Some good tips are set out in an article
entitled “Walking the Walk and Talking
the Talk – Practical Civility**

Suggestions for Bench and Bar:

- The early meet and confer conference
- The show and tell stipulation
- Early mediation
- The Cappuccino factor
- Respect for deponents and witnesses
- Thank you letters

The Louisiana Code of Professionalism of 1992 Contained the Following Preamble:

- *“My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue.”*

Professionalism Orientation Programs at the Law Schools

- Taught basic principles of Professionalism on the very first day of Law School
- Huge response by Judges and Lawyers from all over the State
- Best evidence of Professionalism

Professionalism Orientation Programs in the Law Schools

- First time ever in history of our Bar Association
- Programs on Professionalism at all four law schools on the first day of students careers
- Opening remarks by Chief Justice or Associate Justice and President of LSBA followed by workshops

**“Personal
Integrity,
Reputation and
Timeless Values”**

“Suggested Civil Conduct in the Face of Rambo”

- Best example is from *Carroll vs. The Jaques Admiralty Law Firm*
- “You can cuss your counsel. You can cuss your client. You can cuss yourself. You’re not going to cuss me. We’re stopping right now.”
- “*We’ll resume with Judge Shell tomorrow. Thank you.*”
- “Good evening, sir.”

“Reputation”

- “Reputation for honor, diligence, professionalism and excellence – and the constant day in and day out hard work required to preserve such reputation – is what the professionalism movement is all about.”



Exploding UnPROFESSIONALISM

FACT OR FICTION

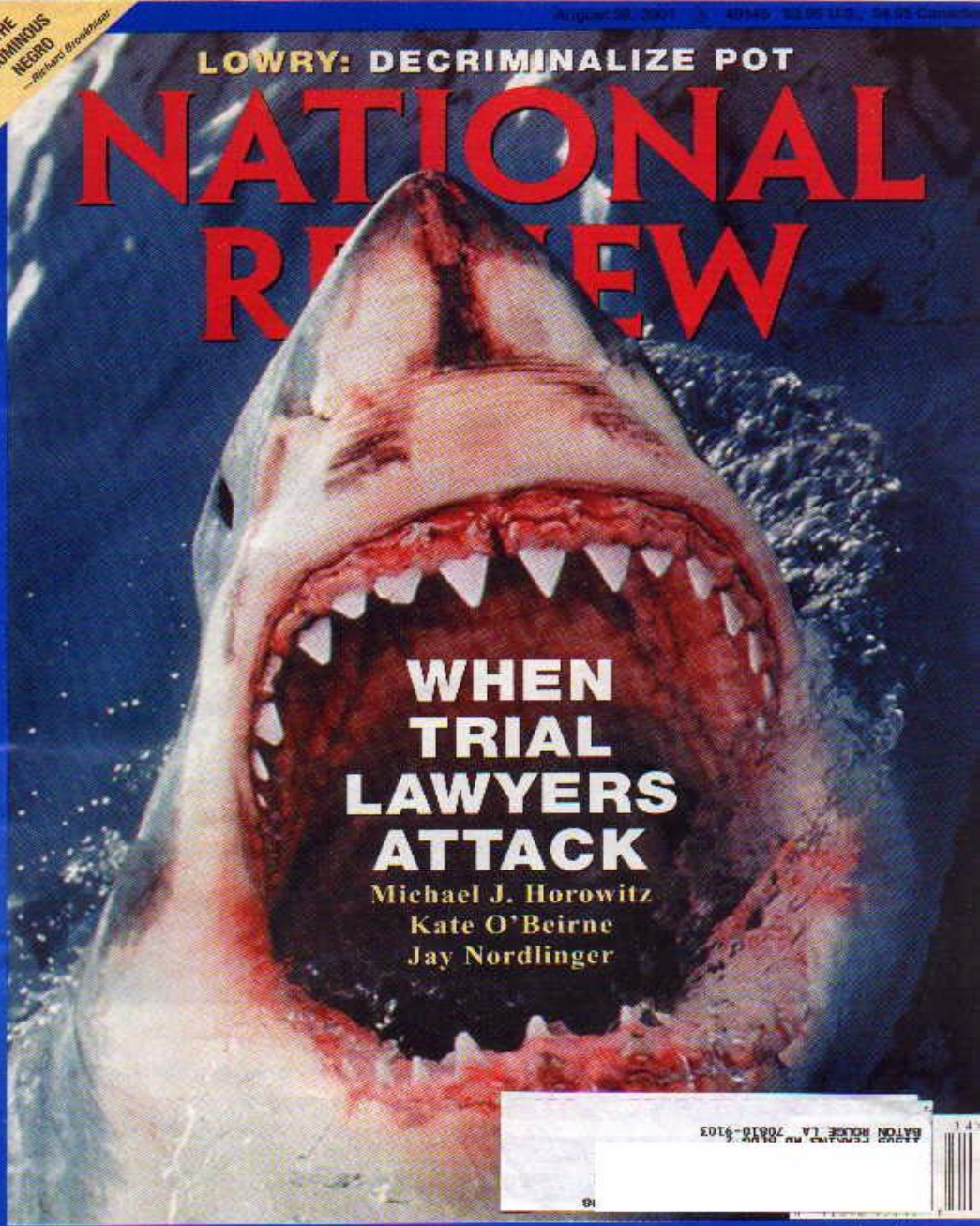


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Ultimate goal of
Professionalism movement-

The day when the phrase will
be used in common usage-

“Ethical as a Lawyer”!