

Fostering Civility in the Legal Profession



Tim Jaasko-Fisher
Robert's Fund
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43% of judges polled had sanctioned attorney on attorney incivility

35%

of judges polled had sanctioned attorney on judge incivility



35%

report that Judge on Judge
incivility is an issue in at least
some instances



WA CJC 2.8 Decorum, Demeanor, and Communication with Jurors.

- (A) A judge shall require order and decorum in proceedings before the court.

- (A) A judge shall be patient, dignified, and courteous...and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Preamble to WA RPC: A Lawyer's Responsibilities

“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court and a public citizen having special responsibility for the quality of justice...”

WA RPC 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment [1] [Washington revision] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with diligence in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. ***The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.*** (Emphasis added).

WA RPC 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or
 - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt a tribunal.*** (Emphasis added).



Defendant's attorney repeatedly petting plaintiff's service dog after being asked not to touch the dog.

[THE STATE]: Objection, Your Honor, and motion outside the presence. And counsel walked right into this after freaking six weeks—

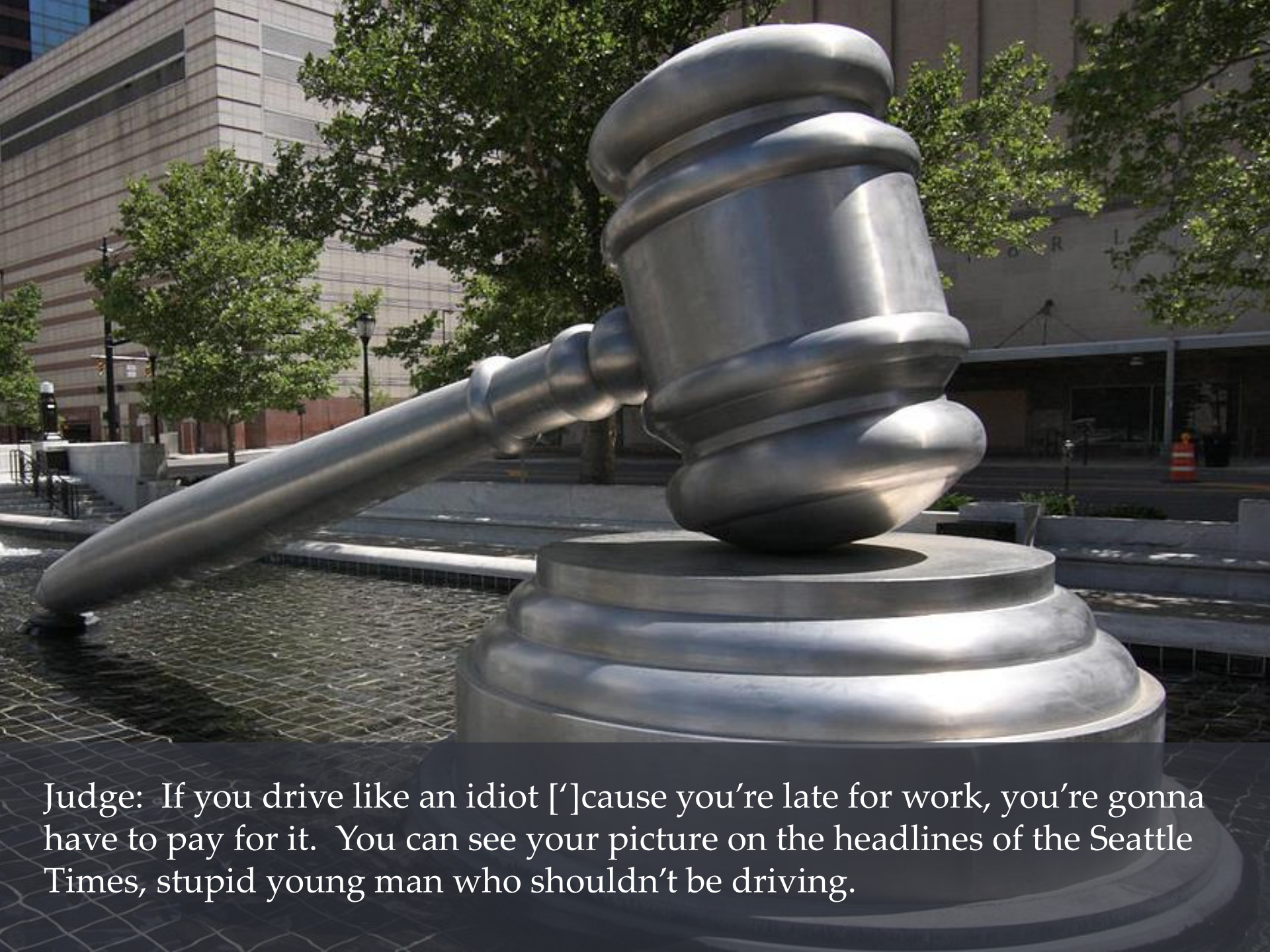
THE COURT: Hold on just a minute.

[HOLMES'S COUNSEL]: [The Prosecutor] is having a tantrum.

THE COURT: If I could have the jury go into the jury room.

[STATE]: Tantrum, because you—





Judge: If you drive like an idiot [']cause you're late for work, you're gonna have to pay for it. You can see your picture on the headlines of the Seattle Times, stupid young man who shouldn't be driving.



Judge: You know, that's the problem with mature people, they think, I see my exit so I have to get ahead, imagine that, ahead of those other trucks, then what did you do, you probably slowed down to get off at the off-ramp making all those people behind you think you were an idiot.

You make the call:

Dissenting opinion:

The [majority] opinion is couched in a style that is as pretentious as its content is egotistic. It is one thing for separate concurring or dissenting opinions to contain extravagances, even silly extravagances, of thought and expression; it is something else for the official opinion of the court to do so. Of course the opinion's showy profundities are often profoundly incoherent.





The price we pay

Business

Health and well-being

Justice

Incivility decreases
Performance
Effectiveness
Helpfulness
Reputation
Motivation
Creativity



Incivility costs money.



48% Reduce effort

47% Reduce time at work

80% Lost time worrying
about the incident

78% Lowered commitment
to organization

12% Leave workplace

50% **Reduction in
creative ideas**

61% **Performed lower on
verbal tasks**

20% **Reduction in recall**





remdue

demure

murder

\$2.8 Million +



A man with a beard, wearing a light-colored trench coat over a dark shirt and a red tie, and a dark cap, is looking down with a somber expression. He is standing in a dark, industrial or underground environment with a tiled wall and a skylight above. The lighting is dim and blue-toned.

Depression

Females: 14%

Female Lawyers: 16%

Males: 9%

Male Lawyers: 21%

Obsessive Compulsive Disorder

Females: 2%

Female Lawyers: 15%

Males: 2%

Male Lawyers: 21%





Anxiety

Females: 4%

Female Lawyers: 20%

Males: 4%

Male Lawyers: 30%

Alcohol Problems

Females: 8%

Female Lawyers: 71%

Males: 20%

Male Lawyers: 67%



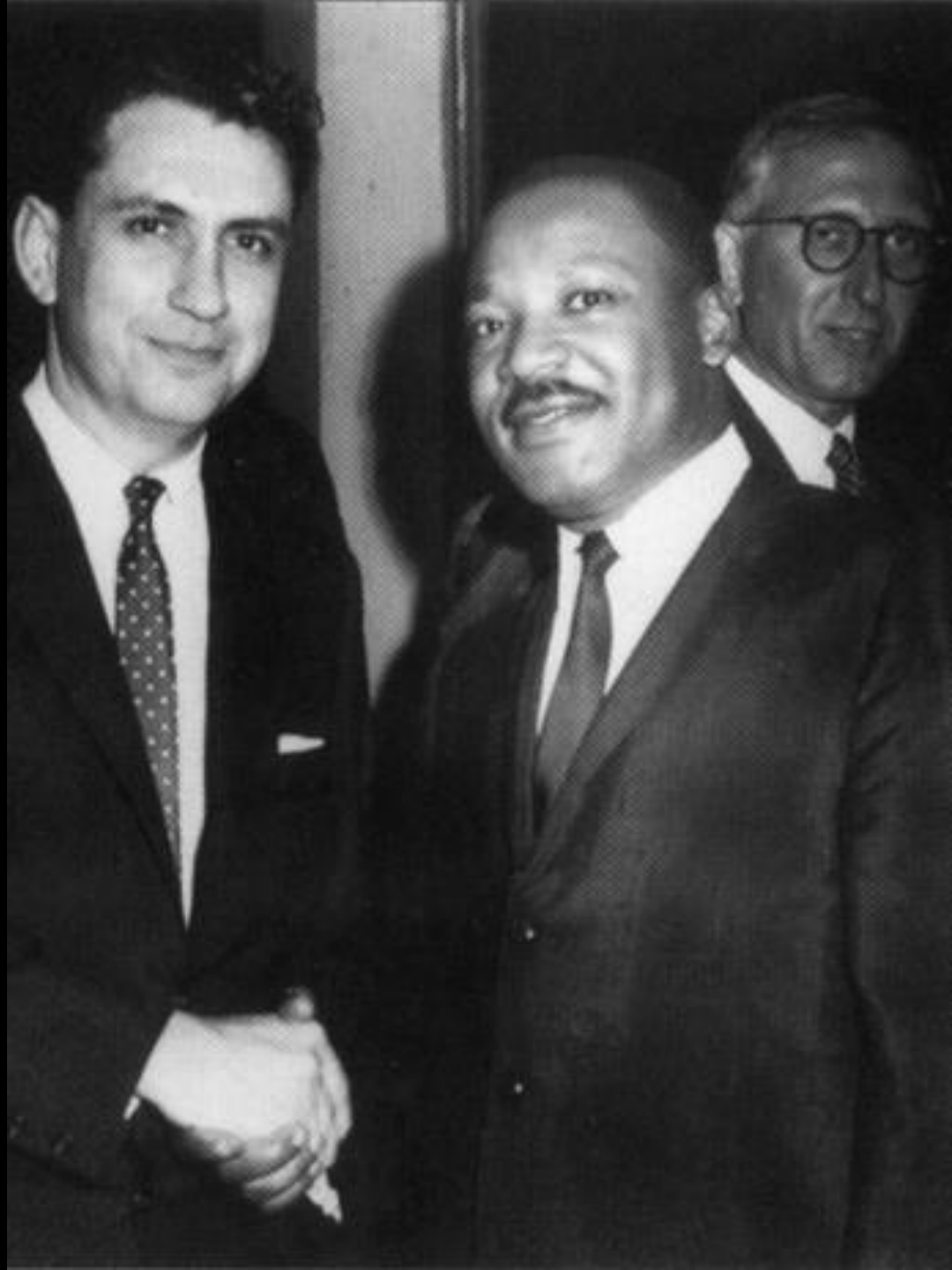
**You now know
some of the costs
of incivility.**

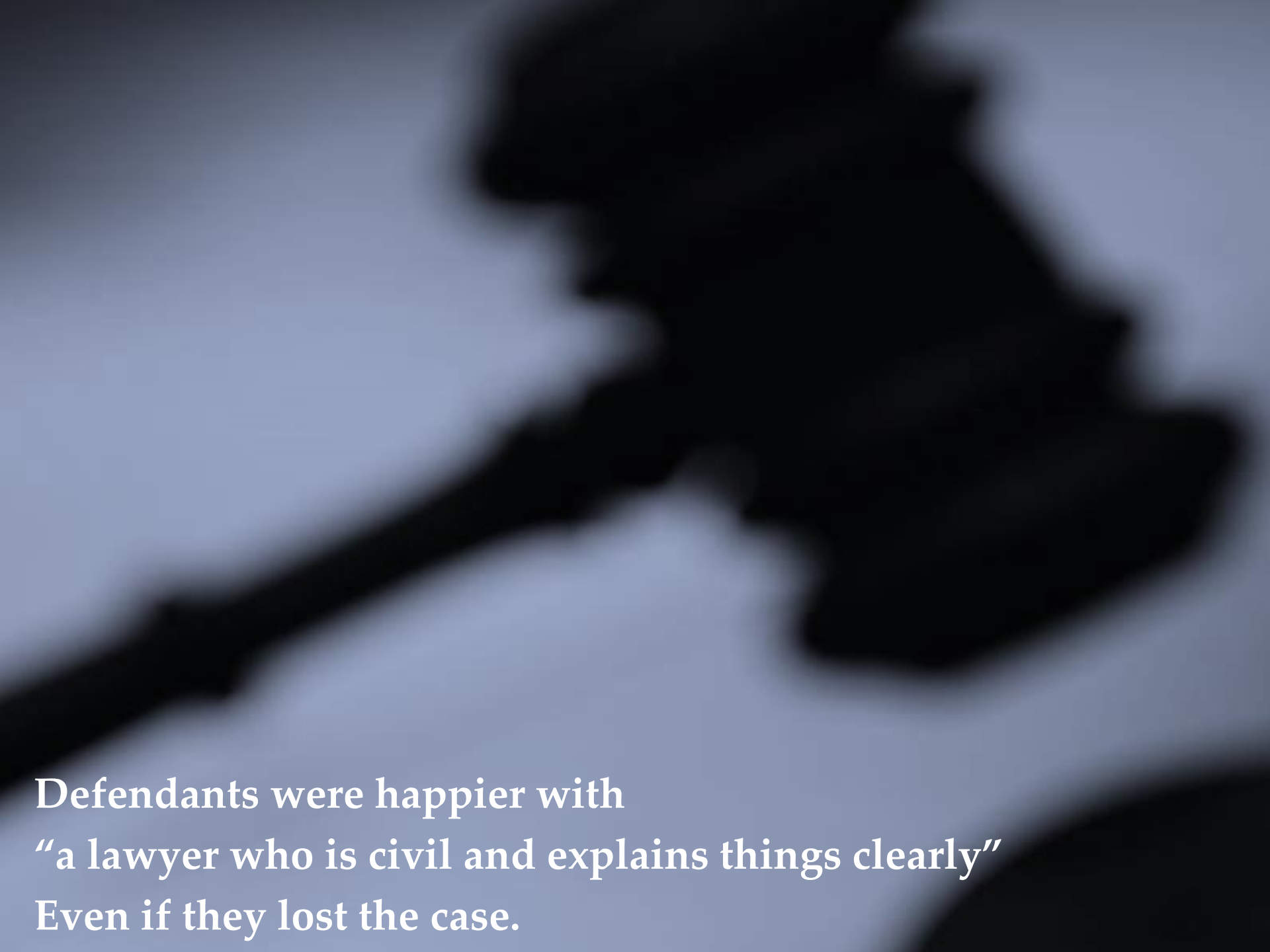
**What are the benefits
of civility?**



Persons perceived to be civil are more likely to be:

- Seen as warm and competent
- Sought out for advice
- Top performers at work
- Better connected to workplace networks
- Seen as a leaders





Defendants were happier with
“a lawyer who is civil and explains things clearly”
Even if they lost the case.

Lawyers perceive justice was served if they think *the outcome was fair.*

Litigants and the general public perceive justice was served if they think *the procedure was fair.*



Dimensions of procedural fairness include:

Voice

Respect

Neutrality

Understanding



I want to give my views, tell my story, and share in discourse related to the case.



How can judges increase perceptions of fairness?



Protect rights and human dignity.

Treat everyone with respect.

Give litigants a meaningful opportunity to be heard.



Pillars of civility



Consciousness

- decreases impact of triggers
- increases awareness of priming
- reduces implicit bias

Dear





How full is your cup?





Decision fatigue

Lack of food or sleep

Stress

Time pressures

Fear of error

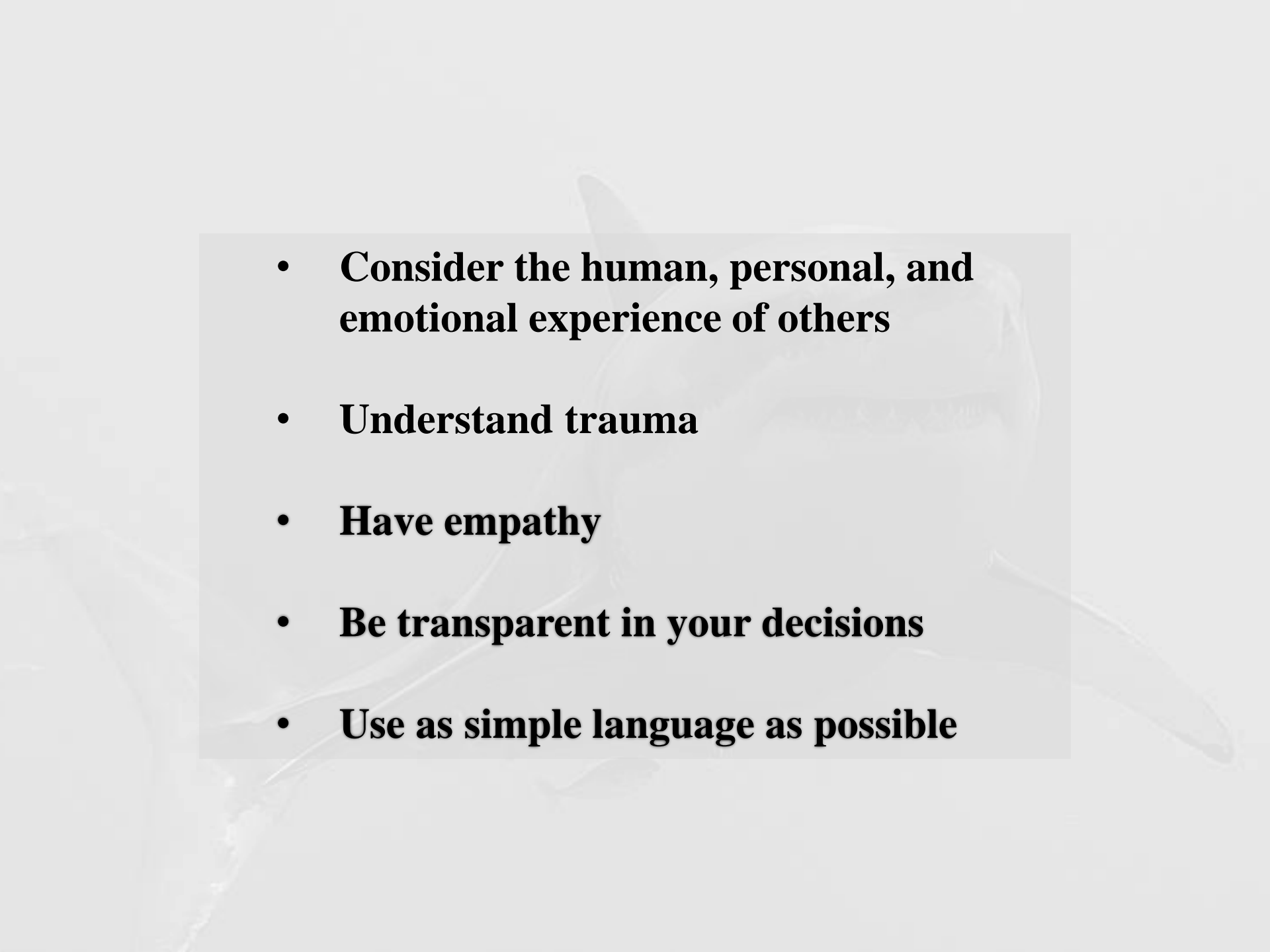
Vicarious trauma

Lack of values congruency

Lack of information

Cross cultural communication

Implicit bias

- 
- **Consider the human, personal, and emotional experience of others**
 - **Understand trauma**
 - **Have empathy**
 - **Be transparent in your decisions**
 - **Use as simple language as possible**



Creativity

- fosters mindfulness and flow
- reduces impact of priming
- opens aperture setting





Community

- Promotes physical well-being
- Reduces impact of implicit bias

Stay connected

Help others understand your role

Never worry alone



**What strategies
might you use on
an individual
level to promote
civility?**



Strategies to promote civility

(what the science says)

Civility training

Take another's perspective

Build empathy

Be present

Give positive feedback

Listen



**What strategies
might you use in
your court to
promote civility?**



Be a good role model

Talk openly about civility and expectations

Civility training

Mentoring

Incorporating codes / creeds into orders

Sanctions



**What can you do to
promote civility in
the profession?**



Civility training

Referral programs

**Creeds of civility /
professionalism**

Inns of Court

Mentoring

**Shift the culture of
the profession**



“Greater civility can only enhance the effectiveness of our justice system, improve the public’s perception of lawyers, and increase lawyers professional satisfaction. “

