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## ‘Have a nice day, Mr. Bond.’

**G**rowing up, I was a fanatic Mad magazine reader. I still own 30 of the books. There's one article I can't find anywhere, but I still remember it all these years later: It was about how movie villains are often far more polite than movie heroes.

In it, Goldfinger says something to James Bond along the lines of, “Well, Mr. Bond, I hope you're comfortable. Can I get you a nice martini as you wait for the laser beam?”

Bond replies with something like, “Go to #\$%#, you \*&\*#!”

I think of that article whenever I hear how lawyers are supposed to be civil with each other. “Civility” is such a superficial word. I prefer “respectful.”

There's no question that a person can be perfectly civil in speech while doing something awful; actions unquestionably speak louder than words, and all of us know people who can “talk the talk” but can't “walk the walk.”

However gruff and seemingly uncivil, a lawyer who demonstrates actual respect for another lawyer is a much-preferred opponent and, yes, colleague.

Which gets to the problem of politically correct speech. No one cared that Donald Trump was not P.C. In fact, some of us — not exactly supporters — might even say it is refreshing to hear a politician at least speak frankly, rather than pretend. For better or worse, we know what he really thinks.

The whole P.C. concept has a good side and a bad side. The good side is the recognition that words matter. That words have power. That labels shape how we think and how we act.

When we think of someone as “mentally challenged,” we actually see them differently than when we think of the same person as “handicapped” (or, worse, “retarded”). The labels we use affect how we see other people and how we treat

them. P.C. speech is a way to try to combat deep-seated prejudice.

The bad side of P.C. is its aggressive challenge to free expression. Trying to get people to change their thinking merely by changing names and labels comes across as hypocritical. In the hilarious movie “Lost in America,” a car salesman tells Albert Brooks' character that no, the car does not have leather — it has “Mercedes leather.”

“Mercedes leather? What's that?” Brooks asks.

“Thick vinyl,” the dealer replies.

In a recent judges' class, we vigorously debated whether it is appropriate for a judge to use the term “ladies” to address women in their courtroom. Some judges felt that word offensive and condescending.

The bottom line is that respect is respect. We all know it when we see it. The drive for respect is a defining trait of trial attorneys. Countless mediations come to a point where one side will claim the other's negotiation is offensive and shows an utter lack of respect.

The mediator has to refocus the offended side on the reason for participating — getting to an agreement. At the same time, the mediator may transmit the perception received and suggest ways to improve communication.

Here are some signs of what we're looking for in trying to find actual respect:

- Active listening. This isn't what I can do when I repeat my wife's words verbatim after she asks if I've heard her (after years of having transcripts read). It's showing a deep understanding of what is actually being said.

- Understanding your opponent's goals. Mediations hit snags when one or both sides don't really understand what the other side wants and needs. Who is calling the shots, and what are their real concerns?

- Admitting what must be admitted. It is incredibly frustrating

### MEDIATION CIRCUS



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when one side refuses to admit an undeniable fact. If a fact or issue is obviously inescapable, failing to acknowledge it can be perceived as deal-breaking disrespect.

- Understanding that actions speak louder than words. Despite a very sincere and contrite expression of sympathy, a plaintiff will not take kindly to an offer well below his expectations. Parties have to understand that each offer communicates opinions about the case and thoughtfully modulate their offers as well as the reasons for them.

- Willingness to move, in some or any way. When one side is totally unconvinced of the other's merits, a failure even to try to reach some form of agreement or accommodation will be seen as a complete lack of respect. Sometimes all it takes to conclude a deal is a gesture, at least giving the other side something to take away.

James Bond wasn't a very good negotiator. With his skills and good looks, he didn't have to be. Whether Trump will be remains to be seen.

Lawyers, however, need to be good negotiators in order to represent their clients well — and part of being a good negotiator is respecting your opponent and understanding how to earn it.