"Civility" Does Not Humiliate

To the Editor:

In the recent Michigan Supreme Court opinion, *Martin v Secretary of State,* a justice who authored a majority opinion went to great lengths to criticize the author of a minority opinion (fair game) with a studied and pretentious attempt to personally humiliate the author of a minority opinion (not fair game):

> I agree with Justice Kelly's statement of legal principles in *Stokes*. Now, in this case, it appears that Justice Kelly has abandoned her *Stokes* opinion and the very principles she propounded there.
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> It appears that Justice Kelly's adherence to precedent is "flexible" such that she is willing to ignore even *her own decisions* when she finds them inconvenient. I am, as is the majority, prepared to follow *Stokes* even if its author abandons it.

In an era where the State Bar and our Supreme Court are fixated on "civility," I find two major problems. First, most subscribers to civility make the mistake of equating it with social etiquette, i.e., civility is nothing more and nothing less than social etiquette. But in the robust debate on important legal issues in a free society, neither civility nor social etiquette should restrain or temper a direct, straightforward, and honest exchange of ideas and arguments. New lawyers brought up on the refrain of "civility, civility, and more civility" run the risk of letting social etiquette stifle the greater need to express the straightforward, clear voice that the pursuit of justice demands. For example, the antebellum South was noted for a remarkable civility in tone, expression, and communication, but that southern expression and civility glossed over the great sin of slavery (and even lynching). Rather, what was desperately needed was not civility and social etiquette, but strident, pointed, and direct voices that exposed and railed against the great sin of slavery—the same kind of voices that later needed to be directed against the holocaust, against the disenfranchisement of women, against poll taxes and literacy tests that kept the poor in the South from voting, against the denial of equal public accommodations and equal education, and against deprivation of other constitutional rights.

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Secondly, however you define civility, it does not condone a studied attempt by a Supreme Court justice to publicly humiliate another member of the Court. Yet in the misguided and misunderstood era of civility, some—from Supreme Court justices to district court judges—think it is permissible to publicly humiliate other justices or to publicly humiliate parties by making them carry signs in public that spell out the parties' transgression (e.g., "We don't smoke marijuana in Muskogee") as long as the words used to humiliate reflect an erudite intellect well versed in the art of civility, social etiquette, and facetious "put down."

In the pursuit of justice, large issues are at stake. So let's draw a line in the sand and slug it out, and clearly and directly express our indignation uninhibited by the constant specter of civility. Yes, take each other on in the name of justice, in the name of idealism, and in the name of "class wars," but drop the uncivil and facetious attempts to publicly humiliate.

Finally, let us adopt a definition of civility that really means something other than social etiquette—a definition of civility that means that those in a position of power or influence treat those without power and influence with respect. And I know it's wishful thinking, but with the new definition of civility, maybe we could get rid of Judge Judy and her act-alikes.

Frederick W. Lauck
Milford
