

**May 2009**

As a profession, we may underestimate our ability to calm a situation.

"The mere presence of a lawyer can bring comfort and solace to a person in need of help," according to American Bar Association Past President Dennis W. Archer. "Knowing that, we can positively affect change in what may otherwise be a difficult, adversarial situation."

Is our potential ability to heal an otherwise conflicted situation compatible with our primary duties as advisors, advocates and counselors?

Florida Coastal School of Law Professor Susan Daicoff believes so. She writes, "Law as a healing profession has great transformational potential...It could make the legal system a more inspiring, humane,

## **PRESIDENT'S VIEW**

*by Edward W McIntyre*

and hospitable place for clients, lawyers, judges, and indeed society as a whole."

The late Warren E. Burger, former chief justice of the U.S. Supreme Court, echoed the concept while speaking at the 1983 ABA Midyear Meeting — "the original role of lawyers was healing social conflict." He went on to urge the profession to return to and embrace that role again.

Revisiting that theme a year later, Burger said, "The entire legal profession ... has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers of conflict .... Trial by adversarial contest must in time go the way of the ancient trial by battle and blood .... Our system has become too costly, too painful, too destructive, and too inefficient for truly civilized people."

Taking Burger's sentiments even further, former dean of Notre Dame Law

## **President's view: ethics**

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School David Link has observed the law to be one of the great healing professions alongside the clergy and medicine.

Last fall, at the University of Windsor Eleventh Colloquium on the Legal Profession, Archer said, "On an individual level, if we approach our life's work as healers, if we reorient our thinking to take advantage of the power of healing, we can do much good for our clients and others."

The approach Archer mentions is timeless.

To argument and criticism, Abraham Lincoln would respond with commendation rather than confrontation. Critics and opponents ultimately came to value his open, non-defensive language as he sought to heal the nation.

In his lecture notes, Lincoln defined his understanding of the calling of a lawyer. "Permit your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."

According to Ronald C. White Jr., in *A. Lincoln*, Lincoln understood his role as a lawyer to be a mediator and recognized that while at first glance a dispute seemed to be between two persons it almost always involved the whole community. He would urge his clients to settle be-

cause he knew these people had to go on living together in their communities, after they had their day in court. Even when dealing with corporations, such as the powerful Central Illinois Railroad, Lincoln looked to be the mediator.

In modern times, healing and mediation are embodied in an evolving "therapeutic jurisprudence" movement. Simply defined, therapeutic jurisprudence is the use of social sciences to examine how the law impacts the well-being of those it serves.

Professor Bruce Winick, a scholar of therapeutic jurisprudence encourages attorneys to see themselves as therapeutic agents. "Lawyers should seek to apply an ethic of care in their practices, and the profession should teach this to subsequent generations."

In 2000, the Conference of Chief Justices and the Conference of State Court Administrators joined the lawyer-as-healer discussion with

joint resolutions centered on unconventional processes to address complex social issues and problems; a focus on remedies; and the benefits of therapeutic jurisprudence.

Currently, therapeutic efforts are being applied in experimental pilots. Two involve domestic relations proceedings and the use of non-adversarial language in filings and pleadings.

Applying these thoughtful and wise principles more broadly in earnest today may help bring about Chief Justice Burger's vision of legal professionals as "healers of conflict."

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