

CIVIL DISCOURSE AND DIFFICULT DECISIONS PROGRAM

Critical life skills through courtroom experiences

BY ROBIN L. ROSENBERG, BETH BLOOM & HAYLEY LAWRENCE

Often, problems come as problems. We know them when we see them; when we feel that unmistakable pit in our stomachs. But sometimes, the problems that arrive on our doorstep are opportunities in disguise. As judges, we noticed two problems in particular that seemed to continually worsen over time. First, we saw young people observing adults communicating disrespectfully and putting one another down. Second, we noticed young adults getting tied up in the criminal justice system after making foolish, regretful decisions. With those challenges in mind, we sought to develop a program that would provide students with the skills to communicate effectively with others, even when they disagree. We also wanted to help students make adult decisions that would keep them from facing criminal charges.

So we created the Civil Discourse and Difficult Decisions Program, coined CD3: an educational outreach program for high school and college students. CD3 teaches young adults how to engage respectfully in difficult or emotionally charged conversations and equips them with tools to make smarter life choices — ones that keep them out of the courtroom. The program is a partnership between the U.S. Courts and the Federal Bar Association (FBA). Judges and lawyers work

together to present the three-hour program in a federal courtroom, but the program can be modified to accommodate virtual learning as well.

We (Judge Bloom and Judge Rosenberg) are both United States district judges serving in the Southern District of Florida. Before our appointments to the federal bench, we each served as state court judges and had previous careers as practicing attorneys. Our experiences both on and off the bench — as judges, lawyers, and moms — have deepened our appreciation of the importance of civility and civil discourse. We share a common belief that respectful dialogue is essential not just to our profession, but also to our community and our next generation of leaders. We are also mindful that civility is a learned practice. Young adults model their behavior on what they see at home and in the public domain. The rise of social media, combined with a seeming dearth of positive role models in the public sphere, concerned us as we witnessed our own kids confronting an increasingly hostile world with increasingly uncivil communication. We designed CD3 to help young adults learn the skills necessary to think critically and engage in productive and respectful conversation.

As judges who routinely sentence defendants, our inspiration also came

from what we heard on the bench from defendants. We identified a common thread in defendants' statements at sentencing hearings: "I wish I could go back and undo what landed me here" or "I didn't realize how my decisions would impact my life, my family, and my loved ones." What struck us about these comments is how life can change in just the blink of an eye. A single falter, and one's life is immeasurably different. To help prevent these "If I could go back and change things, I would" moments, CD3 teaches students the importance of thinking through decisions and equips them with tools to do so.

Together with Rebecca Fanning, the national educational outreach manager for the Administrative Office of the U.S. Courts (see her article on Page 14), we created CD3 with two objectives in mind: to teach students how to have tough conversations without animosity, and to emphasize the importance of making good decisions. The program gives students the skills to navigate situations with potentially life-altering consequences. The program also provides students an opportunity to practice their oral advocacy and decision-making skills under the guidance of a federal judge and volunteer attorneys. And, importantly, it is a program that is readily adaptable to any school and any judicial district.



The Civil Discourse and Difficult Decisions Program

CD3 has four basic parts: the Reality Check Quiz; Civility Self-Reflection and Civil Discourse Skill-Building; Courtroom Preparation and Argument; and Reality Check Discussion/Q&A. In all of these components, students are invited to participate directly in the courtroom with practicing judges and lawyers who introduce themselves to the students and explain why they entered the legal profession.

Reality Check Quiz

The students first complete a Reality Check Quiz. The quiz poses ten true/false questions, framed in the context of scenarios relatable and relevant to young adults, such as house parties, transporting legal marijuana to a state where it is illegal, and cyberbullying. Examples of such questions include: “My parents know that my friends and I are going to drink, and they want to keep us off the road, so they buy the beer and we get together at our house, where my parents can keep an eye on us. If the party gets busted, anyone who is underage is breaking the law, but my parents won’t get charged. Of course, they’re over the legal age and they won’t be drinking because they are driving some kids home”; and “If I’m hiking in Colorado, where pot is legal, and my friends bring some back

to our home state where it’s not legal, they could end up in federal court, if they’re caught with it.” The exercise allows students to discuss each scenario, explain why they believe their responses are correct, and interact with practicing attorneys and a federal judge who facilitate the discussion. The legally correct answers to the true/false questions are not shared until the end of the program.

Some mistakes can be teaching moments, but as students age into young adults, the consequences of those mistakes can be life-altering. Discussions about these mistakes revealed to us that some students may be unaware of how severe those consequences can be. Indeed, scientific research shows that young people’s pre-frontal cortex (the part of the brain responsible for decision-making) does not finish developing until 25 years of age. As a result, young people may not be able to weigh risks (and rewards) like adults can, and young people may be more likely to engage in riskier behaviors than their adult counterparts. This program aims to familiarize young adults with realistic hypotheticals so that when they come to their own proverbial fork in the road, they are better equipped to recognize life’s risks and ultimately make the right choice. At the end of the day, we hope that the program

ABOVE: STUDENT PARTICIPANTS IN A CD3 PROGRAM.
PHOTO COURTESY JUDGE ROBIN ROSENBERG, CENTER.

will both help students make the right decisions and, as a corollary, reduce the number of future sentencings.

Civility Self-Reflection and Civil Discourse Skill-Building

Next, students engage with a Civility Self-Reflection Worksheet. This worksheet introduces the concept of civil discourse. Each student reviews a self-reflection guide that allows them to assess their own behavior, such as their own facial expressions, whether they keep an open mind when they disagree, whether they give their peers their undivided attention, and whether they actively listen and ask clarifying questions.

Referencing the insights students gain about themselves from these worksheets, attorneys facilitate the civil discourse skill-building discussion. Students are asked to openly discuss behaviors and attitudes that are important to them when engaging in a discussion with others. The students then establish their own ground rules and norms for civil discussion. The program’s materials, available for download online, include ten important considerations, including asking students to consider their own reactions to what others say, encouraging ▶

them to refrain from interrupting or speaking over another student, and instructing them to focus on the content of others' comments and to find common ground between others' positions and their own. The students are then asked to create their own list of ground rules for civil discourse to govern their presentation and the jury deliberations that comprise the activity that follows. In past lists, students have emphasized the need to avoid interrupting another participant, for example, and to be aware of body language that may signal a lack of interest, like folding arms or looking away.

Courtroom Preparation and Argument

Students are next presented with a factual scenario derived from an actual U.S. Supreme Court case. Because the program is meant to engage high school and college-aged students, we select cases with facts and issues that are likely to be most interesting or salient to them. Prepared, downloadable materials are based on *Elonis v. United States* (a rumor/threat on social media); *New Jersey v. TLO* (vaping materials found in a student's backpack); and *Tinker v. Des Moines Independent Community School District* (a school walkout protesting new dress-code restrictions). However, judges can tailor the program to any case in which they believe students may be interested.

Students are then divided into three groups: petitioner, respondent, and jurors. For the petitioner and respondent groups, students work with volunteer attorneys to develop their arguments and work among themselves to decide the best way of presenting their argument to the judge and jury. Jurors sit and listen to each side's argument and then deliberate as real jurors do. The other partici-

pants — the judge, volunteer attorneys, and student advocates — observe the jury deliberations. After a predetermined deliberation period, the student jurors are polled to give their verdict. The student jurors are then asked to explain why they reached the decision they did and how the presentations affected their point of view. They also explore questions such as: How did they resolve disagreements among themselves? How did they put their active listening skills to use? In particular, students who changed their vote between when deliberations began and when they rendered their verdict are asked to explain what persuaded them to change their mind.

This discussion allows students to contribute their thoughts and perspectives on which arguments were persuasive and what argument styles were effective. The point is to encourage the students to reflect on how they resolved disagreements respectfully so that they can bring those skills — asking questions, listening actively, thinking before speaking — to discussions in their day-to-day lives.

The CD3 program also aims to give students an idea of what real court proceedings look like. The hearing-style arguments (including judge questioning, should the judge desire) give students real insight into what lawyers, judges, and court personnel do. Empaneling a jury allows students to see the role and function of the jury in the justice system. While the program's primary focus is not on developing students' oral advocacy skills, CD3 provides students an opportunity to develop public speaking and argumentation skills, coached by practicing attorneys and a federal judge. In this way, CD3 is real, experiential, hands-on civics education.

Reality Check Discussion/Q&A

In this final part of the CD3 program, the judge circles back to the first activity in the series, explaining the correct responses to the ten questions in the Reality Check Quiz. The judge engages in a candid discussion about the criminal consequences of making poor decisions. Although the judges' materials provide an objective, detailed answer to each question of the Reality Check Quiz, this part also gives the judge an opportunity to impart her experiences and perspective to the students. The lawyers then join the discussion, and the students are invited to ask them questions about topics related to the program, their careers, and the law.

Impact

CD3 Presented Nationally

We hosted the first CD3 program in West Palm Beach in October 2017 with students from Palm Beach Lakes High School. Since then, the CD3 program has expanded to over 50 schools across the nation. More than 25 judges within the Eleventh Circuit have hosted CD3 programming, along with many other U.S. district and magistrate judges in federal courts from St. Louis, Missouri, to Tacoma, Washington, and from Tucson, Arizona, to Portland, Maine. And although it is difficult to calculate exactly how many students CD3 has impacted over the years, we estimate that more than 3,000 students have participated in CD3 programming since 2017. CD3 was awarded national recognition at the Federal Bar Association Conference in 2021 and was recognized by Chief Justice John G. Roberts Jr. in the *2019 Year-End Report on the Federal Judiciary* as part of the federal judiciary's broader effort to promote civics education.

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Judges and Lawyers Model Civility

CD3 also brings lawyers together in nonadversarial proceedings, helping to foster civility and professionalism among members of local Federal Bar Association chapters, and facilitates positive relations between the bench and the bar.

Brandy Galler, an assistant U.S. attorney in the Southern District of Florida who has volunteered as a program leader and facilitator since 2018, said that CD3 is “a phenomenal opportunity to give back to the community while simultaneously building relationships with members of the bar and the bench. I am not alone in finding that the students and the exercises inspire us as much as we encourage them.”

Stephanie Turk is a partner at a large law firm who has served as the FBA South Florida Chapter’s civics liaison since 2017. She observed that among “the biggest benefits for attorney volunteers is having the opportunity to use the skills we’ve developed over the course of our legal careers in a nonadversarial way. Taking a moment to share some of the basics of civil discourse not only educates students, it also provides a wonderful perspective and serves as a great reminder of what attracted us to the legal field in the first place.”

One of the highlights of the program is when the attorneys introduce themselves to the students and describe what events in their lives precipitated

their careers in the law. Their stories often involve experiences they had at around the same age as the students — and suddenly the gulf between the attorneys and the students does not seem so wide.

Teacher and Student Feedback

Teachers also have praised CD3 for its positive influence on students. Christopher Winkles, a social studies teacher at Santaluces High School, has brought his civics students to the CD3 program since its inception in 2017. Mr. Winkles noted that CD3 has real impacts in the classroom: For example, “after students attend the CD3 program, there is a noticeable difference in their ability to understand, synthesize, and apply complex material in class” like reading and discussing Supreme Court cases. He also noted that the Reality Check Quiz scenarios, which are based on events in the news or in the community, “really resonate with students.” In past years, Mr. Winkles has even noticed a marked difference in some of his students’ decision-making processes before and after the program. He recalled one student in particular who seemed to internalize the program’s messages about recognizing the risks and consequences of one’s decisions — he saw her doing the mental math. Every year, his students thoroughly enjoy attending CD3 — so much so that the program

has even inspired some of his students to consider a career in law and to pursue pre-law coursework at university. Based on his experience over the past four years, Mr. Winkles says he would recommend that CD3 be implemented in every school across the country.

Students themselves have commented positively, with some reporting that the experience even made them excited for jury service. One high school student noted on his feedback form: “Actions have consequences. Think before you make a decision because if you break the law, there are no do-overs.” Other students commented: “It only takes one bad decision to make a lifelong mistake”; “It was great to see the inner workings of a courtroom. The program makes the system more familiar and less daunting”; and “The civility skill I’m going to practice is listening with respect, not sarcasm.”

Anthony Caldwell, a graduate of Santaluces High School, participated in the program in 2017 and is now an undergraduate student studying criminal justice and sports administration at St. Thomas University. He said that CD3 had a real impact on his life and even inspired him to pursue a criminal justice major. CD3, he said, “made me realize how much I like learning about our government and the legal process. I now have my eyes set on becoming a U.S. marshal.” He believes the program was ►

“eye opening” and a “fantastic learning opportunity” that all high school students would benefit from.

How to Get Involved

Participation in CD3 is fun and inspiring. We also believe that, as judges, modeling and teaching civility is an essential part of our judicial duty. Not only is the program an opportunity to educate young people about the role of courts and the importance of civic duties, CD3 also allows judges to be proactive and help shape brighter futures for young people. CD3 puts a human face on the justice system for students who have little or no real-life exposure to the people who make it run — and equally for those who are skeptical of the courts or have had negative interactions with the criminal justice system.

CD3 is easily tailorable. Although there are prepared materials for three Supreme Court cases that constitute the mock argument section of the course, the program can be easily modified for use with any case. CD3 also has been combined with other pre-existing civics education programs or events. In recent years, Law Day, a national day dedicated to celebrating the rule of law, has incorporated CD3 into its



CD3 SESSIONS WERE HELD SUCCESSFULLY ON ZOOM THROUGHOUT THE PANDEMIC. PHOTO COURTESY JUDGE BETH BLOOM, UPPER LEFT.

programming. In addition, as part of a recent celebration of Constitution Day, more than 550 students and 40 judges and lawyers engaged in a stimulating discussion about the Constitution in a program titled *Civil Discourse and the Constitution: Candid Conversations*.

The length of the program is also modifiable: It can be extended to three or more hours or condensed to 60 or 90 minutes, based on the participants’ availabilities. At the outset of the COVID-19 pandemic, CD3 activities adapted to the Zoom platform, and the program is now compatible with both in-person and virtual learning and can be hosted from anywhere.

Judges need only minimal preparation time prior to the program — simply familiarize yourself with the case materials. Facilitating attorneys should review the worksheets and case materials ahead of time and

review the program’s general structure. No preparation is required on the part of students or teachers. The CD3 website has all of the prepared materials for judges, volunteer attorneys, students, and educators. All you have to do is download and go!

If you have any further questions on how to bring CD3 to your district, please contact Rebecca Fanning at rebecca_fanning@ao.uscourts.gov or reach out to your local FBA chapter. The FBA and other local attorneys have devoted untold hours implementing this program. Many local chapters have a civics liaison who spearheads all of the community outreach programming. And, of course, we would be delighted to take calls and help you set up a program in your district. It has been one of the most gratifying experiences we have had while serving as United States district judges.



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For more information, visit www.uscourts.gov/educational-resources/educational-activities/civil-discourse-and-difficult-decisions.