

# It Takes Strength to Be Kind

HON. ROY FERGUSON



*“I don’t want to be part of a world where being kind is a weakness.”*

**T**hese are the words of a famous modern philosopher. No, not Kwame Anthony Appiah. Not Mother Teresa either. They were spoken by *Keanu Reeves*. And while he wasn’t speaking of the world of litigation, his words certainly apply.

Compassion is awareness of the suffering of others accompanied by the wish to relieve it. Kindness is acting on that desire without expectation of compensation. Many lawyers see kindness without compensation as a weakness. But they are wrong. It takes great strength to be kind. Kindness is not “showing weakness,” and cruelty is not “zealous representation.” Weakness is believing that compassion is a concession.

## Litigation—The Ultimate Competition

As a profession, we are hyper-competitive, and—let’s face it—litigation is the ultimate competition. There are winners, and there are losers. There are no prizes for second place. Some lawyers see litigation as a metaphor for war. They “go to battle.” They call themselves warriors, hired guns, or simply *fighters*. And in every fight, the goal is to win—to beat the opponent. But is it

your fight or your client’s? Is the opponent the other party or the other *lawyer*? All too often, lawyers personalize the conflict. The goal is to beat the other lawyer, and theirs is to beat you. It’s not business; it’s personal. When this inversion occurs, we are no longer colleagues; we are combatants. And things get ugly because “all’s fair in love and war.”

These lawyers brag about never agreeing to anything requested by the other side, no matter how insignificant. There’s always an excuse. Some disingenuously blame the client, “Well, I want to agree, but my client won’t let me.” One particularly obstreperous litigator proudly declared that it was her ethical obligation to refuse all accommodations, blaming her duty of “zealous representation.” But behind this façade lies the belief that concession is a sign of weakness that emboldens the opposition.

## Zealous ≠ Ruthless

This belief manifests in cruel ways. Lawyers oppose continuances while opposing counsel is *in the hospital*. Or deny discovery extensions while the other lawyer is attending to the death of a loved one. Or unilaterally set depositions that conflict with a child’s graduation or family vacation and seek personal sanctions when they are quashed.

This profession can exact a heavy emotional price. Ninety-five percent of graduating law students report suffering from anxiety as they enter the profession. Substance abuse runs rampant in our profession, and depression is at epidemic levels. Most seasoned litigators know a lawyer who committed suicide. Everyone is secretly battling their own demons, and all suffer low times. Rather than seeing those moments of personal weakness as adversarial opportunities, try to see them as opportunities for compassion. To *re-humanize* rather than dehumanize. To lift up rather than step on. Not tit-for-tat. Not the Golden Rule. Not goose and gander.

Reach out. Ask, “Are you ok, and how can I help?”

Be a colleague, not a combatant. It takes strength to be kind.

**HON. ROY FERGUSON** PRESIDES OVER THE 394TH DISTRICT COURT—THE LARGEST JUDICIAL DISTRICT IN TEXAS—AND SERVES BY ASSIGNMENT ON THE 8TH DISTRICT COURT OF APPEALS. YOU CAN FOLLOW HIM ON TWITTER @JUDGEFERGUSONTX.

## WORD!

*“UNEXPECTED KINDNESS IS THE MOST POWERFUL, LEAST COSTLY, AND MOST UNDERRATED AGENT OF HUMAN CHANGE.”*

—BOB KERREY