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When Contests Become Personal: How You Should Respond

By Ava Chisling, June 2009

Chicago-based lawyer Gerald Goldberg has 40 years of legal tricks up his sleeve and he's written them down in a new book called *Practical Lawyering: The Skills You Did Not Learn in Law School*.

Initially trained as an accountant, Goldberg worked for the Internal Revenue Service where he learned the fundamentals of assessing his "opponent," including how to spot deception and how to judge body language, voice tone and the overall appearance of people he would meet. A few years later, Goldberg retrained as a lawyer and put his skills to good use in the courtroom, where he insists that understanding your opponent is essential to winning your case.

Here is some of his advice to new lawyers.

Learn to read opposing counsel and judges

Observe people from afar and find out what to expect when you meet them. This is especially true of a judge you have never come across. Sit in a judge's courtroom before your case. See what kind of questions they ask and how they run their courtroom. Research parties online and find out what they have written. As for opposing counsel, you can call people and ask about them, but nothing works better than actually seeing your opponent in action. "The more you can engage and listen, the more comfortable you will feel working against them," Goldberg says in an interview.

See all sides of your case

Be as prepared as possible before every case, whether in court or in negotiations. "You have to say to your client, 'I'm your lawyer. I'm here. But there is a judge, a jury and there is another side that is going to throw stuff at us. We have to prepare for every single thing that may happen.' Don't just close the book and tell your client you are going to win."

Use the element of surprise

A specialist in defending medical practitioners, Goldberg has successfully tried more than 400 cases. Attracted to litigation for the theatrics, Goldberg has developed some unorthodox methods for assessing the opposition - including "faking indignation" or resorting to bad language - "to see how they respond," Goldberg offers.

"At an older age, you can get away with more, but a 25-year-old can still say, 'We will try this case, but don't mess with me. You have to let a bully know that you understand what he is doing and that it is not acceptable.'"

Recognize tactics early on

Goldberg advises lawyers not to get upset at everyone they dislike. For example, he often encounters opposing counsel who try to stall the legal process by asking questions or arguing a lot.

Accept the fact that you cannot change everyone, no matter how much they anger you in a professional context. "If your opponent wants to submit 12 pages, submit 14. Do not show they are getting under your skin. Just play their game."

Accept that "personalities" are par for the course

From time to time, you may encounter a troublesome personality, one whose behaviour lends itself easily to caricature. The range of such types, in Goldberg's lexicon, includes the "egomaniac," the "Rambo," the "liar," the "mope," the "movie star" and "everyone's friend." Beware these characters and adopt a heightened awareness around them, he advises.

For example, the mope appears unkempt, but his shabby suit is a tactic: he hopes you will underestimate him. Do not.

More transparent is the movie star type. Impeccably dressed, and perhaps covering up his weaknesses, the movie star may be easily rattled if you challenge him.

WHEN YOU WIN, WHEN YOU LOSE

- When you win, don't gloat. Be gracious, thank the court and courtroom personnel, get out of there, and enjoy the victory.
- There are telltale signs of a loss, such as the court's reading and quoting from your opponent's brief during the recitation of the decision. Another bad sign is when the judge avoid eye contact with you.
- Write down key points as the decision is rendered. If I am going to lose, I may be able to ask a question or two at the end if I need some clarification of where to go next.
- If I lose, I try to exit gracefully, never displaying any disrespect.
- If the client is with me, it is very important to be able to explain this "hiccup," go back to the office if possible, and talk about the situation.
- It's important to give the client full attention without anger to show that we may have lost a battle, but this is a war that needs our attention

Adapted from *Practical Lawyering: The Skills You Did Not Learn in Law School* by Gerald Goldberg (© Kaplan Publishing, 2009)

Be prepared for troublesome personalities but never be distracted by them. Challenge your opponent sometimes and stay quiet at other times. Knowing when to do each will increase your chance of success.

Know that unruly conduct will backfire

When an opponent is particularly outrageous, he or she will annoy everyone in the room, not only you. Goldberg suggests you use this to your advantage. Find an ally in the process; someone who is showing signs of also being annoyed at this person's behaviour.

For example, if the other party is stalling needlessly in a negotiation, tell your client that they are also wasting time and money on the process "due to the snail's pace of the proceedings," Goldberg says.

Once your client realizes this, he or she will take his own steps to speed up the negotiations. You will not be alone.

The same applies to bad behaviour on the part of counsel. "There is a moment in the proceedings where it becomes obvious the judge is also annoyed at poor behaviour," he says. Connecting with the judge in some way, at that moment, will only raise your level of professionalism in his or her eyes.

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