

Is It Useful?
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When I practiced labor law, I faced constant pressure to arbitrate cases in a timely fashion; employees' livelihoods were often on the line. I rarely sought delays—they hurt the employees, and we were dinged \$500 in postponement fees. One of my arbitrations had to be postponed, however, because of my mother's death. The arbitrator graciously allowed me to delay the hearing without paying the fee. Some time later, that same arbitrator called to ask if he could postpone another arbitration at the last minute if his wife went into labor. Of course, I agreed. As it turned out, the hearing happened as scheduled, and the baby was born soon after. For both of us, I think, it was important to keep our practice humane. It would not have been useful to take a hard line.

If we lawyers formed the habit of asking ourselves whether our actions were useful, perhaps the practice of law would be more compassionate. Former U.S. Supreme Court Chief Justice Warren Burger once asked what had happened to the notion of lawyers as healers. A friend of mine, a lawyer three years out of law school, expressed a similar thought when she said, "I thought we were supposed to be counselors!" Too often she had been attacked or was asked to attack like a junkyard dog.

Winning or being right seems to overshadow all other considerations for many lawyers. Lawyers may too easily mistake attack-mode behavior for zealous advocacy. Too often lawyers overidentify with their client or their client's case and lose sight of their role as counsel. Such an approach is shortsighted. Not long ago a judge told me that jurors often tell her that they were persuaded by respectful attorneys and were put off by overly aggressive ones. They appeared mean-spirited.

We all know that an angry client can be abusive to his or her own attorney. One attorney told me that the nature of his law practice had changed after an encounter with a vengeful client. The client was outraged that the lawyer didn't take a more aggressive tone during a court appearance and later chewed him out. A former client overheard the rant and commented that no one was required to take such abuse and recommended he fire the client. It suddenly dawned on the lawyer that the former client was correct: He fired his client and vowed never to fall into a professional relationship that felt inappropriate to him. He has kept his vow, and he's been much happier in his practice ever since.

Yet, sometimes aggression can be useful and necessary. One family law attorney told me she had developed a habit of being too accommodating with the clerks of the local court in an effort to smooth things for herself and her clients. One time a clerk objected to a filing for a protective order because it involved "only" a threat. The attorney backed off, and two days later her client was murdered. Of course, the client may have been killed even if the protective order had been filed, but now this attorney is no longer so accommodating. She thinks she was too concerned with a smooth relationship with the clerks and not concerned enough with her client. After the experience, she removed herself from the equation. I would say that she now practices with the intention of looking more deeply and asking herself what is truly useful.

Aggression, however, doesn't require you to identify with your client's anger. When a domestic-relations client comes in wanting you to go for the other spouse's jugular, what is a useful response? Consider simply listening. When a client feels heard—truly heard—it can help create a sense of detachment and allow the client to listen instead of seeking revenge. In such a domestic dispute, listening may mean

focusing more on the client's long-term interests, such as the benefit of the children. In a commercial dispute, listening may mean retaining a long-standing business relationship.

When practicing law—or doing anything, for that matter—the essential question should be, “What kind of person do I want to be?” A zealous litigator doesn't need to cease being a decent human being. The practice of law will not become more civil, or more enjoyable, until lawyers themselves change. Asking if a particular action is truly useful is one way to find enough detachment in which to serve both the client and the practice of law.

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