

BALANCE AND THE LAW

© by Alan G. Phillips, Attorney at Law

“To be fully human, we must first engage in humanitarian acts.” Jose Silva

Our adversarial legal system is designed to strike a proper balance between opposing parties’ concerns and positions. Attorneys make their best “argument” for their client, with an ethical duty to do no more than “present the facts in a light most favorable to their client.” When this happens, the judge is well positioned to view the two sides objectively and render what more likely than not will be a just decision—one that is fair and reasonable under the circumstances.

Unfortunately, this is not always what happens. Attorneys sometimes manipulate the system or the circumstances to gain unfair advantage for their client. F. Lee Bailey once said, “you don’t get rich defending innocent people.” Implicit in that statement is the suggestion that it’s acceptable for attorneys to conduct business in a manner intended to thwart justice for the purpose of maximizing profit. Such insanity flies in the

face of any reasonable notion of ethics and fair play; yet, many of us believe that more money can buy you a “better” attorney—one more likely to win your case, regardless of the merits.

All things being fair and equal, competent attorneys should win about 50% of their cases (assuming random selection of clients). To beat the odds, some attorneys may push the “fairness” envelope; they make “winning at all costs” a higher priority than “justice for all” and seem willing to disregard those caught in the crossfire. Is it any wonder that the profession has the reputation that it does? (Though to be sure, there are many attorneys among the most ethical and honorable members of our society.) Consequences of this approach also include the unnecessary harm caused to those caught in the crossfire, perhaps most notably and deplorably, children used as pawns in domestic cases.

So, what do you do when the opposing attorney and/or party resort to tactics you find unacceptable? One possibility, of course, is to respond in kind; there certainly are attorneys willing to serve as your hired gun (though

often for a very high price). Not all attorneys will resort to questionable tactics, though. One of my former attorneys once said that she “didn’t have to act that way” in response to an opposing attorney’s “dirty pool” tactics. Easy for her to say; I was the one who was subject to the effects of those tactics. Couldn’t she lower herself just this once, to protect or avenge me?!

The bottom line is that such difficulties need not be responded to in kind, nor must they necessarily be sacrificially endured for the sake of an abstract morality. Some can be turned into outright opportunities. If you maintain your hold on appropriate goals and a proper course of action despite the serious bad faith acts of others, you will have gained inner strength and built character that make you a better person, and you may also gain the respect of others (including the judge—never underestimate that one!).

Perhaps even more importantly, though—if it is true that we create or attract all that we experience, as some suggest—is that to respond in kind to negativity is to invite more of the same. Many of us are locked into

just such a pattern, despite being really good people, while remaining completely unaware of our part in perpetuating our own cycle of ongoing difficulties. This cycle can be broken. We are ultimately in control of our own lives. We can begin to exercise some of that control by practicing responding to negativity with positive thoughts, decisions, and acts. We can affirm our desire for, and help to create, a more positive life experience—by asserting objectives that by our best measure are aimed at generating that which is best for all concerned. In so doing, we will be maintaining our own balance, setting an example of balance for our society, and in our own small but important way, contributing to a better balance for all of humanity. Indeed, to do anything less is to fall short of what it means to be fully human.

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