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Mad Dogs Finish Last

By G. Christopher Ritter, Esq.

In a trial I worked on some years ago, one of the lawyers liked to play the tough guy. He shouted. He trumpeted. He sneered at witnesses and gave new meaning to the words “cross examination” (especially, to the first of that two-word phrase).

It was quite a performance. But when we went back to interview the jurors about the trial, we got unanimous negative feedback from them. As one juror noted, “That lawyer was like Yosemite Sam. You know, the cartoon character that is always running around shooting off his pistols and his mouth. We enjoyed watching him, but none of us believed anything he said.”

There’s a certain percentage of trial attorneys who definitely seem to think that acting like a mad dog in the courtroom is a good strategy. But the truth is, being overly antagonistic can do more damage than good to your case. “Mad dogs are rarely as effective as they believe they are,” notes Jim Stiff, who heads Trial Analysts, a litigation consulting firm in Dallas, TX.

In fact, a “take-no-prisoners” stance is often very ineffective in the courtroom.

Being a mad dog makes you look inexperienced

By and large, most of the mad dog attorneys that I’ve seen haven’t been in the courtroom enough times – and they’re not yet confident enough – to see that masterful litigators are more like teachers and story tellers than professional wrestlers. Such attorneys confuse “conflict” (on which all trials are based) with the adversarial process.

That is, the point of trials is to *resolve* the conflict, not make it even worse by acting like a bully in the courtroom. And in order to resolve a conflict in your favor, you need *teach* the jurors about your case, *persuade* them as to the veracity of your client’s perspective, and *engage* them by using good storytelling techniques, such as analogies, metaphors, and good graphics.

Being a mad dog turns off the jury

While a quick dust-up in the courtroom gets your jurors’ attention, constantly getting in witnesses’ faces, dressing down opposing counsel, or making tortured facial expressions can make you seem like a mad man—and therefore not to be trusted.

“If being a mad dog is your standard “MO”, you run the risk of alienating your jurors,” Stiff says. “Of course, the last thing you want to do is give the jury room to vote against you.”

Being a mad dog keeps you from telling your story

Sure, the media sometimes glamorizes the image of a frothing-at-the-mouth kind of attorney. (*And Justice for All* with Al Pacino certainly springs to mind.) But the focus in your trial should be on the right way to tell your client’s story, not on adapting an angry persona as a strategy to win your case. And a lot of the art of storytelling involves patience, being attuned to your jurors, and being able to modulate your demeanor to match your material; all of which is hard to pull off if you’re in the midst of one angry outburst after another.

When I taught trial practice, I would always remind my law students, “it is a lot harder to turn down the volume than it is to turn it up.” What I meant by this was that one can get loud and confrontational in an instant, but once you do, it takes a lot of effort to get yourself and everyone who has been affected by your outburst to calm down. I am not advocating that you never turn up the volume; instead, I am merely advising that you to do it when you really need to, at a point that makes sense, and understand that there are always consequences in doing so.

“It’s the polite ones that always get away with murder!”

I once was a teaching assistant for a professor who always cautioned us not to worry too much about the boisterous students, because you could spot what they were up to a mile away. Instead, he suggested we worry about the polite one, because “since you never saw it coming from them, these students always got away with murder!”

William Hendron, who was Abraham Lincoln’s old adversary and eventual law partner, used to say the same thing about Lincoln. Hendron described how Lincoln would politely defer to his opposing counsel and be nothing but polite and accommodating but:

[A]bout the time he [Lincoln] had practiced this three-fourths through the case, if his adversary did not understand him, he [the adversary] would wake up in a few minutes learning that he had feared the Greeks too late and find himself beaten . . . Any man who took Lincoln for a simple-minded man would very soon wake up with his back in a ditch.

(If you need media images of lawyers to inspire you, think of Atticus Fitch in *To Kill a Mockingbird*. The old-fashioned gentleman lawyer—smart, tough, kind, skilled—is still a potent force in the courtroom today.)

Being a mad dog can makes you look like a mad dog

Let’s say there’s a witness that your jury really likes. And you’re about to do a cross examination of her. If you take too much of a bullying stance—if you get downright aggressive—y our jurors will decide you’re the mean one, no matter how inconsistent,

untrue, or unreliable the witness's testimony may be. "If the jury feels sorry for the witness or thinks she's a really good person, they're likely to defend her in their own minds against you," Stiff says. "Having a good sense of how far to push a witness is crucial to good lawyering."

This isn't to say you should never get heated, animated, or adversarial in the court room. That wouldn't be effective either. But the number of situations in which it's appropriate to act the "mad dog" are pretty specific. If you catch a witness in a lie, for instance, taking a more aggressive stance is certainly warranted. And "if a witness is being non-responsive, evasive, or is actually obstructing the legal process, it's time to turn up the heat, as that draws the jurors' attention to the witness and the problems that he or she is creating," Stiff explains.

"A little dust up in the courtroom catches the jurors' attention," he adds. "But if it's constant, the jury stops paying attention."

Now, a lot of attorneys who are mad dogs have underlying anger management problems, which can't be fixed by reading an article in a legal newspaper. But for those of you who have just erred in thinking that the mad dog approach actually *works*, it's not too late to change.

"I had a client a few years ago who played the mad dog throughout most of one trial," Stiff says. "He got constant negative feedback for it. Eventually we got him to change his demeanor and his behavior, so much so that he spent the first three minutes of his closing argument apologizing for his behavior. He specifically told the jurors 'don't hold my behavior against my client here. Hold it against me.'"

The attorney won his case

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