

1982

Preparing Your Client For Trial...Another Point of View

Bernard L. Segal
Golden Gate University School of Law

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/pubs>

 Part of the [Criminal Procedure Commons](#)

Recommended Citation

25 Advocate 20 (1982-1983).

This Article is brought to you for free and open access by the Faculty Scholarship at GGU Law Digital Commons. It has been accepted for inclusion in Publications by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

Preparing Your Client For Trial Another Point Of View

By Professor Bernard L. Segal

Editor's Note: In last month's *Advocate*, an article was presented by James J. Brosnahan on preparing your client for trial. The following feature takes a different stand on the issue.

The recent article by able San Francisco lawyer James Brosnahan contained one section that left me very troubled. My concern was sufficient to cause me to set down in writing "Another Point of View" on at least one part of that article.

Jim Brosnahan has chosen to discuss a topic entitled "Problem" clients and has offered the advice (apparently with approval) of a psychologist by the name of Dr. Mulhare. I do not believe that the views expressed by Dr. Mulhare on the whole represent the best thinking today on the subject of lawyer-client relations. In fact, what worries me most of all is the feeling that following some of her advice is an absolute recipe for disaster as far as building good lawyer-client relations.

Don't try to change yourself to appease a client

A case in point is the advice given for dealing with something called "the obsessive, compulsive client." Assuming that we lawyers are entitled to make such a diagnosis in our roles as amateur psychologists, let alone know what an obsessive, compulsive personality is, I am most troubled by the advice given in this regard:

"... according to Dr. Mulhare, you must be on your toes and demonstrating that you are neither sllob, procrastinator, nor dreamer — his analysis of the rest of the world. Your concern with detail, prompt replies, and concise, well-organized meetings and reports will make him trust you."

Nonsense, nonsense, nonsense. It is not good advice to tell a lawyer to conform his or her personality to the special demands of every client. Assuming that you have a true obsessive, compulsive client, all the available information tells us that no one is ever going to be able to satisfy such a person.

But, more important, it is dangerous nonsense to tell lawyers that the way to relate to such a person is to become someone else themselves. First and foremost it is unlikely that any one of us can make such radical changes at will, or on the demand of a particular client. Perhaps more important is my view that I don't believe it is desirable to even attempt to do this.

A cardinal principle in most successful relationships is that the persons involved try to accept each other. Any one of us who is

bullied, pushed or intimidated into trying to act in a manner inconsistent with our normal personalities or usual style will respond rather predictably: We become resentful, resistant and frustrated. We seldom become reformed because of such outside demands.

Relating to a "demanding" client

To the extent that the lawyer identifies early on the obsessive, compulsive nature of his client, it is essential that the lawyer have a frank discussion with that client as to how the lawyer functions. I am talking about a meeting which is not intended to lose the client. Rather, I am talking about a meeting which makes explicit a number of things: first, I think a lawyer should make clear that he or she feels competent to handle the client's matter, and is thoroughly interested in representing the client. Second, the lawyer ought to identify specific instances of client behavior which led the lawyer (privately) to the conclusion that he was dealing with an obsessive, compulsive personality. In other words, the lawyer ought to describe a couple of instances in which it appeared that the client was dissatisfied because the lawyer did not live up to the client's expectations. Third, the lawyer ought to acknowledge the client's right to feel as he/she does. I don't mean to suggest that the lawyer agrees with the client's point of view — rather, that the lawyer recognizes the client's strongly held feelings. Finally, the lawyer ought to state clearly the way that he or she prefers to work, and ask the client to recognize that there are many ways for a lawyer to do a good job for the client.

The effect of such an approach is simply to clear the air. The lawyer lets the client know that he or she doesn't feel comfortable working along the lines that an obsessive, compulsive person might prefer. But, the lawyer reinforces both his or her sense of competence and interest in the matter and simply asks the client to recognize that the lawyer is still working in the client's interest albeit in a different manner.

I do not think such an approach ever loses a client. The client who wants to go to a different lawyer doesn't need a frank discussion to provide the impetus to do that.

Be candid about the cooperation you expect from the client

I want to take issue with the advice given in dealing with something referred to as the "passive, dependent, indecisive personalities." Again, please note my dubiousness as to the ability of most of us to make such diagnoses. The Brosnahan/Mulhare advice is as follows:

"[Such clients] are often hostile and will resist doing things on time or keeping appointments. To the lawyer, she recommends making telephone calls, issuing constant reminders, and setting clear-cut schedules."

This advice sounds like it was taken from a manual of operations of a life insurance company that was setting out procedures to get annual renewals in. It doesn't sound like the type of approach that most lawyers are comfortable with. This kind of chasing after the client is time consuming, expensive and very unrewarding work. It also requires a little bit of an obsessive compulsive personality on the part of the lawyer.

Assume for the moment that you are seriously irritated by such client behavior (who are lawyers to talk about not doing things on time?) A better approach would be to ventilate the issue with the client. Again, such a discussion should begin with an indication that the lawyer feels both capable and is interested in the client's case. Then the specific incidents which are bothersome to the lawyer should be outlined.

It is predictable that the client will have a number of excuses for his/her conduct. This is to be expected and the lawyer must give a patient hearing to those excuses. They ought not to be the subject of a debate, however, between the attorney and client. The lawyer should acknowledge that there are reasons (without putting a negative value judgment on it, such as "you always have excuses for not doing the things I've asked you to do"). The lawyer should then describe his or her feelings about the situation ("When you fail to keep your appointments, for whatever reason, I feel as if I don't have my own client's support in this matter. It makes me angry to think that I am putting a lot of effort into this case and yet don't have your cooperation.")

Finally, the lawyer has to take a position as to what he or she expects in the future, and the options are rather limited: The lawyer can state that he or she will withdraw from the case if there are any other further breaches of cooperation; or, the client will be billed for late or missed appointments or other wasted effort (sorry, you contingency practitioners), or the lawyer can ask for commitment from the client to honor obligations more scrupulously in the future.

Unhelpful advice

I am totally mystified by some of the other observations such as:

"The conforming personality wants to please you and depends on your approval. He will go to great lengths to

follow your instructions — anything to earn your praise."

So? What exactly are the implications of this observation? What exactly are we supposed to do to reform this type of client? (or perhaps, where do we find more like this type?). I suppose the real implication here is that there is a danger that such a client will say things (change testimony or deposition statements) to please the lawyer. A more useful piece of advice in regard to this client and nearly every other one would be to suggest that lawyers remember the following: The best principles for preparing a client for trial largely resemble the principles that guide the whole process of good client-attorney relationship building. These principles are learnable and applicable by any lawyer, regardless of his/her personal style or emotional make-up.

Suggestions for building better client relation

Give the client a chance to say what is on his/her mind at every meeting. Any meeting that lasts fifteen minutes or longer must provide several minutes for open-minded client monologue.

It is very helpful to briefly state at the outset of a meeting what it is that the lawyer wants to review. However, the lawyer ought to ask if the client has anything that he/she wants to share with the lawyer. Most often, the matters on the client's mind can be stated in a few minutes — particularly if the lawyer will shut up and listen, rather than comment on everything the client is saying.

When the client has had his or her chance to speak, the lawyer ought to indicate whether the present meeting will cover those issues, or indicate when these matters will be dealt with in the future.

There are, of course, those clients who, when given an open-minded opportunity to speak can fill up all of the available time with less than relevant commentary. This does not change the basic principle of the need for the client to get matters off of his/her mind. There are several techniques to help with this situation:

After the client has rambled on for a bit, the lawyer ought to interrupt, apologize for the interruption, and then point out to the client something along the following lines: "There are quite a few important matters that I also have to discuss with you today. Is there anything on your mind that is imperative I hear about before we get on to the rest of our agenda? If the client says "yes," then listen! But, it is quite likely that the client will accept the lawyer's suggestion of moving along with the agenda.

There are clients who frequently have endless questions they want to ask the lawyer. It is often difficult to provide time for all those questions and still get the pressing legal issues dealt with. Try the following approach:

Ask the client to prepare a written list of all the questions that occur to him/her between now and the next meeting. (Giving the client several sheets of legal paper, with a heading written on it "Matters to be discussed at next meeting with my lawyer" is very reassuring to the client.) At the subsequent meeting the lawyer should ask to see that list. You will be amazed at how expeditiously you can go through a fairly large number of questions this way. The greatest value of the procedure, however, is the client's knowledge that his/her lawyer took the time to consider the matters on the client's personal agenda.

Let the client know how much time there is available for a given meeting in advance of that meeting. This should be done at the time the meeting is set. If you have to shorten the available meeting time call the client and advise him/her. If there is resistance to the abbreviated meeting you will hear about it quickly. It makes more sense to reschedule the meeting than to try and compress a one hour meeting into 30 minutes. The client perfectly well knows when the lawyer is giving him/her the rush-rush treatment. What the client feels is that the lawyer doesn't care enough about the client's matter; otherwise

the lawyer wouldn't be pushing the meeting so rapidly.

Finally, try and end every client meeting with a clear-cut statement of what is going to happen next. The worst thing a lawyer can do is to say, "I'll look into it." The lawyer has no idea of what expectations he/she has raised in the mind of the client. The expectations may be unreasonable, but the lawyer is going to be faulted by the client for not living up to them. Here are examples of specifics with which a good meeting should end:

"I'll look into it, and will call you within _____ days." or "I will write them a letter on your behalf, and I'll send you a carbon copy. When I receive a reply I will call you and discuss our next step. If I don't contact you within two weeks please call me and we'll set up another meeting."

Some final observations

The greatest complaint that clients express about lawyers is not dissatisfaction with the legal results gotten by their lawyers. Rather, the nearly universal cry is that clients don't think that their lawyers cared very much about the clients' problems. To the extent that most lawyers are truly concerned about the problems of their clients, it is apparent that the concern does not come across to the clients. The answer to the dilemma is not found in the Bronsahan/Mulhare advice of categorizing and labelling clients. Rather, the answers are found in being a lot more candid with the client about the things you are or are not willing to do/put up with; being honest about your own personal work style; and remembering to give the client an uninterrupted chance to get some things off his/her mind.

Reprint permission granted from the May, 1982 issue of *The San Francisco Attorney*, and the author, Professor Bernard Segal, Golden Gate University, School of Law, San Francisco.

TUCKER & ASSOCIATES

Certified, Professional Court
and Deposition Reporters

- Computer Aided Transcriptions
- NSRA Trained Video Technicians
- Large Deposition Suite
- Fast Deposition Delivery
- Daily Copy
- Statewide Assignments

605 West Fort Street
Boise, Idaho

P.O. Box 1625

345-3704

VOCATIONAL EVALUATIONS

PSYCHOMETRIC TESTING

JOB MARKET ANALYSIS

Specializing In Disability Evaluations

GINA E. WOLFE, M.A.
Associate Psychologist
(208) 376-3546