

Wednesday, September 19, 2007

### **Giving unpleasant people the benefit of the doubt.**

Photo from website of U.S. District Court (W.D. Mi.). Recently, a fellow lawyers' listserv member talked about how he detested his opponent so much, that he was concerned how it might affect his performance in trial. He sought out advice, and I replied as follows: "Dear \_\_\_\_\_ - "I couldn't stand a prosecutor in a felony case I defended. This was the first time we'd ever dealt with each other. He seemed cold and heartless and worked in a prosecutor's office that I still often think requires being an asshole as a prerequisite to working there as a prosecutor. He seemed like such an asshole that when I gave him the courtesy of handing him a copy of my two exhibits for a hearing we awaited, he merely grabbed it out of my hand wordlessly. "Ever after that, he treated me with as much respect as he'd treat his favorite opponent - " though still seeming not to care about justice much if at all. I assumed I'd earned his respect by showing him I knew what the hell I was doing with our first felony case together, where ultimately I obtained a favorable result under the circumstances. "Now a few years later, I learned for the first time that this particular prosecutor has suffered one tragedy after another recently, with the tragedies starting before my first interaction with him. I spoke before with some colleagues who had frequently dealt with him, but none said anything about his tragedies. "I still do not want to socialize with this prosecutor, but am happy that I found a way for my initial irritation at him not to turn into the both of us hating each other so overtly that it would be obvious to those around us, which has happened before with me. "In all likelihood, pain has driven your opponent to be so unlikable. It's hard in the heat of battle to step back and to feel more detachment between the opponent's offensiveness and how we react. You'll find the way, though." On a final note, we all know that we are weaker when we are angry. Consequently, sometimes opponent like nothing better than to learn what gets us angry. I have enjoyed myself at times to see how easily I can anger opponents, unintentionally, to the opponents' weakness and to my strength, that would not irritate other observers. "Would we get angry at a wild animal attacking us? No. Do we get angry, then, at our opponents, by their not meeting our minimal expectations of them (e.g., to follow the governing lawyers' rules of ethics, to tell the truth, and not to fight dirty)? Do we get angry at them when they cause harm to us and our clients -- whether intentionally or not -- without showing any caring about the damage they do, and perhaps even relishing it? Do we not get angry at non-human animals because we do not think they have the capacity to cook up evil, but instead think they mainly act on instinct? The more we eliminate our fears, the more we will eliminate our anger. T'ai chi master Cheng Man Ching spoke of overcoming our fears in terms of imagining that we are practicing t'ai chi while balanced atop a narrow pointed cliff. To not eliminate one's fears while atop the cliff is to guarantee certain death. Eliminating fear also calls for keeping and tempering the fearlessness of a child filled with wonder, and living in the moment, as wonderfully detailed in the following story of the man and the two tigers: A man is chased in the wilderness by two tigers, only to be forced off a cliff, hanging for life from a vine. One tiger waits above and the other waits below for a human meal. Two field mice gnaw away at the vine. The man sees a wild strawberry growing from the side of a cliff, reaches for it, tastes it, and -- with his life hanging in the balance -- thinks of how delicious the strawberry tastes. Jon Katz.

Posted by Jon Katz in Persuasion at 01:00

I disagree with the story about tasting strawberries. To me, it seems like the guy should be thinking about life. He should look for crevices in the rocks to grab onto and/or he should prepare to fight, fight, fight !!! A lawyer who is thinking about how good the strawberries are instead of how to win his case is not being a true warrior and not being the best advocate for his client. The art of advocacy is in some sense the art of war. Zen philosophy tends to cause the advocate to lose his incentive to fight the good battle. If you want to read good asian philosophy, take a look at "The Art of War by Sun Tzu. Under chapter one, "Laying Plans," Sun Tzu says:

"All warfare is based on deception. Hence, when able to attack, we must seem unable; when using our forces, we must seem inactive; when we are near, we must make the enemy believe we are far away; when far away, we must make him believe we are near. Hold out baits to entice the enemy. Feign disorder, and crush him. If he is secure at all points, be prepared for him. If he is in superior strength, evade him. If your opponent is of choleric temper, seek to irritate him. Pretend to be weak, that he may grow arrogant. If he is taking his ease, give him no rest. If his forces are united, separate them. Attack him where he is unprepared, appear where you are not expected."

Yours in the Defense of Fellow Human Beings,  
Glen R. Graham, Tulsa, Oklahoma  
Anonymous on Sep 21 2007, 23:21

Dear Glen- It is curious that before you posted your comment to my blog, you posted the same comment to Mark Bennett's blog at <http://www.bennettandbennett.com/blog/2007/09/anger-and-fear.html> and received replies there that generally pan your comment. I join with those commenters.

I also am left scratching my head why your comments address Zen, when my posting says nothing of Zen. Mark Bennett can call the two tiger story a Zen story all he wants, but I learned it as a story told by t'ai chi master Cheng Man Ch'ing, one of the most effective and devastating martial arts fighters I have ever known about.

You already promoted Sun Tzu in commenting on my September 5 blog entry. Based on my reply there, my reply here, and my view that the man and the two tigers approach does not preclude applying Sun Tzu's advice (and vice versa), I get the feeling that any discussion between you and me on the matter has been exhausted by now.

Anonymous on Sep 22 2007, 22:05