



Blood in the snow

by John D. Whitaker

I vividly remember one of my first trials. The adverse party had just testified on direct, and after a break I was going to start my cross-examination. My client hated the adverse party and was about as emotionally involved in the case as he could be. Right before we walked into the courtroom, he turned to me and said, "Alright Whitaker, when you are done with this guy I want to see some blood in the snow." The message was clear, he wanted me to chop this guy's head off. Well during the cross, I beat the guy to a pulp. I had him admitting things that he had denied during his direct examination, I made him read documents that contradicted his prior testimony and I did it in a mean way. My client felt vindicated. I felt like I acted like a jerk, and we lost the case. In spite of the result, I learned a very important lesson: judges do not like jerks.

Most lawsuits have an emotional component, but divorce and child custody cases seem to be the most turbocharged in terms of strong emotion. In divorce cases it can be very ugly when one party wants out and the other party does not. Love can turn to hate in a very short time, and the people who do not want the divorce can feel very rejected. Intense anger can make people feel like doing very hateful things. Child custody cases are sometimes even more intense. If you are involved in a proceeding that could result in severe restrictions being placed on your ability to see your own children, you can imagine that people might do just about anything to win.

When a lawyer is preparing a case for trial they spend a good deal of time listening to and working with their clients. The clients usually are focused on pointing out any potential flaw that could be used to prevail at trial. The danger here is that the lawyers do not get to hear much about the other side of a case until the trial. The only picture they have of the other side is what they hear from their clients. It is common to show up at trial believing that the other side is a complete monster. It is easy to pick up some of the client's strong emotion in the case and



this can translate into a need for the client and the lawyer to try to put some blood in the snow.

It has been my experience that blood in the snow is very rarely a productive result. You can take a contested child custody case, and by using information provided by your own client, you can polarize the other side in such a way that they will never be able to work together to continue raising the children in the middle. If you decide to do a panzer attack on some poor witness who does not want to be there anyway, the whole thing can blow up in your face. You can also guarantee that the other side will appeal the case if they lose. This

can add thousands of dollars to the cost of the case and add several years to getting the case finished. Finally, it also plays into the stereotype that a lot of people have about all lawyers being jerks.

Over the years I have had the honor of facing a number of very good lawyers in court. I can say unequivocally that the best, most effective lawyers I have seen are always polite and professional when they interact with the other side of the case. They don't lose their temper and they don't get sarcastic. They stick to the facts of the case and don't go out of their way to make any witness uncomfortable unnecessarily. They can ask very tough questions, but if you are good enough you can do it in a very respectful way.

There are situations where lawyers must be tough on a witness. In criminal cases, for example, some witnesses can have a dog in the fight. If a witness has changed his testimony to save his own skin, lawyers must sometimes get aggressive to expose a hidden agenda. Sometimes the witnesses can be jerks as well. There is no clear line a lawyer can use when deciding how aggressive to be with a witness, but if you guess wrong, a jury can get mad at the lawyer and as a result, find against his client.

My only advice here is that if you want a bulldog, go to Metro. They have lots of bulldogs ready to be adopted. If you want a good lawyer, pick one with kind eyes.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jw@wyoinjury.com or by calling his office in Casper at 265-6204.