



Litigation—Two Paradigms

by Monte Vines

There are two very different paradigms for how to view the litigation process and approach a legal dispute. When you find yourself in a legal dispute, it helps to understand the difference.

Litigation as Warfare

Some people view litigation to be like a war. In a war, weapons and military strategy are used to try to defeat an enemy, sometimes at any cost. In this view of litigation legal weapons would be used to try to win the dispute by defeating the enemy party. The battlefield would be the courts, and the winner would be the one with a judgment entered in their favor after a hard-fought trial. And if that judgment is for payment of a sum of money, then the winner would also need to be able to collect on that judgment from the other party.



Wars are often expensive, frequently cause collateral damage, and can have long-term consequences for those involved.

Litigation as a Way to Solve a Problem

Some people view a legal dispute as a problem that is interfering with the peaceful enjoyment of life or preventing a business from focusing on its productive work and making a profit. Here, the goal would be to solve the problem by finding a good resolution as quickly as possible and with the least expense possible so they can get on with their life or get back to business. In this view, litigation would be a way to use legal tools to achieve such a resolution.

Problem solving can be quite a challenge. Real-world problems tend to be multifaceted, and often have more than one solution. They often call for creativity, judgment and persistence, and with legal dispute problems, a recognition that there is a person or company on the other side with their own view of the problem and how it should be resolved.



Achieving a Good Resolution

In a prior article I laid out the case for why the latter view of litigation is usually in the client's best interest. But don't get the idea this is just a matter of compromise. You could almost always compromise away your position to the point that your adversary would agree. But that approach rarely would achieve a good resolution from your perspective. Nor does it mean that you hold hands with your adversary and sing Kum-ba-yah. Achieving a good resolution, in light of the fact that you have an adversary who has their own view of the dispute, usually calls for a wise strategy and the effective use of legal tools to carry it out.

The first challenge is usually to dig out the facts, on both sides of the dispute as well as from third parties, and then to try to achieve a common understanding of the facts with your adversary. A number of legal tools are available for this. This can be the most challenging aspect of a case, but it is critical. The more the parties differ on their understanding of the facts, the harder it is to achieve a good resolution short of going to trial.

Sometimes another challenge is to determine the legal principles that govern the dispute, and to try to achieve a common understanding of the applicable law with your adversary. A number of legal tools are available for this as well.

Finally, a realistic consideration of both parties' circumstances is important to determine what resolutions would be practical and whether a practical resolution can be achieved.

How the parties communicate with each other, and how the various legal tools are used, will foster either an atmosphere conducive to problem solving or a poisonous atmosphere. If the parties and their lawyers express distrust and disdain for their counterparts, seeing them as enemies rather than adversaries, the atmosphere can become very difficult for problem solving. Legal disputes are dynamic situations, and you aren't in control of how your adversary approaches it. If your adversary insists on viewing it as a war and "defeating" you, you need to recognize that and deal with it accordingly. But if the parties and their lawyers are willing to approach the dispute as a problem to be solved, and use the legal tools wisely, an atmosphere conducive to problem solving can often be achieved, facilitating a good resolution.

It's your dispute. Do you want to be fighting a war and trying to defeat an "enemy," or solving the problem and achieving a good resolution?

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