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## The Benefits of Civil[ized] Litigation

When I was a third year lawyer, I was an associate on the plaintiff's side of legal malpractice case. In some ways, legal malpractice cases can be the most contentious. Nothing is more offensive to a lawyer than being accused of malpractice or unethical behavior. This seems to be especially true for litigators -- you know, the lawyers who sue other people every day. But despite the angry emotions that overwhelmed the parties in that case, my counterpart on the other side of the case (we will call her "Jane")\* always conducted herself with the utmost decorum and civility. I learned so much from her example.

Now, eight years later, I am still friends with Jane. We have broken bread together, shared a bottle of wine, "friended" each other on Facebook, spoken on CLE panels together, and celebrated each other's career milestones.

In the years that have passed, we have both confessed that the legal malpractice case was a pivotal learning experience. Jane forced me to raise my game. She says I did the same for her. We grew to respect each other's abilities and treated each other with civility. Yet, there is no question in my mind that both of us represented our clients zealously.

Since that time, I have encountered many other adversaries, with many different styles. As a New York litigator, you can find yourself across the table from some of the rudest, most offensive people you would ever care to meet. They count on their ability to wear out their adversary -- to the point where they get what they want because everyone just wants them to go away. Sometimes, this can be an effective strategy. Some clients want their lawyers to be hyper-aggressive and view civility as a weakness. For some lawyers, rudeness is their calling card.

There is an ongoing debate over whether -- and to what extent -- lawyers should be disciplined or sanctioned for uncivil behavior. Every so often, a case hits the news of a lawyer being censured or suspended for truly obnoxious conduct. But most uncivil behavior goes unpunished. Sometimes it is even rewarded.

This is the lesson I have learned: Incivility is often a substitute for skill and competence. As with Jane, a good lawyer's work speaks for itself. You don't have to be a jerk to be an effective lawyer. In fact, I

don't think you get the best results for your clients by being the nastiest lawyer on the block. As the saying goes, you can attract more flies with honey than with vinegar.

The other day, Jane sent me a text that eloquently summarized our journey: “our careers tried to cast us as adversaries and life made us friends.”

In fact, I believe it is possible to be both.