

**INTERNATIONAL CONGRESS
FOR STUDENTS AND YOUNG PROFESSIONALS**
Law in search of Justice
“Giovani giuristi in dialogo”

Isabelle de Moffarts
Lawyer
Belgium

For 15 years I have worked as a lawyer in Brussels in a small law firm with ten lawyers. I practice in different areas, but mainly in private law (family, tort, real estate, etc.) and immigration law. I have also been introduced to criminal law through a particularly long and complex trial in criminal court.

For me, this profession is fascinating. From the outside or through the lens of some American movies one might think that the key words to describe the profession are eloquence, strength, strategy, and success. My experience is that other key words can be a starting point to reflect on daily practice in the legal profession: trust, truth, respect, and creativity. I would like to offer a brief reflection on each.

Trust

Above all, I try to establish relationships of trust with my clients, starting with the effort to understand them. Together we look for the best solution, starting with the situation as it is, even if we would have wanted circumstances to be different.

I try to respect their own wishes, of course within the limits of my conscience. I do not drag them to a trial if they fear the cost and the consequences. I ask their opinion before each decision. I try to open lines of communication with the client, resisting the “expert” temptation to control every aspect of the process.

This reliance on the client’s input is not necessarily equivalent to weakness; on the contrary, it can be source of strength. The more you “enter” into what the client is living, the more you can express it, give reasons for behavior, and give a voice to feelings of injustice.... It also helps the judge to better understand the situation.

Recently, a real estate client asked me to help him with a very complex inheritance matter. I hesitated to represent him on this matter, in part because I lacked the expertise, and in part because the trial would have been in Flemish, which is not my first language. The client insisted: he had started the case with a Flemish lawyer who was a specialist in inheritance law but the client felt that this lawyer did not allow him to be sufficiently involved in the matter. He preferred to work with me simply because of the relationship of trust and collaboration that we had already built.

Truth

The client comes with his or her own perception of reality: a feeling of injustice, a desire for revenge, the certainty of being right, or an attitude of a victimization. I try to fully welcome the client as he or she is, but I also do not hesitate to speak up when I do not share his or her vision of reality. A times, suffering can blind people to the fact that the other side may have legitimate reasons for their actions. I feel that it is my duty to

share with my client my point of view, with respect and readiness to accept that I may have not fully understood the situation. I invite the client to reflect on the extent to which the opponent's theory of the case may hold some truth. I see that this relationship of truth gives deep roots to our collaboration. Often this also leads to profound agreement on the particular strategy for a given case. When the client chooses an option that I would not have chosen, I respectfully inform him or her of my reservations.

Respect

Respect for the client is an obvious principle of our profession. But I also feel called to respect my adversaries. I try to use exact words to describe facts, without unnecessarily denigrating the opponent. This can be very difficult in practice, especially when you are in the heat of the conflict, but this restraint is worth it. Often the judge appreciates the capacity to step back and stick to the facts and the concrete claims, without useless aggression. This attitude does not keep me from strongly denouncing injustice. In fact, the more I live the value of respect, the better I can present my client's claims. In the same logic, each time I recognize my mistakes or the mistakes of my clients, it increases my own credibility. By not pretending to be right on everything, I have more authority to ask for what I see as right.

To give an example of how respect for an adversary can transform a conflict, I will refer to the Fourniret case. Europeans might have heard something about this case which took place in Charleville-Mezieres (France) in May 2008. It was a major trial before the criminal court in which I was representing the only survivor of a serial killer who was accused of killing 7 young girls. My client, a young girl full of idealism, hoped that her testimony might contribute to the "conversion" of the accused; or at least help him to be aware of the wrong he committed and perhaps even to confess to other crimes that were not yet known.

The parents of the other victims of course saw the accused as "monster," who no longer deserved to be treated as a human being. I tried to respect their suffering and their feelings toward the accused, even if I did not fully share them. Personally I am convinced that even a man who commits tremendous evil remains a human being.

In my closing argument, I tried to express both aspects: on one side, lucidity in front of the evil that he committed and a refusal to enter into his manipulative game; and on the other side, faith that he might be capable of an act of contrition, even though he had been given to lies and falsity his whole life. I tried to focus less on the person of the accused and more on the dynamics of life that had been created through love between the victims.

Almost all the other parents came to me afterwards to thank me for having expressed so clearly my client's solidarity with them. The day after, I learned that my remarks were the only thing that had touched the accused, even to the point of making him cry. This obviously did not change his perverse character, but who knows if part of the message had stayed with him and continues to work on him during his life sentence?

Creativity

My training as a lawyer at times brings me to see the world in a polarized way: who is right vs. who is wrong; or the right theory vs. the wrong one. But reality is much more complex. For me the goal is neither to get a neat, clear decision, nor to see that my reasoning has been wholly adopted by the judge. I define the goal as finding a long-lasting and satisfactory solution for the client. Often this means keeping in mind that the

litigants have to maintain relationships with neighbors, colleagues, business partners, and especially with family members. Rather than plowing toward a head-on collision, I try to consider alternatives to direct conflict. When trial is the best option, I try to conduct it in a manner which is sensitive to preserving relationships.

For example, at the end of the Christmas holiday this past year, my client phoned me panicked because the father of her son had refused to bring her son back to her custody and had indicated his intention to bring the boy to the African country where he works. All of this was in violation of the custody agreement. There were many legitimate reasons to be outraged by this conduct and immediately I moved for a hearing before the court. The law was clearly on my client's side, even if the boy had given false testimony to the police that she was mistreating him.

By really listening to my client, however, I came to understand, that even though she was very angry, she also appreciated that the boy really wanted to live with his father. It was not that he was unhappy with her, but rather that at this point in his development he needed his father.

This understanding complexified my client's goals. If we were to consider the "best interests" of the child, it no longer meant "winning" the case, which would have been pretty easy. Instead we saw that the new goal would be to renegotiate the custody agreement so that the boy's desired transfer to his father would also guarantee that the relationship with his mother would be maintained despite the distance.

At times it was difficult to navigate my client's emotions and contradictory desires. She wanted her son to be happy but at the same time felt resentment toward the father and fearful of further betrayal. Creativity and perseverance were needed, but after three weeks of tough negotiations, the boy flew to Africa, peaceful and sure of both his parents' love.

Shadow and light

In all sincerity, my experience as a lawyer brings me to refer to other, tougher words: suffering, failure, powerlessness, doubt, absurdity.

I cannot heal the violated girl. I cannot bring a child back to life. I cannot reconcile the parents who are set on destroying each another. I cannot shield the despairing foreigner from expulsion.

I also experience a sense of suffering and failure when I receive a decision that seems absurd, when it seems that the judge did not listen to arguments that, in my opinion, were well-founded.

Many of these "whys" remain without answers.

I see my task as to live this drama fully, to be there, to accompany those who suffer so as to protect their human dignity. My greatest joy is when I am able to help them open their horizons to new perspectives, and to discover a sense of hope.