

## Litigation



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# Monkey Business

Peacemaking among people and other primates ● BY CHIP RICE

**W**hen lay people complain to me about the way that lawyers act, I often tell them that they should feel sorry for me, not the other way around. After all, I have to deal with more lawyers than they do. And it's not just opposing counsel I'm talking about. I've probably spent more sleepless nights worrying about personal conflicts with colleagues than with adversaries. Why do we have to fight about everything? Why can't we just get along?

Perhaps it's because we're simply not

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wired to get along all of the time. In fact, it wouldn't necessarily be a good thing if we did. If we want everyone to have the right and opportunity to pursue their own interests, it is inevitable that those individual interests will clash sometimes.

Fortunately, however, we also seem wired to make peace with each other. Conflict and resolution are the nature of the beast — both for us and our primate cousins. So, from time to time, I find it comforting and often illuminating to remind myself that we are all just a bunch of smart monkeys.

If you want a shock of recognition, pick up a copy of Frans de Waal's "Peacemaking Among Primates" (Harvard University

Press, 1990). This book, written by a leading primatologist, describes how chimpanzees and other primate species fight and make up and how integral that process is to their social organizations.

"The members of a group are simultaneously friends and rivals, squabbling over food and mates, yet dependent on one another...." writes de Waal. "These animals have to face the fact that sometimes they cannot win a fight without losing a friend."

Hmm, remind you of anyone?

De Waal concludes that primate groups solve problems caused by their aggression by reducing competition through greater tolerance or by repairing the damage caused by

conflict through reconciliation or by some combination of the two. For example, primate adversaries, after they fight, tend to stay away from each other until one of them tries to make friendly contact — a process that takes only minutes for most monkeys but a lot longer for most humans. The reconciliation process may also adjust which party is dominant and to what degree. Squabbling and making up can change and reinforce the relationship at the same time.

The book goes on to tell some wonderful, funny and sometimes horrible stories about chimpanzees, rhesus monkeys, bonobos and other social primates that live together with varying degrees of hierarchy and external threat. Each of these species depends on aggression and reconciliation to modify both the organization and their own individual status, and each member must find a spot on the totem pole where his or her needs will be met. To do so, says de Waal, each primate has to use a combination of aggression, coalition-building, tolerance, reconciliation and what looks very much like strategic thinking. In order to avoid being at the bottom of the pole, each one has to make friends and be assertive at the same time. Holding a grudge may end up being suicide for these very social animals. Success requires the ability to compromise, forgive and forget.

De Waal points out that aggression is not necessarily a bad thing if it is understood as part of a cycle of conflict and peacemaking. Without aggression, he says, nothing would change in a social organization. The old leaders (or, in the case, of human-run law firms, old ideas and practices) would remain entrenched. But without peacemaking, conflicts between individual interests can tear any organization apart. This pendulum swing between conflict and accommodation is crucial to the vitality of any social organization, whether it's a band of monkeys or a Financial District

law firm. The challenge, then, is not how to eliminate aggression but how to control it by channeling it in predictable ways and unifying competitors in pursuit of a common goal.

Fortunately, we primates seem to have as strong an instinct for making peace as for making war. For example, we have a gift for pretending to ignore conflict. Studies have shown that rats, when they are crowded together, will kill and even eat each other. By contrast, when monkeys are thrown together, they will avoid tension by simply paying less attention to each other. In fact, they will look everywhere but in each other's eyes — sort of like passengers on a crowded bus just trying to make their way home.

In fact, all primates apparently avoid contact in tense situations and seek it when trying to reconcile. They also practice what de Waal calls "implicit reconciliation," where adversaries pretend that nothing has happened. Dominant monkeys will show that they are ready to make up by brushing past a recent adversary without any interaction. This "contact pass" shows the adversary that the fight is over.

Language, of course, provides humans with much greater opportunities for explicit reconciliation. But that can backfire. Most lawyers — especially litigators — want their adversaries to admit that they are wrong — preferably in writing. We may be better off, however, if we just act like monkeys sometimes. Implicit reconciliation — if it works — can be less embarrassing for everyone concerned.

We primates also seem wired to make peace by reaffirming the social order and by bonding to fight common entities. That's something else that any member of a law firm should recognize. Subordinates have to express recognition of the hierarchy by deferring to their elders in countless subtle ways, while leaders have to express appreciation and share the big banana branch (or,

among legal primates, the credit for the firm's work product). It seems particularly significant that among our closest cousins, the chimpanzees, peacemaking is initiated as often by the dominant party as by the subordinate one. Leaders who reassure their followers — often conditionally — reinforce their leadership.

Apes and monkey even have their third-party mediators. The alpha male may be able to bully one female but backs down when all of the females gang up on him. Everyone recognizes that, at least at some point, their individual interests have to bow to the stability of the group as a whole.

Don't get me wrong. I'm not recommending that we litigators should start grooming each other for lice as soon as we start raising our voices. I am, however, suggesting that a little different perspective may help in times of stress. Most lawyers, particularly younger ones, want to believe that there is a right answer in any conflict. As a result, we tend to overestimate the importance of the intellectual concepts involved while undervaluing the social dimensions.

Like our fellow primates, the members of a firm — and the members of the larger legal community — have a mutual interest in both progress and stability. Conflict and reconciliation are inevitable, but we should also be able to do a little better than monkeys when it comes to asserting ourselves and repairing any resulting damage. Certainly, both firms and the broader legal profession have to channel aggression in predictable, constructive ways and unify internal competitors by focusing on common goals. Fortunately, that is usually pretty instinctive for most litigators.

The harder challenge is to stop and think from time to time about why we are arguing so much and whether we really want the particular banana branch that is in dispute. As monkeys show us, it may be better at times to lose the argument but keep a friend and an ally. ❖