

ASSUAGING THE RAGE OF ACHILLES: *Athena, Aikido and Marital Mediation*

By Joseph Caulfield

*Rage – Goddess, sing the rage of Peleus’ son Achilles,
murderous, doomed, that cost the Achaeans countless losses,
hurling down to the House of Death so many sturdy souls,
great fighters’ souls, but made their bodies carrion,
feasts for the dogs and birds,
and the will of Zeus was moving toward its end.
Begin, Muse, when the two first broke and clashed,
Agamemnon lord of men and brilliant Achilles....¹*

THE UNIQUENESS OF FAMILY LAW LITIGATION

Family law litigation leads to more burnout of the judges, marital masters, lawyers, guardians *ad litem*, and mental health workers than perhaps any other area of our practice. It overloads us, places an inordinate amount of pressure on us, frustrates us, and has the capacity to taint our view of the world. Unwilling to back down from the challenges, we are compelled to take on every stressor that comes our way.²

Most judges who are murdered by dissatisfied parties are killed by the irate domestic litigants, not by the criminal defendants. The reason is simple: more emotional issues are involved than in any other litigation.³ With such statistics, one wonders why New Hampshire spends the manpower and time to so thoroughly search the lawyers as they enter the courthouse, other than through some strained sense of egalitarianism. Surely, we are a statistically innocuous group.

In most areas of the law the roles of the parties are clear and the opportunity for litigation fairly limited, as, for example, motor vehicle personal injury law. Seldom have the two drivers met before and, when the case is either tried or settled, seldom will they meet again. They never loved each other, so if they hate each other now,

as opposed to merely consider each other damned fools, the hate is not a deep hate and abates readily when the case is concluded.

In criminal law, again the issues are clear-cut. It is the government against the individual. A criminal defendant may develop hatred of a particular prosecutor and vice versa, but seldom does a criminal defendant “hate” the government and, of course, the government has no feelings, being too often the implacable Wheel of Karma. Neither of the parties ever loved each other. Again, the encounter is limited and, although with certain defendants there may be frequent additional encounters, the issues defining each encounter are very different.

Family law litigation and probate litigation offer unique challenges. Whenever a client comes to a lawyer with a horror story of litigation that never ended, it is likely to involve a contested divorce or a contested estate. Family law litigation and probate litigation share the same weighty psychological issues, and these issues drive the litigation, not the legal issues. In a contested estate, the litigants, in the guise of disputing the division of estate assets, are often struggling over issues of “mother loved you best,” “I loved mother best,” and, “if only you had taken better care of mother, she’d be here today.” Since the parties are not really struggling about money, they seldom perform cost-benefit analyses, and legal fees often escalate uncontrollably, producing little tangible value. Note, I wrote that the fees often escalate uncontrollably, not that the parties *pay* these fees. The parties have a lifetime of grievances against each other and can take years to work them out in the court system, if ever.

In family law litigation, the parties, again, have a long history together, though, perhaps, not as long as in probate litigation. The parties once loved each other romantically and lived together. Now, often as conflicted co-parents, they hate each other. They will sincerely confess to the court that the spouse, whom they once held above all others, is not fit to have one unsupervised moment of contact with their child, lest the child suffers some heinous fate. Again, since the litigation is seldom about finances, despite what the parties contend, legal fees are really no object, and the case can

go on, and on, and on. Worse even than probate litigation, is family law litigation, because most estates close in a couple of years no matter how litigious the parties are. A divorce which occurs early in the children's life can go on through the children's majority. A while back, I was involved in a sad case involving two parents who acrimoniously litigated the issue of custody of a special-needs child through most of the child's minority. Undaunted by the child attaining his majority, they continued litigation through the vehicle of a contested guardianship.

Further, not content with trying to destroy the spouse, such litigants, more frequently of late, then try to destroy the professionals involved in the case, filing specious complaints with the Judicial Conduct Committee, the Professional Conduct Committee and the Guardian ad Litem Board.

And, consider how children fare in these litigation disasters. Although a parent within a violent family may think they are protecting their children from this violence, 80 percent to 90 percent of these children report the opposite. In fact, one out of four times that a father murders a mother, their child is a witness.⁴ Even the most carefully crafted and intricately structured parenting plan is not foolproof. As the saying goes, nothing is foolproof because fools are so ingenious. Any family law practitioner with some wake behind his or her keel will relate the often recurring, malicious tricks. Mother sends son to father's barbecue with the grandparents with son dressed in rags. Father returns daughter to mother from the skiing trip keeping all the expensive new clothing. Mother complains that whatever daughter eats at father's makes her sick/brings out her allergies/keeps her awake at night/makes her sleepy during the day. Father complains that the video that daughter watched at mother's house was too old/too young/too frightening/too boring. Of course, all too soon the children will be telling the parents when and for how long they'll be in the company of each parent, on any given day, leading a more astute parent to consider that the \$50,000 she paid her attorney to obtain this parenting schedule and no other, could have been better spent on the child's post-secondary education at best, or on visiting the Isle of Capri, at worst.

However, to dismiss these family law disasters by assuming that one or both of the parties have become crazed or angered beyond reason misses an opportunity to comprehend how our understanding of anger has changed, and what can be done to help.

HOMER'S ILIAD

The primary myth of our western culture, Homer's Iliad, was a family law disaster of nine years' duration. Although long before the French troubadours invented romantic love, consider what Homer recounted for us. Helen, the wife of King Menelaus of Sparta, eloped with Paris, the son of King Priam of Troy, about 1260 BCE. To avenge this insult and to bring Helen home, the Greeks launched an expeditionary fleet of 1,000 ships against Troy. Agamemnon, the King of Mycenae, and Menelaus' brother-in-law, was elected commander in chief. Unfortunately, he was



Athena defuses violent situation by grabbing Agamemnon by his hair.

greedy, ambitious and arrogantly stupid. One of the Greeks who accompanied Agamemnon was Achilles, who, in the judgment of his peers, was more qualified than Agamemnon to command the fleet. The struggle between Agamemnon and Achilles is brought to a climax nine years into the siege when Agamemnon publicly humiliates Achilles by taking from him the beautiful Briseis, a war prize with whom Achilles fell very much in love. Thereupon, Achilles refuses to fight any longer for the Greeks and sulks in his tent. Eventually Achilles learns compassion and experiences moral growth. This is brought about through the intercession of the Gods, the death of Achilles' male lover, Patroclus, at the hands of Hector, Achilles' slaying of Hector and desecration of his corpse, and his personal encounter with King Priam. Then, in fulfillment of prophecy, Achilles is struck down by the cowardly arrow of Paris.⁵ This would be a "Greek tragedy" (tragoidia), but for the fact that Greek tragedy, just as romantic love, had not yet been invented (Subsequently developed in the theaters of Athens by Aeschylus, Sophocles, and Euripides in the fifth century BCE.)

The Iliad does not begin with an infringement of a moral code: it begins with passions that are far more profound than moral rules and are beyond the scope of reason, with forces operating in human life which seem beyond human control. Morals have nothing to do with it. Rage, "*ménis*," is the ultimate sanction against taboo behavior. Only Gods and heroes have "*ménis*." A powerful and

effective sanction, despite its outbreak in disorder, “*ménis*” keeps the world in order and the cosmic categories intact.⁶

That it is Athena who initially advises Achilles to control his rage is very telling. Although associated with war and battle, the goddess Athena is described by the god Aries in the Iliad as “*apbrón*,” crazed or frantic. However, it was more typical of Athena to act with restraint even in battle, and she was more likely to reveal herself in situations that demanded clear thinking, the calming of emotions, and the restraint of violence. Unlike Aries, she does not fight and seek out battle for the thrill of it, nor does she express herself most fully in the bloodlust and tumult of battle and killing, as does Aries.

For her, warfare is primarily political, tactical and expedient — one way among others to obtain some goal or to protect some cherished value. She is more interested in martial arts techniques, the skillful use of weapons, and the strategy of war, or the use of cunning and reason, than she is in the din and frenzy of violent struggle. Her presence in battle does not incite rage and fury; her presence incites courage and daring, tempered with control of the passions that can make a person reckless and vulnerable. Therefore, it is only fitting that when Achilles first feels rage rising within himself and reaches for his sword, intent upon slaying Agamemnon, it is Athena who appears to him, grabbing him by his hair. Achilles turns towards her and stares into her terrible shining eyes. She is not there to incite him to violence, however. On the contrary, she has appeared to stay his hand. She counsels him to return Agamemnon’s insults with words of his own, but to resist his urge to violence. In return for his restraint, Athena promises him greater rewards in the future.

In all her tales, Athena demonstrates a tendency to employ wisdom, knowledge and cunning in leading events in the direction she favors. Her way of achieving success is to employ reason, intelligence and skill. One of Athena’s most common descriptions is “bright eyed” (*glaukōpis*) relating to her intelligence. That she is associated with the owl, whose large luminous eyes are so striking, also might be understood as suggesting her intelligent nature. A consistent theme in the mythology and cult of Athena is her identification with the city state of Athens where the tale is told that, in the trial of Orestes for the murder of his mother Clytemnestra, Athena established a court of justice in which democratic voting by leading citizens decided the fate of the accused, thereby doing away with the archaic and disruptive law of blood revenge. However, it must never be forgotten that Athena wields two attributes in battle. The first is the serpent-ringed Aegis, the shield of Zeus himself, which, when shook, wraps Mount Ida in clouds and strikes men down with fear. The second is the awful Gorgon’s head on her breast. Feminist philosophers such as Kristine Downing and Mary Daly would explain these attributes as honoring the shadow side of woman and the dark sources of her power.⁷

UNDERSTANDING THE EMOTIONS

Let us now examine the rage of Achilles through the paradigm

of various disciplines and see whether their insights are helpful: Greek philosophy; Freudian psychology; existential philosophy; Christian dogmatism; and, mediation theory.

The ancient Greek view of the soul holds that the soul is divided into reason (*nous*), appetite (*epithymia*), and spirit (*thymos*). “*Thymos*” to the Greeks was “spiritedness,” where pride, a need for recognition, and courage resided. When this part of the soul was not satisfied, it reacted with “spirited” emotions, such as shame and rage. Plato, for example, argues for this division of the soul by describing examples of inner conflict: I desire to look at a corpse (appetite) but I know that I should not (reason) and I feel ashamed (spirit). The similar, Aristotelian view holds that the human soul is divided between rational and non-rational, and the non-rational is further divided into parts obedient and not obedient to reason.⁸

To the Greek philosophers, however, participating in an emotion such as rage brought human beings closer to the world of the gods. To them, it was not the human beings who have their passions, but rather the passions that have their human beings. Further, rage belongs to a heroic character. It is not simply deducible from external provocations: “Achilles is wrathful just as the North Pole is icy.”⁹

In the Iliad, Achilles’ rage was more of a force of nature than an emotion. Even that early in our understanding of anger, a question can be raised whether Achilles’ desecration of Hector’s body was his losing control or taking control. Sartre would favor the latter interpretation, namely that rage is a strategy and has a purpose. In fact, by expressing rage, a party may be purposely seeking to elevate him or herself into a position to be able to pass judgment on the other party who has wronged him or her and to have it both ways, that is, to place his or her claim before the judge, while at the same time being the judge. The substantive disagreement between Sartre and the Greek philosophers is whether the psyche is divided between controlling and controlled elements. The Greek philosophers saw appetites and emotions as largely involuntary reactions, which ought to be controlled by the exercise of reason. Sartre sees appetites and emotions as voluntary actions, which are themselves forms of control. Sartre denies the distinction between voluntary and non-voluntary psychic elements.

Feeling ashamed about a desire I know I should not have is not a battle between passive and active, chosen and un-chosen elements of the soul, but a tension between equally voluntary, equally intentional, yet distinct modes of consciousness. Take anger for example. Sartre’s thesis is that anger — like any mode of consciousness — is a way of living and in fact, a way of choosing one’s relation to the world. One does not “give in” to anger; anger is chosen. However, to choose anger is not to reflectively distance oneself from one’s anger and then embrace it after weighing alternatives. This would be to assume a split between the rational and emotional sides of the soul. Disagreeing with the Greek philosophers, who claim that choosing and directing are actions unique to reason, Sartre would say that emotion chooses

and directs. Reason does not stand back and choose my emotion; emotion chooses to reveal the world.¹⁰

Psychological theory is in accord. Freud coined the term “narcissism” as early as 1911 and four years later recognized the aggressive impulse as a facet of narcissism. It has come to be understood in the field that Freud’s “aggression” is close to the current concept of “narcissistic rage.” As Kohut wrote in the early 1970’s, this narcissistic rage is a reaction to the frustration of the omnipotence of the grandiose self. The integration and repair of the damaged self through an individual’s capacity for empathy for his offenders can cause a “shift” of the aggression produced by this narcissistic rage. Just so does Homer recount Achilles’ transition from narcissistic rage to a capacity for compassion and concern.¹¹

Earliest Christian dogmatism considered anger something to be restrained. Paul, in 2COR 12:20 and GAL 5:20, uses “*thymos*” in the plural to designate outbursts of rage, correlating with infantile or narcissistic rage. Note that the early Christian philosophers much more frequently used “*thymos*” to connote rage, rather than spiritedness, as did the Greek philosophers. GAL 5:19-21 includes this type of anger in a list of vices as “the works of the flesh” along with fornication, impurity, licentiousness, idolatry, sorcery, enmities, strife, jealousy, quarrels, dissensions, factions, envy, drunkenness, and carousing.¹² St. Augustine (354 – 430 CE)

defined rage as inherently aiming at revenge (*iraappetitvindic-tam*). Pope Gregory I (c. 540 – 604 CE) included rage or wrath in his list of seven deadly sins, along with lust, gluttony, greed, sloth, envy and pride.

CONFRONTING THE EMOTIONS

Now, what to do when confronted with the angry family law litigant? How does one assuage the wrath of Achilles? I suggest that Homer had it right and that the same martial arts techniques, these attributes of the goddess Athena, which have matured over a millennium in defending against physical aggression, provide a method. In fact, contemporary mediation theory specifically adopts martial-arts terminology and attempts to utilize martial-arts techniques in the “principled negotiation” developed at the Harvard Negotiation Project.¹³ Such literature is replete with terms such as “negotiation jujitsu,” “pushing back,” “side stepping,” “deflecting,” “stepping aside,” “turn their strength to your ends,” etc. Unfortunately, if a very brief intellectual discussion of an art and discipline enabled one to use it effectively in the real world, we lawyers would all become accomplished trial attorneys as soon as we were handed our JD’s.

Be that as it may, I will describe some techniques from the Japanese martial art of aikido that may be useful in dealing with

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the angry family law litigant.

Aikido is a fairly modern martial art invented in the 1930's by the martial genius Morihei Ueshiba, although many aikido practitioners proclaim that aikido techniques derive from a much earlier period. Ueshiba originally called his art aiki-budō. After it was assimilated into the Butokukai in 1941, its name changed to aikido.¹⁴ Despite its early roots, aikido is a modern martial art because it was created after the Meiji period (1868 – 1912 CE).. Further, the more one seeks to glorify Aikido's roots, the less one acknowledges Ueshiba's greatness. Still further, from a mediation perspective, it is far more useful to utilize techniques invented in a comparably peaceful era when martial arts had evolved from a Bujutsu to a Budo during the Tokugawa bakufu (1603 – 1868), than to seek to utilize martial techniques designed for slaughter during the Yoritomobakufu (1190 – 1199 CE) for principled negotiation.

There are great differences between the Bujutsu, or martial arts, and the Budo, or martial ways. The Bujutsu are combative systems designed by and for warriors to promote self-protection and group solidarity. The Budo are spiritual systems, not necessarily designed by warriors or for warriors, for self-protection of the individual. In any event, as aikido was invented in the 1930's, it is certainly not a classical Bujutsu (*koryūbujutsu*) and, by definition, not a classical Budo (*gendaibudo*). It is a modern Budo.¹⁵

However, to consider aikido as a Budo, more spiritual system than combative system, does not mean that its martial techniques, and thus their facility to diffuse anger in both the physical and psychological realm, are any less vital.

The spiritualism which pervades aikido is Buddhism, including elements of discipline and paradigm-shifting techniques of Zen Buddhism, rather than the elaborate ritualism of the Tendai and Shingon sects.¹⁶

That said, aikido excels in "*tai sabaki*," body-shifting; techniques of entering, blending and moving off the line of attack to diffuse resistance, resentment and anger, allowing the possibility of reconciliation. Wonderful. What does this mean? To be a successful martial artist, one must have control of oneself. A successful mediator must also have control of oneself. The parties' anger or irrationality is the parties', not yours. Aikido offers some practical techniques to accomplish this. Perhaps the easiest is to control your breathing. Try to breathe from your belly, not your upper chest. Controlling your breathing causes a number of physical and psychological changes in the body. It also gives the mediator something to do and succeed at, other than becoming fixated on a party's rage. Another Aikido technique for accomplishing this is called "centering". This is directing your consciousness to your lower abdomen, the "*seikatanden*" or "*bara*," an area called the "one point." Of course, you want to try to relax physically: Drop your shoulders and soften them. Certainly no mammalian posturing! No staring contests, either!

First and foremost, you must remain professional, someone worthy of respect. The angry party will often seek to drag you down to his or her level, or below. Do not cooperate. Very often, this is enough. Consider how much energy it will take the raging party to maintain his or her rage and how little energy it will take you to remain calm, relaxed, breathing deeply and naturally.

If that doesn't facilitate principled negotiation, then I would recommend using a more dynamic aikido technique. Although some mediators favor techniques such as "side stepping," "deflecting," and "stepping aside," I do not. Aikido with its Zen Buddhist roots prefers engagement, to ducking, bobbing, and weaving.

Aikido has a technique called "*irimi*" or "to enter." On the physical plane this involves a strong forward movement toward the attacker characterized by a powerful twist of the hips permitting the aikidoist to enter the attacker's space and leave the attacker weakened with his "*kuzushi*" or balance broken. I am, of course, discussing the use of martial art techniques for mediation, not martial art techniques as a trial tactic, for which, of course, they can be used.¹⁷

A SIMPLISTIC EXAMPLE

Now let me give you a very simplistic example of how the aikido technique of "*irimi*" may be used. A very recently separated husband and wife have sought your services. They have a lovely 10-year-old girl together. The husband has left the wife to live with his girlfriend in her apartment. Both parties are fixated at

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the “negative intimacies phase” -- demonstrating for you insult trading, struggles over power and control, and abusive anger. You have screened for domestic violence and have determined that mediation can proceed. The first issue presented is contact between the girlfriend and the daughter. In a joint session, the husband delights in telling you that the girlfriend is a far better mother to the daughter than the wife ever was and he’ll decide whose company his daughter will be in, not his wife. The wife responds that the girlfriend is a moral reprobate and shouldn’t be permitted near barnyard animals. And there you have it.

Aikido, with its *randori*, defense against multiple attackers, is sophisticated enough to understand well system dynamics. To this situation, you apply a technique that brings harmony to a chaotic system. In this simplistic example, I will deal with the two “attackers” separately. Applying “irimi” to the husband, the mediator enters his space, accepts the attack, applying centrifugal force to “lead” rather than deflect the aggression. The husband’s statements are reframed. His high opinion of his girlfriend is validated and his concerns are directed to specify what contact, and how often, his girlfriend and his daughter shall enjoy.

The mediator similarly accepts the wife’s attack and enters her space. She is validated as the child’s mother and her concerns about the girlfriend are acknowledged. Her attack on the character of the girlfriend is led to the specific types of contact the girlfriend and their child might share at this time; what would be tolerable to their child?

Although this is a simplistic example, it should demonstrate that aikido principles are in accord with contemporary mediation theories, even those which do not presume to teach “negotiation jujitsu.” Just as in the client-centered approach to mediation, the use of aikido techniques places the parties’ fears, prejudices, concerns, beliefs, and values as the focus of the process.¹⁸

Now, proceed with this mediation, and may the goddess Athena bless you!

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