



## President's Column

# Takes A Licking And Keeps On Ticking

BY BILL MATEJA

Last week I won one...and I lost one. The win was an appeal from a West Texas franchise dispute that we tried for three weeks and recovered fees over \$6 million. The loss was in not convincing the U.S. Attorney's Office in Hawaii to not charge my client with criminal health care fraud.

I've already forgotten about my win because that feeling was fleeting, but I can't get the bad taste out of my mouth about the loss. Why is it? Let's face it. Losses are tough to cope with. The problem is that I'm in the wrong business. Scratch that, *we're* all in the wrong business. This lawyering gig is fraught with losing—it's an inevitability. Whether it's losing a case, failing to secure a desired outcome for a client, or facing setbacks in a case or deal, we lawyers get hit over the head with loss.

Coming just off the heels of May being mental health awareness month, I thought I'd reflect on loss perhaps in a way that will help all of us keep from losing our mental sanity and navigate through it.

## The Timex Moment

Older lawyers will remember that Timex catch phrase. But it's also the punch line from a true story coming out of Tarrant County that my sister-in-law, Janna Clarke, told me back in the late '80s and I have now confirmed wasn't just a myth. Janna told me that one of her partners had a make or break trial in Brenham, Texas. Unfortunately, the trial broke that partner. When he made it back to his Fort Worth office, there was a shiny new Timex watch on his desk, case and all. There was a note too—"Takes A Licking and Keeps on Ticking," signed Brooks Harrington.

The note somewhat foreshadowed Brooks, a well-known trial lawyer at the time, becoming a Methodist minister and founder of the Methodist Justice Ministry, a pro bono legal ministry providing legal protections to indigent victims of child abuse and family violence. The recipient of that note, was a Fort Worth trial lawyer by the name of Dusty Fillmore who many Dallas trial lawyers will remember. Brooks told me while I was writing this piece that his gift was just the tonic to help lift Dusty's spirits and kick-start the humility that Dusty was known for. Because his gift was so well-received, Brooks told me that, thereafter, he left a Timex watch for any lawyer who he practiced with who suffered loss and defeat—achieving its intended goal each time. From that anecdote alone, we can learn a couple of things.

## We Have to Pick One Another Up

Like pro bono services, where if we as lawyers don't do something about it, then who is going to, the same is true with picking up our colleagues when they're licking their legal wounds. Help one another through legal tough times. Don't take it for granted that they'll be able to dust themselves off and get back on their feet.

See through the façade of the stiff upper lip that many lawyers are known for. Let them know you're there for them, sorry about their loss, and that you want to know if they're okay. Asking a lawyer if they're okay is one of the most important things a fellow lawyer can do. A managing partner in an office I was once in who I regarded highly used to walk the hallways regularly and stop in every lawyer's office just so he could find out what was going on in that lawyer's life and to see, or ask, if they were okay. Bottom line—pick one another up and figure out how to recreate the Timex moment.

## A Sense of Humor Helps

The Timex watch incident jumpstarted something we all have in us and can draw on if we set out to, namely, humility and a sense of humor (though my wife would tell you I need to up my game). We have to learn to laugh at ourselves because there is no better cure for the sting of defeat than a healthy dose of humility and self-deprecating humor.

While we might have faltered in the boardroom or the courtroom, let's not forget there's not one amongst us who hasn't had their fair share of losses, some perhaps a tad embarrassing. You might even revel in the fact that you were in the position to also potentially be a winner. It's

not that different than the terrific Teddy Roosevelt quote we've all heard about the "man in the arena" in which Roosevelt says "The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood...who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat."

## Don't Fear Losing

Taking the Roosevelt wisdom one step further, it was Clarence Darrow that once said: "I have never been afraid of losing, for I have always believed that the true measure of a lawyer is not in the cases won, but in the battles fought."

While Darrow might not have been that swell of a guy (as reported at a recent DBA Legal History Section presentation courtesy of that Committee's incomparable leader, Josiah Daniel), what Darrow shares is a real nugget. You see, I've seen my fair share of lawyers who are afraid of losing. Because of that, they don't push the boundaries that they need to in order to give the client its due. Fear is a powerful thing that drives us to succeed. But fear of losing can also cause us to settle a case that needs to be tried, not prosecute a case for which justice should be served and not continue to negotiate deal points for fear of losing the deal.

## Take Time to Reflect on Your Losses

Gloria Allred reportedly said that: "In the courtroom, every loss is a lesson. It teaches us to reevaluate our strategies, reassess our strengths, and refine our skills." David Boies said much the same thing: "The mark of a great lawyer is not the number of cases won but the lessons learned from those lost. Each defeat is an opportunity for growth, an invitation to become better, wiser, and more resilient."

While we've heard similar quotes time and time again, each of us needs to spend the time to truly take stock of our shortcomings, how we can do better, reassess our strengths, and refine our skills. For what good is a loss if we don't. The problem is that the speed of life gets in the way of reflection unless you make time for it. That coupled with the fact that we'd rather be sitting on the couch watching a movie or doing something fun, makes thoughtful reflection tough. Because I don't have a helpful tip to solve this problem can I simply say—just do it!

## Loss Instructs Empathy

Losing is also perversely good for us to the extent it teaches empathy and compassion towards others who have failed and, importantly, toward our clients who may be wrestling with disappointment and frustration. As lawyers, we are responsible for guiding our clients through the confusing legal system. By sharing in their disappointment and offering them support during moments of defeat, we strengthen the attorney-client relationship and demonstrate our unwavering commitment to their cause.

## Point The Finger At You

How does the saying go—"Success has many fathers, but failure is an orphan." While we frequently see lawyers who want to take credit where it's not due, we equally see people point the finger at others and distance themselves from failed endeavors. It was Louis Nizer that said: "When a man points a finger at someone else, he should remember that four of his fingers are pointing at himself." So, be gracious in loss, accept responsibility that you should, and don't be a sore loser either.

In closing, be self-aware that you as a lawyer are likely encountering repeated losses, that these losses can sneakily take a toll on you unless you proactively employ strategies to deal with them, and it's incumbent on each of us to help other lawyers through their failures. With that in mind, I sure hope you win more than you lose, and even if you don't, you are all still winners in my book.

*WB Mateja*



## HEADNOTES

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