



President's Column

In My Humble Opinion: Thoughts on Humility and Lawyering



BY BILL MATEJA

You Suck!

After watching my Fightin' Irish pull away from Texas A&M in the 4th quarter of the first football game this season (sorry, Aggie friends!), Notre Dame's new quarterback, Riley Leonard, was asked during his post-game interview whether he was sporting a "You Suck!" wristband. You Suck!—really??? When I heard that, I scratched my head.



The camera panned in on his wrist and, sure enough, there was a wristband in ND colors with the words "You Suck" emblazoned on it. Leonard explained that his mom made the wristband for him and texts him before each game telling him that—"You Suck!" Really! And while he was speaking quickly, I think I heard Leonard quote Matthew 23:12 as well with words to the effect that: "And whosoever shall exalt himself shall be abased, and he that shall humble himself shall be exalted."

It all started in high school. Leonard had been getting a lot of praise but wanted just the opposite. He went to his parents, told them he wanted an ego-check as well as a little motivation, so his mom volunteered. It became a tradition and even after multiple years of playing football for Duke and now Notre Dame at the Division 1 level, his mom still texts him before games and important events that—"You Suck!"

Lawyers and Humility

At the risk of sounding a little preachy, which I'm really trying not to do, it strikes me that many of us could use some encouraging "You Suck!" notes from time-to-time if not for ego-checks just simply for motivation. Of course, who hasn't encountered a lawyer or two or three...who was at least a little arrogant, who was most certainly lacking in the humility category, and who needed a good swift "You Suck!" kick in the pants. We've all experienced it.

It's not hard to understand how lawyers can be arrogant or at least come across as arrogant. A career in the law is generally viewed as prestigious and elite. With this prestige comes pride, which can sometimes turn to arrogance. Coupled with the fact that lawyers are typecast as strong, confident and seemingly always right, it's no surprise that lawyers start along that path and never appropriately self-correct.

Humility Meter: Where Do You Stand?

While I think we lawyers as a whole get a bad rap from the public at large (just search among the never ending lawyer jokes), it's worth all of us noodling on our own humility as lawyers. On a scale of 1-5 with 5 being "strongly agree," please indulge me and consider where you stand on the following:

- I accept my own limitations (and strengths) as an attorney without defensiveness or judgment.
- I understand that I am no better than the clients I serve.
- I am teachable.
- I assume that opposing counsel is as equally intelligent, skilled and professional as I.
- I treat my opposing counsel with the same respect I would want to be treated.
- I consider my staff and co-workers as people who have helped me succeed and not simply tools that I use.

Are you in the same category as Mother Teresa, Ghandhi, Martin Luther King, or even our own former DBA President, Al Ellis? Maybe so, maybe not? Regardless of your scoring, for even the most humble of people, considering one's own humility is certainly something to be mindful of.

Humility: Making You The Greatest Human Being Ever

Dr. Vicki Zakrzewski is the education director at UC Berkley's Greater Good Science Center. She has written extensively on the subject of humility and its related sister—gratitude. Not to state the obvious, but she's a firm believer that humility can make you the greatest person ever. She notes:

When I meet someone who radiates humility, my shoulders relax, my heart beats a little more quietly, and something inside me lets go. Why? Because I know that I'm being fully seen, heard, and accepted for who I am, warts and all—a precious and rare gift that allows our protective walls to come down.

Truly humble people are able to offer this kind of gift to us because they see and accept their own strengths and limitations without defensiveness or judgment—a core dimension, according to researchers, of humility, and one that cultivates a powerful compassion for humanity. This kind of self-acceptance emerges from grounding one's worth in our intrinsic value as human beings rather than things such as six-figure salaries or the body of a movie star or climbing the corporate ladder or the number of friends on Facebook. Instead, humble people place high value on more meaningful things that benefit others, such as noble qualities.

Is Humility An Essential Trait for Good Lawyering?

Applying all of this to the law profession, consider that humility might just be an essential trait for good lawyering even though our profession emphasizes things that sometimes run counter, such as being confident and assertive. Humility leads to good lawyering because:

Improved Client Relationships: Humility helps develop stronger bonds with clients especially when you treat your clients as your equals. By quieting the ego and truly listening to your clients, not only will your clients know that s/he has been heard, but you'll be able to better understand their needs and concerns.

Towing the Ethical/Moral Line: Humility puts the kibosh on arrogance. And arrogance can often be the slippery slope that leads to unethical behavior at worst and immoral conduct at best.

Better Advocacy: All of us have seen the humble lawyer who walks into court or the conference room and immediately exudes credibility because that lawyer acknowledges that s/he doesn't have all the answers and makes clear that s/he is on an equal par with others. I've also seen time and time again that "aw shucks," humble demeanor become the means of knocking down walls that human beings naturally put up as defense mechanisms. By knocking down those walls, one can engage in a real dialogue with others, whether it be a judge, opposing counsel, or otherwise.

Cultural Sensitivity: Humility places a lawyer on equal footing with every other person no matter the ethnicity, economic/social status, or otherwise. Respecting one another's diverse backgrounds leads to better communication and relationship building.

Professional Growth: Admitting that you don't have all the answers, are teachable and willing to seek out new knowledge and skills, can only make you grow as a lawyer.

Come to think of it, **yes**, humility is an essential trait of **good** lawyering.

Tips for Cultivating Humility

Zakrzewski gives three tips for cultivating humanity which I'll repeat. First, she emphasizes **embracing your humanness**. She notes that when we fail, all too often our self-esteem plummets. "Not so for people with humility... their ability to withstand failure or criticism comes from their sense of intrinsic value of being human rather than outer means." It doesn't mean that there is something wrong with them because they're human beings just like the rest of us.

Second, consider **practicing mindfulness and self-compassion**. Mindfulness grows self-awareness and when we better understand our inner lives, it's easier to see unhealthy beliefs and actions that might be limiting.

Last, Zakrzewski suggests **expressing gratitude**, which is something that this author has been trying to become much better at. In fact, I have a yellow sticky on my computer monitor that I look at each day to force myself to not let the day get away without thanking those – whether they be my wife, kids, friends, co-workers, Bar colleagues and even God – for everything that I've been gifted. "Saying 'thank you' means that we recognize the gifts that come into our lives and, as a result, acknowledge the value of other people. Very simply, gratitude can make us less self-focused and more focused on those around us—a hallmark of humble people."

HEADNOTES

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Focus | Appellate Law/Trial Skills

How Juror Questions are Changing Texas Jury Trials

BY MIA FALZARANO

Juror involvement in civil jury trials through juror questions—the practice where jurors write down questions to be asked during trial—is becoming increasingly popular in Texas state court cases. This practice impacts every stage of trial from voir dire to closing argument. As it continues to gain traction, Texas attorneys should take care to learn how the process works and think critically about how to best implement it to their clients’ advantage.

Allowing juror questions helps the jury feel a sense of ownership over the trial and tends to lead to higher levels of engagement and understanding—but that higher level of engagement and ownership can come at a cost. The attorney relinquishes some control during trial. With juror questions comes the possibility of increased focus on certain areas of a case that an attorney might not want highlighted, or decreased focus on more important areas.

With virtually no universally accepted procedures for juror questions and high levels of discretion afforded to the judge, trial attorneys are in a unique position to suggest an approach that will best suit their client and case. To capitalize on this, attorneys

should prepare to work through the logistics of juror questions during the pre-trial conference, including: (1) whether the jury should write down questions after each witness or during designated breaks throughout the day; (2) whether the judge or attorneys will ask the jurors’ questions aloud; and (3) whether attorneys can unilaterally reject questions submitted by jurors, or whether objections to questions must be grounded in the Texas Rules of Evidence.

Attorneys should keep in mind both the legal and practical implications when considering how they want to approach this practice, and the approach is likely to change on a trial-by-trial basis due to individualized case and client concerns. From a practical perspective, consider the situation where a juror writes down a question that uses inflammatory words or that frames your case poorly. Depending on the agreed upon procedure, if a judge reads that question aloud, as written, the act of doing so could be seen by the rest of the jury as lending credence to that one juror’s perception of events. Or consider the situation where a juror writes down multiple questions, none of which are read aloud either due to legal issues or because you or opposing counsel objects to them; that juror might feel slighted or disheartened and

ultimately become less engaged in the trial.

From a legal perspective, it is important to remember that juror questions may implicate other trial procedures, some of which may not be discretionary and, in extreme cases, could lead to reversible error. For example, consider a situation where questions are asked at designated breaks, instead of after individual witnesses’ testimony. If a witness has been excused and is no longer in the courtroom, this may require the judge or attorneys to answer the jurors’ questions. In that situation, the attorney has not been sworn in as a witness, so it is unclear whether the juror could rely on that answer as evidence and how an appellate court would treat the record for that portion of the case.

Likewise, agreeing ahead of time that attorneys have an ultimate veto right for questions does not absolve them of their responsibility to make objections on the record in a situation where a question that they sought to veto does ultimately get asked, either over their (informal) objection or because the judge believes it is a question deserving of an answer.

During trial, juror questions can provide valuable information to attorneys by cueing them into areas of interest or confusion for the jury, and attorneys

should consider that information when tailoring their trial plan and determining how to approach each day and witness. However, do not forget that most questions may be coming from one or two jurors; they may not speak to the majority viewpoints. Moreover, keep in mind that while juror engagement and understanding is certainly beneficial, jurors will never achieve the same level of understanding as the attorney who has lived with the case for years. Juror questions are further limited by the fact that, unlike the attorney, they have no knowledge of what evidence is yet to come and thus can only ask questions based on their real-time knowledge of events. Any change in strategy must balance what the attorney knows (the questions heard) against what the attorney does not know (the unknown context or motivations behind the juror’s questions).

Ultimately, juror questions are altering Texas jury trials, and they will continue to do so. As a result, Texas attorneys should be prepared to use such questions to their advantage by adequately informing their clients, suggesting beneficial procedures, adapting their trial strategies, and protecting appellate issues. **HN**

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In My Humble Opinion

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Humility – A Path To Happiness

New York Times columnist David Brooks, who spoke to the Dallas Bar several years ago, wrote extensively about humility in his book—*The Road to Character*. Not surprisingly, Brooks equates humble people with happy people, hence my reason for penning this column about humility in the first place—*because I want all our lawyers to be happy lawyers!* So, I’ll leave you with this excerpt from Brooks talking about humble people to further

reflect on. Consider this my equivalent of a motivational “You Suck!” text from me to you:

“The self-effacing person is soothing and gracious, while the self-promoting person is fragile and jarring. Humility is freedom from the need to prove you are superior all the time, but egotism is a ravenous hunger in a small space—self-concerned, competitive, and distinction-hungry.”

W. B. Madry



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