

Five Lessons Learned From a Lifetime in the Courtroom

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I have spent my 43-year legal career in the courtroom as a litigator, including participating in more than 75 trials and 125 appeals. During this time, I have seen the science and psychology of trials evolve. In many cases, litigation has become more a war of attrition than a way to find the truth. Even with all of these changes, there are some fundamental lessons that have helped me in and out of the courtroom.

Lesson 1: You don't need to be a pit bull to be successful.

When a business has been sued, or is considering filing a lawsuit, it is often after a long period of increasing tension and rancor. There may be little good will left between the parties. It's not uncommon for everyone involved to want to make life difficult for the other side.

A client's initial reaction in this situation is often to hire a "pit bull" – a lawyer seen as fierce, uncompromising and highly combative. Resist this urge, unless you like paying for conflict that does not improve your position.

When you do everything you can to make your opponent miserable, at least two things happen – (1) you spend resources fighting about things that could be solved with a phone call or a courteous email, and (2) you can be confident that for every sharp letter, email or contentious motion you fire off, you will likely get the same or worse in return, if only in self-defense.

This kind of drama may be entertaining to some, but it costs money. Courtesy will often get you where you want to go, sooner and cheaper.

When you are faced with the take-no-prisoners opponent, most trial lawyers know how to respond. The most experienced, effective ones know to try the high road first.

Lesson 2: Focus on the long-term.

The litigator's core role is to resolve disputes – one way or another. Sometimes that means going to trial. Far more often, it means finding a compromise that works for the client.

When a client approaches me about a filing or defending a lawsuit, one of the first questions I ask is “Where do you want to be a year from now?” If the lawsuit will help you get to that goal, we keep going in that direction. If it won’t help the client’s business, or is likely to cost more than it will yield the client in return, I usually try to persuade them to look at other alternatives.

Lesson 3: Listen to the client more than you talk.

One of the biggest mistakes litigators, and attorneys in general, make is talking more than they listen. In initial meetings with clients, it’s important to learn about them, their business, and their goals and objectives. I ask a lot of questions. I need to fully understand the problem so I can help them find the best solution.

If the client is not doing at least 70 percent of the talking during those initial conversations, I am talking too much. As a good lawyer once told me, “If I’m talking, I ain’t learning.”

Lesson 4: In the courtroom, it’s all about the story you tell.

In a lawyer’s early years, they tend to focus heavily on rules – rules of procedure, rules of evidence, and more. The longer a lawyer practices, the more they learn that, in the end, it’s the story you tell, and how you tell it, that carries the day. It needs to be simple, compelling, and presented one piece at a time.

Jurors learn visually and auditorily. So show them your story and tell them, at the same time.

Technology has given us many great tools to present images, both still and video, to help our storytelling. Use them all – show exhibits on a screen, pop out key passages or images from text or photos on-screen, play videos of critical testimony on cross-examination, make poster-size versions of important images, give jurors copies of material you want them to touch and remember. You never know which medium will best resonate with a pivotal juror.

Just don’t get so enthralled with the toys that you forget the story. Jurors have several times remarked to me about how effective it was when I wrote key points on a flip chart during direct and cross-examination. Surprisingly, I’ve received few remarks on the more elaborate tools we used.

Lesson 5: Don’t assume you are smarter than the jury.

One of the worst mistakes I have seen other attorneys make is talking down to jurors. Jurors sense condescension and will hold it against you and your client.

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Jurors also possess skills and talents the lawyer does not. No one is highly skilled at everything. You will have jurors who may have limited formal education but be very gifted at visual-spatial reasoning, mathematics, or many other skills that will be relevant to the story they are asked to judge.

Respect those people. Respect those skills. It will make you a better advocate – and a better person.

At the end of the day, being successful as a litigator and as an attorney simply comes down to being courteous, a good listener, a hard worker and a decent human being.

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