

Young Lawyers

BY MATTHEW P. DIGESTI, ESQ.



LESSONS FROM LOSSES

While at my alma mater, obtaining certain elusively specific California CLE credits, I couldn't help but reflect on my legal journey thus far. I recalled the mix of excitement (and terror) I'd felt during my first day of orientation, sitting in that same auditorium, thirteen-and-a-half years earlier.

I laughed to myself a little, over the fact that though more than a decade has passed since I began my legal career, I am still technically considered a "young lawyer." My laughter was not derisive, because the practice of law has a way of humbling lawyers, and no good lawyer ever truly stops learning. Every day presents a number of opportunities to discover more and to keep refining your professional tools.

I found myself thinking about my past legal successes and what they have taught me during the past 10 years. Then, as if on cue, a CLE speaker stopped my thoughts in their tracks. The speaker was a seasoned, successful personal injury litigator, with hundreds of jury trials and several multi-million dollar verdicts to his name. But the wins were not what he recalled with clarity — instead, he remembered his losses. From his point of view, it wasn't the successes that had truly refined his craft, but the failures.

He was right. Returning to my law school roots, I sat up in my chair and started taking notes. What follows are five "lessons from losses" for my fellow Young Lawyers; these tips represent a

mixture of what I heard from the CLE speaker and what I have learned through my own experiences.

Listen to Your Gut

As a former small-firm practitioner, I have had the pleasure of talking to several young lawyers who have hung their own shingles. The one piece of advice I received from seasoned small-firm attorneys that I'd like to pass along is to trust your gut when deciding whether or not to take a case — especially with contingency-fee work.

Initial consultations can be exciting. The potential client has great facts, the story seems credible, the client presents well and your investigation is confirming critical components of the case. But something seems off. Maybe the potential client is pushing for a quick settlement, or a witness seems unsure of the story he is telling you. Regardless, your intuition is a powerful tool: one honed by thousands of years of evolution to sense danger. No matter how big the case or the potential payout, decline representation if that is what your intuition tells you.

Believe in Your Case

You are going to be living this case for the next two to three years, maybe longer. In order to fully commit to a case for that length of time, you must believe in it. There will be peaks and valleys and, as the attorney, you need an anchor to ground you throughout the entire process. Believing in your case will help you stay focused and committed to a positive outcome for your client.

There is another equally important reason you have to believe in your

case. After the verdict was returned in a successful three-week jury trial that I co-chaired, my father and I were talking to the jury. (Talking to juries after your cases is a hugely valuable activity that probably should have made it onto this list of lessons.) I heard from several jurors who, unprovoked, said they felt like the prosecutor just hadn't believed in her case. Her presentation conveyed that message to the jury and the jury responded by supporting the defendant. It is incredible what non-verbal cues a jury will zero in on. The first step in conveying the message that you believe in your client's case is to actually believe in it.

The Presiding Judge Matters

The judge who might end up presiding over your case matters. Through speaking with plaintiff employment attorneys in Washoe County, I have learned that many are choosing to file plaintiff employment claims in state rather than federal court. This is an interesting strategy, because federal court provides plaintiffs with more statutory remedies. However, the feeling among some plaintiffs' counsel is that state court provides their clients with better opportunities at the summary judgment stage and trial. Therefore, depending on the case and which side you represent, you should carefully consider which court will provide your client with the best possible outcome.

Jury Selection is Critical

The CLE speaker mentioned above gave an excellent example of why jury selection is so crucial. In the early 1980s,

he tried a case against General Motors. His client was severely injured, and he believed GM could have prevented the injury. After a three-week jury trial, it came to the attention of the attorneys that a juror had conducted an independent investigation of the case. The CLE speaker, knowing from voir dire that the juror was a GM stockholder, concluded that she would be a problem for his client and moved to have her excused; he won the motion. The jury later returned a defense verdict. After speaking with the jury at the conclusion of the case, he learned that the juror he had excused had been his client's biggest proponent in the jury room. Could the CLE speaker have known that? Probably not; but the anecdote further underscores the critical role played by jury selection.

There is No Greater Equalizer of Anxiety Than Preparation

I learned a valuable lesson early in law school. Our first legal writing paper was due about a month into our first semester. Naturally, I approached the paper as I had, successfully, so many times as an undergraduate — I wrote it the day before it was due. I struggled with anxiety that entire day because I knew I had waited too long. Predictably, I did not receive the grade I was hoping for. I later visited my professor during her office hours, and we discussed my approach. Having been a practicing attorney, she taught me the value of preparing. What I did not understand, is that there is a preparation stage for a project and then there is the project itself. Had I prepared to write the paper (i.e. read the materials, conducted the legal research and drafted an outline) well before the deadline, the writing would have been a breeze. Instead, I did everything the day before the paper was due. I didn't truly prepare. I've applied that early lesson in my practice and, while the anxiety is always present to a certain extent, it can be much more manageable if you prepare accordingly. **NL**