

TRUTH WINS LAWSUITS

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Truth wins lawsuits.

In today's world, at first blush, this statement may sound naïve.

Right?

Wrong!

It is what you must prove to the jury to win today. It is what the evidence must show you did at trial. You and your client must present the truth to win. It is the greatest weapon in a trial practitioner's arsenal and conversely it is a time bomb for the lawyer who is hiding the truth and holding his breath his client will not get caught lying at trial.

Truth has two very positive effects on the practice of law-especially in litigation:

First, it involves the principle of being true to yourself despite the jokes since the Watergate debacle (which occurred just as I was trying my first FELA case) that the only mistake made at Watergate was that the evidence was not destroyed so it kept from the legal system. For a trial practitioner telling the whole truth- "the good, the bad and the ugly"- is therapeutically a far better and less stressful way to practice. It is not only more professional but it is also tactically advantageous to tell the bad aspects yourself rather than wait for your opponent to do it for you. This works for both the plaintiff and the defendant.

Secondly, from a practical standpoint, many defense practitioners will readily admit, truth is the biggest club a plaintiff can use at trial. Catch the plaintiff in a lie and

you can kill his entire case because the jury will not know what to believe. The biggest "trip wire" plaintiff's counsel encounters is encouraging a client to lie in the hope he won't get caught! If the plaintiff lied about one thing then he is a liar and the jury will conclude he is lying about everything. This of course includes his pain in a personal injury case.

As trial lawyers, aside from the practical, we must ask ourselves the following question from a philosophical standpoint: "What is the human thing to do?"

Once we are true to ourselves philosophically, then professionally speaking, the position I am about to enunciate will show that by "doing the right thing" you win your case, and by "doing the wrong thing" you will not only lose your case in most instances but you will also simultaneously act in an unethical and unprofessional manner.

Professionalism derives from the philosophy of the Natural Law.

Each of us is born with an innate sense of right and wrong. We know by our very nature the answer to the question: What is the human thing to do? No one needs to teach us to be human. We know this instinctively. It is engrained in our spirit. To lie is wrong. This philosophy emanating from the Natural Law is the foundation for today's Professionalism. What does it mean to be professional? It does not mean to wear a Brooks Brothers suit, act smart or look snappy. It means doing the right thing as a principled person must do to be considered professional. Yet in today's world, contrary to this philosophy, and our natural instincts, many opportunists adopt a "win at any price" philosophy claiming a lawyer must do whatever it takes to win for his client. This

philosophy is unprofessional. If you do what is wrong to win, you violate both the standards of professionalism and the canons of ethics.

Practically speaking the question becomes whether doing whatever it takes to win really works in the end. From my experience it does not. The only way to illustrate the practical side in what I am preaching professionally is to take examples from real trial situations that presented themselves in the course of my practice from some of the cases I have handled.

For example, years ago when I was just beginning to practice law, I represented a plaintiff in a Jones Act case tried before Judge Martin Feldman. The plaintiff was instructed to tell the truth when asked any question on cross-examination. He did not take that advice. He decided to lie. He swore under oath that his back hurt so badly he had to crawl from his house to his car, on all fours, slithering like a snake, in order to drive to the doctor for his appointments. He then swore he returned home in the same fashion. He claimed he crawled from his car to the couch in his house after seeing his doctor. Judge Feldman, recognizing the incredible nature of this testimony, quizzed him saying: "Did I understand you correctly? Are you telling me you cannot walk from your house to your car or from your car to your house after your doctor's appointment?" The gentleman responded that this was true.

In the defense's case the next day a film was shown of the plaintiff building a camp in the country where an investigator had climbed inside of a hollow Cyprus tree to shoot him with an old video camera through a knot in the trunk. You can imagine the rest of the story. This man who had turned down a quarter of a million dollars got only twenty-five thousand dollars.

A diametrically opposed example, from another case where the plaintiff listened and did not lie, as I instructed him I would quit if he did, involved a trial before former Judge Arceneaux. The plaintiff had back surgery. He could not go back to work offshore. Shortly before Christmas he secretly went to work for a bumper company in Monroe, Louisiana. He worked part-time using a bumper grinder. I knew nothing about it. However I told him if anything came up when he was being cross examined at trial which I had not covered in preparing him to testify, he need only tell the truth. I told him the rule he had to follow was to tell the truth even if he thought he was shooting himself in the foot in doing so. He was a hard shell Baptist from North Louisiana. He said he understood and promised he would faithfully listen. He did so.

When questioned by defense counsel about whether or not he worked as a bumper grinder, he looked at me and then at opposing counsel and with his lips quivering answered affirmatively. The defense naturally asked how he could manage to do this kind of labor in his condition. His response was it was Christmas and he had to get some money to buy toys for his little girl no matter how badly it caused him to hurt. Neither the defense nor I knew he was going to give this answer. What he did was to tell the truth.

Judge Arceneaux teared up. So did the jury. A recess was called. The jury came back in 1981 with a \$175,000.00 verdict against a \$10,000.00 offer! The plaintiff thought that by telling the truth he had given his case away. Both the defense lawyer and I were speechless when the jury came back with such a verdict. What a learning experience! I am not trying to melodramatic; this actually happened. *Truth wins lawsuits.*

At this point I am going to show you a short clip from the New Orleans Bar Association Program called "It's the Law" where I spoke with Judge Plotkin and Toby Eason last January. In this question and answer format, Mr. Eason in speaking from the defense standpoint, confirms the belief expressed by me that an honest plaintiff is probably the most formidable opponent a defendant can encounter.

(Insert video excerpt)

For the remainder of this professionalism hour, I am going to do something that I saw done by Jerry Spence at the Waldorf Astoria in New York at ATLA's "Weekend with the Stars".

I am going to go to the blackboard and write any questions you may have in the audience about a similar situation that you may have experienced so that we contrast my philosophy and experiences with yours from both a practical and professional standpoint. I would especially ask for questions involving the proper presentation of a plaintiff in a civil case where there is always a credibility call to be made by the jury.

(Questions and Answers)

In closing I would like to an excerpt from the philosophy of Natural Law Jurisprudence which I believe to be the foundation for the ethics and professionalism we are mandated to study as part of our continuing education each year:

The principles defining what is morally good and morally bad in human activity are promulgated and sanctioned by the natural law as the expression in rational nature of God's design for man. By virtue of the natural law man is vested with certain rights and obligations. These rights and obligations are every man's endowment in virtue of his very nature; they are beyond the reach of men and government. It is the high purpose of

human law to protect the right of each by assuring the reign of justice for all. Therefore, human law cannot be exempted from the directive influence of the natural law without in varying degree exposing the juridical process to the arbitrary will of men – this is the sole basis of a just and sound legal system. Thus human law is valid law only to the extent that it reflects directly or indirectly the dictates of the natural law.

It must be noted, however, that while in its principles the natural law is inflexible and absolute, the applications of these principles can and do vary according to the concrete circumstances of time and place.

May I suggest that you ponder this philosophically the next time you are asking yourself practically and professionally what you should do when your client, be it a person or a corporation, wants to lie at a civil trial?