

AN AMERICAN-CITIZEN LAWYER: FROM SCOREBOARD TO STEWARDSHIP

By: Roy D. Curnow, Esq.

You just got “No Caused”. That’s right, zilch, nada, zero, nothing and all that work for what? Emotions run high, you’re angry, and justifiably so. Was it the lousy charge by the trial judge? Maybe the not so ethical adversary” or “the dumb block of wood jury”? No matter, and as you throw the trial bags into the car one thing is for sure you are not getting over this any time soon. Says who? And here is the rub, where is it written that you must blame others and punish yourself that despite your best efforts the outcome was not in your favor?

I’m not saying it does not sting, it does. I have had my fair share of no causes and it hurts like hell, but for how long? And how long should it hurt? A day, a week, forever or as long as it takes you to calmly pack your bags, thank the court attendant, console your client and take a slow walk out to your car? Practically from the get- go I have been interested in this question and after forty plus years practicing law and almost two hundred jury trials I have something to say on the subject. The bottom line? A philosophical approach to the practice of law is indispensable. It has served me well and I would like to share it with you.

This is what I mean. We have no alternative but to handle our client’s case competently and ethically. Yet we all know this is not the whole picture and barely scratches the surface of the lens through which we view our circumstances. Gratefully here in American we have the liberty to artfully interpret our situation as we see fit and we can choose to throw a tantrum, cry in our beer, and/or do the blame game. It’s a free country have at it. But where is it written that we must define who we are by our wins and losses? In fact, for starters what is written is John Adams admonition to use our freedom wisely:

Posterity! You will never know how much it cost the present generation to preserve your freedom! **I hope you will make a good use of it.** If you do not, I shall repent in heaven that I ever took half the pains to preserve it. (*Letter to Abigail Adams April 26, 1777*)

Thus the inescapable question is how does a practicing attorney make a good use of the freedom John Adams and his generation fought so hard to preserve? What does America want and need from this country’s practicing attorneys? The answer could not be so obvious.

Can there be any doubt that attorneys are charged with the responsibility to represent their clients zealously but always tempered by the spirit of decency, civility, fair play and kindness? Look no further than the counsel table in our courthouse that reminds all trial attorneys in the heat of battle that “cross examination need not be cross”. Take a look at the recent “25 Tips of Professionalism” by the Commission on Professionalism in recognition of their 25 years of service. This is a democratic conversation many of our leaders addressing what we are and who we can become.

Our norms and values are not from out of the blue but tried and true over centuries and centuries of civilization. Isn't this the foundation of America? How can freedom thrive even as a possibility in the absence of principled behavior? Are we a collection of people who measure their worth one transaction at a time repeating wittingly or unwittingly, "winning isn't everything, it's the only thing"? What do we stand for and what are we modeling for the next generation of attorneys? What could possibly be the point if character building is not front and center of who we are? What can we stand on if not our character?

In 1963 Dr. Martin Luther King weighed in on the importance of character, "I have a dream that my children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character". Similarly, our fictional icon, Atticus Finch, who for years has inspired countless future lawyers, made it abundantly clear to his children by example that the content of one's character matters most.

We should not forget that in 1776 twenty-five of us (out of fifty-six attendees) all successful attorneys put a large target on their back by signing the Declaration of Independence. They were serious indeed by committing to each other their lives, fortunes, and sacred honor to support America's cause and ultimately the possibility of our freedom. What is "sacred honor" if not the fruits of a lifetime effort crafting the content of one's own character? In short, the legal profession that once took a leadership role in the creation of our "revolutionary mind" should have a stake in today's American experiment with freedom and lead our journey to "a more perfect union".

Much has been written of late concerning "lawyer happiness" (or the lack thereof) as well as the stress and worry that keeps us up at night. In response to "how's it going?" we greet each other with "living the dream" or similar sarcasm. The "pursuit of happiness" upon which this country was founded seems to be at best elusive and at worse a bad joke. Thomas Jefferson and his revolutionary colleagues saw America as the opportunity to put into practice certain ideals and principles formulated during the Enlightenment. The individual American citizen would be able to pursue happiness as he/she saw fit but in exchange for i.e. subject to the responsible and principled behavior of its citizenry, a quid pro quo to achieve one's freedom..

America's experiment with individual freedom was to be a model for the rest of the world. All those who hungered for a better life of one's own making could see first-hand how an individual no longer in the yoke of ignorance, nor under the thumb of feudalism, could exercise sufficient reason and make responsible choices free from mimicry, conformity, and timidity. This newly invented American-Citizen, properly educated, was meant to be the beacon of hope for all freedom seekers who could see the possibility of a nation of serious people able to govern themselves sans a tyrannical authority (from whatever source). A tyranny over the human mind that is not necessary nor desirable. Freedom would depend upon the American citizen being able to think and reason for him/herself, as an equal among many, committed to doing the right thing representing one's contribution to America.

Unfortunately, one could surely make the argument that we are distracted from our mission and while we “fiddle” with the Scoreboard “Rome is burning”. How is it that 70 West Point cadets could forego their principled behavior and cheat on an exam putting at risk the reputation of the institution they pledged to honor? And obviously on the National stage the “power grab” by any means necessary is clearly contrary to America’s ideals and values. Those engaged in such practices are more concerned about their standing on the Scoreboard. They are driven by their untempered instinct and blind ambition that takes precedence over principled behavior. Scoreboard is pervasive and is not going to disappear without leadership and like the attorneys who signed the Declaration of Independence we too must stand up and be counted by taking responsibility for the sacred Stewardship of the American Experiment, one American citizen-lawyer at a time.

How? We make our professionalism not just “two ethics credits I need” but above all else our patriotic duty to put principle into practice. We take responsibility to use the daily challenges of our law practice (and there are many) to construct the content of our character and hold firm to the highest ideals of our profession. We treat all people with respect and dignity, from legal assistant to Supreme Court Justice. We put away the childish Rambo like practices and rely solely upon our competent skills, satisfied however far they take us. The buck stops here, and each attorney can do an honest self-assessment as to the impact Scoreboard has had on his/her own practice. Some may want to address a short fuse, a tendency to bully or unbridled ambition while others may choose to confront timidity and the wayward drift of egoism. We have all unwittingly crafted our own reflexive response to the tyranny of Scoreboard and like our country why not take on this challenge as one’s individual contribution. What if a young attorney, just starting out, could see that returning a phone call was not just the right thing to do but the American thing to do, even the patriotic thing to do? Why should Scoreboard have the last word on what it means to be patriotic?

Interestingly, as it turns out this is Atticus Finch’s “wild card”. It will not only provide the basis to see a bigger picture and be a bigger person it will also provide the foundation for what the ancient Greeks described as an honorable life and the source of one’s boldness, resilience, strength, and courage to stay the course. Thus by rejecting Scoreboard (“all-about-me”) we can put our eggs in this basket (all about us”) and still achieve our legitimate personal goals and contribute to our country aptly described by the American philosopher, Arnold Siegel. In his essay entitled “Our Better Angels”. (Autonomy and Life Blog, November 29, 2020). Armed with this perspective we will prevail in the heat of the moment and choose the bigger picture over self-indulgence. The payoff is satisfaction, fulfillment and a piece of mind not easily disturbed and without sacrificing our valid self-interest.

So, from philosophical approach let’s go back to you, the belly aching trial lawyer referenced above who just got the “no cause” i.e. the apparent zilch, nada, zero, nothing in return on your investment... a very very bad day to say the least.

But... on second thought what if instead of crying in your beer you could see a different picture and articulate more useful words i.e. that you tried a solid case and you were satisfied with your effort. You enjoyed the challenge to fulfill your responsibility pursuant to the Seventh Amendment, grateful to be an American-citizen lawyer. All in all a challenging day but a good day with a great opportunity to craft one's own character i.e. to muster the necessary strength, resiliency, nobility, courage and most of all moral integrity and honor. After all you did what you said you would do the right way and confronted the difficulty and the opposition from within and without and did not back down. Not easy but your integrity is intact. How else were you expecting to build character? And can you put a price tag on character?

What better way to say thanks to America and thanks to all who have preserved the possibility of our freedom and sacrificed on and off the battlefield including those unknown patriots on Main Street and Wall Street, blue collar and white collar, Republicans and Democrats who take their responsibilities seriously and do not compromise America's values and ideals to achieve their own ends. The unheralded Americans where no eyes can see nor ears can hear day in and day out quietly living their lives putting America first, where it matters most, with their principled behavior.

Decency, civility, fair play and kindness above self-interest has been hard won by countless Americans who love their country and what our country stands for. Making patriotic choices in thought, word and deed, not perfectly but enough for others to emulate will move the American Experiment forward and preserve for the next generation of Americans the opportunity for them to achieve their freedom. You too by putting professionalism and love for country above self-interest have taken a stand on the right side of our history. Having put the Stewardship of America above your own personal ambition you can say to the grateful, satisfied and fulfilled lawyer in the mirror, "this is what America looks like", a job well done..