

Commentary

Is Scoreboard the Bane of Our Profession?

By Roy D. Curnow

To live by the lights of the scoreboard is to live pointlessly.

—Arnold Siegel

Forty years ago when I began trying cases, I was captive to the prevailing cultural myth that “winning isn’t everything, it is the only thing.” Two hundred jury trials later, I see a much different picture. Don’t get me wrong, I am not against winning, but winning is not the golden calf our culture would have you believe. In fact, just the opposite seems to be accurate. Coming out on top in wins, that is, practicing law as a Scoreboard game, is the bane of our profession.

Like water to the fish swimming in it, Scoreboard is ever-present in all of us; but it’s as invisible and penetrating as the air we breathe. We greet each other, asking, “How are you doing?” But aren’t we really asking, “How’s your score?” What we’re really up to is fishing for an opening to get in: “Oh and by the way, I just went on a really nice vacation to Italy and my kid got straight A’s.” (Nothing against nice vacations or straight A’s, but isn’t that all about ranking and status?) And who doesn’t believe that a higher ranking would resolve our day-to-day angst? More winning, more money, more satisfaction, right?

What is the problem? Am I making a mountain out of a mole hill? Isn’t it important to be motivated to win? Don’t our clients select us based upon our wins? And, besides, who wants to be labeled a loser? All true and no doubt winning can pay the bills and buy a lot of vacations and good schools for our kids. But what winning cannot buy is satisfaction, fulfillment and equanimity. (Sure, maybe for a moment or two, but it disappears real fast. Enough will never be enough.) In fact, for the high-profile Scoreboard player, satisfaction is a four-letter word; many lawyers are more than willing to let you know, they can never be satisfied: misery is a badge of honor!

If winning is everything; and satisfaction, fulfillment and equanimity are beside the point, is it any wonder that young lawyers are leaving the profession in droves? In 2014 Time magazine ran an article stating that associate attorneys topped Forbes “unhappiest jobs” list. A Johns Hopkins study asserts that lawyers have the highest rate of depression among 100 professions. This should come as no surprise to those of us who spend much of our time in the courtroom. Who wants to be bullied by the big Scoreboard players, and who wants to be defined by their wins and losses?

Let’s face it, what could be worse than spending hundreds of hours prepping a case for trial, trying a really solid case before a fair and impartial jury, a jury intent on following the

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judge’s clear instructions, weighing the facts and the law, and then coming out with a verdict in favor of the other side? I can hear the cussing and the anger as the trial bags are thrown into the trunk of the car in the parking lot. Interestingly, the more one is at the effect of Scoreboard, the greater permission one gives oneself to throw a temper tantrum, launch into a pity party or drag out the blame game.

Lawyers are not alone. When the Cleveland Cavaliers lost the 2015 NBA Finals to Golden State, LeBron James sat motionless in the locker room, staring straight ahead for 45 minutes after the final buzzer, still wearing his game jersey. Query as to the back and forth he was having in his head that “despite all of my success and zillions of dollars, I, LeBron, am a failure and will never measure up.”

Is there a thoughtful path forward out of this morass? For starters, we can stop kidding ourselves and start to put Scoreboard in its place. A person’s ranking on the Scoreboard is not the answer to putting together a meaningful professional life! Yet there is no denying the impact Scoreboard has had on our profession; and on each of us individually. No matter how high or how low a profile we project, it is all Scoreboard. Surely this was not what was contemplated by the original scholar-practitioners who put together the high standards of our profession, who “professed” their commitment to serving others and society at large. But how do we, in today’s world, get a cognitive distance on the Scoreboard water in which we swim?

Arnold Siegel (autonomyandlife.com) spells it out quite clearly in his blog dated Sept. 11, 2017: “For humans unaware of their condition, their autonomy is an illusion.” Scoreboard is the illusion. It must be put in its place if we are going to be true professionals. Unfortunately,

not only are we under the thumb of Scoreboard, but we use our wins as proof to ourselves and to others that we are pretty special people; or the flip side if our egos are sensitive to losses, we must be lousy human beings. The vicious cycle, the endless distortions and the thwarted ambitions continue unabated. Finally, we cannot retire soon enough. Instead of the courthouse parking lot, we suffer anguish or scream bloody murder on the golf course, as if putting that little ball in that little hole really means something more than a few hours of recreation and exercise.

Where to begin to restore our balance? Satisfaction, fulfillment and equanimity are not four letter words. What is needed professionally is competence, responsibility and service to others. In other words, what is missing is not a bigger “win” or more notches in our holster; but for us to see a bigger picture. Competition is here to stay; but a trial lawyer who is responsible, competent and committed to serving others will be much more effective than one who has his eyes riveted on the Scoreboard. How can a player at first base steal second while watching the Scoreboard and not the pitcher? And all that bluster is just that: bluster, bluster and more bluster. It does not win cases; competence does.

A true professional will win his or her fair share of cases. Just as important, however, one will know progress is being made toward putting Scoreboard in its place when, after the momentary sting of a loss (sure it stings, but only for a moment), one is just as satisfied with a well-tryed case that loses as a well-tryed case that wins. It is on to the next case, stronger and more resilient, serving our clients and discharging our responsibilities pursuant to the U.S. Constitution (e.g., 7th Amendment), not as Scoreboard’s agents.

It is high time that we redefine our profession. If it is going to happen, it will happen when each of us takes a stand that who we are and what we do will not be determined nor defined by the Scoreboard. This is a big challenge, indeed. But freedom from Scoreboard and true independence from the admiration or adulation of others is the opportunity of our times. Scoreboard is simply a bankrupt and obsolete perspective, a corruption of our rivalrous instincts, and it should be thrown on the junk heap. Those who said “whoever dies with the most toys wins,” left out the most important part—the prize! Under Scoreboard’s shallow convention, the opportunity of existence is reduced to nothing more than status or what money can buy.

Again, as Arnold Siegel alludes to in “Achieving our Country” (autonomyandlife.com blog of April 24, 2017), what is the point of the American experiment if not to transform a citizen-subject into an independent agent, moral person and liberated individual able to make his or her contribution to what it really means to be an American citizen? “To live by the lights of the Scoreboard is to live pointlessly.” The legal profession is the backbone of the American experiment; now more than ever we owe it to ourselves and to future generations to restore the balance. ■

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