

Chapter 11

Why You Must Go To Trial (The Spartan and the Trial Lawyer)

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A pair of young lawyers stopped by my office the other day, on their way back from court where the jury had just returned a verdict against them. The conversation naturally turned to a post mortem on the trial itself.

It was an autofraud case that boiled down to who you believe and the jury just didn't see the consumer's version of the truth to be the real truth.

They thought they had done everything right and couldn't understand how the jury could rule against them, although the defense attorneys and the judge all seemed to think their case was a very difficult to win in the first place. They acknowledged knowing it wouldn't be easy from the start, but they had believed in their client.

"Nothing wrong with that," I told them, "sometimes you just have to do the fight, no matter what the result and sometimes losing a trial can be much more influential than winning it."

"What do you mean?" They asked. "Well, it's like Thermopolis, you know?" He said it sounded familiar but she didn't know what I was referring to.

"The battle where 300 Spartans held off thousands of invaders in one battle. They lost the battle eventually, sure, but no one really remembers who the invaders were, where they came from, who their king was or anything else about them. What they remember is the Spartans and the fact that they wouldn't quit and didn't give up even when they knew there was no way they could win. That's what is being talked about over at the courthouse today and at the defense attorneys' offices. No one thought you had a chance but you still didn't quit. Losing today probably earned you more respect than you realize."



The year was 480 B.C. and the Byzantium empire's massive Persian Army was advancing. History records it as between 200,000 and one million strong. The King of Persia intended to invade Greece and, in the face of overwhelming odds, the Greeks had few alternatives. They could give up or they could fight.

The Persian gateway to Greece was a 50 foot wide mountain pass at Thermopolis and everyone knew it. The Greeks decided to fight so they sent 300 Spartan soldiers to hold the Persian army back, to give them time to gather their forces. The Spartans knew that death was certain. It isn't clear whether Spartan scouts or the Persian army commander was the one who said it, or if it was said it all, but the Spartan commander was told that when the Persian archers attacked, there would be so many arrows in the sky that it would block out the sun. The Spartan commander's response was brief. "Good. Today we shall do battle in the shade."

300 Spartans fought fiercely for seven days but in the end, of course, they lost. Why did it matter? Because it gave the Greeks the time they needed to defeat the invading Persian Navy and turn back the entire invasion. Some historians say that the entire culture known as Western Civilization survived because of that one victory.

The Greeks knew they wouldn't win at Thermopolis. That wasn't the point. Sometimes it's just like that when you are trying to decide whether or not to go to trial. Even when you don't have the best case in the world (no one ever does, even when they think they do), sometimes you have to go to trial anyway.

Defense attorneys need to know you will go all the way, even when you have a "bad" case. After all, they will think that if you're "crazy" enough to fight that hard on a case that they think you can't possibly win, what will you do with a case that you *can* win?

If they know that you have the guts to stand up in front of a jury and earnestly argue your whole heart out for a client that the defense attorney thinks he can rip apart on cross, what will you do when you've got a client that they can't touch?

If they know that you'll go to trial in a case where you don't have a single document to support the lies your client was told, they will only wonder what you'll be like when you find a smoking gun.

Judges need to know you will go all the way too, and for all those same reasons and more. They need to know that if you think they're wrong, that you're not afraid to tell them so to their face (respectfully, of course, but also stubbornly).

Judges need to know that you will not back down when they tell you that you should settle for far less than you know your client should get, and far, far less than you know the defendant should have to pay. Judges also need to know that you're not afraid to file an appeal when they make a mistake.

And best of all, when you go to trial, every judge in the building knows it. They all

talk. Consumer Law cases are unique and often prompt behind-the-scenes discussions among judges, law clerks, bailiffs, and everyone else.

Defense attorneys, and judges, need to be constantly reminded that you know your law, you know how to try a case, and you aren't afraid to do it when you have to.

Fear is what settles lawsuits and fear is the only way a defense attorney will settle with your client fairly.

Defense attorneys aren't usually afraid of our clients. After all, they've been trained how to mislead them, how to trick them, how to chew them up. What they are afraid of is us, consumer trial attorneys. We take cases other people don't know what to do with. And we fight them. Yes, I know it sounds a bit egotistical, but I think it's the truth.

Lawyers know who the trial attorneys are. They are a disappearing breed and for that very reason they get more professional respect than do the white shirted suits in the hallways of corporate America.

Sometimes going to trial isn't about winning. Sure, winning is nice. But sometimes the client just needs to have their day in court to say what they have waiting so very long to say. And sometimes a trial attorney just has to go to trial so everyone knows that you really will.

The next day, I learned that the wife of one of the lawyers who had stopped by to talk, sent a basket of cookies to the office with a note that said, "I truly admire your hard work and passion and know that you are in store for countless victories. As the old African proverb reminds us, 'smooth seas do not make skillful sailors.' " She's right, I'm sure.

The Greek sailors probably would have agreed too. Oh yeah, one other thing: those cookies were really good too.