



President's Column

Dallas Lawyers as "Problem Solvers"

BY BILL MATEJA

Because my practice is national in scope coupled with my years practicing in DC, I have the benefit of seeing how Dallas lawyers practice compared with lawyers across not just this State, but the country. Many if not most of our lawyers, at least the Dallas litigators and trial lawyers I cross paths with, are focused on *solving their clients' problems versus simply battling these problems out in litigation for the sake of litigation*. While I don't have firsthand knowledge about our transactional lawyers, reputationally, I get the same sense about them. I have multiple theories on why this is, including the obvious fact that many local clients simply don't have the wherewithal to let lawyers battle it out in a fight to the death. They need their problems fixed in a more cost-efficient fashion than clients that reflexively gravitate to East or West Coast law practices.

But even here in Dallas, if I've seen it once, I've seen it too many times to count—lawyers who are great at the X's and O's of practicing law but tone deaf when it comes to truly solving the client's problem. As you might expect, this is particularly true with some lawyers still getting their sea legs underneath them—like I once was—and who aren't yet secure enough in their instincts and abilities to forego what they learned in law school in favor of the seemingly more risky way of unconventional problem-solving.

Take one of my cases, even if it's a more extreme example. My Eastern European client was staring down the gun barrel of an SEC enforcement action. I immediately pulled out the standard playbook. Within months, we'd unsuccessfully filed a motion to dismiss and were enmeshed in discovery requests and disputes. The spend rate was significant. Unfamiliar with not only U.S. civil litigation, but also SEC enforcement proceedings, my client called and asked: "Bill, I'm sure you're doing a good job, but can't I just go ahead and let the SEC take a judgment against me? The judgment won't hurt me. What hurts me is that the financial institutions in my country won't do business with me because of the uncertainty of what will happen to me. If I can just resolve the case, on reasonable financial terms, everything will be fine." I thought to myself—well, knock me over with a feather. Had I just asked my client what his end game was without assuming his case was like every other SEC case, I'd have solved his problem much earlier. I'm sure we've all seen something familiar whether it be in the transactional, family, probate, or any other context.

So, using my feeble brain, I've jotted down what I consider to be key *problem-solving* tips that might be intuitive to some, but nonetheless important to throw down on a piece of paper so we can all refresh and remind ourselves, namely:

Understand

Understand your client's problem. I obviously didn't in the example above. To that end, sometimes you need to not only empathize with the other side (as I discuss below), but you need to empathize with your own client because they frequently don't share what the problem is that they really need fixed. Empathy breeds understanding. Clients are people, just like the rest of us. Even the corporate clients we represent have decision-makers who are human beings. They invariably have personalities shaped by past experiences and live their lives with the same pressures of everyday life bearing down on them. When they let those pressures affect their dealings with you, give them grace and give them the time and audience to allow you to understand the problem they need fixed. You can't chart a winning plan unless you truly understand the problem.

End Game

On a related note, ascertain where your client wants/needs to end up at the end of the day. Necessarily, you'll need to ask. Sometimes, you'll need to ask twice and/or get the client to shoot straight with you because the client still doesn't know where they are at. Communication is key. At the DBA Coffee with the Federal Judiciary in late January, our own U.S. Bankruptcy Judge **Stacey Jernigan** reminded the 120+ individuals in attendance that the most important attribute of problem-solving is "listening." So, listen.

Step Away

When you're in the heat of litigation, the deal or otherwise, it's sometimes hard to see the forest through the trees. Practicing law can be tough and it can cause you to lose

direction. It's imperative that you continually step away from the fray so you can objectively take stock of where you are in relation to solving your client's problem.

Empathize with the Other Side

Put yourself in the other side's shoes—solving your client's problem likely means that you're going to need to at least understand and partially solve your opponent's problem.

Compromise

That leads me to COMPROMISE. It's not a four-letter word. Compromise leads to victory. It is the extremely rare legal matter that necessitates total capitulation by the other side to get to the right solution or achieve justice. Avoid the culture of adversarialism.

Efficiency

Solving your client's problem necessarily means being cost-conscious. In litigator's terms, that means, for instance, foregoing discovery for the sake of discovery and motions unlikely to be granted. In one of my cases, I called opposing counsel and suggested we forego any discovery in favor of both sides simply filing dueling motions for summary judgment. While there were certainly things both sides wanted to discover, all of the key facts were undisputed and we simply needed to crown a victor. We agreed to this plan and both clients were all the better for us doing so.

Get Help

I think all of us have a tendency to think that we can solve all of our clients' problems. But sometimes we need help and, sometimes, there is someone better than you to bring into the mix. Getting a true expert often maximizes efficiencies and gives us better input for solving the problem. It's okay to acknowledge to your client that there might be a better lawyer than you to help with a particular issue or problem.

Outside-The-Box Thinking

Sometimes you need to think outside-the-box to solve your client's problem. Again, don't just stick to the same playbook that lawyers routinely play by in routine matters. That reminds me, I always thought highly of the late Houston attorney **Steve Susman** from the first time I met him in the late 80s. He thought outside-the-box frequently and especially when he crafted the "Susman Agreements" to streamline the discovery, pretrial, and trial processes, all to problem-solve these often expensive facets of litigation that can be roadblocks in taking cases to trial (which sometimes do need to be tried). If you're a litigator and don't know about these rules which "challenge lawyers and clients to leave the trick plays in the locker room, and beat your opponent based on your ability to develop compelling themes, get the reasonable discovery you need, and try your case," I commend them to your review. Thanks to Susman's partner and last year's DBA Trial Lawyer of the Year, **Ophelia Camina**, who helped me assemble these resources that can be accessed here <https://shorturl.at/eg029> and here: <https://www.americanbar.org/groups/litigation/resources/litigation-news/2023/winter/susman-agreements-clarity/>. Susman was truly an outside-the-box thinker and a problem solver. Bottom line—be creative and don't be afraid to think outside-the-box.

Kindness

"You get more with honey than you do vinegar." This phrase is so true. And in my book, nice guys finish first, not last. Nice guys maximize their problem-solving IQ one hundredfold.

Dallas lawyers, please continue to be *problem solvers* and if you're not one, take these tips to heart and incorporate them into your practice. Both you and your clients will be glad you did.

HEADNOTES

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