

A Litigator's Lessons from the Fields of Friendly Strife

BETHANY RABE

The author is with Greenberg Traurig, LLP, Las Vegas.

Upon the fields of friendly strife are sown the seeds that, upon other fields, on other days, will bear the fruits of victory.

—General Douglas MacArthur

When General MacArthur made that statement more than a hundred years ago, the “other fields” he was referring to were, of course, actual battlefields. Then superintendent of the U.S. Military Academy at West Point, he believed that the lessons learned in athletic competition translated well to battle. As an Air Force veteran and former gymnast in the National Collegiate Athletic Association’s Division I at the U.S. Air Force Academy, I submit that the fields of friendly strife offer lessons that carry over into the courtroom as well. As litigators, we strategize, we plan, and we spend countless hours preparing for what our opponent is going to do and how we will react to it. We fight battles (albeit with words), and, ideally, we eventually win the war. Many of the principles I learned as a cadet and an athlete remain vital to my career as a litigator today.

No Excuses

A core tenet of military training is to accept responsibility for one’s conduct and not make excuses—characteristics well suited to life as a litigator. When you enter basic cadet training (abbreviated “BCT” but pronounced “Beast”) at the Air Force Academy, one of the first things you learn are the “seven basic responses.”

These are the only seven things you can say in response to a question, using “sir” or “ma’am” as appropriate: “Yes, sir.” “No, sir.” “No excuse, sir!” “Sir, may I ask a question?” (Not usually, as it turns out.) “Sir, may I make a statement?” (Almost never.) “Sir, I do not know.” (This one can get you in trouble.) And “Sir, I do not understand.” (Good luck with that.)

Cadets quickly learn that the one correct answer to *any* question beginning with “why” is “No excuse, sir!” This is convenient for questions such as “Why are you laughing?” (you definitely do not want to reveal that your roommate made a silly face at you when no one was looking) but inconvenient for questions like “Why weren’t you ready for PT at 0600?”—which you might actually want to explain your way out of.

At first, this was frustrating. My 17-year-old self had all kinds of justifications and rationalizations at the ready. When I was forced to take ownership of the consequences of my decisions without the opportunity to explain myself, it was difficult. However, I quickly realized that what I thought were important explanations were mostly just excuses.

Gymnastics similarly affords little margin for avoidance. Compared with many popular sports, gymnastics has a large individual component. Although you are part of a team, when it’s time to do the thing you’ve trained to do, you’re alone. That’s good news and bad news.

On the one hand, it’s good: Unlike in football, for example, where it is part of the game for the other team’s players to try to



stop you from scoring, in gymnastics there is no one in your way. On the other hand, the fact that you're alone out there means that if and when things go poorly, there is no one else to blame. Have you been training hard, or have you been phoning it in? Are you mentally prepared, or are you second-guessing yourself? When competition day arrives, your preparation—or lack thereof—will be laid bare for all to see. The choices you made leading up to that day will affect you and your team, for better or for worse.

In my career as an attorney, I've found the same to be true. Taking ownership of your choices is important. No one likes to work with someone who is always making excuses. Instead of telling yourself or others, "I don't have time for [whatever]"—pro bono work, mentoring a junior attorney, writing that article you've been meaning to write—consider saying, "I haven't chosen to make [whatever] a priority." This is the nonmilitary version of "No excuse, sir!" It reminds me that I am responsible for how I spend my time, and it forces me to be honest with myself. Am I really "too busy," or do I just prefer doing other things with my time? Litigators who are honest about their priorities and who don't make excuses garner respect and earn credibility with those around them.

Being a Good Teammate

Putting your team's interests ahead of your own—especially as a leader—is important not only in athletics but equally in trial. A big part of Beast and the freshman year at the Air Force Academy is memorization. One quote that stayed with me was attributed to General George C. Marshall: "There is no limit to the good you can do if you don't care who gets the credit." This quote reminds me that the team and the mission should come first, over the desire for individual recognition and praise.

Likewise, in college gymnastics, sometimes you are asked to perform an easier but more consistent routine—one that the coach knows you will hit—for the good of the team's score, even though not taking certain risks may mean a lower score for you personally.

In the practice of law, seeking individual recognition is often a fool's errand, as there is rarely a true individual accomplishment. Show me the individual who got a great result and I'll show you the team behind that person who helped make it happen. This is certainly true for those who practice in complex litigation. When a trial team is working toward one goal for the client, the whole is greater than the sum of its parts: It's not about who had what idea or about making sure the client knows who drafted the brief or argued the motion. It's about working toward a common goal and accomplishing the mission.

Being on various teams as a cadet and an athlete, I had many opportunities to learn what makes a good teammate. I learned that when you're working together toward the same end, personal differences seem less significant. What matters is whether each member of the team is dependable, hardworking, and competent. Today, I look for those traits when deciding whom to add to my team on cases, and I try to embody those traits when I'm working as part of another attorney's team.

In my time at the academy, I also had the opportunity to lead and be led. In basic training, we quickly learned that there were two types of leaders: those who would order you to do push-ups, then stand there watching and yelling at you, and those who would order you to do push-ups, then get down on the ground to do the push-ups with you. You can imagine which type of leader inspired lasting respect. To this day, when I am responsible for assigning tasks in litigation, I try to avoid the style of leadership that makes unreasonable demands and then criticizes the result. Instead, I try to imagine myself in the place of the person doing the work, foresee issues that might arise, and respect that person's time and schedule.

Dealing with Pressure

Another resonance between training for competition and legal training is the ability to perform under fire. At the college level, six gymnasts compete on each event, and five scores count toward the team's total. Meets are sometimes decided by tenths of a point. In dual meets, the away team finishes on the balance beam—a high-stress, precision event where adrenaline is your enemy—while the home team finishes on floor exercise, a fun event with loud music that gets the crowd excited. Beam is usually slower to finish than floor, meaning that the last one or two gymnasts from the away team compete on what is already a stressful event with the added pressure of being the sole focus of both teams and the audience. As I was often the last competitor

Illustration by Dave Klug

on beam, I remember the pressure of those all-eyes-on-me moments, knowing that whether we would win was dependent on whether I could hit my routine.

Whether it's staying calm enough to tuck away the game-winning penalty kick instead of blasting it over the net, or training relentlessly to ensure that the free throw you earned in the last seconds of the game is exactly like the free throws you make in practice, athletes are forced to learn to deal with pressure. As General MacArthur recognized, experience with pressure is useful when the stakes are higher than in an intercollegiate athletic competition.

When a trial team is working toward one goal for the client, the whole is greater than the sum of its parts.

New cadets are also put under pressure. You learn quickly that just because you can recite a quote you memorized in front of your mirror in your room does not mean you can recite it under physical or mental stress. Once you can recite it under duress, you can feel confident that you have internalized it.

Knowing how to deal with pressure is useful when standing up in front of a jury or answering a barrage of questions from a judge at oral argument. Being able to perform when the circumstances most demand it—and being willing to put in the time to reach that level—are important qualities in litigation.

Discipline and Attention to Detail

Litigators and athletes alike must have command of the details. As a gymnast, you strive to execute each skill perfectly—not only to get the best score but because it can be the difference between a successful performance and catastrophic injury.

Although I had been a gymnast virtually my whole life by the time I got to the academy, used to the detail-oriented nature of the sport, I remember feeling overwhelmed by the minutiae attendant to being a basic cadet. “Gig line”—straight. Hospital corners—sharp. Uniform—ironed, with creases starched. There were so many things to get right, and if just one thing was wrong, you could expect to hear about it (loudly). Being forced to pay

attention to so many small things taught me something I still rely on today: attention to detail.

I mostly practice in federal court, where—at least in my jurisdiction—motion hearings are sparse. Briefs have outsized importance. Of course, briefs always need to be well written and cogently argued, but when I'm drafting a brief, I also make sure to focus on what some might consider “little things” like formatting, proofreading, and cite checking. Attention to detail shows respect to the court and opposing counsel. And while it may be theoretically possible to make a good argument in a sloppy brief, it rarely happens. When my opponent hasn't bothered to align the text of his brief with the numbers on the side of the pleading paper, invariably he also hasn't bothered to research the law thoroughly or craft persuasive arguments.

Time Management

Time management is a critical skill for a litigator—one that being an athlete and a cadet taught me in spades. To say life is busy as an intercollegiate athlete at a service academy would be an understatement. Cadets attended classes every weekday starting at 0730 and ending midafternoon. Athletes practiced with their teams for several hours after that, went to the dining hall, then had time for homework starting around 1930 (7:30 p.m.). Gymnasts often practiced five days a week for three or four hours each day. During our competitive season, we often traveled to other states—sometimes across the United States—for meets. If travel caused us to be out of town for an examination, it would be administered on the road. Every cadet takes classes like electrical engineering, computer science, and thermodynamics as part of the academy's broad core curriculum. And for freshmen, there's the added burden of weekly quizzes on military knowledge.

It doesn't take long to learn a few things about efficiency and time management. First, whatever the task is, it's not going to get done unless you're intentional with your time: If you want it done, schedule it. Second, you can't do everything. You have no choice but to triage what is most important and let the other things go.

Like so many of us, I now find myself juggling a very demanding profession with the other things I want and need to do. The time management skills I learned as a cadet and student-athlete still serve me well. Because I know that if I need to do something, I have to be intentional about it, I am meticulous about scheduling time for work projects. Sometimes I turn down interesting matters or potential new clients, even when it pains me to do so. I know there is no shame in not being able to “do it all.”

My time as a collegiate gymnast at the Air Force Academy is so much a part of who I am as a person (even 20 years later) that these lessons are hard in some ways to distill. Yet, I know the lessons I learned on the fields of friendly strife have been invaluable to me as I've made my career as an attorney and litigator. ■