



## The “Sweet Science” of Litigation for New Practitioners

By Leanne Gould <sup>1</sup>

The phrase “sweet science” was coined in the early 1800’s to describe the sport of boxing; a sport requiring a both mental and physical strength and stamina. As I watched Muhammad Ali and Sugar Ray Leonard as a child, I admired the quickness of their feet and the quickness and power of their hands. Later, after I began to take boxing lessons myself, I began to admire the quickness of their minds; their ability to assess their opponent’s range, style and weaknesses. One evening it occurred to me, in the middle of a session with my boxing coach and a couple days before I was to be deposed as an expert witness, how similar the sport of boxing and litigation are. The analogy between boxing and litigation became even clearer as my coach began teaching me defensive moves and strategy.

Inspired by the 2016 Olympics and the Pacquiao-Vargas bout, I thought I would take a few moments to share my thoughts on the topic and maybe inspire you to think about your work a little differently and even take up the sport!

### Preparation

*The fight is won or lost far away from witnesses—behind the lines, in the gym and out there on the road, long before I dance under those lights. – Muhammad Ali*

As a lawyer or expert witness, it is important to understand the background of the case, foundational issues, questions that need to be answered, and to do the research and analysis to answer those questions. Your analysis, whether of case law, documentation or financial information should be thorough and thoughtful. Like a boxer who studies tapes of his or her opponent and trains to be in the best condition possible before entering the ring, you need to be prepared to withstand questions from your clients, opposing counsel and the judge and/or jury. You also need to be able to clearly and confidently present your case or opinions. Preparation is the key to success – or at the very least escape from a knock-out blow.

### Self-Discipline & Patience

*Boxing is ... perhaps the most challenging of all sports. [It] requires speed, agility, finesse, power, endurance, and ultimate mental toughness. Boxing pushes you like no other, pitting the finest and highest level athletes against each other. It’s a sweet science but at the same time also a raw and brutal sport. – ExpertBoxing.com*

Hopefully, the situations we find ourselves in as litigators and expert witnesses do not degenerate into the category of “raw and brutal sport,” but the rest of the quote describes the challenges we find ourselves in on a regular basis. It’s the ability to think on our feet, flexibility in how to ask questions and how to respond to those questions in the moment that makes our work similar to the boxer.

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We have all been in depositions and/or trials that have gone on for days. We have had to be agile to react to information or arguments that we may not have considered. We have had to answer questions that twisted our words, or address case law that wasn't on point, and at the same time stay focused on our case or opinions.

*The biggest thing about taking a punch is your ego reacts and there's no better spiritual lesson than trying to not pay attention to your ego's reaction." – David O. Russell*

These situations, like the boxer's 10 or 12 rounds in the ring, require stamina and mental toughness, self-discipline and patience – skills you can only learn by not being afraid to get into the "ring" and experience the "fight."

### Respect Your Opponent

*In boxing you create a strategy to beat each new opponent, it's just like chess. – Lennox Lewis*

Respect is another key to success in the ring, or in the courtroom. Respect for the court, respect for your client and respect for opposing counsel and their experts. You may not agree with them, but if you become over confident in your position, your capabilities or experience, you could sabotage yourself.

Whether you are talking about boxing, chess, soccer or baseball, those who excel in their craft respect their opponents and spend hours analyzing their opponent's performance to identify strengths, weaknesses and patterns.<sup>2</sup> Those who excel also know their opponents are analyzing them.

You may not have the opportunity to view tape of the opposing attorney or expert witness but you can get a feel for style, direction and focus from communications, filings and reports. You can also glean certain information during a deposition or trial by paying attention to tone, cadence and mannerisms.

In our business, you may not have all the information you would like or new information may come to light. You need to know when to use the information you have, how to react to a change in strategy or when it may be appropriate to change your own strategy. In boxing, you need to know when to hold back, when to attack, when to counter-punch and when to slip or duck. These decisions, made in a split second are a result of respecting the opponent, identifying his/her patterns and strategy and either sticking to, or modifying, your own strategy as the situation unfolds.

*... in the end, it is about the mental preparation: boxing is a chess game. You have to be skilled enough and have trained hard enough to know how many different ways you can counterattack in any situation, at any moment." – Jimmy Smits*

### Listening to Your Corner

*Once that bell rings you're on your own. It's just you and the other guy. – Joe Louis*

Finally, although you are on your own either asking or answering questions in a deposition or in front of a judge and/or jury, you do have people in your corner. People who have performed research for you and may have more in-depth knowledge of certain issues, people who may be observing the deposition or trial, people who can be sounding boards as you develop your strategy or opinion. These people can be

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<sup>2</sup> Repeated patterns of movement such as dropping the glove before a punch and blinking of the eyes or clearing the throat before bluffing in poker are called "tells."

very helpful and may be able to point out issues and nuances that you haven't thought of. Tap that knowledge and vision, listen to what they have to say before you step into the conference room or court room, and keep those lines of communication open.

*Boxing takes you further than you ever thought possible. Boxing makes you more alive than ever, more humble in defeat, and most glorious in victory. Boxing reveals the true fighter deep inside every single one of us. – ExpertBoxing.com*

As a new practitioner, I hope you found these comments helpful and entertaining. Step out confidently and enjoy the “sweet science” of litigation!