

Truth and Advocacy

A Lesson Learned from Homework at Harvard

In 1999 or so I attended a course in public instruction for lawyers at Harvard Law School called “Making the Deal in Organizing or Restructuring Closely Held Enterprises” with Professor H. (I called the course “Doing the Deal”). As you might expect, the course was challenging and required a fairly high level of knowledge, work and deliberation.

One assignment in particular - which was more or less the highlight of the course - was to negotiate the purchase and sale of shares in a hypothetical high-technology startup company which had a good story and trend line of talent, sales and earnings, but limited financial resources in hand.

The data, depending on what you considered important, e.g. the trend line, could support an argument for a price of \$200.00 per share or a price of \$800.00 per share. Between these extremes as I recall was a median price of near \$480.00. My sales price was about \$600.00 per share.

Like most of the students I had worked hard on my calculations and arguments, but I was not sure they were correct. So, on entering the Pound Hall classroom that Summer day I remarked in passing to the Professor that I was not sure if my previously mentioned share price number was correct - implying by my words and tone of voice that maybe I had missed something.

Professor H. seemed just the slightest bit annoyed by my comment and replied to the effect that he thought I should stick with what I had and have confidence in that.

Over the years I have thought about the good Professor’s reaction and what he meant by his comment. Was he saying, ...

1. I think you are closer to being right than some of the others.
2. Yes, you could be wrong, but you could be right. So, stay the course, so to speak.
3. Stand by your analysis and conclusion unless you have an objective reason not to (and your hesitancy or change of heart is not due to a subjective cause, like insufficient diligence or confidence.) Or,
4. Truth is uncertain; so in a large part the outcome will depend on what is boldly asserted and soundly maintained.¹

Professor H. never stated his opinion of the “correct” share price and I will never know the exact answer (if there is one) to my ruinations about the meaning of his comment. So, any or all of the above answers could be what Professor H. was trying to tell me. But, I think the bottom line is something like this:

Truth needs an advocate and advocacy requires confidence.

So, whether I am doing a deal, or doing a trial, my job as a lawyer is to determine the truth of the situation, and the truth of my client’s position, to reconcile these truths as best as I honestly and reasonably can, then advocate for not less than that outcome unless and until that it becomes clear that position is untenable.

As Goethe said, boldness has magic in it. The magic of inspired advocacy can change the truth of the outcome. What is the best answer? Show me the truth of your advocacy.

¹ Law students learn this formula in law school: that when in doubt as to the answer assert and support.