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What Litigators Can Learn from B Movies

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We litigators take our guidance when and where we can find it. Sometimes we stumble across it very late at night, on television. Weary, intellectually spent, and pining for entertainment that makes no demands on us, in “the wee small hours of the morning” we find ourselves watching a so-called B movie—a film that had a low production budget or that manages to be bad despite an ample one. And, lo, enlightenment ensues through this unlikeliest of messengers. Submitted for your consideration are some gems from half a dozen movies that most sensible people won’t admit watching but that contain lessons for litigators everywhere.

Cooler Lessons

In reality, bouncers are usually just big guys with scars, tattoos, and scowls. Or so people who go to bars tell me. But *Roadhouse* (1989) imagines a subculture of elite martial-arts-expert “coolers” who become the stuff of legend. The owners of overly rambunctious bars across the country compete to hire these watering-hole Ninjas because of their ruthless efficiency in maintaining order and in handling trouble when it breaks out—as it inevitably must in any action movie.

Patrick Swayze plays Dalton (like Bono, Cher, and Madonna, he needs no second name), a cooler whose mythical reputation for dealing with louts precedes him. With his feathered hair,

slender dancer’s build, and boyish charm, Swayze hardly seems the part, but that just amplifies the fun and feeds a running joke (“I thought you’d be bigger”). An especially ratty and tumultuous bar—the Double Deuce—hires Dalton to clean house, and we follow him as he practices tai chi, studies philosophy, beats up bad guys, and becomes romantically entangled with the doctor who stitched him up, a match made in an emergency room, if not in heaven.

Roadhouse includes lots of implicit instruction for litigators. For example, when Dalton arrives at his new job, he carefully hides his Mercedes, buys a crummy used car to drive around town, and lays in a bunch of extra whitewalls. He has anticipated what the opposition will do—smash the windshield, break the antenna, slash the tires—and has planned for it. When his adversaries do exactly what he expected, he just smiles and shakes his head over their predictability. Go forth and do likewise.

But the most important instruction for litigators in *Roadhouse* comes when Dalton initially arrives at the Double Deuce and offers some direction to the assistant bouncers who will help him. He tells them to start by being nice: Be nice when they swear at you; be nice when they call your mother nasty names; be nice when you escort them from the premises. Then Dalton—showing he daringly splits not just skulls but infinitives—concludes: “I want you to be nice until it’s time to not be nice.”

Over the course of 35 years of practice, all of the most effective litigators I have known start from a place of civility and respectfulness and hold that ground as long as possible—often in the face of considerable nastiness from the other side. They understand that you can win a case by out-thinking, out-strategizing, out-preparing, or out-maneuvering your opponent, but not by being the baser and uglier human being. When we litigate, we testify to who we are, and there's no great honor in telling the world we're pointlessly obnoxious.

At the same time, we cannot maintain our civility at the cost of zealous representation. Sometimes we have to behave less “nicely” than we would otherwise like to behave because our opponent wants to test our interest in playing the role of doormat. The line between being civil and being a sucker can be a fine one, and figuring out which side you're on can prove challenging.

They don't—and can't—teach us how to tell the difference in law school. We learn it on the job, with any luck getting some good mentoring about it along the way. *Roadhouse* makes just this point. After Dalton tells them to be nice until it's time “to not be nice,” one of the assistant bouncers asks: “So, uh, how are we supposed to know when that is?” “You won't,” Dalton responds. “I'll let you know.” As a young lawyer, I had the great fortune to work with more senior lawyers who would let me know when I needed to get a little tougher—or, on more than one occasion, a little less tough. New lawyers can make that mistake, too, being a tad too prone to go nuclear.

Beware Flying Sharks

Speaking of which, the testing and use of nuclear weapons in the 1940s inspired a host of B movies in the 1950s and 1960s about monsters created or revived by random radioactivity—*Godzilla* and *Night of the Living Dead*, for example. Our current anxieties about climate change have similarly inspired a batch of horror and action movies driven by environmental disasters, some more plausible than others. Surely, the most likely of these calamities is captured in *Sharknado* (2013), a made-for-television masterpiece in which a cyclone floods Los Angeles with shark-infested waters that then spin up into the sky when three tornados hit. Coming soon to a metropolis near you.

Sharknado has at least two powerful messages for litigators. First, we must expect the unexpected—interestingly, advice that Dalton also gives to his assistant bouncers. “Sharks? I never saw that coming,” a convenience store clerk exclaims. On the same theme, at one point, Fin Shepard (a former surfer who owns a bar and, ultimately, is the hero of the film), Baz Hogan (his right-hand man), and Nova Clarke (a barmaid who works for Fin) share their amazement over the unfolding cataclysm. Fin declares: “I always thought it would be an earthquake that would be the end of Los Angeles.” Baz responds: “Or a meteor shower. Zombies

even . . . Black plague. Aliens. But sharks? Come on!” And so it goes: As litigators, we cannot simply prepare for the predictable walking dead, pandemics, and extraterrestrials. We must anticipate the sharknado.

Truly accomplished litigators carefully consider the down-the-road implications of each and every strategic decision.

Of course, we will not always pull off such astonishing acts of prescience, which leads to the second compelling message of this small cinematic masterpiece: When the unexpected arrives, “we can't just wait for the sharks to rain down upon us,” as Baz sagely observes. Fin—the very embodiment of calm in a storm, so to speak—therefore gets creative: He attaches a bomb to his car to blow up the sharknado and then jumps into the mouth of an attacking great white, triumphantly cutting his way out with a chainsaw. You think there's no equivalent in litigation? Try getting a writ of superintending control sometime.

Fear Makes People Dangerous

Litigation strategy largely consists of eliminating the unanticipated and the risks that come with it. Occasionally, however, all the witness interviews and document examinations and discovery and legal research in the world don't alert us to the jaws waiting to consume us, unforeseeably, from above. When that happens, we need to stay cool, think inventively, and then roll fast and hard.

Many years ago, I walked into the office of a client who was dealing with an emergency. “I hear we need to do some brainstorming,” I said. “No time for that,” the client responded. “We just need storming.” I got it.

One film director who also got it and whose name often shows up more than once on lists of the “best” B movies was William Castle. Castle led a remarkable life. Orphaned at age 11, he dropped out of school at 15 to pursue a career in the theater. Scrappy and resourceful, he found his way to Hollywood and

quickly discovered that he could churn out low-budget films that he could promote through gimmicks.

He got publicity for his first “major” film, *Macabre* (1958), by giving every customer a certificate of insurance for \$1,000 in case any of them died of fright during the movie. He also arranged to have hearses parked outside the theaters showing the film. For *House on Haunted Hill* (1959), Castle announced a theater effect he called “Emergo,” where the theater dangled a skeleton over the audience when a similar skeleton appeared on the screen. And so it went: *13 Ghosts* (1960) featured “Illusion-O” (which required the wearing of special glasses), *Homicidal* (1961) allowed audiences to leave and get a refund if they were too terrified to see the end of the movie, et cetera.

His most famous stunt, however, came in a film called *The Tingler* (1959). In the movie, Dr. Warren Chapin—played by Vincent Price—discovers that every human being has a parasite attached to his or her spine, called a “tingler,” that feeds on fear. It curls up and crushes the host’s spine unless the victim screams—which the film periodically urges the audience to do with great gusto. Castle had buzzers installed in some of the seats at larger theaters so that those in attendance could be zapped into screaming to help things along.

As we would expect, from time to time Dr. Chapin waxes poetically about death, murder, screaming, tingling, and fear. He sagely declares: “The tingler exists in every human being, we now know.” He goes on: “It’s an ugly and dangerous thing. Ugly because it’s the creation of man’s fear. Dangerous because—because a frightened man is dangerous.” Dr. Chapin has a point, and one that litigators need to remember.

Anyone who litigates cases for enough years—and who pays attention while doing it—will inevitably come to two conclusions. First, all clients have something in common: fear. They are scared of prison, of an adverse judgment, of losing, of embarrassment, of criticism, of the expense, of injury to their reputation—the list of possible sources of dread seems endless. Granted, some clients put on a better show of bravura than others, but make no mistake about it, they’re all afraid and, in most cases, justifiably so. To help navigate their fear, they need a smart, calm, competent, honest, loyal friend who can keep a secret—in other words, a lawyer.

Second, as Dr. Chapin says, fear makes people dangerous. It prompts them to lie, to mislead, to hide evidence, to betray trust, to conceal assets—to do all sorts of desperate stuff. Seasoned litigators have the emotional intelligence to recognize their clients’ fears, to anticipate the foolish things that anxiety might prompt them to do, and to try to keep them from making things worse.

Ed Wood and Predicting the Future

Another director whose name often appears more than once on lists of “best” B movies is the legendary Edward Davis Wood Jr. Ed Wood made many films so bad they border on the unwatchable.

A number of them featured his friend Bela Lugosi of *Dracula* fame, who, by the time Wood worked with him, had descended into ill health, depression, and morphine addiction. Interestingly, Lugosi played an important role in getting William Castle’s career off the ground as well.

Ed Wood’s B-movie masterwork is almost certainly *Plan 9 from Outer Space* (1959). The plotline of *Plan 9* resists summary, but the general idea is that aliens are bringing the dead back to life as zombies and this is a bad thing. No viewer can miss the low-budget nature of the affair: In a cemetery scene, the flimsy fake gravestones wobble when actors bump into them, and for years aficionados debated whether the “flying saucer” piloted by the aliens was actually a paper plate, a hubcap, or a plastic toy model.

Wood largely cast the film with friends of his. This included Lugosi, who sadly died while the film was being made—forcing Wood into some bizarre improvisations. But the show is stolen early by an old pal of Wood who called himself Criswell—another one-name guy, like Dalton. Criswell was a professional psychic who was perhaps most famous for generally getting his predictions extravagantly wrong.

The film starts with Criswell staring into the camera and setting the stage in his trademark stentorian and overdramatized tone. He begins with this glorious gobbledygook: “Greetings, my friends. We are all interested in the future, for that is where you and I are going to spend the rest of our lives. And remember, my friend, future events such as these will affect you . . . in the future.” Hard to argue with that.

A litigator does, indeed, need to worry about the future, for that is where he or she is going to spend the rest of his or her case. Indeed, good litigators understand that they must actually think about at least two cases at once: the trial and the appeal. Years ago, I served as part of a team handling a matter we thought would ultimately end up in the Supreme Court of the United States (unlike Criswell, we got this prediction right). Even in the very early strategy meetings, we talked about the record we would have to build in order to get the five votes we needed to prevail.

Criswell’s insight applies not just to appeals but to litigation generally. Truly accomplished litigators carefully consider the down-the-road implications of each and every strategic decision. Thinking ahead is not their ninth plan but their first. No good trial lawyer ever plays one-move chess.

Over the years, worrisome aliens like those in *Plan 9* have provided fodder for lots of B movies. But the prize for the most outrageous premise in this category likely goes to *Iron Sky* (2012), a film so bad it required the work of Finnish, German, and Australian contributors to achieve its full potential. *Paste* magazine’s online list of the 100 best (read: worst) B movies ranks it at 96, arguably an error of 95 places.

Iron Sky posits that in 1945 a group of defeated (but clearly inventive) Nazis fled to the dark side of the moon, where they

have been hiding since. A series of events prompts them to invade Earth in order to secure more cell phone technology. Yes, you read that correctly. At one point, Renate Richter (born on the moon and raised in a lunar base) declares: “This is very simple. The world is sick, but we are the doctors. The world is anemic, but we are the vitamin. The world is weary, but we are the strength.”

She is, of course, both right and wrong. Good reasons exist to view our poor beleaguered world as sick, anemic, and weary. But it seems unlikely that moon-bound fugitive fascists have what we need to make things better around here.

When we litigate, we testify to who we are, and there’s no great honor in telling the world we’re pointlessly obnoxious.

On the other hand, litigators do. We can deploy our formidable skills on behalf of oppressed people, worthwhile causes, and sacred democratic principles. We can take on pro bono projects to benefit the impoverished. We can advocate for important reforms in our civil and criminal justice systems. We can help heal conflict, lift up the downtrodden, and lend our dearly acquired stamina to those who need and deserve it. If I sound a bit grandiose like Criswell, then fine; I’m good with that.

When my first-year, first-term civil procedure students go home for their fall break, I offer them a suggestion. I say: “Be prepared. Your friends and family may tease you about becoming an attorney. Brace yourself for lawyer jokes. When that happens, you might want to respond by smiling and saying something like this: ‘Yes, I’m studying to be a lawyer and you can give me a hard time about that if you like. Remember that law was the chosen profession of many of the founders of our democracy, including Thomas Jefferson and Alexander Hamilton. It was the special passion of the primary architect of our Constitution, James Madison. It was the profession of two of the saviors of our republic, Abraham Lincoln and Franklin Delano Roosevelt. It was the profession of many of the world’s great moral leaders, including Nelson Mandela and Mahatma Gandhi. It was the profession of saints, including Augustine and Thomas of Canterbury. And, in most of the world’s great religions, the making, interpreting, and enforcing of the law is one of the principle endeavors of (wait

for it) God. That’s my profession. What have you got?’” Maybe every litigator should keep this speech handy. You never know when an anti-lawyer sharknado will hit.

No Redeeming Value

But alas, I must leave these lofty sentiments to attend to our final B movie, *Hard Ticket to Hawaii* (1987). After careful viewing, I have thoughtfully concluded that I can find absolutely nothing whatsoever redeeming about this film or worth quoting from it. Badly acted, badly directed, badly scripted, badly scored, badly conceived—even the opening and closing credits are badly done. This may explain why *Paste’s* online B-movie ranking places it at number 1.

In a sense, though, this anti-achievement offers an important lesson for litigators as well. Sometimes we do not just lose, we lose big—really, really big. We take it hard because we like to win—a lot, even. But maybe *Hard Ticket to Hawaii* offers us some consolation. After all, its top-notch rating confirms that giant flops grab people’s attention, too.

And we litigators take our notoriety, like our guidance, when and where we can find it. ■