

# NEWS YOU DIDN'T KNOW YOU NEEDED

*Carla Cotropia*



## OUT OF CONTROL TRIAL LAWYERS

This is a true story about how trial lawyers, and I was one of them, were “out-of-control” in the 1980s. Maybe out-of-control is not the right phrase. We were Rambos, sneaky, up to all kinds of tricks and all of it was fair in the game of “Its War Baby.”

In fact, I believe the current Texas Disciplinary Rules of Professional Conduct for lawyers is directly because we needed some rules of civility. And boy did we, but on the other hand, it was fun, if you view “fun” as crazy and out of control.

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It was different in the 80s if you were a litigator. First there was plenty of trials and cases available. Now there are plenty of lawyers (many would say too many) and work/lawsuits for trial lawyers can sometimes be hard to find. Plus, it was cheap to go to trial and now it is very expensive. As a result, we have mediation, and I can be a mediator which I love. But in the 80s even baby lawyers like me got to try cases-the first one over a fight of \$10,000 - which would never happen today.



In the 80s we did not have docket control orders or scheduling orders. You could get a call to “show up for your trial” the next day. Here is one crazy and wrong example of what we did in the 80s.



SETTLING CASES TWO SNEAKERS AT A TIME

The refinery had an explosion and there were unfortunately injuries. The Plaintiff lawyer, I will call him Sam, sued every company that made a part, dial, or instrument in the control room at the refinery that remotely could have contributed to the explosion. Then after each company had made an appearance, and each company's lawyer had filed an answer, Sam would access the lawyers and decide which one he didn't like. I know what you are thinking. This is crazy and makes no sense. Well, it is true! The key to being liked by Sam and true in the 80s, in general, meant alcohol, bars, and joining in with happy hours. Yes, there it is. Out of the five defendants representing a dial or a gauge, Sam decided he didn't like, I will call him Todd. Todd perhaps was green as a lawyer, but no one was greener, i.e., inexperienced, than me. But Todd didn't understand the "hanging out in a bar" rule, and unfortunately thought it was based on facts and law. Big mistake.

Sam privately approached each defense lawyer, other than Todd, and offered he would "not go after their client" if they would give him their strikes. For those of you not familiar with trials, each side gets a certain number of juror strikes. The distribution of strikes is determined by the Judge to make each side, plaintiff and defense, have an equal number.



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Sam has 6 strikes, and each defendant had one which would have been fair but now 5 of those defendants have given their strikes to Sam so now he has 11 strikes. With 11 strikes, Sam can get the perfect jury for his client.

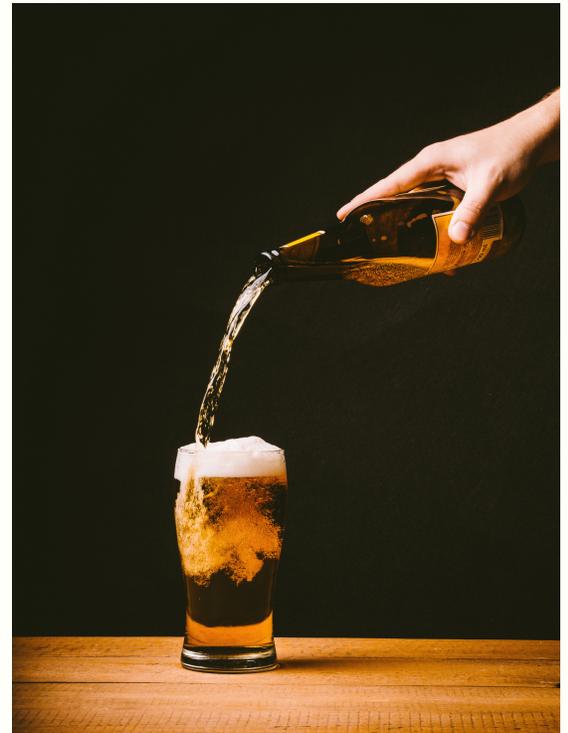
There was a time where this type of behavior was allowed if it was agreed to in a written document called a “Mary Carter” agreement. But because it was patently unfair it had been banned. But that didn’t stop litigators in the Wild Wild West of the 80s. No, Sam couldn’t do a Mary Carter agreement, but he could and did offer a clandestine verbal promise to leave the client alone and not blister/blame him on the witness stand if he got that client’s strikes. The problem was and it was a big problem there was no guarantee, nothing enforceable, only blind faith Sam would not double-cross.

I am not proud of being part of this, but it was the way it was in those days, and I had an important obligation to protect my client. So, it was with a heavy heart I agreed knowing there was no written agreement and no guarantee. I was a very nervous baby lawyer.



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Of course, the defense lawyers “in on the deal” met in a bar, (there was always a favorite watering hole), the day before the trial began to “prepare” which really was to hang out and drink. I meekly suggested to the group that we warn the unknowing lawyer about what was about to happen, but was quickly shot down with such remarks as, “he shouldn’t be a trial lawyer if he got himself in this situation”. Clearly unfair but it was the Wild Wild West of the 80s.



When Sam finished his cross examination of my client, I let out a **loud relieved** sigh and collapsed face down on the defense table. Sam wasn’t happy with my outburst of relief and quickly asked the Judge for a recess because he didn’t want the jury to get an inkling of what was going on.

It wasn’t fair and wasn’t right. These types of antics don’t go on today I am happy to report. I have more true stories from the out-of-control 80s which I will continue to share.



SETTLING CASES TWO SNEAKERS AT A TIME

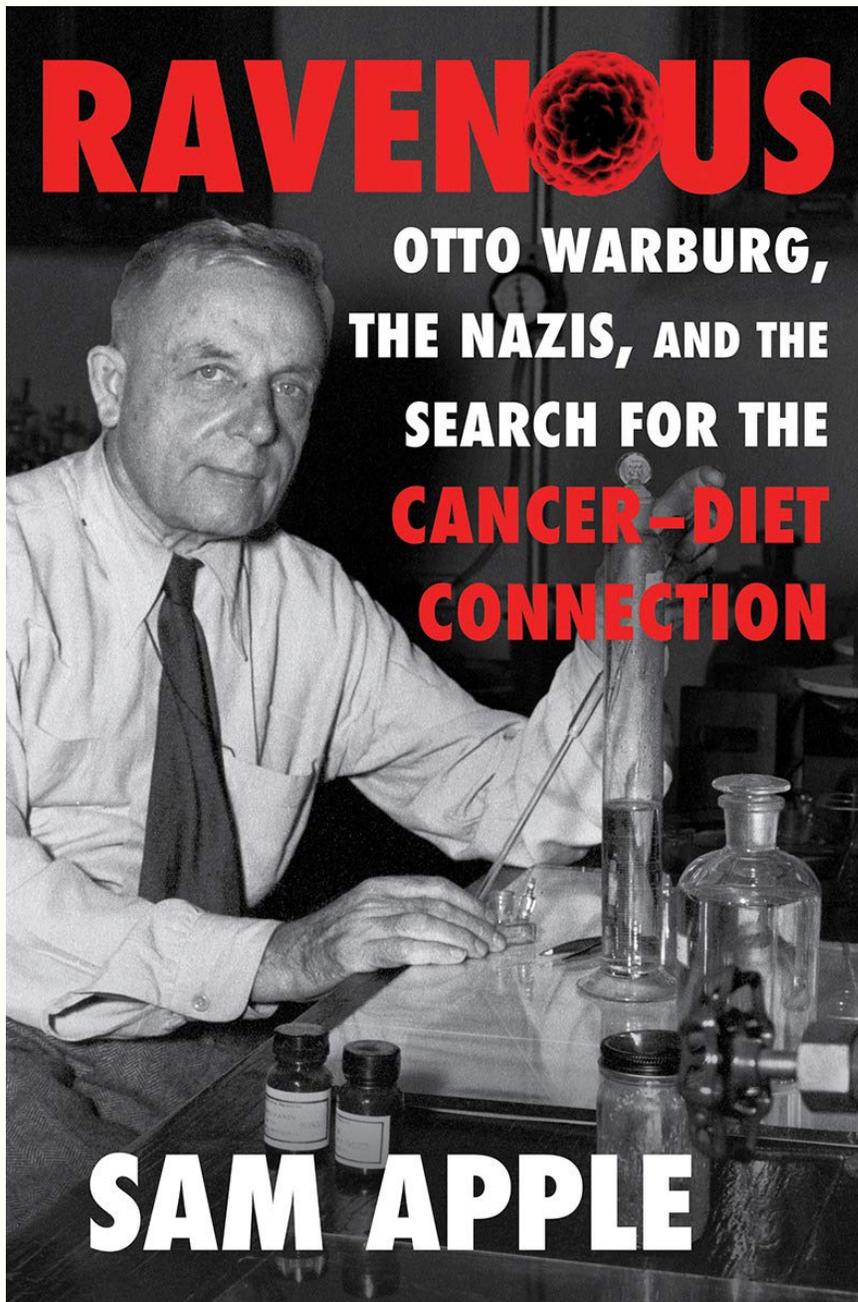
## BOOK OF THE MONTH RAVENOUS

I L-O-V-E-D the book, *RAVENOUS, Otto Warburg, The Nazis, and the Search For the Cancer-Diet Connection*, by Sam Apple. This is several stories in one book and all are fascinating. Sam Apple's writing is easy and enjoyable to read.

Otto Warburg was a Jewish scientist born in 1883 in Germany. He received the Nobel Prize in Medicine in 1931 and was nominated for the award 47 times over his career. Unfortunately, as many explained, on a scale of 1-10 for self-centeredness, he was a 20. He got away with his egocentric and narcissistic ways however because of his brilliance. The story sets out how Warburg survived Nazi Germany which is incredible since he was gay and a Jew. When the Nazis would show up at his home and laboratory wanting him to sign a paper setting out his Aryan heritage, (of which he had none) he would either not answer the door or take the paper, wad it up and throw it in the trash. How did he get away with this audacious behavior during Hitler's sadistic reign? To give you a little taste of this fascinating story, it was because he was studying cancer and what caused cancer to grow and Hitler's mother had died an excruciating death from cancer. There is so much more to Otto Warburg's story so I will let you discover it for yourself.



SETTLING CASES TWO SNEAKERS AT A TIME



Then there is the other story about cancer research and what causes cancer to grow. Before you groan and say “BORING” or “WHO WANTS TO READ ABOUT THAT” you should stop and hear me out. There are many many scientists over the years who have studied cancer and all have interesting stories and how their research fits together to get us where we are today. And yes, as hard as it may be to believe, it is all woven into a very readable and YES, enjoyable story.

Sam Apple will keep you glued to the book. It is that good.



SETTLING CASES TWO SNEAKERS AT A TIME

## LESSONS FROM MY MOTHER

My mother is 88 years and still acting like she is 47 years old. After 70 years of marriage, she lost her husband, my dad Carl Cotropia, last November to Alzheimer's. My mother refused to believe that my dad couldn't get better especially if he would try just a little harder. She meant well and cared for him at home by herself way longer than any person would or should have done. It all goes to her powerful will and drive. If she believed he would get better, it would be true.

My mother's personality traits that were good in her earlier life, like determination, iron will, and commitment, are not so good in her senior years when they become magical thinking and denial.

Examples: Believing my dad could improve even though he had advanced Alzheimer's; Stubbornly refusing to quit trying to run a farm with cows; Snapping back if anyone tried to tell her anything. But then "GULP" I realized these so-called personality traits, I also have. Well, maybe (I hope) not the snapping part.

My parents had a farm foreman that worked for them for 40 years and was part of the family. He was so loyal he kept working or showing up to try to work even though he was slowly going blind.



SETTLING CASES TWO SNEAKERS AT A TIME

When my siblings and I would bring the fact of his blindness up to our mother, especially that he really shouldn't be driving, even if it was on a farm with only cows to run into, her quick response was to sharply snap, "You Kids, stop it right now. We are not going there."



As much as I want to complain, because her stoic/stubborn/refusal to change attitude creates difficulties for her kids, it is also wake-up call for me. My mother refuses to downsize and quit trying to run a farm at 88. She is so tough and stubborn she doesn't want to change. Why is it so hard to accept change? We really have no choice because things are always changing but by golly, we, including me and my mother, fight hard against change. Fighting change becomes more and more apparent when you are elderly or dealing with elderly parents. It goes hand in hand with magical thinking and denial. Magical thinking is pretending that you can continue --just like you always have--when in reality you can't. Denial is a coping mechanism. If I deny the problem, pretend like it doesn't exist, magical thinking, then it doesn't exist.



SETTLING CASES TWO SNEAKERS AT A TIME

I was told once by a good friend, Jim Windmiller, who was selling his thriving business in Galveston and starting over in New Orleans, that “Change made his nostrils flare.” Meaning of course a horse whose nostrils flare open with excitement when about to begin a race.



Switching gears from “fear of change” to “excitement of change” is what we should strive for. You don’t have to be facing senior years to resist change. We all do it. You can sit on the railroad track of life, refusing to change, as the train of life barrels towards you, ready to flatten you.

My mother is tough. Growing up she refused to give condolences or tolerate self-pity. When I was in law school, miserable and—I repeat—miserable, I called her wanting some sympathy for being so miserable. She laughed and said something that didn’t remotely resemble a sympathetic note. I hung up mad and full of resentment called her back. When she answered, I asked her to get a pen and write these words down on a piece of paper.



SETTLING CASES TWO SNEAKERS AT A TIME

“I am so sorry you are so miserable. I know law school is hard. I wish it was better. You can do it and you will be fine.” I told her to keep this note by the phone and when I called back, she should just read those exact words back to me. Then I quickly hung up the phone before she could say anything.



My mother’s toughness has shaped me. She has caused me to be resourceful. She has helped me be able to deal with difficult people and to appreciate all types of characters.

Thank you, Mother, for shaping me and giving me the strengths, I have, including my stubbornness, magical thinking, and iron will which often comes in handy. Sending my mother and all the mothers out there lots of love. I can’t imagine a tougher job!



SETTLING CASES TWO SNEAKERS AT A TIME

## THOUGHTS ON CUOMO

I listened to Andrew Cuomo's resignation speech and was struck by his comment he was not aware "the line" had moved. Really?? No need to vent further about him since it is obvious, he is a GIANT JERK/CREEP. But the comment about "the line moving" struck a chord in me since I have personally seen that line move since I started as a lawyer in 1980.

Let's see, where do I start? It was, what you would call in those days, "little things". Like the bank vice president who would come to our office, (we represented the bank), and always put his arm around my shoulders with a Hi Baby comment. Finally, I took his arm and removed it from my shoulders, and said, "I don't see you putting your arm around the shoulders of my male law partners."

Then there was the small county district judge that after our meeting, (I represented the county on a discrimination claim), who wanted to walk me to my car. Once in my car, before I could close the door, he reached over and kissed me on the lips. Did I do anything or say anything? No, other than feeling creepy and needing a shower.

Then there was the insurance adjuster, known to be a total ass, who literally tried to grab me, and do God knows what.



SETTLING CASES TWO SNEAKERS AT A TIME

My workouts came to my rescue as I was able to push him off. But he won in the end because he removed me from handling every file for his insurance company. When my firm assumed I “screwed something up” (no pun intended) I couldn’t explain the reason and I didn’t. Why? Because that would have confirmed their theory women shouldn’t try lawsuits.

Then as time went on (in defense of my firm these issues no longer exist) it was the more insidious things like put down comments. These offending law partners are gone but I endured these put down comments, way too long. When I would complain I would get this response, “I was only kidding”. Turning the problem on me instead of what they just did. I was “too sensitive” since they were only kidding.

When I got stronger, (some might say meaner/tougher), I pushed back and then I would get a weak, sounding irritated, “sorry”. Finally, I had a belly full of these fake sorrys and replied, “I won’t accept your sorry.” I held back and didn’t say what I was thinking which was, “What you mean is you are a sorry person.”

But all of this is in the past and in a weird way it helped me when I began conducting discrimination and sexual harassment prevention trainings.

What all this behavior really boils down to, is this: It makes a person feel bigger, by making you feel smaller.



SETTLING CASES TWO SNEAKERS AT A TIME

It is simply, POWER. I have the power to do what I want and if it makes you feel uncomfortable, then it is your problem, not mine. Oops, I didn't realize the line had moved and I had stepped over it.

It should be said that women can also be guilty of this, even though it is much more common with men. I investigated a matter where a female elected official was guilty of this same type of power behavior.

For years, I have recommended to women, instead of complaining about the "good old boy system" promote other women. Women in the past have been incredibly competitive with each other and sometimes not very supportive of other women. In law school at Baylor, known for its trial advocacy program, a law professor told me I should always go for male jurors because female jurors would not like me. I think he meant well, but I refused to believe or follow this idea and it worked out just fine. But now women are supporting each other and that is a good sign of process.

I am glad things are improving but I do want to caution women. Women have a warm compassionate side and I for one would not want to lose that gift. I am not justifying anything about Cuomo and he should be "kicked to the curb" and then stomped on by every women he has disrespected. I recommend these women wear stilettos to do the stomping.



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