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Tilt

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In poker, everybody loses sooner or later. Sometimes it's just a few hands, and sometimes you lose for the whole night (or longer). Sometimes the losses are your own fault, and sometimes you can play perfectly and still go broke. The point is that losing is part of the game. No one is immune from it, and even the most skilled players cannot avoid it. In the long run, of course, there is no luck in poker, and the best players will eventually win. But as the card player and poet A. Alvarez explained, there is plenty of luck, both good and bad, in the short run, and "the short run is longer than most people know."[1]

Managing losses, therefore, is one of the most important parts of the game. It is essential to keep them in perspective and, most of all, to prevent bad beats from influencing the way you play the next hand. It may seem counterintuitive, and it is certainly counterproductive, but there is a nearly universal tendency to play loosely in a misguided attempt to "get even" following a series of losses. Card players call it "going on tilt" or "steaming," and journalist Andy Bellin describes it like this: "After losing a big hand, a player bets and raises with garbage because he is steamed over the last game. Then he loses more, and a cycle begins. Once you tilt, there's almost no hope for recovery."[2]

The right thing to do, of course, is to forget about the last hand while concentrating on the next round of cards. But it is not always easy. Puggy Pearson, the 1973 World Series of Poker Champion, observed that "[l]osing is like smoking. It's habit forming."[3] That is why, as 1978 World Series of Poker Champion Bobby Baldwin pointed out:

> The mark of a top player is not how much he wins when he is winning but how he handles his losses. If you win for thirty days in a row, that makes no difference if on the thirty-first you have a bad night, go crazy, and throw it all away. You can't survive that way. In this business, you have to be able to live with adversity.[4]

The funny thing about steaming is that almost everyone is wary of it, but most players end up tilting anyhow. It is hard to recover from a breathtaking loss when you made a foolish and costly mistake, or worse, when you were miraculously outdrawn on the river, while keeping your judgment intact. Almost inevitably, a process of rationalization sets in. You are due for better cards; the next hand is bound to be yours; your luck has to change sometime; the deck "owes" you a good hand; no one (meaning your opponent) can be that lucky twice in a row. Of course, this is all nonsense. The cards have no memory, so each hand is an independent event. You can only win by playing the next hand correctly, on its own terms, not by attempting to redress the previous misfortune. Still, many card players manage to be oddly self-

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1. A. ALVAREZ, POKER: BETS, BLUFFS, AND BAD BEATS 60 (2000) (quoting Rick Bennet).
2. ANDY BELLIN, POKER NATION 131 (2002).
3. ALVAREZ, *supra* note 1, at 51.
4. *Id*.

aware and self-delusional at the same time. "I pride myself on never tilting," says Andy Bellin, and yet "I tilt all the time."[5]

If anything, lawyers are even more susceptible to steaming when things go wrong and more likely to rationalize bad behavior. Losing your temper in negotiation, berating a judge for a bad ruling, snarling at a surprisingly unhelpful witness—these are all examples of going on tilt, turning a momentary disadvantage into a potential debacle. Needless to say, most decent lawyers understand the need to maintain their composure, especially in court. Nonetheless, even the calmest among us will occasionally snap, and the less disciplined will throw outright tantrums, later rationalized (though never excused) with the self-justification that "it had to be said." Well, it almost certainly did not have to be said, especially if it was disrespectful, rude, crude, loud, or inconsiderate. Loutish outbursts might feel good (just like betting heavily on rag hands), but they almost never accomplish anything positive.

But all of that is obvious. No one (well, almost no one) thinks it useful for lawyers to lose their tempers or behave badly. But there is also a more subtle lesson to be learned about steaming. Serious mistakes are more likely to happen when things are going wrong. Judgment becomes clouded when frustration sets in, and foolish temptations seem somehow irresistible. Perhaps the best example is the classic case of "one question too many."

By now, every lawyer understands (at least on an intellectual level) the lurking danger in asking one question too many on cross-examination. Having painstakingly trapped a witness in an apparent contradiction or impossibility, the lawyer is not content to leave the finishing touch for final argument. Instead, counsel attempts to deliver the *coup de grace*, asking the ultimate question—only to be grievously surprised by the witness's perfectly logical explanation.

One famous version of the story is told about the young Abraham Lincoln representing a defendant who was charged with biting off another man's nose. The prosecution called a single witness to the incident who testified that Lincoln's client had indeed done the atrocious act. On cross-examination, Lincoln set out to show that the witness could not have seen all that he claimed.[6]

Question:	The two men were fighting in the middle of a field?
Answer:	Yes.
Question:	You were birdwatching at the time?
Answer:	True.
Question:	Weren't the birds in the trees?
Answer:	They were.
Question:	And the trees were on the edge of the field?
Answer:	That is right.
Question:	So you were looking away from the middle of the field?
Answer:	I was.

5. BELLIN, *supra* note 2, at 131.

6. This iteration of the well-known story is adapted from the late Irving Younger's memorable lecture on cross-examination. Videotape: Basic Concepts in the Law of Evidence Series: The Ten Commandments of Cross Examination (National Institute for Trial Advocacy 1975).

So far, the cross-examination has gone swimmingly. The witness's head has been turned completely away from the action. Rather than looking at the middle of the field, where the fight occurred, he was eyeing the birds in the surrounding trees. Enough! Stop! Mission accomplished! But no, the cross-examiner made the fatal error of asking another question.

Question: Then how can you say that you saw my client bite off the other man's nose?
Answer: Because I saw him spit it out.

Lesson learned. The extra question must never be asked; it leads only to catastrophe. The best cross-examinations will surely be dashed to pieces on the shoals of the unnecessary inquiry.

Well, not really. In reality, it is pretty easy to stop after getting a good answer, satisfied that you have done your job. It is much harder to stop after a bad one, when the urge to salvage something can occlude good sense and good judgment. So good cross-examinations are not the problem; they are seldom ruined by extra questions, because good cross-examiners—with their wits about them and their goals firmly in mind—do not usually give in to the temptation.

Then what about Abraham Lincoln, a great lawyer if ever there was one? It turns out that his cross-examination was not ruined by asking one question too many, because, in fact, he was laying a trap. His next set of questions asked the witness how he was able to see the events so well, given that the fight occurred at night. The witness answered, "I could see by the light of the full moon." That might have seemed like yet another question too many, but Lincoln went on to impeach his testimony by reading from the Farmer's Almanac. There was no moon at all that night.

Abraham Lincoln knew where he was going and maintained his composure, even when confronted by a witness who was clearly lying. He was unlikely to make a mistake precisely because he was not on tilt.

The real problem arises when a cross-examination is already on the rocks, and the lawyer is flailing for something—anything—that might save the day. In that situation, it is all too easy to forget the rules, especially when a witness has delivered a nasty surprise. Another historic case, the 1951 prosecution of Julius and Ethel Rosenberg for espionage, provides an example.[7]

The Rosenbergs were accused of spying for the Soviet Union and delivering the secret of the atomic bomb to Russian agents. The principal witness against them was David Greenglass, Ethel's brother, who had worked as a low-level machinist on the Manhattan Project at Los Alamos, New Mexico. Greenglass testified that he had been enlisted in the Russian spy ring by his brother-in-law, whom he greatly admired. Fortuitously assigned to work at the facility where the bomb was being developed, Greenglass took notes and made sketches of the scientific processes, some of which he passed directly to Julius, and some of which he turned over to a courier named

7. This iteration of the Rosenbergs' story is drawn from Professor Douglas Linder's website, Famous Trials, http://www.law.umkc.edu/faculty/projects/ftrials/rosenb/ROSENB.HTM (last visited Oct. 11, 2005).

Harry Gold. In particular, Greenglass testified that he provided drawings of a top-secret, high-explosive lens mold that was essential to building a bomb.

The defense lawyer, Emmanuel Bloch, faced the daunting task of cross-examining David Greenglass. Bloch was a friend and supporter of the Rosenbergs who labored mightily in their cause, but he was not much of a trial lawyer. From the beginning of the case, he was overwhelmed and outgunned by the highly-experienced prosecution team, which included Irving Saypol, who had only recently secured the conviction of Alger Hiss. To make matters worse, the trial judge was hostile to the defense, and as was later discovered, the prosecution had withheld interview notes of their key witnesses.

Despite these obstacles, Bloch gamely attempted to undermine Greenglass's testimony. It did not go well from the beginning. The witness had already pled guilty to espionage, and he denied Bloch's assertion that his testimony was given in exchange for a lighter sentence. Greenglass admitted that he was a spy and a criminal, but he insisted that he had been recruited by Julius. In fact, Greenglass claimed, he had initially refused Julius's overtures, only to be persuaded by his repeated efforts.

Then, for a moment, the cross-examination seemed to make a bit of headway. Bloch was able to show that Greenglass had been a poor student, failing eight classes in high school, and that he had never studied calculus, thermodynamics, or nuclear physics. The implication, of course, was that Greenglass would have been incapable of assembling meaningful information about the technical aspects of the bomb project. Bloch continued along this line, planning to accentuate Greenglass's ignorance. Instead, he got a surprise.

> Question: Do you know what an isotope is?
> Answer: I do.[8]

Bloch should have known better than to follow up, but he was not willing to accept a bad answer. Gambling on a bad hand, he unwisely challenged the witness.

> Question: What is it?
> Answer: An isotope is an element having the same atomic structure, but having a different atomic weight.[9]

That was already one question too many, but Bloch was clearly annoyed at the ill-educated Greenglass's pretentiousness. Unable to resist temptation, he made the bad situation worse.

> Question: Did you learn that in Los Alamos?
> Answer: I picked it up here and there.
> . . . .
> Question: Can you give me an instance?

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8. Excerpts from the Rosenbergs Trial—David Greenglass, http://www.law.umkc.edu/faculty/projects/ftrials/rosenb/ROS_TDGR.HTM (last visited Oct. 11, 2005).

9. *Id.*

> Answer: A man came to me with a sketch with a piece of material and said, "Machine it up so that I would have square corners, so I could lay out a lens; come over and pick it up." I would go over to his place. He was a scientist. I would say, "What is the idea?" He would tell me the idea.[10]

Greenglass took advantage of Bloch's loose play to emphasize his own involvement in fashioning the critical lens mold and to highlight his access to the information eventually turned over to the Soviets.

Bloch made a crucial mistake because he was steaming. He was clearly angry at Greenglass—who had betrayed his own sister and brother-in-law, exposing them to the death penalty—for exaggerating his scientific knowledge. But just when a lawyer should have been most cautious, he plunged ahead, determined to recoup his losses by dragging something favorable out of Greenglass, no matter how bad the odds. In other words, tilt.

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10. *Id.*