

My Strangest Day In Court: Scuffle On A Courtroom Floor

By James J. Brosnahan, Morrison & Foerster LLP

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This article is part of a monthly series featuring attorneys' fascinating experiences in court. Here, James Brosnahan of Morrison & Foerster LLP recalls a struggle in a Reno courtroom. Brosnahan has been practicing trial and appellate law for more than 50 years. His client list has included 3M Co., former Hewlett-Packard Co. chairwoman Patricia Dunn, "American Taliban" John Walker Lindh and the California Citizens Redistricting Commission. He was named a "lion of the trial bar" by the American Bar Association Journal and was recognized as a 2012 Lifetime Achiever by The American Lawyer. Other honors include his induction into the State Bar of California's "Trial Lawyers Hall of Fame" and the Samuel E. Gates Litigation Award by the American College of Trial Lawyers.



James Brosnahan

This strange but true courtroom drama is about an experienced U.S. marshal minding his own business in a federal building in Reno, Nevada. He had been a marshal for 25 years — a Reno law enforcement veteran.

Reno was not unknown to me. Our family had been vacationing, hiking, and playing poker up the hill at Lake Tahoe for many years. On many occasions, I had driven south on Route 395 through the Carson Valley ranchland, enjoying the beauty of the eastern Sierras as they rise up to the west.

Reno was, and in some ways still is, a part of the Old West. A visit to one of the antique tchotchke stores on Virginia Street takes you back into Reno's colorful days. Continuous gambling, an annual rodeo and legal prostitution all trace their roots to Reno's frontier era.

I have never been sure why, but Nevadans never had warm, fuzzy feelings about tax collectors. A lawyer defending a tax-owing client is as likely to get a good result from a judge or jury in Reno as anywhere.



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I have handled two separate brothel cases there. In one jury trial, the federal government claimed withholding taxes on the theory that the women were employees and not independent contractors. That's right — the federal government wanted its share of the brothel's earnings. (I will let the reader decide the morality of that federal effort.) In that jury box were several matrons who seemed bemused by the conflicting and risqué evidence about the women's work procedures. We got a hung jury in that case, seven to five for our side if I remember, and the government went away.

On the day of this Reno story, I was making notes for an imminent final argument. We were in Reno's federal bankruptcy court. My client was on the stand under some final cross-examination by a California state revenue lawyer. If Nevadans are not generally fond of tax collectors, they love less the California tax collectors.

My associate Jennifer Small and I had obtained an acquittal for our client in the related criminal tax case in Sacramento, California. The California tax authorities had unfairly haunted our client like avenging angels for years. During the earlier criminal trial, with the key witness on the stand, I stood behind the tax agent in the cramped courtroom. Each time the witness made a key admission showing that the agent had rigged the evidence, I gently kicked his chair. It was the revenge of abused taxpayers everywhere.

Now, in Reno, the related civil tax bankruptcy case had gone smoothly, like any other civil tax case.

Focused on my final argument notes, I nonetheless noticed a pause in the cross-examination of my client. Then I saw a flutter of activity out of the corner of my right eye. I looked up at the witness stand — empty! I looked at the flutter, which was on the courtroom floor. My client had the diminutive California revenue lawyer by the throat. She was gasping for air.

For my part it was all immediate instinct: I grabbed the client, pulled him off the lady, and moved him to a neutral corner. I'm sure she was very shaken, although she did recover from this terrible event.

At this point, the judge hit the panic button that all federal judges have. He was standing, and the panic was not confined to the button. The door of the courtroom opened, and in came the chief marshal. His voice was measured and unexcited; his calmness was surreal. For half a second it occurred to me the marshal might think I was holding my client hostage and react to my detriment.

The judge pointed to my client and yelled out, "What happened?"

Still calm, with no weapon showing, the marshal asked, "Who is she?" — referring to the still-gasping victim on the floor.

The judge said, "She's a California tax collector."

"Oh," said the marshal. "That will be a misdemeanor."

And it was. Six months later, the judge ruled that our client owed no taxes. There are many great judges out there in America.

Jim Brosnahan is a senior trial counsel at Morrison & Foerster and author of the upcoming book, "Trial Lawyer."

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