

Opening Statement

Raise the Bar

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I love being a lawyer.

I love trying cases; I love solving problems for clients and courts; I love the loyalty and reciprocal generosity that come with practicing law at the same firm for almost 25 years; I love helping younger lawyers develop their skills and build their practices; and I love finding ways to provide something good to the community in which I work and live.

I still remember my first jury trial, 27 years ago, three months after I took my first job as a lawyer, in the U.S. Attorney's Office in Los Angeles. I remember the first line of my opening statement, the last question I asked on cross-examination of the defendant, and the exact moment the jury returned its verdict. These moments will be etched in my memory forever.

I have tried cases regularly since that first trial—even after leaving the U.S. Attorney's Office in 1981. Every trial, win or lose, is just as exhilarating as the one before (although I prefer to win). Every trial enables me to fight for my client, to promote the best legal system in the world, and to take part in a process that tries to ensure that decisions affecting people's freedoms, pocketbooks, and even their lives are made fairly and with proper respect for due process of law.

Yet it's not just a jury trial that gets me excited about practicing law. I like solving people's problems—and that's what we litigators do every day.

A few years back, one of my partners who does corporate transactions contrasted what he does to what I do. He said that he solves problems, and we litigators write briefs, argue motions, and try cases. True, we do all those things. But that misses the point. We litigators do all of these things in an effort to solve a client's problem. It just happens that our client's problem is now in litigation. No litigator worth his salt ignores that fact. You can write the best legal brief in the Western world and it won't do your client any good if her business goes bankrupt while you're handling the litigation or she's deported while awaiting trial. Good litigators develop a plan to achieve their clients' goals, not their own. When you do that, you not only comply with the ethics rules in every jurisdiction, you also achieve the greatest possible professional and personal satisfaction.

I've been lucky. I sense, however, that growing numbers of lawyers are not

achieving as much professional and personal satisfaction as they hoped they would when they decided to become lawyers. After joining my current firm in 1981, I began attending annual reunion dinners with former AUSAs. These were my comrades-in-arms during our formative years as lawyers. I enjoyed the reunions immensely—the food, the wine, the memories of trials of yore, and most of all the camaraderie. But, invariably, after swapping war stories for hours, the talk now turns to how happy these lawyers were in “the good ole' days” and how unhappy many of them are in their current jobs in law firms. As the years have passed, the unhappiness and frustration seem to have increased for many of them.

They're not alone. Over the years, it seems many successful lawyers are becoming more and more dissatisfied with the practice of law. More lawyers are working harder than ever, but enjoying it less. They feel the pressure of being on call 24/7, enslaved by myriad technological devices that once promised freedom from office demands. Some leave their firms and join new ones; others have chosen to get out of the profession entirely. Many lawyers, particularly lawyers with children, are struggling to find the right balance between their personal and professional lives—a goal that appears increasingly difficult to attain.

I've been both puzzled and saddened by this apparently growing trend: puzzled because I really do love being a lawyer, and saddened because so many lawyers, particularly younger lawyers, seem not to have had the same great experience.

When I was elected Vice-Chair of the Section of Litigation, I decided I wanted to do something about this growing problem. About a year ago, we established a small working group of Section leaders to delve into the issues facing the profession. As a first step, the Litigation Section began hosting focus groups of lawyers of different ages, probing them about their jobs: What they liked, what they disliked, what frustrated them, what they would change if they could.

Initially, I thought younger lawyers would voice different concerns than did older lawyers. To my surprise, we found similar concerns among all levels of seniority, indeed, among all lawyers. At the risk of oversimplifying, all of the

concerns fall into two basic categories. First, what used to be a “profession” has become a “business,” with the inevitable consequences of increasing hours, greater pressures, reduced loyalties within firms and with clients, less mentoring, less pro bono or public service work, and greater tension between work and personal lives. Second, litigators are not trying cases as often as they’d like—are not even getting into court as often as they would like. This has many consequences, not the least of which is fewer opportunities for training and career satisfaction.

These issues are enormously important to litigators and to the legal profession in general. They are so important that I hope to devote much of my year as Section Chair not just to talking about these issues but to doing something about them. This past May the Litigation Section hosted a two-day symposium in Chicago, “Raise the Bar,” to confront these difficult issues. We brought together more than 60 leaders of the litigation bar from across the country, as well as a number of provocative thinkers from outside the legal profession. Together, we probed and prodded five main subjects:

- Firm, Inc.: Law as a business.
- A Delicate Balance: Real work vs. real life.
- Partners and Associates: Can this marriage be saved?
- Living with Technology: And never sleeping.
- Sink or Swim: Who is mentoring and training the next generation?

The search for both the problems and the solutions was exciting and energizing. We did not simply lament the state of our profession; we also brainstormed solutions. While we accomplished a great deal over the course of two days, much work is yet to be done. We now have a Raise the Bar Task Force, dedicated to refining the creative solutions developed at the symposium—solutions we intend to propose to the ABA House of Delegates in 2006. As part of its charge, the task force is also working on a book that will thoughtfully address these issues and discuss solutions. I would like to see these topics discussed throughout the profession.

So far, the task force’s work has deepened my understanding of the causes of

the growing dissatisfaction in our profession, and also of the potential answers. Here are some of my ideas that have emerged—ideas that I know the task force will develop far more than this column’s remaining space will allow.

1. *Find opportunities to try cases.* This is especially important for younger lawyers, but the rule applies to older lawyers as well. On so many personal and professional dimensions, there’s nothing like the experience of taking a case all the way to trial. Trying a case provides the greatest training a litigator will ever get—training that will serve that lawyer well not just in her next trial but in every case she handles thereafter.

There are still cases being tried every day in the courts in this country. If those cases are not in your firm, find them. Take on pro bono cases that are headed to trial, or convince your firm’s management to take on cases for a reduced hourly rate or even a limited, fixed fee. It will be worth the effort and financial sacrifice. After every trial, we enjoy practicing law more, and we develop more skills for the future.

2. *Learn from other lawyers.* I always said that I learned more in law school from my fellow students than from the professors. The same principle applies in the practice of law. Find out who the best lawyers in town are, and find ways to learn from them. Watch them try cases; read their briefs; watch them argue motions before a judge.

When I was first starting out in the U.S. Attorney’s Office, I went to court to watch the best lawyers in the office display their skills. When I first joined my firm, Ron Olson, the firm’s senior partner and a former Chair of the Litigation Section, told me that he did the same thing, walking over to court every time he found out that Joe Ball (one of the greatest trial lawyers in the history of Los Angeles) was in trial. Neither Ron nor I have stopped. I still jump at any chance to watch the best lawyers—or, better yet, to work with them on a case.

3. *Bridge the generational gap.* The younger lawyers entering our profession have grown up in the electronic age, while we older lawyers still remember manual typewriters. The

younger lawyers are used to communicating by e-mail and instant messaging (“IM-ing,” my teenage daughter calls it), while we are more comfortable meeting for lunch or talking on the phone. We entered the profession when it truly was a profession; now it’s more of a business, filled with megafirms with multiple offices around the globe.

While these differences undoubtedly exist, we still share so much in common—most significantly, the desires to hone our skills, enjoy our practices, and help our clients. If you are a more senior lawyer, find opportunities to mentor a younger lawyer, teach her how to take a deposition or prepare an argument. If you’re a younger lawyer, find opportunities to help a more senior lawyer and, in the process, learn from that lawyer’s experience and judgment.

The bottom line is that we all have so much to learn from one another. Take advantage of those opportunities. Our practices, our satisfaction, indeed, our profession itself depend on it.

4. *Find the right balance between your professional and personal lives.* All lawyers need to find the right mix of commitments to their jobs, their family and friends, and themselves. That balance is not the same for every person. Search for the balance that is

right for you, and do your best to keep it. You owe it to yourself.

I recognize that finding the right balance is easy to say but much harder to do, particularly in a world where you can be reached by e-mail or cell phone every minute of every day in almost every country in the world. And that says nothing about the pressures of working as a lawyer, whether you’re on your own or part of a large, multinational law firm.

But lawyers and law firms need to find ways to help all lawyers find the right balance in their lives. We need to find ways to accommodate lawyers who would prefer to work less than full-time or on an alternative schedule. Otherwise, lawyers will burn out and leave the profession. Eventually, the best and the brightest will stop going to law school altogether, depriving law firms and clients of the skills of the most talented young people we have.

5. *Give back to the community.* Practicing law can open up many doors besides those to clients’ offices. By and large, most lawyers still achieve some degree of financial stability, stature, and contact with other leaders in the community in which they live. Use these opportunities to devote time to the less fortunate in your community, indigents in need of

legal services, schools in need of mentors or coaches, or charitable organizations in need of board members and volunteers.

Throughout my own legal career, I have found extremely rewarding each opportunity I’ve had to serve the underprivileged or my community. Not only are these opportunities psychologically rewarding, but each and every one of them has made me a better lawyer. They have made me feel better about myself and helped build my confidence in the judgment calls I’m asked to make every day for my other clients.

All of us should continue to find time for public service. It’s one of the most important commitments we as lawyers can make, and it’s one of the greatest contributions law firms can make to the communities around them.

It’s an honor and a privilege to chair the Section of Litigation of the American Bar Association. Lawyers have unique opportunities in our society, and with those opportunities come special responsibilities to one another, to our profession, and to our communities. I am looking forward to working with all of you and to meeting our responsibilities together. □