



The Only Trick I Know

Several years ago,
the great jazz singer, Jon Hendricks,

starred in an exhilarating review he created, *Evolution of the Blues*.

He was on stage singing and dancing the full hour and a half of the show. After receiving a standing ovation, he moved to the lobby to sell his album. As I was buying an album, I asked him, "How do you maintain your energy and enthusiasm for the entire show six nights a week?" He shrugged and answered,

"It's the only trick I know!"

For a long time, it bothered me that the practice of law is pretty much the only trick I know. I felt that I should have been more diversified and have more accomplishments. When I turned fifty, I strongly identified with the famous statement, "By my age, Mozart was already dead for fifteen years." I saw others turn away from the practice of law to become investment bankers, journalists, theologians, gurus, or—even better—clients. Many of them spent months or years finding themselves (something I had difficulty attempting since I almost always could pinpoint my exact location). It certainly seemed that I had let the parade pass me by in staying with the practice of law for such a long time.

But my view has changed, in good part due to my involvement in the American Bar Association (ABA). Beginning in 1966, I became active in the Public Contract Section of the

ABA because it was an extension of my practice in government contracts. By 1995, I had been around for so long that, when the Public Contract Section's turn came for a seat on the ABA Board of Governors, I got the call.

In my third year on the board, I was appointed the chair of the board's Finance Committee, largely because I was the only person eligible who was intellectually committed to double-entry bookkeeping. As chair of the Finance Committee, I endeared myself to ABA staff and volunteers by leading the effort to cut many entities' budgets. This in turn caused some of my friends on the board to encourage me to run for treasurer, apparently on the theory that there were some entities that had escaped my attention during my board term.

To be elected treasurer, I had to get to know the sixty-seven members of the Nominating

by ALLAN JOSEPH



Committee, and obtain support from thirty-four of them.¹ It turned out that the most critical skill was having the ability to interpret their responses, which ranged from “You have my vote” (which probably meant I had that vote) to “You would make a fine treasurer” (which meant I ain’t gonna get that vote).

I knew a few of the nominators when I began my calls, but most were just names on a page. In talking with the nominators, who represented each of the states, D.C., and Puerto Rico,² I was struck by the universality of the lives that lawyers lead, irrespective of region or accent, and the similarity of the problems and stresses that they face. I was even more impressed with how hard most lawyers work, and the pride they take in their practices. Sure, there was some griping about the practice of law, but mostly the lawyers I talked to believed that they had made a difference in their communities and the lives of the people they had represented. I was overwhelmed by the time and energy that lawyers spend on activities that are of great benefit to society, but that are seldom acknowledged in the media.

Running for national office in the ABA has given me great respect for the bar and renewed my belief in the importance of what we do. At the most basic level, it confirmed the view from a noted philosopher of our time, James Carville, who described the importance of labor honestly applied.³ I also became aware of the significance of the practicing bar in this country.

Ultimately, I managed to convince forty-seven members of the nominating committee to vote for me, so I am now in the first year of my three-year term as ABA treasurer. I describe all this because it is interesting to me. More importantly, serving on the Board of Governors and as treasurer of the ABA has given me valuable insights into the importance of lawyers to our society and has done a lot to validate—or at least rationalize—my decision to remain a practicing lawyer for forty years. And it has helped me remember the things that I really love about being a lawyer:

1. Somehow, I never lose the wonder that goes with being able to say, “Good morning, your honor; Allan Joseph for the Acme Widget Company.” I get nearly the same feeling of pride when I phone another party’s lawyer in a transactional matter and say, “Hi, I represent John Smith, the buyer in this transaction.” It is nothing less than a privilege to be selected to be the spokesperson and champion for someone else in a dispute or other legal dealing.
2. I have come to appreciate that I have a connection with lawyers throughout the country. This was expressed much

more effectively by Justice Anthony Kennedy in a talk he gave at the 1997 Annual Meeting of the ABA in San Francisco:

“We have a bond because of our common heritage and our common law school training, and so we speak to one another in a common language, the language of the law. One of you can pick up a telephone and talk to a lawyer whom you have never met and who is separated to you by one continent or perhaps a generation or two. Nonetheless, you know each other in the sense that you have this bond and speak this language of the law. The language of our profession is one of our great national resources. It is the envy of many other people and many other societies.”

3. I greatly enjoy being given the responsibility to deal with a very difficult, nearly intractable legal problem. Of course, being able to make progress in a difficult case requires a mastery of the facts and the area of law, but I believe the key factor is to use good judgment to expend your energies and “silver bullets” on the points that will really make a difference. I have never understood those lawyers who treat a legal matter like a prize fight, with the winner judged on who comes out ahead on points.
4. I also believe that the law is very much like physics or mathematics, where the elegant proof is the most effective and satisfying. That means that the presentation to a tribunal can be simplified to its basic truth and that the most complicated agreement can be set out in such clear language that it can be understood on the first reading. There is almost nothing better in the law than crafting the perfect sentence, with exactly the right content and cadence.
5. Perhaps my absolute favorite thing about the law is the opportunity to develop enduring friendships with the lawyers on the other side of cases. It has always struck me as almost too good to be true that we, as lawyers, get to engage in hard exchanges—with heartfelt emotion—and then are able to leave the courtroom or negotiating table with everyone’s dignity and self-respect intact. I have always felt that a hard-edged approach to the practice of law is greatly overrated and that patience, agility, sincerity, and decency will prevail over histrionics in almost every instance.

It is dispiriting that the general public has the view that greed and duplicity are primary characteristics of lawyers, particularly when such appellations are inconsistent with what we know about our colleagues and what each of us strives for every day. To overcome this perception, I believe it is critical to return the profession to the level of respect it enjoyed when I first became a member of the bar forty years

FOR YOUR INFORMATION

In 2000, the median annual earnings of all lawyers was \$88,280.

Bureau of Labor Statistics

ago. In making this point, I fully acknowledge the fact that the civility of that time was accompanied by severe and inexcusable discrimination against women and minorities,

and that confrontation was necessary to begin the process of leveling the playing field. But, without ignoring what needs to be done to eliminate the final vestiges of that discrimination, I flatly reject the notion that civility, decency, and respect cannot exist in a bar that is color and gender inclusive. I suggest that there are important values that were found in the bar of forty years ago and that the future of our profession depends on recapturing those values.

I do not underestimate the difficulties in reaching this goal. For one thing, it may not be easy to agree on the values that we are attempting to re-establish. But, I think the original "Golden Rule" —and not the cynical version that "he who has the gold makes the rules"—is a good start. In addition, we tend to confuse principles of conduct with the rules of ethics, which serve a related but not entirely congruent purpose. Ethics rules are meant to be parsed and interpreted. A lawyer can go right up to the boundaries of the ethics rules, so long as he or she has correctly determined those boundaries. By contrast, a lawyer should not veer from the center-line of a code of conduct, since the code is meant to define how we behave as a professional culture. And, unlike ethics rules, codes of conduct are always intuitive.

A good friend, who is a leader of the bar in a medium-sized city in a small midwestern state, told me this story: A local lawyer made a highly improper statement during a trial. Within a few days, my friend received a call from his chief justice asking my friend to talk to the lawyer and let him know that such statements would not be tolerated. My friend made the call, and the lawyer has not repeated that type of conduct. That story tells me several things: The trial judge thought it was important enough to bring the matter to the attention of the chief justice. The chief justice understood that it was his responsibility to keep the conduct from happening again. My friend knew he had a responsibility to quietly and privately take action to maintain a high level of

professional discourse in his community. And all of them (including the miscreant lawyer) understood that peer pressure is much more effective and positive than contempt citations or the bar disciplinary process.

It is not easy to transpose that story to California with its 188,000 licensed lawyers, or even to San Francisco's 16,599 lawyers. Chief Justice George likely has other things to do than to police the behavior of the entire bar. But, that doesn't mean that we should ignore the problem. We just have to conduct the dialog on a larger scale. We have to recognize that all of us have the responsibility to upgrade the level of professional discourse. We cannot expect the public to respect our profession if we are unwilling to respect each other. The process must begin with the chief justice and other members of the judiciary making it clear that a high level of professionalism is a priority. Civility and professionalism should be a required part of the law school curriculum and they should be made a priority of the organized bar. If we are to have mandatory CLE subjects, we should follow the lead of Arizona and Georgia, and include a well thought-out program of professionalism. Finally, each of us has to take seriously our role as officers of the court, by not encouraging or even tolerating conduct that we know is inimical to the professional practice of law.

So, the good news is that even if the practice of law is the only trick you know, there is hope for you. After forty years of doing this, you may be lucky enough to get someone to give you a chance to burden the entire San Francisco bar with your rambling thoughts.

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1. The ABA elects its officers much the same way that Politburo selected its leaders in the former Soviet Union, except that in the ABA the losing candidates are allowed to live . . . and run again.
2. As ABA treasurer, it is probably important to show that I can count, so I should recognize here that this adds up to only fifty-two state delegates. The other fifteen nominators are section, women, and minority members at large.
3. Mr. Carville won my admiration when in 1992, after serving as President Clinton's chief campaign strategist, he declined to accept a position in the Administration, stating simply: "I'm not fit for public service."