

The Journal Of The Section Of Litigation

American Bar Association

Litigation

Vol.24 No.1 Fall 1997



Choices

The Life

by **Kenneth P. Nolan**

I never wanted to be a lawyer. I never even heard of any kid whose life-long ambition was to be the next Clarence Darrow or argue before the Supreme Court. Joe Kelly wanted to be Ernie Banks. Joey Hajar dreamed of roaming center field in Yankee Stadium like the Mick. As a short, skinny kid, I wanted to dribble through a crowd and wow them like Cousy.

Joe Kelly delivers mail and the Haj owns a pool business in Austin. I became a lawyer and it ain't so bad. Of course I would still like to be John Stockton throwing the no-look to the Mailman. Or making a three with time running out to finish the Rockets. Maybe in my next life.

But I'm tired of all the whining and moaning, as if legal work mirrored working the dust-encrusted coal mines of the '30s. Isn't it terrible that our lofty profession—which once consisted of gentlemen whose word was sacred—has degenerated into a business where adjournments of minor matters must be in writing with affidavits? I can't browse a legal publication without some graybeard lamenting the loss of camaraderie. Or some judge in her black robes, who hasn't bought a meal since ascending her throne, decrying the loss of courtesy. Or some wide-eyed, Generation X, spoiled suburbanite with an expensive Ivy League education wailing that the legal profession doesn't do enough for the poor. And, by the way, that six-figure salary just isn't enough to pay back those student loans and a trip to Aspen.

We so want our profession to be perfect. We want to be loved and respected by the public. We are indignant when one of our own steals, cheats, or even acts rudely. Let's legislate rules to compel our legions of colleagues to act like Mother Teresa. We seek an ideal that doesn't exist, that probably never existed. I was always taught that we are born imperfect subject to temptation. And in my world, even my guardian angel loses an occasional struggle with Satan.

So, if I always wanted to be treated with respect, I would have been a bartender or changed my name and joined the Gambino crime family. And if I really wanted to dedicate my

life to others, I would be still teaching English in John Jay H.S. in Brooklyn, or I would have joined the Jesuits and worked with the peasants in Guatemala. And I don't mind another lawyer cursing me out occasionally. I've been called worse and by those who love me.

Let's face it. Law is a business—a big tough business. But it's a good one and we should be proud. Most of the time we have work to do and we struggle through it. Occasionally, however, we do good—help the widow, change the unjust law, or even aid the multinational corporation. Of course we think of fees. But I have met only a few people who aren't concerned with money and they usually wear clerical garb and take the vow of poverty. As a profession, we are better than most. As a lawyer unable to tell the truth, Jim Carrey was hilarious in *Liar Liar*, but he's a caricature. Don't be afraid to laugh at lawyer jokes, most are pretty funny.

So what are we? Huge firms with hundreds of lawyers, offices around the world, millions in revenues, partners working crazy hours with pressures enough to drive you to a third martini. And like any business, there must be profits and advertising and tough decisions based not on personality, but on productivity. And who didn't know this when they started law school?

Of course I wish it could be different and maybe it once was. Where friendship was valued above money, courtesy was the norm, and summer vacations actually existed. But that isn't the real world. Ask Jack Welch of GE or Michael Eisner of Disney if they have pressures. Ask if they work weekends or ever fired a friend. Ask them how long they would remain CEO if their company lost money.

In my Brooklyn neighborhood, I was taught that work was good. If you wanted to buy something, you had to work. Your parents worried about making it from paycheck to paycheck, never mind the baseball glove. So we had paper routes or delivered groceries or sold popcorn in the Prospect Park zoo. Nothing was owed and nothing was given to you. If you wanted it, you earned it. And you had to work at everything, including education and sports. And sometimes, no matter how hard you worked, another would

Kenneth P. Nolan, Editor-in-Chief of LITIGATION, is with Speiser, Krause, Nolan & Granito in New York City.

get a better grade or make the crucial jump shot.

Our concrete schoolyard with its six hoops was the playground for the 1600 children who attended my grammar school. Only the team that won continued playing. If you lost, you sat and waited your turn. Or you would go to another court and challenge a smaller team. Everyone wanted to play, but if you stunk, you weren't included. That's tough when you're 10, but disappointment and defeat were learned early. You became resilient and faced the next challenge.

So it is with lawyers. The interminable hours spent studying the Uniform Commercial Code don't entitle you to success. Don't equate the horrific law school years with the three-and-a-half years my father spent in Africa and Europe fighting World War II or the time my partner Gerry Lear spent in Vietnam piloting helicopters. Those with some intelligence who work diligently will succeed. Yet on occasion, another less deserving will win the case, become partner, be interviewed on the six o'clock news. Life is unfair, as Jack Kennedy once noted. And his death proved he was correct.

Count Your Blessings

Yes, law is work—hard, monotonous, demanding work. Accept it and stop complaining as if you thought every day would be golly-gee terrific. Keep it in perspective. Compare it to a cop or a factory worker or my wife's job as mother of four. And most of the moaning is from men, not those lawyers who are also mothers, whose days begin when they arrive home. We shouldn't have to work so hard. We should make a ton of money without having to stay in the office past six. Too often we sound like, well, spoiled brats.

We work in offices and deal with people and paper. The only calluses on my hands are from holding my golf clubs too tightly. And even the most inexperienced law school grad earns three times what a teacher makes after 20 years struggling to teach 30 bored teenagers. We're not on the street chasing some low-life scum whacked out on drugs who would just as soon put a bullet in your face, or welding thousands of the same doors on the Taurus dreaming daily of Florida retirement to escape the monotony that crushes the spirit. And the firefighters, farm workers, and waiters will never earn the \$90,000 that the first-year associates make at the white-shoe firms. Ask

your cleaning woman if she would work 80 hours a week to earn \$75,000. The truth is she probably works harder for much less. And that you have a cleaning woman speaks volumes. Don't be afraid to count your blessings.

And there are other careers. Litigation is a grind and not the best choice for all. Just because your mother introduces you as a "Big-shot lawyer" doesn't mean you're a failure if you give up the big bucks for journalism, art, or raising children.

I am sure there was a time when it was different—when a handshake was all that was necessary. A written contract was superfluous. After 20 years of practice, I find that another lawyer's word is sufficient for an adjournment, to settle the case. It is rare that I have been screwed by one who lies and cheats. Sure I want all agreements memorialized, but I'm a paranoid New Yorker. And why is that so bad? Was it really that much better years ago? Most attorneys can be trusted. Most are honorable. A few are snakes and a few will serve papers Christmas eve. Put such behavior in the memory bank and remind them when they need a favor.

Sure, I've acted rudely, made a young lawyer cry at a deposition and drove a judge to use a famous four-letter word. And I've done some things that I dare not reveal except in the confessional and would rather forget. And I'm ashamed. As I age, such idiocies lessen but may happen again. I'm far from perfect, ask my partners. But most of the time, I try to treat people fairly and almost always I'm treated with courtesy by my adversaries.

Even most judges accommodate your schedule. Sure a few are bitter, power-mad egomaniacs who revel in making your life miserable. Others are partially corrupt or dumb as a bowling ball. But what occupation is exempt from such? Yet most judges try to do the right thing. They run an imperfect system imperfectly, but 90 percent of the time it works. Only the exceptions are heralded in the newspapers.

Communicate the Good

I'm not a big fan of advertising. I would prefer that reputation and experience determine who is retained. But even Muhammad Ali had to tell everyone that he was the greatest. So we have firm brochures and newsletters and copies of newspaper articles. Again, most are tastefully done. The public, however, only sees the billboard with the car wreck and the 1-800-Get-Rich telephone number. I, too, would rather not have my nonlawyer friends snicker when the crass ads are viewed, but I don't accept those as a reflection on me or my profession. I know better.

Our problem is that we do not communicate the good. We're like the 10 o'clock news—only crime, disaster, and tragedy are broadcast. Our countless works of mercy are ignored. Even the organized bar is partly to blame. Its leaders are forever forming task forces to deal with misconduct, discovery abuse, or incivility. Or passing resolutions to compel diversity, continuing legal education, or pro bono activity, as if we were ignorant, racist paparazzi who wouldn't lift a hand to aid another unless there was a \$100 bill attached. I realize that we lawyers should always strive for perfection. I also realize that that's not going to happen. Some friends have been disbarred.

But let's celebrate our accomplishments. At least occasionally. I have made good and loyal friends, I have supported my family, I have been intellectually challenged, I have won and lost, I have done good and not so good. I never planned on being a lawyer, but I'm glad I did. □

