

Metro

So You Want to Be a Trial Lawyer

Personal injury practice offers the highest highs and the lowest lows. **By Wayne Cohen**

When I began my legal career at Shaw Pittman, a large firm based in Washington, D.C., I would have given 1,000-to-1 odds to anyone who wanted to bet me that one day I'd become a "personal injury lawyer." The idea had never crossed my mind.

Why should it? Even as a first-year associate, I enjoyed the benefits that a major firm had to offer: a well-equipped gym, a wonderful dining area, a squash court, and a secretary.

But after a few years, I had all too thoroughly learned two important lessons: (a) that working for large firms means mainly working for corporations, and (b) that litigators in large firms rarely go to trial.

Don't get me wrong. The people at Shaw Pittman were intelligent, articulate, and hard-working, and the firm itself provided an excellent training ground for a young lawyer beginning his career. The high salary helped, too.

But the reality of life in a large firm is that young lawyers don't see courtrooms. They see their offices. They see libraries. They see rooms filled with documents. But not courtrooms.

Still, there are many practice areas that offer courtroom experience and human clients. Why choose a career in tort law? If it's true that most people hate lawyers, then it's axiomatic that all people deplore personal injury lawyers. Personal injury lawyers advertise on television—sometimes late at night—and in the Yellow Pages. They are aggressive, if not downright pushy. They are the thorn in the side of the smooth, orderly management of corporate America.

To go from the prestige of one of the largest law firms in Washington to the obscurity of a then-solo practice focusing on

personal injury cases was a big leap. Shortly after I gave notice of my departure from Shaw Pittman, I overheard a few of my colleagues commenting that I had gone mad. "Is he really going to be a PI lawyer? That's disgusting . . . and nuts."

Partners at the firm came to see me to persuade me to stay. My assigned mentor spent hours trying to get me to change my mind: "Wayne, you're on track to have an excellent career here. Don't do this. Don't throw all this away for . . . that."

I didn't listen. I was determined. I knew that I wanted to try cases. I wanted to help people who truly needed my help. I wanted to right some wrongs. So I gave notice to the firm and hung out my shingle. I had no money, no cases, and no immediate prospects. But I had the chance to be the kind of lawyer I had dreamed about.

DAVID VS. GOLIATH

How's it going 10 years later? My solo practice has become a seven-lawyer firm. In one year alone, I tried 18 jury trials. In another year, I calculated that I spent more than 10 solid weeks of my life in a courtroom. And in the process, people who really needed compensation got it.

Personal injury litigation generally means representing people without financial means against people with financial means. That is not to suggest that all injured victims are poor. But it is to suggest that all injured victims are poor when compared with the defendants against whom they fight. Health care providers, product manufacturers, and automobile insurers all maintain resources that trump those of almost any individual short of Bill Gates. Every case necessarily becomes a battle of David vs. Goliath.

Because the party you're fighting is always stronger, you have to gird yourself mentally. The effective personal injury lawyer must have confidence, intelligence, and, most important, no fear.

'SURVIVAL OR RUIN'

The trial is the ultimate challenge for any attorney. The famous Chinese general Sun Tzu put it best in *The Art of War* when he said of war—but it applies to personal injury litigation as well—that it “is a matter of vital importance . . . the province of life or death . . . the road to survival or ruin. It is mandatory that it be thoroughly studied.”

The trial is when opposite parties meet, and the truth—if the system works—emerges. For the plaintiffs lawyer, the trial holds out the potential for justice, for it can right a wrong and send a message.

Because plaintiffs lawyers are so vested in their cases, trials bring the greatest highs together with the deepest lows. I recall vividly one of the first cases I ever tried. In a minor automobile accident, my client suffered soft-tissue injuries but no broken bones. The dispute was over which party had the green light. I lost the case. The jury found for the defendant.

It was true that my client thanked me profusely, the judge complimented me, and opposing counsel was gracious in victory. But still, I lost. For weeks, I was depressed and could not get the case out of my head. Then one morning, I received a call from one of the jurors who had voted against me. He had been in a serious accident and wanted me to represent him. I asked him why in the world he wanted me. After all, see above.

His response: “It was clear that you believed in your case and in your client, and you’re a fighter.” When I asked why then the jury did not find for my side, he said that it was a matter of the parties, and not the lawyers.

Facts are facts. Of course, I chose litigation because lawyers can make a huge difference in cases. But evidence counts, too.

THE BEST DAYS

The highs of winning a case are perhaps even greater than the lows of losing. Trials themselves are roller coasters, both for the lawyer and for the client. One side may call a witness who offers favorable testimony on direct examination, but then gets her legs cut out from under her on cross. Another witness may be converted from hostile to friendly by creative interrogation. Reality doesn’t always follow the plan.

In one substantial medical malpractice case, the defense called a physician to testify against my client. That’s routine, but this testimony was so strong that I turned to my co-counsel and mouthed, “We’re dead.” What could I do?

Choosing honey over vinegar, I cross-examined the witness on basic points: Was my client truthful? Yes. Was he, the doctor, being paid by the defense? Yes. Didn’t he spend a mere five minutes examining my client at the request of the defense? Yes. By the end of the cross, the doctor was visibly defensive.

This was not a brilliant strategy demanding Perry Mason-like insight. It was simple. The point, however, resounded in the courtroom. In closing, the defense apologized for calling the witness. The jury disregarded the doctor’s testimony and found for my client. That was a high.

LEARNING TO FIGHT

I’m often asked how the trial lawyers at our firm get trained. The answer is: the same way I did. Trial skills can’t be learned outside the courtroom. Yes, you can read books. Yes, you can attend seminars. Yes, you can watch videotapes. And you should do all those things.

But study all you want, and still no one performs a perfect cross-examination or closing argument on her first attempt. There is no substitute for being in the trenches.

That is not to suggest that practice doesn’t help. In our firm, lawyers of all skill levels discuss their cases during our weekly meetings. If a particular attorney has a trial coming up, she gives her opening statement, performs a mock cross-examination, and plays out other aspects of the case. And the rest of us listen and offer opinions.

As a firm, we also periodically take smaller, less complicated cases that may not be economical so that junior lawyers have a chance to cut their teeth. The result: It is not uncommon for a lawyer at our firm to try a dozen cases before her second year of practice.

Perhaps the best training that I personally received for being a trial lawyer came in my 10 years of boxing. From high school through law school, I learned some valuable lessons in the ring.

I learned that those with the biggest muscles don’t necessarily hit the hardest. Application to the courtroom: Those with the most resources don’t always win.

I learned that even though you may lose a few rounds, you can still win the fight. Application to the courtroom: Keep your chin up even when you’re down and you’re handed bad rulings and the witnesses against you sound very convincing, because a good closing argument can win the case.

I learned that preparation before the fight often determines who wins. Application to the courtroom: The better a case is litigated pre-trial, the more likely you are to win at trial.

Most important, I learned in the ring that even good boxers lose sometimes. And though we hate to admit it, so do good trial lawyers. But I love the fight.

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