

## WHO IS A LITIGATOR?

By

Honorable William Sheffield  
Formerly Judge of the Superior Court of California

I entered the legal profession about 37 years ago graduating from UC Berkeley School of Law (Boalt Hall). Those were the days when tuition was \$195 per semester and the Berkeley Free Speech movement was winding down. Having spent the last 37 years rattling around the courts either as a trial lawyer, Superior Court judge, Pro Tem Justice of the Court of Appeal and full time mediator/arbitrator for 14 years, I feel qualified to offer a little reflection on our profession and who we are as litigators.

I can't imagine being a lawyer and not a litigator. Like if I were a doctor I couldn't imagine not being a surgeon---probably brain surgeon. A litigator is confident, gregarious, humorous, egotistical, courageous and smart. Of any group of people there is none I'd rather hang out with than litigator lawyers. Yes, some are more than I can take, being so self centered it's impossible to get close to them, but by and large there're my kind of folks.

A litigator is at the core of a very noble profession. Of all the professions I could have chosen law wins hands down. As a teenager two lawyers inspired me---sorry to say not Clarence Darrow or John Marshal or even Melvin Belli---but were Algonquin J. Calhoun (Kingfish's lawyer on Amos n Andy---Calhoun always objected to the court that "...not only do I oppose the allegations, I oppose the alligator...") and Perry Mason. I don't know why...but I loved both.

I began my passionate love affair with the law the very first day of law school at the beginning of my first class---contracts. Thirty seven years later I still find resolving a legal problem exhilarating, thrilling and a singularly great adventure knowing that somewhere in all those books is a case that says just what I want it to say. When young men and women ask me whether they should "go into law?"...and "isn't the market saturated?" I say without equivocation: "Yes, become a lawyer...it remains, at least in my mind, the best profession around...but do so for the right reasons---you want to serve people; fight for justice; guard the constitution; speak for those who can't effectively speak for themselves. If you opt in with that attitude you will be richly rewarded...and no, the market is not saturated! There is always room for another warm and courageous heart."

Some will tell you law is a science and being a litigator is being a scientist. Don't believe them! What happens in the courtroom is art not science. A litigator is an artist, a sculptor. Who wins and who loses in the courtroom results from which side can best shape the rough stone block perspective of the decision maker---the judge, juror or arbitrator. A litigator's job is to do his/her best to shape that rough stone of a person into

one whose thoughts and conclusions harmonize with your client's side of the case. A litigator leads the juror into hindsight, recreating the past by weaving facts and law in such a way that will, hopefully for the client, inevitably lead that decision maker to conclude his client's side of the case is the right one. The difference between science and art is that in science---take mathematics for instance--- 2 plus 2 is always 4. A good litigator might argue it's 5, but the truth is---4 is the answer...and that's because math is science. Law is perspective and you get there by the artistry that is in persuasion. It's perspective because getting at "truth" requires the rough stone juror or judge to go back with you in time as you try to recreate and reshape what may have happened years ago---no instant replay, no video, no crystal ball---only perspective---and, not to be pejorative, spin. You see it one way, I see it another...which is right? Depends on what the jury says and that depends on their perspective shaped by your persuasive artistry. So, as I tell litigants---there really is no "truth" in the courtroom, only perspective. It's this reality that makes the courtroom risky business...with good lawyers on each side of the case trying to sculpt the juror's perspective to harmonize with their side, what begins in the mind of the parties as black and white and a dead bang winner, turns from black and white to mushy gray...when the spinning is over. There are only two certainties in the courtroom: You don't know what's going to happen, but you do know that whatever happens will be expensive.

Know also that a litigator's professional and personal life won't be easy and like the courtroom can be risky business. They say law is a jealous mistress---true...beware of getting sucked into a black hole that could cost you your marriage, your children and your health if you're not wise enough to step back and look at the big picture, your place in it and where you may be headed given your current course. Noble and worthy as it is, the law must not become our Raison d'etre...worthy and as majestic as it can be isn't there some higher purpose...some greater reason for our lives than merely moving from one lawsuit to another until we drop? Everyone must seek for and discover for themselves what that higher purpose is, but I suggest until you engage in that discovery adventure and adopt that higher purpose as your guiding life template, you are likely wasting time--your most valuable asset...Our profession facilitates our ability to go for the higher good...whatever that may be for you. But believe it or not, time is short...live each day as a precious gift...take it from me as one who knows and as Sinatra sings in his "September of My Years": "One day you turn around and its summer, next day your turn around and its fall---all the winters and the springs of a life time---whatever happened to them all?"

Guard relentlessly your wife and family and your relationship with them. As a lawyer/litigator the most common complaint you'll hear from your spouse and children is "you work too much." It took me 35 years of marriage to be sensitive enough to read between the lines of what my wife (and children) was really saying. She wasn't saying "I want you home 24 x 7", she was really saying "I don't feel important to you..." Our challenge is to communicate to our family how important they are...I've found that very small things can communicate a huge message. For example I use my cell phone to text message my wife at least once a day...typing "TOU"---"thinking of you." Not much time taken out of my day...but a huge payoff when I get home. My point is be careful,

be wise and be sensitive to the bigger picture that is your life. You're the master sculptor of whatever remaining time you're given. Shape it with wisdom, confidence, creativity, powerful dreams and out-of-the-box thinking. Don't let the thrill, the adventure, the drama, the money, the ego strokes...the work...that it is being a litigator divert you from your higher values...let the law be your means not your mistress.

All in all, you're part of the noblest profession of them all. Many have gone before you righting wrongs, laboring for the unprotected, speaking for an otherwise unheard voice, challenging oppression and guarding democracy. Rather than your profession controlling you as a "jealous mistress", see her as your opportunity to exercise the potential potency endowed upon you the day you were sworn it. Regard your place in the legal profession as an opportunity to minister to the needs of your clients...always give them more than they pay you for...a part of you that can't be bought and won't be compromised that part of you dedicated to easing pain, bringing peace and solving problems.