

Opening Statement

FIVE TRAITS OF THE BEST LAWYERS I KNOW

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Most of what I know about litigation I learned from other lawyers. Sure, I learned from my own experience and mistakes. But just as surely, I borrowed from lawyers I admire and consider “the best.”

Good litigators come from all manner of backgrounds and practice settings.

But the best litigators I know share certain traits in common. If you follow some or all of these traits in your practice, then you are on my list of best lawyers, or you are well on your way.

1) Put Yourself in Every Chair at the Table

In my experience the best litigators focus on people and their needs. They work to understand the social dynamics at play in every case, and they use that understanding to their clients’ advantage. I am not referring here to social intuition, although that is a plus. I am talking about the consciously acquired skill of understanding how people think and act.

Of course, the starting point for any litigator is to understand your own client and the case at hand. Good lawyers ask, “How does my client define victory?” “How realistic is that outcome?” But the best lawyers go further to envision every player in the case—and their lawyers—sitting around a table. Best lawyers imagine themselves sitting in each chair and they consider how each person might define victory from where they sit. What are each person’s strengths and vulnerabilities? Is this dispute only about money? Are there components of embarrassment, saving face, cover up or emotional wounds in the mix? Perhaps there is a simple need to vent anger or frustration that might dissipate with time. Who has the moral high ground? Is that the same as the legal high ground?

I encourage you to try this exercise with a case on your desk. After you have put yourself in every chair at the table, I am confident you will gain a better

understanding of where things stand and what needs to be done. The answers will be different in every case. But the best lawyers I know make a conscious effort to understand the perspective of every person in the room. In the courtroom, this includes the judge and the jurors.

2) Leading Litigators Are Community Leaders

In my observation, the best litigators seek out opportunities to meet new people and to work in groups. This, of course, requires them to get out of the office and into the community. Look around your city. You will see that many of the best litigators are also leaders in the community at large. This is no coincidence. The skills required to excel in both spheres overlap, and so do the opportunities to observe how people think and act. The best lawyers recognize that what they learn about people from community service comes back to make them better lawyers.

I encourage you this week to identify a new group of people with whom you might work on an issue that matters to you. Pick something you are passionate about. Get involved. Raise your hand for a leadership role. The issue itself is not the point. It could be the arts, legal aid for the poor, politics, children’s rights, a bar association—whatever motivates you. The point is to work with a group and learn from the experience, like many of the best lawyers do.

The Section of Litigation can be a resource here. Join one of our many subject-area committees, read our newsletters on hot issues, attend one of our regional meetings about developments in your practice area, or join one of our many good works projects.

3) Stay Curious and Informed

The best litigators I know never stop learning. They keep lists of recommended books. They read professional publications. They read magazines. They find podcasts and audiotapes that interest

them. They seek a variety of perspectives on world events. They stay curious and informed.

How about you? Why not shake things up this week with a new learning experience? Start a new book on something you know little about. I might recommend *Moonwalking with Einstein*, by Joshua Foer, a book about the art and science of memory. If you consider yourself politically progressive, spend some time with Fox News. If you consider yourself conservative, try MSNBC. Check out *Google News* online. Pick up an issue of *The Economist* magazine and read what's going on in other parts of the globe. For college-level audio courses on myriad subjects, check out the website thegreatcourses.com.

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The Section of Litigation offers you extensive learning resources. Our website gets 40,000 visits a month from litigators looking to hone their skills. If you have not tried the website recently, check it out when you finish this column at americanbar.org/groups/litigation.html. Our website is full of practice tips, publications, how-to video clips, podcasts, and more, all designed to make you a better lawyer. Did you know there is an app for the LITIGATION journal you are reading? Download the app for Apple or Android and finish this magazine on your portable device.

4) When You Don't Know, Say So

The best lawyers I know are the quickest to admit when they don't have the answer to a question. They say, "I don't know the answer to that off the top of my head, but

I will find you the answer." Then they go find it. Again, the Section's website may help.

The best lawyers (and judges) are also not afraid to say when they don't understand an argument. They say, "Wait a minute. I was with you right up to the point where the contract was signed, then I lost you. Let's start from there and go through it again."

Clients, judges, and other lawyers all appreciate and admire this brand of candor. It bespeaks close listening, self-confidence, and a desire to get it right.

5) The Best Litigators Share What They Know

The best litigators I know are happy to share their experience. They have a sense of responsibility to our justice system and to our profession. That's one reason more than a thousand top litigators—outside counsel and in-house counsel alike—attend the Section of Litigation Annual Conference every spring. They come to sharpen their skills and to share best practices.

Why don't you join them? Mark your calendar right now to attend the

next Section Annual Conference at the Phoenician Resort in Scottsdale, Arizona, April 9–11, 2014. You will come away a better lawyer.

In the meantime, if you are a seasoned litigator, I encourage to take 30 minutes this week to start a discussion with a younger colleague about the best lawyers you encounter and what makes them so. Your list of traits may differ from mine, and that's great.

If you are a younger lawyer, I encourage you to reach out to a litigator whose skills you admire and ask for a sit-down to discuss her or his perspective on the makeup of best litigators. You don't have to know this lawyer, just call. I will be surprised if you don't get an appointment. That's how most best lawyers work.

No matter what your level of professional development, I hope you will explore broader use of the resources of the Section of Litigation. The Section's benefits for members are vast, all aimed to help you become your best.

Finally, I am interested in what traits you admire in the best lawyers you know. Let me hear from you, and we can share the results. My email is dbivens@swlaw.com. ■