

I. GOODMAN COHEN LECTURE: TRIAL PRACTICE AS VIEWED FROM THE PERSPECTIVE OF THE TRIAL JUDGE

JUDGE GERALD E. ROSEN[†]

The remarks below were delivered by Judge Rosen on February 4, 2014 at the 29th annual I. Goodman Cohen Lecture at Wayne State University Law School. The I. Goodman Cohen Lecture Series was established by the family of the late I. Goodman Cohen, a prominent trial lawyer who was active in the Michigan Trial Lawyers Association, known today as the Michigan Association for Justice.

Thanks very much for that kind and very warm introduction. It is a pleasure to be here tonight. It's high honor and indeed a privilege to be asked to be the guest speaker for this great academic tradition here at Wayne Law—the annual I. Goodman Cohen trial advocacy lecture—and to join a long and distinguished list of attorneys who have received this wonderful honor before me. This great distinction also gives me the opportunity to enhance—in a little different way—my association with this law school that I call my second professional home and have for most of the past 22 years. I want to begin where [Professor Robert Sedler] left off by thanking the I. Goodman Cohen family—Ina and Dennis, whom I've had a chance to get to know today—for making this evening and indeed the entire lecture series possible. I didn't know their father. But I certainly knew of his reputation as not only a very fine trial lawyer who practiced at the highest levels of our profession, but one who devoted his professional life to fighting with passion and with dedication for the rights of those who most needed a voice not only in court but in our society. And I say to Ina and to Dennis that by making the I. Goodman Cohen lecture series a possibility here at Wayne Law, you allow your father's voice to continue to resonate in our profession. So thank you very much.

When my friend Professor Bob Sedler asked me to accept this great honor and to speak here tonight and share some thoughts with you, I asked him what he thought I should talk about. And he said, "Well, at the luncheon session with the students you should talk about trial advocacy and how to try cases and common mistakes that young lawyers and

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maybe even some not so young lawyers make.” So that’s what I did. And he said for the evening lecture, “Why don’t you talk about the state of the legal profession and being a trial lawyer, what life as a trial lawyer is like as you see it from the bench.” That seemed a pretty tall order to me because in the *Sturm und Drang* of life on the trial bench, I usually don’t get to take a step back and reflect upon such big picture thoughts. I’m usually asked to talk about things like evidence and the nuts and bolts of trial advocacy in the courts. But as I thought about it I thought maybe I might be able to share some ideas about life in the trenches, the life of a trial lawyer in this highly competitive, highly stressful, and highly challenging legal environment because I do talk with lawyers about their practice, about their careers, and I get to see up close and personal in real time what it’s like to be a trial lawyer and how difficult it is. So I thought I might be able to share some thoughts about that, and I often talk with students who are on the threshold of a career in law but who perhaps are struggling a bit with whether or not they have chosen the right career; maybe they are having some second thoughts. So that’s where I’d like to begin this evening, with questions I get from students and lawyers about what a life in the law is like and what life in the practice of law in the trial courts is like. Rather than trying to impart sophisticated ruminations about the great issues of jurisprudence or constitutional philosophy, maybe the most helpful thing I can do here this evening is to try to provide some practical advice about how to live your life as a lawyer and to be the best lawyer you can be. And since I’m a trial judge and an adjunct professor rather than an appellate judge or full-fledged academic, maybe that’s what I’m best suited for. And in sharing thoughts about this tonight, I think I’m largely going to try to have a conversation with the lawyers who are here and with the students who are here and soon to be lawyers. I’m going to try to have a direct kind of conversation with you folks.

Given the uncertain and challenging economic environment in our profession, it’s perhaps not surprising that students often ask me about the future of law as a career and whether there are too many lawyers in our society. Students come up to me all the time and say words to the effect of: “Do you think I’m on the right path? I hear it’s really hard to get a job. Do we have too many lawyers in our society?” Although the challenges are greater now than when I graduated 35 years ago, and the opportunities may be harder to come by; my answer is really the same as it has always been. I think there are too many indifferent and uncommitted lawyers; there are not enough good lawyers who are dedicated and committed to the profession and passionate about what they are good at in the way that I. Goodman Cohen was. Every so often

lawyers who have been practicing for a while will stop by my chambers, and we'll talk, and they will essentially say that they are feeling burned out, they are stressed out, and their career is not as rewarding as they had hoped it was going to be, that they feel like they are just treading water and going through the motions. Invariably, my reaction is to wonder how much these lawyers are really putting into it themselves and how much they are really putting into their work because I do see a lot of lawyers who are going through the motions, taking short cuts, or in sports jargon, just mailing it in. It is said that the law is a jealous mistress, and that certainly is true, but the full quotation from U.S. Supreme Court Justice Joseph Story is even more true. Here's the full quotation: "The law is a jealous mistress, and requires long and constant courtship. It is not to be won by trifling favors, but by lavish homage." No matter what your practice is there will be times in your legal career when you will be challenged to work beyond what you believe are your limits; when you will be tempted to take shortcuts and to put forth less than your best effort. No doubt, many of you here tonight have experienced this during your years of practice, and even for our students, maybe you have experienced this during your time in law school. You know that it's hard to push through those challenging breaking points that you reach, and I suppose there are some successful lawyers who maybe make it look easy, make it look like they are not breaking a sweat, but my experience is different. My experience is that behind every successful trial lawyer, every accomplished lawyer, is a trail of blood, toil, tears, and sweat. Putting it simply, there are no shortcuts to becoming a good lawyer. My father was a guy who was enamored of maxims and adages and homilies that reflected his approach to life and which he liked to impart to his three boys. I remember one in particular from my earliest years because he repeated it with a frequency that seemed like a phonograph needle stuck in the groove. It was, "Once a task is once begun never leave it till it's done. Be of labor great or small do it well or not at all." My dad passed away a few years ago, but I can still hear his voice echoing and resonating, and I confess I have internalized it. My wife Lori who is here tonight says that I'm compulsive; I plead guilty to that. But my response is: show me a successful person who is not at least a little bit compulsive about what they are doing. If you begin to take shortcuts, if you begin to "mail it in," in the short run you may only be cheating your clients or your colleagues or maybe a judge. But over the long term the only one you are really short-changing is yourself because in the end your career in the law will only be as successful and rewarding as what you put into it. The degree of professional satisfaction and reward that you will

experience as a lawyer will be the equal measure of your own dedication and commitment as well as the effort that you devote to your work.

I truly believe that the law is still the greatest profession, the highest calling to which one can aspire. This is because lawyers have the ability to help not only individual human beings and institutions at their most critical and sometimes most vulnerable junctures, but also to impact and to contribute to society on a broad scale. It's a license granted to almost no other profession. Unlike other professions, lawyers have the opportunity to be exposed to and to learn about so many different aspects of life and the human condition and to participate in them. The intellectual challenges and opportunities are simply unbounded. For those with a curious mind, there is simply no other discipline that offers the breadth and the scope of intellectual engagement as the law does. The law truly offers an intellectual feast; a cafeteria of choices and opportunities that you will have as a lawyer to explore and to learn and to grow as a human being. These opportunities are limitless and endlessly engaging, and you should seize every opportunity that the law offers with both hands. Find a practice that really grabs you, one that ignites a passion and maybe ignites your imagination, and then run with it. I say this because in the end that's what a career in the law is all about: realizing your own potential to be the very best lawyer that you can be. No matter what the focus of your practice is, become engaged and give it your best shot. As with everything in life over the course of your career, you're going to win some that you probably shouldn't win, and you're going to lose some that you probably shouldn't lose. But the most important things are to not get dragged down or discouraged by the vicissitudes and the vagaries of your day-to-day practice and to stay focused on a commitment to practice law at the highest possible level of the profession that you can possibly achieve. Win or lose, you should always strive to be able to say at the end: "I gave it my best shot; I didn't leave anything out on the field." If you can do that, when it comes time to hang up your spikes and reflect back on your life in the law, you'll be able to do it without looking back with remorse and regret.

There is another aspect of being the best lawyer that you can be and not cutting corners, and that is: try to do it the right way. Just as there will be times when you are tempted to take shortcuts and half-measures in doing your work, so will there be times when you will be tempted to take ethical shortcuts or to rationalize or circumvent your way around the rules of professional conduct. Whether these temptations arise because of concerns about money or time constraints or maybe just avoiding personal embarrassment by trying to cover up a mistake, every lawyer at some time in his or her career will find themselves at an ethical

crossroad, every lawyer. The history of our legal profession unfortunately is littered with bright, talented lawyers—including those who had achieved high public office—who lost their ethical moorings and have paid a terrible price for their trespasses. Now I certainly don't mean to understate the difficulties of not yielding to temptation, but as is the case with your work ethic, so is the case with your professional ethics. It's been said that integrity is what you do when no one is looking, so I thought I would illustrate this with a short story. Even though it's not directly about the practice of law, its subject was a lawyer. I took up golf a few years ago after a lifetime of avoiding and demeaning it; Lori says that I took it up because I don't have enough frustration in my life. I hear a few chuckles from the golfers out there. And I've learned what every golfer learns: although the game looks like it should be easy to play, it's very difficult, it's endlessly frustrating, and it's an all-around humbling endeavor. But more than that, golf has a rigorous code of conduct that more than any other sport requires self-regulation and brutal self-imposed honesty. This brief story illustrates this as best I can hope for my larger point. Many people recognize Bobby Jones as the greatest golfer of all time, but what many might not recall is that he was also a very fine lawyer after his golfing career ended. In the 1925 U.S. Open, Bobby Jones was playing with Walter Hagen, which also has a Detroit connection—I don't know if anyone knows this—but he was the head pro at Oakland Hills for a year. Anyway, Bobby Jones was playing with Walter Hagen, who was not only another all-time great, but a fierce rival of Bobby Jones. Jones was leading Hagen by a stroke, and on the 11th fairway, Jones believed that he had inadvertently caused the ball to move as he was setting up for a shot, so he called a one stroke penalty to himself. Hagen and an official, both of whom were watching him, said that they didn't think he had moved the ball, and they tried to talk him out of the penalty. Hagen told Jones that he didn't want to win that way. The official asked Jones, "Bobby, do you really think you moved the ball?" Jones responded "I know that I did," and he imposed the one stroke penalty on himself. He then went on to lose the 1925 U.S. Open by one stroke. Afterward, when he was asked about the universal praise and acclaim that he was receiving for this act of integrity and how he got a lot more attention than the winner of the U.S. Open, which everyone has forgotten about now, Bobby Jones said that he believed he deserved no credit at all for this. He said, "They might as well praise me for not robbing a bank." Although Bobby Jones lost the U.S. Open in 1925 by one stroke, he won for all time his reputation for unshakeable integrity, which needless to say stood him in great stead throughout his long and very successful career in the law. The moral of this golf story is

obvious. Even if no one is looking, and even if you believe the breaches might be small once you begin down that path of taking a breezy approach to your professional responsibilities, you will inevitably and ineluctably find yourself sliding down the proverbial slippery slope to the point where not only can you not get back up, but you won't be able to recognize where the high ground is. We've seen it happen all too often in our society. But one thing of which you can be sure: your fellow practitioners, your colleagues, and judges, they will recognize that you struggle to find your ethical bearings, and they will not only remember that, but that will become your reputation in the profession. And like indelible ink, this will be a stain not easily removed. Not all of us have a Bobby Jones moment. But your reputation and your profession is your calling card. Guard it diligently and do not permit it to become an alarm bell for other lawyers and judges.

I'd like to end where I began before we get to question time. Having talked about the importance of a strong work ethic and professional integrity, I must say that in some senses I feel like I'm preaching to the converted here at Wayne Law because so many in our Wayne Law family have already demonstrated their mettle in these two important areas. I believe that Wayne's graduates are well prepared to meet the challenges of today's legal world, and I'm really very proud of my long association with this great institution and the faculty and now with the great tradition of the I. Goodman Cohen lecture series. This is a great school. Those of you who are graduating or about to finish your studies here, you'll have endless opportunities. And to be a Wayne Law graduate will open many doors for you. Just remember as you walk through those doors that you stand on the shoulders of others who have gone before you and established the great reputation of this school. So always give it your best shot, whether it's 12:00 at night and you've still got a stack of documents to go through—or I guess a computer screen full of documents—always give it your best shot and do it the right way.

Thank you all.