

Missouri Law Review

Volume 61
Issue 3 *Summer 1996*

Article 1

Summer 1996

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Recommended Citation

Roberta Cooper Ramo, *American Lawyers: Qualities for Greatness*, 61 Mo. L. REV. (1996)
Available at: <https://scholarship.law.missouri.edu/mlr/vol61/iss3/1>

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American Lawyers: Qualities for Greatness*

*Roberta Cooper Ramo***

I was humbled when I looked at the list of enormously distinguished people who have previously given the Nelson lecture. I confess also to have been astonished and properly terror-filled when I saw that the only other woman who had been invited was Soia Mentschikoff. There were few women in my law school class, but remarkably for the time, there was a woman on the faculty of the University of Chicago, Soia Mentschikoff. Her name is known to all of you still because of her relationship to that keystone work, the Uniform Commercial Code.

Soia Mentschikoff was a remarkable and brilliant person. She would be astonished to see me standing here—or anywhere she had been before me. I think, during her time, she was the only woman on the faculty of any major law school in the entire United States. When we came into her classroom, the first-year law students observed at the beginning that she looked like a Russian woman shotputter. And she did. However, by the end of the year they were all to a man in love with her because she was everything that anyone could

* Earl F. Nelson Lecture. University of Missouri-Columbia School of Law, March 22, 1996.

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have wished in a faculty member of Wagnerian proportions. She was incredibly brilliant. She had absolute disdain if you were not prepared. If you answered incorrectly and she thought it was a reasonable answer, she would go beyond the Socratic method to help you come to the understanding that you had said something foolish. If you said something foolish because you were unprepared, you left with visible scars. Professor Mentschikoff was not a warm and fuzzy person. However, what she would say to those of us lucky enough to be invited to tea was this: "Why are you going into the practice of law?" Most of us didn't have a very good answer. I would guess if I asked many of you and you had some sort of truth serum, many of you would not probably have—especially at the beginning of your time in law school—an answer that was both profound and true.

After we worked a little to find something that would please her, she would say, "Well, let me tell you what we need in this profession. Don't waste your time finishing the law school if you are not interested in spending your life using your intellect to its fullest capacity and treating every matter before you as though you were going to the Supreme Court of the United States." I can't tell you anything more important—and I suppose I could make this lecture very brief—than to repeat what she told us.

Don't go into this profession; do not come to join me at the Bar if you do not intend to treat every single matter before you with the same importance that you would treat a case that appeared before the United States Supreme Court. Because the truth of the matter is that every single person you represent will feel that you have their lives in your hands. You will be the person to whom they will look to solve their problems, to save their families and, very often, to take their dreams and make them a reality.

I thought that I would talk today about American lawyers because I am so proud to be one, and because I hope each of you feels thrilled at the opportunity you have to be at a first rate law school, to have unfolding in front of you an opportunity to make such an enormous difference in so many people's lives and have a chance to have a great life for yourself.

I was saddened because of the response I received when I recently talked to someone who teaches law students after telling him that I was very proud because our daughter had just received her law school acceptance. I am enormously proud of both my children and thrilled that our daughter would have an opportunity to have the kind of intellectual honing that a great law school gives to anybody who is willing to engage in the process. In response, this law school faculty member said—to me of all people!—"I'm amazed that you didn't deter her from that and that she didn't go into something else, and that you didn't tell her to do something else." I was shocked, genuinely shocked and pained that somebody teaching law students would say something like that. In fact, I was thrilled when my daughter told me that she had figured out that in order to help the people she cares about and has cared about from the time she was a child—people who are powerless—was by

having the tools of the law. I am also delighted that each of you has a chance to have a life at the Bar.

What, you may wonder, does it mean to live a life at the Bar? When I started law school, I had never been in a courtroom. I had not really known well more than one or two lawyers in my home town of Albuquerque, New Mexico. Thus I started law school without any real understanding of the life on which I was about to embark.

My first opportunity to begin to understand life at the Bar came in the summer between my second and third years, the summer of 1966 in Chicago, a time some of the people in this room may remember. I worked for the American Civil Liberties Union, not out of any great conviction but because they were the only people I could find who were interested in hiring a married woman law student at the time. It was the summer that Martin Luther King was in Chicago. I came in one day and found that Dr. King's people had brought several young men from Atlanta to try to encourage the gangs of Chicago to help people to register to vote and to change their own ways. Mayor Daley, the father of the current Mayor Daley, was not much enamored of Dr. King. The night before, four of these young fellows from Atlanta and the minister who brought them had been arrested for loitering on the street corners of Chicago. Someone called the ACLU for help.

That day I pretty much was the ACLU. I was directed to go get these men out of jail. I had no idea how to do that, but I got in a cab and I went down to the police court. It took me a long time before I even got to see them. They took one look at me and thought they were going to be the first people arrested for loitering to be given the death penalty. I could barely summon up enough courage to tell them I was pretty sure I could probably keep them from a capital offense.

I waited for the case to be called for a long time in the back of a courtroom that looked like *Night Court* on television. There was a judge sitting very high on a bench. He looked to me to be about 840 years old. They brought in the prisoners in a few small groups. There was a bench, a place at the counsel table right in front of the bench, and a few seats in the back. I sat as far back as I could be and still be in the same room. The lunch break came, and my case had not been called. So I called a real lawyer and said, "I don't know what's wrong. I did finally see them, but the bailiff hasn't called my case." He explained to me that I actually had to go ask the bailiff to call my case please; after lunch I did that.

My case was finally called and I walked from the back to the front, with another bailiff pulling at the back of my dress saying, "Lady, lady, only the lawyers can go down there." And from the top of the court, it seemed to me from heaven, this judge pulled down his glasses and looked over them and said, "Who are you?" I explained. He looked at the bailiff and said, "She looks like a lawyer to me." Music to my ears.

I managed to get them out, and they managed to lend me the five dollars that I needed to get back to my office because I'd spent all my money getting down to see them. Now, here is the important part. I agreed to meet them the next afternoon on the south side of Chicago so that I could pay back the five dollars, not an inconsiderable sum. Also, I was concerned about how it looked—their paying me five dollars to represent them in this matter.

I went into an apartment on the south side and I was surprised to see that it was so filled with people, I could barely make my way in. As I muscled my way through the people looking for the client in whose debt I was, I realized why it was so full. It was full because Martin Luther King was sitting at the kitchen table. I stopped at the kitchen door and watched for what became the most amazing two hours of my life. What I saw and what I heard is what makes my life at the Bar so important and what will make your lives equally important. First, Dr. Martin Luther King, who was very famous even then, spent over an hour listening. He barely said a word. He asked questions. He said, "How did that happen?" "What did you do to try to fix this?" "Explain to me how it is that these things are." And he listened as people—most of them poor, many of them uneducated, all of them Black—explained to him what their lives were like. After a while he said, "Well, look, we're here now and we're not going to leave 'til we get these problems fixed." He said, "Not only are we here, but we have lawyers here to help you."

And he was right. The lawyers were there and were every place they were needed in this country. They got on planes, they got on busses, they got in their cars, and they stayed. They stayed sometimes for a weekend just to get people out of jail and try to keep them from being beaten. Sometimes they stayed for a month or more. Sometimes they changed their whole lives because those lawyers understood, and Dr. King understood, something that I worry sometimes we are in danger of forgetting: in this democracy people can only be free if we have a rule of law that has these principles. One, there are some things that the majority cannot do to the minority—unpleasant as that is sometimes for those who think for the moment that because they are the most, they may set all of the rules. Two, those lawyers understood the brilliance of the United States Constitution and the Bill of Rights is a system in which we took unyielding core principles that made this nation different in its founding from any other nation the earth had ever seen, and we married to those core principles the idea that there would be some changes as the world around us changed. Three, that alliance only works as long as there is absolute independence of federal judges and absolute independence of lawyers who do not all work for the government as they do in many countries around this world.

In America, lawyers represent even those among us who have been accused of heinous and terrible crimes. We lawyers agree that we will represent even those we hate personally, that we will represent those who say

things we think are reprehensible because it is our role as officers of the court to do so. The myths that you may read or see on television sometimes in entertainment programs and some in news about what most lawyers are in this country—the myth that we are somehow a profession that does not deserve to be on the playing field—must make way to the reality. If you looked at the constitution of the Soviet Union before it disintegrated, you would have had tears in your eyes because it said everything wonderful about human rights and everything wonderful about an economic system and everything wonderful about human beings. Yet, we know that none of it—not anything—was ever a part of real Soviet life.

We can't allow our country to be a place where we have a constitution that says good things but that does not have an independent judiciary to make those ideals reality. We can't be a nation where there are no lawyers who understand that, in addition to their obligation to represent fee-paying clients, there are times in our lives when we will be picked out—because of skill or because, like me, you just happen to be there that day. If you don't have the courage inside you today to know that when you are chosen you will stand up and do the right thing, well then, you should pack up your books and go home.

Here are some current problems that cause me concern. You are going out into a world in which your fellow citizens do not understand United States history. Many do not understand our Constitution, and they surely do not understand the lawyer's role. For reasons that I do not understand, over the last 20 years we have given up teaching civics as an important part of basic American education. Last year at the annual meeting of the American Bar Association in Chicago, we had a breathtaking opening assembly. Instead of having a speaker, there was an actual naturalization ceremony. It was one of the most remarkable events I can imagine. I am a first-generation American myself, and so it may have had a particular impact on me. As you sit in a naturalization ceremony (perhaps it should be required for everybody who comes and leaves the law school), what you recognize is that to be a citizen in the United States when you come from some place else, you not only have to do all of the terrifying things that people do, leaving loved ones and family and language that you're comfortable with to come to this country, but you have to learn about American history and you have to pass a test. You have to take an oath not only of allegiance, but of responsibility.

You go out into a world that does not understand that the United States was founded by refugees from religious persecution, that we have a rule of law and a jury system because the people who wrote our Constitution understood very well what it felt like to be stopped in England on the road by a sheriff who decided himself what the law was, what the punishment was and exactly how he was going to exact it from your body. You go out into a world filled with myths that not only some Americans believe about the legal system, but that many lawyers believe. One myth is that tort litigation has

gone crazy in this country. In fact, excluding small claims matters, less than 2 percent of the full case load of American state courts has to do with tort litigation; only approximately 6 percent of the civil cases filed in the state courts in 1994 were tort cases.¹ The volume of personal injury cases filed since 1990 is in decline.² Federal products liability cases in 1994 made up less than 1 percent of the total state/federal caseload in the United States and only 9 percent of the federal civil caseload.³

For those of you who think that every lawyer is a litigator and that all lawyers spend all of their time in trial, I am here to tell you that the facts do not uphold that view of the law. The American people think that the dollars involved in tort cases have become crazy. Their view is fueled, perhaps in part, by the *Wall Street Journal*—which only in the last few days has had one editorial called *Lawyer Liars*, a second op-ed piece called *Lawyers Are Killing My Daughter*, and I feel sure that tomorrow in the *Wall Street Journal* we will see *Lawyers Have Alien Babies*.

Punitive damages are, in fact, rarely awarded. If we exclude asbestos cases, between 1965 and 1990 the average in all product liability cases in the United States was 11 cases a year in which punitive damages were awarded.⁴ Another myth is that we have runaway plaintiff's juries in product liability cases. In 1994, only 44 percent of these cases were won by the plaintiff.⁵ Now the way I do my math, that's less than the majority.

Now, why do I painfully tell you all of these facts? Because one of the things I've discovered is that lawyers read the *Wall Street Journal*, and lawyers watch John Stossel on ABC talk about the *Trouble With Lawyers*. Too often, they uncritically accept erroneous views of the legal process too. Some believe that what the Legal Services Corporation does is somehow help rapists get control of their babies. Some believe that helping the poor, if you're a lawyer, is a political statement instead of doing the duty that you agree to do when you raise your hand at the Bar and agree to defend the Constitution of the United States and to be an officer of the court. Please,

1. AMERICAN BAR ASSOCIATION DIVISION FOR MEDIA RELATIONS AND PUBLIC AFFAIRS, FACTS ABOUT THE AMERICAN CIVIL JUSTICE SYSTEM (1996).

2. See NATIONAL CENTER FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS, 1994 7, 34 (1994).

3. AMERICAN BAR ASSOCIATION DIVISION FOR MEDIA RELATIONS AND PUBLIC AFFAIRS, FACTS ABOUT THE AMERICAN CIVIL JUSTICE SYSTEM (1996).

4. See MICHAEL RUSTAD, ROSCOE POUND FOUNDATION, DEMYSTIFYING PUNITIVE DAMAGES IN PRODUCTS LIABILITY CASES: A SURVEY OF A QUARTER CENTURY OF TRIAL VERDICTS 23 (Lee Hays Romano, ed. 1991).

5. See ERIK MOLLER, TRENDS IN CIVIL JURY VERDICTS SINCE 1985, 16 (RAND Institute for Civil Justice, 1996).

throughout your career, make sure that you understand the facts about the system in which you work.

Our profession cannot be passive in our defense of the American justice system. I'm astonished at the number of times I listen to radio talk shows and hear people say things that are just flat wrong, and I don't hear lawyers calling in to say this simply isn't right, this can't be correct. It is my view that each of you has an obligation as a citizen to stand up and speak. Because after all, we are trained to do exactly that.

There are many realities of law practice that I think are wonderful. We lawyers need to talk of them more often. What is it that we lawyers do with our lives? I cannot imagine another profession in which there is, over my practice life of almost 30 years, compelling intellectual interest and an opportunity to understand people in a way that no other profession offers. The people who will come to see you will mainly be scared, confused, some afraid of you. One of the places where law schools—with all due respect to the faculty and the Dean—have let us down is that we are not trained with the skills that it takes to listen to our clients. We don't understand that our very being often seems arrogant to the people who sit across the desk from us because we are well-educated. They believe, from watching *L.A. Law*, that we are callous, that we are unethical, that we care about them often only because of the money they are about to pay us. New lawyers arrive in that world without understanding that first you have to make the person on the other side of the desk believe and feel that, as Dr. King in that kitchen, you are listening to them. Everyone who comes to you for help is a human being and their problems, which may at that moment seem inconvenient or small to you, are very, very big in their lives or they would not be in your office. Interestingly enough, I have found that is true whether you are sitting in a legal services office with someone across the desk from you who is there in desperate need of your services because their life's on the edge about to fall off, or whether you are sitting in an office in a big firm and someone from a big corporation has come in to talk to you about a problem that they have. Clients arrive with a vision about what they should say to you, which has nothing to do very often with what you need to hear.

One of the skills you have to learn is how to draw from your clients the information and cooperation that you need. A second key concept is that the law in its practice is a joint effort, that you do not do things to or for your clients. If you are a good lawyer, you do things *with* your clients. You make informed decisions. You have some control over the course of the matter in front of you. There are some things which you as a lawyer must have the courage to say, "This I will not do because it is unethical, because it does not seem to me to forward your case." To say no is also a skill you need to understand. The reality of life at the Bar is that you must be the best of all public citizens.

What great lawyers share are these qualities. They are great lawyers for their clients because they are creative, because they know the law, because they work hard, because they are wonderful and clear writers and speakers. They are great lawyers for their clients because they have learned their clients' realities—whether those realities are the realities of an enormous publicly held corporation, a family in the middle of a divorce, somebody accused of a terrible crime, or a family just trying to figure out how to go into business for the first time.

Lawyers are fine American citizens because we are great volunteers. The American Bar Association is filled with 370,000 lawyers who write a check every year as a voluntary matter because they believe that what we do, which is to defend the American justice system, is as important to them as what we do to help make them better lawyers. American lawyers are found in classrooms across America, leading Girl Scout and Boy Scout troops, on the boards of every synagogue and church in our communities, as the head of our symphonies, as our senators, our mayors, our city council members and the people who just wade in where there is a problem. The last thing that I find great lawyers must be, especially these days, is that often they are—when they have chosen to have a family—great husbands and great wives and great mothers and great fathers.

It is up to you to craft a life for yourself that incorporates all of these qualities: an understanding and a mastery of the skills that you need to be a great lawyer, the willingness to take on the life of a citizen of the United States that every lawyer must, and the willingness to be serious in your family life. If you are interested only in money or power, you will never be a great lawyer at all.

Let me finish by telling you what I think the lawyer in the next century, 25 years from now—one of you sitting in this room standing where I am standing, still wishing people would come a little closer—will be known for. First, your integrity and ethical standards will be superb. American lawyers take in client confidences and they are ours; and no one—not anyone from the government—can make us disclose those confidences. No one from the government can make us put our ethical principles aside. Our duty is to represent people accused of horrible crimes, not because we applaud what that person stands accused of, but because we know that if we began drawing lines about who deserved and did not deserve to have representation, the line would keep blurring until there was none.

Then there is the courage it takes to be a lawyer. It is no accident that it was a lawyer in Charleston, South Carolina, who stood up every day throughout the entire Civil War and said that he was a citizen of Mr. Lincoln's country, and that he believed in the Constitution of the United States of America and he thought secession was wrong, and they were not going to move him out of Charleston. There is a lawyer of courage. It is no accident that it was a classmate of mine who is Jewish, David Goldberger, who

represented the Nazis when they wanted to walk in Skokie—a matter that I know made him weep for many nights for years. But he knew that what had happened in Nazi Germany was that no one had been willing to stand up for the principle of free speech, and he was willing to sacrifice to protect ours. I could name a very long list of lawyers who throughout our history, including today, represent people who are accused of, or have in fact committed, heinous crimes or said evil things, not because they applaud these actions, but because our system gives lawyers the obligation to represent them.

Third, the lawyer who will be standing here 25 years from now will be a person who understands creativity, who understands that the right lawyer is not somebody who knows the black letter law and is able to apply it in a simple way. Because you will find—as I did, very discouragingly—that when your first clients walk into your office with their problems they do not say, "I am here on a matter of civil procedure," or "What I have, Mrs. Ramo, is a contract problem," or "Let me speak to you about Article 9 of the Uniform Commercial Code." They come with a mixed bag of stuff, and it is your job to sort it out, find the law and find solutions to their problems. Because that's mostly what lawyers do. What most of us do every day is not operate in an adversary system or as true adversaries; we solve problems, and that is our greatness.

Last, the lawyer who will stand here 25 years from now will have one quality that maybe some of the rest of you will have put in abeyance over 25 years of practice. The lawyer who stands in front of you 25 years from now will have understood with every fiber of her body—although I hope you don't wait 25 years to invite another woman—that what has been required of her at the beginning and what is required of her for the next 25 years of her life, is that she have a razor sharp intellect, a compassionate heart and a need to do justice. Thank you.

