

2017 Convention
**Champions
for Justice**

3. What Inspires Lawyers to Do Great Work*

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Why We Must Go the Extra Mile

Bob Burke

Oklahoma lawyers have had great success during the past two years in striking down many provisions of the grossly unconstitutional workers' compensation reform passed by the legislature in 2013. The Governor and legislative leaders said the reform would streamline the system and provide greater and quicker benefits for injured workers. Nothing could be further than the truth. Oklahoma now has the lowest workers' compensation benefits in the nation and the time to justice has increased at least 50 percent.

As lawyers, we have a great burden of not only representing our clients, but also looking for ways to increase confidence in the judicial system and to ward off attempts to dilute the marvelous idea of balancing the power among three branches of government. In Oklahoma, and in any state where anti-judicial sentiment is strong in the legislature, we are facing a critical time in America. Attacks on the right so injured workers are underway in many southern states where pro-business legislators will try anything to cut benefits. If that is not happening in Virginia, it will be. There is a war declared on the American worker, and I intend to fight it for us all.

Anytime the American Bar Association or Virginia Bar Association gives us a list of ideals for being a lawyer, we should take note. There is always the admonition of maintaining communication, being honest, full disclosure, don't harass the opponent, and do our best. But in the Preamble to your state Professional Guidelines, the words "challenge the rectitude of official action" stick out to me. Rectitude is what is morally right.

For example, in Oklahoma, I successfully fought the battle against Opt Out on two fronts. The idea, supported by many of America's largest corporations, including WalMart, Dillard's, Big Lots, Home Depot, Hobby Lobby, and Nordstrom, was both repugnant to the Oklahoma Constitution AND basically immoral by gutting benefits to injured workers and shifting the cost of workplace injuries to the American taxpayer.

In my briefs and argument before the Oklahoma Supreme Court, I emphasized how the Opt Out benefit plan violated the provision of the state constitution that prohibits a special law, defined as a law that provides differing benefits for members of the same class. Previously, the Supreme Court classified

all injured workers in the state as a single class. It was obvious to me, and to 7 of our 9 justices, that both medical and indemnity benefits were markedly less to workers injured for an Opt Out employer than a worker injured for an employer covered by a traditional workers' compensation insurance company. The Workers' Compensation Commission, which first declared the Opt Out law unconstitutional, said any idea that the benefits were the same "was a water mirage."

At the same time I argue the legal reasons why Opt Out was unconstitutional as a matter of law, I put forth the idea to Justices that the concept was morally wrong and a violation of the Grand Bargain in workers' compensation. This is where I challenged the rectitude of official action. The legislature had given Oklahoma employers to authority to Opt Out of the normal workers' compensation system, develop a secret plan, define what was covered, choose every doctor, and then unilaterally try to settle the case....if the worker refused, all future benefits were cut off.

That, I told the Supreme Court, was morally wrong. Workers' compensation, in Oklahoma, in Virginia, and in every state except Texas, is a subject of public policy. It was long ago decided, that in exchange for workers giving up their right to sue an employer at common law with a jury trial, a statutory system with reasonable and quick benefits for injured workers was necessary. If that Grand Bargain has been breached, there is a moral obligation on behalf of the state to fix it.

Another command found in the Preamble of the Virginia Bar Association Professional Guidelines is a lawyer's duty to uphold legal process. That duty includes the oft-trivialized concept of due process. Frankly, those words never meant much to me until I began fighting corporate giants who wanted to limit their injured workers' rights by a trumped-up appeals process, secret determinations, no access to the workers' own doctors, and no opportunity to present the worker's side of the story. It hit me between the eyes.....THIS IS A DENIAL OF DUE PROCESS.

Research led me to the Magna Carta, that promised what has become due process. Along the way, the federal and state constitutions put the concept in hallowed terms. In the Vasquez case, and in other challenges to the awful Oklahoma workers' compensation law, due process forms the core of most arguments.

As the Preamble says, a lawyer should cultivate knowledge of the law beyond its use for clients....to help support the legal professional in the public interest.

Rules of Professional Conduct

Preamble: A Lawyer's Responsibilities

A lawyer is a representative of clients or a neutral third party, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

A lawyer may perform various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. As third party neutral, a lawyer represents neither party, but helps the parties arrive at their own solution. As evaluator, a lawyer examines a client's legal affairs and reports about them to the client or to others.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is

being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

http://www.vsb.org/pro-guidelines/index.php/main/print_view

On Becoming a Lawyer

By [Jeffrey Toobin](#)

June 20, 2013

So now you're Harvard lawyers. Now what?

Well, before we talk about where you're going, let's talk a little about where you've been and how you got here. By and large, you got here because you were really good students. You got good grades—great grades—and scores, or, frankly, you wouldn't have gotten into Harvard Law School in the first place. And the vast majority of you continued to do well once you got here. That's great. I'm a big fan of good grades. But I am going to suggest to you that you will find that the skills of a student are of somewhat less use to you once you get out into what is sometimes referred to as “the real world.”

Students follow rules. Students complete assignments. The job of students—in part, at least—is to please their teachers. Now, I realize I may be exaggerating a little here, but basically I think I'm right: students do what they're told. And I think that might be especially true of law students. After all, law is basically a series of rules, and you came here to learn them. The career recruiting process here at Harvard reinforces these tendencies. The law school runs a conveyor belt of graduates to big law firms, and it's easy to get on. It can look like just another example of following the rules to sign up for recruiting and then sign on with a top firm. And you can do that, and many of you did, and that's fine.

Now, I work in cable news, so I am not afraid to say things that are painfully obvious. Here's one: 2013 is not the greatest time in history to graduate from law school. The legal economy is changing, and it's hard to think it's getting better. There are no guarantees anymore, not even for Harvard lawyers. The legal world you're entering is very different from the one I joined in 1986—and it's very different from the one you'll face in ten years, much less thirty.

Here's something to ponder. As I think about my classmates in law school, today I don't think one of us is doing what we expected to be when we

graduated. Well, maybe one of us: Elena Kagan. But except for Elena—Justice Kagan—everyone else has found that life had other plans. I expect you will find the same thing. Even if you go to the biggest law firm in the world, you are going to have to invent your own career. You are going to have to make it up as you go along.

But I suggest to you that's actually a very good thing. My classmates who have made it up as they've gone along have had the happiest, most satisfying careers. Let me give you an example. When I was in law school, a friend of mine who was a couple years ahead of me had a strange idea for his third-year paper. He decided to put forward the idea that gay people should have a constitutional right to get married. He wasn't the very first person to think up this idea, but he was close, and the idea of same-sex marriage was very far from the conventional wisdom at the time. Lots of people thought the idea was, frankly, weird, or worse. My friend's name is Evan Wolfson. After graduating, he was a prosecutor for a few years—we worked together in Washington for a while—and then he became the founder and executive director of Freedom to Marry. Today, there is an exhibit here on campus devoted to Evan's third-year paper.

When we were in school, the placement office did not have any jobs for careers in advocating same-sex marriage. But Evan invented one, and the results are obvious to all of us. He's lucky, and we're lucky for it.

My own career reflects a strange dichotomy between the world we've long known and the world that will become. I am fortunate to have two jobs. I am a staff writer at *The New Yorker*, and I am a legal analyst at CNN. CNN was born just as I was graduating from college. Cable television is just a little older. There was no such thing as a television legal analyst until about 1995 and the O. J. Simpson trial. So I make my living, in part, in a job that didn't even exist when I went to law school. I'm sure that's true for many parents here. Even if the jobs existed, what we do—and how we do it—is completely different from what went before. That will be true for you too.

You've undoubtedly heard in the news media that there is currently an oversupply of lawyers in the country. There are just too many of you—of us. I've said it myself. But I think that's not quite accurate. In the years since the economic crisis hit, it's become quite apparent that there are actually not

enough lawyers out there—at least, in the right places. Here are some melancholy facts. A study of women seeking restraining orders found that eighty-three per cent of those with lawyers secured an order while only thirty-two per cent of those without lawyers got them. Tenants represented by lawyers are three to nineteen times more likely to beat their landlords in eviction cases. Or let's talk about foreclosures: people facing foreclosure and eviction are dramatically more likely to be able to keep their homes if they are represented by a lawyer.

It's easy to make fun of lawyers. I do it myself more than occasionally. But these statistics show the value that lawyers can provide in the real world. You can even do it part-time while you're working at a firm. You can be that lawyer. You *should* be that lawyer. This is life-changing work.

I mean that in two ways. It's obviously life-changing for your clients. But it can be life-changing for you too. Everyone wants to be paid well—I know that I certainly do. But there are lots of other satisfactions that we get from our work. To feel needed. To feel accomplishment. To believe that our work matters. Being a lawyer gives you a rare chance to experience that kind of success. And the more you feel that kind of success, the better you get at the work. It's a virtuous circle. But you have to go out and look for it in the first place. You have to take the kind of chances that Evan Wolfson took. You have to go out and make that great degree work for yourself—and for all of us.

Photograph by Damon Winter/The New York Times/Redux.

Jeffrey Toobin has been a staff writer at *The New Yorker* since 1993 and the senior legal analyst for CNN since 2002.

Why I'm Glad I Became a Lawyer

Vol 29 No 2 **American Bar Association**

By Cameron C. Gamble, Marvin S. C. Dang, Christine G. Albano, Sharon K. Campbell, Elio F. Martinez Jr.

Sometimes, when the stress of your latest case is threatening to overwhelm you, or when the down economy is making your practice look more like a nonprofit operation, it's hard to remember exactly why you thought that being a lawyer was a good idea in the first place. The sacrifices of personal time and the rigorous and expensive education involved are undeniable. But so are the rewards. So just in case you need reminding how very real these rewards can be, presented below are the thoughts of five attorneys who have found fulfillment—not regrets—in the practice of law.

Cameron C. Gamble

Law Firm of Cameron C. Gamble
New Orleans, Louisiana

In high school I spent my summers and holidays either digging pools and patios or stacking soft drink cases in the 7-Up warehouse or going through two-a-day August football practice.

In college I spent my summers either as a roustabout on oil rigs in the Gulf or loading crates of tomatoes in a Turlock, California, packing plant or going through two-a-day August football practice.

As my senior year in college was ending and I was faced with choosing my life's work, it seemed that all of my work experience was some form of lifting, carrying, or digging involving picks, shovels, chains, and other tools of both unknown names and unfamiliar uses. (I lost my last roustabout job when I clumsily dropped the tool pusher's personal and favorite wrench over the side into the sea.) It was apparent to me that if experience was a teacher, then I should have learned by then that I was not very good at what my dad called "honest labor."

So, having an interest in reading and talking, I entered law school, obtained my juris doctorate, and have been a practicing lawyer for the past 48 years.

Why am I glad that I became a lawyer? The clients! As a lawyer, particularly a solo or small firm general practitioner, I have come into contact with (to quote Thomas Berger's *Little Big Man*) the "real human beings," the clients: the good, the bad, and the ugly, all interesting and unique in their own way. They have challenged me with problems that are always different, interesting, and intellectually stimulating—sometimes entertaining, but never boring. The result has been personal satisfaction that I am not sure could have been achieved repetitively and on the same level doing anything else.

Another reason, not to be ignored, is that there is no heavy lifting or the use of tools larger or more complicated than a pad and pencil.

Marvin S. C. Dang

Law Offices of Marvin S. C. Dang, LLLC
Honolulu, Hawaii

Being an attorney wasn't my first occupational choice when I was a high school senior in 1971 in Honolulu. Engineering was my choice. However, I changed my mind during my freshman year in college because the prospect for getting a job in Hawaii as an attorney seemed sunnier than finding employment as an engineer. Back then, there was a surplus of engineers and a shortage of attorneys.

Now that I've been practicing law since 1978, I do not regret my decision, which was motivated more by economic reality than by passion. I am glad I became a lawyer.

I grew what was a solo practice 30 years ago in 1981 into what is now the largest creditors' rights law firm in Hawaii. My team of 50 attorneys, legal assistants, account representatives, and other employees works with me to zealously assist local and national financial institutions and businesses with their legal needs. My employees are like my second family. I am proud of them. I am glad that as a lawyer I was able to hire them.

As an attorney, I have also helped individual clients on thousands of real estate, estate planning, probate, and business matters. These individuals have been relatives and friends, and have been referred by relatives and friends. At times I have counseled three generations of the same family on their legal needs. Helping my clients brings a smile to my face.

I am glad that my background as an attorney enables me to assist in shaping legislation for a better Hawaii. As an elected member of the Hawaii State House of Representatives in the 1980s, I used my legal skills to draft, analyze, support (and sometimes oppose) bills. Today, I use those same skills as a lobbyist for local and national clients.

Not only am I glad that I became a lawyer, I am passionate in caring about the legal profession. This has spurred my volunteer leadership activities for more than 30 years with the Hawaii State Bar Association and the American Bar Association to improve the profession.

Christine G. Albano

Law Office of Christine G. Albano
Frisco, Texas

In our everyday practice of law, it often seems difficult to remember why we are glad to be lawyers. But I know we are. Sometimes we get the brunt of an emotional client or opposing counsel. We are the buffer between pain and

justice. This is a common occurrence for me as a family law attorney. But when we sit back and think about it, we realize that being a lawyer brings us great opportunities and that our lives are good *because we are lawyers*.

We have the option of self-employment in a down economy. Technology provides us the ability to work from anywhere. We have the privilege of autonomy in our daily schedule. We have the opportunity to use our specialized knowledge to serve the community and improve the profession. We have the authority to seek justice for our clients and provide a voice for those who wouldn't otherwise be heard. We uphold the orderly system of justice in this country so our country remains civil instead of at civil war. Our profession provides us with the unique ability to do something about it when we see a need and to truly make a difference.

I didn't always plan to be a lawyer, but I realized that as an attorney I would have a more direct and effective way to help people. I would also have more control over the path of my career. I've found that where a lawyer is employed has a huge impact on how he or she feels about the practice of law. If you feel that you're not making a difference, find a better fit for yourself. I made that change a long time ago, and now I'm happy to be a lawyer.

Sharon K. Campbell

Law Office of Sharon K. Campbell
Dallas, Texas

I graduated from law school in 1984. Back then, going to law school was somewhat of a "default setting" for college graduates who couldn't figure out what they wanted to be, or at least had not yet done so. I wasn't quite in that category, but I wasn't far. I had a liberal arts degree, I liked going to school, I actually liked studying, and what limited contact I had with the legal profession I found interesting.

I have always dreaded the expected "Why do you want to be a lawyer?" and never believed I had a good answer. What I can say with absolute certitude is that I am glad I became a lawyer and I believe it is the right profession for me. I don't know if there is a connection between this feeling and the area of practice I am in (consumer litigation). Maybe. I think my brain just works that way. Or maybe law school just "took"—I learned how to think like a lawyer. The analyzation of a legal problem, looking at all sides, is completely comfortable for me. I enjoy mapping out strategy. Meeting my clients, analyzing their problems, trying to figure out a way to deal with the presented problem challenges my mind, sometimes making it necessary to use unusual or not commonly used remedies. When the evidence can be developed and result in a recovery or other resolution for my client, it solidifies my belief that I made the right choice. Evaluating the arguments and legal authorities presented by my opponent for their soundness, looking for deficiencies in the evidence or legal arguments, and finding a way to prevail seem to me to be the best way possible to make a living. I genuinely can't imagine doing anything else.

Elio F. Martinez Jr.

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Coral Gables, Florida

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He had lost sleep. On Monday he had discovered that a “stock” photograph used in his recent magazine ad pictured a competitor’s product. Concerns about a possible lawsuit for unfair competition and infringement of intellectual property kept him up at night. By the time he arrived at my office Wednesday morning, the strain was visible on his face.

He did not know what to expect. He feared the worst, and it showed in his body language. His shoulders drooped as he entered my office and collapsed into a guest chair.

I reviewed the ad and asked questions. He found the photograph in a manila folder in a file cabinet, one of several pictures depicting the types of products he sold. There were no visible trademarks on the item shown, nothing to identify the product as his competitor’s. He only realized his mistake when he caught a passing glance of the item in his photograph on his competitor’s website—with his competitor’s trademark clearly visible on the side.

We discussed the specifics of his industry. There was little unique about the products he and his competitor sold. They were essentially interchangeable in look and design. The biggest differences were the trademarks depicted and the names of the companies that marketed them.

By the end of our meeting I set his mind at ease. The photograph contained nothing that his competitor could deem proprietary. A consumer would not likely be confused into believing that he and his competitor were one and the same, or that he sold his competitor’s product—the basic test for trademark infringement and unfair competition.

I did not charge him for the consultation. I told him that he should contact me if anything further developed, adding that I doubted anything would. His relief was visible when he shook my hand and walked toward the elevator.

Later that day, I received a package: a bottle of pinot noir, with a note that said simply: “Thank You.” As I brought the gift into my office, I reflected on the day’s events. I had been able to alleviate someone’s worries, to relieve the stress in his life by explaining the basics of the law. My ability to do that is why, two and a half decades after I graduated law school, I remain glad that I became a lawyer.

Overview - Rule of Law

More than 200 years ago, Alexander Hamilton, James Madison, and John Jay published a series of essays promoting the ratification of the United States Constitution now known as *Federalist Papers*. In explaining the need for an independent judiciary, Alexander Hamilton noted in [The Federalist # 78](#) that the federal courts "were designed to be an intermediate body between the people and their legislature" in order to ensure that the people's representatives acted only within the authority given to Congress under the Constitution.

The U.S. Constitution is the nation's fundamental law. It codifies the core values of the people. Courts have the responsibility to interpret the Constitution's meaning, as well as the meaning of any laws passed by Congress. [The Federalist # 78](#) states further that, if any law passed by Congress conflicts with the Constitution, "the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents."

"Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposed that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

The American democratic system is not always based upon simple majority rule. There are certain principles that are so important to the nation that the majority has agreed not to interfere in these areas. For instance, the Bill of Rights was passed because concepts such as freedom of religion, speech, equal treatment, and due process of law were deemed so important that, barring a Constitutional Amendment, not even a majority should be allowed to change them.

Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are:

- Publicly promulgated
- Equally enforced
- Independently adjudicated
- And consistent with international human rights principles.

The courts play an integral role in maintaining the rule of law, particularly when they hear the grievances voiced by minority groups or by those who may hold minority opinions. Equality before the law is such an essential part of the American system of government that, when a majority, whether acting intentionally or unintentionally, infringes upon the rights of a minority, the Court may see fit to hear both sides of the controversy in court.