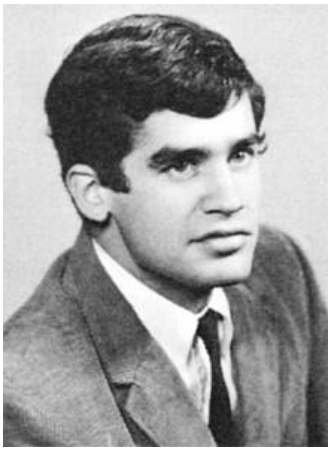

Ralph Shapira,
Oberlin College Class of 1968,
has shared the following on
oberlincollege-con68.com.

There are 14 chapters in four PDF documents:

1-4	*Early life through law school*
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MY FORTUNATE LIFE

Chapter 5, Career

Posted on July 18, 2022

I arrived at O'Melveny & Myers, one of the country's premier law firms, on January 2, 1976. The firm hired the top students from the best law schools in the country. I was awed by the partners I worked with. I was convinced I was a hiring mistake and it was a matter of time before the firm figured it out. I planned to work as hard as I could to delay the inevitable reckoning. After two or three years of training and burnishing my credentials, I would return to the Bay Area and get good job there.

We had over 200 lawyers in the Crocker Bank Building at 6th and Grand in downtown LA. The lawyers were spread around six contiguous floors, from the 34th to the 39th, connected by a grand staircase and grouped by departments (litigation, corporate, tax, labor, and real estate). Everyone wore suits and ties to and from work, but it was shirtsleeves only within the office. Each lawyer had their own window office, sizes C, B and A in order of increasing square footage, the smallest for junior associates to large corner offices for partners, and every lawyer shared a secretary with one other.

Despite the numbers, getting to know the other lawyers was easy. Lawyers kept their doors open unless in a confidential meeting, and you could drop in on anyone to talk. We had a large internal lunchroom with round tables seating ten. You would sign in, pick up a plate, take your food cafeteria-style and look for a place to sit. Conversations flowed easily and were generally whole-table, so new lawyers quickly got to know lawyers from different departments and floors.

Connie and I were adopted into a group of litigators who socialized regularly. Some lawyers, generally older ones, seemed to have married more for beauty than accomplishment. Our O'Melveny group of friends, mostly men, had high-powered wives. Many became close friends of Connie's.

The scuttlebutt among litigation associates was that you wanted at all costs to avoid getting assigned to a giant case staffed by teams of lawyers. You would be trapped for years doing grunt work, not get responsibility, not learn how to handle cases on your own, not get a chance to shine and WOULD WORK FULL TIME ON ONE DAMN CASE FOR YEARS. So I felt trapped when one of the senior partners asked me to his office and told me the firm wanted me to work full time on the biggest case the office had ever handled — Memorex *v.* IBM, the largest private antitrust case in the country, representing computer industry giant IBM. He phrased it as a request, but it wouldn't have been a good career move to refuse. I agreed.

Memorex *v.* IBM

When I started, each side was taking long depositions of the other side's computer engineers and businesspeople. I was given my own hundred-million-dollar issue to defend: whether IBM's new 3705 communications control unit was old wine dressed in new bottles introduced just to hurt Memorex's competitive product, as Memorex claimed, or was a genuine technical innovation, as IBM contended. The defense was easy: the 3705 was programmable and flexible, while Memorex's products were hard-wired and inflexible. IBM assigned me a team of six engineers who functioned as specialized paralegals, scouring the other side's truckloads of document production to find papers relevant to each deposition, explaining their significance to me and organizing them for use as deposition exhibits. The team was led by a gentle and wise IBM senior product manager, Paul Frontiero. He became a close friend and taught me a great deal, about the case and also how to lead a team, get along and get ahead in a large organization.

My first deposition, of a Memorex product manager, took five days. I had no experience questioning anyone, let alone an unfriendly witness. I was nervous and my voice quavered at first, but quickly I relaxed and got the hang of it. The witness was defended by a tall elegantly dressed senior partner of a leading Silicon Valley litigation firm. He tried to throw me off by objecting loudly and contemptuously on spurious grounds to most of my questions. Late in the third day he stood up, slammed a pile of papers on the conference table like a rifle shot and shouted at me that "This is the biggest waste of time I've ever seen in my career." My job was to stay unruffled and continue pursuing the witness, which I did.

Far from not getting responsibility, I took probably 250 days of depositions of hostile witnesses and got the greatest cross-examination experience a lawyer could want. I developed an instinct for what a witness wasn't saying, how to get it out of him and how to nail it in a tight package most useful at trial. I became, and remained throughout my career, a superb cross-examiner. I thought I was as good as anyone.

At the close of discovery 90 days before trial, the Hon. Samuel Conti, the federal judge in San

Francisco handing the case, ordered that within thirty days each side had to file an Offer of Proof ("OOP") identifying every single fact they intended to prove at trial. If a fact wasn't in our OOP, we wouldn't be allowed to prove it at trial. This was a monumental task for an anticipated six-month trial of highly technical evidence featuring scores of witnesses, tens of thousands of documents and hundreds of thousands of pages of depositions. Under the leadership of Patrick Lynch, our brilliant lead counsel, our entire 20-lawyer team dropped everything and worked as hard as humanly possible to produce our OOP by the deadline. I wrote the section on my issue, with Lynch's editing. (He and several other firm partners were superb editors who helped hone my skill at writing concise, compelling briefs.)

Finishing the OOP went down to the wire. On the day it had to be filed, our printers were producing our 3,000-page opus and two copies as two limousines (in case one broke down) waited outside our Los Angeles office to speed it to a Lear Jet waiting in Burbank to fly it to San Francisco where two other limos awaited its delivery to speed it to federal court where we would get the original and two copies file-stamped and filed by their 4:30 closing time.

The stakes were high. Judge Conti was strict and unforgiving. We thought if we didn't get it filed on time he wouldn't allow us to put on our defense at trial, causing IBM to lose billions in the resulting judgment.

The whole operation was to be handled by IBM's staff, but there was room for four lawyers to ride along. I jumped at the chance. It proved fortuitous that I did.

I had never been in a private jet, and was awed as it accelerated and climbed like a rocket out of Burbank. We made it to the clerk's office at about 4:25 pm. But the office had closed early and was locked up tight. There was no apparent way to get the vital clerk's file stamps on the papers showing they were delivered by the deadline.

Desperate, we fanned out through the court's halls looking for help. Miraculously, I ran into the courtroom clerk of a federal judge I had clerked for in law school. Trailed by our minions with carts stacked high with our papers, I shouted "Jim!"

Thankfully he remembered me. "Ralph . . . what are you doing here?" I explained our predicament and that we had been at the clerk's door during regular hours but it had closed early. He walked us back to the clerk's office, opened it with his key, stamped our documents "filed" with that day's date, and left them in the appropriate place. When we got back to LA we told and retold the story, and I was celebrated for saving the day.

Before trial started, Pat Lynch appointed me the trial team's "beachmaster," which, I learned, meant I was in charge of getting the right people, exhibits and documents to court each day when needed. This seriously misgauged my capabilities, since planning and logistics were my weak suits. The assignment didn't outlast the first day of trial.

Lynch planned to use 20 large, 4' X 6' hardboard exhibits in his opening statement to the jury,

one of the most important events of the trial. When the time neared, the exhibits were nowhere to be found. I ran to a corridor telephone booth and desperately tried to locate them. As time ticked by, I felt like I had died and gone to hell. I finally learned that my instructions to the delivery men to take the exhibits to Judge Conti's courtroom in federal court hadn't considered that there was a second federal courthouse in San Francisco where the Ninth Circuit Court of Appeals sat. The messengers had gone to the wrong court.

I got them on the phone and redirected them, and we waited. By the time the exhibits arrived, Lynch was a half hour into his opening without the visual aids he'd counted on. He picked up using them as if nothing had happened and was brilliant throughout, but I thought my career had taken a shot to the heart.

Lynch never spoke to me about the screw-up. My assignment as beachmaster was forgotten, but I resumed working on the issues I was assigned. The partners didn't mention the disaster in my annual performance review.

As trial proceeded and neared the time for my issues, Lynch asked me to cross-examine Memorex's leading fact witness. Our work was being monitored by New York's Cravath firm, which was handling the even larger U.S. government antitrust suit against IBM on issues overlapping ours. It was unheard of in big New York firms to have a mere associate question a significant witness before a jury in a major case, let alone one just three years out of law school who had never been in trial. They complained about my assignment to IBM's general counsel, but Lynch held his ground and I was allowed to proceed.

I prepared by organizing for best effectiveness the important helpful testimony the witness had given in his lengthy sworn deposition. I outlined questions that would call for the witness to repeat his admissions to the jury. I had the excerpts of his deposition testimony underneath each question, available to read to the jury. If he testified inconsistently with what he'd said in deposition, I would recite his prior testimony and the jury would make him out a liar. My cross-examination was tough and effective, and I earned kudos from co-counsel and my IBM team.

Next up was Memorex's paid expert witness on my issues, whom Lynch would cross-examine. By coincidence, I had interviewed the man a year before to consider retaining him as IBM's expert witness. I had explained the issues to him and told him what each side was contending. After we met, he wrote me a letter saying that he agreed completely with IBM's position and would be pleased to testify on our behalf. I hadn't liked him much and hadn't hired him. But I still had that letter.

As Lynch neared his finish, he showed the expert his own letter saying that IBM's position was correct; and after the witness authenticated it, Lynch projected the letter on a screen to the jury and read them the pertinent part. The expert must have forgotten the letter and hadn't warned Memorex's lawyers about it, or they never would have put him on the stand. The moment Lynch showed what he'd said, the expert turned speechless, his lips gaping open and closed like a fish out of water. It was a devastating conclusion.

After trial, the jury deliberated for four weeks while we tried to relax in our offices, nervous and

expectant. One day I took a hike in the Golden Gate headlands with Connie, carrying a beeper in case the jury delivered a verdict and I was needed. When we were a mile into our hike, the beeper went off. I told Connie we had to turn around. Our marriage was already severely strained by my absence for the trial, and Connie got furious and refused to go back. We had an awful, bitter fight on the trail, but I was adamant that duty called. We walked silently back to my car so I could return to the office. We didn't speak a word during our ride.

When I got back I learned that nothing at all had happened; the beep I'd received was a practical joke some of my colleagues had pulled on me. I was livid and never forgave the jokesters.

Finally, the jury announced it was hung, and the case ended in a mistrial. We contemplated having to repeat the whole ordeal from the beginning in a new six month trial, while some of our colleagues prepared a post-trial motion arguing that Memorex had not proved its case as a matter of law. The judge agreed, and entered judgment for IBM on the grounds that Memorex's case was not supported by the evidence. It was a tremendous victory for IBM and our firm.

Circling the Globe

The firm rewarded the associates who worked on the case and their spouses with a three-week all-expenses-paid trip to anywhere in the world. My colleagues outdid one another with the extravagance of the trips they took. Connie and I weren't interested in extravagance. Pan American Airlines, then the world's leading international carrier, was promoting an "Around the World in 80 Days" trip for $1,000. You could fly to any Pan Am destination in the world so long as you continued heading east or west, whichever way you started.

I asked Lynch whether the firm would give me about the same amount they were giving my peers, but allow me a leave of absence for an additional 58 days beyond the three weeks so that we could take the Pan Am deal. The firm generously agreed. We flew to London, Rome, Belgrade, Athens, Istanbul, Delhi, Kathmandu, Bangkok and Hong Kong, using each as a jumping-off point for exploration. The trip was wonderful and restored my marriage. We conceived our first child in a tent high in the Himalayas with a head-on view of Mt. Everest.

In Thailand I contracted a horrible case of dengue fever, AKA "bone break fever," and was bedridden for a week in agonizing pain. I thought I had recovered by the time we made it back to Los Angeles and immediately flew to Berkeley with two partners to interview law students for jobs. I didn't know that dengue often comes roaring back after initially getting better. It hit me during the first morning of interviews and I almost completely lost my mind in delirium. The partners saw me, beet red and sweating heavily with high fever, and told me to go back to our hotel. But I always wanted to be known as a trooper unbowed by any obstacles, and wouldn't hear of it. I continued interviewing, but had no idea what I was babbling or to whom. The partners were afraid for weeks that candidates I interviewed but they hadn't approved would start showing up at the office with offers I had promiscuously extended. That didn't happen, but I'm sure some law students told great stories about their otherworldly interview with a crazed O'Melveny recruiter.

When I got back to LA and checked my bank account, I found that the firm hadn't stopped my

salary during what was supposed to be my 58-day unpaid leave of absence. I went to the accounting department and told them about the mistake. No one cared.

O'Melveny's litigators didn't specialize in substantive areas and I never handled another antitrust case. I won't try to recite all the kinds of cases I handled, but will tell a few hopefully entertaining stories that illustrate the breadth of my practice.

The Billionaire

My clients were almost exclusively large corporations or professional partnerships. I also represented a billionaire — I'll call him B — in two cases that make pretty good telling. The first, my silliest case ever, arose out of a National Arabian Horse Show Championship competition. The championship that year was awarded to a horse owned by the wealthy owner of a chain of psychiatric hospitals ("the Doctor"). B's horse came in third. Then the second place winner was disqualified on account of its shoes being heavier than allowed — apparently, heavy shoes unfairly made a horse's prancing more graceful. All the scores of all the other horses in the competition had to be recalculated as if the disqualified second place horse had never competed. The surprising result was that B's horse was awarded first place, with the Doctor's moving from first to second.

The Doctor sued the Arabian Horse Show Association, which ran the event, and B, seeking the court's declaration that the Doctor's horse was National Champion. In my investigation I was curious how Arabian horses were judged. I toured B's horse ranch and spoke with his horse experts (I didn't meet B that time around). It turns out the Association owns a painting of an Arabian horse that it considers the perfect specimen; the physical features of all other Arabians are judged against that painting. In any event, I won the case by persuading the court that it was legally required to defer to the Association's decision.

My second case for B involved serious money. It concerned a huge super-luxury resort in the desert that B had developed at enormous expense. The resort had been losing money hand over fist, and B had impulsively fired the internationally-renowned management company that ran it for him. The company sued B for damages, claiming he had no right to terminate them under the contract.

B's contract with the management company allowed him to terminate only for specifically defined "good cause." I reviewed the contract, business records and correspondence, and interviewed witnesses. It became apparent that B entirely lacked the good cause required for termination. No credible defense could be made; B was likely to lose at trial and have to pay substantial damages. Moreover, the loser would have to pay the winner's legal fees.

The case was a potential gold mine for a law firm; many lawyers would have died and gone to heaven for the chance to represent B. They could milk the case for huge legal bills for years until it was tried, and still more through trial and appeals. I was never that kind of lawyer. I always gave clients my best advice without considering my firm's financial interests.
I called B's General Counsel ("GC") and laid out my analysis. I concluded, "We should settle

this case or we'll get slaughtered at trial and have to pay big damages, along with the plaintiff's legal fees as well as our own."

GC understood and agreed but was unwilling to deliver the bad news to B. I would have to be the sacrificial messenger.

I flew to Phoenix where a car awaited to take me to B's enormous mansion. We were shown into the living room and sat on fine couches in our business suits awaiting our audience. B kept us waiting the better part of an hour, then swept into the room with a gaggle of staff, wearing only a monogrammed bathrobe and slippers.

GC introduced me. Before I could say a word, B fixed me with a contemptuous stare and spewed loudly and venomously, "I HOPE YOU'RE NOT ONE OF THOSE LAWYERS WITH NO BALLS WHO'S GOING TO TELL ME I HAVE TO SETTLE THIS DAMN CASE. IF THERE'S ONE THING I CAN'T STAND, IT'S A LAWYER WITH NO . . . BALLS."

Uninterested in discussing my anatomy, I ignored his outburst. We sat and I began to explain the contractual issues and the unfortunate facts of the case. After a few minutes B cut me off with a wave of his hand and ordered GC, "Get Edgar Jones on the speakerphone." While B's aides ran for the speakerphone, GC explained to me sotto voce that Jones was B's good friend and fellow resort developer whose judgment B trusted.

Staff connected us with Jones. B told him angrily, "I'm sitting here with a lawyer who's got NO BALLS who's trying to tell me I have to settle my case against the management company. I want you to listen to him."

I knew that discussing my confidential legal advice with an outsider could potentially waive B's attorney-client privilege, but concluded that a legal exception would apply. So I began again and laid out the entire case for Jones as if he were my client. Jones was attentive and asked thoughtful questions. Throughout my presentation B glowered at me and silently mouthed "NO BALLS!"

Jones and I talked for an hour, and the meeting ended without further discussion. I took the car back to the airport not knowing whether a decision had been made or, more likely, whether I would be fired.

A couple of days later, GC called. He said, "Jones agreed with you and persuaded B. We want you to settle the case for as little as you can negotiate." Within a week I negotiated a settlement approved by GC and the case was dismissed.

I never had the pleasure of dealing with B again, although he continued using our firm. I did not envy my colleagues assigned to his cases.

Harassment and Countersuits

In one of my most unusual engagements, I represented a large insurance company that had issued a general liability policy to a 40-bed community hospital in California's Central Valley. The hospital had big problems. They began when a group of nurses made complaints against two doctors on staff — Doctors Vemireddy and Devireddy — for allegedly sexually harassing them. The hospital's Board of Directors met and, after a close vote, suspended the doctors' staff privileges pending investigation.

The doctors immediately sued the hospital, and also each member of its Board of Directors, over what they claimed was their wrongful suspension. They also sued each of the complaining nurses for libel and slander. At this point the Board convened again and, after another contentious meeting, voted to lift the doctors' suspension.

Responding to the doctors' suit, the nurses countersued the doctors for the alleged harassment; they also sued the hospital and each of its Board members over their reinstatement of the doctors. Many of the Board members, responding to the two suits against them personally, sued one another.

I never formed an opinion about the doctors' guilt or innocence, because my role was limited. My insurance company client's problem was that everyone who was a defendant in any of the suits and countersuits was covered by its insurance policy.

The company wasn't worried about having to pay any monies awarded in the cases; that could be easily handled. But it was apoplectic about the legal fees. Under the policy and California law, my client was required to pay the legal fees of everyone who had been sued in every one of the cases. And, because of conflicts of interest, every person sued was entitled to their own separate lawyer.

There weren't nearly enough lawyers in the area to handle all the cases. Lawyers from as far afield as Sacramento, Fresno, Bakersfield and Stockton appeared, representing various defendants in the cases.

When I first visited my client, its head of claims was apoplectic over the tall stacks of bills he was getting every month from all the defense lawyers. The cases seemed to be a full employment guarantee for half the defense lawyers in the vast Central Valley — with my client paying all their bills.

My assignment was simple: "GET US OUT OF THIS!"

The obvious solution was to settle the cases; only that would stop the avalanche of legal bills.

I called the clerk of the small-town county judge assigned to the cases, identified myself and suggested that the court might want to schedule a settlement conference in all the cases simultaneously, which I would attend. The court set up the conference and notified the lawyers. They all appeared at the conference, with some law firms sending multiple lawyers. There wasn't

nearly enough space in the judge's courtroom, so the court moved the conference to the county's large ceremonial courtroom. Even so, there were lawyers jammed in the pews, packed around counsel tables, standing in the aisles and leaning against the walls.

I appeared, wearing one of my elegant dark wool LA court suits — I had long since abandoned the awful suits I had bought for law school interviews — and felt conspicuously out of place among the more practical polyester checked suits and sport coats worn in the hot Central Valley.

After the bailiff called the courtroom to order, the judge announced that he wanted to meet privately with the insurance company's lawyer. I rose and followed him to his chambers. All eyes in the room were on me. The plaintiffs' lawyers hoped I had brought a boatload of insurance company money to settle their cases, which in fact I had.

In preparation for the conference, I had divided the plaintiffs into categories and worked out a suggested amount to be paid to the members of each group. I knew the plaintiffs' lawyers would bargain hard to maximize their contingency fees.

I laid out my suggested strategy for the judge: in which order he should call the plaintiffs' lawyers into his chambers, what he should say to each and what settlements he should propose. He was attentive and took notes.

When we got to one group of plaintiffs, he looked at me and asked casually, "So you think I'll be able to jew this bunch down to $30,000 apiece?"

I stared straight back at him and said, "Your honor, that's an offensive expression." He about fell out of his chair with apologies. If I had represented a party in the cases I would not have been so bold and risked alienating the judge. But I didn't represent a party and the judge had no authority over my client; I was only there to authorize payment of the monies needed to relieve the court (and my client) of this congested tangle of cases.

The judge followed my script, and at the end of a long day, after meeting in groups and individually with every plaintiff's lawyer, he succeeded in settling all of the cases — with my client's money.

When I phoned my client and told him his long ordeal with legal fees was over, he was ecstatic.

WV Gob and UAE Oil

I had a $300 million case in deep rural West Virginia. A large electricity generating plant had been designed and built to burn low-grade waste coal, called "gob." The system's conveyor belts that moved the gob up to and within the plant kept gumming up, stopping it from operating. I represented the bank that had financed the project. The owner sued the engineering and construction firms that designed and built the plant, charging that their work was done negligently. One of the parties countersued the bank on some theory I don't remember.
Big-city lawyers know that small-town judges and juries often don't like them. They don't like

outsiders generally, even more so when they take work from local lawyers. Therefore it's common to hire a local lawyer to act as co-counsel, which I did. I filed a motion for summary judgment to get the bank out of the case.

When the hearing approached, I asked local counsel how to get to his office. "When you get to town, turn right at the stop light and my office is in the first building on the right," he said.

I asked, "Which stop light?"

"The only one in town," he replied.

My opponent had badly misstated some important things in his opposition to my motion. We filed a reply brief two days before the hearing to correct the record. In preparing for oral argument, it was important to me to know whether the judge would likely have read my reply before the hearing. Since my local counsel was familiar with his habits, I asked him.

"Oh yes, he read it," he replied.

"How can you be so sure," I asked.

"Well, we had a funeral this morning for a state policeman killed on duty," he explained. "The judge and I rode out together, and he told me he had just read it."

The importance of local counsel could not have been demonstrated more forcefully. We won the motion and got our client out of the case.

I represented Occidental Petroleum when it was sued by another oil company. It alleged that Armand Hammer, Occidental's founder and leader, had obtained a concession to extract oil from one of the United Arab Emirates by delivering a suitcase full of cash to the Emirate's ruling sheik, in violation of the Foreign Corrupt Practices Act. It sought to invalidate the concession and get it for itself. Whether Hammer did or didn't was immaterial to my defense, and I never asked what really had happened. Occidental hired a senior partner of a leading New York firm to monitor my work. I wrote a motion to dismiss the case under the "Act of State Doctrine," which barred American courts from questioning the actions of a foreign sovereign. The motion was granted and the case dismissed. The New York lawyer asked me whether I would be interested in moving to New York and jumping ship to his firm. I wasn't.

Rodeo Drive

I had two cases for a renowned Beverly Hills department store. In the first, agents from the US Fish and Wildlife Service had raided the store and confiscated racks of women's snakeskin and crocodile shoes and belts, claiming the animals were illegally "harvested" in violation of the Endangered Species Act. I met with a herpetologist and learned that after the skins were stretched and dyed it was extremely difficult to tell what species they were made of.
The company, which had bought the products from designers and had no idea what they were

made from, wasn't concerned about its legal exposure. What it did desperately want was to avoid any publicity about the bust. It thought that if its Beverly Hills customers heard about it selling endangered species, they would boycott the store. So I immediately contacted the Assistant US Attorney to settle the case. We were basically willing to take any remotely-reasonable deal he offered us. We paid $100,000 plus the agency's cost of investigation and agreed never to do it again. The case never hit the news.

The second case involved the store's single largest customer, a woman who had bought hundreds of thousands worth of expensive furs, jewelry and designer clothing. Contrary to its usual policy of getting to know important customers, store personnel had never asked about the woman's background. It turned out she was the accountant for a large ophthalmology practice. All her money was embezzled from the doctors, who sued the store. Fortunately, she had stored most of the merchandise in the store's vaults; it was still there and could be resold. We settled by returning most of the money she had paid.

Extra-Thick Trash Can Liners

I represented a major oil company that had a plastic bag manufacturing plant near Sacramento. An investigator from the State Bureau of Weights and Measures had bought a box of 1000 of the company's trash can liners, opened it and counted them. There were only 850 bags in the box. The state sued for consumer fraud.

I went to the plant to study the manufacturing and counting procedures. It turned out that on heavier-ply bags, the machines that made them had automatic counters so the number of bags was known precisely. Trash can liners, on the other hand, were so thin and light that when they came out of the manufacturing machine they floated like snowflakes into a pile and couldn't be machine-counted individually. Instead, the company measured them by weight.

It knew how much 1000 bags should weigh, and when the pile got to the desired weight it was boxed up and shipped. However, the machine had been mis-calibrated for a time and the liners it produced were thicker and heavier than usual, so when the piles reached the prescribed weight there were fewer bags than expected. I explained to the assistant attorney general how the mistake happened to convince him there was no fraudulent intent. I also tried half-heartedly to persuade him that consumers weren't really hurt, because although they got fewer bags, the bags they did get were better for being thicker and stronger. He treated the latter argument with the merry laugh it richly deserved, and we settled with a fine and a consent decree not to do it again. The company presumably kept the machine more accurately calibrated thereafter.

"Partners" Make the Big Bucks

A partnership at O'Melveny meant a lifetime of high earnings and prestige. But associates faced long odds against getting there. New partners were made only after an associate worked 7½ years at the firm. If you didn't make partner then, you had to leave — it was "up or out." Each associate was given two performance reviews a year by the partners for evaluation and constructive criticism. Associates were more employable elsewhere the earlier they left the firm, and there was gradual attrition from the 30-lawyer class I entered with.
I thought the partners had an inherent conflict of interest in the associate review process. The

firm made huge profits from hard-working middle and senior associates, the difference between what they were paid (plus overhead) and the hourly fees charged to clients for their work. It was in the firm's financial interest to keep busy associates at the firm working for as long as possible. I thought this gave partners an incentive to sugar-coat associates' reviews in order to keep them onboard.

Therefore I was always a bit skeptical of my consistently favorable reviews. I didn't want to be a lawyer lured by good reviews to stay for 7½ years, then have the rug pulled out from under me when a partnership wasn't offered. It was important to me to know what the partners REALLY thought of me, rather than accepting at face value the praise they gave in reviews.

I found a way. I accidentally discovered where the papers showing the partners' secret ranking of associates were kept, in an unlocked office in an unlocked drawer. Each year I would sneak into the office in the middle of the night on Easter or Christmas, when no one else was around, and read the rankings. I found that I was consistently ranked at the top of my class, tied with two others in litigation. This gave me confidence to stay the entire 7½ years of purgatory.

My Dad was dying of cancer as my partnership year approached. I was defending *Psychology Today* magazine against a claim from celebrity Los Angeles psychologist Arthur Janov. He contended in books and on TV that all neuroses stemmed from the "Primal Scream" that infants experienced during birth, and that treatment required the patient to relive that scream. The magazine had published a highly critical article belittling Dr. Janov's theories and treatments, and Janov sued for libel.

I read all the Doctor's books and took his deposition. Then I wrote a motion for summary judgment to get the case thrown out on the grounds that the article was constitutionally protected opinion and contained no mistakes of fact. The partners knew I wrote it while sitting with my father in hospice in Pittsburgh. My three-paragraph introduction juxtaposed various of Janov's statements with excerpts from the article in a way that made him appear a charlatan and laughing stock. It was funny, and designed to predispose the judge against Janov. When my client's general counsel read my brief, he offered me a staff writing position on *Psychology Today.*

The court granted my motion and threw out the case. It was my last major accomplishment before partnership decisions were made. I was told some of the litigation partners had passed around my brief, laughed with it and admired my work.

The partnership announcement was made near Thanksgiving 1983, the same day the firm was having a huge party celebrating our move into newly built, tastefully understated offices. Five associates out of the 30 who started with me made the grade. The wine flowed, and I was almost deliriously happy being congratulated by lawyers and staff and congratulating the other four new partners. One of the secretaries I had batted eyes with pulled me into an empty library storeroom and made me happier still.

Consulting Confucius

My next case was for breach of contract against Taiwan's Tatung Company, a leading electronics and computer maker. I flew to Taiwan to take the court-ordered deposition of its 80-year-old founder and chairman (Tatung had refused to produce him and I had to go to court to force it.) He was treated and acted like a potentate and was overbearing and contemptuous of me. The deposition was held in a huge conference room containing me, my client, a court reporter and 20 obsequious Tatung staff members. During the first day, when I asked why he had made certain decisions, he said he was guided in each instance by the Analects of Confucius, which he revered and always followed.

That night I bought and studied a copy of the Analects and built a cross-examination based on them. I revisited his decisions and read him excerpts that showed them to be inconsistent with the Analects. Mostly, I was just having fun at the old SOB's expense; that cross-examination based on Confucius' Analects was one of the most enjoyable I'd ever taken.

Not a Rainmaker

Although I was quite capable as a practicing litigator and at generating repeat business from satisfied clients, I did nothing to bring in new clients to the firm. When I interviewed O'Melveny as a law student in 1974, my hiring partner told me that the firm always had more business than it could handle and I would not be expected to bring in cases; indeed, he said the firm was unlikely to be interested in any business that an associate attorney could attract. That was one of the things that sold me on the firm — I have always intensely disliked salesmanship or, worse, promoting myself.

For that reason I never joined any of the leading business clubs where top lawyers and businesspeople mingled, socialized widely or played golf with Los Angeles' business leaders. I preferred my own circle of friends and staying at home with my wife and children when I wasn't working.

Then everything changed. In 1979 a new monthly magazine called *The American Lawyer* began publication. Its most sensational feature was revealing the per-partner compensation figures for all the leading national law firms. Before that, it had been impossible to know how one's peer firms were performing financially. Now that was all public knowledge.

The new information caused a remarkable but regrettable transformation in big national law firms. Partners who generated sizable amounts of business at lower-profitability firms began to be "picked off" by wealthier firms who could afford to substantially increase their compensation. So-called "lateral" partner movement became common. Fearing their stars might be lured away, less-profitable firms jumped through hoops, first to raise their own profitability ("increase billable hours") and, more relevantly and importantly, to compensate more highly their "rainmakers" — partners who were best at business development — to prevent their jumping ship.

O'Melveny had long had a "lockstep" policy: partner compensation was based only on seniority.

It held out for years, but the pressure to change to a system of more highly compensating rainmaking partners was enormous. It was necessary both to raise the pay of their stars to keep them from being picked off laterally, and to enable the firm to attract rainmakers from other firms when needed to expand into new territories or acquire new practices.

Since I was a homebody rather than a rainmaker out socializing with potential clients, I never moved past 75 "shares" of the partnership profits, on a scale that started with 30 for new partners and went to 100 shares for the most senior or — in the new world — most prized partners. I'm sure that even the 100-share limit was exceeded in special cases where attracting a particular partner from another firm was deemed essential to the firm's growth. Though I abhorred the new system, I was well satisfied financially with the high-six-figure sum that my 75 shares brought in annually.

Representing Native Alaskans

I continued carrying a varied calendar of cases for years, and then was assigned full-time to another giant one: the Exxon Valdez oil spill litigation, defending Exxon after its supertanker ran aground on a reef in Alaska's pristine Prince William Sound, spilling eleven million gallons of crude oil and creating what was then the greatest man-made environmental disaster in history. Thousands of plaintiffs filed suit in federal and state courts in Anchorage claiming billions in damages from the spill and seeking an additional $5 billion in punitive damages.

I was put in charge of one part of the cases, the claims of Native Alaskans who lived in small villages scattered in remote areas around the Sound. They claimed the oil spill had poisoned their shorelines and waters and destroyed their traditional way of life, which was based on communally harvesting seafood and the customs and rituals that surrounded it. They sought damages for emotional distress.

I loved the case. Essentially I got to be an anthropologist, asking the Natives under oath all about their way of life and how it was before and after the oil spill. Exxon hired a professional anthropologist to school me. I was genuinely interested in the Natives' stories and came to like and greatly admire some of the village elders I met.

I learned that the Natives' traditional way of life had been completely destroyed in the last century and a half, but not by the oil spill. The first blow was from Russian fur traders who virtually enslaved them in the 19th century. Then came the American government, which forced Native children into schools where their language and customs were forbidden. Their village life since then had been deeply troubled by idleness and alcoholism.

Then a remarkable thing happened: under visionary leadership in the years before the spill, they had worked hard to rehabilitate themselves by reinventing their traditional way of life. The spark was a Smithsonian Museum exhibition of the Natives' original tools, clothing, talismans and customs. The Natives bought copies of the exhibition catalog and started learning about their own history. They began reinventing, making, using and practicing things they had long since

forgotten. Although the oil spill suspended their harvesting seafood for a year or two, the process of cultural reinvention was still in full flower and hadn't been arrested by the spill. Instead of saying what their lawyers wanted them to, witnesses proudly proclaimed that their traditional way of life was alive and thriving.

Their claims had a second Achilles heel as well. In the aftermath of the spill, Exxon had hired virtually all able-bodied Alaska Natives in the area and their boats to assist in oil cleanup and shoreline remediation. The jobs and boat rentals paid handsomely, far more than the Natives had ever earned before. While they didn't gather and eat local seafood for a time, they didn't starve: they shopped for food in markets they couldn't have afforded before. One Native leader admitted in deposition that he used to live on smoked salmon and mollusks from the shorelines, but didn't much care for foraging and now ate steak, which he liked a lot better. American courts award damages to plaintiffs who were financially harmed by a defendant's wrongful conduct; they don't generally award damages when a defendant's actions financially enriched the plaintiffs.

The first Exxon Valdez case went to trial in state court in Anchorage in the summertime. I had never lived in a land of midnight sun before, and found the long daylight hours tremendously energizing. I worked harder than ever preparing for trial and trying the case, along with three other lead trial lawyers. One of my partners approached me after watching me prepare to cross-examine an important witness before the jury. Observing that I was vibrating like a tuning fork, she asked if I was nervous. "Not at all," I answered truthfully, "just keyed up for the challenge."

The Natives' lawyers chose their trial witnesses poorly, including the guy who preferred steak, and none of the leaders I had admired and feared the jury would sympathize with were called. My cross-examinations of those who did testify and of their expert witness were triumphs.

At the end of the case, the jury awarded $250 million to the plaintiffs. However, the court was required to deduct the amounts the plaintiffs had received in generous post-spill claims payments that Exxon had made to everyone it thought had a valid claim. The deductions for the Natives' pre-trial claims payments were more than the amount the jury awarded, and the plaintiffs got no net recovery. It was a great victory for Exxon.

Then I began preparing for the Native Alaskan claims in the much larger federal case scheduled to follow. I thought the plaintiffs' lawyers would wise up after the disaster of their first trial and call some of the impressive witnesses I had met and deposed. I was worried that they would elicit jury sympathies that would spill over and hurt Exxon's defense against the much larger class of 32,000 commercial fishermen plaintiffs in the case.

I persuaded Exxon to try to negotiate a settlement of the Natives' claims. They brought in a nationally-renowned plaintiff's class action lawyer from the Lower 48 to negotiate with me. I found him bombastic, obnoxious and unrealistic, so after a fruitless morning in a conference room with 15 other plaintiffs' lawyers watching, I ended the talks and left. The Natives sent that lawyer packing and regrouped. They brought in a more reasonable lawyer whom I had comfortably dealt with before, and we recommenced negotiations.
We settled the Natives' federal claims before trial for $20 million. It was the only class in the

federal case Exxon settled with. It was a generous per-person recovery — there were only a few thousand Natives in the class — and it positioned the Natives to receive a proportionate share of the substantial punitive damages later awarded in the federal trial. With the Natives' claims resolved, I returned to Los Angeles and picked up other cases. Exxon Valdez was one of the most enjoyable and memorable cases of my career.

Belmont for the Disadvantaged Kids

The case that prematurely ended my career came when I had been a partner for 20 years. The Belmont Learning Center was the first new high school the badly-overcrowded Los Angeles Unified School District had built in a generation. Just west of downtown LA in an area packed with Central American immigrants at densities greater than Manhattan, it was a $350 million state-of-the-art high school built for the District's most disadvantaged children. It was sited on an abandoned oil field, as were much of Los Angeles and many other LAUSD schools, and was equipped with modern technology to protect the school and its students from any potentially dangerous oilfield gasses.

Out of the blue, the *Los Angeles Times* ran a front page story whose bold headline claimed the nearly-completed school was built on a toxic waste site and could never safely be used. The paper thought it had the scandal of the decade and followed up in succeeding days and weeks with literally scores more front-page and headlined metro-section stories exposing how the District had allegedly made such a catastrophic mistake.

The School Board, under tremendous pressure, voted to abandon the nearly completed school and write off its $350 million investment. Then it looked for someone to blame and landed on my law firm. One of O'Melveny's real estate partners had represented the District in developing the school. The District alleged that he should have known about the "toxic waste" problems and warned the District not to build the school. It charged our firm with legal malpractice causing its $350 million loss. Many subsequent news articles described our firm's malpractice exposure.

It was by far the worst publicity O'Melveny had suffered in its 125-year history, and it threatened potential liability well in excess of our malpractice insurance limits. The case was not only hugely embarrassing and damaging to our hitherto sterling reputation; it threatened the firm's very existence.

We hired another leading LA law firm to defend us in the case. My brilliant partner Jim Colbert and I were assigned to supervise our defense; we both had defended other law firms in malpractice cases. Colbert was quite busy, and the laboring oar fell to me. We hired Mark Fabiani, a veteran of the Clinton administration and a nationally-renowned corporate crisis counselor, to advise us on strategy and political and public relations.

I investigated the facts. It became apparent that the entire *LA Times* series was wrong. There was no toxic waste on the site — it had never been used for industrial purposes or dumping. The only issue was gasses that could seep up from old abandoned oil wells, but the school had a state-of-the-art mitigation system controlling that risk. Not only was the school perfectly safe, it was much safer than 40 other LAUSD schools that also sat atop abandoned oil fields but lacked the

mitigation technology that Belmont had protecting them from oilfield gasses. (It turned out that the false story about the supposed risks of the site had been planted by a labor union locked in a bitter dispute with the parent company of the project's general contractor.)

We realized that the best defense strategy was to convince the School Board to reverse its decision and complete and use the school: then no money would have been squandered and the District's alleged damages would evaporate. To accomplish that, we plotted a multi-pronged strategy to turn around the media coverage, persuade the local community and politicians to support the school, and ultimately to convince the School Board to finish and open the school.

Fabiani recommended that I be the front man on the campaign. He said we were more likely to be believed if we delivered the message ourselves rather than through our lawyers. We hired local and Sacramento lobbyists to set up meetings for me with important politicians. I contacted the *LA Times* lead reporter and got a meeting, and met with other newspapers and journalists covering the story. A *New York Times* article got an important fact wrong; I called the reporter and got a correction printed. I met community leaders and drummed up public support for the school. I had never done any of these kinds of things before, and was having a ball.

I wasn't motivated solely by my firm's self-interest. I deeply believed that the poor kids in that neighborhood needed and deserved that state-of-the-art school. It was the first case I'd ever handled where there were important stakes beyond corporate monies.

Because there was great concern about the case within the firm, I was dispatched to our Washington, New York, Century City, San Francisco and Newport Beach offices to hold confidential meetings with the partners and educate them about the facts and our strategy. Everyone seemed to support what we were trying to accomplish.

I eventually turned around the news coverage, convinced the important politicians and helped mobilize community-wide support. After many months the School Board reversed itself and decided to complete and open the school. Virtually all of the District's alleged damages were gone.

Colbert believed we should also try to get a summary judgment throwing out the case on the grounds that the District had always known about the risks of oil field gasses on the site, decided to build the school with full knowledge of those facts, and built it with the technology to mitigate those risks; whatever the alleged legal malpractice was, it had not concealed the key facts from the District. The motion was heard by an excellent judge, who granted it and entered judgment for O'Melveny. At this point, our malpractice insurer wanted to avoid the risks of an appeal and demanded that we settle the case for a modest sum with its money, which we did.

In the great ledger in the sky, getting the Belmont school completed and opened was the one major blow for social justice that I struck in my career. I had handled a handful of pro bono cases, but nothing with the impact of getting a modern high school built for thousands of LA's poorest children. It wouldn't have happened without my considerable efforts. (As Colbert commented when he read the last sentence of this paragraph, "That is the Lord's own truth!")

Jeopardizing My Career?

I was a hero to my partners, but all was not well in my relations with the firm's management. The head of our firm had been uncomfortable with our campaign to rehabilitate the school from the beginning. He didn't seem to trust our scientific and engineering evidence and didn't want the firm responsible for building a school that might be dangerous.

More importantly, he strongly believed that any publicity about the firm was bad. It was a living nightmare for him that I was out in the public eye every day using the firm's name in such a high-profile campaign.

The firm's management committee tried numerous times to shut me down, but I was adamant and had an ace up my sleeve. Our outside counsel supported our campaign and thought it was important for our defense. I argued that it could jeopardize our malpractice insurance coverage if we refused to follow our lawyers' recommendations, and whether or not that was true — I didn't really know — this dampened the noise for a time.

The firm then assigned a member of our management committee to accompany me to any meetings I set up. I gave the fellow advance notice of each one, but there were so many. He was a busy lawyer and was able to attend only two meetings. Management's resentment at my "out of control" conduct built.

I got a visit from another management committee member who said I was jeopardizing my career by working full time on the case — after it was over, I wouldn't have any paying cases to work on. I said truthfully that I didn't care and would take the risk.

Keeping Winnie for Walt

After the Belmont victory, I worked as second chair partner on Slesinger *v.* Disney. The case was brought by the heirs of A.A. Milne, author of the Winnie the Pooh books, to cancel Disney's long-term license to use and profit from the Pooh characters and stories. Pooh was at the time Disney's single most valuable intellectual property, and the case was a significant financial exposure to the company.

Our lead partner on the case was Daniel Petrocelli, famed for winning the civil case against O.J. Simpson for the murder of his wife which effectively bankrupted him. I took the depositions of the Slesingers and their detectives and established that they had trespassed on Disney's property surreptitiously to gather from its trash bins its lawyers' memos and other attorney-client privileged materials about the case. We moved to throw out their case on the grounds of litigation misconduct. The court granted the motion and it was upheld on appeal. Another total victory.

Maybe I Should Retire

After our wins in the Belmont School and Disney cases, I had my annual partner review with the head of our litigation department to discuss my compensation for the following year. He told me that because I wasn't currently lead counsel on any paying cases, they thought it likely they would significantly reduce my share of the firm's profits to the level of a junior partner. He suggested that it might be best for me to take early retirement to avoid that embarrassment, and asked me to think about it. He also said the meeting was confidential and I should not discuss what he said with any of my other partners.

This was my reward for helping save the firm from its worst-ever publicity and legal exposure! I knew it was blowback for frustrating management's efforts to end my pro-Belmont political and public relations campaign.

Management had no right under the partnership agreement to force me out without a vote of the partners. There had never been such a vote in the firm's modern history and I didn't think they'd win it if they took it, when I had been a hero to my partners for getting us out the Belmont exposure.

Like a fool, I didn't consult with any of my partner friends about my predicament. I think they would have told me to refuse. What I did instead was get furious at the insult and ingratitude and feel deeply wounded. I told him angrily on the spot that I didn't need to think about it, I would gladly retire. We negotiated terms then and there. In addition to generous monthly retirement payments for life, I was promised an office and secretary for whatever business, charitable matters or legal matters (so long as there was no conflict of interest with the firm's other clients) I got involved with, free parking in the firm's lot and use of all the firm's support services when I needed help. I retired, in the prime of my career after two great triumphs, at age 58. Looking back, retiring that young was a mistake.

What I didn't know then was that the firm had decided it had too many partners. The year after it made my deal, it offered every partner in the firm a million dollars to take early retirement, plus the same monthly payments, use of office facilities, etc. that I was getting. Because my kerfuffle was the year before, I didn't get the million bucks.

In truth, I had long thought about early retirement. Unlike partners like Colbert, whom I admired for always efficiently doing his work then going home at a reasonable hour for drinks, dinner and a good night's sleep, my ADHD had condemned me to a working life of high stress. I would obsessively worry about approaching deadlines without making progress, delay until the deadlines became an emergency, then work at peak energy, often through the night, to get the work done. I thought early retirement would give me a more relaxed and healthful life.

I didn't anticipate the other life crises that would coincide with my retirement and turn my life into a living hell.

Chapter 6, When I Got Filthy Rich

Posted on July 26, 2022

We go back in time 15 years.

I became a very wealthy man in the late 1980's. The supermarket company co-founded by my grandfather, led by my father and then run by my older brother — I'll call it "A-Corp" — decided to start a new business. "B-Corp" was to be a chain of large discount stores modeled on another company's highly successful megastore in Cleveland. B-Corp hired a President, copied the megastore's format and opened half a dozen big new stores in two states.

The new stores had high sales volumes and showed healthy profitability. A-Corp decided to go all-in, spinning off B-Corp into a new privately held corporation and raising money for expansion from institutional investors in private placement stock offerings. A-Corp's shareholders were given the chance to buy B-Corp stock at $10.00 per share. I was an A-Corp shareholder through gifts from my parents. I invested all the money I had in B-Corp stock, as did my siblings.

All My Eggs in One Golden Basket

A year later, with the chain expanding nationally at breakneck speed, a second stock offering was made at $30 a share, tripling the value of my investment. Existing shareholders were allowed to buy or sell stock at the new, higher price. I invested what I had saved since the first offering to buy more stock.

B-Corp's expansion proceeded at an almost exponential pace. Since new stores were expensive to build and open, the company needed huge amounts of money. It made a third, much larger stock offering at $50 a share, again with a buy or sell to existing shareholders. The buyers were major Wall Street investment houses. Sam Walton, the legendary founder of Walmart, said at the time that B-Corp was the only other retailer he feared, on account of its extraordinary speed of expansion.

It appeared we had struck gold. My siblings and I were tremendously excited by B-Corp's promise and our huge newfound paper wealth. I called my brother often to get the latest sales results and new store opening plans, and reveled at the enthusiasm from Wall Street.

Our family never had more fun than during this period of astounding success and burgeoning wealth. Though I was a hardworking partner of O'Melveny & Myers, I expected soon to retire, live in Olympian luxury and become a major donor to charitable causes.

A Mansion? Not Even a Mower

The next offering was at $70 per share, buy or sell. The company by then had over 300 stores and 25,000 employees, and my stock was worth over $50 million. I could have sold just a small part of my stake and been wealthy for life. Moreover, an aging grand mansion on a four acre hilltop in Los Feliz, near where I lived, had come up for sale for a million dollars. I ached to buy it. If I'd been willing to sell just some of my shares, I could have bought and renovated it and lived in one of the great homes of Los Angeles. But I greedily held on to them, anticipating further multiplication of wealth.

I was influenced by an article in *Fortune* magazine about the many early shareholders of Walmart in Bentonville, Arkansas, where the chain was founded. They were now famously wealthy due to the rapid appreciation of their stock, except for one man featured in the article. Like his neighbors, he had bought Walmart stock early and cheaply. But he sold it not long thereafter, taking modest profits in order to afford a riding lawn mower. The article had a picture of the man on his mower, while his neighbors who held onto their stock made tens of millions.

I didn't want to be the poor schmuck left behind sitting on his mower. I had visions of my wealth growing into the hundreds of millions. So I never considered selling any of my stock. My mind and good judgment had been entirely overwhelmed by greed.

Losing It All

Then one day in 1992 it all came crashing down. The *Wall Street Journal* reported that B-Corp's President had been cooking B-Corp's books in conspiracy with its Chief Financial Officer. What had appeared to be healthy profits were actually lackluster financial results. The Big Five accounting firm that audited B-Corp had entirely missed the massive fraud. The outside investors sued, the banks called their loans and B-Corp filed for bankruptcy. Eventually it liquidated, with zero return to the shareholders. The President was sentenced to 19 years in federal prison for securities fraud, and served ten.

I was crushed with disappointment and racked with regret, deeply remorseful of my stupidity in not taking at least some of my profits by selling stock in the later offerings. Instead, my entire investment and savings were lost. I resigned myself to a lifetime of hard work in the law.

Thus ended my years as a wealthy man. I never lived like one, and never spent a dime of my once-huge paper fortune.

Early life through law school	*Chapters 1-4*
Career and temporary wealth	*Chapters 5-6*
Parents, new house, cheating	*Chapters 7-13*
Fire, lifesaving, singing, family	*Chapters 14-19*