

# Personal remarks delivered at the President's Luncheon<sup>1</sup>

Last night I read a blog post by my partner Jed about how hard it is to be a plaintiffs' lawyer.<sup>2</sup> And I was reminded of this scene in the movie *Philadelphia*. Everyone probably remembers the scene where Denzel Washington goes to see Tom Hanks in his home, as he is dying, and he is listening to the opera, and Tom Hanks is relating what is going on in the opera, and it's probably one of the most moving and powerful scenes ever. But what I noticed, a few years ago, as a trial lawyer, and what interested me, is the next scene. Which you probably don't remember. But Denzel

Washington leaves the apartment, and he starts to walk down the hall, to the elevator, and he stops, and comes back to the door. And he is about to knock on the door, and go back in. He is going to do something. Hug him? Love him? Embrace him? Say something? We don't know. Because he turns, and he does not go through the door. He goes back down the hall, and he leaves.

The weight that we carry. When someone comes to you and entrusts you with his or her life, his or her family; maybe the most valuable thing in their lives is their case. The difference between security and having nothing at all. Seven days a week, twenty-four hours a day, 365 days a year, 366 on leap year.

We go months, sometimes years, without any money coming in. And then we have to pay taxes on phantom income even when we don't make any money. How crazy is that?

And then you come to a luncheon like this, and me, or Connie, or Linda, tells you that's not enough.

That, in addition to carrying all of this responsibility on your backs for your own clients, you need to do this, and that, and everything else, to see that legislation, court decisions, regulation, the rules, public opinion, don't unfairly strip away the rights of our clients, future clients, would-be clients, and clients we hope never to have by preventing their injuries in the first place.

Really? That's my responsibility?

I am supposed to take on the Koch Brothers, and the BPs, and the JP Morgans, and the State Farms of the world?

Allstate Insurance Company drops more money on a thirty-second spot during the Super Bowl, just one commercial, than I have probably made in twenty-one years of practicing law.

It's not fair. And we get angry, sometimes. Or we get resentful.

Then I think about the sacrifice that some of our colleagues in the legislature make. Who not only carry the responsibility of all of their own clients on their backs, but then have to spend the time and the money to run for office, and two or three months in Baton Rouge every year trying to keep really harmful bills from getting passed.

When I was at AAJ in Palm Springs a few months ago, people were talking about a speech that Gerry Spence had given at the "Weekend With the Stars." So I bought it, and I watched it.<sup>3</sup> And at some point, they asked him if he had any regrets. And he said, "What I think you are really asking is: Would I do it again? Would I be a plaintiff lawyer again? And fight for my clients, and what's right, and the little guy?" And he said "No. It's too friggin' hard."

He also said, looking at the audience, "You are the only ones. You are the only ones standing between the hope of a justice system, and oblivion."

And just a few weeks ago, I was at an event. And someone else stood up and said the very same thing. "You are the only ones. You are the only ones fighting for the little guy. Or even the middle class. They are killing the unions. The consumer groups aren't as organized as they used to be. And they don't have the money."

To come into a fiscal session with almost a \$2 billion deficit, and big-business organizations in this state are worried about making you pay for a jury in a \$15,000 case?



Steve Herman

These guys from Washington, and London, and elsewhere, that are setting the agenda, are bullies. And they are going to keep being bullies. And if you think they are going to stop, good luck and God bless.

Sorry to be the bearer of bad news. But you're it. You are the three hundred Spartans trying to hold back the entire Persian Army.

It's not right. It's not fair. But you are the only ones.

Many of you have probably heard me quote from the end of Tennyson's *Ulysses*, but today I wanted to leave you

with something else. During the early BP days, another one of my friends and mentors Duke Williams stood up and recited the speech from *Henry V* at one of our dinners. (Hard to believe we are still fighting about things we thought they settled almost three years ago.) I don't know this by heart. But I'll try to read something that puts things in words much better than I ever could:

If we are marked to die, we are enow  
To do our country loss; and if to live,  
The fewer men, the greater share of honor. . . .

By Jove, I am not covetous for gold,  
Nor care I who doth feed upon my cost. . . .

He that outlives this day, and comes safe home,  
Will stand a-tiptoe when this day is named. . . .

Old me forget; yet all shall be forgot,  
But he'll remember, with advantages,  
What feats he did that day. . . .

. . . we in it shall be remembered —  
We few, we happy few, we band of brothers;  
For he today that sheds his blood with me  
Shall be my brother. Be he ne'er so vile,  
This day shall gentle his condition;  
And gentlemen in England now abed  
Shall think themselves accursed they were not here,  
And hold their manhoods cheap whiles any speaks  
That fought with us upon Saint Crispin's day.<sup>4</sup>

Thanks. Keep fighting.

## Endnotes

1. This column is taken from my personal remarks to the membership during the LAJ Convention in New Orleans on March 20, 2015.
2. "Plaintiffs' lawyers," he had written, "constantly wrestle with how best to nurture their empathy while protecting themselves against drowning in the darkness. It is a delicate balance. Failure to find that balance can result in simultaneous professional success and personal defeat. Some of us begin to run away from our empathetic gifts that led us to the profession in the first place. The sadness takes its toll. We find ways to distance ourselves from our clients. We become hardened." Cain, Jed. "Plaintiffs' Lawyers Are Gross," *Above the Law* (March 18, 2015) (<http://abovethelaw.com/2015/03/plaintiffs-lawyers-are-gross/>).
3. The speech is available at <http://www.playbackaaaj.com/2014-aaaj-seminars/42410>.
4. Act IV, Scene iii.