

Judge Daniel M. Crowley

Be a good lawyer

A GOOD LAWYER SOLVES PROBLEMS, A LESS COMPETENT ONE WASTES TIME ON NEEDLESS DISPUTES WITHIN A CASE

"The trial by adversarial combat is a tool, not an end. The best lawyers are those who can look at a human or commercial crisis and design a bridge, not a battlefield."
– *Sandra Day O'Connor, former Justice, U.S. Supreme Court*

"The legal profession's highest calling is to serve as problem solvers, healers of conflict, and architects of peace."
– *Warren E. Burger, former Chief Justice, US Supreme Court*

What is a good lawyer?

A good lawyer solves problems. A less competent lawyer spends time and energy on disputes within a case that are needless and which do not advance the goal the lawyer was retained to achieve – the expeditious and cost-effective resolution of the client's dispute. This causes undue stress on the attorney and the attorney's client as well as diminished financial returns. The pursuit of these extraneous disputes seriously impacts the court system, as well, delaying the resolution of the primary problem for months and even years. Good lawyers do not engage in rote litigation and focus instead on actual dispute resolution.

What stops people from being a good lawyer?

Young litigators are taught that when a client walks in the door, they need to immediately analyze what causes of action the client's problem presents, what discovery will be needed to establish the elements of those causes of action and to eliminate any potential defenses, and then to develop a trial strategy. They immediately go into litigator mode.

To be fair, this is driven in part by the client's expectations. Clients seek out attorneys during moments of severe disruption – whether due to physical trauma, catastrophic financial fraud, wrongful termination, or a broken business partnership. They want someone who will fight for them. That's what all the advertising says: "I will fight for you."

Consequently, initial client consultations are often clouded by a high degree of emotional volatility. A client's explicit request is frequently framed as a desire for retribution: *"I want to take them to court and ruin them,"* or *"not a penny for tribute."* It is easy on both sides to convey toughness to get hired and get caught up in doing what the person paying your fee wants to have done.

If an attorney builds a litigation strategy entirely around a client's emotional desire for vengeance, they do their client a disservice. That emotional momentum will almost certainly fizzle out over three to five years of dry, grinding procedural battles. The client may not know that yet. You do, with almost universal certainty.

Instead of being swept up in the client's emotions, good lawyers reflect instead on the problem the client has and how to solve that problem. Both problem-solving plaintiff's attorneys and defense counsel must systematically separate a client's legal positions (or their demands) from their true underlying

Portfolio Metric	Litigation	Problem Solving
Time to Resolution	36 to 48 Months	6 to 9 Months
Firm Capital Advanced	$50,000 – $150,000 (Expert depositions, focus groups, trial exhibits)	$5,000 – $15,000 (Early expert consultations, medical record curation)
Attorney Hours Expended	400 – 600 Hours (Discovery motions, trial prep, court appearances)	60 – 100 Hours (Targeted information exchange, mediation)
Hypothetical Gross Recovery	$500,000	$350,000
Attorneys' Fee (33.3% - 40%)	$200,000	$116,666
Effective Hourly Yield	$333 / Hour	$1,166 / Hour
Risk Profile	High (California Juries, Appellate risk, statutory cost-shifting)	Extremely Low (Guaranteed contractual settlement)

interests (or their needs). By identifying that the client's real priorities are financial recovery or stabilization, future risk mitigation, and validation, an attorney can look for non-litigious paths that satisfy those core needs in a fraction of the time.

Why be a good lawyer?

Good lawyering makes for happy clients. No psychically healthy individual enjoys the litigation process. Responding to written discovery is tedious and time-consuming. Preparing for and attending depositions is, at the least, nerve-wracking, not to mention expensive. Being examined by a doctor you know is looking to call you a liar is not pleasant. And, trial, even if it does start on the day on which it is scheduled, is extremely disruptive, stressful, and risky. Who wants that? (If your client seems to be enjoying litigation, beware – you may be the client's next defendant!)

Good lawyering makes overall financial sense. The financial math of a modern California plaintiff's practice heavily favors early, creative resolution. A firm's primary financial metric should not be the absolute size of a single headline verdict, but rather, solving the client's problem, the velocity of capital and return on invested hours.

Consider a direct comparison of two different approaches to handling a standard personal injury or employment case within a plaintiff's firm portfolio: *Please see chart on previous page*

While the litigator may secure a nominally higher gross settlement or verdict on the eve of trial, the firm's economic yield and the client's net, after a longer fight and higher expenses, tell a completely different story. The problem-solving approach yields a similar or better net result for the client sooner, significantly higher effective hourly rate and frees up capital and time to help 10 additional clients in the same window.

The math works on the defense side, too. My earlier career was predominantly representing defendants. It is true, defense clients want to win, or, at least, minimize their exposure. But they also want the process to be cost-effective. There may be times when the client does not care how much you spend defending them, but over the long run, they will look for efficiency and expediency.

And, while you may be a hero within your firm because your billable hours are high, over time, clients are going to send their work to those who resolve their cases quickly and inexpensively. Someone once explained to me that defense firms need three types of lawyers: Finders, Minders, and Grinders. Billing hours without regard for the client's need for cost-effective representation may doom you to being Grinder forever.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough."
– Abraham Lincoln

How to be a good lawyer

A good plaintiff's attorney makes it easy for the other side to pay them. Traditional litigation that I have seen far too often from my positions as a former defense lawyer and now as a judge, relies on a posture of aggressive secrecy, which forces the opposition to conduct aggressive discovery just to figure out what the case is actually worth. This is wasteful.

A problem-solving plaintiff's attorney flips this dynamic through front-loaded transparency. For example, **i**nstead of filing a boilerplate complaint to kick off a lawsuit, consider making an airtight, comprehensive pre-litigation package. Provide the insurance adjuster or corporate risk officer with everything they need to secure authorization for a payout:

- Fully organized, hyperlinked medical chronologies and itemized bills.
- Verified lost wage calculations backed by employer documents.
- Video statements from key impact witnesses.
- A clear, unemotional legal brief outlining undisputed liability.

By presenting a trial-ready file *before* a lawsuit is filed, you give the defense a clear choice: pay a realistic, slightly discounted number today, or explain to the client/corporate leadership why they are about to spend six figures on legal fees defending an unwinnable case.

Even if you decide to file the case, it makes sense to put this information on the table early without the need for discovery requests. By pulling the information together and providing it early, you save time from responding to defensive discovery. If your opponent is unwilling to settle early, at least you will have positioned the case so that the activity is all about them providing information to you.

In commercial, employment, or consumer plaintiffs' work, the defendant is rarely an individual; it is a corporate entity managed by risk committees and CFOs. A good attorney speaks their language. Be empathetic. Consider the other side's viewpoints and needs. Consider framing settlement proposals around total cost of risk rather than just legal liability. Explain both the value of the case and the cost of litigating it and the time it will take to reach resolution. Consider structured settlement annuities to maximize long-term payout for your client while reducing the immediate cash-flow burden on the defendant. Think outside the box. Consider making employment references for a terminated employee, corporate policy adjustments, or private retractions to bridge gaps that cash alone cannot close.

Consider this a template:

1. Within 30 days of retention, gather all crucial evidence and records immediately. Do not file a complaint out of habit.
2. Propose a voluntary, limited information exchange backed by a 60-day tolling agreement; or
3. File a complaint which includes complete information, and/or send the complete package of information shortly after the complaint is served, without the need for discovery.
4. Propose early mutual exchange of any further information needed for effective mediation and attempt to tie case progression on an early mediation slot before both sides pour capital into expert depositions.

Setting aside impeachment or unusu-

al specific strategic circumstances, if you give the defense everything you have that they are entitled to anyway, that shows the value of the case. You leave them with the decision of whether to spend money holding back what you are entitled to, which only makes the case more expensive for them. Some may choose the low road. But at least you will know with whom you are dealing, and any percentage of the time that this suggested framework succeeds will benefit both you and your client.

A smart defense approach to litigation involves reaching out to the other side as soon as you get an assignment, to introduce yourself and to get an informal sense of what the case is about.

Find out what you can do to assist your client in making an informed decision as to how to proceed. If discovery is needed to be sure of an issue, agree to limit the discovery to that issue.

One approach might be to send all the discovery you'll ever need (Form Interrogatories, Special Interrogatories (i.e., State all facts supporting…Identify all witnesses with knowledge…Identify each writing…), Requests for Admission, Requests for Production) and then agree with the other side to hold them in abeyance until you absolutely need verified responses. In the interim, exchange information informally and focus on what is really needed to resolve the dispute.

This is where civility also comes into play, because a good lawyer on the other side with whom you build a relationship will fairly present the scenario you created to their client.

One case I handled sticks out in my mind on this topic. The plaintiff was a dental student at a school where they used alcohol burners to heat materials needing to be molded. Her burner appeared to have run out of fuel. Her classmate grabbed a one-gallon container of alcohol supplied by my client and went to refill her burner. Unfortunately, the burner was not out of fuel, and, unbeknownst to them, its flame was still burning. The one-gallon bottle ignited, and became somewhat of a flame thrower, burning the plaintiff over 80% of her body.

Upon my answering the complaint, Plaintiff's counsel sent me a collection of photographs that no juror should ever have to see. He explained that his expert was of the view that a simple screen could have been placed by my client on the gallon bottle which would have prevented the bottle from igniting.

I retained an expert who told me the same thing. For two cents, the accident could have been avoided. I talked to my client and to its carrier. We tendered the $1 million policy limits. Plaintiff's counsel and I met for a drink to exchange the release and request for dismissal. We had the waitress sign a napkin that read, "This one guy gave this other guy a check for $1 million." I look back at the interaction between plaintiff's counsel and me in that matter and think, "That's how it ought to be."

"The challenge of leadership is to be strong, but not rude; be kind, but not weak; be bold, but not bully; be thoughtful, but not lazy; be humble, but not timid; be proud, but not arrogant; have humor, but without folly."
– Jim Rohn, American entrepreneur, author, and motivational speaker

The good attorney is a leader

Not every case will be so clear as to how to proceed. A good lawyer takes the lead in the dispute resolution process. Plaintiffs' attorneys often worry that choosing a collaborative, civil approach early on will be misconstrued by the defense as a sign of weakness or an indication of an unready case. Don't let that fear dictate your behavior. Whenever I represented defendants, the Plaintiffs' attorneys I feared the most were the ones who were the nicest (but also the smartest and the most prepared). Incivility does not intimidate; it simply makes it easier for the other side to resist.

If your opponent simply will not follow your lead, stay the course. The judge in your case will likely see what is going on behind the scenes. If defense counsel responds to a collaborative information request with knee-jerk, scorched-earth boilerplate objections, a problem-solving plaintiff's attorney can use that behavior to set up a clean path for statutory attorneys' fees or sanctions.

Demonstrating a clear, continuous willingness to resolve a matter outside of court makes a plaintiff look exceptionally reasonable to a judge. If a case eventually requires a discovery hearing or a mandatory settlement conference, the judge will see your firm as the adult in the room, shifting the burden of skepticism onto an overly combative defense firm.

Being a good lawyer is good for you

By systematically making problem-solving your default operational framework, you protect your firm's bottom line, insulate your clients from the exhausting toll of the court system, and build a highly profitable, sustainable practice that delivers real-world results. You also will enjoy a more meaningful life.
– Daniel M. Crowley

Hon. Daniel M. Crowley has presided over Department 729 at the Stanley Mosk Courthouse for the last three and a half years. Prior to his current assignment, he presided over a Personal Injury Hub Court for over three years. Prior to his appointment, Judge Crowley was the managing partner at Booth, Mitchel & Strange, LLP, where he practiced for 31 years.