

LAWDRAGON

The Lawdragon Lawyer Limelight: Michael Rakower

By John Ryan

A taste for adventure has played a big role in Michael Rakower's career. Realizing that he had "the heart and soul of a litigator," Rakower left his corporate finance practice at Latham & Watkins' New York office to travel around Africa with his wife, which in 2003 led to a job at the International Criminal Tribunal for Rwanda (ICTR). After his return and the completion of a clerkship with a federal appellate judge, Rakower decided to launch his own solo litigation practice instead of returning to large firm life. The next year, in 2006, he won the New York State Bar Association's Outstanding Young Lawyer of the Year Award.

In 2012, Rakower joined up with Jonathan Lupkin to form Rakower Lupkin. The six-attorney boutique handles a wide range of complex commercial litigation along with white-collar defense and regulatory work. Rakower, a 1999 graduate of the University of Virginia School of Law, doesn't shy away from doing battle with the big firms in the courtroom; in fact, it's the type of challenge he relishes.

Lawdragon: You had a good job at the start of your career. What led to your decision to leave?

Michael Rakower: Latham is a great firm, but the corporate finance work I was mainly doing – debt and equity offerings – didn't capture my interest. I was at a crossroads. I entered law school expecting to become a litigator, but at some point had heard the siren song of corporate law. Beginning in my second year of law school, I loaded up on classes focused on the transactional side of the practice. I joined Latham with the intention of pursuing a



Photo provided by Rakower Lupkin

career in corporate finance. The firm had an aggressive maturation process, allowing junior lawyers to take on as much responsibility as they could handle. I liked the hard work and the late nights. I was fascinated by the financial markets in terms of the role they played as a catalyst for economic growth, the ingenious products they developed, and the high level of execution required to generate, market and sell products on a mass scale.

But, fundamentally, I was not intrigued by the work required of me. Nothing I did examined issues of unfairness. As I saw it, nothing I did was designed to help others in a direct and meaningful way. The things

that spurred me to go to law school, the things that kept me up at night, were not the things I was examining on a daily basis.

LD: How did you arrive at the ICTR, as opposed to finding work as a litigator in the city?

MR: On a personal level, my wife and I were young in our marriage and we were both looking for some form of adventure, so we decided to take leaves of absence from our respective jobs and experience the world. It was the perfect antidote to my developing disillusionment. We bought one-way tickets to Cape Town, South Africa, a beat up truck and camping equipment and toured Southern and East Africa on a barebones budget. We eventually made our way to the ICTR, where we found jobs in the Prosecutor's Office. At the ICTR, I interviewed witnesses and rape victims of the Rwandan genocide; I studied the coordinated effort of the genocidaires in attempting to exterminate a group of people; and I examined the root causes of human conflict. This sobering experience renewed my interest in litigation.

LD: What was involved in your transition to litigation once you returned?

MR: My U.S. litigation experience had been limited largely to two pro bono asylum cases I had won for Tibetan refugees while I was an associate at Latham. When I returned to the U.S., I needed to figure out how to make up for lost time. I decided to pursue a federal clerkship, thinking a clerkship would hone my research and writing skills, teach me how judges make decisions, and give me "street credibility" because my resume would show that I had been vetted and trained by an Article III judge.

I did not want to be idle while searching for a clerkship position, so I reached out to a variety of non-profits in search of a project. The Legal Aid Society's Prisoners' Rights Project offered me a civil rights case. When I came by the office to pick up the file, I was told my client – a prisoner who alleged he had been the target of gang attacks inside the prison – was scheduled to be deposed in jail the very next day. I had 24 hours to learn the facts of the case and the procedures of a deposition. The next day, I had

24 hours to learn the facts of the case and the procedures of a deposition. The next day, bleary-eyed from a late-night cramming session, I hopped on a train to Sing Sing Prison to meet my client and defend him at his deposition.

I put all of my passion into that case while pursuing the clerkship. As a result, I learned a great deal very quickly, participating in nearly a dozen depositions, including the depositions of housing unit officers, a deputy warden and the chief of the prison's gang intelligence unit. I even commissioned a photographer to accompany me to Rikers Island, which is where my client had been attacked. I also taught myself a fair bit about civil procedure, including how to pursue a sanctions motion for discovery abuse. When I started with the case, I had been told that I would be doing my client a world of good if I could obtain \$10,000 or \$15,000 for him; months later, the case settled for six figures, including a Rule 37 sanctions award that made the front page of the New York Law Journal. My client was over the moon.

LD: What eventually happened with with the clerkship?

MR: My clerkship with Second Circuit Judge Richard Wesley began at about the time the case ended. As I struggled over vexing legal questions, the clerkship worked like a tonic. I became more and more enthusiastic over the power of the law and the devotion that lawyers and judges have to it. As part of that process, Judge Wesley became a mentor and friend. He gave me the freedom I wanted to explore the law and the guidance I needed to develop my judgment. His confidence in me made me forever indebted to him. He taught me that judging involves recognizing one's humanity, not divorcing oneself from it. And, on a related point, he showed by example how one can balance a demanding professional life with a rewarding family life.

As I neared the end of the clerkship and thought about my next professional step, I kept thinking about the thrill I experienced from the civil rights case and the vast improvement of my skills in just one year during the clerkship. I became fascinated

with the idea of opening a solo practice, where I would be on the front lines every day, responding to the needs of each client, developing knowledge and experience each day. Wondering whether I really could open my own firm, I reasoned that if I could satisfy the demands of an Article III judge, I could satisfy the demands of most clients. I started to develop a plan.

LD: Why did you start your own practice instead of joining another firm?

MR: I did not know if the plan would work, but I also did not know why it would not work. I thought that if going solo really excited me and if the only reason not to strike out on my own was because I was afraid, then I had to go forward. Fear was not a good reason to turn back. I felt I should be challenging myself and seeing what I could accomplish in the world. I did not want to live a life fearful of failure. I was willing to sacrifice money and a sense of stability in order to pursue my goal. I believed there was plenty of time to focus on money, but now was a critical time to focus on my dream.

Fortunately, my wife was working as a lawyer at the time, which meant that I could risk public failure but we would still not be risking rent money.

LD: What does it take to build your own firm? How did you make it work?

MR: The tried-and-true methods work, and fear of failure is a good motivator. For the first three years, I worked as hard as possible. I did everything I could to maximize the likelihood of success. I worked non-stop to find ways to win for my clients and to teach myself how to run a business. I ran from one bar association event to another, meeting successful lawyers and trying to learn their secrets and develop relationships. Along the way, I found out something pretty remarkable: When I was not satisfied in my job, I seemed to be a magnet for cynicism, but when I was excited about my goals, I became a magnet for optimism. People saw that I had a genuine interest in the law, that I wanted to succeed through hard work, and that I was happy to make sacrifices along the way. And they wanted to

help. Lloyd Constantine of Constantine Cannon gave me an office to rent from his firm at very fair rates. He made me of counsel and gave me plenty of work as I built my practice. Gordon Mehler, a prominent prosecutor turned defense attorney, also took me under his wing and gave me white-collar work. Lloyd and Gordon gave me the ballast I needed to become financially stable, and then I was able to build from there. Next, I met Bob Begleiter, with whom I worked on a remarkable civil RICO case involving a kickback scheme at the United Nations. That experience led me to write a couple of articles on civil RICO and lecture on the topic. And that's how I met Jonathan Lupkin. We put together a CLE program on the nuts and bolts of civil RICO for the New York State Bar. It was so well regarded, we put it on a second time. Jonathan and I became fast friends, and I was impressed by his legal scholarship. Who knew years later we would become partners?

LD: What are some of the challenges of going up against firms much bigger than yours?

MR: There are a variety of ways to analyze the adversarial relationship between counsel on a case. At the end of the day, only one person speaks in the courtroom at a time. The adversarial relationship boils down to one lead lawyer against another lead lawyer. Of course, on a case of any magnitude, that lawyer is only as good as his team. The question arises: How many people assist that lead lawyer? At a 2,000-lawyer firm, the lead lawyer on a case will not be assisted by 2,000 lawyers. The team will be much smaller. That team will still likely be larger than mine, but that does not mean they will be better, that they will work harder, or that the lead lawyer will be more devoted to his client than I am to mine. In our firm, we are totally committed to our clients' needs, our lawyers are excellent and we work extremely well together as a team.

To battle against the "big boys", we require individual accountability from our team members, which makes our lawyers tap into the best they have because they know their input matters. At a boutique firm like ours, the team gels more quickly because we work more closely with one another. Our

lawyers mature faster because there is greater oversight, and the work product is better because people are more devoted to it. This enables us to staff more leanly and be more efficient. Given that litigation is often a war of attrition, our goal is to help our client win that war by staying leaner and meaner, and therefore less expensive than the adversary.

We are also committed to leveraging off of the power of technology. As an example, we are a paperless office in that all documents that go in or out of the firm are stored electronically and are accessible anywhere in the world with just a few keystrokes.

LD: You mentioned at the start of the interview having “the heart and soul of a litigator.” What does that mean?

MR: First of all, I identify strongly with the notion of justice. For many people, a righteous fire burns within them and I’m one of those people. When I see something wrong, I want to fix it. In litigation, I can right those wrongs, and I can make sure my client’s position is fairly articulated and justly assessed. That work is exciting to me, and the challenge keeps me engaged.

When I was in the middle of my prisoner’s rights case, the opposing lawyer said to me, “Mike, you don’t get it – winning this case would be like climbing the Himalayas.” When he made that comment, I knew the case was over. What he did not know is that I had actually climbed the Himalayas during a trip to Nepal and that I had already committed myself to twice that effort. This guy had essentially told me the case could be won as long as I was willing to put in an extraordinary effort, and that was when I knew the case was mine. It was only a matter of time.

I want to be challenged. I like hard work. I want to go against a big firm adversary and show that right makes might, not the other way around. I like the competition of litigation, the pressure associated with a battle of wits, and I like to win.

LD: Do you have a favorite part of trials or the litigation process?

MR: I enjoy questioning witnesses and understanding their thought processes. I find that even with opposing witnesses, I can build trust by showing them that I respect their perspective. They tend to reward that trust by providing more effusive and self-critical testimony.

LD: I noticed on your bio your involvement with American Friends of the Kigali Public Library. What was that work about?

MR: When I came back from the ICTR, I was not ready to let go of that experience. I wanted to make something good out of the horrific stories I had learned, so I became involved in the AFKPL. I am now its Vice President and a member of its board. Initially, the organization was committed to building Rwanda’s first public library. In the early years, the work primarily involved fundraising. Later, we were concerned with the library’s construction, its book collections and its management. Our role is a little more removed now that the library has been built, but we continue to provide a bit of oversight and guidance.

LD: What’s next for your firm?

MR: My partner and I are committed to building the next generation litigation boutique in New York. Our focus is on complex commercial cases in New York’s federal and state courts. We are building a firm where individuals are asked to shine by bringing their unique talents to bear in a collaborative, team-oriented environment.

We want to align our interests with our clients’ needs. As the firm expands its caseload, we will experiment more with hybrid billing arrangements that offer a reduced hourly fee coupled with a success fee. We are already making waves in the marketplace. Tomorrow we will make more.