

Speech to the AMERICAN BOARD OF TRIAL ADVOCATES 2025 International Meeting

Millbrook, Queenstown, 3 April 2025

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1. I do not know any of you, but the fact that you are trial advocates means that I know all of you! And the most astonishing fact about the 150 members of the American Board of Trial Advocates (ABOTA) at the dinner tonight is that you have come to NZ for 2 weeks (with a pre-trip extension to Sydney and Port Douglas Australia and a post-trip extension to Tahiti and Bora Bora in French Polynesia) to get some work life balance! I know this is also good networking for your practice, but still...
2. I have **seen** your itinerary – I now live in Auckland, and prior to that for a long time living in windy Wellington. And I had my honeymoon sometime last century here in Queenstown and I am happy to say when I turned up to my Harvard Law School reunion 30 years later, my classmates said – “Wow you are still married to the same guy - Dr John Sinclair.”
3. Despite justice being traditionally depicted by a woman holding a set of scales, no one, I met when I was at Harvard Law School studying for my Master of Laws, and certainly no trial lawyer I have met instructing me or on the other side of me in court, has ever been balanced! And I have appeared in the Supreme Court, the Court of Appeal (in NZ and the Cook Islands), the High Court, the District Court, and in a range of tribunals and commissions of inquiry.
4. I have been reading a book called: *Great Lives: A Century in Obituaries*. I don't think anyone profiled in that book could be called “balanced.” My former co-founding law partner at Chen Palmer, the Rt Hon Sir Geoffrey Palmer KC – former Prime Minister of NZ and Chicago Law School alumnus – was certainly not balanced.
5. The founder of the Kōhanga Reo movement, Dame Iritana Tāwhiwhirangi, and the chair of the Kohanga Reo Trust Board I acted for in a claim before the Waitangi Tribunal, gifted me this greenstone (pounamu) treasure (taonga). It has my Maori name given to me by NZ's foremost Maori linguists Sir Timoti Karetu and Professor Wharehuia Milroy Te Hirikapo (“sharp mind”) engraved in gold. None of these karoua in Maoridom were balanced. They were focused and fierce in their passion for te reo Māori, to ensure that it survived and thrived. If you cannot speak fluent te reo Maori, then Sir Timoti is not interested in speaking to you!
6. I wrote my LLM Thesis at Harvard on the Treaty of Waitangi and I have acted for various indigenous groups all my career, including the Kohanga Reo National Trust Board.
7. It is the ability to handle intensity, even be comfortable with it, that makes you a great trial lawyer. And if you did not have that intensity of going to court in your life, you would need to recreate it in your life.
8. NZer Dame Barbara Kendall – Olympic Gold medalist Boardsailor in 1992 at the Barcelona Olympics, silver at the 1996 Olympics and bronze at the 2000 Sydney Olympics, psych tested me. She laughed at the result – I am in the uppermost right-hand quadrant – those driven to get results and change. Dame Barbara told me that Olympians end up in that top right-hand quadrant – always wanting to know how fast they can go, internally driven. The

relevance is that if we psych tested the ABOTA members here tonight, I know we would get the same result.

9. I found the immigrant experience is also intense – I was part of the first Taiwanese family who had immigrated to the South Island of NZ. A new country, new language, new culture, and no family to help you. I shall not comment on US immigration policies which I am not as well versed on as you.
10. Litigation is the ultimate intensity sport! Going to trial is the hardest work I do.
11. For that reason, litigators are prone to burnout. Total dedication, total burnout.
12. Justice O’Meara KC, of the Supreme Court of Victoria, gave a speech at the Victoria Bar Readers Dinner on 18 May 2023 about his own journey into burnout, depression and his recovery. Along the way, he told some great stories about trial lawyering. He spoke of a great litigation colleague he had who was “the barristerial equivalent of the sniper who can open his case, assemble his rifle and shoot a bullet through the head of his target; all within 3.9 seconds.” He concludes by saying:

“No-one rational wants to be a litigant. It’s stressful, unpleasant and uncertain. But you – the barrister – are the shepherd in your client’s hour of need. You are also their advisor and their avatar. It’s a calling of true nobility within a system that exists for the just determination of conflict and issues of real importance.

Within that system – if you look – you will see every part of life: the elegant, the ugly, the just, the unjust; and the hilariously funny. In one moment, you see the sobbing and grateful client, ...; yet another is your own tears and moment of reckoning. And all of that happens because what you’re doing really matters.”

There’s really nothing like it.

To each of you I say –

- a) when you’ve won the unwinnable and lost the unlosable;
- b) when you’ve sat with a lump in your throat awaiting the verdict of a jury;
- c) when you’ve felt the bitter and real sting of a loss;
- d) when you’ve prepared so assiduously that your argument transcends the mere notes that you prepared to guide it; and
- e) when you’ve seen the gratitude in the eyes of your client and the admiration in the eyes of your opponents –

then in those and other such moments you’ll really know that you’re alive.

And you’ll also know – and really feel – an appreciation for life and the human condition.

13. The philosopher Seneca, who lived around 5 BC – AD 65 said in *On the Shortness of Life: Life is Long if You Know How to Use It*,¹:
Most human beings ... complain about the meanness of nature, because we were born for a brief span of life, and because the spell of time that has been given to use rushes by so swiftly and rapidly that with very few exceptions life ceases for the rest of us just when we are getting ready for it. ...It is not that we have a short time to live, but that we waste a

¹ Marcus Aurelius *Great Ideas Meditations*(Penguin Books, United Kingdom, 2005).

lot of it. Life is long enough, and a sufficiently generous amount has been given to use for the highest achievements if it were all well invested. But when it is wasted in heedless luxury and spent on no good activity, we are forced at last by death's final constraint to realize that it has passed away before we knew it was passing. So it is: we are not given a short life, but we make it short and we are not ill supplied but wasteful of it. Just as when ample and princely wealth falls to a bad owner it is squandered in a moment, but wealth however modest, if entrusted to a good custodian, increases with use, so our lifetime extends amply if you manage it properly. ... It is a small part of life we really live. Indeed, all the rest is not life but merely time."

14. Seneca really doesn't have good things to say about being a trial lawyer

- *"How many are left no freedom by the crowd of clients surrounding them!... Indeed you will hear many of those to whom great prosperity is a burden sometimes crying out amidst their hordes of clients or their pleadings in law courts or their other honorable miseries "It's impossible to live." Of course, it's impossible. All those who call you to themselves draw away from yourself. How many days has that defendant stolen from you? ... That advocate is grabbed on every side throughout the Forum, and fills the whole place with a huge crowd extending further than he can be heard: But he says, "When will vacation come?" Everyone hustles his life along, and is troubled by a longing for the future and weariness of the present."*
- He talks about preoccupation – *"the mind when distracted absorbs nothing deeply, but rejects everything which is, so to speak, crammed into it. Living is the least important activity of a preoccupied man.*
- *People are frugal in guarding their personal property; but as soon as it comes to squandering time they are most wasteful of the one thing in which it is right to be stingy. ... hold an audit of your life."* By that, Seneca meant a time audit;
- *"You act like mortals in all that you fear and like immortals in all that you desire. ...How late it is to begin to really live just when life must end! How stupid to forget our mortality and put off sensible plans to our fiftieth and sixtieth years, aiming to begin life from a point at which few have arrived.*
- *Learning how to live takes a whole life and, what may surprise you more is that, it takes a whole life to learn how to die."*

15. I once asked a Chief Judge I sat next to at a bar dinner to tell me something he knew now that he didn't know at my age. He said, "There is no such thing as work-life balance but those who love you come to forgive you." I wasn't expecting that!

16. NZer Daniel Kalderimis KC, has just written a book called *Zest: Climbing from Depression to Philosophy*² where he speaks about the perils of always climbing that slippery ladder of success, working harder and harder on cases, to get promotions, respect and accolades – but there is never enough respect and "making it" is always elusive. This causes us to live a shallow life while we climb that ladder. So, he exhorts us to live a deep life – a life of connection – which may or may not lead to success. If it does, great. If not, then at least you have **lived** your life. And living a deep life is a lifetime's work.

17. So, I raise a glass to ABOTA and its members present in Queenstown tonight. Well done for choosing to live your life by being here. This is a disruptive time. We have a trade war, some say we are on the verge of another world war, the world is arming, the (physical)

² Ugly Hill Press, 2024.

climate is also heating up to become an existential threat as the Doomsday clock ticks down. Separation of powers and constitutional issues are keeping us constitutional lawyers busy in NZ and it appears also in the US. We also have a superdiverse population in NZ which is causing unique issues and challenges in the court with cases not settling as quickly as they should or at all, the time needed for translation and self-representation, and the lack of documentary evidence. There may be lessons to be learned from the US as NZ moves towards having nearly 50% of the population who are (and in these proportions) Asian, Maori and Pacifica.

18. My junior tells me that as soon as I attempt to leave the country, something always goes wrong requiring my input. I am sure you are experiencing some of that in your inbox.
19. Don't spend all your time clearing your inbox please. Remember that the opposite of **preoccupation** is **being present**.
20. Embrace the chance for a fresh perspective from down under and to reflect on what has been a good use of your time and what has not; **do a time audit**.
21. If an alien was spying on you from Mars, they would ponder why they see us doing the same thing on repeat – work, home, and then work back to home, with the odd trip to the gym or supermarket or restaurant but otherwise, always the same back and forth.³ It is always good to surprise the Martians by coming to NZ! Soren Kierkegaard says we must wake up and stay awake. We must not sleepwalk through life– and this trip to NZ should help you.
22. I am proud to have been a lawyer of long standing, and I am proud to stand alongside such a gorgeous looking successful group of trial attorneys from the US. Law is a tough career– and none more so than being a trial attorney, but the sense of satisfaction from helping people in what we do is enormous, and I hope you get back to the ranch after your break in NZ ready to get back in the saddle and ride hard.
23. I acknowledge David Teece who founded BRG and the amazing Jennifer Doan and Harriet O'Neill, who briefed me in preparation for tonight's speech. We salute your success, and to Harriet, I have always wanted to be a **former** judge of the Supreme Court. The hard work is over!
24. I close with this Māori proverb or whakatauki:

Whāia te iti kahurangi ki te tūohu koe me he maunga teitei – which means “*Seek the treasure you value most dearly: if you bow your head, let it be to a lofty mountain.*”

³ Robert Ferguson *Life Lessons From Kierkegaard* (Macmillan Publishers, London, 2013).