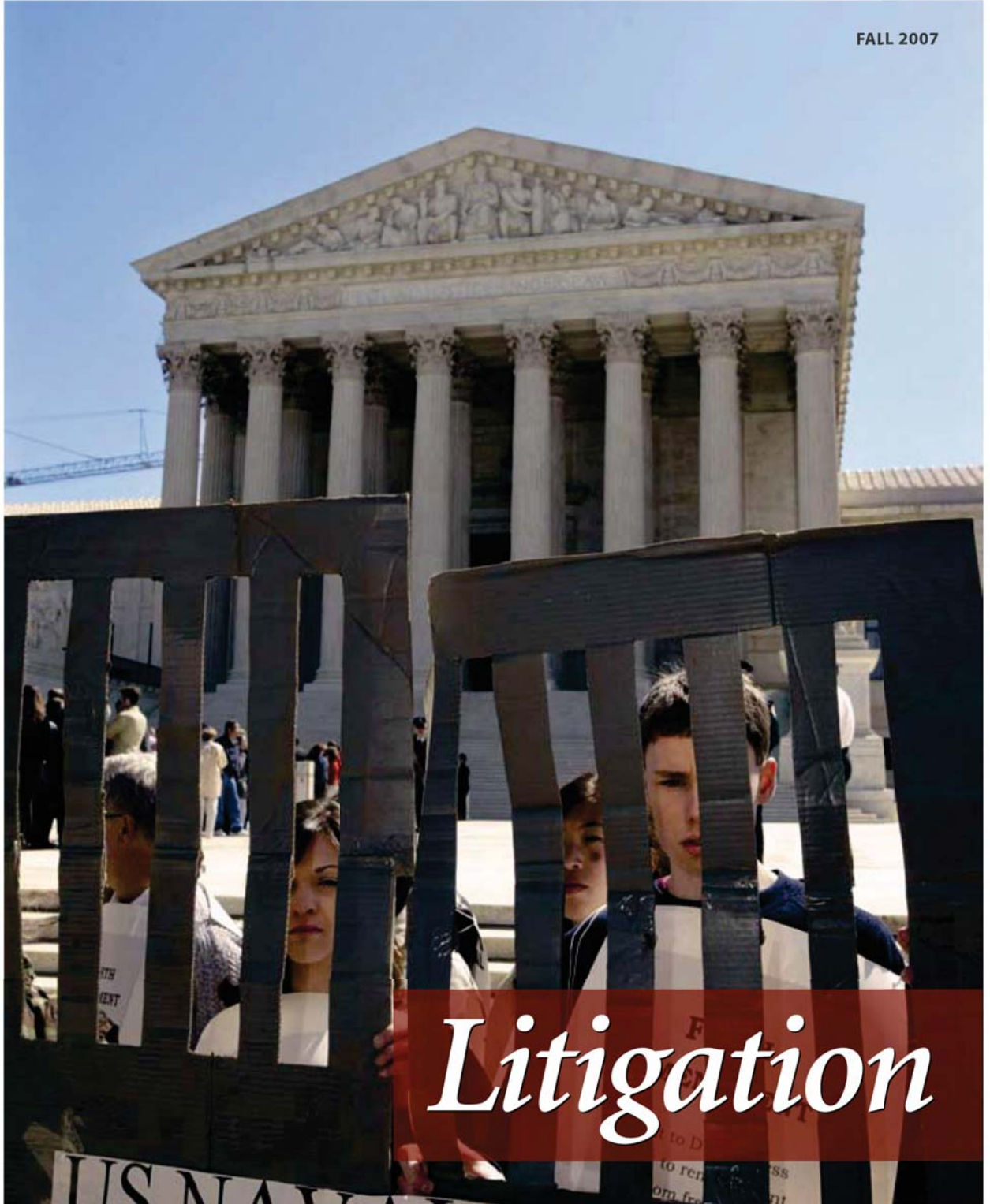


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Litigation



Michael Olecki at his office in Los Angeles

Life-Altering Litigation

While Practicing Outside Your Field

 Michael J. Olecki '86

A PHONE CALL ON JANUARY 12, 2003 CHANGED a lot of lives, including mine. A neighbor requested a referral to a criminal attorney for the brother of a friend of a friend — a 23-year old Latino schoolteacher, Raul Ramirez — who had been arrested by the Los Angeles Sheriff's Department for a violent sex crime. Raul had been "identified" by the victim eight months after the crime took place. He denied any involvement and claimed mistaken identity. Unable to post bail, Raul spent ten months and ten days in Los Angeles County Jail — a brutal, gang-infested, dangerous place on the best of days where he routinely faced severe physical harm, if not death. He lost his job, his car, and all his savings. He almost lost his 10-day-old marriage, and practically lost his mind. His life lay in ruins.

When I recommended a criminal attorney, I unknowingly began a multi-year journey that led to my first Federal Civil Rights trial. The journey forced me to learn a lot of things, forget others, develop new relationships, and build a whole new framework for representing my clients. In the end, we helped right a terrible wrong and probably saved a young school teacher's life.

I didn't actually meet or speak to Raul until 2005

after the jury had acquitted him and the trial judge had declared him "factually innocent," which under California law means that the prosecution not only did not meet its burden of proof but the accused proved he did not commit the alleged crime. I had been asked to litigate the anticipated civil rights case with the criminal attorney I'd recommended. Raul wanted to file a civil suit against the Sheriff's Department, claiming his civil rights had been violated by a false arrest, illegal search, and malicious prosecution. He claimed that Detective Frank Bravo, a 20-year-veteran, had built a false case against him. Sure that I wouldn't want to be involved, I met with Raul and his police officer brother, but immediately liked both of them. The arrest-jail-investigation-trial saga had injured not only Raul, but his entire warm, close-knit immigrant family. From what I was told, Raul was a shell of his former self.

Still, I agonized over getting involved. It was easy to turn down this case. The time and money commitment would be large, and I was just starting a new, small firm. Further, as a business and entertainment trial lawyer; I knew *nothing* about criminal law and almost as little about civil rights law. A civil rights attorney repeatedly warned

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me about “traps for the unwary” unique to such cases. About to turn down the case, my law partner and my wife told me to reconsider. I decided to risk it.

FIRST STEPS

We reviewed the pertinent Ninth Circuit cases on civil rights cases. From liability to damages, the law is “slanted” against the plaintiff; the defendant almost always gets the benefit of the doubt. Worse (at least from a plaintiff’s perspective), the police officer defendant gets several opportunities to derail or delay the case based on “qualified immunity.”

To preempt the defendants’ anticipated motion to dismiss, we drafted an unusually detailed, 31-page complaint setting out Raul’s compelling story. It worked. The defense decided not to file the motion. It was a good move on another level; the Judge had studied our complaint. Noting that “this case is different,” he gave us a year to prepare for trial — much needed for discovery.

KEEPING THE FAITH

Despite having been exonerated, Raul was frequently despondent. He couldn’t get back his job teaching developmentally disabled children. And he *loved* teaching — to the point that he had bought classroom supplies which his school had no budget for — and he missed it deeply. Even worse, the school district’s process for “credentialing” had changed while Raul was in jail.

To make matters worse, Raul’s marriage was in trouble. He’d been arrested and jailed a mere ten days after his honeymoon, the family couldn’t post the high bail, and he and his wife hadn’t spent much time together before marrying. Without his teaching job, Raul couldn’t afford an apartment. So, the newlyweds were now living in cramped quarters with his parents, brother, and sister. He had finally found a job as a receptionist/clerk in a medical office, but at a fraction of his pre-arrest salary.

And, of course, there was the post-traumatic stress

disorder (PTSD) he had developed after his 10-month ordeal in jail. Sounds, smells, situations — all transported Raul back to the horror of jail and criminal court. Sometimes he was charming and funny; but

often he grew anxious and distracted. He had trouble studying for his new teaching credentials and, at one point, simply dropped the study course altogether.

Raul’s state of mind affected our trial preparation. Too often, Raul just “didn’t care.” After a 14-hour day working on his case, the last thing I wanted was a client who couldn’t be bothered to assist us or showed up hours late for meetings. Sometimes getting information or help from him was a chore. I became furious when he dropped his credentials-prep class. He retorted that I didn’t “understand.” Our altercation simmered for months.

Keeping Raul “with us” was often a full-time job. We just kept focusing him on trial. He had already “cleared his name,” but he needed the prospect of a finding of liability, even if just for a dollar’s damages. That usually kept Raul intent on moving forward.

GETTING TO TRIAL

The defense’s long-expected summary judgment motion finally arrived. It was compelling, honed by experience in dozens of prior civil rights cases. We spent hundreds of hours organizing and writing our opposition papers. We won. The Judge’s 31-page decision found numerous disputed issues of material fact.

Equally important, the Judge granted our request for a *Chuman* certification — a rare finding that an interlocutory appeal of the decision to deny the defendant qualified immunity would be “frivolous.” The Judge’s *Chuman* finding virtually guaranteed that trial would not be delayed by three to four years for that appeal.

SETTLEMENT?

The defense seemed to have no interest in settling; they had made no offer. I worried that the defense knew something I didn’t.

Following the summary judgment decision, the defense requested mediation. But they still made no offer.

We demanded \$2 million. Defense counsel said he'd recommend \$5,000 if we would do the same. We were outraged, insulted, and disheartened.

During the Final Status Conference, the Judge conducted an impromptu settlement conference. He urged us to settle, saying he'd never seen a civil rights verdict above a few hundred thousand dollars. He knew what he was talking about. As the judge handling all the *Rampart* police scandal cases in L.A., he'd overseen more civil rights verdicts and settlements than any judge in California, if not the nation.

The defendants offered \$200,000. The offer may have been sincere, but might also have been for face-saving purposes in front of the Judge who would rule on pre-trial matters. It didn't matter; Raul rejected it. He felt the defendants were adding insult to injury. He wanted to see the defendants fear trial the way he had.

GETTING RAUL READY FOR TRIAL

Going to trial is like making a movie. But our "star's" PTSD made it problematic.

Despite extensive trial experience, I was ill-equipped to prepare Raul for trial. No matter how much time I spent with him — and it was a *lot* — I still had trouble relating to his PTSD. I understood the horror of jail, the loss of dignity, and the financial troubles. I could tell the story and explain what made for effective testimony. But Raul's mental state stymied me. My witnesses have been typically successful executives and entertainment types. They're good at communicating. They don't suffer from PTSD.

In a question-and-answer setting, I simply couldn't get Raul to communicate what had happened to him. How would the jury react to testimony of such horrific events when recited in flat tones, without any emotion? I, for one, was unmoved.

Raul finally told me that when I asked him questions, he found himself transported back to the criminal trial being examined by the prosecutor. He would "lock up." I racked my brain for solutions, and finally decided to try something different. Rather than asking questions from a lectern 40 feet away (to mimic the courtroom experience), I sat next to Raul and spoke in a soft, friendly voice. I spoke like Raul's friend, brother, or therapist. Raul began to open up. He started sharing his experiences in riveting words and detail. After a few hours, I put a chair's distance between us. Raul stayed focused and communicative. I



Police sketch artist drawing of Raul Ramirez and photo prior to the civil trial to illustrate the obvious differences between the two.

moved a little farther away.

We did this over several hours. By the time we were finished, I was using the same tone, but sitting 30 feet away. The next time we prepared, I began anew, sitting next to Raul; by the end of the session, I was standing 40 feet away, but talking in the same, soft voice. One more session and Raul was ready.

I still had worries. What if he seized up during trial? What if he drifted into "flat affect"? We decided to examine the forensic psychologist directly before Raul to set the stage by explaining, from a clinical perspective, what Raul went through. The psychologist would describe how Raul might react during trial. That way, no matter how Raul behaved, the jury might understand and, we hoped, accept him.

TRIAL

On the first day of trial, the Clerk brought in an unusually large jury panel. Raul began to cry. We knew this was likely. As planned, I put my arm around Raul's shoulders and walked out of the courtroom. The potential jurors watched.

Per federal court practice, the Judge asked all the *voir dire* questions. We had supplied a series of important questions, and he asked most of them.

We caught a few more breaks. The defense was clearly striking minority jurors (who traditionally mistrust the police). We objected on *Batson/Wheeler* grounds to the first strike of an African-American woman; the Judge overruled the objection, but it primed the pump. The next defense strike was the only remaining African-American. We asked for a side-bar. The Judge was peeved, saying "Again?" When we pointed out that this was the last

*Raul delivered powerful testimony. He described vividly what it had been like being **snatched from his home** and wife with no knowledge of what was going on. He cried. He got angry.*

African-American, the Judge spun toward the defense and demanded, “What’s your basis?” Defense counsel replied weakly, “When the Plaintiff left the courtroom crying, this potential juror gave me harsh looks.” The Judge paused, then scolded, “Denied! She stays.”

We also challenged for “cause” any potential juror who worked for the County. The Judge initially balked, but he then accepted our “implied bias” argument. After all, the County was a defendant. How could a juror be fair in considering damages against the juror’s employer? All the County-affiliated jurors were excused.

In the end, nine jurors were sworn. All would deliberate; we’d need a unanimous verdict. While the panel was not an ideal “plaintiff’s jury,” it was the best jury I’d ever seen in a federal court plaintiff’s case. For example, at lunchtime I did an internet search of one of the prospective jurors, a Hollywood agent. He had worked in Democratic politics, and he still did fundraising for Democrats. Another juror was a professor at the University of Santa Monica, a school focused on “spiritual psychology.” These two jurors would probably articulate Raul’s position in the jury room.

OPENING STATEMENT

I *always* videotape the deposition of the opposing party. It’s a key weapon that many trial lawyers (remarkably) don’t use.

For opening statement, I selected five key deposition “clips” in which the defendant detective looked mean, angry, or defensive; his words were ill-considered; or he said something that we needed in evidence. We played these same clips later as evidence, and again during closing argument. Because the defendants hadn’t videotaped Raul’s deposition, the only testimony played during closing argument would be the detective’s — a significant advantage once the defendant can no longer testify from the witness stand.

The opening went well. I showed a poster-sized photo of Raul and a same-size poster of the crime artist’s “matching” sketch of the perpetrator. They looked nothing alike. Several of the jurors sat stone-faced. But half-way through the opening, I saw a few of the jurors looking back and forth between the photos. I knew at that

moment that these jurors would be riveted.

My opening must have worried defense counsel: as I began my last sentence — “at the conclusion of the trial, we’ll ask that you award significant . . .” — defense counsel stood up and objected. The judge overruled. I resumed, emboldened by the interruption. “When we’re through showing you the evidence, we’ll be back to speak to you again. At that time we’ll ask for *significant damages* against the defendants.”

TESTIMONY

Our direct and cross-examinations were crisp, strong, and powerful. We were “doing justice,” and it felt good. The defense also made a last-minute blunder. They brought in a seasoned trial lawyer to “take over.” This immediately weakened their case. They stumbled. They cross-examined on minor points.

Raul delivered powerful testimony. He described vividly what it had been like being snatched from his home and wife with no knowledge of what was going on. He cried. He got angry. He described in detail his ten months and ten days, and everything that came after.

I started Raul’s examination on a Friday afternoon at 3:30. At precisely 5:00 p.m., I asked my last question. “What happened after the detective left the interrogation room?” He replied, “they left me handcuffed there for a few hours. Then someone came and took me down a long dark tunnel, to the jail.”

We recessed for the weekend, with the jury thinking about that image, and about what came next.

On Monday morning, I had Raul on the stand for two more hours. He was wonderful. And he was perfect on cross. He handled the questions well; he treated defense counsel in the same open, non-argumentative manner that he used to respond to me. The preparation paid off. We were in good shape.

CLOSING ARGUMENT

At the very end of closing argument, my co-counsel displayed the photo of a happy, smiling Raul that I had used during Raul's testimony. After describing the happy, successful, caring person Raul had been, co-counsel violently crumbled up the photo, pointed to the defendant detective, and said, "They did this. They shattered Raul's life." There were gasps and cries in the courtroom. During the long pause that followed, I heard several people crying. Then we told the jury it was their job to "try to put the pieces back together."



Ramirez and Olecki holding the settlement check

RESULT

The jury deliberated two days. The clerk called at around noon and told us there was a verdict. My stomach was spinning. I drove home and put on a suit on the way to court. I called my wife and asked her to meet me there.

I actually don't remember whether the Judge or the Clerk read the Special Verdict. I remember this ... the number \$18 million was repeated again and again.

I was stunned. It felt like a dream. I kept my head down and took verbatim notes. I couldn't believe it. With the verdict form completed, the Judge asked the jury to return to the jury room.

I hugged Raul. He hugged me back, tears dripping down his cheek.

Now the jury had to make findings for punitive damages. Defense counsel told the Judge the defense would like to try to settle the case and requested a postponement

before the punitive damages phase. The Judge reluctantly agreed. We spent three hours the next day trying to settle. We'd meanwhile learned that this was the largest single plaintiff verdict ever against the Sheriff's Department. During settlement discussions with the Judge the next morning — another rare event in a case of rare events — he said that he knew the verdict would be large, but he did not think it would be that large (another good reason to settle). With that in mind, and knowing that the Judge would slash the verdict, Raul settled for \$9.3 million — more than enough to pay off his debts, get back to school, and jump-start his life.

EPILOGUE

A few months after trial, while I was having dinner at one of Hollywood's oldest restaurants, a waiter came by our table and asked if I remembered him. He'd been one of the jurors; of course, I did. In an emotional voice, he said, "you guys did such a great job for him. He was really damaged. I hope he gets better." This was striking, coming from a juror that we'd worried about. During *voir dire* he'd said he had two sons, both in jail for gang crime.

When asked how he felt about that, he said, "They did the crime, they gotta do the time." He seemed cold and bitter. But we needed to save peremptory challenges, and there were other, seemingly worse jurors that needed to go. So he stayed.

Since the trial and settlement, Raul *has* gotten better. He has his teaching credentials, and found a job in a different school. He and his wife bought a modest house in a nice neighborhood. They're expecting their first child. He's still seeing his therapist, and still has moments of panic. But he seems better — optimistic, generous, and happy.

We went to Raul's house a few months ago for a party with his entire family. His mother cooked up a Mexican feast, and we sat on the deck looking out at the city lights. We all felt good. We had fought a hard fight. We had won a large sum of money for Raul. But more importantly, we had helped change a man's life for the better. ☞

“THAT THOSE ALONE
MAY BE SERVANTS OF THE LAW
WHO LABOR WITH LEARNING,
COURAGE, AND DEVOTION
TO PRESERVE LIBERTY
AND PROMOTE JUSTICE.”

LESLIE H. BUCKLER, 1931
FACULTY MEMBER