

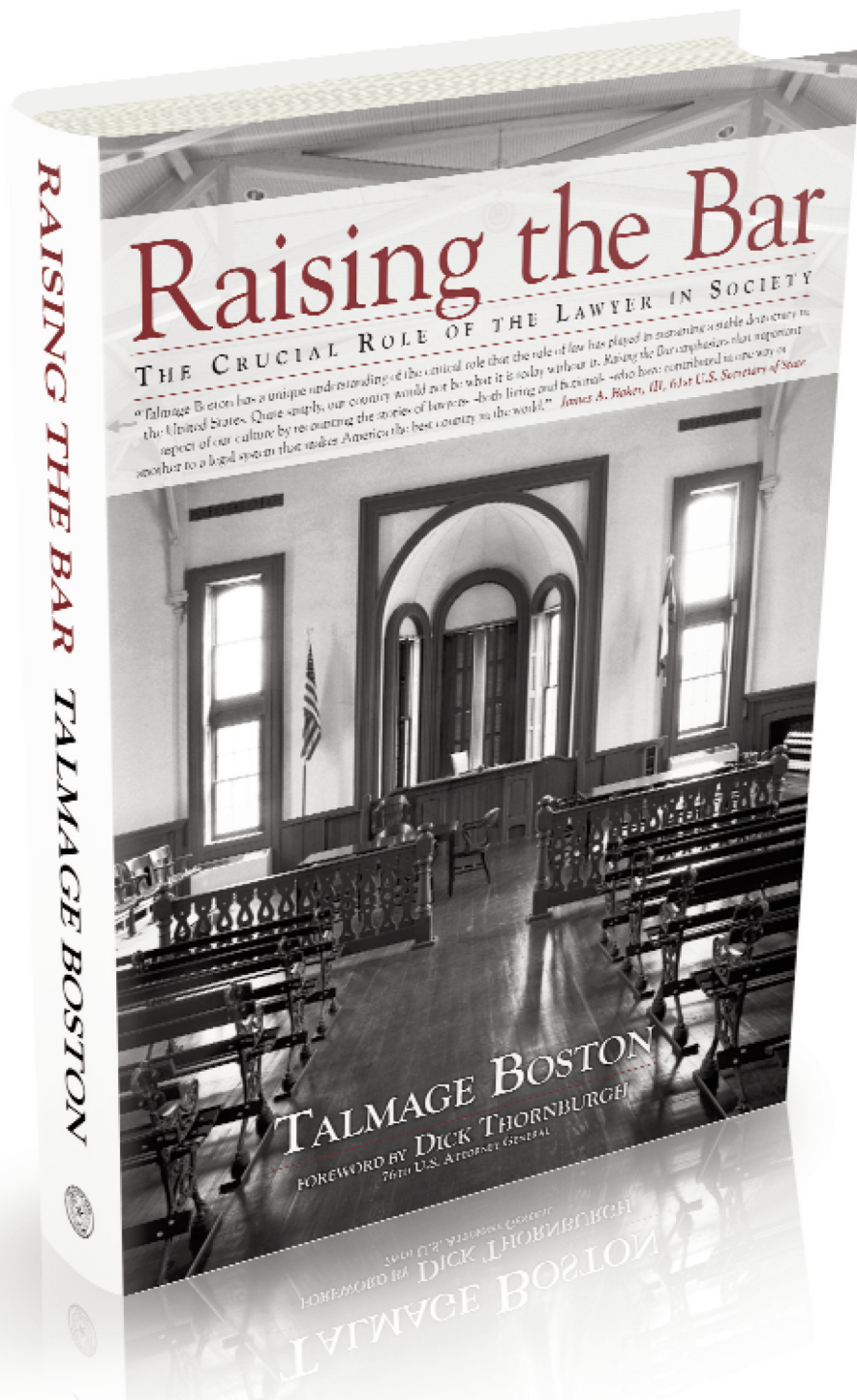
The following article is excerpted from *Raising the Bar: The Crucial Role of the Lawyer in Society* by Talmage Boston, recently published by TexasBarBooks. This excerpt is taken from Chapter 2, which is devoted to Leon Jaworski and James A. Baker, III, believed by the author to be the two most important American lawyers of the last half-century. The excerpt below identifies the skill-set developed by Secretary Baker during his years in private practice, which caused him to progress from consummate transactional lawyer to ultimate power player for the federal government during the administrations of Presidents Ronald Reagan and George H.W. Bush.

### James A. Baker, III The Ultimate Negotiator and Counselor

“The case for pragmatic idealism is based on an optimistic view of man, tempered by our knowledge of human imperfection. It promises no easy answers or quick fixes. But I am convinced that it offers our surest guide and best hope for navigating our great country safely through this precarious period of opportunity and risk in world affairs.”<sup>1</sup>

James A. Baker, III entered the world in 1930 as the son, grandson, and great-grandson of distinguished lawyers all named James A. Baker,<sup>2</sup> who each made a good living working at the Baker Botts law firm (formed by Baker’s great-grandfather) in Houston. Rising from a comfortable beginning, James A. Baker, III took his counseling, negotiating, and deal-making talents as far as they could go, making an impact at the White House; at the Commerce, Treasury, and State departments; and at places around the world.

When James Baker left the University of Texas Law School in 1957, he believed the only real lawyers were trial lawyers. With that perspective, after passing the bar exam, he spent his first two years doing civil litigation as an associate at the Houston law firm of Andrews, Kurth, Campbell & Bradley. As the fourth in a generational string of eminent lawyers, James Baker had grown up respecting the work of those whose name he bore as well as the profession he had chosen for himself, and he recoiled at the idea of spending his career attempting to win trials where witness perjury appeared to be more the rule than the exception.



What to do? In his book *The Politics of Diplomacy*, James Baker explained that in looking for a plan B after rejecting litigation, he sought “a good fit between something I was good at doing (so I could make partner) and something I enjoyed doing (so I could go home content at night).”<sup>3</sup> He found that good fit as a business transactional lawyer, first drafting commercial contracts and, after moving up the ladder, negotiating them.

His personal strengths brought him success as he came to excel in his chosen career. In particular, attorney James Baker provided his corporate clientele with the following tools in his business lawyer toolkit:

**Painstaking attention to detail and foresight.** Baker acknowledges he’s always been a “cross the t’s and dot the i’s” kind of guy. And he still recites as his mantra the “5 Ps” taught by his father: “Proper preparation prevents poor performance.” As a successful transactional practitioner, Baker knew his job was to anticipate the potential issues that might rear their ugly heads in a business venture and to make sure those issues were addressed with clarity on the front end in the agreements he prepared and negotiated.

**Empathy.** As he explained in *The Politics of Diplomacy*, to get to the goal line of consummating the deals he handled, Baker knew he not only had to know which points were crucial and which were less essential to his client, but he also knew he had to get into the heads of the lawyer and party on the other side to understand their constraints and priorities on issues.

I interviewed Secretary Baker on June 28, 2011, at which time he told me, “You’ve got to know what your red lines are and what your opponent’s red lines are.” To make sure empathy was in play on both sides of the table, Baker also typically provided the other side with a clear picture of what circumstances were most important to his client. Using this approach, the back-and-forth of negotiations progressed from the perspective of all participants fully understanding each other’s situation, allowing for a higher likelihood of moving toward an agreement.

**The one-on-one power to persuade.** Deals often get made or fall apart over a single disputed issue. That being the case, one side either gets its way on that final outcome determinative issue or it doesn’t, meaning one side either persuades its opponent to accept its perspective on the deal-breaking point or else everyone goes home empty-handed. Persuading a counterpart

to accept one’s most important term, thereby allowing the agreement to get made, is what great business lawyers do on a consistent basis. Choice of words and tone are crucial to maximizing persuasion. Mutual trust and rapport also make a big difference. And maybe the most important tool required to get things to go the client’s way at crunch time is the trait James Baker learned and respected during his time in the U.S. Marine Corps: the ability to project “command presence” at the moment of truth in a transaction, when the deal either makes or breaks. This force of personality combines self-confidence (without arrogance), quiet strength (without bravado), conviction in one’s position, and yes, a subtle measure of charisma, all coming together to get the dominant lawyer over the hump to drive the negotiation to his desired destination.

**Pragmatism.** Lawyers sometimes lose sight of the forest for the trees and end up not consummating an agreement, though a good deal was possible, because they allowed their client to throw in the towel when every single issue didn’t get resolved favorably. Obviously, certain key terms are essential before an acceptable agreement can be reached. He told me, “There are red lines in every deal, and you don’t cross those lines.” But not all points rise to deal-breaker status. Baker understood this and later named his philosophy of what it takes to get transactions closed “principled pragmatism” (during our interview, he explained, “I don’t think the two terms are mutually exclusive”), defined as doing all he could to get his clients’ agreements finalized, even when they achieved only some of their objectives.

**Quickly reaching the heart of a matter.** When James Baker was a young lawyer at Andrews Kurth, management assigned Harry Jones as his supervisor. In his memoir, *Work Hard, Study ... and Keep out of Politics!*, Baker called Jones “a lawyer’s lawyer,” and gave his mentor credit for refining his “ability to separate the wheat from the chaff or, less delicately, to cut through the BS in a written memo or a face-to-face negotiation.”<sup>4</sup> Former Senate Majority Leader Howard Baker (no relation) would later acknowledge James Baker as the “master of the thirty-second conversation,” a fact the Houston legal and business community already knew.

**Finding the best opening for moving negotiations toward the goal line.** Nobody gets two chances to make a strong first

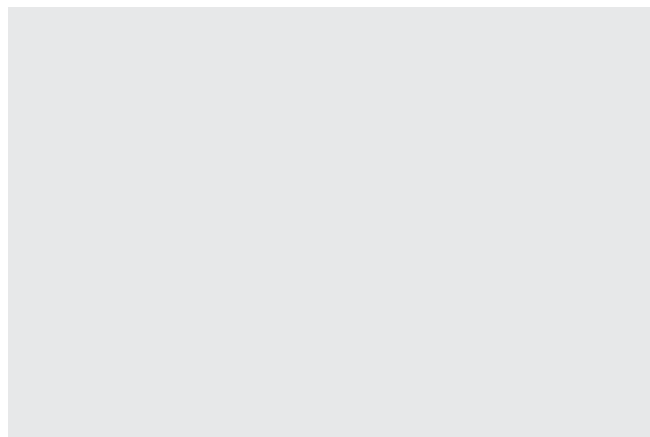
impression about one's plan and motivation for making a deal. James Baker's "5 Ps" caused him to brainstorm several possible discussion starters before zeroing in on the best way to get the ball rolling toward productive negotiations, knowing that using an opening that resonated with the other side's mind-set usually jump-started the flow of momentum toward the final objective, whereas getting off to a bad start often kills a possible deal before negotiations ever get off the ground.

**Good timing.** Since childhood, James Baker has spent much of his recreational time hunting and fishing, activities that stress the importance of patience in waiting for the right time to pull the trigger or jerk the hook. He has used that same intuitive sense of what journalist Hedrick Smith called "jugular timing" in seizing initiatives and directing priorities during his negotiations.

**Knowing when to drop one's guard.** When satisfied the person on the other side of the table was trustworthy and sensitive to the pertinent circumstances in play on a deal, Baker knew when to depart from a formal arm's-length attitude, shift his internal gear, and open up with candid disclosure calculated to get his counterpart to do the same. When operating in his candor mode, Baker often saw obstacles to compromise disappear in a flash, allowing progress to proceed on a faster track toward making a final agreement.

**Avoiding litigation if at all possible.** Unsuccessful negotiations sometimes lead to litigation. Because of its expense, risk, and time-consuming nature, fighting a lawsuit is the prudent client's least favorite sport. Knowing this, Baker conducted his negotiations, particularly those that were most tense and had the most at stake, mindful of the threat of litigation's looming presence. He always believed that the business lawyer owes his client the duty to explore all viable possibilities to save or even walk away from a deal before advocating litigation as a justifiable option.

With these corporate lawyer tools honed in Houston's business and legal trenches for over two decades, James Baker then enhanced his impact as White House Chief of Staff, Secretary of the Treasury, and Secretary of State during the Reagan-Bush years by effectively utilizing his "power game" personality that put him on everyone's short list of the most influential people in our nation's capital.



Premier Washington, D.C., commentator Hedrick Smith provided this telling description of what he and others encountered in Baker's immediate presence:

Tall, trim, thin-lipped, handsome, always impeccably dressed and shined, and cool as a Texas gunslinger ... Baker is smart, cautious, patient, and decisive. He is savvy; he sees the interrelationships of issues, people, money, and votes, and he marshals his own forces extremely well. As I interviewed Baker or watched him in action, the one word that kept coming to mind was *control*: self-control, control of the situation, control of others. Baker keeps his intentions to himself or shares them with only a couple of trusted aides; he plots his moves with care, and strikes when confident of a kill. He stalks his political prey with his pale-blue eyes set in a squint, gauging the political terrain and counting votes the way he would watch the skies or listen for the telltale rustle of a gobbler. He thrives on challenge. And he exults in the sport of politics and, most of all, in winning.<sup>5</sup>

Who in Congress, the media, or anywhere else wouldn't want to have a close friendship with someone who measures up to that description?

After leaving Washington, James Baker joined the Baker Botts law firm, making him the fourth generation of his family to practice there. He told me, "It's great to get my ticket punched at the family firm."<sup>6</sup>

In his almost two decades at Baker Botts, the firm has provided him with the best of all possible worlds: occupying a spacious corner office; working only on the jobs he chooses; avoiding the hassles of management responsibilities; taking on the high-level international diplomatic projects he selects at the request of the federal government; leading the James A. Baker, III Institute for Public Policy at Rice University; and never having to write down his billable time at the firm. James Baker received those perks the old-fashioned way: He earned them.

## Notes

1. James A. Baker, III, *Work Hard, Study ... and Keep out of Politics!*, rev. ed. (Evanston, IL: Northwestern University Press, 2008), p. 447.
2. In a footnote to his autobiography, *Work Hard, Study ... and Keep out of Politics!* (New York: G.P. Putnam's Sons, 2006), Baker explains that although he's actually the fourth generation to bear the name, "the numbering didn't start until I came along." p. 12.
3. Baker, *The Politics of Diplomacy* (New York: G.P. Putnam's Sons, 1995), p. 133.
4. Baker, *Work Hard*, p. 13.
5. Hedrick Smith, *The Power Game: How Washington Works* (New York: Ballantine Books, 1988), p. 313.
6. James A. Baker, III, personal communication to author, June 28, 2011.



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