

Opening Statement

The American Jury Project and the Image of the Justice System

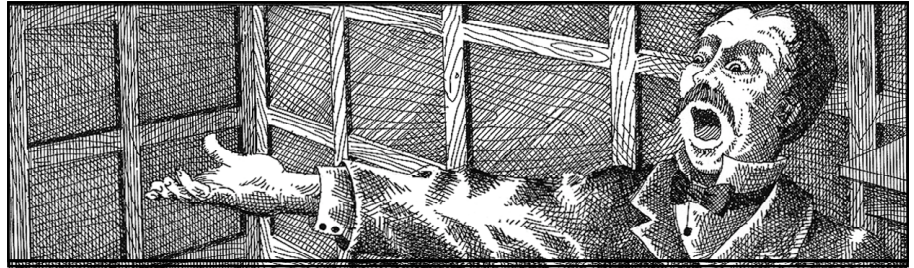
by Dennis J. Drasco

Chair, Section of Litigation

Opening Statement

The American Jury Project and the Image of the Justice System

by **Dennis J. Drasco**
Chair, Section of Litigation



The backbone of the American justice system is trial by jury. In fact, the jury trial is the hallmark of our participatory democracy. Working at its best, the jury trial puts justice in the hands of citizens—not judges, not litigants, not lawyers.

Recently, the image of lawyers has been the focus of discussion by the Section of Litigation. Likewise, in the last few years, the Section has tackled the phenomenon of the “vanishing trial” and the move by corporate America to avoid jury trials in favor of ADR to resolve disputes. These issues are interrelated.

Past Section Chair Robert A. Clifford alerted us to the negative image of lawyers. In 2001, under his leadership, the Section commissioned an empirical research study to determine the American public’s perception of lawyers. This in-depth survey revealed a need for change in the way lawyers communicate with their clients and the public. Our Section undertook to further study the basis of those perceptions and alternative strategies to improve lawyers’ reputation in American society. Bob discussed that study, *Public Perceptions of Lawyers, Consumer Research Findings* (April 2002), in his chair’s column *Confronting Our Critics*, Vol. 28, No. 2 LITIGATION at 1 (Winter 2002). The image of lawyers and the shift in the way our society resolves disputes are not isolated. Together, they form the way society views the justice system in which we, as lawyers, function. The vanishing trial phenomenon is certainly a part of the overall image of the justice system.

This year, ABA President Robert J. Grey, Jr., asked the ABA Litigation and Criminal Justice Sections and the Judicial Division to study the workings of juries in America, and to develop Principles for Juries and Jury Trials to take the jury experience into the 21st century.

This report was presented to the ABA House of Delegates at the Midyear Meeting in February 2005.

The goal of new and uniform national principles is to foster understanding by juries that will result in better, more reasonable decisions and, consequently, outcomes that not only are perceived as more in line with justice but also are more just. Who can doubt that, with more just results, we will restore lost confidence in our system of justice and enhance the public’s image of the profession as part of the system.

Thus we have, in effect, come full circle. The vanishing trial, in part, is an outgrowth of the public’s negative perception of the justice system, which is directly related to the negative image of lawyers. I believe the work of the American Jury Project will strike at the causes of the public’s negative perception and elevate the image of both the profession and our system of justice.

Composed of judges, trial lawyers, and academics, the American Jury Project presented the proposed national principles to a group of more than 100 academics, citizen groups, representatives of all ABA entities, and state and local bar representatives at the National Symposium on the American Jury in October 2004. The presentation encouraged lively debate during the meeting, as well as voluminous written comments sent afterward to the drafting committee. Comments were incorporated into the draft, and a revised, unified set of Principles for Juries and Jury Trials emerged. These encompass jury composition, juror treatment, juror comprehension, and related issues—all geared toward elevating jury service and the justice it dispenses.

President Grey formed a second group, the Commission on the American Jury, with Honorary Chair U.S. Supreme

EDITOR-IN-CHIEF **Charles D. Tobin**
Holland & Knight LLP
Washington, D.C.

EXECUTIVE EDITOR **Joyce S. Meyers**
Montgomery, McCracken,
Walker & Rhoads, LLP
Philadelphia, Pennsylvania

SENIOR EDITORS **Peter D. Baird**
Lewis and Roca
Phoenix, Arizona

Jeffrey Cole
Cole and Staes
Chicago, Illinois

James W. McElhanev
Chama, New Mexico

Jacob A. Stein
Stein, Mitchell & Mezzines
Washington, D.C.

ASSOCIATE EDITORS **Kevin Abel**
Bryan Cave • St. Louis, Missouri

Robert Aitken
Law Office of Robert Aitken
Palos Verdes Estates, California

Hon. Elaine E. Bucklo
U.S. District Court • Chicago, Illinois

Edna Selan Epstein
Law Office of Edna Selan Epstein
Chicago, Illinois

William T. Garcia
MCI
Ashburn, Virginia

Hon. Robert W. Gettleman
U.S. District Court • Chicago, Illinois

Stephen G. Good
Fletcher & Springer LLP
Dallas, Texas

Hon. Joseph A. Greenaway, Jr.
U.S. District Court
Newark, New Jersey

Howard Gutman
Williams & Connolly
Washington, D.C.

Pamela S. Menaker
Clifford Law Offices
Chicago, Illinois

Lee Stapleton Milford
Baker & McKenzie
Miami, Florida

Steven J. Miller
Goodman Weiss Miller LLP
Cleveland, Ohio

Jason M. Murray
Carlton Fields • Miami, Florida

Maria Rodriguez
Venable, Baetjer, and Howard LLP
Baltimore, Maryland

Robert E. Shapiro
Barack Ferrazzano Kirschbaum
Perlman & Nagelberg
Chicago, Illinois

Laura Lee Stapleton
Jackson Walker, LLP • Austin, Texas

Robin Page West
Cohan & West, P.C.
Baltimore, Maryland

PERIODICALS DIRECTOR **Monica Buckley**
American Bar Association

MANAGING EDITOR **Annemarie Micklo**
American Bar Association

ART DIRECTOR **Liane Sebastian**
MichaelLight Inc.
Evanston, Illinois

Court Associate Justice Sandra Day O'Connor and Chair New York State Chief Judge Judith Kaye. The Commission will embark upon a national campaign that will publicize the work of the American Jury Project, implement the principles throughout the United States, and celebrate the jury trial as the hallmark not only of our justice system but of our democracy as well.

Why is this important in our country today? The answer goes beyond the negative public perception of trial lawyers, and focuses on the image of the profession and the justice system as a whole. By elevating the stature of juries and implementing innovative ways to ensure dignity and privacy for jurors and better understanding by jurors, we invest in the independence of our system of justice and the quality of that system's results.

No one is suggesting that we turn our backs on mediation and arbitration as means of settling disputes. But the integrity of the system that fosters jury service and celebrates the sanctity of the jury award makes the system, as a whole, better. The proposed principles seek to elevate jury service by empowering jurors as an aspirational goal. Intended to address both civil and criminal trials comprehensively, the Principles for Juries and Jury Trials, as of early 2005, consist of 19 principles and many standards and best practices within each principle. The principles are as follows:

1. The right to jury trial shall be preserved.
2. Citizens have the right to participate in jury service and their service should be facilitated.
3. Juries should have 12 members.
4. Jury decisions should be unanimous.
5. It is the duty of the courts to enforce and protect the right to jury trial and jury service.
6. Courts should educate jurors

regarding the essential aspects of a jury trial.

7. Courts should protect juror privacy insofar as consistent with the requirements of justice and the public interest.
8. Individuals selected to serve on a jury have an ongoing interest in completing their service.
9. Courts should conduct jury trials in the venue required by applicable law and the interests of justice.
10. Courts should use open, fair and flexible procedures to select a representative pool of prospective jurors.
11. Courts should ensure that the process used to empanel jurors effectively serves the goal of assembling a fair and impartial jury.
12. Courts should limit the length of jury trials insofar as justice allows, and jurors should be fully informed of the trial schedule established.
13. The court and parties should vigorously promote juror understanding of the facts and the law.
14. The court should instruct the jury in plain and understandable language regarding the applicable law and the conduct of deliberations.
15. Courts and parties have a duty to facilitate effective and impartial deliberations.
16. Deliberating jurors should be offered assistance when an apparent impasse is reported.
17. Trial and appellate courts should afford jury decisions the greatest deference consistent with law.
18. Courts should give jurors legally permissible post-verdict advice and information.
19. Appropriate inquiries into allegations of juror misconduct should be promptly undertaken by the trial court.

Certainly aspirational but tremendously practical are the standards within each principle. The force and effect of the ABA's adoption of uniform Principles for Juries and Jury Trials will provide the Commission on the American Jury, the ABA, and the profession with the ammunition to counter attacks on the American system of justice. It is not enough to defend our profession, our roles as lawyers in our society, or the independence of the judiciary; we must also defend and support public confidence in the system of justice as a whole. The system, at its core, enforces the rights of citizens to participate as jurors and to have their disputes resolved by their peers. Strengthening the jurors' role within the system will greatly improve both the system and the public's perception of it.

Adoption of the national principles by the ABA will take us to first base.

Implementing them within our state justice systems will move us to second. Educating the public and communicating the constitutional right of citizens to participate, to receive respect, and to understand the law and facts of a case will help us turn the corner to preserve our system of justice, as well as to elevate the image of the profession—for both our citizens and our profession,

As Chair of the Section of Litigation, I have been privileged to take part in this great discussion and debate as the principles have taken shape. I commend to your reading and thoughtful consideration the work of the American Jury Project to improve the American jury system. See www.abanet.org/juryprojectstandards/principles.pdf. Further, as the Principles for Juries and Jury Trials become ABA policy, I ask you—judges, lawyers, academics, jury experts, court administrators, and bar

leaders interested in the vitality of our nation's jury system—to help implement these innovations and reiterations of values in our state judicial systems.

Lastly, I ask you to join me, the American Jury Project members, the Commission on the American Jury, and ABA President Robert J. Grey, Jr., in New York City, at the Section Annual Conference, April 20 to 23, 2005. We will discuss these values and innovations to improve the American justice system and the public's perception of it. As Justice O'Connor stated in her foreword to *America's Lawyer-Presidents*: "Our forefathers have left us with a remarkable legacy upon which to build." Let us pick up that mantle and take it to the next level for the benefit of the profession and the citizens of America, and ensure that our system of justice and its role in our democracy will continue to flourish for generations to come. ■