

# Foreword

*Morris Dees*

In 1981, I introduced David Berg to the Texas Knights of the Ku Klux Klan. Neither would ever be the same.

Refugees from the Vietnam War had been moving to the shrimping town of Seabrook on the Texas Gulf Coast. The locals who had fished those waters for decades were not pleased at the prospect of added competition for scarce shrimp. Eventually, one of those locals turned to the Grand Dragon of the Texas Knights of the Ku Klux Klan for help. Always happy to accommodate, the Klan cruised Galveston Bay, burning some of the Vietnamese boats and threatening the owners of other boats. The paramilitary wing of that particular chapter of the Klan, known as the Texas Emergency Reserve, did its part by training about sixty of the local fishermen in “self-defense” at the group’s camp in the swampy flatlands northwest of Galveston Bay.

My organization, the Southern Poverty Law Center, decided to get involved as part of our Klanwatch Project to help these hardworking Vietnamese Americans who had every right to fish in the waters off Seabrook. We also hoped to put this dangerous Klan group out of business.

I asked David to be my co-counsel in what would become an historic case. Already one of the best criminal defense attorneys in Texas, David, I knew, was no stranger to cases with the potential for real danger and violence. Even so, when he agreed to help me sue the Klan, he was really stepping out of the box.

On the morning after we filed our complaint, David discovered a Klan calling card taped to his office door. The business-size card with a fiery cross symbol read that this friendly “social visit” could easily be followed up with a “business call.” Two nights later, he found a similar greeting waiting for him at home. On the first day of the deposition of the Grand Dragon himself—who attended in his white robe and carried a

concealed revolver—David was followed home by a red and white pickup truck. Fortunately, nothing happened, but several weeks earlier, a person seated in that same truck had pulled a gun on the Vietnamese owner of a seafood café in Seabrook. David reacted to these threats with his characteristic humor, joking that the Klan was facing its own worst nightmare in the case: an Alabama Bubba, a Jewish lawyer, and a black judge.

David proved to be an invaluable addition to the trial team, brainstorming on how to best tell the fishermen's story, putting on a ton of good evidence, and working tirelessly to overcome local resistance to our cause. With his help, we won an injunction barring the Klan from committing acts of violence and intimidation against the Vietnamese fishermen. A second injunction followed. It effectively shut down the Texas Emergency Reserve and its paramilitary activities.

Along the way, David and I became close personal and professional friends. I think of him now as a people's trial lawyer in the Clarence Darrow tradition. David practices the kind of law young people dream about when they go to law school. He has tried almost every type of criminal and civil case, from murder to patent infringement. He has an ability to persuade juries that is the equal of any practitioner I know. He is deeply respected by opposing counsel because he isn't afraid to go to trial, whether in a civil or criminal matter. Juries trust him because he empowers them to do justice. Clients retain him because he knows how to win.

In 1970, less than two years after opening his law office, David won a case in the United States Supreme Court, reversing his client's conviction for taking part in an antiwar demonstration and establishing "Guerrilla Theater" as a recognized form of protest. In 1978, using the battered wife defense for the first time in Texas, he won an acquittal for a woman accused of murdering her husband and transporting his dismembered body across the country in the trunk of a car.

I always urged David to combine civil work with his criminal practice. In his first personal injury case in 1991, he won a record \$12.5 million verdict for the survivors of a young woman killed in a collision with a Missouri-Pacific train. That same year, he won a unanimous verdict for Robert Sakowitz, Houston's "merchant prince," who had been accused by family members of fraud and mismanagement of his father's estate. Later that decade, he won a verdict in a fraud case for Robert Bass's investment group, Acadia Ltd. Partners, worth \$52 million.

In 1994, he negotiated a \$4.25 million settlement for the survivors and estate of a young mother, a Mexican national, who came to El Paso to give birth to her second child. In this astonishing case, the young mother was shot and killed in a hotel room in front of her husband and first child by an employee of E-Systems, Inc., a CIA-funded defense contractor. The employee, who was staying in an adjacent room, had decided to test-fire his semiautomatic weapon by pointing it at an internal wall and pulling the trigger. In 2000, David obtained a \$425 million settlement from Marriott Corporation for thousands of investors who alleged that they had been defrauded when they invested in several limited partnerships.

Notwithstanding these noteworthy settlements, David is no settlement lawyer. Big-firm attorneys could learn a lot from him in this area. He doesn't run up fees during discovery, only to settle before trial because the alternative is "too risky." He doesn't just rubber-stamp management decisions like most boards of directors. He has a conscience, he has backbone, and he is perfectly willing to hold the bad guy's feet to the fire.

Nor is David afraid to subordinate personal advancement to "doing the right thing," which just happens to be one of his favorite trial themes. Case in point: When I first met him in 1976, David was a member of Jimmy Carter's Justice Department transition team. I was still serving as national finance director of Carter's presidential campaign. Among other things, David drafted a presidential pardon for Vietnam War draft resisters. As reported at the time on the front page of the *Washington Post*, David was a leading candidate for White House counsel. In Plains, however, he argued that service members who received less-than-honorable (but not dishonorable) discharges should get an upgrade. Otherwise, these men—poor and disenfranchised—would be ineligible for GI benefits and would start to fill the nation's jails. A falling-out with Carter ensued. At the end of the storm, David didn't get the counsel job, but he did remain true to himself and his convictions.

*Texas Monthly* put him in the same league as Joe Jamail and Racehorse Haynes, and properly so. The *National Law Journal* has named David in its annual list of the nation's top ten civil trial lawyers. *Best Lawyers in America* consistently recognizes him in eight trial specialties, including bet-the-company and commercial litigation as well as plaintiff's personal injury and white collar defense. He is driven by a sense of justice, a desire to win contests that he believes in, and a genuine passion for assisting clients who are powerless.

I also know David to be a great family man. He is committed to his wife, Kathryn, and their daughter, Caitlin, and to his two sons, Geoff and Gabe, both of whom are trial lawyers. Both have their own firms.

I have read many “how to” books over the years. Just one or two good ideas usually make the purchase price worthwhile. *The Trial Lawyer* meets that standard on virtually every page, whether David is discussing how to uncover deadly evidence on cross-examination or the importance of investigating each case personally. His confident and seasoned voice comes through loud and clear. He is instructive, to the point, funny—even poignant.

Like other successful trial lawyers before him, David, I believe, is at a point in his life where he is starting to think about leaving more behind than just a winning record and a large bank account. With this book, he has achieved that goal by making a lasting contribution to the craft he practices with passion and love.

Morris Dees  
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