

The Journal Of The Section Of Litigation

American Bar Association

Litigation

online

Volume 30 No. 4, Summer 2004

Opening Statement

Proud of Who We Are, Proud of What We Do

by Dennis J. Drasco

Chair, Section of Litigation

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Opening Statement



Proud of Who We Are, Proud of What We Do

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

There is an old joke that asks the difference between trial lawyers and litigators. The answer suggests that “trial lawyers drink whiskey and try cases, while litigators drink white wine and take depositions.” Although I drink more white wine than whiskey these days, nostalgia for our trial experiences raises serious questions of who we are and what we do. This is especially true in light of the “Vanishing Trial,” see Vol. 30, No. 2 *Litigation* at 1 (Winter 2004).

I have always considered myself a trial lawyer. I like to hang around and socialize with trial lawyers. In fact, I was attracted to the Section of Litigation (I joined as a young lawyer almost 30 years ago) because I believed it was the premier bar association for training the trial lawyer, and I still do.

While the practice has changed and the number of cases we all try has declined (I prefer “declined” to “vanished”), I gladly say that I am proud to be a trial lawyer and proud of what we do. Young lawyers today spend thousands of hours preparing and responding to discovery requests, taking depositions, preparing motion practice, and engaging in alternative dispute resolution techniques, but I contend the same basic skills we learned as we became trial lawyers train us to handle the challenge of today’s litigation practice. After all, the role of the trial lawyer is still the same: namely, to represent a litigant effectively in either a civil or criminal matter to resolve a dispute in the most efficient and cost-effective way possible—to do justice for our clients in the adversary system that still exists, notwithstanding the declining number of trials.

I am not suggesting that we should be complacent about the decline in trials or that we should not question the usefulness of ADR, the cost associated with trials, the increasing use of Rule 56 by our courts, and the trend of corporate America to seek private adjudications in avoiding trials. Certainly, the availability of civil and criminal trials is the very essence of our democracy. We must never waiver from affording the utmost respect to the jury system and the work of jurors. This coming year, in particular, ABA President Robert Grey is focusing on issues relating to jury service. He is seeking ABA policy by the House of Delegates to establish standards for jury service that are intended to enhance and encourage service by our citizens. The Section of Litigation is proud to be a partner in that effort. This year, the ABA and the Section will celebrate the constitutional right to trial by jury and congratulate the work of our citizens who make the system work.

As the Section of Litigation, we must and will do more. We will work hard to continue the tradition of providing the finest advocacy training programs in the organized bar. Our Section Annual Conference in New York City in April 2005; our many committee CLE programs; our long-distance and regional CLE; and our many publications, including *Litigation*, *Litigation News*, and *Litigation Update*, as well as our many committee journals and newsletters, offer the best in advocacy training. We have for a long time provided for the training of legal services lawyers who could not afford to attend trial advisory courses on their own. Our Young Lawyer Advocacy Training Committee

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offers trial skills programs for young lawyers. We have reached out to young lawyers and law students, bringing our programs and publications where they are needed to help train the next generation of trial lawyers. This year we will also reach out to the numerous Inns in the American Inns of Court family to cross-pollinate and help to bring the skills we have acquired to the next generation of trial lawyers.

The vitality of our advocacy system depends upon the quality of advocacy. The quality of advocacy depends upon the level of skill and ethics of the lawyers who represent the litigants. I am proud to say that the Section continues to fill that role. The negativists ask, "Why are we training trial lawyers when trials are vanishing?" The answer is simple. First, there will always be trials, and we must have lawyers trained for them.

Second, and, perhaps more importantly, whether you are preparing for a trial, an ADR proceeding, a dispositive motion, or an administrative hearing, you are creating a record. A trained trial lawyer who can effectively examine witnesses, present evidence, and argue for a result, is best able to do justice. The result, whether at trial, on motion, or by way of negotiated settlement, is the product of the skill of the advocates who represent the interests of the respective parties—in each case, the skills of the trial lawyer.

At the annual Judicial Conference of the Federal Bar in New Jersey in March 2004, I asked a panel of district court judges and magistrates who were discussing the subject of declining trials whether, when given the opportunity, jurors reach the correct decision. Chief Judge John Bissell of the District of New Jersey said that he is impressed with the fact that "jurors get it right." What that tells us, notwithstanding the decline in trials, is that

the system is not broken and that jury trials should not be replaced by any other means of dispute resolution on the theory that jurors can't handle complex or difficult cases. Commentators such as the authors of the "Litigation Hell" article in the November 2003 *Newsweek*, who argue that complex cases should no longer be presented to juries, are simply flat-out wrong. The Section of Litigation will continue to study ways the system can be improved, such as making better use of a jury's time, the speed at which trials unfold, and the cost of trial.

Therefore, the need to teach trial attorney skills is as vital today as it was in 1973 when I tried my first jury case, one week after being admitted to the Bar. That trial opportunities are not as available because of the size of cases and the costs associated with trial, or that many cases simply do not go to trial, should encourage us (as experienced trial lawyers) to find other ways to import the skills we all learned, in part, "by the seat of our pants." Our Section offers trial lawyers, young and old, that experience. In our programs, our publications, our mentoring, and our networking—in everything we do—we convey pride in who we are and pride in what we do. If we do not exhibit pride, we are doomed to the negative inference of the commentators who tell lawyer jokes or seek to change our system of justice.

Let me take a moment to highlight the sometimes unnoticed work of our more than 50 committees and task forces. First, the Section has a Task Force on the Image of the Profession. The work of this group concentrates on the public perception of our profession and the justice system. Recently, this group, co-chaired by Henry Hoberman and George Freeman, of the ABC News and the *New York Times* legal departments, respec-

tively, held programs in New York and Phoenix. This task force brought the television, radio, and print media together for a roundtable workshop on the relationship of the media and the trial lawyer and how that relationship depicts and reflects the public image of the profession. Through communication with the media, the work of trial lawyers, and jurors for that matter, will be better understood and, perhaps, more fairly portrayed in the media. We will continue this effort.

Our death penalty, Litigation Assistance Partnership Project (LAPP), children's rights, and legal services projects focus Section resources toward extremely necessary good work. The Death Penalty Representation Project recruits and assists pro bono attorneys who represent capital defendants in post-conviction proceedings. The Section also continues its financial support of the Texas Defenders Service (TDS), and the Equal Justice Initiative of Alabama (EJI). TDS tracks cases in Texas to ensure that prisoners on Death Row receive competent legal representation. The EJI provides legal representation to the poor in Alabama who otherwise would

be denied effective representation.

The Section's LAPP links private firm pro bono resources with legal service and public interest programs. Our Children's Rights Litigation Committee assists lawyers who represent children pro bono and supports development of quality legal programs for children. Additionally, our Section conducts free three-day skills programs for legal services and public interest advocates through our Legal Services Advocacy Training Program. For the past two years, the Section Judicial Intern Opportunity Program has placed more than 150 law students from law schools across the country in summer internships with state and federal judges in Houston and Chicago. The students participating in the program are financially disadvantaged or minority students who otherwise might not have the opportunity to work for a judge.

The pro bono and public service efforts of our members sometimes go unnoticed. This work is not so sensational as representing Martha Stewart or Jason Williams, but the public needs to know how much time and effort goes into the pro bono activities of trial lawyers and their law firms throughout

the country. Communication with the media will help balance the image of our profession. The Section's John Minor Wisdom Awards, given each year at the Section Annual Conference, recognize those individuals and law firms who devote great effort to representing the poor and unrepresented in their community. Our International Human Rights Awards, given at the ABA Annual Meeting, recognize lawyers who fight for human rights throughout the world.

Our Section is truly a family. Though 70,000 strong, we offer our members opportunities to teach, write, learn, and network. I am not only proud to be a trial lawyer; I am proud to be a member of the Section of Litigation. Get more involved yourself. It's good for the profession, good for the public, and good for you and your law firm, company, or public entity. I will have no greater honor in my career than chairing our Section of Litigation. I look forward to representing the profession and our members this year.

I will take this message everywhere I go: *Trial lawyers and litigators are truly proud of who we are and proud of what we do.* □