

Being a Trial Lawyer

By Geoffrey Fieger

I am approaching 40 years as a litigator. I have never held another job after college. I have never worked for anyone but myself. I don't get paid unless I win a case. I think of myself as a hunter; a trial warrior.

I have tried countless cases and won some of the largest civil verdicts. I have defended some of the most notorious criminal cases. Forty years have provided me with more practice in the law than anything else I have ever done.

I lead a lonely existence. Trial lawyers are routinely reviled and underestimated in our society. Yet without us, the structure of our society would fail. No one understands that we are the bulwark against those forces in society that would destroy our hard-fought and hard-won freedoms. We aren't ever going to be held up as examples or recognized for the true value of our sacrifice.

When I go home at night, whom can I talk to? Who understands? What can I say? Really, I'm so weary, I don't want to talk.

After 40 years of practicing law, I don't want to do anything else. My work never gets boring. Every case is new. The canvas upon which I paint each case is unique. I crave the opportunity that presents itself when my staff brings a case to me and says, "This case was made for you to try."

Few things give me the adrenaline rush of preparing for trial. Looking for facts that have not been revealed. Finding the story of a case. Every case at trial *must have a story*.

Eventually, the story of your case becomes a parable about trust and betrayal. The story always starts with the villain, like every good story. The victim trusts the

villain—whoever that may be. The villain betrays the hero's trust. Without first understanding the bad, there is no context in which to understand why the good must prevail and why the villain must be vanquished.

A real trial lawyer is a storyteller, just like the ancient shamans and chiefs who told stories by campfire. It isn't a coincidence that children love being told a story—a good story, one that captures their imaginations and paints a picture in their minds with words they can understand.

Trials are contests. They are heavyweight championship fights. The real judges are the jury. With those 6, 8, or 12 men and women, a real trial lawyer first and most importantly establishes *credibility* and *trust*.

A jury comes into a courtroom completely ignorant of everything that has happened in the years leading up to the trial and about what is going to happen. Invariably, the jurors pick sides. They do it quickly. Unconsciously. Usually in the *voir dire*.

The judge is the most powerful person in the courtroom. No matter what you may think of him or her, the jurors believe, rightly or wrongly, that the judge is a fair person. They look to the judge for guidance. Challenging the judge in front of the jury is self-defeating. If a judge is biased or unfair, the jury will eventually see it. A trial lawyer does himself or herself no good by highlighting, confronting, or directly challenging judicial bias.

As with virtually everyone else in our society, jurors also yearn to be led. Led to the truth. Led to justice. Led to enlightenment. People instinctively look for someone to lead them. Who will that be?

The two opposing lawyers walk into court and are immediately sized up by the jury. Some bring dazzling electronics and a parade of support staff in an obvious attempt to impress, frighten, or intimidate their opponents. Others bring only themselves and the power of their story (and their own character).

Thus begins the ancient struggle to lead. Whom will the jury follow? Which team will

they join? The contest is to establish credibility and trust; *voir dire* provides the only real theater for establishing them. It's all about the human desire to join a team, a tribe. Whose tribe will it be? Mine? Or theirs?

You must honestly confess all weaknesses of your case to the jury. No soft-soaping anything. Weaknesses in a case are acceptable. Deception is not. No case is perfect. Problems always exist. Confess them. Who would join the tribe of anyone so arrogant as to believe he has no sin?

Juries help people they care for. Even if your case is absolutely just, if a jury doesn't care, your client will be cast to the wind. And if *you* don't care for your client, why in the world should the jury care?

My pal Gerry Spence says, "The mirror is always at work." In the mirror, you see a reflection of yourself. Do you understand that person? Do you understand why that person does what he or she does? Does that person truly feel? Does that person truly believe? Does that person care? The mirror is *you*. To thine own self be true.

It seems like just yesterday when I graduated from law school. In the blink of an eye, I have hurtled through 40 years of time and space. How much longer do I have? How many more battles? How many more trials?

In every person's life comes a wave that, if taken at its crest, will lead to success. I am still on that wave. I became a trial lawyer out of sheer indirection; I had no idea what I wanted to do or be. It certainly wasn't a lawyer. Look at me. That's what I am: a trial lawyer.

Through indirection, I have found direction. ■

"Best Practices" is a regular column of the *Michigan Bar Journal*, edited by Gerard Mantese and Theresamarie Mantese for the Publications and Website Advisory Committee. To contribute an article, contact Mr. Mantese at gmantese@manteselaw.com.



Geoffrey Fieger graduated from the University of Michigan (BA, 1974; MA, 1976) and the Detroit College of Law (JD, 1979). Fieger Law is located in Southfield and has more than 65 employees.