



Lawyers on Trial

A recent, widely circulated e-mail message from the Michigan Chamber of Commerce contained the following statement:

Trial lawyers have wreaked havoc with frivolous lawsuits.

The judicial system is often overwhelmed with cases. And businesses and organizations must spend excessive money to protect themselves from these sharks.

There are many things wrong with this message, starting with the intended purpose, which, I believe, was to use a form of knee-jerk bigotry against lawyers to raise money for political campaigns. But it is also wrong to draw a line in the sand between “business” and “lawyers” because it creates a false dichotomy. I am in a business, as are most Michigan lawyers. We are employers and business people. We are Republicans, Democrats, and independents. We have the same worries and challenges as other business people and citizens. We pay substantial premiums for malpractice insurance and health insurance for our employees. We pay significant amounts in taxes, including single business and worker’s compensation taxes. What’s more, we are active participants in the business community. My own firm has contributed mightily to the Grand Rapids Junior Chamber of Commerce. We are members of

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the Grand Rapids Chamber of Commerce, and I know that many lawyers across Michigan give time, money, and leadership skill to local chambers.

So why do lawyers tolerate an organization to which many of us belong using us as a whipping post through the insulting vitriol that has appeared in e-mail, on the Chamber website, and in the media? In fact, the attack on trial lawyers is, I believe, merely a smoke-screen for an attack on the Chamber’s real target: the jury system itself. To be sure, the Chamber’s agenda does not include the preservation of the judicial system. But those of us whose agenda, and indeed ethical obligation, *does* include the preservation of the judicial system should be quicker to remind the Chamber and the public why our judicial system, including the centuries-old system of tort law and jury trials and the role of lawyers within it, is a critically important part of a citizen’s right to petition for justice—regardless of socioeconomic status, race/ethnic background, occupation, or other factors that, without the protections of our system, would tend to create unequal footing.

Talk about irony! The Chamber of Commerce has in effect filed a frivolous lawsuit against the entire legal profession through a vicious *ad hominem*, *ad extremum*, *ad nauseam* attack. And most lawyers, despite their training in persuasion, advocacy, and defense, have been anything but “shark-like” in response. We must do more to conduct ourselves in ways that contradict the negative stereotype being peddled by the Chamber and others. We must educate the public about the value of our system of justice, at the same time acknowledging the failures of the few members of our profession who abuse it. We must care about the problem of nuisance and frivolous lawsuits as much as the Chamber of Commerce does because it is our problem even more than it is theirs,

and because their methods of addressing it are destructive.

We are not perfect, but we are the sum of all our parts, the best and the brightest as well as the worst. If other institutions and professions—medicine, auto manufacturing, insurance, accounting, teaching, or the Catholic priesthood—are measured simply by their worst practitioners, they will certainly fare no better or worse than lawyers.

I have been a *trial lawyer* for 34 years. Much of my work has fit the profile squarely in the propaganda bulls-eye, representing unpopular criminal defendants and doing a fair amount of contingency fee work on behalf of injured plaintiffs, but much of it has also been on behalf of businesses as well. In the past year, I have mediated more than 25 cases and have not seen a frivolous one in the bunch. Each case involved legitimate disputes between citizens. All of the lawyers involved handled their cases with dignity. There was not a shark among them.

Here are a few simple truths that the Chamber seems to have forgotten.

- **Trial lawyers serve both plaintiffs and defendants.**
- Lawyers provide invaluable services to businesses.
- The American jury system, a bedrock of protection for the public, was made part of our Constitution by our founding fathers.
- Juries, guided by lawyers who ensure that the rights of *each* side are represented, try to sort fact from fiction in courtrooms across Michigan every day.

Recently, I rediscovered three classic movies I had seen before I was a lawyer: *Twelve Angry Men*, *To Kill a Mockingbird*, and *Anatomy of a Murder*. In *Twelve Angry Men*, Henry Fonda is the only juror who initially votes for acquittal of a young man charged with stabbing his father with a knife. Over the course of the next two hours the audience is taken

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into the jury room as Fonda convinces the others and the audience that the facts relied upon by the prosecution are simply wrong, and the innocent young man is acquitted.

In *To Kill a Mockingbird*, Gregory Peck is Atticus Finch, a poor, small-town southern lawyer appointed to represent Tom Robinson, an African-American man alleged to have raped and beaten a young white girl. Finch's closing argument is a classic.

In this country our courts are the great leveler. All men are created equal. I'm no idealist to believe firmly in the integrity of our courts and our jury system. That's no ideal to me. That's a living, working reality. In the name of God, do your duty.

After the jury rejects Finch's arguments and convicts Tom Robinson, Robinson's minister noticed that the children were still seated as their father packed up his papers and began to leave the courtroom. The minister chided Atticus' son, Jem:

Some men in this world are bound to do our unpleasant jobs for us. Your father's one of them. At least stand up, your father's a passin'.

In *Anatomy of a Murder*, by our own former Supreme Court Justice John Voelker, one of the lawyers, Parnell McCarthy says:

A jury is 12 people who go off in a room with 12 different minds, 12 different hearts and 12 different walks of life. They have 12 different sets of eyes, 12 different ears. They are of all different shapes and sizes. They are asked to judge a person as different from them as they are from one another. In their judgment they must be of one mind: unanimous. It is one of the mysteries of man's disorganized soul that they can do it and in most instances do it right well. God bless juries.

In their zeal to protect the businesses who are their members, the Chamber and others would stifle the jury trial and the protections it provides by, among other things, calling the lawyers who appear before them "sharks." I

believe the jury trial is the most important right of the Bill of Rights because it puts *citizens* between government and those charged with crimes and it allows *citizens* to decide civil disputes. It has been labeled inefficient, unpredictable, and subject to the emotions and whims of the few. Like all human enterprises, it is not perfect. Its faults have been numbered; its weaknesses catalogued. And yet, the jury system has inner strength and abiding wisdom which dictatorships around the world lack.

Nearly 230 years ago, just before the outbreak of the Revolutionary War, another trial lawyer, this time not a fictionalized version found in a movie or book, but a living, breathing husband and father, had a very successful practice in Boston, Massachusetts. That lawyer lost his practice when he defended a British soldier involved in the attack on the crowd during the Boston Massacre. When asked why he would ever do such a thing, the trial lawyer expressed his opinion that it would be far better for 99 guilty men to go free than for one innocent man to be hanged.

The irony of the story, and the true testament of that trial lawyer's character, is that he was no loyalist, and no great fan of the English monarchy. To the contrary, less than a decade later that same trial lawyer was accused by many of pushing the colonies into a war against Britain based on his own petty and selfish grievances against King George. His name, of course, was John Adams.

Adams and the other founders believed that the right to a jury trial was absolutely es-

sential to the preservation of our freedoms. Recognizing that there might be some confusion in the Constitution, the Bill of Rights was added and guaranteed the right to jury trial in civil cases. Alexander Hamilton said in *Federalist 83*:

The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury. . . the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government. For my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation.

Me too! I'm with Adams and Hamilton, Parnell McCarthy, and Atticus Finch. Pretty good company!

It is for every generation of Americans to rediscover the power and necessity of the jury trial—the hallmark of our constitutional system of justice. It lets the *people* decide what justice demands in particular cases. How else can it possibly operate in a government of the people, by the people, and for the people?

Measured strictly in terms of the speed and clinical precision that our modern society is conditioned to venerate, the jury trial falls short. It is inefficient, expensive, and worst of all, as some highly publicized cases have demonstrated, it is sometimes wrong. I have seen its faults. But more often I have observed, in courtrooms not fit for Hollywood, with lawyers not vying for an Academy Award, that a jury trial is often the best way to assure that justice is done.

That is why I am proud to be "labeled" a trial lawyer. ♦

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