

MassDLA

Newsletter

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Message from the President: Anthony J. Sbarra, Jr.

Trial Lawyers and Justice, Who We Are and What We Do

As the summer months passed by and I approached my term as president of MassDLA, I thought about what I would say in these notes. Much like with the dreaded term papers of my past, I procrastinated, and then began writing several times without satisfaction. The process forced me to think long and hard about just what it was that we defense lawyers actually do. How many times have you been asked at social gatherings "So what is it that you do?" "I'm a lawyer" just doesn't cut it, I'm afraid.

So I decided to try and sort it out. I started with my perception that we lawyers indeed have an image problem. I thought that an analytical discussion of Shakespeare's Dick the Butcher's quote "What we do first, let's kill all the lawyers," would be a good beginning. I discovered that the quote is subject to many interpretations and wrote, persuasively I thought, that it was actually made in defense of our profession. Having completed the notes, I showed my work to the ultimate judge of all things important, my wife, and the response was lukewarm, at best. So I thought about it some more.

There are terms, used and misused, in society and the media to describe us. Why is it, in today's world, that a "trial lawyer" is one who takes a frivolous case and turns it into a huge settlement or award for an injured person through trickery and underhanded tactics? Why have some politicians taken besmirching "trial lawyers" (and blaming them for all of the country's ills) to an art form? Isn't the truth that real trial lawyers are those extraordinarily skilled attorneys who present their cases to juries for plaintiffs and for defendants? And isn't it further true that we, as defense lawyers, often try cases more often than any other attorneys?

"Justice" is another misused term. Several years ago, as part of my responsibilities as a MassDLA officer, I attended the Massachusetts Academy of Trial Lawyers Annual Meeting. There I heard a number of riveting speeches. Seasoned and highly talented plaintiffs' attorneys told truly compelling stories about their cases and trials. To a person, they all concluded their presentations with references to how gratified they were to have obtained justice for their clients. The speeches were all met with

thunderous applause, and it was all perfectly justified. The attorneys had each performed a tremendous service for their clients and praise for their efforts was richly deserved.

But what about the work of we defense lawyers? Do we not achieve justice as well? Can't that justice be just as compelling? I once had the privilege of defending a homeowner in a personal injury case that went to verdict in Southeastern Massachusetts. The plaintiff had fallen from my client's roof, and had sustained permanent and debilitating injuries, allegedly because of a defect in the roof's gutters. The case progressed through discovery and depositions and ultimately was tried. After the jury returned a defense verdict, my client sat in the courtroom, crying. She explained to me how difficult it was for her to have stood accused of causing such serious injuries. Over and over, hearing the allegations against her, she agonized about whether she had in fact done something wrong. Her peers told her otherwise. I witnessed firsthand her relief; it was palpable and I will not forget it. Is that not justice? My client certainly thought so.

The efforts of plaintiffs' trial attorneys deserve praise and respect. So do our efforts. No one has a monopoly on the concept of justice. We defense lawyers are indeed trial lawyers and we indeed strive for and obtain justice. Of that we should be proud.

I would be remiss, given the current fiscal situation, if I left it there. After all, to what good do our efforts go if there are insufficient and understaffed courtrooms in which to try our clients' cases? We have all heard complaints from the judiciary and court officials about resources and staffing. There is, I fear, a very real "boy who cried wolf" attitude demonstrated in the press about the court crisis in Massachusetts. This is not only unfortunate but inaccurate. We have all seen and felt the repercussions of the lack of funding. Trials are delayed, stenographers are no longer provided, hearings on motions are delayed and rulings delayed further and, most recently, office staff members in various court clerks' offices answer telephone calls during strictly limited hours. This list, as we all know, is not exhaustive by any means.

Those members who attended our last Annual Meeting and Spring Seminar heard first hand about these problems from Associate Justice Paul E. Troy and Assistant Clerk John E. Powers, III. I cannot duplicate their eloquent descriptions of the almost insurmountable hurdles that judges and court personnel face daily in the attempted administration of justice. The fiscal issues are no longer debatable; the wolf is here. For that reason I commend our various local and state bar associations for making it their respective goals to bring this issue to the forefront. I am committed to having MassDLA share in those goals, and look forward to working with fellow bar association leaders in the effort.