MAY 30, 2007 | THE NEW LAWYER

On Being a Plaintiffs' Lawyer

By Mark Labaton

Being a trial lawyer once was widely viewed as a noble calling.

Remember Clarence Darrow and Thurgood Marshall? Remember Atticus Finch, Gregory Peck's heroic lawyer in "To Kill A Mockingbird?"

These and other trial lawyers - real and fictional - were role models.

Times have changed. The term "trial lawyer" is no longer a badge of honor. Instead, it is often used to refer negatively to plaintiffs' lawyers - the result of a concerted effort to reduce litigation and limit access to our courts.

I am a plaintiffs' lawyer - and proud of it.

I represent shareholders in securities class actions, consumers in class actions and whistle-blowers in qui tam actions.

Close to 60 million Americans own stock in public companies. When investors are defrauded, they sometimes become clients. Private shareholder class actions are in the SEC's words "a necessary supplement to the Commission's efforts" because they compensate victims and deter financial shenanigans, thereby strengthening U.S. financial markets.

Consumer class actions involve frauds that are impractical or too costly for any one victim to bring alone.

Whistle-blower qui tam actions combat wrongs that harm taxpayers. Since 1986, the U.S. Justice Department and whistle-blowers have used the Federal False Claims Act to recover more than $20 billion misappropriated by contractors from the federal government.

Such lawsuits have led to safer healthcare and deterrence of more than $300 billion of fraud. California, and other states, have similar whistle-blower statutes patterned after the False Claims Act.

Earlier in my career, I was an Assistant U.S. Attorney and also worked for law firms that represented corporate clients.

My father, a lifelong plaintiffs' lawyer, has a plastic cube on his desk with a quote inside that reads: "My father persuaded me to be a lawyer because I have good intentions but no skills."

This is half true; my father has good intentions and many skills.

Good plaintiffs' lawyers are smart, articulate, persistent, creative, hard-working, thoughtful, personable, honest, empathetic, practical and resourceful.

Some are also skilled writers, speakers, teachers, storytellers and investigators. Like conscientious investigative journalists and detectives, plaintiffs' lawyer can be adept at finding, ferreting out and organizing facts - the building blocks upon which strong cases are built.

Some plaintiffs' lawyer, moreover, have an uncommon quality called moral courage - guts.

Former Sen. Robert F. Kennedy said, "moral courage is a rarer commodity than bravery in battle or great intelligence. Yet, it is the one essential, vital quality for those who seek to change a world that yields most painfully to change."

Plaintiffs' lawyers have changed the world. They have, for example, fought to end segregation and have battled tobacco, automobile and insurance companies and many other powerful interests.

Lawsuits involving the struggles of victims of toxic-waste dumping, racial or sexual harassment or other public issues have been the subjects of movies, books and documentaries including "Erin Brockovich," "North Country," "A Civil Action," "Parting the Waters" and "Eyes on the Prize."

Most civil cases, however, are quietly fought in courtrooms and law offices. These fights can be difficult, long and expensive; litigation usually is neither easy nor cheap, in part, because defendants often possess and harness vast resources and they rarely concede - even when they commit clear wrongs.

Our legal system might be the best in the world. Yet, it is not perfect, which is one reason plaintiffs' lawyers sometimes lose meritorious battles.

The tobacco cases are a good example. A few years ago, law firms with help from state prosecutors succeeded in litigation where tobacco companies were held partly accountable for years of fraudulent conduct harming millions of Americans. But these victories came after dozens of unsuccessful cases fought over several decades.

Despite a few bad apples, the majority of lawyers, regardless of whom they represent, are civil and professional, and they play by the rules. Still, it has become fashionable to attack lawyers - especially plaintiffs' lawyers.

Our judiciary is not immune from political influence. Federal judges are appointed by politicians. And, according to a recent Zogby poll, business interests spend more than twice as much on state

high-court elections than all other groups combined.

But because they are accessible, American courts are the bedrock of a pluralistic, mobile and democratic society.

Not only do our courts provide redress for victims and deter fraud and other bad conduct; they also resolve disputes that the legislative and the executive branches, beholden to political pressures, ignore.

Relying on anecdotes from a tiny number of anomalous cases, certain interest groups complain that our civil justice system is bad for business. In their view, this system can resolve disputes between corporations and large businesses, but affording ordinary citizens access to the courts has created a "litigation explosion."

As a result, these groups contend, corporate defendants are unable to withstand litigation, and must pay large monetary settlements regardless of the merits of particular lawsuits.

Experienced civil litigators know this is a weak argument: in fact, corporate defendants almost never "fold" in the face of a marginal case, and such cases rarely succeed.

Reality, however, has not stopped powerful interests from promoting myths or advocating legislation and regulations to curtail our civil justice system.

Such measures, mislabeled "reforms" by their proponents, attack the jury systems, contingent fees and the "American Rule." This "rule" requires parties to pay their own legal fees.

The "English Rule," in contrast, requires the losing party to pay its opponents' legal fees, and prevents ordinary persons from starting lawsuits because the risk of losing is something they can almost never afford.

In the Declaration of Independence, Thomas Jefferson accused King George III of "depriving us in many cases, of the benefit of trial by jury." So-called "reformers" have tried, with some success, to curtail this benefit and to severely cap the damages juries can award to injured individuals.

Marc Moller, my partner, says we practice "little-guy law." I agree. We can do this thanks to the American Rule, and because we are allowed to accept cases based on contingent fee arrangements. Without these, our judicial system would almost exclusively serve big companies and wealthy individuals.

It is not easy being a plaintiffs' lawyer. But it is honorable work.

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