

Ways in Which Trial Lawyers Make a Difference

By Bill Trine

I was asked to write an article for this issue of the Warrior describing how I became involved in the prison reform movement, and how other trial lawyers can become involved in activities and programs that might make a difference. This request caused me to again think about this animal called a 'trial lawyer'.

Why would someone want to be a trial lawyer? Why do some trial lawyers make a career of representing the people, and others representing corporate America or the government? Why do some trial lawyers become public defenders or private-practice criminal defense lawyers, rather than prosecutors? And what type of trial lawyer could become a role model for those who want to someday end their career with the satisfaction that they helped promote justice where it was needed the most.

Let's start with the premise that a trial lawyer must make money to practice law and to make money, must be successful as a trial lawyer. How much is enough? There are plaintiff's trial lawyers who become rich because they are very talented and successful in the courtroom and are very selective in the cases they take. Some of these lawyers use their wealth for the benefit of the public good. Some do not. I am not suggesting that trial lawyers who only focus on big money-making cases do not obtain justice for their clients. But the result of screening and selecting only those clients who have cases that will produce enormous verdicts is that a large segment of the population must look elsewhere for justice.

Fortunately, there are many trial lawyers who are not satisfied with just filing lawsuits and making money, but also want their lawsuits to result in justice for their clients and perhaps also advance the public good in many other ways. Why are lawyers often dissatisfied with just making money? Perhaps it's because the practice of law for money alone, does not produce lasting satisfaction. But

helping those in need, can enrich the lives of trial lawyers and produce some happiness throughout a long and difficult career

Most of the lawyers who attend the Trial Lawyers College fall into this category. They are often trial lawyers who entered the College feeling “burned out”, feeling that the practice of law was no longer worthwhile (or, for younger lawyers, looking for direction and focus), and looking for ways to feel energized and satisfied that the work that they do is important. Those Warriors then leave the College anxious to return and do battle, not just to make money, but to make a difference in the lives of many.

Merchandising People for Profit

These lawyers are to be distinguished from that segment of the legal profession who are in the business of merchandising people for profit, regardless of whether justice for the client is achieved in the process. We sometimes see this when class actions are filed that financially benefit the lawyers, but not the represented members of the class. We see this among those lawyers who file claims or lawsuits, intending to do minimum work, with the primary goal of obtaining a settlement, no matter how unfair or unreasonable the settlement might be. These are so-called ‘litigators’ who never intend to proceed to trial, but just maximize their profits.

Unprofitable Cases that Cry for Justice

My hat goes off to the many great trial lawyers who are financially successful because they have the talent to obtain huge verdicts for deserving clients, but who also take unprofitable cases that cry for justice: cases that could advance the public good; and cases that could make a difference in the lives of many people. Some of the lawyers who immediately come to mind include our own Gerry Spence who obtained substantial verdicts and used the proceeds from those verdicts to sometimes represent indigent deserving defendants in criminal cases. He then started the nationally renowned Trial Lawyers College, which has never turned away an applicant based on inability to afford tuition, which trains lawyers to serve those who are poor, forgotten and damned.

Another great trial lawyer who falls into that category is Joe Cotchett in California. Like Gerry, he was also selected to be a member of the prestigious **National Trial Lawyer Hall of Fame** for his work nationwide in civil rights, and litigation on behalf of the under-privileged in our society. He and his law firm have successfully represented thousands of deserving clients in jury trials and class actions that made a difference in the lives of those clients. His most recent book, ***The People vs. Greed: Stealing America***,¹ is an example of how a trial lawyer can use the publication of a book to advocate for progressive political and judicial change nationwide for the benefit of the public.

I could go on and name some of the trial lawyers who have had phenomenal success in using lawsuits that have helped to regulate various industries that harm or poison our citizens; e.g., the tobacco, asbestos, and chemical industries; the automobile industry; the lead paint, drugs, and health care industries; just to mention a few. Sometimes just the filing of a lawsuit will produce damaging discovery that, when made public, forces an entire industry to enact safety standards that will save the lives many people.

This occurred when Chuck Sedmak brought suit against Clark Equipment Company in 1980², claiming that had a seat belt been installed on forklifts manufactured by Clark, he would not have been paralyzed and brain damaged when the forklift he was operating tipped over. His chest was crushed by the falling object protection structure (FOPS), which forklift manufacturers began installing on forklifts in the 1960's. This overhead protection device also served to prevent the forklift from rolling when it tipped over. Before the use of FOPS, the operator sustained little or no injury when a forklift tipped over and the operator fell out. However, with the use of FOPS, the industry quickly learned that operators were being decapitated or crushed by the FOPS in a tip over, and tip over's were frequently occurring because the FOPS increased the instability of the lift.

Clark Equipment Company was sufficiently alarmed to propose that the members of the Industrial Truck Association (ITA) pass a resolution that all members begin installing seat belts on forklifts. In the 1970's, a majority vote of

the ITA defeated Clark's resolution. Later, when Sedmak brought suit against Clark in 1980, a retired, cooperative Clark engineer informally provided me with a box of smoking gun documents consisting of ITA minutes of engineering committee meetings and Clark internal documents. The documents established that the industry, with knowledge of mounting injuries and deaths, conspired to delay the installation of seatbelts and bucket seats on forklifts. This information was then widely distributed prior to a substantial settlement with Clark. With public knowledge of Clark's complicity in this conspiracy, other lawsuits were soon filed, and in 1983, Clark nationally advertized the free installation of seat belts on all of its forklifts.³ The rest of the industry did likewise and seatbelts became standard equipment, thus preventing additional catastrophic injuries and deaths.

Trial Lawyers Working in the Trenches

So, some lawsuits serve to regulate industry and make a difference by preventing countless injuries and deaths. **But what about the thousands of nameless lawyers** who are working in the trenches, day after day, year after year, seeking justice for the homeless, the poor, the forgotten, the defenseless and those harmed by the greed and inhumane conduct of others? These are Lawyers who, because of the nature of the cases they handle and the clients they represent, may never receive national recognition or be admired or envied for obtaining multi-million dollar verdicts or settlements.

But these lawyers, by the thousands, constitute the foundation of our civil and criminal justice systems because they represent the poor people who would otherwise be shunted to Legal Aid Clinics which are not staffed by experienced trial lawyers. They represent indigent criminal defendants who would not otherwise receive an adequate defense. They represent incarcerated prisoners who often desperately need good legal representation. In short, these are the lawyers who constitute the foundation of justice for millions of people: for refugees and immigrants, for families and children being held in detention centers, for the poor who must sometimes fight to obtain low income housing and food stamps; for the homeless charged with the crime of sleeping in a public place; and for lives ruined by corporate greed.

Search for Opportunities to Make a Difference

For those who want to do more to make a difference, you will have many opportunities to do so. Perhaps by taking a particular risky case that could change the law and benefit thousands. You may fail now and then, but without assuming the risk, you will never know. Instead of waiting for an opportunity to present itself, you may want to create one by organizing a group of trial lawyers to help fill a needed void in our justice system, or start a non-profit organization designed to do so. There is certainly well-known precedent for such ambitious projects, both large and small. Ralph Nader planted many such seeds, and some were cultivated by lawyers who then gave birth to non-profits like ***Public Citizen*** and ***Trial Lawyers for Public Justice***. Morris Dees, who started the ***Southern Poverty Law Center***, is another good example.

But most of us will have an opportunity to contribute on a much smaller scale and many TLC graduates are doing so. Those on the teaching staff at the College and at TLC seminars are contributing to the success of hundreds of trial lawyers who are working in the trenches seeking justice for the needy. Another example is TLC graduate Pablo Sartorio, assisted by my daughter, TLC graduate Cheryl Trine, who organized a group of trial lawyers to participate as pro-bono volunteers in Obama's prison Clemency Project. There are TLC graduates now making a difference as Judges, Public Defenders, or as politicians. The opportunities are endless.

Opportunities to Change the Law

It was early in my career when I discovered that a lawsuit for a deserving client could not only result in obtaining some justice for that client, but could open the door for justice for many other people. This would occur when a client could only obtain justice if the law was advanced or changed at the appellate level. So I had many opportunities to do that in the 1960's and 1970's in representing clients who could not pursue claims that cried out for justice because the existing law did not recognize a claim. Justice for that client could only be achieved by changing the law through judicial intervention. My primary

purpose was to obtain justice for a particular client, but it also created an opportunity to change the law for the benefit of the general public. Every trial lawyer may have similar opportunities to make a difference during her or his career.

For example, in 1968 I represented Shirley Rugg, an impoverished single mother whose job was threatened by tactics commonly employed by collection agencies at that time --- calling all hours of the night with sundry threats, calling the debtors employer and threatening garnishment without filing suit and constantly harassing the debtor. Shirley was a mental wreck and about to lose her job when I filed suit alleging the torts of outrageous conduct and invasion of privacy. The trial court dismissed the complaint, as anticipated, but the Colorado Supreme Court unanimously reversed, recognizing the newly adopted torts of **Outrageous Conduct** and a civil **Invasion of Privacy**.⁴

In 1970 I brought suit on behalf of Patrick Wright, a five-year-old boy who ran into a sliding glass door containing clear plate glass which shattered, cutting the boy. Suit was brought against the home builder who installed the door, alleging that the glass door was defective because it gave an “illusion of space.” The complaint was dismissed for failure to state a claim recognized by Colorado law, and because the boy was not in contractual privity with the homebuilder. In reversing the trial court, Colorado adopted the “**illusion of space**” theory of liability and extended it to persons injured as a result of the negligent construction of a home, eliminating the requirement of **privity**. The court also ruled that the buyer of a new home is protected by **implied warranties**.⁵

My contributions to changing Colorado law was the direct result of taking cases often rejected by other lawyers because existing law would not permit a claim, and I took delight in the challenge and enjoyed appellate work. In 1976 the telephone company servicing Colorado had immunity from lawsuits brought by customers for errors and omissions in telephone directories pursuant to a regulatory agency tariff. I represented Charlie Shoemaker, an elderly gray haired real estate agent, whose name was omitted from the yellow pages for two straight years, asking the court to rule that the company’s conduct was “willful

and wanton” and that such conduct should be an **exception to the immunity** granted by the tariff. The Colorado Court of Appeals agreed, ⁶ and we then proceeded to trial receiving a jury verdict for both compensatory and punitive damages.

So, seeking justice for a particular client may sometimes provide an opportunity to make a difference in the lives of many other people similarly situated. We must seize upon those opportunities when they occur. Other examples of this include a lawsuit I brought on behalf of Jim Roberts against Nissan Motor Corporation for Nissan’s manufacture of a hard dashboard that would not cushion the face when it struck the dashboard in a vehicular collision. The trial court adopted my tendered instruction on strict liability and the jury verdict for my client was affirmed on appeal and Colorado adopted “**crashworthy design**” as a strict products liability theory.⁷

In 1980, the law of strict liability was extended to the distribution of propane gas when a lawsuit brought by Mr. VanHoose, who was severely burned, alleged both negligence in the distribution and strict liability. On appeal, the Colorado Supreme Court adopted the “**highest duty**” standard in the distribution of propane gas, and also applied **strict liability** under section 402A of the Restatement of Torts (2d) to the sale and distribution of propane gas.⁸

Often a prospective client’s story cries for justice when the existing law would not support a claim. This presents an opportunity to fight for a change in the law that would not only benefit the client, but assist others similarly situated in future years. Thus in 1980 I represented Mr. Bloskas in a medical negligence lawsuit against a physician who failed to inform him that the physician had never performed a total ankle replacement, which was being recommended, and which failed. I tendered an instruction on “negligent misrepresentation”, as defined in Sec 311 of the Restatement of Torts (2d), which the trial court rejected. The Colorado Supreme Court reversed and adopted the tort of **Negligent Misrepresentation**, and applied it to the physician-patient relationship, which obviated the need for expert testimony to establish the negligence. This new application became the subject of an ALR annotation.⁹

I could give other examples of clients' stories that provided an opportunity to not only seek justice for the client, but advance or change the law for the public's benefit.¹⁰ These illustrate the opportunities that each of us will have during our career as trial lawyers to make a difference in that fashion, but it often requires assuming the risk of financial loss and substantial time consumed when a loss occurs. Look for the opportunities and assume the risk. I often failed, but I tried.

Prison Reform

So, how and why did I become involved in the prison reform movement as I approached the age of 70? And what can trial lawyers now do to help eliminate the private prison system, and correct the evils existing in all of our prisons and in our criminal justice systems? I have previously described the history and re-birth of the private prison industry and the disastrous consequences of merchandizing people for profit.¹¹ I have also previously described the lawsuits I began filing 16 years ago to seek justice for prisoners and try to promote needed changes in our prison systems.¹²

However, much to my dismay, little progress has been made and the evils existing in our prison systems have not been suppressed, but continue to victimize almost everyone involved in mass incarceration. The flagrant constitutional and human rights violations continue unabated. There is even greater need to eliminate private prisons, for-profit private detention centers, and the privatization of prison related services by corporations that are getting rich on the backs of poor people nation-wide. The necessary changes will require the combined efforts of the executive, legislative and judicial branches of our government, and the trial lawyers of this nation must become more actively involved to insure that these changes occur. There are many areas in which justifiable lawsuits can assist in promoting the needed changes. Those areas include:

- **The abuse and misuse of solitary confinement.**¹³
- **Privatized prisoner transportation services.**¹⁴

- **Prison created environmental contamination and ecology hazards.**
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- **Privatized food services: unsafe and unsanitary conditions.** ¹⁶
- **Price gauging prisoners and their families on phone rates, visitation charges, and computer Use.**¹⁷
- **Injuries and death from use of excessive force and brutality.**
- **Lack of proper medical care and treatment.**
- **Interference with family visitation and communications.**
- **Damages for wrongful convictions.**
- **Riots created by inhumane prison conditions.**

The opportunities for trial Lawyers to assist in creating change are present and easily accessed. Don't just wait for a contact from a possible client with a justifiable case that might make a difference. Search for the right case. For example, you might contact national organizations that are often looking for trial lawyers to assist in prisoner litigation and become a volunteer in your jurisdiction. Some of the contacts in national non-profits that come to mind are: Paul Wright (pwright@prisonlegalnews.org) and Alex Friedman (stein919@gmail.com) at the Human Rights Defense Center (HRDC) , the Publisher of Prison Legal News; and David Fathi , the director of the ACLU National Prison Project in Wash. D.C. (see, <https://www.aclu.org/aclu-national-prison>). You might contact your local ACLU office. In short, you can easily actively seek to become involved if you are motivated and inclined to do so.

Conclusion

Trial lawyers who represent the people and not corporations or the government, have the unique opportunity to not only seek justice for their clients in the courtroom and in jury trials, but the opportunity to advance the public good in many other ways, and make a difference in the lives of many people. There are thousands of trial lawyers who are involved politically, economically and socially in promoting policies and changes that benefit the poor, the forgotten, the defenseless, the homeless, and the many people who unnecessarily suffer under existing societal conditions and laws. Trial lawyers,

who are only interested in merchandising people for a profit and not doing more for the public good, are missing the opportunity to look back at careers end with the satisfaction of having made the difference in the lives of far more people--- of retiring feeling proud to have been a trial lawyer.

Bill Trine lives in Boulder, Colorado, with his wife Jeni and their two dogs. He recently retired from his practice of law, where he was a proud and active trial lawyer for 55 years. He is a past president of the Colorado Trial Lawyers Association, a founder and past president of the Washington D.C. based Trial Lawyers for Public Justice (now 'Public Justice'), and on the Board of Directors of the Florida based Human Rights Defense Center which publishes Prison Legal News. He has been on the teaching staff of the Trial Lawyers College in Wyoming since its inception in 1994. He was selected by his peers for listing in "Best Lawyers in America" every year since it began publishing in 1978 until his retirement in 2015.

¹ By Joseph W. Cotchett, (2016), Printed at Patsons Press, Santa Clara California

² *Sedmak v. Clark Equipment Co.*, Fremont County District Court, Colorado, Civ. Action No. 80-CV-135.

³ Clark's announcement in the October 3, 1983 issue of *Business Week* states: "Clark engineers have designed a seat attachment that 'wraps around' forklift operators and, combined with a seatbelt, keeps operators in place when the truck accidentally overturns. This system is a result of recent breakthroughs in testing techniques and has been proven in both simulated and live situations. It is being offered by Clark dealers for installation on your Clark trucks at no charge to you ...We urge you to call our toll free number ..."

⁴ *Rugg v. McCarty*, 476 P.2d 723 (Colo. 1970).

⁵ *Wright v. Creative Corp.*, 498 P.2d 1179 (Colo.App. 1972).

⁶ *Shoemaker v. Mountain Bell Tel. & Tel.*, 559 P.2d 721 (Colo. App. 1976).

⁷ *Roberts v. May and Nissan Motor Corp.*, 583 P.2d 305 (Colo. App. 1978).

⁸ *VanHoose v. Blueflame Gas Inc.*, 642 P.2d 36 (Colo. App. 1982) *aff'd* 679 P.2d 579 (Colo.1981).

⁹ *Bloskas v. Murray*, 646 P.2d 907 (Colo. 1982).

¹⁰ See, *Rimkus v. Northwest Colorado Ski Corp*, 706 F.2d 1060 (10th Cir.1983) (permitting evidence of post-remedial repairs to rebut a claim of contributory negligence, which the 10th Circuit adopted as a new exception to Federal Rule 407). This case was then relied upon by the 10th Circuit in allowing evidence of post-accident design changes in product liability cases based on strict liability. See, *Herndon v. Seven Bar Flying Serv.*, 716 F.2d 1322 (10th Cir. 1983).

Also see, *Sanchez v. Connection Gen. Life Insurance Co.*, 681 P.2d 974 (Colo. App. 1984) (After a life insurance company refused to pay the insurance proceeds when death occurred before the policy was issued, the Colorado appellate court adopted the “reasonable expectation” doctrine of life insurance coverage based on a conditional receipt, and ordered payment.)

¹¹ *The Warrior*, Winter 2005, p. 11.

¹² See, Bill Trine, *A Broken Criminal Justice System and Prisons for Profit*, *The Warrior*, Fall 2012, p.7

¹³ See, Jean Casella and James Ridgeway, *Audit of Solitary Confinement in Federal Prisons: An Inside Job Reaches Foregone Conclusions*, Vol. 25 *Prison Legal News* 11, page 22 (Nov.2015).; also see, Matt Clark, *ACLU Report: Woman Uniquely Harmed by Solitary Confinement*, Vol. 27 *Prison Legal News* 5 (may 2016)

¹⁴ See, David Reutter, *Privatized Prisoner Transportation Services Problems*, Vol.26 *Prison Legal News* 12, page 60 (Dec. 2015).

¹⁵ See, Dashka Slater, *Prison Ecology*, Vol. 26 *Prison Legal News* 12, page 39 (Dec. 2015); also see, Laura Cepero, *Toxic Traps: Environmental Hazards Threaten Two Federal Supermax Prisons*, Vol. 26 *Prison Legal News* 11, page 34, (Nov. 2015); Panagioti Tsolkas, *Incarceration, Justice and the Planet: How the Fight Against Toxic Prisons May Shape the Future of Environmentalism*, Vol. 27 *Prison Legal News* 6 (June 2016).

¹⁶ See Zoukis & Bower, *Aramark’s Correctional Food Services: Meals, Maggots and Misconduct*, Vol. 26 *Prison Legal News* 12, (Dec. 2015)

¹⁷ See, Carrie Wilkinson, *Breaking News! FCC Votes to Further Reform Prison Phone Industry*, Vol. 26 *Prison Legal News* 12, page 40 (Dec. 2015); and see, Carrie Wilkinson, *A “Quantum Leap” Isn’t far Enough for the Prison Phone Industry*, Vol. 27 *Prison Legal News* 5, page 36 (May 2016).