
Introduction: Trial 2010: A Look inside Our Nation's Courtrooms: Twentieth Annual DePaul Law Review Symposium

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Recommended Citation

Benjamin M. Shrader, *Introduction: Trial 2010: A Look inside Our Nation's Courtrooms: Twentieth Annual DePaul Law Review Symposium*, 60 DePaul L. Rev. 785 (2011)

Available at: <https://via.library.depaul.edu/law-review/vol60/iss3/2>

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INTRODUCTION

*Benjamin M. Shrader**

In an era in which fewer and fewer lawsuits are tried to a jury verdict, and seasoned litigators can go through a whole career without trying a case to verdict, it would be easy to look at trial practice as a lost art. It's just the opposite. Trial lawyers in 2011 are on the cutting edge of an ever-changing and evolving frontier. Instead of becoming a lost art, trial practice in today's courtrooms is becoming more artful, more technological, more stylistic, and in theory, much more effective than ever before. That is no easy feat. Jurors today are more knowledgeable and expect more than ever before.¹ Based partly on this increased challenge and partly on technologies that make it easier for a layperson to functionally present information in a sophisticated and well-produced manner, trial lawyers across all practice areas are making their cases in ways that their predecessors never imagined.

Technology and its impact in the courtroom was just one segment of the Twentieth Annual DePaul Law Review Symposium held on March 19, 2010. The program, entitled *Trial 2010: A Look Inside Our Nation's Courtrooms*, examined the state and future of trial practice in American courts. As discussed below, the day-long Symposium featured many excellent speakers. In addition, this year's Symposium incorporates a written component: scholarly articles submitted by a few of the panel's participants.

The first of these was submitted by Joel Simberg, a trial lawyer in the Office of the Cook County Public Defender. He provides a practical application of some of these principles in his article *Displaying Digital Media During Opening Statements: Tactics, Techniques, and*

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1. Trial lawyers and judges commonly refer to a phenomenon known as the "CSI Effect." Named after the popular CBS television show—CSI refers to "Crime Scene Investigation"—in which police departments and prosecutors tie up cases in neat little packages in the span of an hour-long program, this principle espouses the notion that jurors have an exaggerated view of forensic science and its capabilities, thus expecting trial lawyers to present smoking gun-type evidence: the bloody t-shirt found at the crime scene that is perfectly connected to the defendant's DNA, for example. Of course, as trial lawyers know, cases that reach a jury are rarely that much of a slam-dunk.

Pitfalls.² A nuts-and-bolts guide on how and when to effectively use trial technology, Mr. Simberg's piece is an accessible primer for attorneys of all technical abilities on how to improve their trial skills.

What happens in the courtroom is, somewhat paradoxically, a small part of what affects a lawsuit, a criminal proceeding, or even a jury trial. And what happens in the courtroom or during the workup of a case has become prohibitively costly, time-consuming, and unsatisfying for many litigants. For these (and other) reasons, alternative dispute resolution has become extremely popular. A broad umbrella that includes arbitration, mediation, and less formal dispute resolution mechanisms, this is a popular option for those who either do not want to spend the time and money to see a case through, or are unsatisfied by the prospect of a "winner-take-all" scenario.³ Some courts even mandate arbitration during the course of a civil lawsuit.⁴ Though not the subject of an article, this issue was explored in one of the Symposium's panel discussions.

Alternative dispute resolution is practical and somewhat uncontroversial. How judges reach the bench is another matter altogether. It is perhaps well-known that Supreme Court Justices are nominated by the President, and officially appointed only after confirmation by the United States Senate. The hearings are highly publicized and broadcast on cable television. What is certainly less well known is that all judges are not chosen the same way. Federal district court judges, for example, are also nominated by the President and confirmed by the Senate, although usually in a much less public manner. And in some states—including Illinois—state court judges are elected by the people. A voter has the ability to vote for a judge on election day, and several weeks later, to appear in the courtroom of that very same judge as a litigant, attorney, or juror. Supporters of the system call it a victory for democracy; detractors argue that less-qualified judges reach the bench.

Regardless of which view you take, the pages that follow promise to enrich the debate. In an article entitled *Judicial Elections and Ameri-*

2. See Joel Simberg, *Displaying Digital Media During Opening Statements: Tactics, Techniques, and Pitfalls*, 60 DEPAUL L. REV. 789 (2011).

3. Or a scenario in which all the litigants lose, and only the attorneys win. I am referring, of course, to legal fees. Even winning a lawsuit can cause someone to lose a small fortune.

4. Cook County, Illinois, for example, has in place a mandatory arbitration program for lawsuits in its Municipal Division. Under local rules, any civil lawsuit subject to an amount not to exceed \$30,000 is subject to this mandatory arbitration. See Rules of the Circuit Court of Cook County 18.3, available at <http://www.cookcountycourt.org/rules/rules/rulespart18.html#rules18.3>.

can Exceptionalism: A Comparative Perspective,⁵ Professor Mary L. Volcansek notes that only two places in the world still elect judges: some American states and Bolivia. In examining ways in which other countries select their jurists, Professor Volcansek has articulately framed the issue within an international context.

On a more local level, Albert J. Klumpp, Ph.D.—a research analyst at the law firm of McDermott Will & Emery—takes an empirical look at how and why people vote for judges in one of the nation's most populous counties in his article, *Judicial Primary Elections in Cook County, Illinois: Fear the Irish Women!*⁶ Dr. Klumpp helps simplify a complicated set of data and brings a unique perspective to the debate. Best of all, his article presents an objective view—based solely on numbers, votes, and hard data. It's fascinating, and a fresh angle I hope readers will enjoy.

Before I close, I would be remiss if I did not take this opportunity to thank those participants who made the Twentieth Annual DePaul Law Review Symposium itself such a success. The program was an admittedly ambitious attempt to review the landscape of trial practice and to provide a look forward.⁷ The panelists excelled in ways that I, as the Symposium Editor, could only hope were possible. The following participants, taking time out of their busy schedules, truly made the Symposium a memorable event: Philip Harnett Corboy, Jr. (Corboy & Demetrio); Thomas Durkin (Mayer Brown LLP); Cindy Gray (Executive Director, American Judicature Society); Chris Griesmeyer (Greiman, Rome & Griesmeyer); Chief Judge James Holderman (U.S. District Court for the Northern District of Illinois); Albert J. Klumpp, Ph.D. (McDermott Will & Emery); Irving Levinson (K&L Gates); Judge William D. Maddux (Circuit Court of Cook County); Joel Simberg (Cook County Public Defender's Office); Tiffany Tracy (U.S. Attorney's Office for the Northern District of Illinois); Professor Mary Volcansek (Texas Christian University); Dan Wolfe, J.D., Ph.D. (Director, Jury Consulting, Kroll Ontrack/TrialGraphix); and Susan Yates (Resolution Systems Institute).

A special thank you is owed to the moderators of last year's panels: Professor Stanley Sklar of DePaul University College of Law, Profes-

5. See Mary L. Volcansek, *Judicial Elections and American Exceptionalism: A Comparative Perspective*, 60 DEPAUL L. REV. 805 (2011).

6. See Albert J. Klumpp, *Judicial Primary Elections in Cook County, Illinois: Fear the Irish Women!*, 60 DEPAUL L. REV. 821 (2011).

7. The program, held over an entire day at the DePaul University College of Law's downtown Chicago campus, included the following panel discussions: Judicial Elections; Alternative Dispute Resolution and Its Impact on the American Legal System; Technology in Today's Courtrooms; and The Constitution in the Courtroom.

sor James P. Carey of Loyola University Chicago School of Law, and especially Interim Dean of DePaul University College of Law Warren D. Wolfson. They kept the conversation frank, open, and ultimately entertaining. In addition to the successful live program, this issue contains three excellent articles, which are representative of the level of thought and intelligence that went into this Symposium. Enjoy.