

From Litigator to Trial Lawyer

by Elizabeth A. Fegan



Elizabeth A. Fegan is managing partner of the Chicago office of Hagens Berman Sobol Shapiro LLP, a national class-action and complex litigation law firm that takes on the world's largest corporations and entities, fighting for the rights of consumers, whistleblowers, employees, investors, and others.

Recent Senate Judiciary Committee hearings on nominees for vacant federal district court judgeships shined a spotlight on a problem litigators have faced for some time: a lack of trial experience.

Between 1997 and 2016, the number of civil cases that went to trial declined from 7,359 to 2,781.¹ Criminal cases fared nearly the same with a drop from 4,623 to 1,562 bench or jury trials.² And yet, there are over 900,000 more active lawyers in the United States today than there were 20 years ago.³

So how can litigators get the trial experience they covet?

Demonstrate Courtroom Savvy

Take advantage of the many opportunities that present themselves throughout a case. Many federal district court judges are now encouraging law firms to provide new lawyers with oral argument opportunities during the course of litigation.

Did you write a motion to compel? Ask your partner for the opportunity to argue it. Did the court set an evidentiary hearing on a motion for preliminary injunction to which you contributed? Ask for the opportunity to handle a cross-examination. Use this experience—and the critiques that come with it—to develop your presence in the courtroom.

According to Next Generation Lawyers, an initiative to promote more opportunities for junior lawyers in the courtroom, at least 29 district court judges have standing orders in place that encourage law firms to let junior lawyers handle oral argument opportunities.⁴ In fact, some of those judges may not hold oral argument *unless* a junior lawyer will be arguing. For example, Hon. Christopher J. Burke's Standing Order Regarding Courtroom Opportunities for Newer Attorneys provides that, if a party alerts the court "it intends to have a newer attorney argue the motion (or a portion of the motion), the court will "grant the request for oral argument on the motion, if it is at all practicable to do so."⁵

Ask to Be Put On the Trial Team

If you are not already on the team, knock on your partner's door early. Ask to do the grunt work. Be willing to be bury yourself in the minutiae of research

for motions in limine or the admissibility of evidence. Take on the thankless task of designating testimony in deposition transcripts. Know where every document is so that you are invaluable to the lead lawyers. Even if you play a background role in the first trial, it is more likely you will be called on for a second.

Host Your Audience

Recognizing the lack of regular opportunities to practice oral advocacy skills, my firm works with Joshua Karton, a nationally known trial consultant and teacher of trial advocacy, to burnish our public speaking skills and to hone our courtroom presence. Relying on his professional theater experience, Karton challenges us to use the "live, human connection" to connect to each person in the courtroom. But what does that mean?

Early in my time at Hagens Berman, Karton challenged me to pretend I was the young character Heidi speaking to her blind hermit grandfather⁶—in front of my firm's managing partner, executive committee, and 50 of my firm peers. I must have shrunk in my chair and turned bright red; this was far from my courtroom (or firm) demeanor. But Karton turned to me, opened his arms wide as if encompassing the audience, and said: "We want to be hosted by you."

While I don't think I mastered Heidi, I did take his words to heart. Be the host in the courtroom. Be the one the court can rely on to state the facts as reflected in the evidence. Stand firm on your arguments where they are well-supported by the law, but concede when you are wrong. Speak directly to the judge and own your space.

Your partners will recognize that you are becoming a seasoned host—in meetings or in the courtroom. In time, they will ask you to join the trial team. ☺

Endnotes

¹See U.S. COURTS, TABLE C-4, U.S. DISTRICT COURTS—CIVIL CASES TERMINATED, BY NATURE OF SUIT AND ACTION TAKEN, DURING THE TWELVE-MONTH PERIOD ENDED SEPTEMBER 30, 1997 (Mar. 9, 1998), http://www.uscourts.gov/sites/default/files/statistics_import_dir/c04sep97.pdf; and U.S. COURTS, TABLE C-4, U.S. DISTRICT COURTS—CIVIL CASES TERMINATED, BY NATURE OF SUIT AND ACTION TAKEN, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30,

2016 (Feb. 11, 2017), http://www.uscourts.gov/sites/default/files/data_tables/jb_c4_0930.2016.pdf.

²See U.S. COURTS, TABLE D-4, U.S. DISTRICT COURTS—CRIMINAL DEFENDANTS DISPOSED OF, BY TYPE OF DISPOSITION AND OFFENSE, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2016 (Feb. 11, 2017), http://www.uscourts.gov/sites/default/files/data_tables/jb_d4_0930.2016.pdf; and U.S. COURTS, TABLE D-4, U.S. DISTRICT COURTS—CRIMINAL DEFENDANTS DISPOSED OF, BY TYPE OF DISPOSITION AND OFFENSE, DURING THE TWELVE-MONTH PERIOD ENDED SEPTEMBER 30, 1997 (Mar. 9, 1998), http://www.uscourts.gov/sites/default/files/statistics_import_dir/d04sep97.pdf.

³AM. BAR ASS'N, ABA NATIONAL LAWYER POPULATION SURVEY, HISTORICAL TREND IN TOTAL NATIONAL LAWYER POPULATION 1878-2017 (2017), <https://>

www.americanbar.org/content/dam/aba/administrative/market_research/Total%20National%20Lawyer%20Population%201878-2017.authcheckdam.pdf.

⁴See generally NEXT GENERATION LAWYERS, <https://nextgenlawyers.com> (last visited Jan. 9, 2018).

⁵Christopher J. Burke, U.S. Magistrate Judge, U.S. Dist. Ct. for Dist. of Del., *Standing Order Regarding Courtroom Opportunities for Newer Attorneys* (Jan. 23, 2017), <https://nextgenlawyers.com/wp-content/uploads/2017/01/Standing-Order-re-Newer-Attorneys-January-2017.pdf>.

⁶See *Heidi (1937)*, IMDb, <http://www.imdb.com/title/tt0028988> (last visited Jan. 9, 2018).

In the Legal Community

The Constitutional Evolution of Puerto Rico and Other US Territories

by Hon. Gustavo A. Gelpi, Past National FBA President, U.S. District Judge, District of Puerto Rico

On Dec. 5, 2017, Past National FBA President Judge Gustavo A. Gelpi presented his book *The Constitutional Evolution of Puerto Rico and Other US Territories (1898-Present)* at the Panamá Canal Museum in Panamá. The U.S. ambassador to Panama, Hon. John Feeley, attended and spoke about Judge Gelpi's work. The event (originally scheduled for September but postponed due to Hurricane Maria) was co-sponsored by the museum, Inter-American University of Puerto Rico, and the FBA. During the event, a letter from then FBA President Hon. Michael Newman was read commending Judge Gelpi for his recent book and recognizing that over the years the FBA and its chapters had supported his academic work, inviting him to lecture about the topic and also publishing several of the articles reproduced in the book. ☺



Judge Gelpi giving his presentation.



Judge Gelpi with Ambassador John Feeley.