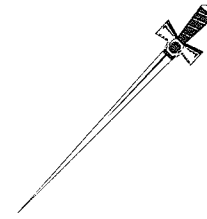




S J A F B A R



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Section Chair's Message

I am very pleased to announce that the Litigation Section is co-sponsoring the "Products Liability Seminar," being presented during the FBA Convention September 9-12 1992, in Cleveland, Ohio. Also, the Federal Litigation Section will have a membership meeting which will be a great opportunity to meet fellow practitioners. I encourage all members to attend. I hope that, in the future, there will be an annual Section membership meeting at each Convention.

On June 23, 1992, the Section co-sponsored the "Alternate Dispute Resolutions Seminar" with the Tax Section. The seminar was held at the Holiday Inn Crown Plaza in Washington, D.C.

The Section has co-sponsored various seminars throughout the year, including the "Trial Practice and Procedure Under the Civil Rights Act of 1991" on April 24, in Bethesda, MD, and on May 15, the "Seminar/Court Admission Ceremony/Judicial Reception" with the Memphis Mid-South Chapter. Also, on May 20, the Litigation and the Health and Human Services Sections presented a seminar, "Physician Referrals After *Hanlester*—A Discussion of the Implications of the *Hanlester* Decision and Other Recent Developments in the Fraud and Abuse Area on Physician Referrals." The Philadelphia Chapter, the Federal Career Service Division, and the Litigation Section are presenting "Sexual Harassment, Attorney Fees and the Civil Rights Act of 1991" in Philadelphia, PA. If you would like more information on this seminar, you may contact Tony De Marco at (202) 708-0680.

If your Chapter has a program it would like the Federal Litigation Section to co-sponsor, please contact me.

I look forward to seeing all of you at the FBA Convention, especially at the Litigation Section membership meeting. My address is on this page.

Adrienne A. Berry

Three Proposed Civil Practice Reforms

By William O. Bertelsman, Chief Judge, U.S. District Court for The Eastern District of Kentucky

Reforms are in the works which will drastically change the way you conduct your civil practice. No one can say with certainty exactly what shape the final product will take, but I believe some stringent reforms are inevitable.

There are three principal reform movements now under way. The first of these is the disclosure system proposed by the Advisory Committee on the Federal Rules of Civil Procedure. Briefly, mandatory voluntary disclosures will be coupled with exacting limitations on traditional discovery devices such as depositions and interrogatories. For example, each side (say, all plaintiffs) would be limited to ten depositions.

The second reform you should be aware of is the Civil Justice Reform Act, sometimes known as the Biden Bill, after its author and sponsor. This Act has already become law and is being implemented even as you read this. The Act requires that every federal district appoint a committee to propose an "expense and delay reduction" plan.

The committee is mandated by the statute to determine whether there is undue expense and delay in the district and what can be done about it. The committee is required to consider the advisability in the particular district of multiple tracks, mandatory arbitration and/or other forms of alternate dispute resolution, and any other improvement in district procedures it may consider beneficial.

Some of these plans have already been filed. One of the Texas districts has adopted a system where the clerk will assign each case to one of six "tracks," each with its own individualized procedure. For example, one track might permit only depositions of the parties, another fifteen



Justice David Souter recently broke bread with Litigation Section Chair Adrienne Berry and other FBA officers. Justice Souter provided an extremely entertaining informal speech. Pictured standing (l to r) are: Dana E. McDonald, Deputy Section Chair and FBA Deputy Secretary; Adrienne A. Berry, Section Chair; Alan C. Harnish, FBA Second Vice President; and Malcom W. Monroe, FBA President-Elect. Seated are Paul Pumpian; Justice Souter; FBA President Alfred F. Belcuore; and Cindy Belcuore.

Law Day Award for Larry D. Thompson, Esq.

By Joyce E. Kitchens

On May 14, 1992, the Federal Litigation Section presented its First Annual Law Day Award to Larry D. Thompson, a longtime member and supporter of the Federal Bar Association. The award was presented by myself, an Eleventh Circuit Officer. The event was the Law Day Luncheon sponsored by the Atlanta Chapter, and it was held at the Omni Hotel in Atlanta.

Mr. Thompson's illustrious credentials are as follows:

Mr. Thompson received his law degree from the University of Michigan Law School in Ann Arbor, Michigan. He is a partner with the Atlanta law firm of King & Spalding.

Mr. Thompson's practice involves white-collar criminal defense matters and complex civil litigation, including grand jury and administrative investigations, internal corporate investigations, RICO litigation, and criminal and civil trials.

Mr. Thompson is active in several professional and civic organizations. He serves as chairman of the board of directors of the Atlanta Urban League. He also serves as a member of the board of directors of the King-Tisdell Cottage Foundation in Savannah, Georgia and the Republic Foundation. Mr. Thompson has written a chapter for a recent *Critical Issues* monograph

published by the Heritage Foundation. He was a member of the panel for the first Robert S. Vance Forum.

Mr. Thompson is also a member of the board of directors of the Northern District of Georgia Federal Defender Program and the State of Georgia Board of Examiners. He is also a member of the Joseph Henry Lumpkin Inn of Court. He has participated as a faculty member in several continuing legal education programs and has written and lectured on civil litigation techniques, litigation ethics, RICO, bank fraud, and white-collar crime for such organizations and programs as the Institute of Continuing Legal Education in Georgia, American Bar Association, and the Regional Training Program for Federal Investigators. Mr. Thompson has also edited an American Bar Association publication entitled *Jury Instructions in Criminal Antitrust Cases, 1976-1980*. He has served as an Adjunct Professor of Law with the Walter F. George School of Law at Mercer University in Macon, Georgia and is a member of the bars of Georgia and Missouri. Mr. Thompson is also a member of the Lawyers Advisory Committee of the Eleventh Circuit Court of Appeals.

Mr. Thompson served as United States Attorney for the Northern District of Georgia from 1982 to 1986. As United States Attorney, Mr. Thompson directed the Southeastern Organized Crime Drug Enforcement Task Force and served on the Attorney General's Economic Crime Council.

depositions per side. Still another might have a mandatory discovery deadline of sixty days with an automatic trial assignment 180 days from filing.

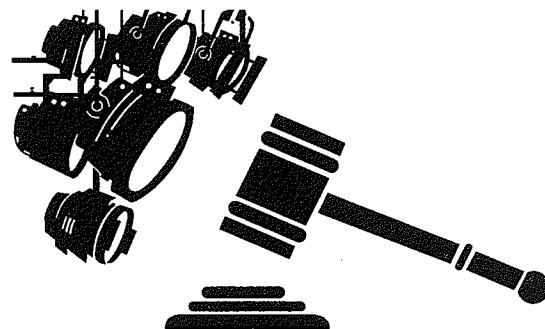
Since I am writing this right before Christmas, it occurs to me that you might regard the three reforms movements as Scrooge viewed the three spirits—each one worse than the one before.

Which brings me to the last reform, which could be deemed the spirit of litigation yet to come. This is the report of the President's Council on Competitiveness, sometimes called the "Quayle Committee," because the Vice President is the chairperson. The report is titled "Agenda for Civil Justice Reform in America." It contains recommendations for strict limitations on discovery, as do the other two proposals. It proposes the limitation of

Continued on page 3

Proposed Media v. the Law Seminar (CLE) Has Unique Format

A play has been filmed and edited by WLRN, the public radio and television station in Miami, Florida. The cast consists of real attorneys and judges involved



with the issues. A nationally broadcast one-day seminar comprising the film is planned for the last week of October 1992, depending on registration. The Florida Bar has approved eight hours of CLE with specific designation of four hours for Appellate Practice, six hours for Civil Trial Practice, and two hours for Ethics. The planned seminar is endorsed by the Litigation Section. For more information, please contact Professor Leonard Pertnoy of the Saint Thomas University School of Law, Miami, Florida, (305) 623-2310.

“junk science” in the courts by requiring close court scrutiny of expert qualifications and testimonial theories. It projects limiting punitive damages to actual damages and then only after proof by clear and convincing evidence of intentional injury.

It favors at least experimental adoption of the “English rule,” under which the loser automatically pays the winner’s attorney fees; elimination of statutes where standards are more favorable for awards of attorney fees to plaintiffs than to defendants; and wider use of summary judgment, sanctions, and ADR.

The Quayle proposal would establish a “multi-door” courthouse, that is a system where a litigant would have a choice of a traditional civil trial or various forms of alternate dispute resolution, such as arbitration or binding summary jury trial. The proposal would also require a party contemplating suit to contact the proposed defendant first and try to settle.

The President has, by executive order, already directed attorneys for the United States to implement many of the plan’s proposals.

Obviously, if even a fraction of the recommendations made by these three reform movements are implemented, the way you litigate civil cases will be drastically altered.

Since it’s only human nature to resist change—and this characteristic seems to apply to lawyers more than others—you may be alarmed by these proposals. Personally, I believe that many of them have merit and compromises are possible to alleviate the unduly harsh effects of some which go too far.

One thing seems to me to be certain. In the public perception, the cost, and to a lesser extent the delay, of today’s litigation has gotten out of hand. This is especially true of excessively expensive discovery. Since the need for reform is one of the few things that the president and Congress seem to agree on, far-reaching reforms are inevitable.

I am concerned about the lack of coordination in these reform movements, however, in that they are going forward independently with no one having moved as yet to resolve conflicting provisions. In any event, as informed attorneys, you should be aware of what’s in the mill before you find yourself between the millstones.

On the Case

By Mark Lee Hogge
Witness Q’s and A’s (Trial Book)

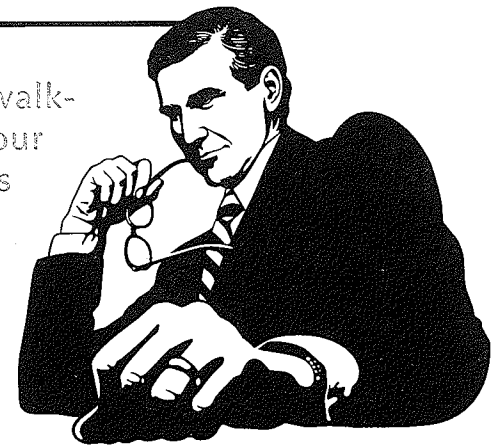
Believe it or not, we often receive inquiries on how to do litigation. The following is what I believe to be the most efficient way to prepare for an interrogation.

Whenever possible, you should work from a prepared set of questions and expected answers when gathering statements, taking depositions, and conducting direct and cross-examination. The questions and expected answers should be typed with enough space to make notes. Any documen-

There is nothing quite like walking up to the podium with your binder for the particular witness and conducting an orderly, prepared examination eliciting the testimony and admitting the documents necessary for your case.

given in case the witness strayed on direct or strays from the previous testimony. At trial you will only ask questions on cross-examination to which you know the answer and can prove the answer.

In addition to your binder, you will need to organize in a pouch or some other holder multiple copies of documentary exhibits, one for your opponent and one for the witness and court in addition to the one for yourself. You may also want an overhead of a document to keep the jury or bench tracking your examination. The documents should be set up in the order you wish to use them. For impeachment, you will need two copies of the prior testimony or statement of the witness, one



tary evidence you wish to show the witness should be interleaved with the question and answers and the document identification should be in the question. These are the basics for a trial book for each witness.

I recommend using a three-ring binder and plain unlined three-hole punched paper as your basic supplies for working up your Q’s and A’s.

In generating your Q’s and A’s, you should always consider what you are trying to do with the witness. If the witness is adverse and you are conducting discovery, then you will want to ensure that your Q’s and A’s flush out all the good and bad stuff the witness can and will say and use at trial. You will want to avoid surprise and compile admissions. If the witness is adverse and you are at trial, you will want your Q’s and A’s and documents to be tailored to drawing out good things about your case and eliciting admissions. For cross-examination, your questions eliciting admissions should be framed exactly the way the questions were previously asked or the information was previously

for yourself and one for the witness. If you are using depositions for impeachment, make sure one of the copies is the signed original and you have the errata sheet.

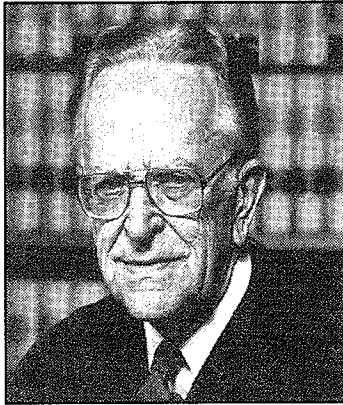
For direct examination of your witness, you should have prepared the witness and gone through the Q’s and A’s and documents, etc. several times prior to the examination.

When listening to your opponent interrogating witnesses, both his and yours, you should have blank paper to take notes and write new Q’s and A’s for redirect or cross-examination.

There is nothing quite like walking up to the podium with your binder for the particular witness and conducting an orderly, prepared examination eliciting the testimony and admitting the documents necessary for your case.

This Q and A process should be followed even if you are directing an expert witness who has testified a hundred times. Experts will very often provide you with Q’s and A’s, but the experts will rarely know the facts as well as you.

Justice
Blackmun to
Speak at '92
FBA Annual
Convention in
Cleveland



The Honorable Harry A. Blackmun is scheduled to be the guest speaker on September 11, 1992 at the Banquet of this year's Annual FBA Convention being held at the Sheraton Cleveland City Centre Hotel in Cleveland, Ohio. Numerous litigation seminars are planned from 9:00 a.m. Wednesday morning, September 9, until 4:30 p.m. Friday afternoon, September 11. Saturday, September 12, is scheduled for FBA organizational meetings and a luncheon. The Litigation Section will maintain a hospitality suite for Section members at the hotel on Thursday evening, September 10. Don't miss this opportunity to network with your colleagues and meet your 1992 CLE requirements!

Visit America's
North Coast!

**Don't Miss the 1992 FBA
Annual Convention!
September 9-12**
Sheraton Cleveland City Centre



No litigator should miss the CLE programs offered during the 1992 Annual Convention in Cleveland. Over 14 hours of CLE credit can be earned in these programs:

- Sanctions in Civil Litigation
- Employee Rights Litigation
- Federal Grand Jury Practice
- Bankruptcy Issues
- Immigration Issues
- Litigating Against the U.S. Government
- Product Liability Litigation and Mock Trial Practice

In addition, the Sixth Circuit Court of Appeals will hold oral arguments in Cleveland, to be followed by an Appellate Practice Seminar. Check the July and August issues of the *News & Journal* for full details, or call (202) 638-0252.

Sidebar is published quarterly by the Federal Litigation Section of the Federal Bar Association. The views expressed herein do not necessarily represent those of the FBA. Send any and all articles or other contributions you may have to Mark Lee Hogge at 2000 M Street, NW, Suite 590, Washington, D.C. 20036, (202) 659-2000.

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