

ON TURNING THE CORNER...

By Roberta D. Pichini, Esq.

INTERNATIONAL ACADEMY OF TRIAL LAWYERS
DEAN'S ADDRESS

APRIL 25, 2009
ATLANTA, GEORGIA

ON TURNING THE CORNER...

PREPARED AND DELIVERED

BY ROBERTA D. PICHINI, ESQ.

ON APRIL 25, 2009 AT

THE ANNUAL MEETING OF THE

INTERNATIONAL ACADEMY OF TRIAL LAWYERS

ON TURNING THE CORNER....

Mr. President, Fellows of the Academy, spouses, special guests and friends, I am honored to be speaking to you as your Dean.

Where to start? Well, maybe a good place to start would be with the question that has been asked of me by so many people over the last year. Most of them have been from outside the Academy, but there have even been a few from within. “What is the Dean’s speech supposed to be about?” To answer that question, all we need to do is to look in the Academy’s bylaws, because the bylaws make very clear that the Dean’s address is to be about advocacy or the rule of law.

As we look back on the Dean’s addresses of the past, it is clear that with every Dean’s address we recognize that force which is advocacy. We also understand and respect that that force must be exercised within the parameters of the rule of law. We look back and honor what has been accomplished and we look ahead to the opportunities and the challenges that come to us as advocates which we must embrace if we are to fulfill the responsibilities that come with the gift of advocacy and if we are to fulfill the mission of the Academy.

Well, when I set myself to the task of writing the Dean’s address, I struggled. I struggled because I wanted to find a way to capture the nature and full extent of what advocacy is, and I failed. I kept falling short. I don’t know if it can be done because advocacy comes in so many forms.

The best I could do was to put it into the context of an analogy, a broader concept. It seems to me that, whether it is an individual, an organization, a business, a corporation or a public institution, each is on some manner of journey towards the future—a future that we hope will be a good one. Each follows a path; but it is never a straight path. There are decisions to be made. There are turns to be taken, corners that must be turned if we are to go in the direction of that hoped-for future. But we also know that along that way there are obstacles. Some are little and some are very big. Sometimes those obstacles threaten to keep us from turning the corner to where we need to go to accomplish our goals and that is where the advocate comes in. The advocate steps in, not for himself or herself, but to help another in overcoming those obstacles.

Thomas Carlyle told us something about obstacles and advocacy. Carlyle told us that the block of granite in the pathway, which serves as an obstacle to the weak, becomes a stepping-stone in the pathway of the strong. That is what the Fellows of the Academy do and what good advocates do. When faced with that obstacle, they step in and they use that block of

granite to step up on and to pull with them people in need, companies in need, institutions in need. To be a force in helping others to turn a corner—that is the mission of the advocate.

I am sure I don't have to tell any of you in this audience that you don't have to be a lawyer to be an advocate. I know you, and I know that so many of you are powerful advocates—in your family, in your community and in your workplace. It is equally true that I do not have to tell you that not all lawyers are advocates. Not all lawyers have fully embraced the responsibilities that come with being an advocate.

But every Fellow in this Academy is a Fellow because he or she is indeed a true advocate: someone who has willingly embraced the responsibilities that come with advocacy and someone who is committed to exercise advocacy with a profound faith and belief in the rule of law. For Academy Fellows, advocacy and the rule of law go hand in hand. Isn't that exactly why the drafters of our bylaws mandated that advocacy and rule of law be revisited by the Dean every year?

Each Academy Fellow knows that at times there is a need to speak truth to power. Each knows that at times the way to confront power and to advocate for change is through litigation. Litigation may be the way, sometimes the only way, to confront inequality and injustice in a lawful manner. The rule of law permits that; but it is our mission as advocates which demands it.

Although we ordinarily think of advocacy as a means to an end, there is a lot more to it. As all advocates know, when people are in need, they may feel weakened; they may feel alone and apart. When we step in and advocate for them, we show respect; we convey that we think they are worth something. We say to the world, "Pay attention...Pay attention!" In doing that, we can lift up and sometimes even empower. What a wonderful thing to be able to do!

I would like to take just a moment to talk about one specific act of great advocacy and the turning of a very important corner. It is the story of a little boy named Paul—a little brown-haired, brown-eyed boy with a ready smile. He was born a healthy baby and was developing normally. But, at age eight months, all that changed. As a result of contracting Reyes syndrome, he was left catastrophically injured and severely impaired both physically and mentally. His father left the home and provided no support. He was left with his mother in a housing project.

His mother, Marie, was not a woman of means. She had very few resources, but she dedicated herself to seeing to it that her little boy would have the best life that he could have and so that he, now so altered, could have

whatever joy was possible in this life. But she had an enormous obstacle. Where she lived, the state provided no education for children like little Paul, children who were both mentally and physically disabled. These children were outside of the scope of public education; they were invisible to the state. But she rallied to do what she could do. She learned that there was a private school in the area for such children which did receive some state funds and took the occasional child for free. Marie applied—over and over and over again. Each time she was told that there was no place for her son. The years passed.

On her own and with her meager income, she tried to learn what she could learn so that she could try to teach her son whatever he could learn. Even the little bit that she could give him convinced her beyond a doubt that this child could benefit from education. He enjoyed music and seemed to have some talent at it. She saw that, even with the little she could give Paul, he was a different boy. In her words, with this, her son literally “came to life.” Marie was even more determined. She wanted Paul to have a real education. But what could she do? How could she possibly take on the state? She needed an advocate and one stepped forward.

The state was Ireland and her advocate was another Paul, our Fellow Paul Sreenan. He undertook the cause and took up the fight. It was an enormous one. Against great opposition Paul Sreenan argued that, under the constitution of Ireland, little Paul and children like him had a constitutional right to public education. This was obviously an uphill battle.

Once it got underway, an interesting thing happened. That school which had had no room for little Paul notified Marie, “We have a place for Paul. You may send him now and public funds will pay for it. Not only that, we will also give him free transportation.” Well, wasn’t that good news? Indeed, it was good news, but the story did not end there. To their credit, Paul’s mother, Marie O’Donoghue, and her advocate Paul Sreenan said, “Oh, no. Not good enough. Not now.”

They pressed forward with their argument for the right of public education under the constitution. They advocated, not only on behalf of little Paul, but also for all children like him—and they won. More litigation followed and other children, those mildly to moderately impaired, were also determined to have the right to public education. Now Marie O’Donoghue did not have to worry, as she had before, that her son would spend his days propped up in front of a television in an institution. Consider how many children, because of the advocacy of Paul Sreenan, have turned an important corner to an education which they otherwise never would have had, children he will never know. That is great advocacy exercised under the rule of law. We applaud him.

As you know, in the Academy there are many, many other Fellows whose advocacy has helped to turn important corners. I look at so many of you in this audience who have done it. Someone once said that the ability to perceive injustice is a sixth sense and, when that sixth sense is roused, it raises all the other senses. Academy Fellows have a very well-developed sixth sense and the ability to perceive injustice. If you need any proof of that, just pick up a copy of our anniversary book and read the stories in it. The book does not contain all our stories, but the stories in it indeed are amazing.

I could not say it any better than did President Jim Bostwick at the time of our 50th anniversary, when he so eloquently summarized for us some of the things which had been accomplished by Academy Fellows. Jim reminded us that, on the plaintiffs' side of the bar, Academy Fellows have over the years fought to achieve full and fair compensation for victims of injury and also have created economic pressures to protect consumer safety in the future. He reminded us that equally important are the contributions of those on the defense side of the bar who have protected the economic strength of our commercial institutions, businesses, and medical and public institutions. Our Fellows have distinguished themselves and honored us in the fight against apartheid, the fight over the election of a US president, the savings and loan litigation, Pennzoil v. Texaco, big tobacco, the prosecution and defense of public figures, mass disaster tort litigation, and on and on. In fact, I could go on and on almost indefinitely with the heroic achievements of our Fellows, but time does not permit it.

But I do want to mention one group of Fellows because their work has so touched me. Could we be any more proud of our Fellows like President Dicky Grigg and others who went to Guantanamo to advocate for certain detainees and who stood up for the ideals we believe in as Americans? They fought for basic human rights. They spoke truth to power in an unpopular cause and in the face of all odds for a group of people who were vilified and demonized by many. And they did it because it was the right thing to do.

When I heard about their efforts and the odds they faced, I couldn't help but think about a speech I attended given by author and historian, David McCullough, who has written so powerfully about the war for independence and the heroism and courage of those who were willing to sacrifice everything for our country's independence. He made the point that we now know what happened at the end of the story. When we look back we see victory through a rose-colored glass. But to truly understand courage and commitment, we must stop to appreciate that these revolutionaries did not know they were going to win! There were dark, dark days when victory did not seem within reach.

In another day, Abraham Lincoln said: “the probability that we may fail in the struggle ought not to deter us from the support of a cause we believe to be just.” Robert Kennedy said it even better than President Lincoln, I think, when he said, “Only those who dare to fail greatly, can ever achieve greatly.... If we fail to dare, if we do not try, the next generation will harvest the fruits of our indifference.”

The Fellows in this Academy, on both the plaintiff and defense sides of the aisle, do not fail to dare and because of that, yes, at times we have failed. But, because they do not fail to dare, our heroes in this Academy have achieved greatness and I am so proud to be one of them.

It is of course true that, as advocates, we don't know what our efforts will bring or if any corners will be turned on the path for ourselves and others. That is particularly true when advocacy is not a win/lose situation. But the doing can bring enormous rewards sometimes when we least expect it. I am focusing in particular now as an example on the Academy's China program, the jewel in the crown of the IATL.

Thanks to President Ray Tam's expansive vision and his and Audrey Tam's immeasurable patience and perseverance, we all believe that the China program has led to change in China. We know that our China exchange has enriched the lives of each of us who has hosted a delegate. Some of the changes wrought by our China program are measurable, for example, our guidance in helping China draft its laws. But we won't know the full effect of our China program for some time. It has as its subtle mission the providing of a model and the absence of proselytizing. In providing such a model, however, we too can learn.

Something very unexpected happened to me by virtue of that program that I want to share with you. It had a tremendous impact on me and it reflects directly on advocacy and the rule of law. My delegate was Ellen Du, a bright and vibrant young woman who is a professor at the Central Party Law School in Beijing. Ellen was in Philadelphia for two weeks and, among with all the wonderful things we did and the fun we had, I wanted her to see a jury trial. She wanted to experience this, too, because this was something she had never seen first hand. One of my partners happened to be in state court in Philadelphia trying a product liability case against a major automobile manufacturer. It had to do with allegedly defective brake rotors. So I let Ellen read about the case and we decided to go over to watch.

We walked into City Hall where we hold our civil trials and sat in an absolutely beautiful and historic court room. Unfortunately, we arrived at what I thought was the wrong time, at least wrong for what I wanted to achieve. There was an expert on the stand and he happened to be a defense

expert—an engineer who was going into excruciating detail about the brake rotors (and I do mean excruciating detail). I sat with Ellen and, as I sat there and we tried to listen, I saw her doing exactly what I was doing. She was watching the expert, looking at the jury, watching the expert, looking at the jury. As I looked at that jury, I saw a Philadelphia jury. I saw people who appeared to be from working class backgrounds. To the extent you could draw any conclusions from their clothing, that was the conclusion that you would draw. As I looked, I wondered how many of these folks had ever gone to college, much less had ever had an engineering course. In fact, I wondered how many of these jurors had ever owned a car. By definition, they live in a city. Many city people don't own cars; they can't afford to park and insure them. Finally, of course, I was absolutely certain that there was virtually no one who knew anything about brake rotors.

As I continued to sit there, my stomach tied in a knot and I began to clench my jaw, because I feared that this exposure to the jury system was not making the impression on Ellen I had intended it to make. I was sure that, when we left the courtroom, I was going to hear those criticisms that we trial lawyers hear so often: “How can you try these cases and let such people make decisions? These cases should be decided by engineers, by experts, not by juries.”

I actually sat there and thought, “Now what am I going to do? I can't proselytize; I can't indoctrinate, so what am I going to say?”

The testimony concluded and we went outside. Ellen didn't look at me. I was afraid to look at her. Finally, I got up the gumption to say, “So what do you think?” She then looked at me directly and she went like this—she placed her hand open over her heart. She said, “I am so moved.” That sort of took me aback and I asked her to sit down. Once we had settled ourselves on a bench outside the courthouse, I asked her what she meant. She did it again —hand over heart. She explained, “I am so moved ... that any person could walk into that courtroom and see what was going on and know that, if they had a problem that needed to be decided, that they too could bring it there and have it decided *by people just like them.*”

Now I was the one who was moved. I had a lump in my throat and could not speak. Ellen Du got it. She “got” what the jury system is all about. As commented on by political scientists, no one institution of government places so much power in the hands of individuals as a trial by jury. Ellen Du experienced the jury trial with the intellect, in fact the great intellect, of an adult, but through the eyes and ears of a child. She experienced it fresh and new. She was so taken with the importance of the rights of

individuals in this country that we made a special trip to our beautiful Constitution Center in Philadelphia, where she purchased on parchment paper twenty-seven copies of the Bills of Rights (suitable for framing) to take back with her to her friends at the Central Party School!

Will Ellen Du change the course of China? I don't know. She is a go-getter and an up-and-comer. She talked about the Supreme Court of China and I believe she is headed there. But, did she turn a corner that day in the Court of Common Pleas of Philadelphia? Maybe. I know I did. With that experience, I recommitted to advocate for and to continue to defend the right to trial by jury.

I have told many people this story; a number of you in fact may have heard it at the New Fellows Breakfast. I was telling the story most recently to a colleague in Philadelphia, who reminded me of another lesson on the subject of the right to trial by jury.

Many of us, especially those of us from Pennsylvania, are enamored of William Penn—the Quaker who established an American sanctuary from religious persecution, now known as Pennsylvania, at a time when Protestants were persecuting Catholics, Catholics were persecuting Protestants and both Catholics and Protestants were persecuting the Quakers. Penn gave Pennsylvania a written constitution which limited the powers of government, provided a humane penal code and guaranteed many fundamental liberties. Why do I bring him up today?

It is because of the intersection of William Penn and the jury system. It is also because of the courage of a man whose name perhaps few of us know: Edward Bushell. You may know about the trial of William Penn in 1670 in London. But for those who may not, William Penn was imprisoned six times for speaking out against oppressive government and intolerance and on behalf of religious rights. (He had studied law at Lincoln's Inn in London.) Because of a law named the "Conventicle Act," religious dissent was treated as sedition—inciting rebellion against the monarchy. The Conventicle Act was designed specifically to suppress the potential political power of the Catholics and under it thousands were imprisoned and their property seized.

William Penn decided to challenge this law and held a public meeting where he spoke. He was arrested and tried before a jury. The king was very much interested in this trial and wanted Penn condemned. Here we come to my point. Edward Bushell was the jury foreman at the trial of William Penn. He was an utterly ordinary citizen who became part of that important trial.

The jury took only fifteen minutes to acquit Penn. It found that Penn had indeed spoken on the street about religion, but that this was no crime.

The presiding judge refused to accept the verdict. He ordered the jury back into deliberations and fined all the jurors the equivalent of almost a year's wages. When they returned with the same not guilty verdict, the judge threatened to have the nose of foreman Bushell cut off! The judge threatened the jury, "Gentlemen, you shall not be dismissed until we have a verdict the court will accept; and you shall be locked up without meat, drink, fire and tobacco. You shall not think thus to abuse the court; we will have a verdict or by the help of God you shall starve for it." The jury went back and deliberated three more times and, when it refused to change its verdict, the judge ordered it imprisoned for failing to pay the fines he had imposed. He ordered the jury "to the hole" in the infamous Newgate Prison.

William Penn himself was set free. After all, he had been acquitted. The accounts vary as to how long the jury spent in that hell hole of a prison—weeks or months. The judge focused more harshly on Edward Bushell. When the judge demanded of Bushell to know when he would change his mind, Bushell said "*never*." For his trouble, Bushell himself individually was imprisoned for misconduct as a juror. Eventually he was released by writ of habeas corpus. England's chief justice affirmed the principle that a jury must be free to speak its conscience and cannot be fined for its verdict. These jurors and its foreman—common men with uncommon courage—established for all time something we now take for granted: the independence of juries in common law nations.

Thanks to Edward Bushell, a corner was turned forever on the right to a fair trial by jury... or was it? What has happened to the right in this country to a fair trial by jury and to the right to advocacy before a jury of one's peers? When Academy President Ronald Krist delivered his Dean's address on trial by jury he reminded us that exaggerated anecdotes, half truths and distorted results have all played their part in undermining the public's belief in one of our most cherished and valuable rights—the individual's right to trial by jury. He reminded us that money, hype, sloganeering, scapegoating, sound-bite advocacy and the power of repetition can effectively obfuscate the truth about the right to jury trial.

Ellen Du did see it clearly when she saw a jury trial in action. Was that because she saw it without that background of money, hype, scapegoating and sound-bite advocacy that the public has been exposed to for years? But what about us? What are we prepared to do?

We know that, without full access to justice, there is a poisoning of the human spirit. In 2006, President Whitehurst in his Dean's address gave us an eloquent and compelling call to commitment to fill the ever-widening justice gap for the poor in this country. Here, in the United States, with

our proud history, erosions of access to justice and the right to trial by jury continue to take place. Access to justice has been denied, rights have been abrogated: we have endured so-called reforms, limitations on liability and pre-emption.

In the face of these erosions it is hard not to let discouragement and apathy take up the space where our passion for justice used to be. It is hard not to get tired of fighting. Yet, just yesterday, Neal Sonnet reminded us that who we are is who we must continue to be. We must change the mind set that the doors to the courthouse cannot be opened for all. We are the ones who possess the skills, the passion and the power to continue to cry out for justice. We are the ones to educate those who follow us about the abuses that block the courthouse doors, so they too will be called to action. We are the ones who must work hard to elect to public office those who will fight to open that door

- not only for those who have the money to pay for justice;*
- not only for those who have certain kinds of cases;*
- not only for those who don't need too much to compensate them for their losses and*
- not only for those folks whose cause makes us feel good-but also for those whose acts we may despise*

We must do this because, in this country, justice is not a privilege. It need not even be earned. In this country, justice is a right.

If not us, with our skills and our resources and our commitment, then who will do it? Because we carry with us always our clients and because of the lessons of Ellen Du and Edward Bushell and so many others, we can never relax in our struggle to swing those courthouse doors open wide so that everyone who needs to be there can be there, with us by their sides.

As we go forward, we must also keep in mind that advocacy is not only about suddenly achieving great and monumental changes. I want to speak for a moment about that. Again, Robert Kennedy, this time from a speech in Capetown, South Africa, in 1966:

Few will have the greatness to bend history itself, but each of us can work to change a small portion of events. And in the total of all these acts will be written the history of this generation. It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope.

Indeed, small acts of advocacy can make a difference in little but important ways. If we need any proof of that, I suggest that perhaps we all look back on our own lives to learn something about advocacy and what help in turning a corner can mean. I cannot do this for anyone but myself. But I know that, as I stand here as your Dean, and reflect back on where I came from, I have to ask myself, “How on earth did I get here? How did I get to be on this stage in the magnificent Carter Center delivering an address about advocacy to the best lawyers in world? What corners did I turn?”

When I do look back on the successes I’ve had, I know that at many points, there have been people willing to assist me at getting past obstacles to turn important corners. One example is the high school guidance counselor who, although my father insisted that I take the secretarial course (since he sincerely believed that a college education was a waste and even possibly dangerous for women), found a way for me nonetheless to take academic courses to prepare me for college in the event that the opportunity ever arose for me.

I look back at a religious order, the Sisters of Saint Francis of Philadelphia, and the college they founded, Neumann College. In the 1970’s they made it their mission to go out into the community and find women like me. We were adult women with children and families who had not yet achieved a baccalaureate degree. They made it their mission to do what they could do to make that possible by removing artificial barriers. They provided child care on campus, flexible scheduling and flexible curricula. They helped so many women turn their own corners to a path they had only ever dreamed of. They made it happen.

I look back at those people who hired me and who have made it possible, not just for me to work as a trial lawyer, but to practice at the highest level without any impediments. I want to tell you one more story. It’s very brief, but it is illustrative. Many years ago when I was an associate and working with Jerry Litvin, a Fellow of this Academy, we met as we frequently did with a new prospective client. After explaining his case, this new client told us that he wanted our firm to represent him. He then said, “You know, I’m sorry to say this, but I really think that it would be in my best interest to have a man handle my case.” My heart sank. I knew that it would be easy for Jerry to do a “work around” those wishes. He could give this case to someone else and give me another case—maybe a bigger case and even one which would have been more helpful for my career in the long term. But Jerry got up, pulled on his cuffs, stuck his hand out, put his arm around the man’s shoulder and guided him to the door, telling him along the way, “I’m sorry, we won’t be representing you.” That was the end of it. There was no big fuss.

I think it is a measure of the man that Jerry does not remember that story. It was not any big deal to him. His wife, Arlene, however, does remember it. He told it to her that night at dinner and it stuck in her mind. Well, it stuck in my mind, too. I turned a corner that day that was huge because, when that happened, I knew that it was going to be okay for me. I knew I'd be allowed to practice at whatever level my merits permitted.

Today, as I stand here after a decade honored to be an Academy Fellow, I am so keenly aware that I am the first woman ever to have the honor and responsibility to speak to you as Dean. When I look at those who helped me turn that corner, I first want to give thanks to the officers, board members, and Academy Fellows who have supported me.

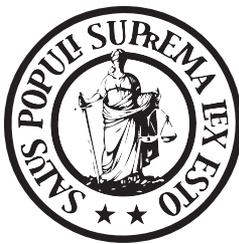
Even more, I want to give special thanks to an exceptional group of people: the Academy's First Ladies. From my induction in Hawaii as a Fellow, these extraordinary women have been there for me. Their warmth, good humor and friendship have been boundless. I know that they have always "had my back" and I have so appreciated it. To each of you, First Ladies, you will never know how much your support has meant to me and, from my heart, I thank you my sisters.

But, for all of us, there is still much work to be done. There are more corners to be turned: for our families and our friends, for our clients and for people whom we do not even know. The Deans' addresses in the past have been an enormous source of inspiration to me. I hope that maybe you will take something away from today as we look to the future. It is hard to keep doing in the face of the overwhelming pressures that seem to resist change. It is hard to keep doing with all the distractions that we face every day. We must deal with world crises, family crises, financial and health worries.

When the challenges seem to be too much, I am comforted by the words of Helen Keller, who said, "I am only one, but still I am one. I cannot do everything, but still I can do something; and because I cannot do everything I will not refuse to do the something that I can do."

Lawyers and non-lawyers alike, we face the challenge to a keep our heads up and our eyes open so that we can look around and see what needs to be done. When we do look around, we will see the ever-present denials of access to justice. We will see someone who is trying to turn a corner and having difficulty and we will reach out and be there:

- to lift up those who are in need*
- to send out those ripples of hope*
- to be an advocate.*



INTERNATIONAL ACADEMY OF TRIAL LAWYERS

EXECUTIVE OFFICE 5841 Cedar Lake Road, Suite 204
Minneapolis, MN 55416

TOLL FREE 866-823-2443
PHONE 952-546-2364
FAX 952-545-6073
WEB www.iatl.net