

Practicing Law in Poetic Prose

Former New York governor and staunch civil justice advocate Mario Cuomo once said, "You campaign in poetry. You govern in prose." The quote captures the essence of politics – politicians make grand promises to get elected, but often cannot deliver on those promises, fully or at all, because the reality of the political process intervenes. The grand ideas and high aspirations so often are never turned into law. But Governor Cuomo was not being cynical. While the lesser politician succumbs to the day-to-day realities of the political process, taking in money, buckling to special interests and leaving a legacy that is mediocre or less, the greater politician engages in and masters the day-to-day business of politics, while seizing the grand and the aspirational whenever achievable. You might say the greater politician governs in poetic prose.

If a good politician can govern this way, then can't a good trial lawyer practice law in poetic prose? After all, we are especially well positioned to do it because we have the privilege of representing people. As the mission statement for Gerry Spence's Trial Lawyers College reads, trial lawyers "are committed to the jury system and to representing and obtaining justice for individuals, the poor, the injured, the forgotten, the voiceless, the defenseless and the damned, and to protecting the rights of such people from corporate and government oppression." See <http://www.triallawyerscollege.org/> (last visited April 10, 2015). Now that's poetry. And there is no better trial lawyer poet than Gerry Spence. But of course, Gerry Spence never stopped at poetry. He is a master practitioner. He is among the best at practicing in prose. Perhaps what makes him so great is that in practicing, he never seems to lose sight of the poetry. He is a model of practicing law in poetic prose.

It is easy to lose track of the poetry in what we do. The day-to-day practice of law is a grind. Constant deadlines. Clients who are less than perfect because they are human beings. The financial pressures of a contingency fee practice or the limited retainers that may or may not have been paid by the criminal defendant. The fallout from underfunded courts and overworked judges and their staff. The case that is always less than perfect. The witness whose testimony comes out differently on the record than in the investigation. The expert who wasn't fully prepared, but charged as if he or she was. The court ruling that went the wrong way.

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by: Timothy Blood, CASD President



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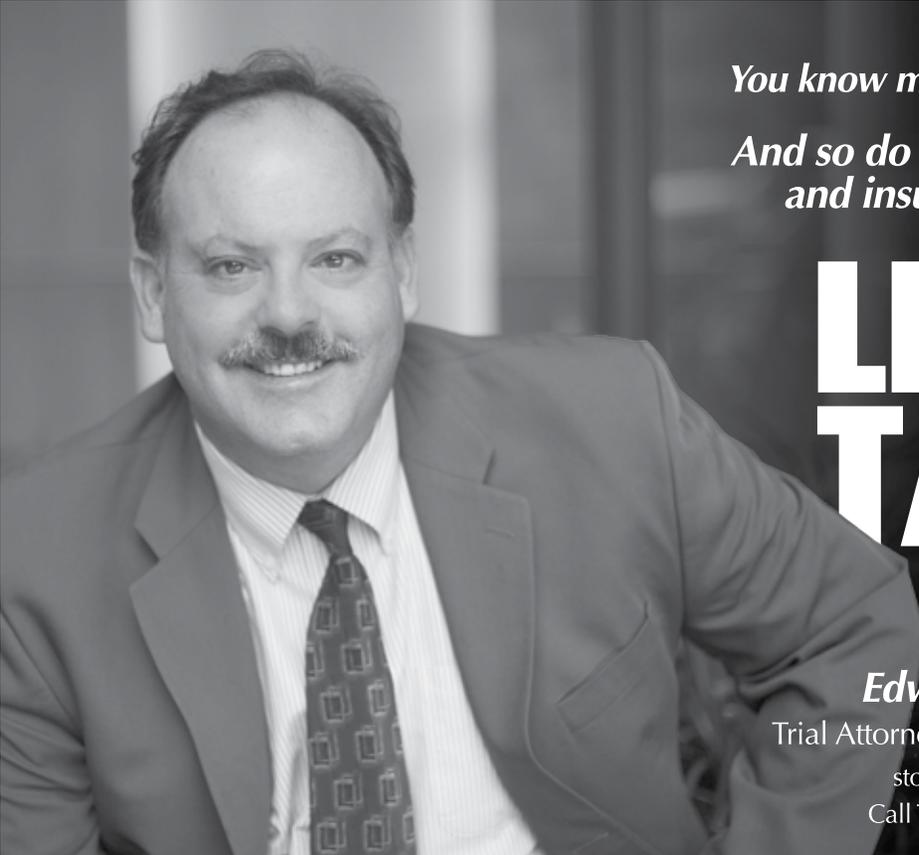
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Then there are the institutional pressures working against the plaintiff's lawyer. Legislatively our clients and we are under constant attack, fueled by the very corporate and government oppression we are duty-bound to battle. And now, politically speaking large corporations are people, entitled to a louder voice than regular people because they have more money. Meanwhile, academic research shows that courts, and particularly the federal courts, have become more hostile to the interests of regular people in favor of large corporations and the government because of procedural barriers courts have placed in the path to trials on the merits. For an eye-opening analysis of these procedural changes, read Professor Arthur Miller's law review article *Simplified Pleading, Meaningful Days In Court, And Trials On The Merits: Reflections On The Deformation Of Federal Procedure*, New York University Law Review, vol. 88:286, April 2013.

So why do we do it? Because of the poetry, of course. Enforcing the rights of people is a tremendous privilege and tremendously important. How's this for an example: In April, Anthony Ray Hinton was freed after nearly 30 years on Alabama's death row for murders he didn't commit. CNN reported his first moments of freedom: "Hinton, 58, looked up, took in the sunshine and thanked God and his lawyers Friday morning outside the county jail in Birmingham, minutes after taking his first steps as a free man since 1985." Jason Hanna and Ed Payne, *Alabama Inmate Freed After Nearly 30 Years On Death Row*, CNN.com, April 3, 2015. The rewards for the lawyers representing Mr. Hinton are obvious. I also hope Mr. Hinton will receive some measure of economic compensation for all of those years on death row, not because it is about money, but to grant some additional measure of justice. He will need money as he attempts to live a reasonable life.

While this is a dramatic example, it is nonetheless an example of what we do every day. We fight for people to improve their lives in large ways and small. While there are days when it feels like we are losing the battle – and some times we do lose – we should remind ourselves of the grander purpose of what we do and strive to do it better.

By honing our prose and embracing the poetry at every opportunity, we will not merely have satisfying professional lives, but we will also do our part to make the world a little safer, a little fairer and a little better. Now that's good stuff. **TBN**



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LET'S TALK

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