

ARE YOU A TOUCAN? Views of the Jungle from a Fellow Litigator

In a recent conversation with fellow attorneys, one of my associates commented that he meets a lot of lawyers in this business of litigation. My brow furrowed and he explained that he understood that litigators *are* lawyers, but that the litigators are the *toucans* of lawyers. He explained that toucans (litigators) are big on show, universally recognizable, and are unusually loud. His point was that while it is often easy to recognize a litigator (toucan) when you see it, you rarely see them in their native habitat—the courtroom.

In the past several years, we have all lamented the disappearance of the jury trial. Law schools have favored classes on alternative dispute resolution over those which hone trial technique. Federal court judges watch entire years pass without empanelling a civil jury. Bar journals frequently talk about the death of the jury trial, but I can attest . . . **THE JURY TRIAL IS BACK!!**

From January 5, 2009 to June 3, 2009 I tried 10 cases. Two were judge-tried cases, and eight were jury trials. When this marathon started, I experienced the normal butterflies, the worries about the little things that were imperfect, the records that we could not find, and how to get this or that piece of information into evidence. After my third trial in three weeks, the light bulb went off. I stopped complaining about being so busy. I stopped worrying so much about those phone calls that had to wait to be returned and those emails that went unanswered. I said to myself. “I am a trial lawyer and this is what I am supposed to be doing. I need to stop considering this an imposition on my ability to ‘practice law’. This is my job.”

Oh how that insight changed things. I realized the initial trials had allowed me to sand off the rust spots, free up the frozen joints, and sharpen my analytical skills dulled by inactivity. In those last 7 trials, I was a well oiled machine. My instincts were honed, my reactions were quick, my objections were timely but judicious, and my legal rhythm was better than ever.

When my last trial was over, I missed the court room, the click of the stenographer machine, looking the jury panel in the face and laughing (or frowning) with them, and the churning of my stomach when the court announced, “We have a verdict”. I went back and I sat in on a trial the next week, just to ease my yearning.

I have returned to my dusty desk, returned those calls, and answered those emails. I realize it is **THIS** part of the job that results in those same cases I will try. Instead of dreading the next big and ugly case, I now look at it a little differently. I am ready--or at least I will be. My calendar shows one trial in July, one in August and several more in October. My entire January 2010 is full of preemptory settings. In the meantime, I will build my nest, gather my seeds, and when the time comes, I will try my best case for my client.

If you see me in February, I might have changed my song. I might be burned out, tired, or I might have taken a hard hit. Today though--I am glad I am a litigator. I am glad that in my world the jury trial is alive and well. It is, after all, what makes me a toucan. Here's wishing you a summer of good seeds and healthy plumage.