Message from the Chair

Robert Masters

This past May, at the NYSBA building in Albany, the Executive Committee of the Criminal Justice Section met for its Spring meeting, followed the next day by one of our fine CLE sessions. The meeting was significant because it in many mays concluded the two-year tenure of Tucker Stanclift as Chair of the Section. As anyone who has paid even the slightest bit of attention is surely aware, Tucker's tenure, like that of Sherry Levin Wallach before that, was not only marked by success, but by enormous commitment to advance the interests of those who have dedicated our careers to the practice of criminal law. That Tucker was able to accomplish so much while maintaining standards of excellence in his own practice speaks volumes about him, as well as providing an example to which we should all aspire.

That meeting was also notable because, as Tucker pointed out to those present, it happened only days before I assumed the responsibility of becoming the Section's Chair. Tucker was kind enough to not only wish me luck; he assured me that he would always remain available for advice whenever I should need it, but to warn me about the difficulty of the times our profession, and particularly our practice area, faces. Months later I remain very grateful for Tucker's sentiments, offers and of course—his warning.

At that meeting something else occurred. Something casually revealed—almost by coincidence—triggering a small sense of irony and a flood of nostalgia. Our editor, Jay Shapiro, and I were chatting prior to the meeting's commencement. Somehow, I disclosed to him that I had been admitted to practice at the Appellate Division, Second Department on May 6, 1981. I reminisced about the experience, noting some of the long deceased judicial icons who presided at the ceremony. Not long after, my digitally savvy friend Jay showed me a tablet's screen, displaying an OCA that website revealed he, too, had been admitted to practice on May 6, 1981 at the Appellate Division, Second Department. We both laughed at the serendipity that our careers began as two of the throng of freshly minted lawyers in that ornate room and that 38 years of legal adventures had brought us to the same place again.

That was a charming moment, but one I thought of during the next day's drive from Albany. I considered the arc of time that had passed and not only had it affected my life and career, but how the very practice of the profession, of which I was a longstanding member had changed. The reflection at first made me winsome—longing for a time filled with the possible, with less gray hair and no arthritis. But I also became pensive, unsure of current times, concerned for the future. I began to accept a conclusion that I was reluctant to acknowledge—that our profession, and perhaps our particular practice, had fallen prey to today's partisan climate.

I am saddened by the reality that virtually every facet of our lives has been consumed by a partisanship characterized not simply by a lack of courtesy, but rather by a hostility that frequently veers into nastiness, if not abuse. From our national politics, to local politics, to matters less critical, whether entertainment, education, literature or sports, differences of belief, perspective or opinion cannot be understood, much less abided or tolerated. Because of this endemic, hyper-partisan reflex that seems to have overtaken all human commerce, is it any surprise that the practice of law has not proven to be immune? Past NYSBA President Michael Miller noted the alarming changes in personal and professional discourse last year in a written Message from the President. Sadly, I am persuaded his conclusions have only been validated by current events—those occurring in the criminal justice arena and otherwise.

When I was first admitted as an attorney, I had the privilege of working as a confidential law secretary to several judges. From them, I learned the importance of professional grace and to personally extend courtesy whenever possible. I observed many trials, conducted by talented and aggressive advocates, conclude with one party's deep satisfaction and the other's plain disappointment, but never with harsh words, assaults on each other's character, honesty or the questioning of anyone's motives. Handshakes and offers of sincere congratulations were routine, as was speaking well of your opponent to others thereafter. Such experiences are increasingly rare today. I fear the generation of lawyers being admitted this month at the Appellate Division, Second Department, may practice their entire careers and never enjoy them.

It is my profound hope to reverse that trend and I believe the practice of criminal law—and particularly among those who are members of our Section— is an ideal place for that effort to begin. It is obvious that defense attorneys have many organizations devoted to advancing the interest of their particular practices. In New York, prosecutors have DAASNY, the District Attorneys' Association of the State of New York, to advance theirs; members of the judiciary are represented by various organizations which serve to protect and promote their professional standing. In essence, each of these important groups is a trade association, created and sustained to ensure the interests of their members are best considered and promoted. That these groups exist is a good thing. That they succeed in their mission is even better. Belonging to one of these groups should result in making the member better at what they do, whether it is to defend, prosecute or preside.

The Criminal Justice Section of NYSBA is different. It is not where each group goes to promote its narrow interest. It is where we find common ground, meet in partnership with a diverse group of our profession, discuss and develop best practices. We search for both the ways and means to develop the most efficient, fairest and most transparent and efficient system of criminal justice, thereby providing our society—our communities—the most effective methods of resolving the most serious and life-threatening problems. And as we commence the hard work of achieving that hefty goal, we can only succeed by focusing on the many things that unite us, rather than on the obvious issues that divide us; by focusing on how we are the same and not different; by collaboratively noting truths, considering compromise and searching for and recognizing solutions when they are discovered. And that lofty goal can only be attained when talented professionals, acting pursuant to the best of intentions, treat each other not merely with civility and respect, but with professional courtesy and affection. I remain convinced that will be our path to a better practice and a still better criminal justice system.

We have to reverse this unhappy trend in our culture. The practice of criminal law now faces enormous challenges presented by the legislature. The only CPL that I have ever known has been fundamentally changed. Discovery, our bail system and speedy trial dictates have not merely been changed, they have been revolutionized. The time for debating these changes has passed. It is now up to all of us who practice criminal law to represent our clients, our offices or our court to the best of our ability within this new legal landscape. New laws are always challenged. Their scope is pressed for broader or more narrow application by advocates seeking advantageous interpretations. Courts are forced to choose between the fervently advanced propositions of counsel, only to have their choices simultaneously criticized and lauded during the appellate process. This is what lawyers do. In its simplest form, that is the practice of law. It is how our common law, the basis for some of the very ground rules by which our society functions, developed. And I am certain that this process happens best without professional rancor, without questioning the motives or ethics of an opponent, without resort to discourtesy or worse still, to insult, name-calling or pandering.

Our test, indeed our responsibility, is to face the challenge of implementing the seismic shifts in our practice—discovery, bail, speedy trial—as well as others that are sure to follow, in a way that not only benefits our individual interests, but those of our entire profession, the justice system and society at large. I remain convinced that through the shared embrace of the highest standards of professional grace, courtesy and integrity these challenges can be met, and it is the members of the Criminal Justice Section who can best serve as the models of what a wonderful thing the practice of law can be.

It is through these joint and collaborative efforts that dreams from May 6, 1981—not just envisioned by two newly admitted lawyers, but by our entire profession—will be realized.

Robert Masters

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