

JUSTICE FOR ALL

*Mark Lanier**

It is a great privilege to give a lecture in honor of General and Dean Walter Huffman. He has thanked Becky and me for this beautiful building we are in, but the building should have his name on it. As I have repeatedly told him, “You were the one who raised money for this thing.” If Becky and I had not had the chance to be a part of this edifice, Dean Huffman would have raised every penny necessary from other people; so, thank you, Dean Huffman!

I suspect everybody in here, at some point in their lives, committed to memory the Pledge of Allegiance. “I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and *justice for all*.”¹

Those last three words of our Pledge of Allegiance, memorized by countless American citizens and children all across this country for decades, resound with a concept of “justice for all”—a concept that is not found in many areas of the world.² It is a concept that does not necessarily have strong historical roots, at least not in Roman civilization. To the extent that Roman civilization is the civilization of the West, we need to be aware that Roman law did not believe in justice for all. Roman law did not believe in justice for non-citizens.³ Even within the realm of citizenship under Roman law, there were degrees of justice.⁴ You were not allowed to pursue justice outside of your class or the classes below you.⁵ If someone wronged me and that person was a higher class citizen than me, I could not seek justice in the court system.⁶ Under Roman law, it would be contemptable and criminal if I came

* Founder of The Lanier Law Firm in 1990. J.D., Texas Tech University School of Law, 1984.

1. *Pledge of Allegiance to the Flag of the United States of America*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/event/Pledge-of-Allegiance-to-the-flag-of-the-United-States-of-America> (last visited May 29, 2019) (emphasis added).

2. *Id.* See generally Garry Kasparov & Thor Halvorssen, Opinion, *Why the Rise of Authoritarianism Is a Global Catastrophe*, WASH. POST (Feb. 13, 2017), <https://www.washingtonpost.com/news/democracy-post/wp/2017/02/13/why-the-rise-of-authoritarianism-is-a-global-catastrophe/> (discussing examples of injustice and oppression in other countries); Debbie Schaefer-Jacobs, *I Pledge Allegiance*, NAT'L MUSEUM AM. HIST. (Oct. 23, 2017), <https://americanhistory.si.edu/blog/i-pledge-allegiance> (describing the history of the Pledge of Allegiance).

3. See Robert M. Hitch, *Our Debt to Roman Law*, 13 LOY. L.J. 66, 71–72 (1932) (explaining that Roman law was reserved for Roman citizens).

4. See Stephen C. Neff, *Decline and Emergence: Roman Law and the Transition from Antiquity to Feudalism*, 5 J. LEGAL HIST. 91, 93–96 (1984) (discussing the distinctions within the Roman caste system).

5. See *id.* at 94–96.

6. *Id.*

into an event, like this or a sporting event, and I took a seat that was assigned to someone of a higher legal social standing.⁷

But, the American system of justice for all was not something that was dreamed up by our Forefathers. Equal justice was something that they borrowed from the British court system, although they knew that the British court system lacked in actually delivering on that promise.⁸ But the British court system of justice for all was based upon a concept that found its roots in Judaism, not in the Roman courts.⁹

Five or six hundred years before the current era—commonly measured in Western Civilization by the birth of Jesus—there was an Old Testament prophet named Micah.¹⁰ In the sixth chapter of his book, the eighth verse, he asked this question: “[W]hat does the Lord require of you. . .?”¹¹ And then he provides a three-part answer. The very first part of that answer is to “do justice.”¹² This is Micah’s plea to a society that had reached a point where justice was not available for all,¹³ but Micah did not dream this up any more than our Forefathers did.

The roots of this go back to a very early law school book. It is a book that in Hebrew is called the Torah.¹⁴ Torah, translated from Hebrew, means “law.”¹⁵ And one of the earliest law school classes in history took place in the wilderness, on the side of Mount Sinai when God spoke the Torah to Moses.¹⁶

He taught Moses the law for Israel.¹⁷ And in teaching that law, one of the books of the law—we call it Deuteronomy—God gave instructions to the judges that would judge the Israelites’ court system.¹⁸ These were instructions for those judges, and they are no less applicable to judges and litigants three thousand two hundred years later: “[J]udge righteously between a man and his brother or the alien who is with him.”¹⁹ Most judges

7. See Daryl Worthington, *Restoration Project Finds Red Numbers in the Colosseum*, NEW HISTORIAN (Jan. 24, 2015), www.newhistorian.com/restoration-project-finds-red-numbers-colosseum/2802/ (explaining that the discovery of the red paint reinforces the management of seating based on class and the strict social hierarchy of the Roman civilization).

8. See Ruggero J. Aldisert, *The Role of the Courts in Contemporary Society*, 38 U. PITT. L. REV. 437, 437–39 (1977); Justice Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT’L L.J. S83, S88 (2000).

9. See Edward Kessler, *The Jewish Concept of Justice*, WAY, <https://www.theway.org.uk/back/S097Kessler.pdf> (last visited May 29, 2019).

10. *Micah* 1:1 (English Standard Version).

11. *Id.* at 6:8.

12. *Id.*

13. *See id.*

14. *Torah*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/Torah> (last visited May 29, 2019).

15. *Id.*

16. See Dewey M. Beegle, *Moses*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/biography/Moses-Hebrew-prophet> (last visited May 29, 2019).

17. *See id.*

18. *See Deuteronomy* 1:16–18 (English Standard Version).

19. *Id.* at 1:16.

might think the first admonition to “judge righteously between a man and his brother,”²⁰ is obvious, but the next clause—and “the alien who is with him”—might prove more difficult.²¹ “You shall not be partial in judgment. You shall hear the small and the great alike. You shall not be intimidated by anyone”²² That charge to Moses and Israel underlies the Pledge of Allegiance that an American citizen makes. That is the charge that undergirds the constitutional concepts that we all hold dear. This is why the Declaration of Independence affirms that all people are created equal and are endowed with certain unalienable rights.²³ That is also the sacred trust that we, as lawyers in the court system, are obligated to discharge.

I am going to suggest to you, in the time that I have, three different ways we can best discharge the obligation: Justice for all. My three suggestions are through diligence,²⁴ hard work,²⁵ and strong ethics.²⁶

First, diligence. As a lawyer, I have found that there are the small, everyday cases that mean the world to individuals. When Houston was inundated with a flood last year, it destroyed hundreds of thousands of people’s homes.²⁷ Out of the wreckage that was left, innumerable people hawked their skills under the guise of being contractors, when in truth they were little more than opportunists.²⁸ One family in particular did not have insurance money yet to cover the work that needed to be done on their house.²⁹ But they found a “contractor” who seemed to sing a pretty song.³⁰ He promised that, for just one thousand dollars, he would get to work on their home and secure it so that the mold and the mildew did not make it uninhabitable forever.³¹

20. *Id.*

21. *Id.*

22. *Id.* at 1:17.

23. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

24. See *infra* notes 27–136 (discussing the importance of diligence in working toward justice for all).

25. See *infra* notes 48–136 (considering the value of hard work in discharging the obligation of justice for all).

26. See *infra* notes 139–97 (arguing that strong ethics are crucial to achieving justice for all).

27. See Kimberly Amadeo, *Hurricane Harvey Facts, Damage and Costs*, BALANCE, <https://www.thebalance.com/hurricane-harvey-facts-damage-costs-4150087> (last updated Jan. 20, 2019).

28. See, e.g., Larry Seward, *Three Families Sue La Porte Contractor Over Unfinished Harvey Repairs*, KHOU11 (May 14, 2018, 10:49 PM), <https://www.khou.com/article/weather/hurricane/harvey/three-families-sue-la-porte-contractor-over-unfinished-repairs/285-552119663>.

29. See *generally* Gualtieri v. Jones, No. 5585 (Justice of the Peace, Precinct 4, Place 2, Harris County, Tex. Jan. 1, 2013).

30. See *generally* L.M. Sixel, *Lawyers Rush to Represent Flood Victims*, HOUS. CHRON. (Oct. 16, 2017), <https://www.houstonchronicle.com/business/article/lawyers-rush-to-represent-flood-victims-12281056.php>. See also *Houston Post-Flood Inverse Condemnation Information*, LANIER L. FIRM, <https://lanierlawfirm.com/legal-practice-areas/houston-inverse-condemnation/> (last visited May 29, 2019) [hereinafter *Houston Post-Flood*] (demonstrating that the Lanier Law Firm held an information session for flood victims in Houston).

31. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

This couple scraped together the thousand dollars and paid the contractor. But he never seemed to show up for the job.³² When he did show up, he never seemed to get anything done.³³ The couple took their concern about the contractor to the police and said, “Help! This contractor is not showing up! Yet he took our thousand dollars.”³⁴ The police said, “There is nothing we can do about it. Go to small claims court and try to get your thousand dollars back.”³⁵

The couple went to the small claims court, and they pleaded, “We are filing to get our thousand dollars back.”³⁶ The contractor had a family member or some close friend who was a lawyer, who then answered the small claims case and, in an overt act of legal bullying, filed a counterclaim, saying, “They owe another ten thousand dollars because we actually did do some work that exceeded the one thousand dollars paid.”³⁷ This couple approached me at church. They did not know what to do. Their court date was in a matter of days. I told them, “Do not worry. I have some of the best lawyers in the world that work at my firm, and I am sure we will have someone who can help you.” I knew I had at least a dozen from the Texas Tech University School of Law.

One of my lawyers is a young lady named Monica Cooper.³⁸ I asked Ms. Cooper if she could help this family out, and she took it on with diligence that would make you proud. She went in and tried that case like it was for \$50 million. She ripped the heart out of the defendant through cross-examination.³⁹ She argued to the jury with fervor.⁴⁰ The jury returned a verdict in favor of this couple who was facing insolvency had they lost the counterclaim.⁴¹ That is diligence on a small scale. And it is justice for all. It is not justice that can be bought. I want to urge everybody who is a practicing lawyer to recognize that there comes a point where time is your most precious commodity. But if we do not donate some portion of our time, then shame on us. Justice for all requires diligence, which is not always good for the bottom line in terms of profit.

My second diligence story comes from the other end of the spectrum. I have twenty-two women who are suffering from ovarian cancer.⁴² Ovarian cancer, in the stage it is typically caught, has a 25% survival rate of five

32. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

33. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

34. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

35. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

36. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

37. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

38. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

39. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

40. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

41. See Sixel, *supra* note 30; *Houston Post-Flood*, *supra* note 30.

42. See generally *Ingham v. Johnson & Johnson*, No. 1522-CC-10417, 2018 WL 3471489 (Mo. Cir. Ct. July 12, 2018).

years.⁴³ Three out of four die. These women used Johnson & Johnson's baby powder extensively.⁴⁴ Johnson & Johnson's baby powder was used, not just in a genital application, but throughout their entire bodies on a daily basis for years.⁴⁵ These women came to me with this ovarian cancer, and the issue was whether the talcum powder caused ovarian cancer.⁴⁶ I found studies that go both ways.⁴⁷ But through diligence and hard work we uncovered a truth: Talc mines are laced with asbestos.⁴⁸ Asbestos is a Class I carcinogen by IARC (International Association for the Research of Cancer), the branch of the World Health Organization that is the authority on the many causes of cancer.⁴⁹ IARC says, beyond any medical and scientific question, that asbestos causes ovarian cancer.⁵⁰ So, I was concerned that the Johnson & Johnson baby powder had asbestos in it. There were lawyers who told us, "You are wasting your time. Johnson & Johnson has told us that they have not had asbestos in their baby powder since the early 1970s." My response was, "And you believed them?" Instead, we should learn from Ronald Reagan: If we are going to trust, we should at least verify.⁵¹

We began trying to find old and new containers of Johnson & Johnson's baby powder to send off to a lab for testing. We found over and over that Johnson & Johnson's talcum baby powder had asbestos in it.⁵² Furthermore, the company was aware of the fact that it had asbestos in it.⁵³ As we dug through their documents, we discovered that as well. The company rigged their own tests because they knew the asbestos was present in such a small amount that they could generally test around it. Unfortunately, asbestos in

43. See Danijela Jelovac & Deborah K. Armstrong, *Recent Progress in the Diagnosis and Treatment of Ovarian Cancer*, 61 CA: CANCER J. FOR CLINICIANS 183, 186 (2011) (explaining that 62% of diagnoses occur at the distant spread stage); *Survival Rates for Ovarian Cancer*, AM. CANCER SOC'Y, <https://www.cancer.org/cancer/ovarian-cancer/detection-diagnosis-staging/survival-rates.html> (last updated Feb. 13, 2019) (showing the five-year relative survival rate of invasive epithelial ovarian cancer at 30%).

44. *Johnson & Johnson's Cover Up on Talc and Asbestos Revealed*, LANIER L. FIRM (Dec. 18, 2018), <https://lanierlawfirm.com/johnson-johnsons-cover-up-on-talc-and-asbestos-revealed/>.

45. Roni Caryn Rabin & Tiffany Hsu, *Johnson & Johnson Feared Baby Powder's Possible Asbestos Link for Years*, N.Y. TIMES (Dec. 14, 2018), <https://www.nytimes.com/2018/12/14/business/baby-powder-asbestos-johnson-johnson.html>.

46. *Id.*

47. *Id.*

48. *Id.*

49. WORLD HEALTH ORG., IARC MONOGRAPHS ON THE EVALUATION OF THE CARCINOGENIC RISKS TO HUMANS 106–10 (1987), <https://monographs.iarc.fr/wp-content/uploads/2018/06/Suppl7.pdf>.

50. *Id.*

51. See President Ronald Reagan, Remarks on Signing the Intermediate-Range Nuclear Forces Treaty (Dec. 8, 1987) (transcript available at <https://www.reaganlibrary.gov/research/speeches/120887c>).

52. See Lisa Girion, *Johnson & Johnson Knew for Decades that Asbestos Lurked in Its Baby Powder*, REUTERS (Dec. 14, 2018, 2:00 PM), <https://www.reuters.com/investigates/special-report/johnsonand-johnson-cancer/>.

53. Tim Povtak, *Johnson & Johnson Knew of Asbestos in Baby Powder for Decades*, ASBESTOS.COM (Dec. 14, 2018), <https://www.asbestos.com/news/2018/12/14/Johnson-Johnson-asbestos-in-talc-for-decades/>.

these small—yet toxic—quantities could be present but not seen.⁵⁴ It is too small to be seen.⁵⁵ You would not notice it in this room. You would not smell it.⁵⁶ It would not make you sneeze.⁵⁷ It would not make your eyes water.⁵⁸ It would not be caught by your nose hairs.⁵⁹ Some of the most damaging pieces are microns in size.⁶⁰ It is the size of DNA strands.⁶¹ Consider, in that light, the need to test talc to determine if this very small pollutant cancer-causer lurks within it. What the company did was set its standard for testing on a scale that was not sensitive enough to pick up the asbestos.⁶² If the asbestos is .05%, they set their scale at .1%. It is akin to taking a bathroom scale that gives you a digital readout of 0.0 pounds, taking a needle, and putting it on the scale. And then, seeing that the scale still says 0.0 pounds, you say that there is no needle on that scale. Something, I might add, I did in front of the jury on cross-examination of their expert.⁶³ I then said, “Maybe it’s just not heavy enough. Maybe we need two needles.”⁶⁴ So I put on two, three, five, the whole box of needles on the bathroom scale.⁶⁵ It still showed 0.0.⁶⁶ So I took a pen out of my pocket.⁶⁷ I added that.⁶⁸ It was still 0.0.⁶⁹ I added a highlighter.⁷⁰ I added another pen.⁷¹ I took my glasses off and put them on the scale.⁷² At that point, I had a good pile of things on the scale, but it was still 0.0 pounds.⁷³ The scale was not sensitive enough to pick it up.

In the 1970s, the company knew that there was another, more sensitive method of testing for asbestos and the company asked, should we be doing this new, pre-concentration testing method?⁷⁴ The corporate reply was, “No.

54. See Daniel King, *What Ss Asbestos?*, ASBESTOS.COM, <https://www.asbestos.com/asbestos/> (last updated May 29, 2019).

55. *Id.*

56. *Id.*

57. *See id.*

58. See *Asbestosis*, MAYO CLINIC (Mar. 7, 2018), <https://www.mayoclinic.org/diseases-conditions/asbestosis/symptoms-causes/syc-20354637>.

59. *See id.*

60. See DEP’T OF HEALTH & HUMAN SERVS., TOXICOLOGICAL PROFILE FOR ASBESTOS 6, 93–94 (2001), <https://www.atsdr.cdc.gov/toxprofiles/tp61.pdf>.

61. *See id.*

62. See Girion, *supra* note 52.

63. See Daniel Fisher, *A Bale of Hay and a Block of Cheese: How Mark Lanier Won \$4.7 Billion Talcum Powder Verdict*, FORBES (Oct. 3, 2018, 6:10 AM), <https://www.forbes.com/sites/legalnewsline/2018/10/03/a-bale-of-hay-and-a-block-of-cheese-how-mark-lanier-won-4-7-billion-talcum-powder-verdict/#1e2f054c1c10>.

64. *See id.*

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.*

73. *See id.*

74. See Girion, *supra* note 52.

It's too sensitive. We tried it, and it shows tremolite (a kind of asbestos) in our product."⁷⁵

They not only did not use it but they also distracted the FDA from considering it as an appropriate test.⁷⁶ They asked other people to test their products so that they would have outside sources.⁷⁷ They went to the Colorado School of Mines.⁷⁸ The Colorado School of Mines said it was the essential test if you want to find the needle in the haystack (their illustration) that you use this pre-concentration method.⁷⁹ The company was told that in 1973.⁸⁰ The company rejected the technique.⁸¹

We were able to uncover a sordid tale that showed hundreds of positive findings of asbestos in the product that the company had disregarded, ignored, and papered over. It was rightly frustrating to the jury, who assessed not only actual damages for each of the twenty-two women but punitive damages as well for the abhorrent conduct.⁸² This is conduct that, of course, has affected—by Johnson & Johnson's estimate—over 200 million Americans.⁸³ This powder was used on that many American babies.⁸⁴ The asbestos dust cloud remains in the air, not visible, for six hours.⁸⁵ Infants' diapers are changed about every two hours,⁸⁶ so it is basically a full-time exposure. Asbestos particles are so fine that when you inhale them, they go down into the alveolar clusters at the bottom of the lungs.⁸⁷ These clusters are so thin and small that gasses can pass through them into the blood stream.⁸⁸ And those fibers are able to pass through the walls, into the

75. *See id.*

76. *See id.*

77. *See id.*

78. *See id.*

79. John Sammon, *Talc Lawyer Wants to Show J&J Passed on Needle-in-Haystack Asbestos-Detection Method*, LEGAL NEWSLINE (Feb. 28, 2019), <https://legalnewsline.com/stories/511827762-talc-lawyer-wants-to-show-j-j-passed-on-needle-in-haystack-asbestos-detection-method>.

80. Girion, *supra* note 52.

81. *Id.*

82. *See St. Louis Jury Returns \$4.69 Billion Verdict in First Trial Linking Baby Powder, Asbestos and Ovarian Cancer*, LANIER L. FIRM (July 12, 2018) [hereinafter *St. Louis Jury*], <https://lanierlawfirm.com/st-louis-jury-returns-4-69-billion-verdict-in-first-trial-linking-baby-powder-asbestos-and-ovarian-cancer/>. *See generally* Rabin & Hsu, *supra* note 45.

83. Memorandum from William Ashton Regarding Johnson & Johnson's Baby Powder Use, William Ashton, Talc Supply Chief, Johnson & Johnson (Dec. 19, 1991) (on file with author).

84. *See id.*; Lindsey Bever, *Johnson & Johnson Ordered to Pay \$4.7 Billion to Women Who Say Baby Powder Gave Them Cancer*, WASH. POST (July 13, 2018), <https://www.washingtonpost.com/news/to-your-health/up/2018/07/13/Johnson-Johnson-ordered-to-pay-4-7-billion-to-women-who-say-baby-powder-gave-them-cancer/>.

85. *Asbestos Background Information*, CPWR, <https://www.cpwr.com/sites/default/files/training/asbestos/Chapter%201.pdf> (last visited May 29, 2019).

86. *Changing a Diaper*, AM. PREGNANCY ASS'N, <https://americanpregnancy.org/first-year-of-life/changing-a-diaper/> (last updated Aug. 2015).

87. G. Miserocchi et al., *Translocation Pathways for Inhaled Asbestos Fibers*, 7 ENVTL. HEALTH 4, 5 (2008).

88. *Id.* at 4.

interstitial fluids, and into the lymph nodes.⁸⁹ And they go into the ovarian tissues.⁹⁰ They go into the mesothelial tissues and cause mesothelioma.⁹¹ A number of our women had their cancerous tissues taken out, put under an electron microscope, and were able to find the specific varieties of asbestos—along with the talc—in the tissues.⁹² It is a tragic case, but it is a case that will upend the world over the next five years. And it arrives from diligence and hard work.

There is another aspect to diligence and hard work that I want to talk about. And that is—in the idea of justice for all—there is something that we can do beyond just helping out the individual cases, beyond looking for the things that can make a societal difference in terms of causes of action for specific clients. There are issues that cry out for us to be novel thinkers. I want to give you two examples.

First, there is a national health crisis in America caused by opioid addiction and abuse.⁹³ Legislatures have tried to deal with it, but they are not able to effectively.⁹⁴ From my perspective, some drug companies have managed to persuade an entire generation of medical people that opioids, in some varieties, are nonaddictive and are appropriate for any kind of pain people may have.⁹⁵ As a result, we have got to not only try to wean people from opioid addiction but we also have to try to re-educate the medical community about how to handle these problems and what the drugs really do. This is a monstrous problem that cries out for a solution, and so a number of law firms around the country—including mine—have opted to try and use the court system—justice for all—to try to bring some measure of justice and stop this societal problem.⁹⁶

I find it is like the mythological Hydra. Every time you chop off one head, two more grow out.⁹⁷ Trying to corral this problem is taking some of

89. *Id.*

90. Melisa Bunderson-Schelvan et al., *Nonpulmonary Outcomes of Asbestos Exposure*, 14 J. TOXICOLOGY & ENVTL. HEALTH 122, 135 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3118539/pdf/uteb14-122.pdf>.

91. Yasunosuke Suzuki & Steven R. Yuen, *Asbestos Tissue Burden Study on Human Malignant Mesothelioma*, 39 INDUS. HEALTH 150, 150 (2001), https://www.jstage.jst.go.jp/article/indhealth1963/39/2/39_2_150/pdf-char/en.

92. *St. Louis Jury*, *supra* note 82.

93. *Opioid Overdose Crisis*, NAT'L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last updated Jan. 2019).

94. Alison Takkunen & Karmen Hanson, *States Fight the Opioid Epidemic by Expanding Access to Treatment*, NAT'L CONF. ST. LEGISLATURES (Aug. 8, 2018), <http://www.ncsl.org/blog/2018/08/08/states-fight-the-opioid-epidemic-by-expanding-access-to-treatment.aspx>.

95. Barry Meier, *Origins of an Epidemic: Purdue Pharma Knew Its Opioids Were Widely Abused*, N.Y. TIMES (May 29, 2018), <https://www.nytimes.com/2018/05/29/health/purdue-opioids-oxycotin.html>.

96. Mark Lanier, *Lanier Law Firm Takes Lead in Opioid Epidemic Lawsuits*, LANIER L. FIRM (Mar. 26, 2018), <https://lanierlawfirm.com/lanier-law-firm-takes-lead-in-opioid-epidemic-lawsuits/>.

97. See Gregory Jantz, *Fighting the Hydra*, HUFFINGTON POST (July 6, 2017, 12:58 PM), https://www.huffingtonpost.com/entry/fighting-the-hydra_us_595e57c8e4b08f5c97d0679f.

the top legal minds of our country because the companies can only settle if they find resolution.⁹⁸ It does them no good to settle with the State of Texas if the settlement does not include the City of Dallas or the State of New Mexico. You have got to somehow incorporate all of the different plaintiffs and do this in a way where you are able to bring resolution with so many different defendants—the manufacturers, the distributors, the marketers.⁹⁹ You have lots of different defendants, lots of different kinds of plaintiffs—states, cities, counties, third-party payors, various financial districts, hospitals.¹⁰⁰ You have a massive group of plaintiffs against a massive group of defendants, and the only resolution that will work is one that is total.

If you are a law student or a lawyer and you go back and read Federal Rule of Civil Procedure 23, you recognize that you must have a mandatory class or you do not have full resolution.¹⁰¹ But how do you get a mandatory class on something like this? The law was not set up to do it.

It is taking, truly, some of the greatest legal minds of the country¹⁰² to focus on this because they are intent on trying to figure out how to bring justice for all: the cry of our legal system. That is the case that is ongoing right now. The MDL (multidistrict litigation) is in front of the most able jurists in our country, the honorable Judge Polster in Cleveland, Ohio.¹⁰³ I have watched Judge Polster, who is ultra-sensitive to making sure that all sides of the story are properly presented in court, as he works overtime to find a way the courts can resolve a societal problem that likely should have been resolved through other avenues.¹⁰⁴ Frankly, I do not know what the solution is going to be.¹⁰⁵ You feel like those involved have a tiger by the tail, getting whipped around, along for the ride, and hoping not to get eaten.

I want to give you another example that is nascent, one that is coming down the pike. There is another area of societal problems that a bunch of us, perhaps quixotic lawyers, who do not mind tilting at windmills, who do not mind dreaming the impossible dream, are pursuing.

98. See Nicole Fisher, *Opioid Lawsuits on Par to Become Largest Civil Litigation Agreement in U.S. History*, FORBES (Oct. 18, 2018, 6:52 PM), <https://www.forbes.com/sites/nicolefisher/2018/10/18/opioid-lawsuits-on-par-to-become-largest-civil-litigation-agreement-in-u-s-history/>.

99. See *id.*

100. See *id.*

101. FED. R. CIV. P. 23.

102. See *Arthur R. Miller*, N.Y.U., <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=20130> (last visited May 29, 2019). A current professor at New York University School of Law, Arthur Miller is one of the country's most distinguished legal scholars in civil and multidistrict litigation. *Id.*

103. See generally *In re Nat'l Prescription Opiate Litig.*, 325 F. Supp. 3d 833 (N.D. Ohio 2018). The opioid problem is also being addressed at the state level. See generally *In re Tex. Opioid Litig.*, No. 18-0358, 2018 Tex. LEXIS 554 (Tex. M.D.L. Panel June 13, 2018).

104. Jan Hoffman, *Can This Judge Solve the Opioid Crisis?*, N.Y. TIMES (Mar. 5, 2018), <https://www.nytimes.com/2018/03/05/health/opioid-crisis-judge-lawsuits.html>. See generally *In re Nat'l Prescription Opiate Litig.*, 325 F. Supp. 3d 833.

105. See generally *In re Nat'l Prescription Opiate Litig.*, 325 F. Supp. 3d 833; *In re Tex. Opioid Litig.*, 2018 Tex. LEXIS 554.

Human trafficking is a horrible problem in our world and it is a horrible problem in our nation.¹⁰⁶ Consider these startling statistics. According to the Department of Defense, human trafficking is the fastest growing crime in the world.¹⁰⁷ It is a \$99 billion industry, according to Equality Now, a research group focused on this issue.¹⁰⁸ In America, there are 57,000 victims of human trafficking at any point in time—15,000 new victims being added each year, making billions of dollars on what is basically modern-day slavery.¹⁰⁹

The United Nations has estimated that 51% of the people who are victims of human trafficking are adult women.¹¹⁰ Twenty percent are young girls.¹¹¹ If you do the math, that also means there are still a number that are men as well.¹¹² A United Nations report also tells us that some of the traffickers—those who peddle in human life and human flesh—are women, as well as men.¹¹³ One in six runaways in America will become a victim of human trafficking.¹¹⁴

The prosecution rates for this are very low.¹¹⁵ It is a difficult thing to prosecute because there is a general perception among most American jurors that if you are selling yourself as a prostitute or a pimp, you must be doing it voluntarily.¹¹⁶ Prosecutors are hesitant to prosecute because the cases are difficult to try and difficult to win.

According to the Polaris Project, human trafficking in America has increased by 13% between 2016 and 2017.¹¹⁷ It is on the rise.¹¹⁸ If justice for all is to have bite, we lawyers need to figure out—through hard work—how

106. See Dale Archer, *Human Trafficking in America*, PSYCHOL. TODAY (Apr. 11, 2013), <https://www.psychologytoday.com/us/blog/reading-between-the-headlines/201304/human-trafficking-in-america>.

107. DEP'T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING FACT SHEET (2004), <https://www.hsd.org/?view&did=23329>.

108. *Sex Trafficking Campaign*, EQUALITY NOW, https://www.equalitynow.org/sex_trafficking_campaign (last visited May 29, 2019).

109. See Stephen Wood, *The Intersection of Human Trafficking and Immigration*, BILL HEALTH (June 27, 2018), blog.petrieflom.law.harvard.edu/2018/06/27/the-intersection-of-human-trafficking-and-immigration/.

110. *Report: Majority of Trafficking Victims Are Women and Girls; One-Third Children*, UNITED NATIONS (Dec. 22, 2016), <https://www.un.org/sustainabledevelopment/blog/2016/12/report-majority-of-trafficking-victims-are-women-and-girls-one-third-children/> [hereinafter *Report*].

111. *Id.*

112. *Id.*

113. *Id.*

114. See Hanna Cody, *Domestic Violence and Human Trafficking*, UNICEF USA (Nov. 15, 2017), <https://www.unicefusa.org/stories/domestic-violence-and-human-trafficking/33601>.

115. See *Report*, *supra* note 110.

116. See Nicholas Kristof, Opinion, *What About American Girls Sold on the Streets?*, N.Y. TIMES (Apr. 23, 2011), <https://www.nytimes.com/2011/04/24/opinion/24kristof.html>.

117. See Press Release, Polaris Project, National Human Trafficking Hotline Cases Jump by 13% in 2017 (Mar. 14, 2018), <https://polarisproject.org/news/press-releases/national-human-trafficking-hotline-cases-jump-13-2017>.

118. See *id.*

we can bring some measure of justice to this epidemic of human life trading. So, we are going for it.

You might say, “Well who are you going to sue?” We have a list. There are certain truck stops that are notorious for human trafficking.¹¹⁹ Buzzwords are used, encouraging truckers to stop and take advantage.¹²⁰ The truck driving population is a largely male population.¹²¹ They have sleeping compartments, typically attached within the truck itself, for long-haul trucking.¹²² They park in the parking lots of these truck stops because you are only allowed to drive a certain number of hours per day.¹²³ And these truck stops are infamous for peddling flesh.¹²⁴ Traffickers keep the girls, the boys, the men, and the women that they peddle at the truck stops for about two weeks before they rotate them to another truck stop for fresh faces on the return journeys.¹²⁵ We believe that the truck stops know it is going on.¹²⁶ They think it is a good thing for them; it brings them business.

Hotels and motels are famous camps for enslavement of these people who are kept under lock and key.¹²⁷ You say, “Well, we are hearing this in Lubbock, Texas. We are surely not experiencing any of those problems in our area.” Wrong. There is not an American city with a highway that goes through it that is not experiencing this problem.¹²⁸ I am from Houston, where the I-10 corridor is notorious for having some of the largest amounts of human trafficking.¹²⁹ Consider the travesty of a fifteen-year-old girl who is told, “You need to generate \$700 per night or you are going to be beaten up, deprived of food, and kept under lock and key.”

119. See Michelle Lillie, *Truck Stops and Trafficking*, HUM. TRAFFICKING SEARCH (2013), <http://humantraffickingsearch.org/truck-stops-and-trafficking/>.

120. See, e.g., *Sex Trafficking at Truck Stops*, POLARIS PROJECT (2012), <https://humantraffickinghotline.org/sites/default/files/Sex%20Trafficking%20at%20Truck%20Stops%20AAG.pdf>.

121. See, e.g., *Driver/Sales Workers & Truck Drivers*, DATAUSA, <https://datausa.io/profile/soc/533030/> (last visited May 29, 2019).

122. See, e.g., Nancy Grugle, *Asleep at the Wheel: Sleep Deprivation and Fatigue in Commercial Trucking*, ROBSON FORENSIC (Mar. 11, 2014), <https://www.robsonforensic.com/articles/asleep-at-the-wheel-sleep-deprivation-and-fatigue-in-commercial-trucking/>.

123. *Id.*

124. See, e.g., Lillie, *supra* note 119.

125. See, e.g., Dylan Wells, *On the Track: Sexual Exploitation Along the I-5 Corridor*, GATE (Jan. 9, 2017, 9:49 PM), <http://uchicagogate.com/articles/2017/1/9/on-the-track-sexual-exploitation-along-the-i-5-corridor/>.

126. See, e.g., Jessica Willey, *Sex Trafficking Victim Suing Truck Stops, Hotel for Profiting from Her Suffering*, ABC 13 (Jan. 24, 2018), <https://abc13.com/sex-trafficking-victim-sues-truck-stops-and-hotel-chains/2982366/>.

127. *Combat Human Trafficking*, AHLA, <https://www.ahla.com/combathumantrafficking> (last visited May 29, 2019).

128. Dawn McBane, *The Facts: What Is Sex Trafficking and How Widespread Is It?*, FOCUS ON FAMILY (2014), <https://www.focusonthefamily.com/socialissues/family/sex-trafficking/sex-trafficking-the-facts>.

129. See Katie Dreger, “Everything Is Bigger in Texas . . . Including Human and Sex Trafficking.”, TREASURED VESSELS FOUND. (Sept. 24, 2018), <https://treasuredvesselsfoundation.org/uncategorized/everything-bigger-texas-including-human-sex-trafficking/>.

Read some of the cases where there have been prosecutions. One of the cases that came out of Oklahoma concerned a young girl, who at the age of thirteen, had run away from home.¹³⁰ She got picked up on the street by a man and a woman.¹³¹ The man said, “Can we give you a ride?” She said, “Yes please.” They asked her, “Where are you going?” She said, “I have not figured out yet.” They asked, “Do you like to drink and smoke pot?”¹³² The thirteen-year-old said, “Yes.” They started getting her drunk and loaded on pot.¹³³ She said, “Just take me into Oklahoma City itself and I’ll be fine.” They drove her a different way; they drove her to Amarillo, Texas, where they started using her as a sex slave to the truckers that drove through Amarillo.¹³⁴

The man was caught, prosecuted, found guilty, and sentenced to 120 months in prison.¹³⁵ But the man had entered into a plea bargain.¹³⁶ As a result of the plea bargain, he argued that the sentence was too excessive for peddling and prostituting minors across state lines, which is what he pleaded guilty to.¹³⁷ The appellate court agreed that was too excessive.¹³⁸ They knocked his punishment back.¹³⁹

Something needs to be done, and this would be wonderful for lawyers to figure out. It may not be lucrative in the end. That is not the question. The question is justice for all.

My third and final point: Ethics. We have to do what we do ethically. I see Dave Cummins, my ethics professor from Texas Tech University School of Law, on the third row. He was tough, he was good, and he taught us how important it is to pursue justice ethically.

This was a difficult summer for me. The Fifth Circuit Court of Appeals wrote an opinion reversing a case of mine for two reasons.¹⁴⁰ One reason was the judge had allowed some things into evidence, and the Fifth Circuit said the jury should not have known those things. Namely, the manufacturer of this hip product had bribed doctors and pled guilty to bribing doctors and foreign governments—including Saddam Hussein’s government—into using various products, including the hip devices in some cases and other devices and products in other cases.¹⁴¹ The Fifth Circuit said the company’s behavior

130. See *United States v. Scott*, 455 F.3d 1188, 1192 (Kelly, J., dissenting), *opinion superseded by* 469 F.3d 1335 (10th Cir. 2006).

131. See *id.* at 1194.

132. See *id.*

133. See *id.*

134. See *id.*

135. *Scott*, 469 F.3d at 1336.

136. See *id.*

137. *Id.*

138. See *id.* at 1340.

139. See *id.*

140. *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 763 (5th Cir. 2018).

141. *Id.* at 785.

was so reprehensible that the prejudice outweighed the probative value, and the jury should not be entitled to hear it.¹⁴²

Additionally, there was a second reason for reversal. The panel reversed, saying that I had failed to properly inform the jury of an important issue, challenging my ethics in that trial as a lawyer.¹⁴³ It is the harshest thing I have ever had written about me in my life. And it was written in such a way where I could not comfortably appeal that without also putting the re-trial of my client's case off for years. I am in a predicament of just living with the stinging opinion, with which I did not agree, or fighting it, potentially affecting my clients losing their right to a speedy re-trial.¹⁴⁴ Recognizing that some of my clients were quite elderly and in frail health,¹⁴⁵ I opted for the re-trial, which was scheduled to start a few months later.¹⁴⁶

But here are the facts, and I think they are informative. I think Professor Cummins would put them on an exam, perhaps, and I would be interested to see how you would all write the exam answer. This is a case that dealt with artificial hips.¹⁴⁷ We had five plaintiffs.¹⁴⁸ The jury found in favor of our five plaintiffs and awarded a large amount of money.¹⁴⁹ During the trial, I, as the plaintiff, had to put on expert testimony about these hips being defective.¹⁵⁰ The hips involved a metal ball with a metal liner.¹⁵¹ My argument was a metal-on-metal hip is not a good thing, and the company knew it and they went for it anyway because they saw the bottom-line profits.¹⁵²

I put an expert on the stand: Dr. Bernard Morrey.¹⁵³ Dr. Morrey is—in my opinion—one of the most outstanding orthopedic surgeons the world has ever produced. This is a man who truly was a rocket scientist before he went to medical school.¹⁵⁴ He wrote the programs that were used to bring Apollo 13 back to Earth.¹⁵⁵ He was one of the leading orthopedic surgeons in the world, the President of the American Orthopedic Association, the head of Mayo Clinic's orthopedic division, on the trustees for Mayo, the man behind

142. *Id.* at 786.

143. *Id.* at 792.

144. U.S. CONST. amend. VI, cl. 1.

145. Testimony of Plaintiff, Elizabeth Andrews, *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 2017 WL 9807464 (N.D. Tex. Sept. 19, 2017) (MDL No. 3:11-MD-2244-K), 2016 WL 9410535.

146. Tina Bellon, *Case to Watch: Pinnacle Hip Implant Trial Gets Redo After Blistering 5th Circuit Ruling*, REUTERS (Jan. 22, 2019, 6:45 AM), <https://www.reuters.com/article/products-pinnacle/case-to-watch-pinnacle-hip-implant-trial-gets-redo-after-blistering-5th-circuit-ruling-idUSL1N1ZM0AR>.

147. *In re DePuy*, 888 F.3d at 763.

148. *Id.*

149. *Aoki v. DePuy Orthopaedics, Inc.*, No. 3-13-cv-1071-K, 2016 WL 10828742, at *1 (N.D. Tex. July 5, 2016), *rev'd in part sub nom. In re DePuy*, 888 F.3d 753.

150. *In re DePuy*, 888 F.3d at 764.

151. *Id.* at 763–64.

152. *Id.* at 764.

153. *Id.* at 788–89.

154. Bernard Morrey, *What I've Learned*, 28 J. SHOULDER & ELBOW SURGERY 607, 607 (2019).

155. *Id.*

the Tommy-John elbow surgery that brought Tommy John back into the major leagues.¹⁵⁶ This is the man who did President Bush's hips.¹⁵⁷ When President Bush needed someone to do his hip replacement, this was the man.¹⁵⁸ Barbara Bush—this was the man.¹⁵⁹ Billy Graham—this was the man.¹⁶⁰

I went to him and I said, "Would you testify for me please?"¹⁶¹ He said, "No, I do not do that."¹⁶² I said, "Would you spend a day and educate me, at least?"¹⁶³ He said, "Yes, I would do that."¹⁶⁴ He spent a day with me and he spent a day with Johnson & Johnson, the defendants.¹⁶⁵ At the conclusion of my day, I said to him, "Can I pay you for today?"¹⁶⁶ He said, "No."¹⁶⁷ I said, "Is there at least a charity or something you support? I will give some money to a charity."¹⁶⁸ He said, "You do whatever you want to do."¹⁶⁹ I said, "Well name a charity you like."¹⁷⁰ He said, "My elementary school, from 50-some-odd years ago: Saint Rita's in Fort Worth, Texas."¹⁷¹ I said, "Okay. My wife and I are big fans of supporting Christian education, and we would be honored to."¹⁷² Following this encounter, the same expert met for a day with defense counsel.

Sometime later, we wrote a check for a day's work for the expert—those experts were billing in those cases about \$10,000 per day, so we wrote a check for \$10,000 to the school.¹⁷³ At that point, the man still refused to testify.¹⁷⁴

156. *Bernard F. Morrey, M.D.*, MAYO CLINIC, <https://www.mayoclinic.org/biographies/morrey-bernard-f-m-d/bio-20053800> (last visited May 29, 2019).

157. Sealed Opening Brief for Defendants-Appellants at 19, *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753 (5th Cir. 2018) (No. 17-10030), <https://dlbjbjzgnk95t.cloudfront.net/0920000/920310/document.pdf>.

158. *Id.*

159. Jeff Hansel, *Mayo Is a Hip Place for Surgery*, POST BULL. (Mar. 10, 2007), https://www.postbulletin.com/mayo-is-a-hip-place-for-surgery/article_388acbe7-6876-54c4-af30-ce9ceaf27f87.html.

160. *Retrial Begins After Case Remanded for Concealing Expert Witness Fees*, LEXVISIO (Jan. 18, 2019), <https://www.lexvisio.com/article/2019/01/18/retrial-begins-after-case-remanded-for-concealing-expert-witness-fees>.

161. *See In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 788 (5th Cir. 2018).

162. *See id.*

163. *See id.*

164. *See id.* ("In December of that year, Lanier met with Morrey Sr. to discuss the history of MoM implants.").

165. *See id.*

166. *See id.* ("Toward the end of their meeting, Lanier offered payment, which Morrey Sr. declined.").

167. *See id.*

168. *See id.* ("Lanier then asked whether there was a charity to which he could contribute . . .").

169. *See id.*

170. *See id.*

171. *See id.* ("Morrey identified his alma mater, St. Rita's Catholic School in Fort Worth.").

172. *Id.* at 765, 788.

173. *See id.*

174. *See id.* at 788.

Fast forward to trial. The defendants were trying to defend a test that they had done, one where they had committed fraud within the test and lied about the results, putting that lie out in front of the American Orthopaedic Association.¹⁷⁵ The defense seemed to be, in part, “You know we did not do anything that bad, that is the way those things happen.”¹⁷⁶

I called Dr. Morrey on the phone and I said, “Dr. Morrey, here is what went down and here is the defense. Is that really the kind of stuff that goes on?”¹⁷⁷ Dr. Morrey was appalled. He said, “Absolutely not. They said that?” And I said, “Yes.” Then he said, “They did that?” And I said, “Yes.” Finally, he said, “Well I will come tell everybody that that was wrong.” I said, “Great, thank you.”

I told the court, “Your honor, I would like to bring in Dr. Morrey. He is not a retained expert.”¹⁷⁸ A “retained expert” in litigation parlance means I hire him to testify. Importantly, a retained expert has to produce an expert report.¹⁷⁹ I explained, “He is a non-retained expert medical doctor.”¹⁸⁰ The other side had theirs as well,¹⁸¹ including doctors that they would have paid hundreds and thousands and millions of dollars to in various ways, means, and fashions.

Within the framework of this, the court allowed Dr. Morrey to testify, something I had anticipated and told the doctor would likely take two hours of his time.¹⁸² Once the court indicated the doctor could testify, the other side decided to cross-examine him. In addition to that cross-examination, the defense asked for a chance to spend a day deposing him, with a chance to recall him to the stand. Ultimately, his testimony turned into three and a half days of his life,¹⁸³ which, in doctor parlance, is brutal—especially a doctor like him.

I put him on the stand.¹⁸⁴ He was not charging us for testifying.¹⁸⁵ I proved up that he was not.¹⁸⁶ I would have had zero qualms paying him. This is a case where the anti-Dr. Morrey, Dr. Cato Lorenzen, who was hired by the defendants, got paid over \$900,000.¹⁸⁷ I had paid my other experts and

175. *See id.* at 766–69.

176. *See id.* at 766–69, 773–74, 785.

177. *See id.* at 774, 788–89.

178. *See id.* at 788.

179. *See generally* FED. R. CIV. P. 26(a)(2)(B) (requiring a written report from a from a witness “retained or specially employed to provide expert testimony”).

180. Oral Argument at 29:32, *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753 (5th Cir. 2018) (No. 17-10030), http://www.ca5.uscourts.gov/OralArgRecordings/17/17-10030_12-7-2017.mp3.

181. *Id.* at 20:05.

182. *Id.* at 18:50.

183. *Id.* at 20:22.

184. *Id.* at 17:52.

185. *Id.* at 17:56.

186. *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 789 (5th Cir. 2018).

187. Oral Argument, *supra* note 180, at 19:57.

proved up that we paid them; it is just that Dr. Morrey would not take a dime for it.¹⁸⁸

We put him on the stand and he testified. His son was a treating doctor—that is how we found out about him; his son took the stand and testified.¹⁸⁹ Unknown to me because I am part of a big committee assigned to this trial, his son, when he gave his deposition, charged the defendants \$10,000 for his deposition time.¹⁹⁰ The Plaintiffs Executive Committee (the committee) did not pay it, the defendants had.¹⁹¹ But I did not know that; I had not prepared him.¹⁹² I did not meet him until the day before he took the stand.¹⁹³

The bottom line is we won the case, and we realized that we had to try another one. I desperately wanted this doctor to testify again, but before I approached him, I approached the committee for the litigation. I explained that we needed the doctor to testify again, a point to which all on the committee agreed. This was an MDL with over a hundred lawyers working on the case. Five law firms comprised the executive committee. The committee determined that if we were going to have to try more of these cases, we would do best if we could get Dr. Morrey to testify.

The committee was concerned, “How do we ask him to do it again when he was reticent before and the two hours he gave us turned into three and a half days?” So, the committee made a decision to try to offer him \$35,000—that is the three and a half days¹⁹⁴—documented very carefully in a letter: “You said you would not take any money, we know that. But we are including a check. Please take it. It is the fair amount, based on what everybody else was making. And we would like you to do this again.”¹⁹⁵ This letter was written by another lawyer; the check was paid by another lawyer out of the committee funds, but all with my vote as one of five.

The doctor cashed the check, as did his son.¹⁹⁶ The next case was ready for trial and, at this point in my mind, he is a retained expert because we had paid him. And I anticipated paying him again. So, I told the other side, “He is a retained expert. Here is what we paid him. Here is the check. Here is the letter. Here is how we did it. Here is why we did it. And, oh by the way, I had also given money to a private school.”¹⁹⁷ Based upon that, the defendants filed a second appellate action to the Fifth Circuit, which was combined with

188. *Id.* at 26:06.

189. *Id.* at 24:17.

190. *Id.* at 24:38.

191. *Id.*

192. *Id.*

193. *Id.* at 24:15.

194. Andrew Strickler, ‘Hidden’ Trial Expert Payment Stumble an Ethics Oddity, LAW360 (May 4, 2018, 6:30 PM), <https://www.law360.com/articles/1040475>.

195. Brief of Appellees at 24–25, *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753 (5th Cir. 2018) (No. 3:14-cv-1994-K), 2017 WL 2225288.

196. *See In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 789–90 (5th Cir. 2018).

197. Brief of Appellees, *supra* note 195.

the first appeal still pending. The second action was based on claims that I had committed fraud on the jury and fraud on the court because I had orchestrated this scheme. The trial judge had already denied the motion for new trial on that basis, hence the appeal.¹⁹⁸

Of course, I had not. It was a committee decision, not my own. Furthermore, if I were going to orchestrate a scheme, I could orchestrate a much cleaner one. I could have said, “Hey, I will give you \$35,000 just as a down payment on your next testimony,” instead of telling the truth: “This is three and a half days, this is what you did, please take the money.”

Heavens, the committee could have done that easy. We are not that dumb. But this was a situation where we clearly, as Dave Cummins taught us, have to not only avoid impropriety but also the appearance of impropriety. We should have thought, “How could this look?” rather than simply documenting what was happening.

Should the committee have done it differently? Absolutely. Because if what we are doing at its core is not ethically right and honest, then no matter how good the end is, it does not justify the means. Justice for all means we need to get there in a just way.

“Just” comes from the Latin word “*ius*.”¹⁹⁹ It is a Latin word—the Greek word is “*dikē*.”²⁰⁰ This conveys the idea of “justice” if we want to use the Latin root. If we want the Germanic root for the same thing, it is “right.”²⁰¹ “Right” is the Germanic English word for “just,” which derives from the Latin word.²⁰² In similar linguistic manner, we can speak of “pork” and “swine.” Our language is not purely romance with Latin roots; it is not purely Germanic with Germanic roots.²⁰³ We have got recombinant DNA of those.²⁰⁴ So “just” and “right” are two words we have got in the English language for the same concept. But it is a concept that goes back thousands of years.²⁰⁵ And the challenge for us, through diligence, hard work, and good ethics, is to pursue justice for all and to pursue it in the same way as that old law school primer, Deuteronomy: “[R]ighteously between a man and his brother or the alien who is with him . . . not [] partial in judgment.”²⁰⁶ “[H]ear

198. *In re DePuy*, 888 F.3d at 790.

199. *Ius, Iurus*, LATIN-IS-SIMPLE.COM, <https://www.latin-is-simple.com/en/vocabulary/noun/190/> (last visited May 29, 2019).

200. *Justice and ‘Dikē’ in Ancient Greek*, PHIL. INDEX, www.philosophy-index.com/terms/dike.php (last visited May, 2019).

201. *Right*, ONLINE ETYMOLOGY DICTIONARY, www.etymonline.com/word/right (last visited May 29, 2019).

202. *See id.*

203. Simeon Potter & David Crystal, *English Language*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/english-language> (last visited May 29, 2019).

204. *Id.*

205. *Id.*

206. *Deuteronomy* 1:16–17 (English Standard Version).

the small and the great alike.”²⁰⁷ “You shall not be intimidated by anyone”²⁰⁸

One of my mentors, Ernest Cannon, asked me, “Lanier, why do you continue to fight companies worth hundreds and billions of dollars? Do not pick fights with people like that.” I said, “Ernest, Justice for All.”

207. *Id.* 1:17.

208. *Id.*