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COMMENTARY

## Three Areas for the Practicing Bar to Change in 2024

Contributor Peter Vaira suggests three areas that the practicing bar, in conjunction with state and federal government leaders, should address in 2024.

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Practice Skills

By Peter Vaira | January 09, 2024 at 09:36 AM



This column suggests three areas that the practicing bar, in conjunction with state and federal government leaders, should address in 2024.

### The Disappearing Trial Lawyer

The trial lawyer, especially in the civil litigation practice area, is disappearing. There is very little effort on the part of civil law firms to train experienced trial lawyers. Many firms use “there are so many settlements that there is little need to continue to train trial lawyers” as an excuse. This is nonsense. In our common law court system, there is always the need to speak out and contest the opponent’s position, and cross examine the opponent’s witnesses. This trial skill requires more than classroom study to perfect. Training a trial lawyer is very much like training a bullfighter. To really learn the skills of their unique trade, the bullfighter and trial lawyer must go into the bullring or the courtroom and fight the bull or cross-examine witnesses. This training requires actually handling cases in a trial forum. That is the only way to train trial lawyers.

Leaders of many firms have said that actual trials are too costly to handle; the costs are too much for clients. If one follows that reasoning, there will be little opportunity when a client can find relief in litigation. That means we will soon have a society where there are only a few trial lawyers to represent very rich clients, and there will be very few judges on the bench who are experienced in handling trials. Some observers say we may have already arrived at such a situation.

Members of the bar cannot allow the disappearance of the trial lawyer for so-called economic reasons. The trial lawyer is the last stronghold of the freedom in this gray public world of social media.

### The Need to Bring Leadership Training to Law Firm Personnel

Other major professions have done so for years. Major business schools offer numerous courses for leadership training in the field. There is little leadership on-the-job training in the legal profession. Anyone who has spent time in law firms or the government has seen many examples of poor leadership. Professor Anthony Thompson of New York School of Law warned that by not teaching leadership we are creating dangerous leaders. Considering the sensitive nature of matters handled by attorneys, this is not an exaggeration.

The three U.S. military academies and the Coast Guard Academy all train their students in leadership. When I was an active duty navy officer, 20% of my annual performance evaluation was on leadership. There is no reason why this on-the-job evaluation should not occur in the legal profession. Many attorneys feel that leadership training should start in law school. Duquesne Kline School of Law, where I received my law degree, now offers a full semester course in leadership for law students. It is taught by visiting instructors from government and industry. The course is very popular with students. This enthusiasm will follow them when they start to practice.

Providing on-the-job leadership training for lawyers is not a project for a few CLE courses. This is not a CLE subject. Leadership requires on-the-job training. It is not “appointing as a leader” the person who bills the most hours. The firms must bring in professional leadership trainers for on-the-job training. The results will be amazing and there will be much professional enthusiasm that will certainly be noticed by clients.

## **The DOJ Should Conduct a Formal Review of the FBI**

There is a growing consensus that the FBI is no longer the professional nonpartisan agency that the public and government has relied upon for years. Information has been reported from numerous sources that top FBI supervisors have become politically motivated in major investigation decisions. There have been reports of basically unprofessional handling of top-level investigations, and the insertion of personal political interests of supervisors in decision making. I was a federal prosecutor for 15 years, including five years as the U.S. attorney. I dealt regularly with FBI agents on complex criminal investigations. I never encountered the lack of effective supervision and professionalism as has been publicly reported in the past several years. A former high-ranking FBI official who spoke to me (anonymously) said that a major problem is the lack of field leadership at the upper levels of the FBI, many of whom lack basic investigative experience. He said there are too many supervisors who have only intelligence expertise. Practicing criminal lawyers who deal with FBI field agents report that the agents are discouraged with what has happened to the reputation of their agency. The agents feel there is no longer an esprit de corps.

Whatever the reason for the cause of this condition, it must be corrected, lest we become a Caribbean-style government with political intrigues. Attorney General Merrick Garland should appoint a team of qualified attorneys, investigators, and former FBI agents, to conduct a thorough examination of the entire FBI, from top to bottom, and clean house. This should not be a political issue, but one of professional law enforcement that should concern both political parties.

Personal note: Any former judge advocate officer, in any of the military services, interested in forming an informal social group, please contact me at [pvaira@wgpllp.com](mailto:pvaira@wgpllp.com).

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