

An Interview with Gary B. Richardson

by Sabrina C. Beavens, Esq.

In July 2010, *Trial Bar News* interviewed State Representative and recipient of the 2010 New Hampshire Association for Justice Board of Governor's Award, Gary B. Richardson. Richardson is one of few lawyers, especially today, who practices at the first law firm he joined after law school, Upton & Hatfield. A seasoned trial lawyer, Richardson has been involved in a number of significant cases, but it was his humility and compassion for his clients that was most striking when speaking with him. The following is an abridgment of our conversation about trial practice and his more recent experience as a State Representative.

TBN: What is your background?

A: I grew up in New Hampshire, went to Middlebury College in Vermont and then went to Boston College Law School.

TBN: What are your memories as a young lawyer?

A: Well, it was very different from today I think. First of all, almost all of us were generalists. I handled divorces, criminal work, searched deeds: you literally did everything. I recall when I first started out I had a client who needed a tax return done and I hadn't specialized in tax, so I went to Fred Upton to ask him who I should refer my client to and he looked at me and said, "You can't do a tax return? You can't call yourself a lawyer if you can't do a tax return!" So it's a very different world and that has wider implications because I think there was more comradery and a more unified feeling among members of the Bar because we weren't just defense lawyers or just plaintiffs lawyers or just tax experts or whatever. So in some ways that was nicer. I think specialization has been good for clients and frankly I'm happier now specializing than trying to be an expert in all areas, which very few people can be. But, it has changed the atmosphere of the practice of law.

TBN: When did you start to narrow your practice to medical malpractice and personal injury?

A: I would say probably about ten years into my practice. I was really moving more and more into the personal injury type of work and then I started handling a couple of medical malpractice cases and I really loved the work. I love learning the medicine, it's such a specialty. I think if I hadn't gone to law school I might have gone to medical school.

TBN: Can you tell me about a few of your first medical malpractice cases that convinced you to specialize in that area?

A: I don't know what there is about my personality, but I've always liked helping the underdog and the first major medical malpractice case I had was a Cerebral Palsy case. It was a tragic case, the child was headed to being institutionalized for the rest of his life and the family was devastated and I got very wrapped up in the case. Another one of my early medical malpractice cases was for a minority woman who had had an IUD that had perforated her uterus. I was a brand new lawyer, I was terrified of what I was getting involved in, and I went down to New York City to depose the Chief Engineer for the company that had designed the IUD. I just asked a very simple question about the proper way to insert this IUD and lo and behold he went through all of the steps and one of the steps that he mentioned was not mentioned in the brochure that the company supplied with the IUD. I got him to testify how important that step was and the defense attorney turned several shades of red and purple. It made the case. So, I came back from that and said, well you know, I guess I really can do this work. They aren't all that easy, but it was fun.

TBN: How has the emphasis on mediation changed the practice?

A: I think the system is fairer and bet-



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ter now because of mediation and because of the open rules we have about discovery. When I started, it was much more of a trial by ambush mentality and you tried to hide the ball from the other side and surprise the other side at trial and I think that resulted in some unfair results. If you were on the winning side, it was great; if you were on the losing side it was horrible. I think that all of the discovery we do now and the wide latitude that we have in discovery together with the mediation process really result in fairer results and I think it's a good evolution.

TBN: Could you tell me about a few of your most memorable cases?

A: I represented a very wonderful woman who got HIV as a result of a blood transfusion from a surgery. She went in for a hysterectomy and was told by her doctor or she understood her doctor to say there was a salesman who sold surgical stapling devices and the salesman wanted training in how these devices work. The doctor asked if it would be alright if the salesman came to the operating room and the surgeon

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showed the salesman how it worked and she consented. Unfortunately, the device malfunctioned, she hemorrhaged, then required the blood transfusion, which it turned out was HIV positive and she eventually contracted AIDS. It turned out that the salesman was training the physician. So, in fact, the obstetrician had never used a surgical stapler device before and it was the salesman training the doctor. The case had a lot of merit and interest and the client was wonderful and had a young family and was just a hero. When we presented evidence during the trial, I think at one point, every juror in the room was crying and I know the Judge was crying and I was crying. It was quite a case.

As part of that case, I had a claim against the American Red Cross that had been responsible for allegedly not adequately screening the blood. That case went to the U.S. Supreme Court on an issue of jurisdiction because the American Red Cross was chartered by Congress and claimed immunity. Unfortunately, we lost the issue on jurisdiction and to rub

salt in the wound - the majority opinion was written by Justice Souter. So much for having a hometown advantage! Well, I've never blamed him and we have a very pleasant relationship. (Laughs).

I also handled one of the first sexual harassment cases for a female architect back in the time when it wasn't clear whether sexual harassment was a violation of law (believe it or not!)

There have really been a lot of cases over the years and I love doing them.

TBN: If you could change one thing about the judicial system, other than infinite budgeting, what would it be?

A: I would require Judges to practice law for a year every five years. I think that some Judges forget about how difficult it is to practice law. That being said, I think we have excellent Judges, but one can get out of touch with what it is like. Now, I have some criticisms of lawyers too. I think lawyers need to prepare cases better and from sitting as a mediator, it's frustrating when one of the lawyers or

both of the lawyers come to mediation and they aren't prepared and they don't know the facts or they don't know how much the lien is, you know, those kinds of things. So, I think the practice of law can be improved too. The obvious improvement as you eluded to would be to insure there is adequate funding for the Courts. It's a really serious problem. I was reading an article this morning about Justice Broderick talking about the closures that are occurring and the inadequate staffing and the judicial positions that aren't being filled and it's a bad situation.

TBN: Why did you decide to run for State Representative?

A: I had been interested in politics all of my life. My grandmother was a State Representative for 30 years.

TBN: What was her name?

A: Mable Richardson. She was a rock, a far right Republican. We had many arguments at the family table at Thanksgiving about politics and she would say "Gary, I

know I'm right, it says so right here in the Manchester Union Leader."

I was a political science major in college, but I always felt that I wanted to be a lawyer first and a politician second. I love serving in the House and it has a lot of similarities to Plaintiff's work in a sense that I'm on the Judiciary Committee and we have a lot of bills involving not only judicial issues, but issues of civil rights, such as civil marriage. I have become a better lawyer by virtue of having served in the Legislature. There is nothing that teaches you more about public speaking than actually doing it, and addressing the Legislature is like addressing a jury of 400 people. From January to June of this year, I was on the floor of the House 20 or 30 times and essentially making closing arguments. I think that a young lawyer who has some interest in politics and trial law would be very well served to run for the house and serve a term or two. It's great experience.

TBN: Could you compare your work as a Representative to representing a client at trial?

A: Yes. One of the nice things about serving the Legislature is that the only person you have to answer to or be responsible to other than your constituents is yourself. And so, I'll look at an issue and think about, well what's the right thing to do here and how will my constituents feel about it? But when you are trying a case, you are holding the lives of your clients in your hands. Their financial future at least and that puts a lot of pressure on you. I always dread losing a case when I know that my clients are in tough financial circumstances or they've lost the bread winner of the family or they've lost their mother or whatever and losing that case is going to be devastating to them. So there is less pressure really in Legislature and that is very freeing. That's a nice thing, but you know, to be able to get up and to address a large group of people about an issue you are interested in and passionate about, without the pressure of knowing that if you lose, somebody is not going to be able to

put food on your table, that's a great thing.

TBN: How has being a State Representative influenced your practice of the law?

A: It's made me a better trial lawyer. It's not only the public speaking, but serving in the Legislature lets you see how people make decisions. As I said, I view the Legislature as like a jury and it's interesting when an issue comes up for debate or discussion, not only on the floor but in the hallways, to see how people make decisions. It gives you some insight into how juries make decisions. You get to see how all people, myself included, have biases and prejudices and you get to see how sometimes people's minds can be changed. Sometimes you might have a preconceived idea of a bill, but then you go into the hearing and discuss the issue and lobbyists come in and the public comes in and you find yourself changing your mind. That phenomena of how you take an individual who feels one way and convince him or her that there is another way to look at an issue. That's what we do with juries all the time.

TBN: When it comes to the budget, and budget shortfalls, it is difficult to balance your natural bias for funding

for the judicial system with the competing interests of the other branches of government, agencies, programs, etc.?

A: That is difficult because obviously I am very sympathetic to the Courts and I'm very concerned about the Courts. Frankly the problem was that we have a limited amount of money in this most recent budget crisis. There was only so much money and we were making decisions between do you fund Health & Human Services or programs for homeless shelters or the Judiciary and those are not pleasant choices. We have to do something to get more revenue. I think that the State is at an absolute bare bones level right now. Hopefully the economy is going to improve and we are going to have more money, but our tax structure is such that we have a structural deficit. I'm very unhappy at the budget, but I don't have any regret in having voted for that budget given that all we had was that amount of money to deal with.

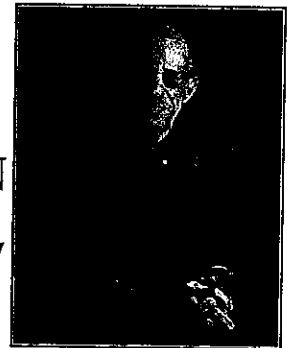
TBN: When you are not trying cases or at the State House what do you like to do?

A: I have three lovely grand children and a fourth one on the way, so I spend a lot of time with my family and relaxing. I love to sail and golf, but I'm terrible at golf. I also like to garden. ☺

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