

# JUSTICE FOR ALL

*"The law will never make men free; it is men who have got to make the law free."*

Henry David Thoreau, *Slavery in Massachusetts*, 1854

Conflict over the treatment of free and enslaved African-Americans raged throughout the careers of all who studied law in Litchfield. Early lawmakers compromised by leaving references to slavery out of the Constitution and agreeing to count each enslaved individual as 3/5 of a person when determining congressional representation. As sentiments intensified and politicians pushed for expanded freedom for escaped slaves, the expansion of slavery stood

# FEARLESS ADVOCACY

## Casper & de Toledo in Stamford: Personal Injury White Knights

WRITTEN BY HILARY JOHNSON

If the firm of Casper & de Toledo had a motto, it might be “By helping one, we help many.”

It’s a phrase that comes to Victoria de Toledo, a partner at the Stamford firm, as she mulls her response to the question “Why do you like doing what you do?”

“What we do is so rewarding,” Ms. de Toledo explained further, “because we not only help our individual clients, we make many people safer.”

Since 1987, Ms. de Toledo, and her partner Stewart Casper, whom she married in 2001, have been fighting it out in court on behalf of clients who claim personal injury or employment discrimination. They are joined by two associates, Jeremy Virgil and Benjamin Pomerantz, to help get the job done.

Mr. Casper, 56, is a former president of the Connecticut Trial Lawyers Association and is listed in “The Best Lawyers in America.” He’s also a member of the American Association for Justice, serves on its board of governors, and is chair-elect of the association’s traumatic brain injury litigation group. He received his juris doctor from Hofstra Law School.

Ms. de Toledo, 52, is a former president of the Connecticut Employment Lawyers Association and is also listed in “The Best Lawyers in America,” as well as in a listing of some of the best lawyers in the state of Connecticut. She received her law degree from New York University.

Mr. Virgil, 29, is a 2005 graduate of the University of Connecticut Law School, and Mr. Pomerantz, 27, got his juris doctor from American University Law School in 2007.

The firm’s focus on personal injury and employment discrimination is “a nice balance,” Ms. de Toledo said, because both areas of the law involve representing people who have been victims. And both areas afford opportunities to improve conditions for more than one person.

“With employment discrimination, it’s more of a focus on trying to change employers’ mindset, but even in the personal injury area, often what results from our cases is a view to doing things differently.”

Two recent cases stand out for Ms. de Toledo as good examples.

In one, a woman slipped and fell near the Stamford train station, on a walkway that was in poor condition. She broke her shoulder and her nose. The pavement was full of gaps and holes, and other people had fallen and hurt themselves, but the city had not really done anything to fix it properly, Ms. de Toledo said.

“This was a place that was seeing thousands of visitors a day. In bringing that case, not only were we successful in helping this woman who had injured herself, but we were also able to bring to light an issue that the city needed to take care of.”

The elderly woman ended up receiving \$305,000 in compensation.

Another case had to do with employment law, when a police officer in Weston protested about age discrimination, and his boss retaliated against him through internal investigations and harsh discipline. The officer was initially awarded \$860,000 from the town of Weston, though the amount was subsequently reduced.

“Hopefully officers now will be safer from discrimination, since everyone knows that the town of Weston got hit for this one rogue police chief doing awful stuff,” Ms. de Toledo said. “People around the state hopefully gained some protection by a jury saying, ‘No, we’re not going to tolerate it when people are retaliated against after exercising free speech.’”

Ms. de Toledo said that although there have been important improvements in discrimination, there’s still a lot of work to do, whether it be in terms of age, gender, or race. “In some ways, it’s gotten better, and in other ways it’s just gone underground and gotten harder to prove,” Ms. de Toledo said. For example, employers may have learned not to say anything that could incriminate them, and they may also sometimes mask their discrimination, Ms. de Toledo noted.

Ms. de Toledo said she watches influential Supreme Court cases, such as *Ledbetter v. Goodyear Tire & Rubber Co.*, and *Ricci v. DeStefano*, the New Haven firefighters’ case, with interest.

Though Ms. *Ledbetter* lost her case in the Supreme Court, Congress this year passed a law, *The Lilly Ledbetter Fair Pay Act of 2009*, that will in the future protect people who receive less pay than their male colleagues, but who do not learn about the discrepancy right away, and as such do not redress the wrong in a timely fashion.

“Lily Ledbetter herself did not get justice, but in the end the law was clarified,” Ms. de Toledo said. “In the end, what she did had great benefit to other people.”

On the subject of the New Haven firefighters’ case—*Ricci v. DeStefano*—Ms. de Toledo said that the Supreme Court’s recent reversal of a lower court’s decision in favor of the city of New Haven was a blow to affirmative action, an issue she strongly supports.

“It’s still an unlevel playing field for minority job candidates,” Ms. de Toledo said. “When some people enter the game with huge boulders in their way, it’s important for the law to try to level some of those boulders.”

“We’re obviously not thrilled with the decision,” she added. “But our laws prohibiting discrimination are still there, and we’re still going to bring cases under those laws, and courts will hopefully still be enforcing those laws.”

Both Ms. de Toledo and Mr. Casper agree that most often, the best place to resolve a personal injury suit or an employment discrimination case is in the courtroom. Indeed, that’s one way his firm differentiates itself, Mr. Casper said.

“There are a lot of lawyers out there who say they will get justice for a client, but they really don’t want to end up in a courtroom trying a case,” he said. “It can result in people taking less for a claim than it’s worth.”

“Part of our philosophy is, when we make a judgment of what a claim is worth, we don’t have any reticence at all about going to court, picking a jury, and letting a jury decide,” he added.

Mr. Casper has had his share of extremely difficult cases, such as one that pitted family members against one another. In the case, a mother and daughter sued another daughter and son-in-law in order to get homeowners insurance to pay compensation for a severe injury. ▶



*Victoria de Toledo and Stewart Casper photographed outside their firm by Walter Kidd.*

Staying overnight at her daughter's house in Southport, 72-year old Nancy Bayard got up in the middle of the night to use the bathroom and went down a very dark hall. She missed the bathroom door and instead plunged down a set of stairs with no railing, and as a result sustained severe brain injuries and numerous fractures, including her clavicle, wrist and ribs. She would never be the same again, and she required care from then on. Ms. Bayard's daughter had homeowners' insurance, but the insurance company didn't want to pay because it was an unwitnessed fall, and as such it was hard to prove negligence.

"It was the quintessential adding insult to injury, to have to go to court after their mother was severely injured, but they had to, because they had to make sure their mother had care for the rest of her life," said Mr. Virgil, the associate who worked with Mr. Casper on the case.

After a three-week trial, Ms. Bayard was awarded \$2.475 million. It was higher to begin with (\$4.125 million) but the amount was reduced because the court also took Ms. Bayard's own personal negligence into account, in line with applicable statutes.

"There was no other choice, there was no other route that could be followed," Mr. Casper said of the unfortunate case. "I'm sure that the Whitcombs [the defendants and homeowners] understood that whatever I did in court, I did on behalf of Mrs. Bayard."

Sometimes Casper & de Toledo ends up on the defensive, when it comes to the problem of dispelling the popular notion that personal injury law is clogged with litigious pests. On the firm's Web site, a message urges readers to boycott the U.S. Chamber of Commerce, which currently are trying to "reform" the tort system, and urges, "Don't Feed the Trial Lawyers."

"The Chamber of Commerce still wants to feed the trial lawyers of corporate America," Casper & de Toledo contends

in their response on the Web site. "It wants to feed the executives who are grossly overcompensated while often defrauding stockholders and consumers. And it wants the judicial system reserved for its members, forgetting about 'we the people.'"

When he's interviewing individual jurors in preparation for a trial, Mr. Casper tries to ferret out how much they know about personal injury law, and what their biases might be.

"What I always want to explore is what's really bothering people. And I find what bothers people is the frivolous lawsuit," he said. "I still hear a lot about the McDonald's hot coffee lawsuit." But though that high profile case was initially a \$2 million award (subsequently reduced), Mr. Casper would not call it frivolous.

"McDonald's knew that their coffee was hot enough to cause third-degree burns, and didn't change their policy," Mr. Casper noted. "They had an opportunity to settle the case for the woman's medical bills, but they didn't. And when the lawsuit went forward, McDonald's demonstrated a level of corporate indifference and arrogance that the jury responded to. And, in the end, the woman's settlement was reduced by the comparative negligence laws. The system worked perfectly."

Which is not to say that it does all the time. In fact, Mr. Casper recently lost a difficult medical malpractice suit. But, that's part of the job, as well.

"When I was a kid, I once heard a famous lawyer interviewed on the 'Today' show, and he said something that stuck with me," Mr. Casper recalled. "He said, 'It doesn't take anything special to win an easy case.'"

"I'm not afraid to take the hard cases," Mr. Casper added. And that, too, might be part of the firm's unofficial motto.

For more information, see the Web site at [www.casperdetoledo.com](http://www.casperdetoledo.com). ■