

O'Melveny's Dan Petrocelli Sees a 'Hellaciously Busy' Year Ahead for Big Law Litigators

"It is going to be helter skelter. These cases are colliding with one another as we start getting back to normal," The American Lawyer's Litigator of the Year says.

By Ben Seal
February 23, 2021

Dan Petrocelli hasn't seen the inside of a courtroom in a year. For the O'Melveny & Myers litigator and chair of the firm's trial practice, whose 40-year career has included work on many of the most high-profile, high-stakes cases in sports, media and entertainment, that unprecedented rupture has been a gift and a curse. Despite the distance, he says he's never been more communicative with clients, who need his help more than ever, and as a result is forging stronger relationships. But he's also spending all his time holed up in the home office he's borrowing from his wife, the days, nights and weekends blurring into one shapeless form while he waits to get back to the courtroom.

Petrocelli, who was recently named [The American Lawyer's Litigator of the Year](#) after successfully guiding AT&T and Time Warner through a historic antitrust trial, among other notable achievements, spoke with The American Lawyer about the "helter-skelter" future he anticipates when trials resume, his eagerness to resume in-person proceedings, and what the pandemic has meant for the litigation business.

This conversation has been lightly edited for length and clarity.

Ben Seal: How has the pandemic altered the cases you're handling and your approach to them?

Dan Petrocelli: We're no longer wasting time in airports and hotel rooms, so there's a lot of productivity that's picked up, and a lot of that has had to do with dealing directly with clients and strengthening ties and relationships in a way that frankly had never happened before. There's always a silver lining, there are always unintended consequences, and those are some of the positive things I saw come out of this horrible crisis.

Now we're at a place where people have adapted—clients, lawyers, people in the legal profession and judicial system—and it's going to be interesting to see as we move out of the COVID world how and if many of these



Daniel Petrocelli, O'Melveny & Myers, Los Angeles.

Photo: Diego M. Radzinski/ALM.

changes will endure. I can see some that will and I hope others do not.

I miss being in the courtroom. I miss personal interaction with people, whether it be chatting in the hallway of the courthouse or arguing in person to a judge or a jury, and yes even talking to opposing counsel. I'm old school in that I believe very much in human interaction and how we impact others and how they impact us, and I believe that's an important part of what we do as lawyers. That's more challenging in a virtual environment. I do not like taking remote depositions, for example. I do it, but it's not ideal, and I dislike even more defending my clients when I'm not in the same room.

BS: Have you taken any lessons from your experience over the past year that you expect to apply to litigation going forward?

DP: The importance of communicating more often with our clients. Because of COVID we've been effectively forced to get on Zooms and telephone calls all day. That

has paid huge dividends. It has forged stronger bonds and partnerships with clients. That's something we have to figure out how to continue in a post-COVID environment. Clients have perhaps never needed us as much as during the past year when we were all faced with new legal challenges across a broad spectrum of issues presented by this pandemic. So I hope those relationships can continue to persist and we don't go back to our old ways in that respect.

At the same time, I do think some of these remote proceedings will continue to exist in post-COVID practice. There's a place for virtual mediations in particular. You don't even need to select a mediator in your city, so you can have a larger selection of people to work on your cases. You can avoid all the travel and expense of having to go someplace and be holed up in an office all day and night. We will also see more and more court proceedings handled virtually—status conferences, for example. That said, I do hope that for the most part we go back to the norm before the pandemic because I think that's the way our profession delivers the best.

BS: Do you expect to be back in the courtroom anytime soon?

DP: My trials have all been continued. I didn't have a single trial in 2020. Maybe in the second half of this year those trials will begin. What I envision is going into next year and the year after when these cases come back, we're going to have an extraordinarily busy trial calendar. And of course the delays then provide an incentive to get cases settled as well. Judges and court systems have been working furiously to figure out how to slot in all these postponements and land all these airplanes that are coming in at one time. I think it's going to be a hellaciously busy year as we deal with this backlog.

BS: What happens when that backlog starts to become a crunch on courts and everyone else?

DP: It is going to be helter-skelter. These cases are colliding with one another as we start getting back to normal. It's going to take a couple of years for this to work through the system. There's a tremendous backlog right now. We've never had a year in our judicial history where there's literally been no trials—other than maybe a couple of bench trials handled virtually.

After that first destabilizing period when the pandemic hit, we didn't see a lot of case filings, but then plaintiffs lawyers got back in action. We're seeing the velocity of new filings increase significantly, so now you're going to have all these new cases in the system to process as well. The litigation business is going to be furiously busy.

BS: How have all the changes over the past year affected litigation practices like yours from a business standpoint, and what do you anticipate in that regard?

DP: Business levels initially were slow, but they started to pick up, and before we knew it we were all busier than ever dealing with COVID-related issues, as lawyers and judges figured out how to process cases without having to show up in person. So business levels are very high right now. If you ask me if I've had the most fun practicing law this year, that's a different story. I've been sitting in this chair in this home office of mine. I'm on the phone all day. I'm in Zooms all day. I'm reading all day, but I'm not going anywhere. I'm not running around blowing off energy. I'm not meeting and greeting people in person, I'm not in some witness' face cross-examining them or getting worked up in a courtroom making some impassioned argument—all the things that are fun to do and make me feel alive. This year has been a struggle to stay interested and stay engaged, and it's for that reason that I'm looking forward to when we're on the other side of this.

BS: Are there any cases you've handled recently that strike you as emblematic of any changes in where litigation is headed right now?

DP: Even with the change of administrations we are seeing antitrust activity pick up significantly, with government cases challenging practices and business models of some of the largest companies in the country, namely some of our technology companies. But we're also seeing private antitrust litigation getting filed with increasing frequency, so I think that's going to be a busy area over the next couple of years. There's been convergence in the world of media and entertainment. That was on center stage in our antitrust trial for AT&T and Time Warner. We've seen a lot of legal issues grow out of this process, largely fueled by the internet, because it has now become a pervasive delivery system, delivering content to people all over the world. Companies have consolidated in the entertainment and technology industries. All of these companies have now developed and launched their own platforms for delivering content over the internet. We're seeing a lot of legal issues arising out of transactions for the distribution of digital content. There are a lot of emerging issues having to do with how technology is interacting with media and entertainment.

Ben Seal is managing editor of The American Lawyer. He joined the magazine in February 2018, and previously spent five years working for The Legal Intelligencer, editing the paper's magazines and supplements and reporting on Pennsylvania's state courts, legislature and Attorney General's Office. Contact him at bseal@alm.com or @BSealTAL

