



# David Domina: A Lawyer's Lawyer

By Amile Wilson

“**M**y name is Dave Domina. I’m a lawyer.” He has made this simple statement in most states in the country, and nearly every county in his home state. In court, in corn fields and pastures, in jails, in palatial offices of wealthy people who also want help, and in seats of power.

Trial by jury (350 or so; many a month long or more), arguments in court (250 appeals alone), and life in the law have made this Northeast Nebraska native of the farm comfortable with his skills in more settings than most can imagine.

“I believe in the jury, and generally in the judge, too,” Domina reflects. “They usually want to feel good about doing the ‘right’ thing and do not ask ‘What’s in this for me?’” It is harder to believe in legislative or executive functions for what is ‘just’ without being compromised by the greedy instinct of political self-preservation.”

“A lawyer’s lawyer.” It is an interesting phrase. And, for Dave Domina, it is an aspiration. On the first weekend of the new year, for Domina, it meant a Saturday and Sunday spent in meetings with five client groups, two notable phone conferences with “very visible businessmen” in two “major cities east of the Mississippi,” preparation of a two hour lecture on legal issues for a group of 200 landowners Sunday evening, completion of two briefs, an expert witness interview and a site visit to meet clients in a new case two hours from home. He also managed press interviews in two environmental cases “that seem to be of interest.”

“Most of this work was the result of requests from other lawyers who needed a hand.” Domina’s practice involves “hard cases, that are fascinating legal problems, but can be a little intimidating for some, I guess.”

Domina is analytical. He sees the social science of the law as “a puzzle made of part what is, part what should be, and part what dare not be allowed. People understand, a little, when they hear that I never met a judge or a lawyer who got a degree from a College of Justice. We all went to Colleges of Law.”

While Domina’s work may be known in some circles, his story is not. “Everybody has a story. It is the effort that is interesting, not the story.” So, Domina talks about cases, but not about accomplishments.

Some facts stand out. Remarkable experiences in court and vast diversity in types of cases are among them. “Why would I want to be a lawyer for one narrow subject in the law? Learning is a great stimulation, and new ideas tend to stir things up,” he says.

Domina’s experiences are hard to catalog. He had lead roles in two of his home state’s three constitutional impeachment proceedings, is the only Nebraska lawyer to hear a jury return a verdict for his clients for more than \$1.2 billion and also watched several juries find his clients “not guilty” in capital homicide cases. Trials range from contested adoptions to securities fraud class actions; from ordinance violations to antitrust conspiracies.

Domina writes, too. “I try to write my own appellate briefs, and appreciate all the help from the talented people who work with me,” he says. His recreational writing includes pieces for a national magazine about the importance of trial by jury and publications in peer reviewed economics journals involving “sick markets for ag products.” When asked why he likes to write, Domina is direct. “Writing is nearly always more important to changing the law than oral comments. It is usually most important to the client’s position, too.”

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interesting, not the story.”

From international border crossing disputes in Michigan to milking machine product liability cases in New Mexico, and “good cases before Nebraska juries” Domina has “had the privilege of service to the gamut of people.” He recalls major league baseball and NFL clients, and developmentally disabled ones, too. “I wish you could have met the young mother who knew she was dying due to a missed diagnosis when she asked me to watch over her 8 month old baby and husband. I check in on them.”

Domina has a reputation for hard work, but prefers to think about devotion to his practice as “my way to say I am trying to help where I can, whenever I can.” His recreation is “a little writing about things of interest, and a lot of reading.” When asked about exercise, which he takes seriously, Domina says “all my best thoughts have come to me while exercising vigorously.”

Controversy seems to come Domina’s way. “How can I help but love to get called into issues of moment?” he asks. When asked if he worries about unpopular cases, or losing, he is philosophical. “I am not a candidate for prom king.” And, “no change comes without cost... including losing. I fell off my horse before I could ride.”

Cases of public interest have been part of Domina’s practice for years. At 24, he won a verdict for \$1 million in “a bank fraud case.” He had to learn about commodities markets the same year the Commodities Futures Trading Commission was formed to handle the case. Last year, his law firm was commended by the ACLU and commended for pro bono work on women’s rights issues.

Domina was selected to write an amicus curiae brief to the U.S. Supreme Court for the Consumer Federation of America, which claims to speak for 50 million people, to resist TransCanada Pipeline Company’s efforts to take land from Nebraskans, to sue the world’s largest protein company and to challenge Nebraska to “do much better with its water policy”. He has handled headline cases across the country and is currently “doing work for a client in Michigan with some problems.” The man is that state’s largest private landowner. Domina has been asked to “take a look at some trading issues” in commodities markets involving grain and livestock contracts. He is wry about the identities of those asking, but it is clear the people are “substantial.”

At the same time, “a colleague asked us for help in a case involving a death caused by a bad tire stem” and “the farmers from around home have an irrigation problem” and “it looks like we have to sue a bad realtor who overreached.”

Other notable works include a declaration that the state property tax was unconstitutional, successful constitutional challenges to election laws, other tax laws and statutes. “I have a pretty good start at an argument that trial by jury is required in state tort claim cases under the guarantee that “trial by jury shall remain inviolate, and was permitted against the King at the time of the Revolution,” he says.

Conversation with Domina is punctuated with talk about the future and the law’s role. His commitment to the jury system is constant. “I have been terribly disappointed with jury verdicts once in awhile, but my clients have always found it so much easier to accept the jury’s verdict than a single judge’s ruling.” He sees



Above (L to R): Brian E. Jorde, Managing Partner; April A. Nebel, Administrative Manager; Carol E. Domina, Director, Special Projects; and David A. Domina, President, Senior Partner (seated).

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From L to R: Lindsey M. Roethemeyer, Legal Assistant; April A. Nebel, Administrative Manager; Kathrin K. Weber, Trial Assistant to Mr. Domina; and David A. Domina, President, Senior Partner.



David A. Domina and Brian E. Jorde

“jury service as the best way to preserve judicial independence. The more juries we convene and people we involve, the more disciples we have for the courts.” He fears the vanishing jury as a “precursor of the independent judiciary’s predictable doom.”

Some opinions are easily coaxed from this former Army JAG officer. “When I negotiate contracts and see an arbitration clause, my offer is this: If you can name one American soldier who died for the right to arbitrate, I will sign your waiver of the jury. If you can’t, you sign my choice of venue clause.”

Domina wonders how often lawyers consider the risk of professional negligence in passing on a waiver of trial by jury without informed client consent. “Do they ever think about the fact they are waiving a constitutional right... and how unlikely it is that they are smarter than Thomas Jefferson?”

Which case stands out the most? “The one I plan to try tomorrow!” He leaves no question about the answer. What remains undone for you? “All I have not done,” he says. And what is that? He smiles and looks away.

His experiences make Domina a frequent invited speaker. He delivered guest lectures at Duke University College of Law, and the two law schools in Nebraska, and estimates “hundreds I am sure” of speeches at conventions, and banquets as a keynoter to groups ranging from physicians to farmers and preachers to teachers.

Domina preaches guest sermons and recalls “someone submitted one of my sermons in a contest.” It won the North American Sermon of the Year Award for the entire Church,” and led to an invitation to preach at the annual convention. “Then they changed the rules so lawyers couldn’t compete with preachers.”

His speeches “relate to the law.” He gives them from “maybe Lewiston, Mont., was most remote” to “an event where I got to introduce 11 foreign ambassadors at Carnegie Hall in New York City.”

What is the hardest part of a practice so active? “I really would love to have more time with my wife.” Carol is “as committed as I am to making as much of a difference as we can one problem at a time, and I love her for it,” he says.

## At A Glance

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