



REACHING THE SUMMIT:

Becoming a Top Trial Lawyer

"I'm an artifact," said William A. Barton JD'72, who has litigated more than 500 trials in his 35-year career. "I'm a product from a time of days gone by that's now extinct. There's no way young lawyers can ever acquire that kind of experience again. There aren't many cases being tried. The landscape has changed."

Barton, senior partner in the Newport, Ore., firm Barton & Strever PC, said that nowadays a trial attorney is lucky to get in one or two trials a year. "That's not the way I was raised; I used to have two or three a week," he said, voicing a concern shared by most trial attorneys about the significant decline in jury trials, which compose less than 2 percent of all cases filed.

"If your goal is to become a trial attorney, it's a hard place to get to now," agreed Christopher I. Brain JD'73, partner in the Seattle firm Tousley Brain Stephens PLLC. "It's difficult to get the experience. In large firms, it's not uncommon to have litigator partners who have no actual trial experience."

Early Exposure Was Key

Brain gained trial experience in his first few years of practice. His background was in conflict resolution for businesses, and around the time he went into a partnership with two other lawyers in the late 1970s, the Seattle real estate market heated up.

"I spent a lot of time in court as a young man," said Brain, noting that legal issues always come into play with owners, developers, contractors and businesses with property. "It was a very busy time, and it provided me with tremendous experience at a fairly young age. We didn't have mediation then. It was *mano a mano*: You settled cases by dealing with them, or you went to trial. I spent 10 to 12 weeks a year in trial in the mid-'80s."

Paul L. Stritmatter JD'69, partner in the Hoquiam, Wash., firm Stritmatter Kessler Whelan Coluccio, also acquired trial experience during his early days of practice. Immediately following his graduation from Willamette University College of Law, Stritmatter joined his father's law practice. The elder Stritmatter had two trials scheduled, so the younger Stritmatter was given a slip-and-fall case. He won.

"I thought I'd tried a good enough case," Stritmatter said. "I asked for \$13,800, but the jury awarded \$14,000 — \$200 more than I'd asked for. I was quite thrilled by that." Over the next few weeks, Stritmatter received calls from other lawyers asking if he would take their cases to trial. "I found out a lot of lawyers don't even like to go into the courtroom."

Many of the cases he took on were difficult — and he got more and more of them. "All of the sudden, I found myself trying a lot of cases," he explained. "And I was having some really nice successes."

The Snowball Effect

Stritmatter, Barton and Brain found that big wins in crucial cases helped propel their careers into unique specialty areas for which each has been widely recognized as being among the best in the profession.

Barton spent most of his first decade of practice in criminal defense. But when he prevailed in a sexual abuse case against the Boy Scouts of America in the mid-'80s for \$3.7 million, the case turned his practice almost overnight into one representing plaintiffs claiming sexual abuse or psychological injuries.

Likewise, Stritmatter took many divorce cases early in his practice. But when he sued the city of Aberdeen, Wash., over a roadway design flaw, the case opened up a new area of the law for him and brought a lot of publicity.

"Nobody really thought this was a good case," he said, explaining that the case involved young people killed and injured in a car crash while speeding. But Stritmatter thought it was a strong case of negligence by the city, and he won on appeal. "At the time, it was not part of injury law to sue a city," he explained. Suddenly, he was asked to speak around the state. Within eight or nine years, he was handling only plaintiffs' injury law cases.



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William A. Barton JD'72

Brain had a similar experience. In the mid-'80s, he served as lead counsel for a large hospital development company in multistate ownership management disputes. It became the first declaratory judgment action tried in the state of Mississippi and further established Brain's expertise and reputation in complex business litigation.

Characteristics of a Strong Litigator

When Stritmatter faced his first trial, he relied partly on skills learned in a course at Willamette. "One important thing Willamette gave me was a trial law course," he said. "I had been a plaintiff's lawyer in that. I pulled my file for the course to help me with the case.

"I got a great education at Willamette and made lifelong friends there," the Washington native said. "I was there three weeks, and I knew I was where I should be. I loved the law, the way it was taught."

"Willamette's goal was to teach you to be a lawyer," observed Brain, who, unlike Stritmatter, had left his hometown of Seattle somewhat reluctantly. "Within a short period, I began to enjoy Willamette. It allowed you to get to know your classmates. It was a pretty close class that way, with camaraderie."

Barton, who frequently speaks to law classes at Willamette, spent his earliest years in Alaska, where his father was a bush pilot. Barton said his dad was a "risk-taking" raconteur. Both traits must have rubbed off on the son, because after the family moved to Alsea, Ore., a small logging town in the Coast Range, a high school teacher predicted that the younger Barton would become a lawyer. "Being a plaintiff's jury trial lawyer was a natural fit," Barton said.



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Christopher I. Brain JD'73

According to Barton, becoming a successful trial attorney is "an alloy of liking people, tenacity, solid clinical skills, enjoying public speaking, intuition, not being averse to risk, and finally — the *sine qua non* — judgment." Barton, who studies and employs psychology in his cases, enjoys the pressure of the job.

"I believe I outprepare and outwork my opponents every time," said Stritmatter. "Second, I really care. I'm really committed to my clients and the impact [of their case] on their lives. I've always considered that an asset."

Once, when he was representing a client who became a spastic quadriplegic as a result of a severe injury, Stritmatter rented the nursing home bed next to the client and stayed there for 24 hours to better understand what the client experienced. He did not tell the jury about his own stay in the nursing home, but he was able to convey to them more effectively what he had learned.

"Third, I just am able to develop a good rapport with juries as I explain the facts to them," he added. "Jurors like me; I like jurors."

Brain said success is partly being in the right place at the right time, as is being able to recognize your luck and take risks. "The most important thing is being able to sit down with your client and figure out what the important goals are and how to get there," Brain said. "You have to be extremely quick on your feet. I have the ability to take a case and condense it into three or four primary issues and figure out where I want to go. According to Brain, doing so ensures he spends time and money on what's most important in a case.

Effects of the Drop in Trials

The decline in the number of cases going to trial has both upsides and downsides for experienced attorneys. "Because a number of lawyers lack experience in litigation, they process cases to death," observed Brain. "You go through that all the time, dealing with lawyers who are inexperienced and/or inflexible. They're losing track of the goals of the profession. What you see today is a procedural focus rather than a proactive one to get to a goal, a resolution."

On the other hand, he pointed out that with fewer experienced trial attorneys, the trial work tends to go to those who have experience. "We do a lot of work from referrals from other attorneys, because people are seeking experience," said Brain.

"The better you get, the better cases you get," Barton explained. "That almost guarantees you won't go to court. You become a victim of your own competence." An example from his own career was a 2004 case asking the Archdiocese of Portland for \$125 million in punitive damages for a former altar boy allegedly sexually abused by a priest. The defendant declared bankruptcy the same morning Barton was to take the case to court.

Advice for Aspiring Trial Attorneys

When students ask Stritmatter for advice on pursuing a career as a trial attorney, he tells them that being able to express yourself well is vital. "Become comfortable standing up in front of a judge and a jury," he said. "You really need to develop a passion for oral advocacy. You've got to feel this in your heart and in your gut. If you do, I would encourage anyone to be a trial lawyer."

Although fewer cases go to trial each year, Brain tells students: "You can get there. It's a longer process than it used to be. If you want to get on a faster track, work in a smaller firm to gain experience quicker. Look for a firm that does trial work. Look for firms with a philosophy that fits you." For his own firm, he seeks associates who have good judgment and are "able to analyze what's important."

Barton, who has made an avocation of mentoring young trial lawyers, said he advises them: "Learn to ask, 'Why?' and work on your people smarts, not just your book smarts. All the excellent plaintiffs' jury trial lawyers I know are passionate about their work, care about people, work hard and are comfortable with risk. Most people are risk-averse."



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Enthusiasm apparently is an essential trait as well. "I love going to work every day," said Stritmatter. "Having an impact on peoples' lives, generally the most important issue in their lives — I like that challenge, that responsibility."

"I was born to do what I do," noted Barton. "It's really a calling, not a job. Being a plaintiff's jury trial lawyer allows me to be a social architect or engineer. My lawsuits and verdicts drive public policy. This is a privilege, and I try to always remember this."

— Cliff Collins is a Portland-based freelance legal writer.