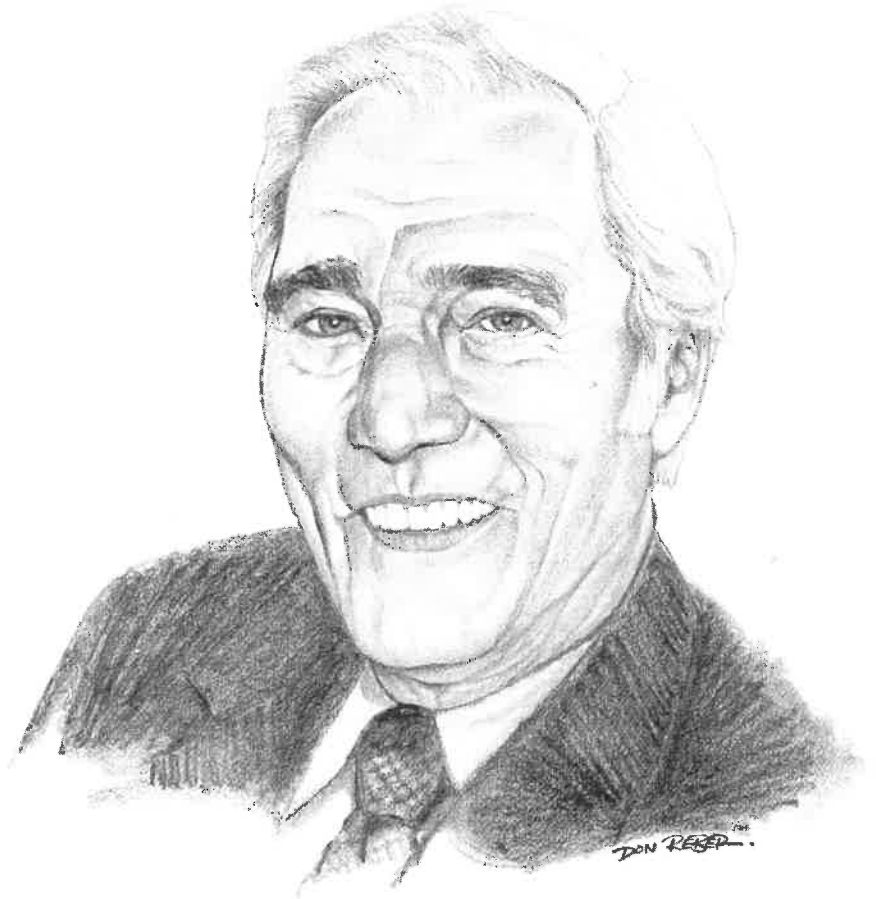


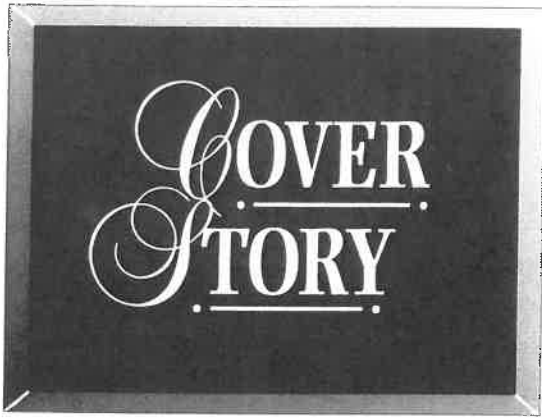
SUMMER

1994

*TWO
LEGENDARY
TRIAL*



*LAWYERS
IN
RETIREMENT*



A Look Back At The Trial Attorneys

Two careers with similar beginnings, achieving similar distinguished status but concluding in dissimilar fashion.

LeRoy Hyman and Richard A. Bausher, both past Presidents of our Bar Association, are now in retirement following two very distinguished careers as trial attorneys. Dick Bausher, in good health, chose to retire at the end of 1993 after spending his entire career with Stevens & Lee. Similarly, Lee Hyman never changed firms throughout his 36 year career. Two years ago Lee retired from Liever, Hyman & Potter, P.C., because of declining health.

Dick graduated from the University of Pennsylvania Law School in 1953. When he then sat for the Bar exam in Philadelphia, his ticket was 1313 and was assigned to seat 13. The results then arrived on Friday the 13th. Nevertheless, he overcame those superstitious odds and passed. After law school Dick was scheduled to serve his preceptorship with John Rhoda, but Dick's father, an active Republican, thought his son should serve instead with a member of the Grand Old Party. Harry Lee,

a staunch Republican at the time, thus became Dick's preceptor.

When the Preceptorship ended, Dick really did not know what he wanted to do, and Mr. Lee asked him into his office. He invited Dick to stay with the firm and Dick's response was simply "Great." When he arrived home from work that day and told his wife he had been hired by Stevens & Lee, she asked him what he would be paid. He did not know. As it turned out, the salary was \$50.00 per week. Initially, he worked on everything, including wills, real estate, attending auctions on Saturdays, as well as some criminal work. There was no specialty.

Lee attended Dickinson School of Law for one year before funds ran out. He dropped out of school to sell vacuum cleaners. During his short stay at Dickinson, he met the woman who would become his wife. Dean Walter Hitchler would not permit Dickinson students to date and would roam the streets of Carlisle on weekend nights to catch violators. So, those desiring to date went to Harrisburg. On one such occasion, while picking up his date, Lee met Rosalind Fried who happened to be visiting the home for the weekend. They were married in 1951.

After the birth of their first child, Roz convinced Lee to return to law school. Despite a stellar record, Dickinson refused to give him credit for his first year so he matriculated at Temple, graduating in 1956.

Lee was scheduled to begin his preceptorship with Ed Youngerman, who then realized he had been obligated to take someone else and would not have room for Lee. However, one of Lee's uncles convinced Sam Liever to become Lee's preceptor and a successful relationship began.

At the time, Sam also had Leonard Gajewski and Alan Baskin in the office which was on Washington Street above then Lee's Luncheonette (today it is Strat's). The office suite had three rooms, one for Sam, one for the secretary and then one for the others to share. Whenever



LeRoy Hyman

Careers of Two Legendary Now in Retirement

by Donald F. Smith, Jr.

one of the three young attorneys was meeting with a client, the other two would have to go downstairs to the restaurant. At the end of the preceptorship, Lenny Gajewski and Alan Baskin were going to look for offices and asked Lee to come along. The three of them had sought out recommendations from Sam. Later Lee bumped into Sam, and Sam asked him if he had made any commitments. When Lee replied in the negative, Sam said "Why don't you hang around for a couple of weeks and I might have plans." In fact he did, and Lee took up practice with Sam.

For the first five years of his practice, Lee did criminal defense work. Sam's approach was to ask Lee at the last minute if he had anything scheduled for that afternoon and then ask him to cover a hearing at the alderman's office. When Lee would ask him who the client would be, Sam would respond that it will be the "one who doesn't look guilty." When Lee would ask for the file, Sam would hand him a napkin with notes scribbled on it. In those early years Lee tried three murder cases. Although none were acquitted, they were all found guilty of lesser offenses. He described one case where he represented a man who had knifed his girlfriend 20 times with the same knife, killing her. The jury found him guilty only of assault. Once Sam had asked him to take over a trial after the evidence had been completed. Lee would have to make the closing argument. He went over to the courtroom and in approaching the jury he recognized his Aunt Rose. He said, "Good morning ladies and gentleman of the jury and hello Aunt Rose." She responded, "Hello, LeRoy." The judge said nothing and the opposing attorney made no objection. The case ended with a favorable result for Lee.

For four years shortly after starting practice with Sam, Lee taught business law at Albright. His students included the late Robert Van Hoove, who later served as District Attorney of Berks County, Jack Linton, senior partner of Linton & Giannascoli, and Lee Swartz, former President of the Pennsylvania Trial Lawyers Association.

James M. Potter left the service in early 1959 and

joined Sam and Lee in the practice of law. Thereafter, the firm moved to 24 North Sixth Street in September, 1959 and at that time the firm of Liever, Hyman & Potter was created.

While Sam and Jim were still engaged in a highly respected criminal defense practice, Lee began to develop a personal injury - plaintiff's practice. Eventually, after Sam's death in 1967 and under Lee's leadership, Liever, Hyman & Potter became the only Berks County firm to restrict its practice to personal injury.

Meanwhile, at Stevens & Lee, Dick came under the wing of John D. Glase, who was representing American Casualty Company of Reading, the predecessor to today's CNA. A career in insurance defense was launched.

Dick and Lee would find themselves on the opposite side of many cases in the '60s though the '80s. One encounter they both enjoy telling about is the "Billy Barton" case. It arose from a motor vehicle accident. The trial was being conducted in front of Judge Body, who was anxious to have



Richard Bausher

it concluded so that it would not interfere with deer hunting season. To avoid such a conflict, the Judge had the trial run into the evening hours each day.

Credibility was at issue. A witness for the plaintiff was testifying, and, as he testified, Dick could tell his client next to him "was doing a slow burn and was beginning to steam." After the witness finished and walked out of the courtroom, Dick's client got up and ran out after him. Dick, realizing what was going to happen, ran out after him without excusing himself to the court. When he got into the lobby, he saw the client had put the witness up against the wall and was ready to lay a right hook into him. Dick broke it up and brought the client back into the courtroom, apologizing to the court.

At that point, Lee was sure the case had been won but was anxious to see how Dick would handle it. Closing arguments in the case began at 10:00 o'clock at night. Dick started his argument by apologizing for his client's behavior but that what the jury had seen "was simply the righteous indignation of an honest man." Lee recalls Dick raising his voice and the phrase reverberating the courtroom. Dick recalls looking at Lee and thinking that Lee was about to have a stroke. Unfortunately, neither remembers the result of the case.

The two of them were together in a case that was a prelude to Dick having to stand up several times to the President Judge. At the time, they were the attorneys in the case that was number 1 on the trial list of President Judge Warren Hess. For some reason Judge Hess was very anxious to get to the second case on the list in which Dick was local counsel for the actual trial attorney who was from Philadelphia. The judge was rushing the case between Lee and Dick and made it quite clear that he wanted to get through it in order to start the next one. The pressure became so intense that Dick was afraid he was going to have a nervous breakdown. Because of the pressure that was being exerted by Judge Hess, he asked for a mistrial, and Lee, realizing the effect that the judge was having on Dick, agreed. Reluctantly, Judge Hess granted a mistrial.

Lee referred to his agreement to end his case prematurely as a "good example of lawyers working together." It was a courtesy to opposing counsel not often seen today.

Once the mistrial was declared, Judge Hess immediately called the second case to trial. The Philadelphia attorney representing the plaintiff was on trial elsewhere and was not available. Judge Hess ordered Dick to try the case as local counsel, but Dick refused. It came time to pick the jury, and Dick again refused to participate, explaining that he was only local counsel and that the attorney who was to try the case was otherwise on trial. Judge Hess instructed the clerk to pick the jury for the plaintiff. Once the jury was picked, the judge ordered Dick to try the case, but Dick again refused

the judge. Judge Hess then looked to defense counsel, and asked if he had any motions. Defense counsel moved for a compulsory non-suit, and the motion was granted. Judge Hess declared, "If I am in error in this, I will resign."

Dick recalls that three months later an appellate case came down that was exactly on point, holding that local counsel could not be ordered to try a case when he had not been listed as trial attorney. He said that for six months Judge Hess could not talk to him, but the cold shoulder eventually wore off. Otherwise there were no other repercussions to him standing up to Judge Hess, although it was quite the talk of the Bar Association.

Prior to having statewide practice, an attorney had to be admitted to the Bar of each county in which he desired to practice. Besides Berks, Dick was admitted to practice in Schuylkill, Lebanon, Lancaster and Northampton Counties. He came to have a case load of 250 to 350 cases. He wrote his own pleadings, conducted his own discovery and researched and drafted his own briefs.

In the days before comparative negligence, when a plaintiff could be held to have been contributorily negligent as a matter of law, Dick established a record of success. At one point, he had achieved a string of ten consecutive compulsory non-suits in fall-down cases. At the time, it was a record, and no doubt still stands today.

Although a superb cross-examiner, the result of thorough preparation, to an observer, Dick's closing arguments were always the highlight. Working without notes his argument would be emotional, persuasive and at times the boom of his voice would seem to rattle the rafters. In the summer of 1990, this writer represented a plaintiff in the trial of a dram shop case in which Dick was the defense attorney. The plaintiff had been severely injured in a one car accident after having too much to drink at the defendant-bar. During the trial, Robert "Hank" Miller, long-time partner of Dick's at Stevens & Lee, died from serious injuries in a one car accident under similar circumstances.

Closing arguments were scheduled for the day after Hank's death. Dick recalled later that his speech in defense of the bar and against the handicapped plaintiff "was probably the toughest I ever had to give." He expressed doubts to his wife as to whether he could go through with it given the irony of the situation. But go through with he did. It was vintage Bausher, with no let up. Nevertheless, even as trying as it has been for him, he extended the courtesy to complement the plaintiff's attorney for his closing argument. There was a defense verdict in the case.

Judge Calvin Smith, in his "Berks County Bench and Bar - A Commentary" describes Dick as, "He'll break before he'll bend." Dick recognizes that he had a reputation as being tough. "From a defense point of view you just had to steel yourself. Put on a callous front." Dick recalls being in

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the middle of a trial with the plaintiff so horribly injured that Dick would break down and cry at the dinner table in the evening, knowing that he would have to go in the next morning and either hope for a defense verdict or a low verdict.

There have been lighter moments. Dick recalls a case where the plaintiff claimed negligence against the hospital because she had fallen off a chair while on a bedpan. During his closing argument, Dick sat in the chair and bedpan throughout his speech. He was able to complete the argument without falling off, and there was a defense verdict.

Dick suffered one loss he enjoyed telling about. The case involved a very Dutchified plaintiff who insisted upon a recovery of \$6,656.00 for his back strain injury, the damage to his truck and the damage to his cow, Tillie, following a motor vehicle accident. The insurance company had offered \$2,500.00, but the plaintiff would not budge. When the jury rendered its verdict, it was exactly for \$6,656.00. Dick was dumbfounded when the verdict was read and simply had to laugh. He had no idea how the jury had come up with that exact figure, unless they had overheard something in the elevator.

Lee's preparation on a case was likewise unequalled. Not only would the facts be mastered, but the appellate law on every point was nailed down. While Dick's style was to deliver an emotional closing argument, Lee would quietly persuade the jury to his point of view by sound reason.

In his civil practice, Lee cannot recall suffering a defense verdict in any case. However, one victory only came after a retrial. Lee was counsel for an African-American who was seriously injured in a motor vehicle accident while traveling through Berks County. At the completion of the case, the jury announced the verdict for the defense, but when members of the jury were leaving, the foreman was overheard by Lee to say "Nobody in Berks County will ever give a nigger money." Lee asked for a retrial, which was granted. There was a verdict for the plaintiff in the second trial.

Lee's career included several firsts. The first medical negligence case that was tried in Berks County was Lee's. The defendant-doctor had removed the appendix of a teenager who was a charity patient at the time. She was released from the hospital the next day following surgery and went home with her stomach extended. Soon thereafter she developed a high fever with severe pain. The mother called the doctor, but he did not respond. The child then died. The verdict in the case was \$20,000.00, which was considered high at the time for the death of a child.

The first traumatic neurosis case tried in Berks County was tried by Lee. The plaintiff had been injured in a truck accident and continued to complain of pain even though, objectively, he was physically recovered. The defense attorney became so incensed with Lee that he would consider pursuing such a case, calling it "quackery", that he threatened Lee with disciplinary action.

The late Herbert Johnson, M.D., was to be the medical witness for the defendant. Because Dr. Johnson could never be bothered

with going to court, his trial deposition had been taken. The trial began before Judge Warren Hess. When it came time to present the defense medical evidence, Judge Hess would not accept the deposition of Dr. Johnson. A subpoena to compel the doctor's appearance in court was issued. The doctor chose to ignore it. Judge Hess threatened contempt, and, with the intervention of the doctor's personal counsel, Dr. Johnson finally appeared. He testified that the plaintiff was physically recovered, but on cross examination by Lee, Dr. Johnson admitted that the plaintiff's continuing complaints of pain were legitimate. The complaints, although real, were based upon an emotional reaction rather than a continuing physical impairment. The jury verdict was for the plaintiff in the amount of \$10,000.00.

Lee's effectiveness as a plaintiff's attorney was recognized statewide in 1973 when he was elected Secretary of the Pennsylvania Trial Lawyers Association. Unfortunately, his health was not the best. In 1968 he had suffered his first heart attack. Then in 1973 he was admitted to the Cleveland Clinic for heart by-pass surgery. Another heart attack prevented the surgery from taking place. While a patient at the clinic, he learned he had been elected President of the Berks County Bar Association.

It was during Lee's presidential term that the Bar's first Executive Director was hired. "Up until then the Bar had been mainly an honorary association, but we made a conscious decision to be more active and having an Executive Director would help," explains Lee.

Despite the failure at Cleveland, Lee was able to return to a trial practice by following a strict diet and a walking regimen. He would try cases into the 1980's. His success in the field of medical negligence continued, including achieving a jury verdict in a claim against psychiatrists for the suicide of their patient.

In the summer of 1988 Lee was diagnosed as having Parkinson's Disease. Then, in the fall of 1988 he suffered a "cardiac event" while at the office and was admitted to the hospital. During that admission, by-pass surgery was successfully completed. Thereafter, Lee continued to come into the office until the effects of Parkinson's Disease made walking difficult.

Lee and Roz have two children. Cathy graduated from Dickinson School of Law and is a Master with the Court of Common Pleas of Berks County. Bradley is an Associate Professor in Neurology at the Harvard Medical School.

Dick's notorious "Bullshit" stamp ("I found that some letters simply required a terse response.") has been willed to his son, Dan, who is a partner at Stevens & Lee. Knowing Dan was at the firm and able to carry on his work made retirement easier for Dick. His other son, Bruce, is at Reading Body Works.

We celebrate the careers of two trial attorneys who achieved great success as tough advocates while being courteous to the other side, and giving much of their time to the work of the Bar Association. ■

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