

THE TRIAL LAWYERS

FRED
BARTLIT
♦
JULIUS
CHAMBERS
♦
PHILIP
CORBOY
♦
LINDA
FAIRSTEIN
♦
DAVID
HARNEY

— THE —
NATION'S TOP
LITIGATORS
TELL HOW
THEY WIN

"RACEHORSE"
HAYNES
♦
ARTHUR
LIMAN
♦
JAMES NEAL
♦
HOWARD
WEITZMAN
♦
EDWARD
BENNETT
WILLIAMS

EMILY COURIC

THE TRIAL
LAWYERS

THE NATION'S TOP LITIGATORS
TELL HOW THEY WIN

EMILY COURIC

ST. MARTIN'S PRESS NEW YORK

THE TRIAL LAWYERS. Copyright © 1988 by Emily Couric. All rights reserved. Printed in the United States of America. No part of this book may be used or reproduced in any manner whatsoever without written permission except in the case of brief quotations embodied in critical articles or reviews. For information, address St. Martin's Press, 175 Fifth Avenue, New York, N.Y. 10010.

Design by Judith Stagnitto

Library of Congress Cataloging-in-Publication Data

Couric, Emily.

The trial lawyers : the nation's top litigators tell how they win
/ Emily Couric.

p. cm.

ISBN 0-312-02305-7

1. Trial practice—United States. 2. Lawyers—United States.

I. Title.

KF8915.C63 1988

447.73'7—dc19

[347.3077]

First Edition

10 9 8 7 6 5 4 3 2 1

ACKNOWLEDGMENTS

This book grew from hours of interviews with ten lawyers. They were kind enough to give their time freely and to explain with care and patience exactly how they try and win their cases. I am very grateful for their generosity.

Many other people in these lawyers' offices also assisted with my research and inquiries. Those who were especially helpful include: Sidney N. Herman and Barbara E. Zarnecki of Kirkland & Ellis in Chicago; Susan E. Stearns of Corboy & Demetrio in Chicago; Sylvia Musser of Harney, Wolfe, Shaller & Carr in Los Angeles; Judy Fogarty and Jan Woodward Fox of Haynes & Fullenweider in Houston; Leslie G. Fagen of Paul, Weiss, Rifkind, Wharton & Garrison in New York; Thomas H. Dundon and Joanne Miller of Neal & Harwell in Nashville; Karen Homer of Wyman, Bautzer, Kuchel & Silbert in Los Angeles; and Julie

∥ THE TRIAL LAWYERS ∥

Allen of Williams & Connolly in Washington, D.C. Many thanks to them, too.

I am also indebted to my literary agent, Trish Todd, who enthusiastically embraced this project and introduced it to the publishing world. Similarly, my St. Martin's Press editor, Michael Sagalyn, spurred me on with his probing questions and insightful comments. This was clearly a team effort.

I especially appreciate *National Law Journal* editor T. Sumner Robinson's unflagging support and advice. It was he who first suggested that I write about winning trial lawyers' courtroom techniques.

Finally, I must thank my sons, Raymond Wadlow and Jeffrey Wadlow, for their sustained interest, enthusiasm, and patience over the many months I worked on this book. And of course, I am most deeply indebted to my husband, George Beller, who, throughout any of my endeavors, is a constant.

—Emily Couric

FOREWORD

They might best be called the shock troops of the legal profession, the ones called in when all else has failed. After the niceties of early legal wrangling, it is up to the trial lawyers to right wrongs, prosecute or defend the accused, and see that—for at least one side—truth wins out in the courtroom’s bright glare.

Of course, real-life courtroom lawyers know that real-life cases seldom are won solely on the basis of flowery oratory. Instead, it’s a matter of mastering an extraordinarily complex set of facts and presenting them to jurors in a way that convinces them there is only one possible right version: their client’s. And witnesses who confess on the stand, freeing an unjustly accused person, are even rarer; litigation rules now leave few opportunities for dramatic flourishes of that sort.

∥ THE TRIAL LAWYERS ∥

But the successful trial lawyer remains a breed apart from others in the bar. He or she (and women are slowly being added to top litigators' ranks) is supremely confident of a wide range of skills, not likely to be content with a backseat role in some professional association. They're crack investigators who leave no stone unturned in preparing their client's case. They're willing to fervently take on almost all challenges, often when the client is sure there is no hope left, that he or she has been written off by everyone as a loser.

It is in the courtroom itself where all this pays off. The trite comparison of courtrooms to boxing rings is not all wrong: Most of the time, there is a clear winner; it might not be a knockout, but a TKO often means victory for one side. And for the spectators at a good trial, there is enough counter-punching to whet any appetite for mayhem. Solid blows are landed, and even the glancing shots might slow down the opponent enough to weaken the whole fabric of the case.

For me, the fascination with trial lawyers probably began in the county seat of Walker County, Alabama, in the early 1960s after a bootlegger broke the unwritten rule of the backwoods and shot a federal agent. The ensuing trial, which I covered for the local paper, was part revival and part classroom, and wholly alluring. And that fascination never left, whether I was watching the worst of court-appointed attorneys defending the dregs of the criminal justice system, or watching the nation's best courtroom tacticians defend numerous top Presidential aides—not to mention a Vice President and a President of the United States—in the 1970s as a reporter covering legal affairs for *The Washington Post*.

There has been much talk of "reform" in the jury system. Cases are too complex, the argument goes; jurors are too easily swayed; it boils down to a popularity contest among lawyers. Needless to say, the successful trial lawyers aren't the ones leading

\\ Foreword \\

that movement. For they know, as would anyone who has prowled the nation's courtrooms—or even watched “Perry Mason” win yet again—that there’s a reason the system has remained intact in principle for centuries: It works.

T. Sumner Robinson
Editor-in-Chief
The National Law Journal
New York City, March 1988

INTRODUCTION

Americans like to compete, and some of the best battles in this country take place in the courtroom. We watch raptly as skilled, knowledgeable, and experienced attorneys fight to prove that they're on the side of justice, and that they should be the victors.

The contest holds another interest for us, too. We love the human drama behind a trial—the unfolding of a story through the words of witnesses and experts. Again, the lawyers are most important in this retelling. They direct the characters, weave the plot, and reveal the passion, tragedy, or greed behind their cases. In court, lawyers mesmerize their listeners, much like preachers whose job it is to make believers of all who listen. They meticulously choose their words and carefully craft their sentences. Their delivery may be relaxed and easygoing, or sharp and flashy. It is

∞ THE TRIAL LAWYERS ∞

always compelling. And when these advocates finish speaking, when the trial is over, the lives of their clients may—or may not—be finished, too. Either way, they are forever changed.

This book tells the story of ten famous trials, and how ten well-known lawyers won them. These nine men and one woman represent the upper echelon of their profession. They come from every specialty within the trial bar, and from every part of the country. Among them are corporate lawyers, personal injury and medical malpractice specialists, criminal defense lawyers, a civil rights advocate, and a prosecutor. They control the fate of business leaders and Hollywood celebrities; they advocate the rights of the average man; they represent alleged thieves, arms merchants, murderers, and drug pushers.

The chapters describe the litigators' rise to success—how they began a career, their sources of inspiration, the hurdles they overcame. They reveal the techniques and strategies they use to insure victory. You'll learn the secrets that never made the papers during sensational trials. The lawyers divulge inside information and supply tips and wisdom gained through years of experience. You'll watch them apply their know-how to a trial that epitomizes their success.

The Trial Lawyers takes you into the exclusive world of high-powered law, where fees mount quickly into the hundreds of thousands if not millions of dollars, and trial preparation takes on the flavor of war. You'll learn how the nation's best choose from hundreds of cases the ones they'll accept and sweat blood to win; how they feel about representing criminals; how they develop a working rapport with clients during months or years of close contact; and how they size up the opposition.

It's a demanding, often grueling life. Survival depends on working harder than the competition. That means being the best in pretrial discovery, knowing what to delegate to younger lawyers

\\ Introduction \\

and what to handle yourself, plotting effective pretrial motions to give a client an advantage later on, and coaching witnesses to deliver impeccable testimony in court. How do the best trial lawyers develop strategy for a case? How do they select a jury? What do they put into opening statements and on closing arguments? How do they prepare and execute the perfect cross-examination? *The Trial Lawyers* answers these questions while providing a sensational, behind-the-scenes look at ten of the titanic legal battles of our time.

The Trial Lawyers

Fred H. Bartlit, Jr., Kirkland & Ellis, Chicago. Bartlit knocked out National Business Lists, Inc., when that company sued his client, the Dun & Bradstreet Corporation. NBL claimed that D&B had a monopoly in business data bases. Bartlit stunned courtwatchers by proving instead that NBL had been “stealing” from D&B and was guilty of copyright infringement. The verdict for D&B: \$8 million.

Julius L. Chambers, NAACP Legal Defense and Educational Fund, Inc., New York. Chambers is a lifelong fighter for civil rights. Cases he handled from his Charlotte, North Carolina, law firm produced key U.S. Supreme Court rulings on employment and education discrimination. Here Chambers reflects on one of the landmark desegregation cases of the century, *Swann v. Charlotte-Mecklenburg Board of Education*, where for the first time the Court endorsed busing to desegregate schools.

Philip H. Corboy, Corboy & Demetrio, P.C., Chicago. Fifteen-year-old Danny Schaffner was brain damaged when he fell off his bike riding over a Highland Park, Illinois, railroad crossing. Schaffner's parents contacted Corboy. They sued both Schwinn Bicycle Company and the railroad, the Chicago and North Western Transportation Company; the jury found the railroad fully

∞ THE TRIAL LAWYERS ∞

liable and awarded Danny more than \$8 million. Corboy is a flamboyant personal injury lawyer, the attorney of choice among other Chicago lawyers, judges, and politicians.

Linda Fairstein, Chief, Sex Crimes Prosecution Unit, District Attorney's Office, New York. Fairstein recently prosecuted Robert Chambers on charges of murdering Jennifer Levin during rough sex; Chambers eventually pleaded guilty to first-degree manslaughter. Earlier, Fairstein successfully prosecuted Marvin Teicher, a suave dentist who sexually abused female patients while they were sedated. Fairstein used a court-ordered undercover camera to catch Teicher in action, disproving Teicher's claim that his caresses relieved respiratory distress.

David M. Harney, Harney, Wolfe, Shaller & Carr, Los Angeles. A sharp-tongued Irish American, this products liability and medical malpractice lawyer takes on clients such as Harry Jordan, a sixty-two-year-old insurance man who had his healthy left kidney removed instead of his cancerous right one. In a poll taken by the physicians' trade journal *Medical Economics*, defense attorneys voted Harney the "best plaintiff's lawyer in the land."

Richard "Racehorse" Haynes, Haynes & Fullenweider, Houston. Nicknamed "Racehorse" by a school football coach, Haynes defends clients in a "Smith & Wesson divorce," where "someone pulls the trigger, and then the marriage is over." He represented Fort Worth, Texas, businessman T. Cullen Davis, acquitted of attempting to murder his wife and of murdering his stepdaughter and wife's boyfriend; and socially prominent Houstonian Dr. John Hill, accused of murdering his wife, but himself murdered before trial. Despite public hostility toward arms dealing, Haynes successfully defended Ian Smalley, charged with selling tanks to Iran and antitank missiles to Iraq.

Arthur L. Liman, Paul, Weiss, Rifkind, Wharton & Garrison, New York. The lawyer who questioned Oliver North for the U.S. Senate committee investigating the Iran-contra affair, Liman tells here how he vindicated the New York Transit Authority when he sued and won \$72 million from Rockwell Inter-

≡ Introduction ≡

national Corporation after it put defective undercarriages in the city's new subway cars. Liman also represented fugitive financier Robert Vesco, businessman John Zaccaro, investment banker Dennis Levine, and corporate raider Carl Icahn.

James F. Neal, Neal & Harwell, Nashville. One of Neal's most challenging cases was that of Elvis Presley's physician, Dr. George "Nick" Nichopoulos, who was accused of supplying the late singer with drugs leading to his death. Dr. Nick was acquitted. A former Watergate prosecutor, Neal also successfully defended director John Landis, producer of the ill-fated movie *Twilight Zone*, in whose filming actor Victor Morrow and two children were killed; and former three-term Louisiana governor Edwin W. Edwards, on charges of racketeering and fraud.

Howard L. Weitzman, Wyman, Bautzer, Kuchel & Silbert, Los Angeles. Weitzman caught the public by surprise when his client, automaker John Z. DeLorean, was acquitted on charges of cocaine trafficking. Most everyone had seen the "60 Minutes" tape of DeLorean in a hotel room toasting with champagne a suitcase of cocaine. Then Weitzman made a repeat performance, successfully defending DeLorean in a second trial for alleged fraudulent financial dealings. Other clients include actors Marlon Brando and Sean Penn, rock singer Ozzy Osbourne, and palimony lawyer Marvin M. Mitchelson.

Edward Bennett Williams, Williams & Connolly, Washington, D.C. Williams, whose name is synonymous with trial expertise, has built one of the best litigating firms in the country, with clients including U.S. Senator Joseph R. McCarthy, former Teamsters chief Jimmy Hoffa, and Richard Nixon's treasury secretary John B. Connally. When Connally was tried on charges of accepting an illegal gratuity in the infamous milk fund case, Williams proved that his client's accuser was lying to protect himself from criminal exposure.

In the ten case stories described here, these lawyers say they were on the right side of the law. They say they deserved to win.

≡ THE TRIAL LAWYERS ≡

Yet more importantly, they also say that justice is not a easy victory. It is, rather, a competition, one that demands the best minds, the most finely tuned skills, and the know-how that comes from the experience of many earlier battles.

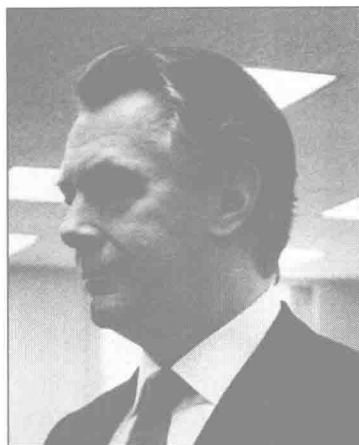
THE TRIAL
LAWYERS

CONTENTS

Acknowledgments	vii
Foreword	ix
Introduction	xiii
Fred H. Bartlit, Jr., <i>Kirkland & Ellis, Chicago</i>	1
Linda Fairstein, <i>Chief, Sex Crimes Prosecution Unit, District Attorney's Office, New York</i>	41
Howard L. Weitzman, <i>Wyman, Bautzer, Kuchel & Silbert, Los Angeles</i>	79
David M. Harney, <i>Harney, Wolfe, Shaller & Carr, Los Angeles</i>	115
Arthur L. Liman, <i>Paul, Weiss, Rifkind, Wharton & Garrison, New York</i>	149
James F. Neal, <i>Neal & Harwell, Nashville</i>	183
Philip H. Corboy, <i>Corboy & Demetrio, P.C., Chicago</i>	221
Julius L. Chambers, <i>NAACP Legal Defense and Educational Fund, Inc., New York</i>	261
Richard "Racehorse" Haynes, <i>Haynes & Fullenweider, Houston</i>	297
Edward Bennett Williams, <i>Williams & Connolly, Washington, D.C.</i>	327
Conclusion	361
Index	365

FRED H. BARTLIT, JR.

Kirkland & Ellis, Chicago



Jon M. Ricci

As a successful trial lawyer, Fred H. Bartlit, Jr., overcomes two obstacles. The first is his appearance. Bartlit is movie-star handsome. Six feet two inches tall and 216 pounds, he strides into a courtroom impeccably dressed in an Italian double-breasted suit. He's straight-arrow tall, with shoulders held back and square jaw forward, waves of graying brown hair combed securely in place. Many jurors dislike Bartlit precisely because of his looks, including, he says, "successful men about my own age and young attractive women in their twenties." The latter, he surmises, don't trust him. "Historically, I've done better in long trials than in short ones," observes the fifty-six-year-old Bartlit, who likes time to build up that trust.

Second, Bartlit represents corporate America, companies