

THE CARLSONS

Preparation Pays Off For This Father-Son Team

by Wendy L. Werner



Eric Carlson, left, and father Joe enjoy an easy give-and-take in their practice at Carlson & Carlson.

Maybe it was flying an airplane that reinforced Jon Carlson's tendency to look at the big picture. Having a pilot's license may have allowed him to temporarily escape from his immersion in trial law, or perhaps he chose this interest in part because of his skills in looking at the broad scope.

In the meantime, his son Eric Carlson may be found on the ground. In his limited free time, when he isn't shepherding his three children to myriad activities, he might be found working in his yard. He sees himself as someone who digs for the details.

Both are committed to knowing everything they can about their client's case—and being absolutely prepared for trial.

The two practice together at the firm of **Carlson & Carlson, PC**, in Edwardsville. There is an easy give-and-take between the two that demonstrates their professional relationship, and their contrasting styles.

"When I work up a file, I am probably the super-detail person and Dad is the big-picture person. It works in a complementary way. He offers new perspectives. I may be more paranoid about paying attention to the minutia, and he helps give me a new perspective," says Eric.

His father agrees. "Eric has a talent for detail that I never had. He can take huge amounts of material and put it in an order that I may never have been able to. When I started 42 years ago, I could take the whole case to court under my arm. Now you have trial boxes, dollies, and exhibits that have evolved to being much more information. Discovery has changed trial practice significantly."

Jon started practicing back more than 40

years ago in 1967 in East St. Louis. He had completed the University of Illinois "three-three" program. It offered college juniors an opportunity to apply to law school and complete both degrees in six years. He had been thinking of completing a Ph.D. in history, and was initially turned down for the law program. But literally days before law school classes were to begin he received an acceptance letter, and literally flipped a coin to decide whether or not to attend. Although he still enjoys history, he was beginning to believe he might not want to spend a number of years in the musty library stacks. "Law seemed like it might be a little more exciting," he says.

He has never regretted his choice. "Maybe I watched too many *Perry Mason* shows," says Jon, "but I thought a courtroom might be an interesting place. So in law school I gravitated toward evidence and torts."

After a short stint with a general practice lawyer, he moved to Belleville in 1978 and started working in personal injury litigation. "But I had a problem—I was painfully shy and I didn't much like to speak up. Early in my career I worked for Walter Kassly and Maurice Bone. Walter never tried cases, but he had a tremendous knack for getting business. In turn, he gave me the opportunity to try cases."

This early experience trying cases built his confidence. "I was learning by doing. In a particular trial I remember returning from the courtroom and lamenting that the judge and the defense lawyer were both chopping me up. Kassly suggested that in closing I tell the jury that I was a young lawyer doing the best that I could, and to apologize for any errors

that I had made. Additionally, he suggested that I tell them that opposing counsel was very experienced and one of the best lawyers in southern Illinois. The jury responded favorably, and I received a plaintiff's verdict.

"I decided that I liked the courtroom, and particularly so when the jury came back and showed their love by giving my client a positive verdict.

"I became almost obsessed about learning how to be a good trial attorney. I went to seminars, I listened to record albums of famous closing arguments—that was the media of the time—and I joined the trial lawyers association.

"Don't get me wrong—after 41 years I am still terrified any time I walk into the courtroom. I once heard the famous attorney Jerry Spence say that F. Lee Bailey was never afraid in court. Spence said, and I agree, 'You're a fool if you're not afraid.' The hardest part of trying a case for me is hearing the buzzer ring when the jury is coming back to announce their verdict."

Closing Arguments Over Barbecue

When asked about his own decision to enter the practice of law, Eric reflects. "I go back and think about my aspirations, and there was obviously exposure to the legal practice at home. Probably the most extensive exposure was having the opportunity to hear opening and closing arguments while my dad was working at the barbecue pit. Cooking out was one of his main pastimes—maybe we should thank the Weber Company for my involvement in the law."

Like his father, Eric gravitated toward history and was a history major and English minor at the University of Illinois, before attending law school at Southern Illinois University in Carbondale.

While in school, he worked for a trial lawyer in Southern Illinois, John Womick. "For the first six months, all I did was abstract depositions. I could do them in my sleep! He was so committed he used to take advance sheets with him on vacation and abstract all the new cases and dictate them to the support staff! He was a very interesting person to work with and for, and he taught me a lot."

Jon jumps in. "John Womick is a very good lawyer and he really wanted Eric to stay in Carbondale. But I knew something else—Eric's wife didn't want him to stay in Carbondale." So he returned to his home town and has been practicing with his father ever since.

Working with his father may have given Eric a

greater perspective on his profession than other lawyers of his age. “It is a different time in the legal profession. When Dad started, everything went to trial. You didn’t have discovery. You just showed up at the courthouse. The facts were what the facts were, and you tried it. Now everyone knows everything before you set foot in the courtroom. A large percentage of cases are settled now.”

But that doesn’t mean the younger Carlson hasn’t earned his stripes as a trial attorney. “I just finished a trial in Galesburg, Illinois, living out of a hotel for four days. I haven’t slept all week, I haven’t eaten all week, and it is definitely one of the most stressful things that you could ever do.”

His father concurs. “I have tried cases in five or six other states. Trying cases from a hotel room isn’t fun—I don’t do that much any more. The reason fewer cases are being tried now is because mediation is becoming an important tool. Companies want to mediate if you have a good case.”

Preparation Pays

One key to having that “good case” is preparation. “Preparation is everything if you want to be a trial lawyer,” Jon says. “You have to know every scrap of paper in the file and have total command of the facts. Your credibility is everything. You can’t tell your jury anything unless you can back it up with facts.”

Eric agrees. “You have to think about all of the options and what might happen next. You must know every mole, potential hole, or scratch in your case. You have to be able to handle everything that could possibly happen, and that should lead you to extraordinary preparation.”

The firm tried a vehicle accident case that required them to question the veracity of the state trooper’s accident report. “If you looked at the police report alone you would never have taken the case,” says Jon.

Both sides hired accident reconstruction experts. Their opponent’s expert came up with calculations and mathematical formulas regarding velocity of vehicles and the impact upon the accident. “The two history major lawyers weren’t really very capable of handling the mathematics,” says Eric. “But my grandfather was an engineer. He took a look at the mathematical formulas and found them to be inaccurate. As a result we were able to expose those errors at trial.”

Ultimately their client, a non-English-speaking man from Mexico, was awarded \$5.5 million. “We were very gratified to have three generations working on the case,” Eric says.

But sometimes the two “history major lawyers” become experts themselves, Jon explains. “We had a terrible case where a blast furnace malfunctioned and the molten material

exploded into a 3000-degree fireball, killing our client. Eric became an expert on blast furnaces.”

Eric picks up the story. “The advent of the internet has helped us learn about educational conferences for industry personnel. I registered as a student and the instructors were the defendants in our case. We had all of the information that we needed.”

Jon chimes in, “The manufacturers didn’t know when they put information about safety issues on their websites that there would be an Eric seeking out that information. You can learn some very interesting things about a defendant just by reading what they post on their site.”

Reforming Tort Reform

When Eric joined the firm in 1995 there were two very important cases the firm was handling, *Best v. Taylor Machine Works*, and *Kelso v. Union Pacific Railroad*. Both were critical to overturning a recently-enacted Illinois tort reform statute that Jon described as “draconian” in setting caps on the damages that could be awarded to the injured.

“Attorneys throughout the state were looking for the cases that could best move forward to challenge the new law,” Jon recalls. “There were cases in progress in the Chicago area and I didn’t want to be at cross purposes with their progression, so when these cases came to us I called Bill Harte in Chicago, my colleague. I felt that I could make the law unconstitutional. Bill is probably the best appellate lawyer in the state of Illinois and when he gave me the green light to proceed we moved quickly and received a declaratory judgment action [in the *Best* case].”

Ten days after the initial declaratory judgment, the statute was declared to be unconstitutional. “It went directly to the [Illinois] Supreme Court,” Jon explains. “The Supreme Court stayed all the other cases and advanced our case for an expedited briefing schedule and toward oral arguments. The opinion was the longest in the history of the court. This was in December of 1997, pre-email and pdf files! The Supreme Court faxed those 87 pages to us. We kept waiting for the conclusion, which thankfully was in our favor.”

Ultimately the *Best* case settled for a figure far in excess of what the statutory cap for damages which the Supreme Court had found unconstitutional would have allowed.

“The work on that case is famous for what happened in the Supreme Court, but everyone must remember that the client was fully and fairly compensated,” Jon emphasizes.

In discussing the other landmark tort reform case, Jon stresses the long road that must be traveled to achieve justice. “The *Kelso* case was not settled, and we went to trial and received an award of \$2.5 million for our client. However, the case was appealed through the 5th District court

and it was affirmed. It was sent to the Supreme Court again, and again they ruled in our favor. After two trips to the Supreme Court, the case was not truly settled until 2002. People do not hear enough about “part two” of this process—how long it takes to get a verdict for your client. We had a lot of help on those cases from trial lawyers throughout the state.”

Life Outside the Law

Both men have some recreational interests that help remove them occasionally from the rigors of their work. Jon no longer pilots a plane—he now operates a boat on the Mississippi River and a houseboat, where his main recreation is reading. He’s a voracious reader, and yet there is still crossover between reading and legal work. “I read anything—fiction, crime novels, mysteries. But in the end, attorneys are storytellers [and the story] is in fact a morality play. Someone once told me that every trial lawyer should read Louis L’Amour because he is a great storyteller.”

Eric is involved with the activities of his three children, ages 12, 11, and 8. “They are so involved in so many activities that in a typical weekend we could have three soccer games, a little league game, and church camp. All three take piano lessons and one takes singing lessons. It is perpetual motion. If I do have free time I will work in the yard.”

Although neither of the Carlsons mentioned this, they are both highly regarded by their peers and have been very active in professional associations. Both men were finalists for Trial Lawyer of the Year for their efforts in the successful challenge to the 1995 Tort Reform Act. They have been very active in the Illinois Trial Lawyers Association. And in recognition of his lifelong work Jon Carlson was awarded the Leonard M. Ring Lifetime Achievement Award given by the Illinois Trial Lawyers Association in 2004 in recognition of one lawyer’s substantial commitment to his or her work and the ideals of the Association.

As for working with his father, Eric says, “It makes for some interesting dynamics. You never have a family get-together when you aren’t talking about law. It is always there. Some people leave work and try to leave practice there, but you don’t do that when you practice with your family.”

Jon jumps in, “My poor wife is used to us working when we should be socializing.”

“Other lawyers ask me, ‘What it’s like to have your son as your partner?’ But what I want to know is this—how did he become the senior lawyer here? How did he make that transition?” the senior Carlson chuckles.

The unspoken answer, of course, is hard work and preparation—a tradition passed from father to son. ■