

DAN
LYTLE

Playing to Win in Metro East Trial Law

by Suzie Gutierrez



EDWARDSVILLE—On the court or in the court, Daniel C. Lytle understands the meaning of competition.

As a former Division I basketball player for the University of Evansville, Lytle says the school's longtime coach, Jim Crews, instilled in him the value of hard work and a drive to win.

Crews was a disciple of Indiana University's Bobby Knight, having played on the Hoosier's 1976 championship team. Crews coached with a strict sense of discipline and high expectations, Lytle says. And Lytle believes litigating requires the same type of competitive fervor.

Now a partner in the Edwardsville office of defense firm Hepler Broom, Lytle, 38, has learned the ropes of being a trial lawyer under namesake and senior partner Gordon Broom.

"I've been thankful along the way for my coaches, Jim Crews and also Gordon Broom. I consider both of them very instrumental in my development along my path," Lytle says. "The expectations were very significant, but there was always a discussion and honest representation of those expectations, and there was an acknowledgment when those were met."

Broom says his firm looks for associates who have played competitive sports. And he was already well aware of Lytle's athletic talents having watched him grow up playing

basketball on the Edwardsville school teams.

"I do feel like a coach," Broom says. "In sports, there's a winner and a loser, and in the courtroom, there's a winner and a loser. When you've played competitively, you understand competition and what it means to win and lose.

"Dan was assigned to me because he really wanted to be a trial lawyer," Broom says. "The trial business is a very competitive enterprise, and you have to be a competitive person to be a good trial lawyer. You want to win for your client. You want to win for the right reasons and do it the right way."

Having 115 jury verdicts under his belt, Broom had made a name for himself as a well-seasoned defense trial lawyer, and Lytle says he couldn't have asked for a better mentor.

"It was very fortuitous that I was the last associate assigned to him," Lytle says. "Gordon Broom—who I respect very much—is one of the most well-respected trial lawyers in Madison County and has been for many years."

Today, most cases don't go to trial. In defense cases, there tend to be multiple parties, and with that comes great expense. Broom says that now that mediation has become more popular to settle cases, there just aren't as many jury trials as in the old days. "I'm sort of a dinosaur," he adds.

So, Lytle learned from an old school trial

lawyer, Broom says. And his coaching method seems to have paid off.

"I got real pleasure recently when I got an email from a partner extolling the virtues and skills of Dan in court and giving me the credit, saying, 'You taught him well,'" Broom says.

"There is no greater pleasure than for a senior lawyer to hear that the person he has worked with has developed the skills to be a successful attorney."

ENDURANCE DEMONSTRATED AT TRIAL

Bharat Varadachari is the partner who sent Broom the email. He worked with Lytle on a 10-day wrongful death case in May 2019.

"Dan came to me highly recommended. I had known him for a long time, but we had never worked a case together before," Varadachari says. "He really had no background until two weeks before trial, but he was so good in front of the jury and so good in front of the judge. He's a smart guy, and he wasn't intimidated at all. During witness examination, he knew when to be aggressive, and he knew when to back off. The jury loved him."

In the case, *Whitworth v. Legacy Harley Davidson*, Charleen Roy, the mother of the plaintiff Shawn Whitworth, was killed after being thrown from a Harley Davidson motorcycle that was pulling a trailer. It was

reported that the rear tire deflated, causing the driver to lose control.

Whitworth, as special representative of the estate of Roy, sued multiple defendants, including Hepler Broom's client Legacy Harley Davidson. The plaintiff claimed that the accident was caused by the presence of the trailer and that Legacy was negligent for installing a hitch on the motorcycle. With the other parties settling, Legacy was the only defendant left at trial.

"It was clear liability, so it was very unlikely we were going to win on the negligence count," Varadachari says. "They asked for between \$2.5 million and \$4 million. We asked them for a defense verdict. They deliberated for a couple of hours, and the first jury question that came back was, 'Can we find for the defendant but give them money?' Obviously, they can't do that, but that told us that they bought our side."

The plaintiff family was well known throughout the community, Varadachari explains, and the deceased was well liked. But the jury concluded that the defendant wasn't responsible, and they returned an outcome based on that fact. The jury limited the plaintiff's damages to \$180,000.

"It was a long trial. It was an exhausting trial. We were putting in 19 hours a day, and I was very proud of Dan," Varadachari says. "I know we're both partners, but he had just tried a case the week before on his own, so I was really grateful for his help. We ended up getting a great result, and if I didn't have Dan on that case I don't think I would have."

"I'd love to try another case with him if I get the opportunity."

And Lytle says he is always chomping at the bit.

"When we were done, essentially after three weeks of trial, and then I got a little sleep, I looked at my calendar to see when my next trial would be," Lytle says.

Now, with the advent of alternative dispute resolution, Lytle says these opportunities don't come around as often as they once did.

But when they do, Lytle looks for the chance to place himself in a position to persuade a judge or jury. "I think it is one of the most wonderful things you can do in this profession," he says.

QUICK ON HIS FEET

Part of being a good competitor is being prepared for the unexpected, Lytle says. He describes a construction case where he had prepared for weeks and weeks only to have to change his strategy at the last minute when the plaintiff threw him a curveball.

In the Madison County case, *Six Mile Regional Library District v. Korte & Luitjohan and Custom Home Elevator*, Lytle represented Korte & Luitjohan, the contractor hired to renovate one of the district's libraries.

Part of the renovation included installing two elevators. In the state of Illinois, only a licensed elevator contractor can install an elevator, so Lytle's client hired subcontractor Custom Home Elevator to do the installation.

The elevators were placed in service by a qualified elevator inspector, and they passed the inspection. After the installation, they had way more than the acceptable amount of issues, Lytle explains. The library district decided to replace the elevators for three times what the initial contract cost.

"We got in a position where the damages so far exceeded what anyone would pay on settlement that this case was going to go to trial no matter what," Lytle says.

It was Lytle's game plan to try to insulate his client from being the target defendant.

“He was so good in front of the jury and so good in front of the judge. He’s a smart guy, and he wasn’t intimidated at all. During witness examination, he knew when to be aggressive and when to back off. The jury loved him.”

"There was a claim against my client for breach of contract and a claim against the subcontractor for breach of warranty, and then I filed a breach of subcontract claim against the subcontractor basically saying that, by law, my client couldn't even purchase, install or inspect the equipment. So, therefore, if there was a problem with the installation, it was (the subcontractor's responsibility)," Lytle says.

A week before trial, Lytle made a tactical choice to voluntarily dismiss the claim against the co-defendant. He wanted the focus to be on the direct breach of warranty claim by the library against the subcontractor instead of the contractual obligations assumed by Korte to install the elevators.

"So, the strategic issue was I didn't want to be lumped in with the subcontractor's actions. I wanted to voluntarily dismiss the breach of subcontract claim so I could basically say, 'I didn't do anything wrong. I followed the contract because I found the correct subcontractor. I ensured the elevator was

inspected. I ensured everything was installed per the contract documents, so you can't blame me,'" Lytle says.

"But the morning of the trial, the plaintiff voluntarily dismissed the direct warranty claim against the subcontractor, and now I'm alone, stuck with a bad installation that I have to acknowledge and a contract that says I have the obligation to install. So, it drastically changed how I had to proceed.

"I had about 15 minutes to consider how this changed everything about my preparation and how I had to proceed now, being the sole defendant in the case," Lytle says. "I had to reassess and make choices on the fly on how it affected my opening statement, to my jury selection to cross-examining witnesses and how that was going to affect a case that I had already spent months and months preparing for."

Despite the sudden turn of events, Lytle still received a favorable outcome.

"They wanted \$450,000 for the cost of replacement and some additional ancillary expert fees, and the jury limited it to \$150,000 which basically covered the cost of repairs, which was what my expert had advocated for," Lytle says.

"And then, I retained my claim against the subcontractor to pursue that amount against them at a later date, and that's still pending. So, my hope is my client has zero exposure."

Getting positive results as a defense lawyer in a place like Madison County is not always easy.

On the list of so-called "judicial hellholes" for many years, Madison County is known for giving less than favorable outcomes to defense lawyers. To Lytle, that only fueled his competitive fire, and it was a key factor in wanting to work at Hepler Broom.

Lytle has come up against some tough competition. Judge David Dugan of Madison County Circuit Court says before he was elected to the bench he faced Lytle on a few cases. He knew he had a worthy adversary.

"When I was practicing law and I had Dan as an opponent on a case, I knew I would have to work hard and bring my best game," Dugan says. "I knew Dan to be knowledgeable, keen in his use of appropriate tactics in representing his client, and always well-prepared for depositions, hearings and trial.

"From my more recent observations, I can see that he continues in these traits," Dugan says.

LOCAL BOY THROUGH AND THROUGH

Lytle counts himself lucky to have been able to follow his passion for basketball and the law while still staying close to home. There was a moment in his life when he might have ended up playing professional basketball overseas.

But during his last year of college, he hurt his back and had to have surgery.

“The injury wasn’t desired, but it allowed me to focus my energy on law school and kind of transition in the best time frame for a career,” Lytle says.

So, with his future decided, Lytle attended St. Louis University School of Law to earn his degree. He passed the bar in Illinois and Missouri and remains licensed to practice in both states.

Some people may say Lytle was predestined to work at Hepler Broom. Not only did his aunt, Lisa Franke, begin working there in the mid-’80s, but Gordon Broom also has lived right across the street from his grandparents for over 30 years.

Franke was a partner at Hepler Broom handling mostly medical malpractice. She died unexpectedly at the age of 50 in 2007 before Lytle had the opportunity to work with her.

Aside from his aunt encouraging him to pursue a career in law, Lytle credits many of his high-achieving family members as his greatest influences. His aunt was just one of several.

Before Lytle’s mother, Cara Lytle, became a professor at Southern Illinois University (she completed her Ph.D. at the same time Lytle was finishing up law school), she used to teach at Lytle’s elementary school. Because many of Lytle’s elementary school teachers were also his mother’s friends, they liked to share stories of his time in their classrooms.

“Some of her friends would enjoy telling me the tales of how I would not really argue but would always ask the tough questions that made them cringe. Then I would push them for answers. I wasn’t being difficult as much as being inquisitive and challenging,” Lytle says. “I think I’ve been building my whole life to do what I do.”

Lytle, who married his wife Jayme in 2007, has three young boys, Anderson, 9, Cameron, 7 and Graham, 2. Now he gets to pass on to his kids the importance of competition by spending his free time coaching them.

Having juggled the responsibilities of family life along with a demanding day job, Lytle knows you can’t be rewarded without putting in your time.

“I guess the pain involved is how much work it’s going to be,” he says.

“But the rewarding part—and what I’ve been taught along the way and here especially at Hepler Broom—is if you follow these things and you prepare the right way in every task you do and every task you’re working toward, you’ll realize how the hard work pays off and the preparation pays off.” ■