

Alan J. Larivee: Trial Lawyer

by Thomas A. Dickson

Eighteen years ago, I received a call at my parents' farm outside of Gilby. I was unemployed. Al Larivee, a trial lawyer from Grand Forks, was heading to Grafton the next day to try a DUI case and asked if I wanted to come along. He was defending one of the Tibert boys from Voss. I knew the Tibert boys quite well and figured it would be a challenging case for Al. I went along. He picked me up early in the morning, and we headed north to Grafton. The prosecution introduced a .19 percent breathalyzer test. Dr. Rao, the State Toxicologist, was called to testify as an expert witness by the State. At the end of the direct examination of Dr. Rao, the case looked hopeless. The arresting officer was a decent, hard-working deputy. Dr. Rao's direct examination was flawless.



But then the State passed their expert for cross, and Al stood up. Eighteen years and hundreds of jury trials later, I can still see that courtroom, Dr. Rao, and that moment. It was unbelievable. It was magic. It was one of the most defining moments in my legal career, and I was just an observer. Twenty minutes later, Al sat down, and the case was over. The verdict was not guilty. The breathalyzer was never again used in Walsh County. After that day, the prosecutor insisted that all DUI cases be prosecuted with blood tests. In most criminal cases, there are only two procedures for the defense: voir dire and cross-examination. The rest is usually just fill. Al was truly a master at both.

Al offered me a job on the ride home from Grafton, and I accepted. We worked with two young law students who later became excellent attorneys: Brenda Selinger of Dickinson and Bob Stroup, III of Fargo.

One time, Brenda, Al, and I were driving home from Fargo after we had lost a high-profile criminal case in federal court. The jury had deliberated almost eight hours but eventually reached a verdict and convicted our client on several felony counts.

We were all disappointed in the result and, on the way home, Brenda asked, "Why? Why do you think they convicted him?" Al merely replied, "They convicted him because he was guilty."

Like most criminal defense attorneys in North Dakota, Al felt the imposition of highway speed limits to be State-regulated oppression at its worst. A typical trip to Fargo in his old Toronado would take about 30 minutes. He cornered faster than most people who drove on the Interstate.

During the almost two decades since that time, Al continued to dedicate himself to the right of every person to have a fair trial. His dedication and commitment often superceded any concern for his personal well-being. Diabetes, that most insidious of diseases, was slowly but steadily eroding his well-being, but his commitment to his clients and the criminal justice system took precedence over any such personal concerns.

There were times over the past several years when many of us would sit with him and offered assistance or help if he needed it. He always said he would call. But the call never came. He knew what all criminal defense attorneys know without ever articulating it. This is lonely and solitary work. Trial by committee may work in the civil arena, but criminal cases are still largely defended by the single trial lawyer searching for justice in an often hostile courtroom. Al would take no help. He, out of singular commitment to his clients, did not want it. He certainly didn't need it.

The years since my time with Al have seemed to roll by, but there is one recent memory which captures the essence of Alan J. Larivee, the trial lawyer, and will always stand foremost in my memory.

One fall afternoon a few years ago, I was in Dave Thompson's office in Grand Forks preparing to try an asbestos case the next morning. Dave and I were going through exhibits when the telephone rang. Dave picked up the phone. It was Al. Four defendants had been charged with a murder in Polk County, Minnesota. It was a high-profile case and it had received a lot of publicity in the Grand Forks area. Kevin Spaeth, Bill McKechnie, Dave, and Al were defending the four individuals. The four cases had been severed. Kevin had obtained a Not Guilty verdict in the first trial. Al was preparing to defend the second trial. Al had called Dave, and the following is my recollection of the one-sided conversation to which I was privileged.

Dave: Hello Al.

Al: ()

Dave: Yes.

Al: ()

Dave: Yes.

Al: ()

Dave: Yes

Al: ()

Dave: I'll get on it.

Al: ()

Dave: I'll get on that too.

Al: ()

Dave: I'll make sure the subpoena is served.

Al: ()

Dave: OK!

Al: ()

Dave: OK! OK!

Al: ()

Dave: Yes.

Al: ()

Dave: Yes.

Al: ()

Dave: Al, what the hell is that motor running in the background? I can hardly hear you.

Al: ()

Dave: No shit.

Al: ()

Dave: Yes.

Al: ()

Dave: Yes.

Al: ()

Dave: Yes.

Al: ()

Dave: Good-bye.

Al: ()

Dave then hung up the phone and turned to me. "You are not going to believe this – Al Larivee was giving marching orders on a murder case while he was hooked up to a kidney dialysis machine. Now, that is a trial lawyer."

Truer words were never spoken. Al was a big man in every way. Big in size; big in talent; big in passion; and big in heart. We shall all miss him very much.

Source: <http://www.dicksonlaw.com/ponderings/alan-j-larivee-trial-lawyer>