

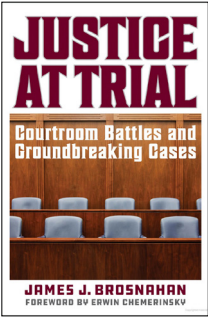
## Doing Well While Doing Good

BY HON. JOSEPH R. GRODIN

James J. Brosnahan

JUSTICE AT TRIAL: COURTROOM BATTLES AND  
GROUNDBREAKING CASES

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THE GREEK POET Archilochus wrote, “The fox knows many things, but the hedgehog knows one big thing.” In modern times the philosopher Isaiah Berlin, in an essay on Tolstoy, drew upon this ancient metaphor to divide writers and thinkers into those who view the world through the lens of a single overarching idea

(the hedgehogs) and those (the foxes) who decline such sweeping philosophical concepts in favor of describing the world through a variety of experiences. The distinction is useful but subject to qualification; a keen observer is likely to come equipped with bifocal vision, capable of seeing and displaying both foxian and hedgehogian perspectives — both the detail and the landscape, and areas in between.

Indeed, such multilevel vision is essential for a great trial lawyer, and is on vivid display in James Brosnahan’s fine book, *Justice at Trial: Courtroom Battles and Groundbreaking Cases*. As the title suggests, the book consists mainly of stories of cases in which Brosnahan has been involved throughout his extensive career, from his first trial as a federal prosecutor in Phoenix to his argument before the California Supreme Court in support of the recommendations of the then-recently created California Redistricting Commission. Along the way we learn about his role in important and challenging cases. We see him in the prosecution of Don Silverthorne, president of the San Francisco National Bank, for widespread fraud.

We see him defending, on First Amendment grounds, the producers of a television movie, “Born Innocent,” against a claim that the movie, which depicted a brutal sexual assault against a young girl, could be held responsible for inspiring similar conduct in real life. We learn how he defended an individual charged with making bombs in his San Francisco house to be used to overthrow the Philippine dictator, Ferdinand Marcos, by showing that the FBI had intentionally mishandled the evidence. And in a case with current resonance, we learn about his extensive preparations for the trial of Caspar Weinberger, President Ronald Reagan’s secretary of defense, charged with unlawfully collaborating to cover

up Reagan’s order sending missiles to Iran in violation of an embargo imposed by Congress. The trial never took place because Weinberger was pardoned by Reagan’s successor, George H. W. Bush.<sup>1</sup>

These case-focused narratives reflect a good trial lawyer’s obsession with detail, and often contain lessons Brosnahan learned along the way. “I began to tell juries in final argument that the lawyers mattered less than the parties, the facts, and the law. I found that preparation for trial requires a complete immersion in other people’s lives, while at the same time trying to preserve an objective view of the case”;<sup>2</sup> “At my utopian law school, the third year would be entirely devoted to teaching psychology to prepare lawyers for understanding the mentality of clients and others in their practice”;<sup>3</sup> “Juries apply collective intelligence. They recall facts in their deliberations and put them together with the judge’s instructions on the law”;<sup>4</sup> “In a data-based society statistics make it easier to tolerate harm that others must endure”;<sup>5</sup> “Nothing disrupts a cross-examiner’s control more than losing eye contact with the witness”;<sup>6</sup> “One of the hardest parts of being a trial lawyer is finding the patience to wait for certain things to happen”;<sup>7</sup> “There is a great truth in lawyers: bullies must be confronted”;<sup>8</sup> and (referring to his practice of visiting the physical surroundings of the focus of the trial, “Always go to the scene.”) Collectively such observations provide a useful manual for any aspiring trial lawyer.

But the book is more than a description of individual cases and lessons learned; it is also a memoir, providing insights into the career and motivations of one of the country’s most influential lawyers. Brosnahan describes, through both case descriptions and supplemental material, how he was born into a working-class family in Brookline, Massachusetts, his father earning five dollars a week as a bookkeeper at Symphony Hall in Boston; how at age 3 a prolonged headache led to a diagnosis of rheumatic fever with heart involvement, and in turn to a sentence by his overly zealous family doctor to a bed stay that turned out to last two and a half years; and how his early educational experience, which included having

1. See Jim Brosnahan, “The Indictment and Presidential Pardon of Caspar Weinberger” (Fall/Winter 2019 *CSCHS Review* 18–20, <https://www.cschs.org/wp-content/uploads/2019/12/2019-CSCHS-Review-Fall-Presidential-Pardon.pdf> [as of Aug. 16, 2023]).

2. Brosnahan, *Justice at Trial*, 9.

3. *Id.* 13.

4. *Id.* 43.

5. *Id.* 49.

6. *Id.* 57.

7. *Id.* 106.

8. *Id.* 126.

9. *Id.* 127.

to repeat the fourth grade and ending high school with a D-minus average, was dramatically unpromising until he decided to study, and how excelling at sports led to increased self-confidence and, through sports scholarships, to Boston College and thereafter Harvard Law School. After graduation he served 16 years as a federal prosecutor, first in Phoenix, then in San Francisco, moved to a private law firm, Cooper White & Cooper, which provided him with a diversity of trial experience, and finally took a partnership in Morrison & Foerster, where, among other things, he coordinated a pro bono program of advocacy and litigation that has achieved national recognition.

Here we come to Brosnahan's hedgehog, the author's passion for justice, which dominates the book as it does his career. In his view, being a lawyer and his concern for doing justice are inseparable, not only in his selection and handling of cases but also in his choice of professional activities outside the courtroom. It is not an abstract philosophical concept of justice, more of an instinctive reaction stemming from his childhood

experiences. "As I wrote *Justice at Trial*," he says in the Preface, "my memory kept returning to my youngest days when decisions by people with power over me formed who I became. I have been an outsider willing — no, anxious — to call out the powerful when I think they deserve it. . . . I wrote this book to give hope to readers trying to overcome medical problems, academic difficulties, and any other impediments to leading a fulfilling and impactful life. I hope the reader will see how challenges can become your strengths, and perhaps lead you to a life of fighting for justice, change, and reform."<sup>10</sup> At a time when a few lawyers seem to have flagrantly abandoned their obligations to the public, the author provides a sterling example of what it takes to do well by doing good. ★

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10. *Id.* xxi–xxii.