

ORAL HISTORY OF BROADUS A. SPIVEY

BY J. PATRICK HAZEL

FORMER EDITOR OF THE ADVOCATE (now Editor Emeritus) Professor Pat Hazel sat down with Broadus Spivey last year. An excerpt from that interview follows. Those interested in the complete interview may contact Lonny Hoffman at LHoffman@central.uh.edu for a copy.

... Beginnings

Pat Hazel: Broadus, you didn't grow up in a family filled with trial lawyers or lawyers of any kind, did you?

Broadus Spivey: Correct. I was the first person in my family to get a college education.

Pat: Tell us about it your early life.

Broadus: Well, I was born in Lakeview, Texas, Hall County, about 7 miles from where Bob Wills grew up: Turkey, Texas.

Pat: And, I've heard a lot about Clarendon. How did Clarendon play into your life?

Broadus: Well, when I was a junior in high school, I wanted to play football. Goodnight didn't have enough people for a baseball team or football team. We had a basketball team and a volleyball team. So I transferred to Clarendon, which was about 16 miles away. I wanted to attend a school that played football. And I spent my junior and senior years there and then got my education at Clarendon Junior College, a two-year college. Then I transferred to the University of Texas to finish up in undergrad and then law school.

Pat: When did you come to the University of Texas?

Broadus: 1956, same year I got married. Ruth Ann and I got married on August the 1st, moved to Austin, and Ruth Ann and I both started to school.

Pat: When you started law school had you wanted to be a trial lawyer or to try lawsuits?

Broadus: That's about the only thing I felt I was competent to do, number one. But number two, the thing that intrigued me the most was the trial of lawsuits. Yes, I wanted to try lawsuits.

Pat: Had you ever seen any before?

Broadus: The first case I ever saw tried, I tried myself.

Pat: They didn't have any courses in law school on how to try lawsuits?

Broadus: No, they didn't, until you set up the course in advocacy at the University of Texas, I don't think there was an actual course, true course in advocacy. Baylor, as I recall, was the only school in Texas that had a course in advocacy, and I found out early on, when you tried a Baylor graduate, even if he or she was just out of law school, they could clean your plow, because they knew how to try lawsuits. We didn't. We knew kind of how to find the law, but we didn't know the real practical aspects of trying a case.

Pat: When did you get out of law school?

Broadus: 1962.



BROADUS A. SPIVEY

... 1962

Broadus: My first job was assistant county attorney in Lubbock, and I was in that job for two years, prosecuting.

Pat: Now Broadus, they paid big money back in those days, didn't they?

Broadus: \$475.

Pat: \$475 a month?

Broadus: Plus, I could practice on the side. So I handled a lot of divorce cases while I was prosecuting.

Pat: What did you get for divorce cases?

Broadus: Oh, fifty dollars to \$250. I remember one that I charged the fellow \$3,000 and darned if he didn't pay it. So I was stuck with him.

Pat: Okay. So you started off with the County Attorney's office. Were you trying criminal cases?

Broadus: I'd say almost all of my practice was criminal cases. A few civil cases that I was allowed to handle privately, but

we would try two and sometimes three cases a week. Mostly DWI's, some traffic.

Pat: How long were you with the County Attorney's office?

Broadus: Two years.

... Private practice

Pat: Then what did you do?

Broadus: Set up my own law practice, sort of solo, with the County Attorney, Fred West, and Quinn Brackett, who was also a lawyer there. We were partners and that lasted about a year. We kind of starved out, and I was offered a job by Forrest Bowers of Huff and Bowers. They were the premier plaintiff's trial firm in all of west Texas and the Panhandle.

Pat: Forrest is still practicing, isn't he?

Broadus: He claimed 3 or 4 years ago he was retiring and last year, I know, he won two medical malpractice cases in Lubbock, which is very, very difficult. Forrest Bowers is, if not the best lawyer, one of the absolute best trial lawyers I've ever known in all my life. He never got the recognition he deserves, because he doesn't seek recognition like some people. He's not much at beating his own drum. But you ask any lawyer that's every tried him or seen one he has tried, and they'll tell you he's good.

Pat: Well, you worked for them for how long?

Broadus: Five years.

Pat: And then?

Broadus: I set up my own practice... [it was] behind a pawnshop. The federal judge, Hal Woodward, used to laugh after I moved to Austin. He said, "I see you every day. I look out my window and your name is still on your glass door over there. I think you must be advertising." The fellow that owned the pawnshop was a friend of mine, and he said he would give me six month's free rent if I would take that office. So, I did. He was a great friend of mine—and a good fellow, really. I had a small office and one secretary, Pam Parrot, and got a lot of business, actually. The first case that walked in the door, ironically, was a woman and her husband. The woman had been on a jury the week before, in Plainview, Texas. I had lost a comp case to Joe Nagy. And she dragged her husband in there; he had a comp case; she wanted to hire me. I said, after she signed the contract, "Why in the world would you hire a lawyer who lost a case?" And she said, "Oh Mr. Spivey, the jury just loved you, we all loved you, and I said that man's going to be my husband's lawyer, I'm going to hire him." "But you," she said, "you were just wrong in that case in Plainview."

Pat: Yeah, that's going to divert me a little bit, but have you found that to be pretty true, that the jurors really try to do the right thing—what they really believe is right?

Broadus: I've known one or two judges that I thought were, I won't say, I certainly won't say, bought off, but I thought were leaning too far to the other side, but I've never known a jury, even though they've held against me, I've never known a jury that didn't try to do what they thought was the right thing. Now, it might be local prejudice and they might exercise their local prejudice against you, but they were being honest. And, jurors rise to the occasion. They've done it since we started this country and they still do it.

Pat: I've always been impressed with that. I've always hated it when I lost a case, but as I look back on it, I said, you know, I should've lost.

Broadus: You know, some of the most outspoken opponents of the jury system, it seems now are some of our appellate judges. I'm sorry to say that, but I think I've tried more cases then our entire Texas Supreme court and our United States Supreme Court put together. In fact, I think I've tried far more cases, and if you're in the pit day after day, plaintiff or defendant, you gain an appreciation for the jury system that you cannot gain by outside observation. I think it's a shame that many of our judges take the bench, not having had the experience of being a trial lawyer and losing cases as well as, perhaps, winning a few cases to understand how the jury system functions—because the jurors are the conscience of the community.

Pat: Have you ever tried to figure out how many jury trials you've had Broadus?

Broadus: Yes, I've, one time I had to list them for the American Board of Trial Advocates, and I listed 350. Now, most of those were appellate cases that I have had, so I could remember them, and then a few that I could remember other than that, but it's well over that, I'd say, probably 500. It's hard to claim that, because I can't name you 500. But I suspect it's about 500.

Pat: Who've been some of the best defense lawyers that you run into?

Broadus: Two of the best lawyers that I've ever tried in my life were in Lubbock, Texas. They're both deceased now. Jim Milam of Crenshaw, Dupree and Milam, not only was one of the greatest lawyers that ever lived, in my opinion, he was a great, great human being. He was such a good lawyer that it irritated you for him to be on the other side. You knew the jury would fall in love with him, and they always did. And he was so fair minded and so candid, but had such a basic under-

standing of what the real issues were and how to discuss them in a way that a jury could understand them. The other greatest lawyer was Charlie Jones. Charlie had the best mind I've ever seen. He reminded me so much of Charles Alan Wright. And you remember what a magnificent mind Charles Alan Wright had? You'd just stand in awe of him because he could recall a case and the cite to the case and the page number. Charlie Jones was that way and he would cross-examine a witness by saying, "Didn't you say on page 67, line 13 so-and-so?" Never looking at the deposition. And darned if that page and line didn't have exactly what he said. But on top of that he was a true gentleman and a great, great lawyer. Both of these lawyers had a tremendous sense of humor. And here in Austin, I think John Coates probably was as good a lawyer, if not one of the absolute finest lawyers, I've ever tried. He was just a superb lawyer. In his latter years he was confined to a wheel chair. He had the darndest habit in trial. He would drop papers, and you knew darn well it wasn't accidental. Then he would reach—make the biggest motion reaching down. I finally said, "John, you drop one more damned paper and I'm going to put water on your axel." And he just laughed. He was a great friend, but he was one of the most ingenious lawyers. Jurors just loved him. They just fell in love with him, and part of it was because he had a sense of what was important in a case. He had a sense of humor, he would laugh at himself, and he wouldn't try to make a witness look bad. He would let the witness make himself look bad. He had this art of being very upfront and very candid, very polite in talking to witnesses and let them impeach themselves, which is the true art of cross-examination, I think.

Pat: Well, I know you're not a big on bragging on yourself, but there's no question that you are and have been one of the premier trial lawyers in this state, if not the nation. What do you think are the qualities that most benefit you in being a trial lawyer?

Broadus: That's very kind of you to say that. I'm not sure that even I agree with you, but, I would say that the qualities of a lawyer are the "Three H's" that I've tried to get law schools to pick up on, and I just can't get them involved in it. And that's humanity, humility, and humor. If a lawyer really would be himself or herself, and if they would not try to make themselves out to be something they're not. In other words, just be themselves. And if they would have genuine humility, like I was talking about John Coates having, where they don't come across as arrogant. Lawyers, like doctors, have a tendency to come across with a degree of pomposity that's unacceptable to jurors and judges. And then if they had a sense of humor. Part of a sense of humor is the ability to laugh at yourself. If they would laugh at themselves, and

truly laugh at themselves when they make mistakes, because we all make them. In fact in my office we have a manual with a paragraph that I put in there that no employee can maintain her or his employment without making at least one mistake a day. And it's required that they make one mistake a day because they're going to make it. And that keeps people from feeling like they're going to lose their job if they make a mistake. Well, lawyers are not going to lose a case, by making a mistake. They're like doctors. Most doctors' mistakes don't end up in a burial. Now sometimes they do, but fortunately most mistakes don't lead to severe damage. And it's important that a lawyer recognize that they're human beings, and they're going to make mistakes. Their clients are not going to be perfect, and the other party's not going to be all wrong. But there's a great tendency, it seems to me today, in the environment for young lawyers to have to assume the role that the opposition is all bad and their position, their client's position, is all right. And it frustrates the opportunity for settlement; it frustrates the opportunity to present a good case, I think. Humanity is important.

... Humanity is Important.

Pat: Is it as easy to be a good friend of the other side as it used to be?

Broadus: It is for me. I think now, there's maybe such a tendency, especially in some of the larger firms, for performance, people are graded on their performance, that they have a tendency not to be congenial with the other side. That's one of the great differences I noticed. When I started out in Lubbock, all the lawyers were great friends. Nobody was an enemy of another lawyer. Now you know, there were exceptions and sometimes there were good reasons. But most of the lawyers, without exception, just got along with each and were at least congenial, if they weren't real fond of the other lawyer.

Pat: Well, did you find that being good friends affects advocacy?

Broadus: Yes, because it affected it positively, because I think jurors respond to that. They understand that a lawyer represents a side. They also understand something that the lawyer doesn't, and that is that they don't think either side is right yet. They want to hear all the facts so they keep an open mind, inevitably. And they don't object to lawyers being congenial with each other. Now, I think it may be sometimes a little bit offensive if the lawyers are too friendly in front of the jury, but to be respectful, and to have common courtesy, I think, is a real plus for any lawyer in the courtroom, any lawyer, especially in bench cases. I think judges get real offended with animosities in the courtroom.

... In the courtroom

Pat: Tell us about your final argument in the Popsie case.

Broadus: It was a criminal case. Herman Gotcher, who in my opinion was one of the finest prosecutors Travis County's ever had, in fact, they called him Mad Dog Gotcher. He taught here at the law school. He taught Advocacy, you had him in the program out here. Great lawyer, great human being, now deceased. Popsie, had a record shop and a dance hall in East Austin. The police, for some reason, thought he was the heroine king, and they raided him. About 30 minutes after they searched his premises and didn't find anything, they, surprisingly, decided he was hiding something in his mouth and took him down. They pulled out what they said was a packet of heroine. And it tested out to be heroine. And I was suspicious that, maybe this was a planted job. So, I took a 50-cent piece and wrapped it in cellophane and put it in my mouth. My final argument to the jury was made with this 50-cent piece wrapped in cellophane in my mouth. And, of course, I wasn't clearly understandable, and that was part of my argument. They wouldn't have waited 30 minutes. They would have known that he had something in his mouth in the first few seconds. And so we had some fun; that was a great trial. Great trial.

Pat: Do you remember any cross-examinations that you felt really good about? Maybe you shouldn't tell the one where you tossed that piece of chalk.

Broadus: I learned a lot from Forrest Bowers. In fact, I was quite offended at Forrest for a while. I did a good job—not a good job—but a great job at cross-examining a neurosurgeon, who testified against me in a personal injury case. My expert was a chiropractor. And Brad Crawford, who was a great lawyer with Crenshaw, Dupree and Milam, had done an effective job of cross-examining my chiropractor, but when he put his neurosurgeon on the stand, I did a pretty good job cross-examining. I had read Spurling, a book on disc surgery, and I knew I had done a good job and when I said, "No further questions." I turned around and flipped a piece of chalk, caught it, and sat down. The jury left and Forrest Bowers came up to me. He had come over to watch the cross-examination. He said, "You did a wonderful job. That's as fine a job of cross-examination as I've ever seen, but you lost that jury when you flipped the chalk. And I said, "What?" He said, "When you flipped that chalk, that jury thought you were a smart aleck." And so I was offended at Forrest that he would say that. I was especially offended when the jury verdict came in and I lost that case. But it was one of the great lessons I learned. That was one of the lessons that I learned not to flip the damned piece of chalk and not do little things that seem innocuous but might be seen as very important to a jury.

But on cross-examination. I don't remember many cross-examinations because my approach to cross-examinations is not to try to destroy a witness, or not to try to win your case on cross-examination, though sometimes you do. But it's to use that approach that John Coates used so effectively, let the witness cross-examine himself or herself. You just ask the questions and it's amazing how many times a witness will do the job for you, if you just give them a chance. We sometimes feel that we have to act like a lawyer to be a lawyer and all we've got to act like is a human being. Ask a question, let the witness answer.

Pat: If one of these law students around here walked into this room right now and said, "Mr. Spivey, I want to be a trial lawyer. What do you recommend I do?" What would you tell her or him?

Broadus: I'd tell them to get a job, first of all, with a prosecutor, if they could. If they can't get that job, then with a defense firm, if they could, because I think defense firms do a better job of training young lawyers. We plaintiffs tend to be emotional; we tend to be very subjective about particular cases. Whereas defense firms tend to be more attuned to teaching the young lawyers that come to them, the skills that it takes to practice law. Most defense firms, for instance, are much better equipped on a hearing on motion for sanctions or a motion for discovery issues. And that's because they get paid by the hour, and they can justify reading the rules of procedure. My father-in-law used to say he never tried a case without going back and reading the statute first. And that's a good lesson to go back and read the Hornbook law before you go to trial. The second best suggestion is always draw your charge, your charge to the jury, your proposed questions and jury instructions early in the case, so you know where you're going, and you don't just ramble through a case.

Pat: Is there anything you'd like to say that I haven't asked about?

Broadus: No, with the exception that I think attitude has so much to do with whatever you do. And it really doesn't make much difference whether you're a street sweeper or a professor in college, or a person selling insurance or a lawyer, or a doctor. I know I've just gone through the a series of medical mishaps like you have, and I cannot tell you how much I've appreciated some of the doctors who were human enough just to have a conversation with me, a smile and to discuss my problems with me. And I think, as lawyers, we forget that these people we represent need to be dealt with as people. They need to be kept informed on their case, they need to have an explanation, and all clients want to know how much their case is worth. You can't tell them what it's worth but you

can certainly discuss it with them and explain the range and it helps people for you to treat them as a human being. And there's a satisfaction that comes about by knowing that that person is satisfied with you as a lawyer. It's a very rewarding thing and some of the best friends and referral people I've had are people whose cases I've tried and lost. People understand you are not going to win every case, but if you try their case, even if you lose the case, people are going to respect you and like you. They want to be represented.

Pat: One of the things that I've got to bring up, that I've always admired about you, is when you would hear a lawyer say, "Oh that client is such problem client." You always said, "No, that client is a challenge." And it's been an attitudinal thing, really. It regards how you are going to approach it. Are you going to approach it as a problem, or you going to approach it as a challenge.

Broadus, I really appreciate you're coming out here and taking your time to do this. As you mentioned, you've had a lot of medical problems lately and you seem to be doing real well.

Broadus: I'm doing real well. ★