



Profile: James Bostwick

He becomes a trial lawyer by chance, but goes on to become a legend of the medical-malpractice bar

BY STEPHEN ELLISON

Every once in a while, opportunity supersedes all other reasoning and practically begs to be seized. Such was the case with James Bostwick – first when he decided to ditch medical school and take the LSAT, and then again when a top plaintiff law firm answered his letter.

Bostwick made it through three-plus years of pre-med studies before he figured out he really wasn't interested in following his parents into the field of medicine. So, on a whim, he took the law school admission test, not fully realizing what doors it would open for him. He would soon find out his choice made sense.

"I took the LSAT and did well, and so I figured I'll go to law school so I don't have to go out and work," said Bostwick, the principal of Bostwick & Peterson LLP of San Francisco. "I really hadn't ever thought about law and at the time didn't know what a trial lawyer was. While in law school I sent out 150 letters, like many students do, to 150 law firms, and I got back a couple of replies, and one of them was from the Walkup office. So I got a job with the Walkup firm as a law clerk – that was in 1967 – and I loved it."

With Walkup – at the time one of the most acclaimed firms in the state, if not the nation – as his measuring stick, Bostwick turned an opportunity into a lifelong devotion to plaintiff trial law. He has since been recognized many times over as one of the top trial lawyers in the country, having served as president of the prestigious



Bostwick

lawyers in the U.S. The latter honor, he said, is one of his "proudest achievements" because the organization was launched by his mentor, Bruce Walkup.

And, as it turned out, those pre-med studies did not go to waste. Bostwick has become a renowned specialist in medical malpractice litigation – not only in California but also in several other states. He has obtained record verdicts and settlements in the seven-figure and eight-figure range, and is one of a few medical malpractice lawyers in the nation to be certified as a specialist by the American Board of Professional Liability.

His work in the area preceded the Medical Insurance Compensation Reform Act of 1975 (MICRA), which placed a \$250,000 cap on pain-and-suffering damages in such cases. "I was doing it when MICRA came in, and we all assumed it was unconstitutional – until the Fein case came down and held it to be constitutional," Bostwick

International Academy of Trial Lawyers and being a member of the Inner Circle of Trial Advocates, which is limited to the top 100 plaintiffs' trial

said. "I was involved in the process; I represented consumer attorneys in attempts to get MICRA changed. The only thing we were able to get changed was the attorneys' fees. I don't think any of us would have been able to continue to practice if we hadn't gotten the fees raised.

"Most lawyers have stayed away (from medical malpractice in California), but we've continued to do it – of course we have to concentrate on catastrophic injuries," he said. "I'm also a member of the bar in Hawaii – I've been doing cases there since the '70s – as well as other states. I go where there aren't caps."

Changes for the better

Raised by doctor and nurse parents, Bostwick went to the University of Washington to study pre-med. By his senior year, his career aspirations had changed, and he started applying to law schools with designs on eventually earning an MBA. He landed in San Francisco at UC Hastings College of the Law. Soon thereafter, the call from Walkup came, and Bostwick was thrust into the law profession with very little knowledge or understanding of how it worked. Clerking at the Walkup firm quickly filled those voids.

"I really had no idea what I'd do with the law or what I would practice," Bostwick recalled. "Then that all changed when I went to work for Walkup. That was my first exposure to plaintiffs' law, and from that point on, there was no question I was going to do plaintiffs' work; that was clear."



After Bostwick graduated from law school, he was hired by Walkup and spent the next 10 years there, trying cases and working his way up to partner. Then came another change.

"I was very lucky to get the opportunity to work under Bruce Walkup, who had to be one of the finest trial lawyers in the country. And it was a marvelous experience," Bostwick said. "But there comes a time when you don't want to be a cog in a big wheel – you want to be the wheel."

Bostwick and two colleagues left Walkup to start their own firm. The departure was both frightening and exciting, he said. All three had enough experience to make the transition smooth; plus, Bruce Walkup made a generous yet shrewd offer to send them on their way.

"We all had our own cases we were working on at that point – our own case lists – and Walkup was a brilliant and very sensible man," Bostwick explained. "Many law firms fight over things like that, but he was smart. He just said, 'You guys take all your cases and send us 50 percent when you're done.' We didn't have to search for cases – we never missed a step. But he was smart because we sent him lots of money.

"And we never looked back," Bostwick continued, "because it was an amicable parting."

Intriguing cases

There was one case Walkup did not want Bostwick to take with him. It involved a teenage girl who had been rendered a quadriplegic after a radiation accident while she was receiving cancer treatment. Even though Bostwick had initially worked on the case, Walkup felt a personal connection to the client and wanted it to stay with the firm. Bostwick agreed.

"But I said, 'Bruce, promise me you will do the case personally.' Then

I would be really happy," Bostwick recalled. "He said definitely he would, and then about six months later, he called me up and said, 'Jim, would you agree to take that case on the same deal we did everything else?' He wanted to keep it, but he told me, 'She calls me almost every day, and all she talks about is you.' Because I was like her big brother. Her father had abandoned her, and her mother had MS, and she was living in a hospital as a quadriplegic. It was just a terrible situation. I said I'd do it."

Bostwick embarked on a worldwide search for a radiation oncologist to be an expert witness – there were only about 200 in existence at the time, he said – and finally found a man in his 80s in England who was considered the grandfather of radiation oncology. Bostwick tried the case for seven weeks against Mount Zion and UCSF and a physician up in Eureka who had been treating his client. The resulting verdict, according to Bostwick, was the highest in the world at the time – \$7.6 million. It became a national story, appearing on network news shows and in dozens of newspapers across the country.

"That kinda put our firm on the map," Bostwick said. "It was a good thing to have happen right after you start your own practice."

Another intriguing and unique case was sent to Bostwick after the legendary Melvin Belli had represented a 16-year-old quadriplegic and settled for an amount less than what the client's insurance policy was worth. Bostwick said he and his colleagues couldn't quite figure out why Belli didn't get the full amount of the policy or why he gave the case to the youngest lawyer in his office. According to Bostwick, Belli's team failed to discover that when the young man, who had been in an auto accident, arrived at

the hospital, he was able to move his arms and legs. He lost that ability some time while being cared for at the hospital – the doctors there overlooked a fracture in the teen's neck, Bostwick said. Ultimately, he settled the case with the hospital for \$2 million, which at the time was the highest settlement or verdict in San Diego County. But Bostwick wasn't done.

"I decided that wasn't enough money for a 16-year-old quadriplegic," Bostwick said. Meanwhile, he had been told he could never get more than the \$2 million for a quadriplegic in San Diego County – he had maxed it. "I said, 'That's right. But I'm going to sue Mr. Belli for that in San Francisco County.'"

So Bostwick sued Belli. He had a seven-week trial that he called "fascinating" because he had to try the underlying medical malpractice case and then try the legal malpractice case. Bostwick even put Belli on the stand during a time when Belli was probably the most famous lawyer in the state, if not the country. He got a verdict exceeding \$6 million.

'More about the client'

While Bostwick no doubt thrives under the pressure of high-stakes litigation, oftentimes outsmarting and outworking opponents in the courtroom, he makes a point of not letting the lawyerly competition consume him. This is where many trial lawyers may lose their way, he said, but he has managed to maintain the proper perspective.

"I would say the most important thing – and it's not always easy to do – is to really be able to relate to your client and be able to relate your client to the jury," Bostwick said. "I think sometimes the battle becomes the battle, and lawyers forget that the client is such an important and central part



of the case. That's what it's all about. After all, that's how human beings make decisions – based on their reactions to people. It's gotta be less about you and more about the client.”

When Bostwick is not in the office or courtroom, he enjoys traveling to the mountains to hike and fish and ski, things he did often when his children were younger. He also is an avid runner. “That keeps me sane,” he said. “I've been running since my 30s, and I'm lucky that I'm still able to do it. I used to do triathlons, but I'm too old for that now.”

Bostwick also has tried his hand at fiction writing. He recently penned a novel based on his case against Belli, but it is still in the draft stage and he's not sure when it will be ready for publication. He said he feels as if he's been busier in the past year than at any other time during his career and hasn't had the time to get back and edit the manuscript.

Being so busy with cases all over the country likely is the reason why Bostwick is not even considering retirement. “I was so lucky that I got into (law) when I didn't really know anything

about it,” he said. “It's a lot of work and a lot of pressure, but that's part of it. The best thing is you get a chance to really make a difference in someone's life. You can't make them better, but you can change their life from a financial and security standpoint – you can make their *lives* better. And that makes it all worthwhile.”

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