

Chicago Daily Law Bulletin®

Volume 160, No. 58

One Foote in front of the others

After six decades, Winston & Strawn lawyer sits in stratosphere of courtroom players

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Dan Webb calls him “my idol” and “one of the greatest lawyers in the city since Clarence Darrow.”

Thomas P. Sullivan of Jenner & Block LLP calls him the greatest trial lawyer he’s ever seen in his 55 years of practice.

While arguing against him in the 1980s, Scott Turow stopped preparing witnesses because the cross-examinations could not be predicted.

“He scared me to death,” Turow wrote in “Your Witness,” a book about cross-examination as described by Chicago’s finest trial lawyers.

His name is Edward L. Foote, and he’s been trying cases for Winston & Strawn LLP since 1955.

Now 86, Foote’s love for the job and ability to perform it remains strong — he comes to the office every day, works three to four cases a year and is currently preparing for an antitrust case in Michigan.

“Foote was and is the most imaginative cross-examiner that I’ve ever seen,” Turow said.

The two men opposed each other in the mid-1980s when Turow, as an assistant U.S. attorney, prosecuted Cook County Circuit Judge Reginald J. Holzer for mail fraud after Holzer accepted money from lawyers and litigants appearing before him in court.

Holzer called them loans. The government believed otherwise. Foote defended Holzer.

In voir dire, Turow first saw Foote in action.

“Did you know that the government is going to pay you for your services ... if you’re



Edward L. Foote has made a name for himself as a fierce and creative cross-examiner since he started trying cases at Winston & Strawn LLP in 1955. “He’s a triple threat,” said Layn R. Phillips, a former U.S. attorney and former federal judge. “A world-class trial lawyer, a world-class negotiator and a world-class appellate lawyer.” *Chandler West*

chosen to serve in this case?”

Foote asked the first juror.

“Yes,” the juror replied.

“Well, is that going to affect your judgment in any way?”

Foote asked. “The same people who the prosecutors represent are giving you a check.”

Turow was amazed.

“Ed was basically arguing his case through voir dire,” he said. “It’s an example of how imaginative he was as a lawyer and how he can take seemingly routine facts and turn them to his own advantage. It’s just a very clever thing to do, the fact that the jurors would receive a jurors’ fee.”

Convicted in 1986 on 29 counts of mail fraud and extortion, Holzer was sentenced to 18 years in prison.

The sentence was reduced to 13 years after the U.S. Supreme Court rewrote the definition of

mail fraud in the wake of appeals of two cases, one coming from Foote. In the end, Holzer was released from prison in 1990.

But Turow didn’t need to reach the case’s conclusion to learn a valuable lesson. The exercise in voir dire was enough.

When you’re dealing with Ed Foote, be ready for anything.

‘Dismiss this case, or we’ll try it’

Before Foote entered his first courtroom, he made his mark as a boy in a weekly program at Nancy L. Hill Elementary School in Aurora.

“At times, you’d have a visiting expert to tell you how to live your life, or what jobs were best to plan for,” Foote said. “But the more important part was that I joined my friends in putting on plays and reading and doing stunts and generally participating on the stage.

“That’s when I decided to be a lawyer. The idea of talking to people was something that came very natural to me.”

That single-minded determination led to Foote pursuing law firms that would allow him to practice immediately. He found that in Winston & Strawn, the firm that hired him out of Harvard Law School.

At the time, Winston represented four major railroads. As the firm’s youngest lawyer, Foote was responsible for freight claims, cases that revolved around problems such as lettuce wilting on a train between Sacramento and Chicago or a personal-injury case in which a train struck someone.

“These good folks who handle freight claims as plaintiffs, they never try anything,” Foote said. The standard operating procedure was settlement offers.

That didn't fly with Foote.

"You have two choices," he recalls telling the plaintiff attorney in his first case. "Dismiss this case, or we'll try it."

Foote's reputation as a hard-headed, talented trial attorney grew with his practice. Even those who didn't know him personally knew his reputation. Edward W. McNabola of McNabola Law Group remembers once skipping a class in law school to watch Foote in court.

"He really is a treasure trove of the qualities you want in a trial attorney," McNabola said. "Hard working, knowledgeable, persistent, respectful and humble. That's a dangerous adversary, someone who can package all of those qualities together."

Webb felt the same way. After serving as U.S. attorney for the Northern District of Illinois, Webb was recruited to Winston & Strawn by managing partner Thomas A. Reynolds and partner James R. Thompson, former Illinois governor.

But that wasn't enough for Webb.

"I was not coming to Winston without Ed's blessing because Ed Foote was the trial lawyer in Chicago, and I wasn't sure if he thought there was room for us both there," Webb explained. "I think I was fairly well-known in the world, but Ed Foote was a legendary figure who I idolized. I wasn't about to come to Winston without his blessing."

Foote and Webb eventually spoke on the phone. Within 10 minutes of their conversation, Foote convinced Webb to join the firm.

"Before the day was out, I told Reynolds, 'I'm signing on with Winston,'" Webb said. "And I've been here for 30 years since."

Understanding the people

There are, Foote says, five reasons other than his own talent that he has succeeded.

One is his marriage to his wife Helen, an act he calls "the smartest thing I ever did." He credits Helen for keeping him healthy and driven at an age when most of his peers from his early days are either retired or deceased.

Two of the factors were matters of timing.

Winston gave him many opportunities to try cases as a young lawyer, a privilege he

knows is not often available to first-year associates of 2014. And a boom in commercial litigation from the 1960s to the 1980s gave him even more opportunities to hone his skills.

The other two keys to his success involve getting to know all kinds of people, first as a young worker in Illinois and later as a Harvard student.

As a result of his family's poverty, Foote got his Social Security card when he was 10 years old and took a job bussing dishes at the Elks Club in Aurora.

"What would appear to many people to be an obstacle was a fortunate benefit in my life," Foote said about growing up poor. "I had to work."

Foote worked consistently throughout childhood and adolescence. Before he turned 16, he worked at the Elks Club, as a door-to-door salesman and later as a milling machine operator.

"I rubbed elbows with the unions and the people who didn't like the unions, and I got to know them all," he said.

"I worked a summer on the Burlington railroad with a group

And with good reason.

"I found a survey (in the 1960s) of the Southern California jury trials done by UCLA Law School," Foote said. "This article impressed me. They did this survey and it said 'Jurors are far more comfortable with a brown suit. ... They don't want somebody who looks like they're in the House of Lords.'"

His eyeglasses are a crucial tool as well. They help his vision, but more than that, they give him something to do with his hands other than pointing.

"Pointing at somebody is a direction," Foote said. "The last thing you should do with a jury is order them to do anything. You can tell them what to do in a polite way ... but you never say 'You must retire and do this.'"

Along with understanding people, Foote credits his lifetime of trial work to his diverse experience with people.

"The most important question that the jury has to decide is who to believe," he said. "Credibility. There will be people who will say things against your client. The question is, should they be believed?"

"He wasn't particularly well dressed, and he just sat back, didn't use a lot of notes. He looked like he was sort of unprepared. But, oh boy, was he good when it came to cross-examining witnesses. The whole package."

of people that ... looked like the United Nations. We worked together all week and drank on weekends. This experience provided me with an understanding of people that has helped me in the law and surely helped me pick juries."

His understanding of people and juries dictates most of his actions and decisions when trying cases. Like his famous brown suits.

"I have every reason to presume that Ed Foote is well compensated for his skills, but that never ever prevented Ed from wearing a brown suit with a brown vest every time he walked into a courtroom," said Vincent J. Connelly of Mayer, Brown LLP.

Turow recalls it too. He was never sure how many brown suits Foote owned — he speculated it was as many as 20.

Not so: Foote owns three.

object as soon as I figure out what he's trying to accomplish."

The Roy Hobbs of law

While Foote is known for hammering witnesses when necessary, he always manages to strike the balance needed to win the jury's approval. When he has to get tough, they feel he has cause.

"He has the common touch," Sullivan said. "He did not put on any airs when he was in court. He conducted himself almost like you wouldn't expect much out of him."

"He wasn't particularly well dressed, and he just sat back, didn't use a lot of notes. He looked like he was sort of unprepared. But, oh boy, was he good when it came to cross-examining witnesses. The whole package."

Layn R. Phillips agrees.

President Ronald Reagan appointed Phillips a U.S. attorney at the age of 31 and a federal judge at 34. Since 1991, he has worked for West Coast firm Irell & Manella LLP as a mediator handling high-profile alternative dispute resolutions such as the NFL's \$765 million concussion settlement.

Despite Phillips' stature, the one lawyer who leaves him starry-eyed is Foote.

"He's a triple threat," Phillips said. "A world-class trial lawyer, a world-class negotiator and a world-class appellate lawyer."

Phillips first met Foote as a young lawyer with the Federal Trade Commission. The federal government had objected to Beatrice Foods' merger with Tropicana Products Inc. Foote represented Beatrice.

"He didn't win the negotiation," Phillips said. "He didn't prevail at the trial. But he left me in the dust at the appellate stage such that we lost. The U.S. government lost completely its challenge to the merger."

Stories like this are the reason that Foote is so highly regarded among his fellow legal professionals, even if his name has remained largely unknown by the general public.

Foote is like a movie hero, Phillips said, and Phillips knows the movie.

"The scene that comes to mind is the scene in 'The Natural' when they look at Robert Redford and they made the comment, 'There goes Roy Hobbs, the best that ever was.'"

"That's how I think of Ed."