

## Holland & Knight Litigator Shares Lessons From 'Life On Trial'

By **Madison Arnold**

*Law360 (April 2, 2024, 4:44 PM EDT)* -- Just two years out of law school and working for the U.S. Department of Justice, Daniel Small suddenly had his first major case on his hands.

Working for a small team within the DOJ's criminal division dedicated to health and safety cases, Small recalled, he was sent to Texas to "carry the bags and do the research" for a higher-ranking prosecutor who was set to litigate a case over a 1977 grain elevator explosion that left 18 dead.

But just a few weeks before a trial was to begin against two grain elevator managers, the prosecutor found out he had a conflict and another experienced trial lawyer was tied up in a complex multi-defendant drug case. That left Small as the lead DOJ attorney on the case.

The matter ended in a mistrial with a deadlocked jury and the DOJ decided not to retry the case. While Small was initially dejected, the prosecution led to a broader victory by encouraging grain elevator operators around the country to change their practices, he said.

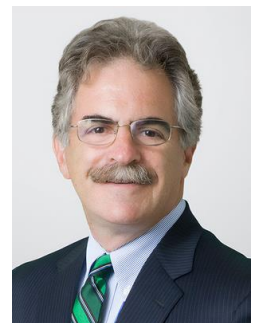
As Small recounts in his new book "Lessons Learned from a Life on Trial," published by the American Bar Association, that case shows the "law is a force for change."

"Win/lose, succeed/fail. In every case, we need to think about what these words mean to us. What are we looking to accomplish? Sometimes definitions are easy, but don't be too fast to judge. All I know is that ... trial, one of my biggest 'failures' in the sense of not winning, will always be one of my proudest victories. Lessons learned," Small wrote.

Small, now a veteran Holland & Knight LLP litigator based in Boston and Miami, set out in the new book to pass along such lessons to other trial attorneys based on experiences from his more than 40-year career.

In an interview with Law360 Pulse, Small said the book came about because he is known to use stories from his cases to highlight points he wants to make. One day, he was talking to his wife, Alex, who has heard each of his stories "18 times," when inspiration struck.

"I have to give credit where credit is due. She said, 'You have all of these stories which illustrate



Daniel Small

important points, so they're both interesting stories, facilitating cases and important lessons for trial lawyers, and you ought to write them down," Small said.

While Small tells numerous stories and discusses many lessons in his book, most of them revolve around three core themes. Those are "know your court," "tell your story" and "do the right thing."

As Small said in the interview, "You learn by doing, you learn by making the mistakes and hopefully the mistakes you make are fixable or at least not fatal."

"I was incredibly fortunate to get thrown into the middle of some very high-profile and complex and challenging cases, which continued to deepen my love for trials, and it's been a lifetime love affair with trials," he added.

While the book includes specific stories about particular cases, readers can draw broader lessons from them, according to Small.

"Most of it is understanding the importance of knowing your court, knowing your case, knowing your jury and treating all of those parties with respect and appreciation," Small said.

### **Connecting With Juror No. 6**

Small grew up wanting to be a teacher before he fell in love with the courtroom and attended Harvard Law School. While it wasn't his ultimate career destination, Small said there is an aspect of teaching in being a litigator.

"What I love about trials is really the combination of being an advocate, being a teacher, and being a storyteller. It is a truly unique combination of those things that really attracted me to it at the beginning and, amazingly enough, still does all these years later," Small told Law360 Pulse.

That approach to his work is another lesson he wrote about in his book. Small often talks about his concept of connecting with juror No. 6 so that person, in particular, understands the case being made during a trial.

"It's the opportunity to connect with a jury and the challenge of learning how to connect with a jury. I talk a lot about juror No. 6. I very rarely talk about 'the jury' because most people don't really know how to talk to a [block of people]," Small said, adding, "It's that challenge of, 'How do I take a complex case or a difficult case or an ugly case, whatever it is, and communicate it to juror No. 6 and connect with juror No. 6 in a way that is meaningful to him or to her?'"

The concept of juror No. 6 came about when Small was prosecuting a RICO, or Racketeer Influenced and Corrupt Organizations Act, case against Sam Cammarata, who had ties to the Boston mafia. That case involved multiple slayings, drugs and a monthlong trial in Houston.

In that case, attorneys had no real reason to strike juror No. 6 from the trial, but that man would look up into space all day. Small said he tried every trick in the book to get his attention, including dropping a pencil in front of him and passing him all the papers for the jury.

Small needed a unanimous verdict in the case, so he was worried about that juror's lack of attentiveness. However, in deliberations, the other jurors found that juror No. 6 had remembered all the

facts in the trial and all the jury instructions, Small said.

"It turned out that for juror No. 6, sitting in a chair listening eight hours a day was an experience he'd never had before but, in his mind, this was the most important thing he'd ever done. The only way he could figure out how to do it was to block out everything but what he heard," Small said.

Small said he talks to "lawyers and witnesses all the time about juror No. 6, about understanding somebody who doesn't know your business, that doesn't know your world, that doesn't know your profession, but he wants to know."

"We have to figure out how to tell and how to explain it to them and how to help him or her to do the right thing," he added.

### **"Push the Envelope"**

In another case highlighted in his book, Small was serving in the public corruption unit of the U.S. Attorney's Office for the District of Massachusetts in Boston. While there, the commissioner of the department of public works for the city of Brockton, Massachusetts, which is south of Boston, was suspected of taking bribes for contracts from two partners of a big construction company, Small said.

In order to prosecute the public official, Frank Wallen, Small needed to secure the cooperation of a partner living in Italy, Dominic D'Allesandro.

"Through a lot of persistence, I was able to get approval to go to Italy to try to persuade [him] to come back to the United States, plead guilty to tax evasion and testify for me, with the understanding — the IRS people had told me very clearly — no one had ever been extradited from Italy for tax evasion," Small told Law360 Pulse.

It was a challenging case to make to D'Allesandro, requiring Small to travel to a small town and sit with him at a four-hour dinner in which European customs dictated that they spoke no business. Small went glass for glass of wine with D'Allesandro with the hopes that the next morning he'd be able to convince him to return to the U.S., in what would likely be a long negotiation process.

The meeting actually turned out to be very short. D'Allesandro turned to his lawyer and said, "I trust Dan, make it happen." The partner eventually pled guilty and the judge accepted Small's recommendation for probation.

Eventually, the partner's testimony led to Wallen's conviction on all corruption charges, Small said.

"It's the unusual things that you need to do and you need to push the envelope. Nobody wanted to approve my trip to Italy. They all thought I was nuts," Small said. "I may be nuts, but if we can't get Dominic back, Wallen walks and that's not acceptable."

### **"You Can Do This"**

Now that his book — spanning 13 chapters and highlighting dozens of lessons for trial lawyers — is published, Small told Law360 Pulse that he hoped readers would take away two things.

The first takeaway: "They can do this."

"Part of my hope for the book is that people can understand that you can do this," he said. "I've made lots of mistakes. I've learned a lot and I've been very fortunate to be thrown into positions where I've been forced to learn a lot."

The second takeaway, which also has to do with confidence, is helping trial attorneys feel more empowered about how to go about their work, Small said.

Small witnessed those lessons firsthand when he traveled to Uzbekistan to work with lawyers and judges there on reforming their legal system and introducing them to an adversarial system. At the time, judges received a file on a case from a prosecutor and then handled the case from there, calling and questioning their own witnesses, he said.

However, about 10 or 12 years ago, there were some lawyers who were hungry for reform, he said. He taught them in a three-day trial workshop that culminated in a mock trial.

Small wraps up his book with a story about the Uzbekistan attorneys' introduction to the idea of cross-examining witnesses.

When Small told one defense lawyer that they would actually be cross-examining mock witnesses, "This smart, mature, sophisticated woman starts to cry. And she says, 'Do you think that could ever happen in my country?'" Small said.

With a choked up voice, Small said he told the attorney that he and others were there to show them what was possible.

"And they did it. They tried it. And 10 years later, last year, they asked me to come speak at a ... conference on the passage of a whole series of amendments to their constitution, including the right to cross-examine," Small said.

--Editing by Kelly Duncan and Michael Watanabe.