

TODD SMITH

Achieving Significant Courtroom Justice for Regular People

by Mike Bailey



Todd A. Smith doesn't just put together a functional closing argument, fellow attorneys say. He channels Cicero.

"Hardly," says Smith, of Power Rogers & Smith LLP. "I just try to connect with regular folks on the jury about, ultimately, right and wrong."

According to those who make it a practice to watch his openings and closings, however, he is disarmingly polite, purely genuine and a brilliant speaker.

But his abilities transcend simple persuasive oration. "Todd sees significance in people who feel insignificant," says Shawn Kasserman, a fellow plaintiff's trial lawyer at Tomasik Kotin Kasserman, LLC. "His clients have had their world shattered, and they feel insignificant. Todd instills in them a feeling of significance through the practice of law."

Smith has quietly fashioned a national reputation as an attorney known not just for his powers of persuasion and his expert legal acumen, but as a lawyer who is not practicing for just the large judgments or the thrill of the competition.

"He genuinely cares about people, and

he uses the practice of law to help them," Kasserman says. "And he's very good at it."

It is difficult to pinpoint any single trait or skill that distinguishes Smith from other attorneys, his peers say, because there are so many of them.

Ask attorney Charles Rantis to name the very best trial lawyer in Illinois and he doesn't hesitate. "Todd Smith. Hands down."

Rantis, highly regarded as a defense attorney with Johnson & Bell, goes so far as to encourage young lawyers to watch Smith's opening statements and closing arguments for a life lesson in how to perform them. In fact, Rantis watches as well, often spellbound by the oratorical skill and precision Smith brings to his cases.

"I first met him professionally in 2000. We tried a case to verdict involving a husband with a severe traumatic brain injury. He turned what I thought was a defensible case into a huge plaintiff victory," Rantis says.

"The oratorical skills he used in closing were exceptional. I'll never forget it. When we were doing jury selection, we found that one of the jurors was a member of the University of Chicago Great Books Club. So, he quoted John

Milton in his closing, something about the power of the human mind and what happens when that is taken away. He was talking directly to her. I sat there and thought, 'We're (beaten).'"

Like many successful Chicago plaintiffs' trial lawyers, his career in private practice began at PCU, the acronym for Philip Corboy University.

"If I recall correctly, he even had a football in his office that said 'PCU,'" Smith remembers. "A lot of really good lawyers have been there." Corboy & Demetrio spawned some of the city's most successful attorneys who toiled under the demanding and often irascible senior partner.

Kasserman was one of them. "I clerked for Todd for a few years at Corboy. He was mentored by Corboy, and he really took to it. Some lawyers did not. Corboy would, to be generous, 'raise' his voice. He was intimidating. It was not an easy process. But he was a fantastic teacher and a mentor, and Todd got the full benefit. He stands on the shoulders of Corboy, advancing what he learned and refining his skills. They have similarities in that they are both very passionate, thorough and competitive. You don't mess with either one of them," he laughs.

EARLY WORK IN AVIATION

Corboy & Demetrio handled many aviation-related cases back then, Smith remembers, including several claims resulting from American Airlines Flight 191, which crashed on May 25, 1979, just moments after takeoff from Chicago's O'Hare Airport. All 271 passengers and crewmembers died as well as two people on the ground, making it one of the deadliest crashes in history to that point.

National Transportation Safety Board (NTSB) investigators determined that improper maintenance by American Airlines caused an engine to come loose and ultimately separate from the wing of the craft, resulting in the crash.

Smith assisted in some of those cases, and his resulting fascination with flight led him to get a pilot's license in the 1980s.

"I don't fly now," he says. "One day I was approaching for a landing at Midway Airport in my Cessna 172, and there were large jet airliners on either side of me. No one said, 'Get out of there,' so I wasn't doing anything wrong, but I didn't feel I was flying often enough to be certain, and you need to be. But I loved it."

His fascination with all things aviation came into play again in 1994 when US Airways flight 427 crashed approaching Pittsburgh. Smith was part of the leadership group heading up the litigation that followed.

"The NTSB has control of all occurrences, including commercial crashes. We sometimes have to wait to see how it all plays out. Eventually, we have to look at all component parts from Boeing, General Electric, etc., consult our experts, piece together our own information and sometimes our conclusion may differ from the NTSB."

Smith says an anomaly in the hydraulic control of the aircraft's rudder made it turn in the opposite direction of what was intended. In US Air 427, the pilot could not regain control of the plane, and it crashed in a wooded area, killing all 132 on board. US Air and Boeing blamed the crash on wind shear.

It was discovered that a previous flight, United 585 heading into Colorado Springs, apparently had the same issue. That, too, was attributed to wind shear. In other words, Smith says, discovery showed that the issue had occurred previously but was never corrected, and it formed the basis for the overall litigation.

"We developed our case off of that," he remembers. "There were a lot of lawyers involved in that one. Among others, we represented the family of a 28-year-old mother and wife who was on a business trip to Koehler, Wisconsin. She drove down to O'Hare that morning to catch the flight to Pittsburgh and then drive home to West Virginia." That case took more than five years to resolve, but Smith was able to secure a then-record \$11.5 million

wrongful death settlement.

Many times, he says, the path to a full understanding of what happened eludes even the experts, particularly in small aircraft general aviation matters where the NTSB supplies more limited resources. It's then that patience and perseverance can achieve rewarding results.

Mike Russell was a helicopter pilot for much of his 52 years. He put in long hours as a pilot in Vietnam and then later for the Air Angels, a group that provides emergency medical services. "He logged over 10,000 hours flying a helicopter," Smith says.

But in January 2003, Russell's copter crashed near DuPage County Airport, killing him. He had just finished a run for the Air Angels and was returning to the base at the airport when he told the control tower that he wanted to cross the airport, gas up and then fly south of the airport to check his instruments. He received permission.

PAINSTAKINGLY RECONSTRUCTING EVENTS

A short time later, the Agusta 109C model helicopter crashed. He was the only occupant. No one knew why the crash occurred. Sometimes the NTSB does not do as intense an investigation of a single fatality crash at a small airport.

"The investigator will look at the debris, then examine the weather reports, the radar and talk to any witnesses," Smith says. So, Russell's family contacted Power Rogers & Smith for help.

After exhaustive and painstaking reconstruction of everything from debris to radar, they discovered that a 14-inch piece of the tail rotor driveshaft was missing in the debris. From that and other information, they were able to determine that one of the tail rotor driveshaft bearings froze, the rear rotor driveshaft broke, and Russell could not control the craft as it plunged wildly toward the ground.

Smith built a computer animation based

on radar and other reports to reconstruct the accident. The animation shows the copter turning and then vibrating, pitching and yawing before the crash. Smith retained a metallurgist and former U.S. Navy expert from Pensacola, Florida, to help him piece together what happened to Russell's helicopter.

Smith filed a suit against Agusta, the Italian company that manufactured the helicopter, and SNFA, a French company that made the bearings.

"The bearings had a two-inch diameter opening to accept the drive shaft," Smith says. "We found that the missing piece of drive shaft was between the second and third bearings of the seven bearings on the shaft.

"The 14-inch piece of the tail rotor driveshaft was never found," he says, explaining the basis for the suit. "The defense contested our conclusion and tried to establish that the pilot committed suicide by helicopter."

The bearing company contested jurisdiction and obtained a dismissal in the trial court.



With wife Marcia Friedl-Smith at U.S. Supreme Court. She has argued two cases there.



From left in 2015: Smith, wife Marcia, son Ben, daughter Grace

The appellate court reversed, only to have the matter appealed to the Illinois Supreme Court, which asked the appellate court to review its decision.

The appellate court reaffirmed its ruling, and the Illinois Supreme Court then affirmed jurisdiction in the case, creating an important precedent in Illinois for product liability cases involving foreign manufacturers.

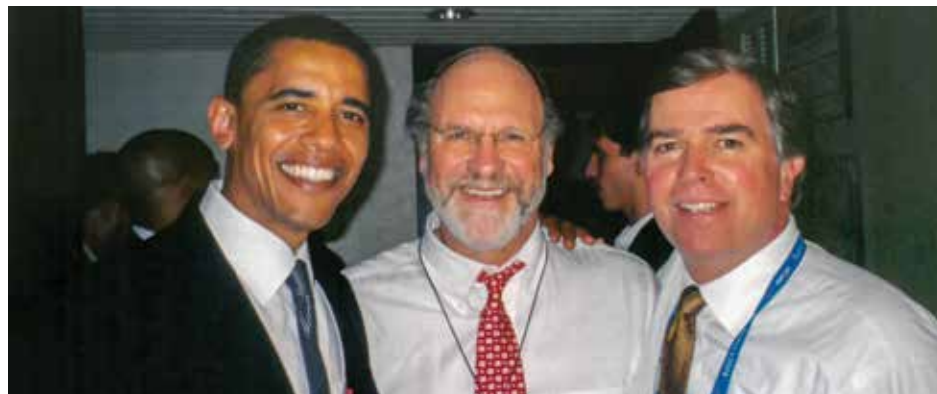
Ultimately, discovery revealed that SNFA and Agusta had prior notice that the bearings were failing. Records revealed that the company had to ship bearings to the United States to replace those in aircraft because of their short dependability. “They are supposed



With Nelson Mandela in Chicago in early '90s



Smith and wife Marcia in the Clinton White House in 1996



With then Illinois State Senator Barack Obama and then New Jersey Sen. John Corzine after Obama's 2004 DNC keynote

to last for the life of the craft,” says Smith. “They weren't coming close.”

So, while the NTSB was unable to determine the cause of the crash, Smith and attorney Brian LaCien of Power Rogers & Smith did. The case was filed in 2005, two years after the crash. After years of appeals and discovery, it was settled for \$8 million in the fall of 2015 as trial began.

The data plate from the shattered helicopter was framed and hangs on the wall of Smith's office to this day.

His aviation cases have included many of the major U.S. crashes since 1979 and international ones as well—including the representation of over 40 plaintiffs in the Turkish Airlines crash near the Amsterdam airport in 2010 and even a domestic Afghanistan crash in the mountains outside Kabul.

“The Afghanistan crash involved air traffic control errors with—as it turns out—Midwest ATC out of Kansas handling the control due to the major U.S. presence there,” Smith says.

All 28 onboard died when the Russian-built aircraft crashed into a mountain peak at 14,000 feet on approach to Kabul.

BAR ASSOCIATION LEADERSHIP

Smith's career includes terms as president of the Illinois State Bar Association and the Association of Trial Lawyers of America, now

known as the American Association for Justice.

Smith earned a national reputation at the latter. Linda A. Lipsen, CEO of the American Association for Justice, has been a part of that organization for 25 years. The group represents and lobbies on behalf of over 20,000 trial lawyers nationwide. She remembers Smith led that group during one of the most difficult and significant periods in the organization's history.

“Todd was president in 2004–'05 at a time when Congress and the president sought to limit the rights of individuals (through tort reform and caps on awards). I can't say enough about Todd and his leadership. He is very genuine. He lives his clients' stories. He's so empathetic and has such a big heart.”

But, she says, that is only part of what makes Smith such a dynamic and successful lawyer.

“He is very smart in terms of courtroom tactics and the best way to pursue a claim. He focuses on the individual and on the story and relates that in a beautiful and effective way to the jury.

“He also represents individuals one case at a time,” she says, noting that some attorneys can take on too many clients at once. “He is motivated by trying to make life better for people who have suffered a life-changing tragedy. He is such a great person.”

After the 9/11 tragedy, the Association of Trial Lawyers of America's executive committee, of which Smith was a part, led by President Leo Boyle of Boston, pushed for a federal compensation remedy for the families who lost loved ones and for those who were injured within three days of the events.

In addition, the trial lawyers committed to representing those persons on a pro bono basis. Boyle was quoted as saying, “If a firefighter can enter a burning building to save the lives of people he does not know, trial lawyers certainly can represent his family free of charge.”

More than 1,100 lawyers provided representation to over 1,700 victim families, obtaining compensation for lost income, society and companionship. The program carried on for almost three years.

At the program's completion, Special Master Kenneth Feinberg, who administered compensation for the victims, said “I've never, ever been prouder of my profession than [for] what ATLA and Trial Lawyers Care did to make this program a success. I am in your debt. The program never would have succeeded without you... I thank you.”

“It is our understanding that it was the largest single pro bono effort ever accomplished in U.S. history,” Smith says. “It's easily one of my very proudest moments as a trial lawyer.”

Like AAJ's Lipsen, Rantis also has high praise for Smith. “He is very convincing and persuasive, and he really believes what he says, and the jury senses that. They trust him.

"I have often said that Todd is the best trial lawyer I have ever seen. I represented the defendant in the death of an 84-year-old woman (in which Smith represented the plaintiff), and I told the client that we were going up against the best trial attorney in Illinois and that we would have to pay. He's resourceful and smart and a great orator."

Smith's satisfying and successful career started by choice in the Cook County Public Defender's Office. He grew up in Evanston where his father was a Northwestern University voice professor and his mother received a master's in dramatic arts.

After graduating in a class of nearly 1,000 from Evanston High School, Smith went to the University of Kansas largely because a lot of friends were going there, he admits.

"Kansas had great sports back then," he recalls. "Bobby Douglass was the quarterback, and in 1969 they went to the Orange Bowl against Penn State University."

After graduating with a degree in business, he returned to Evanston and obtained his MBA from Northwestern. But something just wasn't right. "It was late in my second year of grad school, and I was thinking, 'I'm just not that excited about this.' My favorite course was about corporate social responsibility. I liked business all right, but it wasn't about just making money for me. So, I went to law school."

While friends questioned his sanity in dedicating three more years to academics, Smith loved every moment at Loyola University of Chicago where he enrolled to study law.

"I always felt that if I was studying and learning, that was a positive thing. Loyola had a terrific trial advocacy program in the 1970s, and it still does," something that hooked Smith with its intricacy. "They offered an advanced, intensive course in our third year. When I was done with that, I knew I was headed for trial work."

So, he graduated in 1976 with one goal in mind: to work for the public defender's office. "I felt I could contribute as a trial lawyer for those who could not afford to hire a lawyer themselves."

With an excellent academic background and roots in the community, it seemed like that would be a slam dunk. It was not. Getting hired there proved to be more difficult.

After a chance meeting gave him an inside track with someone who could help, and then months of being told to call back later, Smith finally got an interview with Cook County Circuit Court Chief Judge John Boyle and the committee that determined appointments to the public defender's office. Smith was hired and assigned immediately to do preliminary hearings at 26th and California, the main Cook County criminal courthouse.

"CROSS AND CLOSE" CASES

"Cook County was, and maybe still is, the largest unified court system in the country. I was sent to 26th and California to handle felony preliminary hearings, sometimes 10 a day. It was a really big deal for me."

Smith did about 700 to 800 felony hearings there before being transferred to the Daley Center where, at that time, criminal cases were also heard. There, he tried about a jury trial a month for close to three years.

Defense work on cases including murder, aggravated battery and armed robbery helped him learn how to mount a defense and, more importantly, how to cross-examine—since many of his clients had "some background issues that made testifying problematic."

"I often really had no case to put on.



Data plate from Agusta 109C helicopter crash

Sometimes, we could offer an alibi, but mostly the case was built on cross examination and closing argument."

Smith's career advanced to the point that in 1980 he was invited to join an elite group, the Murder Task Force. That group was charged with the defense of high profile homicide cases. While he wanted to be a part of this division, his supervisor did not want him to leave. Instead, he urged Smith to stay and train younger assistants.

"I was 29 years old, and I really wanted to be out there helping on cases—often the most challenging and with the greatest risk. I started looking at private criminal law firms, and I then heard that Corboy was looking."

He applied, was hired, and stayed there 13 years and became a partner.

He then joined Joe Power Jr. and Larry Rogers Sr. in 1993 in the newly established firm of Power Rogers & Smith.

"I was very fortunate to have been there and again very fortunate to have joined Joe and Larry. I don't take for granted the opportunities

that working with outstanding trial lawyers have provided me. I know Larry agrees with me that our partner, Joe Power, is at the top of the heap," Smith says.

"The truth is, in over 25 years together and from trial successes with him, I've benefited enormously from practicing with the very best."

SIGNIFICANT VERDICTS, SETTLEMENTS

Smith has handled many significant cases over the years, and the loss of children through wrongful death has had a great impact. Cindy Rowland was a 13-year-old trying to catch a CTA bus after school. The driver had closed the bus doors and was preparing to drive away when she knocked on the door for admittance. The driver pulled away from the curb and turned the corner, knocking her down and then running over her with the rear wheels of the bus.

"Those buses make tight turns, and 'off-track,'" Smith says, "and I've tried to verdict at least four other occurrences involving the same circumstances of 'off-tracking' rear wheels."

The girl lived briefly and was conscious for a short time after the accident. The jury awarded \$6 million in the wrongful death case, a record high for such a case at that time.

Another case involved a 10-year-old, Amy Hollowell, who was participating in a swim meet in northwest Indiana. She grabbed onto a lane divider in the pool and then collapsed in cardiac arrest to the bottom of the pool.

She was taken by helicopter to the University of Chicago hospitals. There, she was diagnosed with an arrhythmia, given medication, and discharged days later. But doctors were unable to determine the cause of the arrhythmia, something that troubled her parents.

Her mother read a medical story about an implantable defibrillator and, thinking it might save their daughter's life if this happened again, called the cardiologist who told her it was not right for Amy because she was too young and small.

"He told them it was for larger people," Smith says. About six months later and less than two years after the first episode, Amy was in the shower when she called out to her mother for help. She collapsed shortly thereafter and died.

Smith filed suit against the cardiologist and the University of Chicago for wrongful death despite the contention that the implantable device was not sized for children. While the cause of the arrhythmia was never determined, Smith and Joe Balesteri, with whom he tried the case, brought in experts who said the device was indeed implantable for the young girl and that it might have saved her life.

"It came down to what the jury believed," Smith recalls. "When the case went to the jury after three weeks of trial, we went to lunch.

About 90 minutes later, they called to tell us the jury had reached a verdict. We were very concerned because usually when a jury comes back that soon, they don't typically find for a plaintiff."

But the jury did, awarding the family \$8 million, again a record verdict.

In fact, much of Smith's reputation is built largely on his skill across multiple areas of trial law. He has secured many large judgments and settlements totaling hundreds of millions of dollars.

In 2002, he secured a \$10 million settlement for a 74-year-old Schaumburg man who was prescribed the drug Amiodarone to help control a heart arrhythmia. Instead, it caused near-blindness. The company had warned doctors in Canada about that potential side effect years earlier but neglected to issue the same warning in the United States. The medicine destroyed some of his optic nerves, leaving him with significant vision loss.

Being selective in cases that are accepted is important. "We don't want a client to go through years of litigation to ultimately end with disappointment," he says.

In a *New York Times* article written during his tenure as president of ATLA, he pointed out the rigorous screening process Power Rogers & Smith employs to prevent just such a result. In the article, he says, "We say to people right off that a bad outcome does not mean you have a medical negligence case, but we will examine all issues closely to try our best to provide a just outcome for our client."

While his reputation in medical malpractice, product liability and aviation is well known, Smith also takes on some high value litigation with national implications. Currently, he and nationally known attorney David Boies are co-lead counsel on the economic loss portion of class action suits involving Takata air bags that were erupting aggressively and causing injury and death.

In all, vehicles made by 19 automakers have been recalled to replace frontal airbags on the driver's side, passenger's side or both in the largest automotive recall in U.S. history.

DECONSTRUCTING TAKATA 'EXPLOSIONS'

Airbags made by Takata were installed in many automobiles from 2001 through 2015. Some of those airbags could deploy explosively, injuring or even killing car occupants. More than a dozen deaths and scores of injuries have been reported. To date, more than 37 million vehicles have been recalled for as many as 50 million defective air bags.

The Takata issue concerns the airbag's



July 2004 ATLA meeting. From left: Richard Bieder of ATLA's Trial Lawyers Care, Special Master Ken Feinberg, Smith, ATLA President David Casey, U.S. Supreme Court Justice Stephen G. Breyer

inflator, a metal cartridge loaded with propellant, which in some cases has ignited with explosive force. That has caused bits of shrapnel from the canister to spray through the passenger cabin with deadly consequences.

The cause of the problem, Smith says, was that the airbags used ammonium nitrate-based propellant, which can degrade. Ammonium nitrate is highly volatile and was contained in the explosive device used to decimate the Oklahoma City courthouse in 1995, killing 168 people.

“ Todd is the best trial lawyer I have ever seen. I represented the defendant in the death of an 84-year-old woman, and I told the client we were going up against the best trial attorney in Illinois and we would have to pay.”

Smith says environmental effects of humidity and moisture cause the surface of the propellant to expand, thus causing the burn rate of that surface to increase since there is more of it due to the expansion. That means the explosion that deploys the airbags is more violent, rupturing the metal container and sending shards of shrapnel through the interior of the vehicle.

The leadership group has worked out settlements with six vehicle manufacturers and has fashioned a settlement with a seventh awaiting approval. "Right now, settlements have reached \$1.25 billion, and \$299 million with Ford is pending," he says.

Smith says the amount of loss is determined by economic models showing what car owners paid, believing they were getting a safety feature like the airbag, and the amount of economic loss because they did not.

"You buy what you believed was a safe car with an airbag, but you later determine that you were not protected. That is a damage theory that we work with," he says.

Additionally, vehicle owners were compensated for lost wages, childcare and vehicle rental associated with airbag remediation.

"It is enormously gratifying to be able to provide some level of justice in this way when regular American consumers are left on the short end yet again."

When he is not practicing law, Smith and his wife, Marcia, whom he met in law school, enjoy Chicago and especially the Cubs. Although Evanston is still dear to his heart, living about a mile from Wrigley Field cut off much of his long commute and put him closer to his beloved Northsiders.

Smith and his wife have two children.

Ben, 28, is an aspiring filmmaker and script supervisor. Grace, 26, is in law school at the University of Michigan, studying with an interest in environmental law.

Marcia, he says, had a wonderful career as an appellate lawyer for the Illinois Attorney General. She argued twice before the United States Supreme Court.

Smith still approaches each case with enthusiasm and an energy borne of the simplest and purest of motives, stemming from his earliest desire to use his profession to help people.

"I always wanted to do things for regular people who need help and who may not get fair and adequate access to justice otherwise." ■