

Super Lawyers

the amazing life of DEAN BARNHARD

From the circus to the law to the pit stop at Talladega, Barnhard has done it all

By Larry Rosen

Photography by John C. Freeland



When speaking with Dean Barnhard, the first thing you notice is the voice. It is deep and mellifluous. You don't listen to it; you float away on it. The sonorous baritone has been a great boon to the Barnes & Thornburg attorney, whose life has been defined partly by his ability to push air out of his lungs in unique and wonderful ways.

The voice is powerful enough to draw attention away from the second thing you notice: the Hawaiian shirts. Barnhard has 54 of them according to a recent count by his 11-year-old daughter, including "God only knows how many Tommy Bahamas." They, as much as his voice, are his trademark, a style he picked up after a "pesky little heart attack" in 1999 gave him reason to rethink his lifestyle. "Wearing them cheers me up," he says.

He wore one to court once. On the way to Oklahoma City for a summary judgment hearing, Barnhard's luggage, full of his regular, sober court attire, disappeared en route. Tornadoes played havoc with his itinerary, so he arrived at court late, sporting his "second-loudest" Hawaiian shirt. "I came rushing in a few minutes late," says Barnhard. "There was an audible gasp."

The story has a happy ending: The judge granted summary judgment. Nowhere in his opinion did he mention Hawaiian shirts.

Recently, Barnhard found himself watching a movie on television in which a man saw his life flash before his eyes. "[The character] said, 'I saw my life flash before my eyes ... and I was bored!'" At this, Barnhard laughs; not an everyday chuckle, but a booming eruption of joy. If his own life were to flash before his eyes, Barnhard would be anything but bored.

So far, in his 53 years, Barnhard has run away to the circus (sort of),

played the tuba professionally, read news and weather on the radio, waved a pit stop flag at Talladega Raceway, prepared dinners at some of Indianapolis' fine restaurants and flown in a stunt plane. Oh, and then there's his legal career. He has represented the estates of James Dean and Babe Ruth, among others; helped write the groundbreaking 1994 Indiana Right of Publicity statute; worked for NASCAR driver Bill Elliott; and became a leading expert in the defense of toxic tort claims.

The son of a civilian contractor for the military, Barnhard spent his childhood moving between Florida, Oklahoma and other points south. In high school, he drove a 1969 Pontiac GTO and played the tuba. He loved the car, but the tuba was his true soul mate. After a childhood flirtation with the cornet, Barnhard found his musical home with the oversized brass horn. "It called to me," he says. He soon learned that the tuba is not just the exclamation point of the musical world. It, as Barnhard likes to remind the tuba-illiterate, is every bit as versatile and lyrical as any other brass instrument.

After he graduated from high school, Barnhard won a music scholarship to the prestigious University of Miami music program. While there, Barnhard explored his love for orchestral music and played improvisational jazz. He earned his bachelor's and his master's in music and eventually taught in the university's music department.

During a year off from school, Barnhard fit in a stint doing weather and news for radio station KGOU, in Norman, Okla. He enjoyed the work and in fact, auditioned for a TV news slot in Miami. But time constraints forced him to choose between music and broadcasting. He chose music, playing locally, teaching and earning a spot traveling part time through

Florida with the Ringling Brothers, Barnum & Bailey circus band.

The circus was a good fit for Barnhard. The work was challenging. “In those days, the circus band went non-stop,” he says. “You were doing marches, waltzes, gallops, anything you could think of.”

At the time, Ringling Brothers was broken into two units. Barnhard would pick up one unit, travel the length of Florida, then hook up with the other as it entered the state the following year. It was impractical to leave the circus grounds between shows, so Barnhard hung around, absorbing knowledge from circus veterans. One day during a juggling lesson, a Ringling Brothers clown gave him advice that sticks with him today.

“Dean, there’s two secrets to juggling,” he said. “One, you have to know how to do it; two, you have to make it look eeeeasy.” Barnhard stretches out the last word until he sounds like the bass voice in a ‘50s doo-wop group and then chuckles. “I always thought that was one of the most profound things I ever heard. It applies to everything.”

While at Miami, Barnhard produced a “spectacularly unsuccessful” record album and found that he enjoyed all of the “business side” facets of the production. “Working with the companies that do the record pressing, do the distribution ... I enjoyed it tremendously,” which led him to consider becoming a lawyer. “I’d always been fascinated with the intersection between music and the law,” he says. But back then he was enjoying too much success — blowing on his Meinl Weston Double C, teaching music and playing for the circus — to consider a career change.

This life came to an end in 1976, when Barnhard injured his embouchure (according to Wikipedia, “the shaping of the lips to the mouthpiece of an instrument”), effectively putting an abrupt end to his career as a professional musician. He moved to Indiana to study with tuba great Harvey Phillips, known in some circles as the “Paganini of tuba,” hoping for a miracle. None came. Barnhard has not blown a tuba since.

And so he began his next career. After “scouting around” for a while, he recalled his prior interest and settled on a career in law. But it wasn’t easy. His music degrees didn’t translate into a usable bachelor’s degree, according to the Law School Data Assembly service, so he took night school classes and put his persuasive voice to work on the Indiana University-Indianapolis law school dean of admissions. “I wore him down,” he says dryly, “until, just out of fatigue, he let me in.”

While at IU-Indianapolis, Barnhard made acquaintance with one of the most important figures of his life. He’d been mulling over his chances of a career in intellectual property law when he met Mark Roesler. Roesler, a fellow student, had been employed following graduation to protect the *Saturday Evening Post*’s rights to Norman Rockwell’s cover art following the artist’s death in 1978. Through this, Roesler discovered that the rights of deceased celebrities were essentially nonexistent. “When I started practicing law,” recalls Barnhard, “once you were deceased, you had no rights to publicity at all. They were considered to be rights akin to rights of privacy, so rights of publicity expired with your rights of privacy. Mark set out to change that.”

Roesler began building a company that would eventually grow into CMG Worldwide, today recognized as the premier dead celebrity IP firm in the world. Barnhard came on board and eventually represented the estates of James Dean, Babe Ruth, Marilyn Monroe and Humphrey Bogart. “It seemed unfair that someone could dedicate their lives to becoming celebrated and then, at the instant of their death, pirates could just come and exploit their name at will,” he says.

The most exploited celebrity was Indiana-born James Dean. Pirates had been illegally using his image for years before CMG got on the case.

Some of the exploitations were relatively harmless, while others were in particularly bad taste. “There was a lot of not just piracy, but particularly noxious piracy,” says Barnhard.

Among the worst he has seen was an outfit using the name and image

of teenage AIDS victim and activist Ryan White on a package of condoms. “Ryan White was an extraordinary young man,” Barnhard says, still angry in recollection. “To have his image exploited in such a fashion, that’s the worst I’ve ever seen.”

Barnhard and Roesler eventually collaborated on the 1994 Indiana Right of Publicity Statute. “The statute answered all the questions a judge could ask,” says Barnhard. Litigation dropped off dramatically following the statute’s adoption.

So once again, Barnhard assessed his options and moved on. Today, his time is primarily spent representing Dow AgroSciences in product liability litigation. “It’s 99 percent of what I do,” he says. “Crop damage with use of herbicide, groundwater contamination issues ... it’s fabulously interesting.”

He does retain one celebrity client, however. In 1999, NASCAR driver Bill Elliott called CMG Worldwide to help with some issues he was having with his former licensing agent. Barnhard was assigned to Elliott’s case, and has worked with him since. “I was never really a racing fan,” Barnhard says, “but I am a Bill Elliott fan. This guy is probably the most decent human being in the world. A pillar of integrity.”

And not incidentally, a man who allows his lawyer to wander around the pits during races. There is a rumor that Barnhard actually has worked in Elliott’s pit crew. At this, he uncorks another burst of laughter. “Occasionally, I was allowed to carry the toolbox from the trailer to the pits,” he says, and he has once held the pit stop flag. “It was wonderful! The opportunity to carry a toolbox was enough for me, but to hold the flag at Talladega was a real thrill.”

Barnhard is more at home with classic vehicles. He owns a 1969 GTO convertible — the same year and model he drove in high school — and a Seagraves model 88C city pumper fire truck. He once owned an airplane and is still known to occasionally crank out some aerobatics in a craft borrowed from his friend, a commercial pilot.

So what’s left for Barnhard? He’s a married father of two, a noted expert in his field, a proud wearer of Hawaiian shirts and possessor of a honeyed voice. He is also a cooking enthusiast who once attended cooking school and sometimes serves as guest chef at various Indianapolis eateries. He takes his children to the circus every time it comes to town and marvels at their aptitude for the music that once drove his life.

If Barnhard misses the life of a professional musician, he doesn’t show it. Of course, as he points out, “In today’s world, as a tuba player, the chances of getting into a major orchestra are roughly identical to the chances of being struck by lightning while you’re being eaten by a shark.”

There is a theme that is present throughout Dean Barnhard’s life of quirks and adventure, something he learned first from his father. “My father found it intolerable for us not to meet our capabilities,” he says. “There ought not be a phrase ‘good enough.’”

Someday, there will be no more tubas to play, no more celebrities to protect, and Dow AgroSciences will have hired Barnhard’s successor. At that time, ambitious law students will settle into their seats and be hypnotized by the mellow baritone of Professor Barnhard. He will teach them his philosophy of litigation, how to reduce litigation budgets and shorten calendars without reducing the quality of services. “Every dollar spent on litigation is a dollar not spent on employee benefits, R&D or charity,” he will say, and he will emphasize efficiency and clarity of thought as a moral imperative. His students will be inspired.

He will do all of this while wearing a loud Hawaiian shirt. And during class breaks, he will juggle tubas.