

## TIM CAVANAGH

Driven to Bring  
Negligence to Light  
by Edward McClelland



On a bookshelf in Timothy Cavanagh's office are a pair model box cars, one from the Canadian National railroad, the other from the Illinois Central. They represent two of the personal injury lawyer's most important cases, in which he won multi-million dollar awards for motorists who were killed or seriously hurt by trains hurtling through rail crossings.

It was a winter night in early 1998. The wind was blowing so hard the snow was flying sideways. At the Schmale Road crossing in suburban Bloomingdale, the gate had been knocked, and the flashing red signals were covered in snow. Hanifa Ajmeri of Carol Stream was riding in a friend's car. When her friend tried to drive over the crossing, the car was broadsided by a speeding train.

Ajmeri suffered brain damage and serious orthopedic injuries. She hired Cavanagh as her lawyer. At first, the Canadian National Railroad claimed that Ajmeri's friend had knocked the gate down. But Cavanagh, of **Cavanagh Law Group**, obtained a protective order on the evidence. As he paged through the files, he had what he calls "a Perry Mason moment"—the moment he found the document that sealed his case.

"When I got these documents, I was looking

them over, and they indicated they got a phone call about a downed gate, and it turns out that the gate was knocked over about an hour before the crash," Cavanagh says. "I was able to get the actual call. It was taped."

Under the railroad's "fail-safe" procedure, the dispatcher is supposed to call upcoming trains to inform them of a downed gate. The engineer is then supposed to execute a "stop-and-flag procedure," stopping the train a few feet before crossing, and walking it across at 1 mile per hour. That didn't happen on that March night, because the dispatcher forgot to call the engineer.

"The guy—I took his deposition. I'll remember it 'til the day I die: He made a mistake," Cavanagh says. "He forgot to call. He got the call [about the gate]. He placed it into the computer. He forgot to actually make the radio call to the conductor and engineer on the train."

The railroad's insurer offered Cavanagh's client "a couple million dollars." He turned it down. Just before he was about to give his opening statement in court, they settled for \$9 million, then a record for a railroad injury case in Illinois.

The case helped make Cavanagh's name as

the man to call in a railroad injury case.

On January 9, 2001, there was another horrific collision, on the same line, just a couple crossings down. The gates and lights were malfunctioning, so the crossing had a stop-and-flag order. But the dispatcher erroneously radioed an approaching train that the crossing had been fixed. The train barreled through at 60 mph and hit a Ford Explorer, pushing it 400 feet down the tracks. The passengers, Fidel and Francesca Velarde, grandparents in their 70s, both suffered severe brain injuries.

"They went from very active adults to very sedentary adults in a matter of seconds," Cavanagh says. "Their entire future was taken away. A brain injury leads to depression and hopelessness. Literally, their future was stripped from them."

Cavanagh used one of those model trains in his argument and won the Velardes \$21 million. The car's driver received \$34 million. The total verdict was another state record.

### **Very Thorough and Dynamic**

Cavanagh grew up in a courtroom and followed the exploits of lawyers the way other boys follow basketball players. His mother



Cavanagh secured a \$9 million settlement for Hanifa Ajmeri of Carol Stream, a passenger in this car when it was struck by a Canadian National Railroad train on a snowy night in 1988.

was a clerk for Cook County Circuit Court Judge Brian Crowe, so in high school, Cavanagh would stop by the courtroom and sit in on cases. There, he got to watch Philip Corboy and Al Hofeld, two of Chicago's most successful plaintiff's attorneys.

"It was exciting," he remembered. "It was very competitive. It was almost like athletics. This is a business you know whether you win or you lose. The one I really remember is Al Hofeld — it was such a sad case — it was a medical malpractice case. They'd alleged that the doctor failed to diagnose breast cancer, and the day before the closing argument, the plaintiff died. I was there when the judge told the jury it is now a wrongful death case. It was sad, and the air got sucked out of the room."

Another of Cavanagh's early legal influences was his uncle, Thomas Tully, who served as Cook County assessor in the 1970s and worked as a trial attorney, both for the state's attorney's office and in private practice.

"He was always interested in the law business," Tully says. "Whether I got him interested in it, I don't know."

Tully has watched his nephew in court and admires his work ethic and preparation.

"He knows how to communicate to a jury," Tully says. "He's very thorough and very dynamic."

After graduating from Chicago-Kent Law School, Cavanagh spent several years at the Illinois Attorney General's Office, then went to work for Corboy, one of his idols whose firm is nicknamed "Corboy College" because it has trained so many attorneys who've gone on to found their own firms.

While at Corboy & Demetrio, Cavanagh represented a Mundelein police officer who got out of the car in the middle of night to get

a cat out of the road. A limousine rear-ended her squad car. Trapped between both cars, she lost a leg and suffered a miscarriage. Cavanagh won her \$5.7 million, making up for a lifetime of lost wages.

"Her entire life was taken away from her. Her baby was taken away from her. Her ability to walk, to run, to pursue her profession."

Cavanagh started his own firm in 1997. With only four lawyers, it's smaller than his family. Cavanagh and his wife, Stacey, who is of

## 'I Believe in the System'

Cavanagh chose a career as a personal injury lawyer because "it appeals to me for whatever reason, whatever's in my DNA, I like representing the little guy, the person who's been injured."

He's aware, though, that it's one of the legal profession's more controversial practices.

Conservative lawmakers and business interests are constantly agitating for "tort reform:" limits on the amount of money a jury can award can award the victim of an accident or a defective product. Cavanagh sees the tort system as an important check on corporate behavior. Lawsuits, for instance, have led to banning lead in toys and exposed the dangers of drywall from China.

"It allows the existence of negligent products to come to light. Where else are citizens going to find out that there's defective products out there if a corporation can't be held accountable in a court of law? Historically, that's what the system's designed to do, when you get back to the Ford Pinto and seatbelts. I think despite chambers of commerce trying to demonize injury lawyers, I believe in the system. The advances we've made in public safety, I think a lot of it can be attributed to the tort system."

Cavanagh is currently trying a case that has already led to an improvement in public safety.



Cavanagh and his wife, Stacey, join their menagerie of two sets of triplets for Halloween fun. From left: Jack (rhino), Kate (piggy), T.J. (skunk), Charlie (tiger), Kiley (chicken), and Ryan (polar bear).

counsel at his firm, have two sets of triplets. Charlie, Jack, and Ryan are almost 3, while T.J., Kiley, and Kate are a year-and-a-half old. The Cavanaghs live in Chicago's Lincoln Park neighborhood.

He's representing the family of a woman who was run over and killed by a Chicago Transit Authority bus while trying to lift her bicycle off the front rack. The driver claimed he didn't see the victim because his line of sight was

obstructed by the fare box.

"If in fact this bus driver's testimony is correct, that there is a sight obstruction, if he's telling the truth, and ) you still make the decision that the best place for the bike rack to go is on the front of the bus where there's a sight obstruction, you'd better darn well warn the passengers that there's a sight obstruction, which the CTA never did," he says.

"All they've done is put up a sign that people should tell the bus driver that their bike is on the front of the bus. It's not their job to tell the bus driver that."

Interestingly, a case that attracted national media attention had nothing to do with public safety.

Rather, it was cited by conservatives who objected to the way hate crime laws are applied. Cavanagh represented the family of a funeral home employee murdered by a tenant of the building where the business was located.

It was a wrongful death suit. He was invited to discuss it on *The O'Reilly Factor* because the alleged killer was gay. The issue: Why wasn't the murder labeled a hate crime, like many killings of homosexuals by straight attackers?

"It was clearly a story pushed by the far right," Cavanagh says. "They were like, 'How come this is not a hate crime? Does the family view it as a hate crime?' We say, 'The family viewed it as a hateful act.'"

Cavanagh won a \$20 million default judgment against the murderer.

Cavanagh is "really tough," says Anna Czapski, who hired him after her son, Roger, was killed during a test drive at the BMW dealership where he worked. The potential buyer was going 90 miles an hour when he crashed into a vehicle making a left turn, causing the BMW to swerve into a lamp post and explode.

Czapski, a Polish immigrant, was distressed when the driver was sentenced only to community service.

"I say, 'Is that all Roger's life was worth?' Tim says, 'We're gonna get him.'"

Cavanagh won a \$13.7 million verdict, currently on appeal. Czapski was grateful, but as many lawsuit winners will attest, the money cannot make up for her loss.

"We need to have money," she says, "but compared to a young life, nothing's going to change. We might have money, but we don't have Roger."

Recently, Cavanagh won a \$14 million settlement for an Arlington Heights couple whose newborn boy was deprived of oxygen during birth after doctors allegedly confused his vital signs with those of his mother's. The infant suffered cerebral palsy, leaving his arms

and legs paralyzed.

"He'll have significant medical bills for the remainder of her life," Cavanagh says. The money "will help when the parents are no longer there to care for him."

Medical malpractice awards are also controversial, with critics claiming they drive up patient costs and health insurance rates. Cavanagh cites a Harvard study that found that most meritless or frivolous claims don't result in a monetary award. Claims that are paid average around \$500,000.

"There's a big political fight in this country on our tort system and medical malpractice, and instead of talking about facts, I think they've tried to demonize and politicize the system and take away the constitutional rights of our victims," he says.

"Nobody knows when they're going to be a victim. Capping damages is only going to take away from the person most seriously hurt, their rights to seek redress." ■