



Everything you need to know, you learn during your first trial...

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Well maybe not everything, but many helpful lessons are learned by doing. Last year, we volunteered to represent a pro se party during trial preparation and through trial as part of the Southern District's Civil Trial Assistance Panel program. Although it was just a one-day trial, we learned countless valuable lessons, and thought we would share a few.

1. Sweat the "small stuff." Ultimately, the "small stuff" makes a big difference. Before your trial, take a trip over to the courthouse and view the setup of the courtroom. Use this trip to determine which types and sizes of exhibits will be most effective, where to stand when making arguments and questioning witnesses, and to get comfortable with your "stage," so to speak. Work with the court's staff to practice using any necessary audio-visual equipment ahead of time. Make easy-to-navigate jury binders containing your exhibits. Along these lines, communicate with opposing counsel to work out an exhibit numbering system ahead of time. If you have the "small stuff" figured out and prepared in advance, it helps things run smoothly, reduces stress, and allows you to concentrate on the "big stuff" during trial.

2. Do not Procrastinate. With respect to most aspects of the case, the Judge probably will not allow you to procrastinate. The case management order will set pre-trial deadlines for the submission of motions *in limine*, stipulations, and final witness and exhibit lists well before trial. But many of these submissions will require coordination with opposing counsel. If you want submissions such as stipulated exhibits and facts to effectively reduce the number of issues for trial,

contact opposing counsel more than a few days before they are due. Similarly, coordinate your calendar with your witnesses' calendars and reserve time for pre-trial preparation. Remember, your pre-trial efforts should include not only outlining your questions for each witness, but also working with each witness to prepare him or her to take the stand.

3. Practice, practice, practice. Do not just write out your opening and arguments and witness outlines. Actually **read** them aloud, either to yourself or to other members of your trial team or firm. Things that read well on paper do not necessarily flow when read aloud, and doing this beforehand gives you time to make revisions. In addition, taking the time to read something out loud helps you identify and correct mistakes that you may miss when doing a quick read-through in your head. Finally, you will quickly realize if something sounds silly, illogical, or is not convincing when you actually say it out loud. These are things that you want to know before – not during – your trial.

4. Develop your own style. Keep in mind that while accepting comments and constructive criticism from other attorneys is vital to your performance, you need to take each comment with a grain of salt and work to develop your own style. Try to emulate an attorney whose style you admire, knowing that you need make it your own. You will come across as more genuine and credible if you act like yourself and do not appear as if you are "acting" like a lawyer. You are a lawyer – no acting required – so be yourself.

5. It is your show. It is up to you (and your co-counsel, with input from your clients) to develop the order in

which you will present your witnesses. Consider why you are calling each witness. Map out the key facts that each witness will put in the record. Then, determine the appropriate order for the judge or jury to hear those facts. For instance, if your client is claiming that the defendant breached a non-compete agreement and committed trade-secret violations by taking confidential information from the company, it may make more sense to present the defendant's scope of employment, the terms of the non-compete agreement, how the company used certain confidential information, and why that information needed to be protected *before* you present evidence of the defendant's bad acts.

Beyond setting the order of the witnesses, your demeanor and questions can help set the tone for each

witness's testimony. This is especially true for cross-examinations, when you can employ leading questions and craft your examination so that the witness is limited to simple yes-or-no answers.

6. Focus on the big picture. Take a step back and look at things from the other side. It is too easy to become entrenched in your own arguments and the minute details of the case. Take a step back. Think about the arguments the other side will make. Even if you disagree with their legal or factual conclusions, think about whether those arguments or their witness's testimony will resonate with the jury. If so, how will you overcome any setbacks? Test out different options on other members of your trial team and individuals who are not as familiar with the case. Take their comments seriously and make adjustments *before* trial.

7. Relax. Prior to the trial, do what you can to address potential sources of stress – have your significant other pick up the kids from daycare, send your dog to a boarding facility for the week of trial, and get all your laundry done and suits pressed a week in advance. If you have truly managed to plan ahead and can fit it in, schedule time to unwind and think about something other than the trial for a few hours. Whether you plan a long trip to the gym, a massage, or even a Sunday brunch, taking a mental break will help you come back to your trial preparations relaxed and with a fresh perspective on the facts and issues in the case. ♣

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