

Why You Should Put At Least Two Lawyers on Every Case

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Even in cases that seem straightforward, it's always a good idea to have at least two attorneys assigned to the trial of an action. You may even expand that team to include more attorneys, for reasons that I will illuminate below.

The Power of Collaboration

When dealing with a jury trial, lawyers need to humble themselves to the truth that a jury of six people can think more multidimensionally than any one single lawyer. We all have different experiences and different backgrounds, and what strikes the trial lawyer as important may not resonate with one or more of the jurors.

For example, it's amazing how different minds can interpret different pieces of evidence. On cases that are heavy on physical evidence such as photographs, I've spent hundreds of hours reviewing those photographs and thinking about what they really show. Still, I have been stunned by what other people, particularly strangers on the jury, think when they see a particular piece of evidence. Despite never-ending effort, there are limits to my perspective. This is why it's so valuable to ask for a second opinion from another attorney.

Additionally, trials are won and lost in jury selection. That's one of the reasons it can be



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Trials are always stressful, but that stress can be mitigated substantially by preparation and helping hands from the senior folks in the firm.

advantageous to have at least one other attorney from your firm at the counsel table when selecting the jury. A second set of eyes during jury selection frees up the primary attorney to communicate in an uninterrupted way with the jurors. It is imperative that lawyers connect with jurors during voir dire, and nothing interrupts that connection more than notetaking.

Having another attorney act as a notetaker and observer as you stand up and speak directly to jurors is priceless. It frees you from having to remember the facial expression or reaction of a juror when a question is posed to them. Instead,

your notetaker is recording everything they see, including the physical reactions of other potential jurors during questioning.

Dedicating One Lawyer to Preparation Is Key

It is axiomatic that trials are stressful. If they're not stressful, you are in the wrong profession. You should be stressed out. You should be working huge numbers of hours. Your client's life rides on the outcome of the trial, and shortcuts are an absolute no-no.

However, unnecessary stress is unacceptable, and properly preparing for a trial eliminates a great deal of unwarranted strain. For example, you don't want to struggle with the introduction of evidence that could have been taken care of long before trial.

Ideally, you should be standing on a mountain of already-admitted evidence when you make an opening statement. Once an item is introduced into evidence, an attorney may speak freely about it. In other words, rather than saying that the evidence "will show," one can directly reference evidence in their opening statement.

To achieve this goal, it is essential to have associate attorneys assigned singly to the structural trial preparation of a case. These attorneys make sure that subpoenas are properly drafted and served in a timely manner. They also handle CPLR 3122-a notices and certifications, which allow for the introduction of records pursuant to subpoena and by operation of law. These 3122-a exchanges must be made carefully and timely.

Similarly, CPLR 4518(c) allows for the introduction of hospital charts in evidence by operation of law. CPLR 4532-a allows for the introduction of diagnostic films and testing by operation of law if properly and timely served.

CPLR 3101-d expert disclosures can make or break a case. Ensuring that they are properly

drafted, supported and served in a timely manner is crucial and can determine the outcome of a case.

This system allows hundreds of items admitted into evidence by operation of law and or stipulation before you make your opening statement. If the pre-trial work is done perfectly, there can be no good faith objection interposed to the introduction of evidence.

Additionally, courts love it when counsel comes in well before the trial with pre-marked evidence along with charts explaining why each piece of date-stamped evidence should be introduced, statute citations and dates of exchange. Working in a trial court is a very difficult job, and making the clerk's job easier by being prepared and professional goes a very long way.

A proactive law firm will send out notices of intention for each item of evidence months in advance of jury selection, and ask for stipulations months in advance of trial. Even if an adversary fails to stipulate, which they often do, that sets them up as the obstructionist from the very first day that they meet the trial judge. One law firm stands apart as prepared; the other is deemed to be the problem right off the bat.

Not only does this preparation pay off for all the reasons stated above, the trial prep attorney learns an important lesson by being assigned this task. They learn that the foundation of a great verdict is often laid in trial prep. They become perfect at their job, and therefore when they are standing up in front of jury, they do so feeling completely bulletproof and free to be an artist because they know they have followed the rules flawlessly.

At Least One Mentor on Every Legal Team

Great trial lawyers are not born. They are trained and built. It goes without saying that no one should try the biggest case in New York having never tried any case before. To that end, it is wise to assign

additional senior lawyers to each trial team based on experience and severity of the case.

If a trial does not present particular complexities, it is sufficient to assign a senior trial lawyer and a junior associate to try the case together. However, there should be no such thing as a silent, passive second chair. Every second chair should actively participate in the trial of the action.

Assignments of particular witnesses should be worked out months in advance of trial. The younger associates can be given plenty of time to work on their questioning and decide how they want to introduce particular items into evidence, and then critiqued in roundtable discussions with senior attorneys at the firm.

Complex cases with very heavy stakes should have at least two senior partners assigned to the trial. Multiple senior associates are necessary for collateral attack preparation on adverse experts, motions to preclude and exclude expert witnesses on the defense side, and for the preparation and argument of motions in limine.

One Case, Four Partner Attorneys, Nine Victories

The defense often focuses on what they would like to come into evidence at trial, or what they would like to be able to say at trial. However, the law acts as a guard rail to the introduction of inflammatory and non-probative information.

Anticipating, and then crafting strategic attacks on that sort of damaging evidence is critical.

I can recall one particular case that we tried where four senior partners at our firm appeared for oral argument on pre-jury selection motions in limine. We had served and filed no less than 13 motions in limine. We won nine of them.

We knew that our adversaries would have to devote a great deal of time to each one of the motions even though we served them well in advance of argument date. We spent months on the motions in limine and threw every available resource at them.

When the day for arguments arrived, the defense table did not know which one of us would stand up to argue any particular motion. Each of the attorneys from our firm had different styles, different energy levels and different ways of presenting their arguments. It was overwhelming.

This had a disorientating effect on our adversaries, and the outcome of these motions completely changed the evidentiary universe of the case.

At every step of a case, two brains are better than one. Training younger attorneys ensures that the next generation of trial lawyers will be every bit as seasoned and talented as the one that preceded it.

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