

Two for Teamwork

VIEWPOINT: Lead and second-chair attorneys must learn to divide the responsibilities and work together in order to handle complex jury trials.

BY CHRISTOPHER TAYBACK AND ADRIAN PRUETZ

Complex jury trials usually require more than one trial attorney — one acting as the primary lawyer, the other as a “second chair.” Effectively trying cases as a team requires more time up front, in the preparation stages, but can yield terrific results, including greater efficiency by dividing the many tasks that are required during a jury trial. It allows younger lawyers to gain actual trial time — a valuable commodity in developing a litigator — and provides each attorney an opportunity to see another lawyer’s approach.

Chemistry is an element of every successful collaboration, and is no less a part of what makes a trial team successful. Jurors form opinions about the attorneys very early. If the team looks disorganized, that negative dynamic will rapidly become part of the juror’s opinion of the case. While trying cases as a team involves many intangibles, there are steps the lawyers can take to make the process smoother and ensure better chemistry in front of the jury.

The three main tenets to successfully trying cases as a team are preparation, communication and organization.

Preparation extends both to the facts and to the division of responsibility at the trial. An old trial attorney saying is that a trial lawyer should know the facts broadly, but try the case selectively. This broad-based knowledge must extend to both trial partners equally. There is no room for guessing about what direction your partner is going in handling his or her aspect of the trial presentation. Both attorneys need to know the evidence inside and out, and know where to go with each witness in order to establish the points that need to be made, and where not to go with a particular witness in order to avoid problems.

Well before trial begins, the attorneys need to communicate clearly what their relationship will be at trial. Some cases are tried equally, meaning each attorney handles approximately half of the presentation. Others are truly divided into “first chair” and “second chair” responsibilities, in which the second chair supports the first and presents a smaller portion of the case. In either case, however, both attorneys need to discuss upfront what their responsibilities will be, even though both need to understand the importance of each witness’s testimony in the overall picture.

In order to handle the joint responsibilities of a trial, organization becomes more important than ever. Trial is a form of controlled chaos. Everybody has a different style.

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Each one needs to understand the other’s style. When it comes time to cross-examine an important witness, the supporting attorney needs to know what the examining attorney wants and needs to make the examination go well. Does he want documents put on an overhead projector, and if so, which ones and when? Does the examining attorney like to be handed notes by the supporting attorney as he thinks of things, or later, after a break?

Breaking a trial into its component parts, there are also specific decisions that need to be made about how your trial team will work.

■ **Voir dire.** In courts that permit attorney voir dire, it is usually a good idea to allow both attorneys to make some inquiry, so the jurors see and hear each attorney as a real

■ **Direct Examinations.** Direct examinations can be mapped out in advance so that each attorney knows which witnesses he is responsible for, and what important testimony must be elicited. This is the best opportunity to provide a very unseasoned attorney with trial experience in a reasonably controlled setting. This requires substantial discussion about what issues, evidentiary and otherwise, opposing counsel may raise during questioning.

Ideally, the senior lawyer will not “assist” the junior lawyer with the examination or to run to the bench during sidebars, spectacles that, even when necessary, suggest a lack of confidence in the junior lawyer, an overblown ego in the senior lawyer, or both.

■ **Cross-examination.** Cross-examination is less predictable, both in terms of the witnesses that the other side will call and the testimony presented.

To the extent that witnesses are called who have been deposed, the trial team should divide them and each should understand what points the responsible attorney intends to make with that witness, and how to effectively do so.

There will likely be other witnesses, however, because no matter how many depositions are taken, there is almost always a witness called who offers testimony that has never been heard before. This situation requires traditional cross-examination skills, and an understanding that at trial, someone is going to have to decide who will cross-examine which of those witnesses.

There will be times when the junior lawyer is best equipped to cross the surprise witness, because of having prepared that part of the case dealing with the subject matter of the testimony, such as an aspect of complex technology or industry practice. Since a short break to discuss strategy and technique is usually all that is available to prepare, examination of the unexpected witness typically goes less smoothly no matter how experienced the questioner. It is one of those times at trial that brings the acting skills of the attorneys to the forefront, requiring a command performance of serenity and solidarity, whatever is happening.

■ **Closing Argument.** Often, courts permit closing argument to be divided. If the case divides into segments, there usually is a logical basis for the division.

Unlike many aspects of trial, closing argument is something that can be prepared in advance and rehearsed, an opportunity that should be exploited. The chemistry between attorneys on a trial team should be showcased during closing argument — the most passionate part of any trial. Team members should refer to the other trial partner’s examinations, if possible, as supporting the other part of the case. This both draws attention to the evidence and to the joint effectiveness of the trial team’s presentation.



person, even if the division of responsibility will not be equal during the trial. Attorney voir dire is one of the few opportunities trial attorneys have to show that they are people with personalities. Any chance to make you and your team appear likable and trustworthy before a jury can only be advantageous to your case.

■ **Opening statement.** Most courts do not permit dividing opening statements between attorneys. Nevertheless, during the opening statement, the nonspeaking attorney on the trial team should support the presentation, either by providing the speaker with necessary documents, exhibits or charts, or simply by being attentive. The jury will see the working relationship between the attorneys, and it will reflect favorably if the team treats each other with mutual respect and support, even if it is apparent that one is the “lead” attorney and the other “second chair.”