

March 3, 2013

Winning at Trial: A Different Approach

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A prospective client recently asked me to describe how I handle cases and how my approach differs from the norm. After our discussion, it occurred to me that every client selecting lead trial counsel for a major case is entitled to know in advance the principles that drive how their lawyer will handle their case. For me there are four.

First, everything we do from the first pleading on is designed to position us to win at trial. We develop and test case themes early and stay focused throughout on proving the winning story. Our interest is in winning with the jury, not winning discovery battles or preliminary motions that don't advance the ball. We are convinced this is the right approach in every case, regardless of whether the case settles. Clients fare better in settlement when they have consistently demonstrated that they are ready, willing and able to go to the jury.

Second, we view discovery as a means to prepare to win at trial, not an end in itself. Turning over every stone on every conceivable issue is a waste of time and money, and it invariably distracts the trial team from the ultimate goal of winning at trial. We make only limited use of interrogatories. Our depositions are shorter and fewer than most. We focus on the facts likely to matter to the jury instead of building an endless database of every fact potentially related to the case. And we spend considerable effort interviewing key witnesses and developing facts outside the formal discovery process.

Third, we don't pretend to have all the answers. We use mock trials and jury simulations to test our trial themes. The best way to know how jurors are likely to react to our case is to present the case to panels of representative people and learn from their response. Our clients attend the mock trials so that they can help develop and refine the themes and so they can see their counsel in action. Mock trials are also an invaluable tool in guiding our jury selection.

Finally, we leverage technology. We rely heavily on advanced software to track and source the key facts as they are developed, instead of repeatedly searching for and reviewing old handwritten notes. We clip and immediately circulate the few highlights of video depositions that matter instead of relying on a paralegal to prepare lengthy and often useless deposition summaries long after the deposition. We are believers in the power of visual persuasion and prepare many of our own demonstratives so that we can adjust them in real time in the courtroom. Technology frees us to focus on persuading the jury, and enables us to do more with less.

Our trial team doesn't follow this approach because it differs from the norm, although it does. We follow it because it is substantially more focused and efficient and because we are convinced based on our experience in the courtroom that it delivers the best results for our clients in major litigation.



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