



A Guide for the Next Generation of Trial Lawyers

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There is a need for trial lawyers today like no other, and the future will require great trial lawyers even more than the present as fewer and fewer lawyers these days are given the opportunity to try cases.

Some decry there being too many lawsuits, but in many ways there are too few lawsuits. Where individuals do not feel that their grievances will be heard fairly by the court system, there can be a tendency to take matters into one's own hands, always with unfortunate results. The American court system, and the trial lawyers who lead it, are necessary to ensure that all who have been aggrieved will be confident that, win or lose, the court system and the advocates who preside over it will adjudicate their claims and defenses fairly.

Anyone can be a trial lawyer. Jurors will never know (or likely care) where you went to law school, what your class rank was, whether you were editor of the law review, etc.

Start trying cases early. There is a certain mystique about trials. However, it does not take many trials for a lawyer to quickly get past this and become a "real" trial lawyer ready to take on any case. After two or three trials, the mystique of being on your feet in a courtroom will wear off. You can do this. But you have to start early. No one will fault the junior lawyer if he or she needs a little guidance to get through the first trial or two, but a client (and judge) definitely will fault the senior partner taking a first flyer on one.

Pick a firm that tries cases. This may seem obvious, but if you want to try cases, go to work for a firm that tries cases. These days every firm's website says the firm has experience with every conceivable type of law. Just because a firm has a "litigation" department means nothing about the frequency of cases it takes to trial, if ever. The vast majority of lawyers, including the vast majority of litigators, will never first chair a trial. When interviewing with a firm, ask specific and pointed questions regarding how many cases it has taken to trial in the last 12 months, including jury verdicts, judge verdicts (bench trials) and binding arbitration awards.

Better yet, pick a firm where associates try cases. Simply because a firm tries cases, and perhaps tries many cases, does not necessarily mean that there are opportunities for newer lawyers to get in the courtroom. During the interview ask specific and pointed questions (particularly of associates) regarding associate involvement in trying cases.

Find out which cases in your firm are getting set for trial and ask if you can help. Do not assume that the senior partners know you want to try cases. Many lawyers do not.

Forget about having a 9-to-5 job. Trial lawyers work late into the night and on weekends.

Spend as much time in the courtroom as possible, whether you have anything to do with the case or not. Go to court once a week and spend two hours observing four different trials (30 minutes each). When you head over to court for a status conference or discovery motion, do not be in a hurry to get out of the building when your matter finishes.

Learn everything you can about trial logistics. Even seasoned trial lawyers get nervous in trial because they are invested in their client's plight. But there is another form of nervousness that comes from the fear of being embarrassed. This is a very normal and rational fear for a newer lawyer trying his or her first case or two. How to examine witnesses, how to cross-examine witnesses, how to make arguments, etc. are an artform and not mechanical, and thus in many ways can only be mastered through experience. Much else of what happens in a trial is easily learnable before one steps foot in court for the first time.

Learn the law, especially the rules of evidence. Read the Evidence Code cover to cover. Spend your "free time" reading articles, treatises and books regarding trial tactics, evidentiary rules and the like.

Become an expert in a substantive area of law where cases go to trial. It is far more likely that someone will allow a newer lawyer to take part in a trial if that lawyer is seen as an expert in the underlying section of law. There are many areas of law that go to trial. Find one that interests you and learn everything you can about that area of law, and if it requires self-study on evenings and weekends, so be it.

Take small personal injury cases with "on-board" clients. Personal injury cases are good for a lawyer's first trial or two (or more). First, there are lots of them. Second, they are almost impossible to defeat on summary judgment so they can get in front of juries if you (and the client) are not too eager to settle. Most personal injury cases, like most cases in general, end up settling and that is as it should be. However, you do not have to be too eager to settle.

At the end of the day, it is your client's life and resolving the case advantageously for him or her is more important than your trial development. If a settlement offer is made that is in

the client's best interest and the client wants to accept it, you should be supportive of that decision. However, one of the greatest disservices lawyers do to their clients is when they, perhaps without even realizing they are doing so, gently coerce the client into taking a settlement offer because the lawyer is afraid to try the case. If you are eager to gain trial experience you will be better able to provide advice to the client about whether settlement is advantageous if you are not afraid of the trial process. Tell them you are in this together.

Simply because you are a newer lawyer does not mean that you cannot create great theories to win your case. Never get discouraged by someone telling you "you can't do it this way." I have had associates save the day to win cases with me with theories I initially disagreed with. A smart, hard-working junior lawyer can single-handedly win the case if he or she works hard, thinks creatively and refuses to take no for an answer.

Prepare, prepare, prepare (and then prepare some more). Just because you are a newer lawyer does not mean you cannot know every document, every fact, and every witness better than anyone else involved with the case, lawyers, parties or otherwise. Preparation allows you to frame the case in the most advantageous way, but also allows you to change course when needed, improvise and adjust (especially during cross-examination).

Always, always be courteous, civil and professional. First, it is the right thing to do. Period. But if this is not enough of an incentive, juries will resent (rightfully so) any lawyer they perceive as being unprofessional, and will especially resent a lawyer who acts professionally to other lawyers in the courtroom but is less so to the court reporter, bailiff or clerk.

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