

Running a Client-Focused Trial from Start to Finish

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The relationships between trial lawyers and their clients are rooted in trust and open communication. They have to be. Every step in a trial involves a myriad of decisions that builds on one another in a way that is guided by an overall strategy that puts the business interests of the client first. Successful trial lawyers know that their priorities are their clients' priorities. Any trial must be a client-focused trial from start to finish.

Here are some elements of a client-focused trial strategy.

Go to Trial on the Client's Terms.

Most C-level executives and in-house counsel do not look forward to going to trial, yet litigation is a fact of life in business. There are circumstances that will push even the most litigation-averse board of directors into the courtroom. Therefore, it can be helpful for companies to set their own "line in the sand" beyond which litigation becomes a viable option. Trial lawyers can guide clients in setting this boundary in a way that is supportive of the company and its business priorities. This dialogue ensures clients pursue litigation for the right reasons.

It's the Client's Case. Period.

Before the start of a recent trial I asked my client, the in-house counsel of a large manufacturing company, "What do you want from me during the trial?" His answer: "Keep proving my decision to hire you was a good one."

As trial lawyers, we must never forget that we serve the client. There are some lawyers who tell clients, "It's my case, and I'm trying it this way." It is not the trial lawyer's case, however. It's always the client's case. See Rules 1.2 and 1.4, ABA Model Rules of Professional Conduct and Comments. Everything a lawyer does in that courtroom must serve the client's case to the fullest extent consonant with the applicable Rules of Professional Conduct.

Communicate. Communicate. Communicate.

The best way to try the client's case is to stay in close communication with the trial lawyer's main contact throughout the trial. Some clients come to court every day, while others prefer to read the daily transcripts. Most are a mix of the two with out-of-town clients more likely to attend the opening and closing arguments rather than drop in regularly. It is also rare that a general counsel will be the one who comes. Usually, it is a member of the in-house legal team, who will keep superiors and stakeholders informed on the day's activities. Regardless of who attends and how often, the client should be informed of strategy and objectives each day.

Be Flexible.

A trial is not some fixed system that, once set in motion, cannot be altered. Clients and their lawyers must stay in constant communication so as to adjust strategies and tactics in a way that serves the company as a whole. In this way, a litigator truly serves the client, his or her superiors, and the company itself.

Use Witness Testimony to Address Weaknesses.

One trial strategy is to have company witnesses reveal and address all possible weaknesses and problems for the case in their testimony. This may seem like a counterintuitive approach—and not

client-focused—because it seemingly exposes the company to attack from the other side. The reflex response would be to protect this information at all costs during trial, hoping the other side will not bring it up.

However, there are two critical reasons why weaknesses and problems should be addressed directly in witness testimony. First, juries look more favorably on corporate defendants when witnesses speak candidly and plainly about the circumstances that gave rise to the lawsuit. By dealing with any potential issues up front, witnesses build trust with the jury. Second, a trust bond with a jury is a fragile thing and can be easily broken. If company witnesses hide a weakness that is then exposed by opposing counsel, juries may well regard any information given to them by those witnesses as suspect. Only by being open and honest can a company's trial lawyer ensure jurors will trust what they are being told.

No Surprises at Closing.

A good trial lawyer will have involved key client stakeholders in all decisions throughout the trial, and the closing arguments phase is no exception. The closing argument should focus on the case from the client's point of view, weaving in key messages about the company.

Learn from this Trial for the Next.

No matter the verdict and whether it comes down for or against the client, the work does not stop when the jury files out of the courtroom. In fact, the final stage is just gearing up, particularly if the client is facing additional similar litigation.

If the jurisdiction allows post-trial jury interview, for example, there is much to learn from those conversations. In particular, jury interviews can reveal why jurors found for or against the company, what influenced them, and any weaknesses in the case presented.

Trial lawyers should also conduct post-mortem meetings with clients after every case. These meetings provide an opportunity to review everything that happened during the trial and assess the impact on the result. Even if the verdict was positive, there are always lessons to learn.

Conclusion

Putting on a client-focused trial requires a commitment to communication and an openness to working in a way that serves the client's needs. A lawyer may have his or her own ideas about how a case should proceed, but if that strategy is out of sync with what the client's business goals, it is not a path to success.

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