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JACOBY & MEYERS

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Learning over a lifetime

A CURATED COLLECTION OF ADVICE FROM ELEVEN VETERAN TRIAL LAWYERS FOR WHEN YOU'RE "UP BEFORE THE BEAK"

In March of 2020, when our legal world effectively shut down for a year, I made myself a personal promise to not waste the time. As part of my new resolution, and after watching all nine seasons of *Homeland*, I decided to spend a certain allotment of time each week to improving my skill set as a trial lawyer. I read books, attended webinars, listened to podcasts – anything I could think of to help me get to the next level.

After doing this for a few months, I noticed something pretty cool. I realized that a lot of the legendary trial lawyers I've come to respect over the years were not just teaching the classes, they were attending the classes. In speaking with them, I realized that they became legendary because they continuously practice, they make efforts to learn, they have mentors, they read books, they basically do all the things they need to do to keep getting better.

So, a few weeks back, when I was asked to write an article in the trial skills edition of Advocate, I decided to write an article about the need to continuously learn. In doing so, I reached out to some of my friends, mentors, and other lawyers who I consider to be trial bad-asses, to ask them to share some of their approaches to learning as well as to share some of the trial hacks and lessons they have picked up in recent years. I found their responses to be interesting, informative, but most of all, inspirational.

Slow down

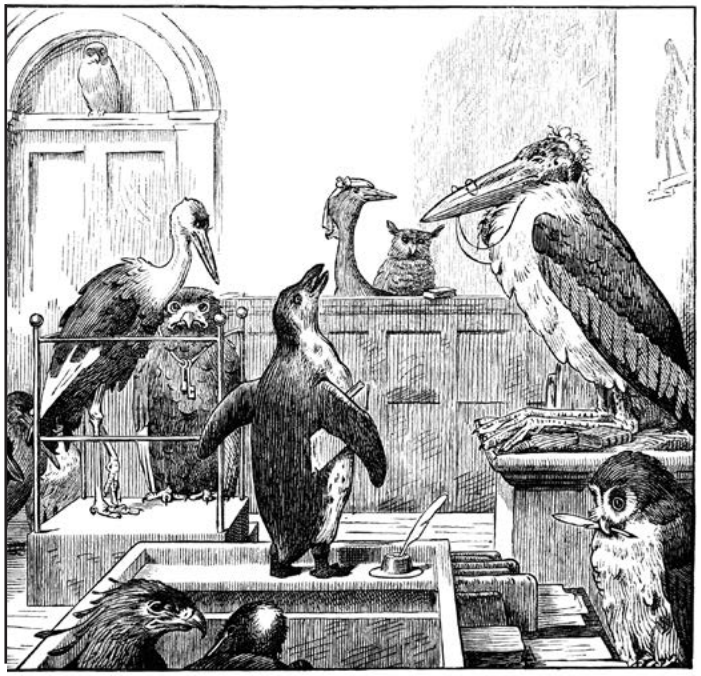
Slow down – words of wisdom that flowed repeatedly from the mouths of the judges and court reporters in my first trials. I finally learned. They are the two words I say now every morning. They are words to live by and to try cases by. By slowing down you think more carefully about each word that you use. By slowing down you listen better. By slowing down you are calmer and forget all that unwanted noise in your head – noise that is nothing more than fear of the unknown and of failing. By slowing down your voice tells a better story. By slowing down, the jury hears you. – *Gretchen Nelson*

Less is usually more at trial

I have learned in recent years that less is more. I think the tendency in past years was to overkill everything with too many witnesses, too many of them repetitive; too many exhibits and too many of them repetitive. Trials going on too long and the jurors losing interest and the high points made by plaintiff's counsel forgotten or lost in the weeks of testimony. Don't be afraid to cut it all down, make strong simple points and swing for the fences! – *Gary Dordick*

Be ready to embrace the unexpected

During voir dire recently, I inquired with a perspective juror and mentioned that he said something on his questionnaire that I wanted to talk about. He knew what I was referring to, and



UP BEFORE THE BEAK.

before I read it out loud, he said, "I wrote it to be humorous and I know it worked because I can see the smile in your eyes." Masks do not hide a person's feelings. Whether it be in jury selection or the examination of witnesses, I was initially concerned that I would not be able to see the feelings or emotions of those masked individuals. I was concerned that I could not best message to the jury if a mask was hiding part of my face. The truth is, we emote with much more than our mouths. We have the ability to conduct effective jury trials even during a time when people need to wear masks. So, I continue to be reminded that the unknown is not something to be feared. Rather, we should embrace and thrive when faced with the unexpected. – *Rahul Ravipudi*

Nine is the magic number

Remind the jurors they only need nine votes to move onto the next question! Jurors are pre-programmed to be unanimous. This results in an attempt for all to agree on a number when it comes to damages awards. This will usually result in a lower number than you would get if just nine of 12 come to an agreement. So, always remind them, "nine of 12, nine of 12 and you are done." – *Michael Alder*

Avoid ranges for your "verdict number"

I always like to tell the jury my "verdict number" early and often. Most of the time I'll just say a round number or give a range,

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but I recently tried a case in Los Angeles and gave the jury a range. A friend told me, "It's nice to give the jury a choice between numbers and let them choose after you sold your case – it empowers them." Much to my disappointment, they chose the low end of the range. After speaking with the foreperson, he told me point blank: "Don't give ranges! We were in there negotiating, and it gave the lesser jurors a way out to a smaller number that we could all agree with because you said it." Fast forward a week, I was sent an article by my friend John Davidi; it said to use a big number, and be as specific as possible. Focus groups have found the more specific, the more believable that number is. They have also found that juries are not offended by big numbers. So, in my next trial, I'll be asking for $16,397,231.10 and I won't be scared of offending the jury. – *Greyson Goody*

The leading question

I always considered myself to be a good cross-examiner at trial, but I felt uncomfortable with too many leading questions. After reading some books on the subject during the pandemic and attending a great seminar on cross-examination, I have used leading questions both in constructive cross (where you are obtaining admissions from the opponent or their expert) as well as destructive cross (where you are chipping away at the witness's credibility). I have also shortened up my questions, using one new fact for each question and progressing to a conclusion. The story telling is not in the answers but in the leading question. – *Jack Denove*

Be the authentic you

Authenticity is key. As a fairly new civil trial attorney, I went down the rabbit hole of attending every conference, reading every book, and during the pandemic, logging on to webinars to the point of Zoom fatigue. I love watching my colleagues and mentors share their war stories so I can extract pearls of wisdom from their experiences. I realized, however, that my style is different than most of the people I look up to and who I have tried to emulate. My background as a former prosecutor was very pragmatic – this is what happened, I will prove it to you by x, y and z, so you, the jury, should hold the person accountable. I was not used to the touchy, feely, storytelling involved in creating damage narratives. I tried doing what I had seen others do, but it was not me. The jury could tell I was not being authentic. Once I got comfortable in my own skin and did storytelling in my way, then things began to change. By believing in the amount I was asking for and not being afraid to ask for it in my own way, the judges and juries also believed in what I was saying. In short, we know that preparation is the most important part of trial presentation, but being your authentic self is the key and the difference between being ordinary and extraordinary. – *Siannah Collado*

Years ago, I was told that longer trials favored plaintiffs. If a case took a long time to try, the jury would think it must be an "important case." When I was a newer attorney desperately wanting to accrue ABOTA points, I took comfort in this idea and was fine with trials dragging on interminably. After all, being in trial was a lot more fun than pushing paper in the office.

But now, having run the gamut from as long as a five-and-a-half month single-plaintiff jury trial to trying federal court lightning-rod eight- or ten-hours per side stop-watch-timed trials, I believe that, generally speaking, shorter trials (especially when literally timed and "on a clock") favor the plaintiff. Shorter trials (especially if timed) keep the jurors' interest and force us to: keep things simple; avoid any unnecessary detail or facts; frame the case around the core strengths; focus only on the essential points; surgically make those points in sniper-like fashion rather than a shotgun-style presentation; avoid unnecessary repetition; etc.

The jury doesn't need to hear the same thing, over and over, repetitively, from each witness. And, as trial lawyers, we tend to offer a lot of unnecessary repetition, a dynamic that longer trials exacerbate and encourage. This excessive repetition can backfire by de-sensitizing the jurors to their initial (angry) reactions to certain evidence; the longer the case drags on, the greater risk that the jurors' initial reactions and feelings subside with time.

Keep it short

Shorter trials have another benefit: they make it very difficult for the defense to effectively develop the typical collateral attacks on our client. Even better, if the trial is timed and requires the discipline of managing a clock, most defense attorneys (who don't try that many cases) will fail at managing the clock and will run out of time. I used to hate being told by a court to hurry up or that the court would impose time limits. Not anymore. I not only welcome strict time limits, but will often even encourage state court judges to put us on a clock like federal judges regularly do. Since I've made this mental switch, I've tried better cases, gotten better results and I know the jurors have preferred it. – *David deRubertis*

You can't win a bad case

The most important lesson I learned is that I cannot win a bad case. What I can do is turn a good case into a great case by putting my spin on it and the practical skill I learned was being able to tell the difference between the two. – *Steve Vartazarian*

As a trial lawyer, I am constantly learning, evolving, and bettering myself to be the best advocate for my client. When I started practicing law, I took what I had learned from watching how other trial lawyers try cases. I continued this learning process by going to watch other trial lawyers try cases. I watched Jeffrey Pop (my mentor), Arash Homampour, Gary Dordick, Garo Mardirossian, the late Charlie O'Reilly, Michael Alder, and Brian Panish.

While I learned a lot about them, I could not be like them. I did not speak like them, think like them, or have the

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same life experiences as them. They told jokes that I would never tell and had mannerisms that are unique to them. While I tried to be like them, I could never be like them. They were all different. They were all unique and successful because they were themselves. I had to learn who I was. I had to develop my own voice. I had to shed the insecurities and just be me.

To find your voice you must try cases

The moment when I understood who I was and embraced my past was when I found my voice. While I am not one to judge or analyze my own voice, I do believe it is unique and forceful in our legal community. But I'll let others judge me. I learned how to be a trial lawyer by trying cases, falling flat on my face, and getting back up. I learned how to be a trial lawyer by getting into the arena and getting my face marred. I tried disputed-liability cases. I tried soft-tissue cases. I tried premises cases, auto cases, and products cases. Along the way, I learned; I evolved; I found my voice; and I started winning. – *Minh Nguyen*

The power of your opening statement

I think opening statement is where you win your case. I have a structure I use for most cases that I start writing from the time we file the complaint, and constantly adjusting as the evidence comes out. At trial, the first words out of my mouth are usually a powerful one-liner theme, e.g., "Mr. Acosta had two seconds, the defendants had two years." Then I give a compelling present-tense story from the defendant's wrongful acts perspective, and only first mentioning my client at the moment of injury. From there, I like the Ball/Mitnik methods of dismantling all liability defenses, then tell the damages story from the medical providers' viewpoint, then dismantle all the damage defenses. I end with the powerful theme, ask for the economic damages (if big enough not to waive) then talk about how the biggest damages are the human losses which "you will see are in the millions of dollars for what happened to him." – *Daniel Kramer*

So, there you have it. While there is no one way to do things, one of the overarching themes I took away from this project is the need to constantly reflect on what we are doing and make adjustments. The landscape of the courtrooms, judges, jurors, and pretty much everything involved in our role as trial lawyers is constantly changing and evolving. The only way to stay relevant over the course of a career is to learn and evolve along with it.

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