War Room Basics—Asking the Right Questions

When a client walks into our offices at The Focal Point and asks “Do I need a war room?” our response often surprises them. Since we routinely help set up and staff war rooms throughout the country, potential clients seem to assume we will say, “Why, of course!” Instead, we inevitably (but politely) shrug our collective shoulders and say, “It depends.” Then we pepper them with a series of questions, such as “What do you mean by a ‘war room’?” “Who is going to be working on the case prior to and during trial?” “Who’s going to be in charge?” and “What do you need to do when you get to court?”

We ask these questions for three reasons. The first is obvious, the second more subtle, and the third is for an entirely ulterior motive.

The first, most obvious reason: Every trial is different. There is no stock answer as to whether someone needs a “war room” or even what the term means. Asking these questions helps us determine what is needed for a particular case.

The second and more subtle reason we ask these questions is because the answers tell us a lot about the person or trial team responding. There are no “right” or “wrong” responses to our questions. However, the answers do let us know how well prepared the trial team is and how much experience it has. Both factors are important to consider.

There is nothing nefarious about the third reason we ask these questions, but we admit to having an ulterior motive in doing so. Specifically, we want to force our clients to step back and plan their
logistics for trial. In some instances, this is the first time they do so in any kind of meaningful way.

This Chapter focuses on questions—the questions you need to ask yourself and your team whenever you start assembling a war room. Obviously, we cannot answer every question you may raise as part of this inquiry. Instead, we want this Chapter to serve two broad purposes: (1) to give you some basic information so that you can at least start a dialogue (both internally and with your team) about your logistics needs; and (2) to direct you to places in this handbook where you can begin to find some answers.

Strategy Versus Logistics

In order to win, you (or others on your team) need to plan both your trial strategy and your trial logistics. These crucial elements of every case are different. Strategy is your line of attack. It is what they teach you and test you on in law school during trial practice classes (e.g., “What is the case theme?” “What is the story?” “Which witnesses will you call?” “In what order will they testify?”).

Logistics are rarely taught in any formal setting, much less in law school. Logistics have to do with how you are going to implement your trial strategy: creating trial graphics, presenting video clips, preparing witnesses, and making sure your entire team is well fed throughout trial. You often only learn these crucial skills in the heat of the moment during trial—and then what you really learn is what not to do next time (e.g., allocate less than an hour to fix a graphic to which opposing counsel objected; send your trial tech into court without breakfast; send your key paralegal home before a verdict is announced). This is unfortunate, because you
will rarely get the verdict or other result you want without having fully developed both your trial strategy and your trial logistics.

Most trial teams decide they need a war room when they step back and acknowledge an important truth: “If it is going to work in the courtroom, it has to first happen in the war room!” No matter how brilliant your argument or how extensive your evidence, if you fail to practice your opening statement or create a space for witness prep, at some point you will undermine your own best efforts.

Some of our clients do not bother with a war room because they believe that their case probably will settle, so they view these efforts as a waste of time. Statistically, that is hard to argue with, as the vast majority of cases never get to the courtroom. Nevertheless, we have seen considerable harm result when trial teams delay planning the necessary logistics for trial. Let’s face it: some cases that should or could go away do not. In such instances, the resulting delay means that an enormous amount of work must be done to get ready in a hurry. Consequently, both the costs and the chances that something will go wrong increase substantially.

We rarely see a downside in planning ahead, even if you are relatively sure your case will settle. French mathematician Blaise Pascal summed up the wisdom of such an approach when he explained to his atheist colleagues why he went to church each Sunday. Pascal admitted he did not know what would happen when he died. If there was no heaven, he reasoned, going to church had done no harm. But if there was a heaven, he “gained all.” While we leave religious arguments to others, we see considerable merit in applying Pascal’s approach to war rooms. That is, it does not hurt to plan ahead, even if there is no trial. And if there is one, you will experience considerable gain.

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<thead>
<tr>
<th>Pascal’s wager:</th>
<th>Trial happens</th>
<th>Trial does not happen</th>
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<td>I prepare</td>
<td>Potential favorable verdict</td>
<td>Minor cost in time &amp; planning</td>
</tr>
<tr>
<td>I do not prepare</td>
<td>Probable defeat</td>
<td>Negligible savings in time &amp; planning</td>
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First Key Question: What Is a War Room?

In our view, a war room is a space that you set aside to prepare for a major legal event. Most war rooms are set up in anticipation of a milestone in a case. Typically this is a trial, but it can be an arbitration or a major hearing, such as a Markman in a patent case, a preliminary injunction hearing in a trade secret case, or a significant summary judgment hearing.

Often these milestones require attorneys to stand up in court, present actual evidence, and speak knowledgeably and persuasively—all of which requires intense, focused preparation. War rooms provide a place to do this work, no matter what event you are facing.

More specifically, a war room is the place where you can concentrate and plan. It is far away (psychologically, if not always physically) from the day-to-day distractions of home and office. We call this, with apologies to Virginia Woolf, “A War Room of One’s Own.” War rooms also are places for entire teams to gather to work out key case themes, theories, and critical next steps. They are inner sanctums, if you will, where teams craft case strategies and make major decisions both before and during the heat of trial.

At the outset, we want to make it clear that when we talk about a war room, we are not talking about some specific layout or space plan. You can set up your war room in a series of hotel suites near the courtroom or on a table in the corner of your office. The point is, a war room is a specific place (regardless of actual size or proximity to court) that you consciously set aside and conscientiously maintain as the location to which you go in order to do what needs to be done for trial.
The size of the event notwithstanding, more often than not it behooves you to at least consider whether you need a war room. Ask yourself if you need a place where you can get away from distractions, where you can store all of your materials, where you can reflect, and where you can confer privately with others on your team. And ask yourself if you need a place that is specifically designed for one project only: getting ready for trial.

A war room is not just a place to get away from it all. It also is a place to go to so you have everything that is essential to your case. It is a place (regardless of budget) where you and your team (regardless of number) organize and store what you need for trial—from staplers, pens, and snacks, to copiers, trial exhibits, and deposition transcripts. It is the one place you know you can go any time of the day to focus, because everything you need is there.

You set up and use a war room to accomplish something very specific. It is a special time and place to concentrate, collaborate, and execute your legal strategies. It is a place to get, and stay, on point.

Clearly, having such a space is helpful not only for practical reasons but for psychological ones as well. A war room is a place where you and your colleagues work collectively as a team and form the personal bonds necessary to endure the tribulations of trial. Psychologically, it is the place you go each morning just before court to put on your “game face.” Equally important, it is the place where you can take off your game face when you return from court and are ready to focus on what is needed for the next day.

Second Key Question: How Do I Set Up and Run a Successful War Room?

If, upon reading the prior section, you are left thinking “Yes, I do need a war room,” your next question should be “How do I set up and run a successful one?”
Unfortunately, this is not as simple a question as it may first appear. Instead, it leads to a series of other questions. Lest that seem complicated, let us assure you that just asking yourself these questions serves a crucial function: it increases your chances of operating a successful war room because you are forced to consider (and reconsider) all of the possible contingencies and to anticipate all of your possible needs.

For example, thinking about how many workstations you need may remind you that you have not yet hired someone to synchronize your video depositions. Asking questions about how war room personnel might best help the lawyer present her case may convince your team to use a projector and screen to display graphics, instead of a flipchart or whiteboard. Or thinking about where to house everyone during trial can remind you to advise a key witness of the new trial date and when he may be needed.

In the broadest sense, these additional questions fall into five categories: Who, When, Where, and How?

“Who” questions

Your war room is nothing without the right staff—in both the courtroom and the war room. Simply assessing the number of people who will be working on the case is not enough, though. You must also consider:

- “What is each of these people likely to need in order to do his or her job, in terms of both support and supplies?”
- “Who is my intended audience?” because that determines what to do and bring to the war room.

For a more detailed analysis of how these and similar issues affect your war room, turn to Chapters 3, 4, and 8.

“When” questions

The big “when” question—one of the first we ask any potential client—is “When is the trial?” Heading to trial next week will have
profound effects on the viability and scope of your war room. We are not saying it cannot be done, but there are limits (physical and often budgetary). If your event is four weeks, six weeks, or, better yet, eight weeks away, you can do a lot more, and at a more comfortable pace. Other “when” questions include “When should I set up my war room?” and “When do I need to set up my equipment in the courtroom?” You can find answers to these questions in Chapters 5 and 9.

“Where” questions

Location is key to figuring out what kind of war room to set up and how best to run it. The “where” questions include “Where is the trial being held?” (i.e., “Will I need hotel rooms for my staff?”) and “Where will I set up the war room?”) plus “Where is my staff located?” (e.g., “How will they get there?” and “How long do they need to stay?”). We discuss location, location, location in Chapter 6.

“How” questions

Of all the questions we are asked about war rooms, we probably field more “how” questions than any other. These range from very general inquiries, such as “How do I determine what size exhibit boards I should use in court?” to highly technical and specialized ones, such as “How do I change a lightbulb on my state-of-the-art projector?” or, even more seriously, “How do I create a trial presentation database?” While many of the more specialized and individualized questions are beyond the scope of this general handbook, we do cover some of the biggest and most common ones, including:

- “How do I set up my war room?”
- “How do I run and manage the war room?”
- “How much is this going to cost?”
- “How do I make one of those databases that organizes all the materials I want to show in the courtroom?”
- “How do I set up in the courtroom?”

We discuss these and other “How” questions in Chapters 7 through 11.