# Finding Your Way to First-Chairing a Trial

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It was one of those mornings when I was in the office early. It was still dark outside. No one else was around yet. Basking in this early morning solitude, I took time to skim the headlines of some of those daily emails telling me what is new and exciting in the practice of law. One in particular caught my eye because it is a subject I care a lot about. Yet another young attorney was bemoaning the challenges of trying to obtain courtroom and trial experience. He was an associate in a large law firm, so he knew that the odds were already stacked against him. He had taken on a pro bono case, hoping that this would be his ticket to gaining that elusive trial experience. He had spent more than a year, and hundreds of hours, slogging through discovery and then ramping up for trial on his pro bono case. And then it happened—his worst nightmare. His pro bono case settled. What ended up being a great result for the client was devastating to this attorney. And yet, his story is all too common.

I couldn't stop thinking about this story and this problem, which is one I had already spent a lot of time pondering. The practice of law has certainly evolved, especially in the world of litigation. Before alternative dispute resolution gained the widespread popularity that it has today, it used to be that trials were the most popular form of dispute resolution. This was especially true in smaller cases, in which the stakes were not so high. A complaint was filed; a little discovery was taken; and if the parties were still at odds, it was "Let's just try the case." Things have changed. Clients now increasingly look for early resolution, whether through an offer of judgment, a summary judgment motion, or mediation, hoping to avoid the unpredictability, disruption, and added expense of a trial. Mediation has grown in popularity in part because the client has more control over the eventual outcome and can be an active participant in helping to shape an acceptable resolution. For those cases that appear destined for trial, it is likely that the stakes are high, alternatives have been explored and rejected, and the client opts for trial knowing full well the risks a trial entails. It is not surprising that clients in this position want to eliminate as many risks as possible. One obvious way is to go to your "tried and true" trial counsel—the seasoned and savvy trial lawyer who has scores of trials notched on her belt. Clients want to know that their lead trial lawyer is someone seasoned, confident, nimble on her feet, who can marshal the facts and the law as best possible to advocate for the client's position.

## What to Tell a Young Lawyer

So what do you tell a young lawyer who wants to be a "trial lawyer" and not just a "litigator"? Is there any happy ending to be found in today's world of litigation, where trials are celebrated as the rare exception to summary judgments, settlements, and alternative dispute resolution? Is there hope for anyone who

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hasn't already carved out his or her place as one of the "go to" tried and true trial lawyers for those bet-the-company cases? I always prefer a story with a happy ending, but this time I wasn't sure I could find one. I talked with some of my colleagues and friends about it. I saw glimmers of hope here and there in some of the stories I heard. Two things became clear—first, it is essential that you, the aspiring trial lawyer, take matters into your own hands, invest in yourself, and make sure that you have all of the right skills and knowledge. In short, be prepared. If you aren't prepared, you have set yourself up to fail. Second, you need that lucky break. But it isn't just pure luck; it is creating the illusion of luck by having done the right things to put yourself into position to find, create, or seize that first trial opportunity.

Be prepared—an easy point to remember, but just what does it mean? It takes more than legal knowledge to be a good trial lawyer, although that is an important first step. You must know the rules—especially the rules of evidence. There simply is no substitute for this. When you are on your feet in the heat of trial, every moment counts. There is no time to consult your pocket rules of evidence. The time for objecting will have passed long before you find the right rule. You must have a thorough command of the rules of evidence to keep out that which is objectionable and harmful to your client and to get in that which is admissible and will move your client's case forward. It must become second nature, instinct, to know when to object and then articulate the proper grounds. You must always have in the back of your mind the need to preserve for possible appeal any trial court rulings that could constitute reversible error. Seasoned trial lawyers will tell you that only by study and lots of practice does this come as easily as it seems to when they are in trial.

Equally important is having a solid familiarity with the rules of civil procedure and your local rules as well. By becoming a "rules nerd," you can enhance your value and develop a reputation for yourself that will make you an essential member of a trial team. And it goes without saying that you must know the substantive law. Those law school hypotheticals you puzzled through are now replaced by real-world legal conflicts with their own twists and turns. In any case that you work on, you should become intimately familiar with all of the elements of the claims, all of the potential defenses, and any relevant statutes and regulations, leaving no stone unturned and challenging your assumptions at every step of the way.

This thorough grasp of the law, both substantive and procedural, is essential. A friend of mine refers to them as the "table stakes" in litigation—without this knowledge, you don't get to play. You must bring to the table—here, the courtroom—this legal knowledge if you expect to try cases.

Another aspect of being prepared requires that you develop poise and self-confidence; you must demonstrate a level of comfort when you step into the courtroom. It is hard for a client to

SUA SPONTE

# A Judge Comments

**HON. BARBARA M.G. LYNN**

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I cannot emphasize enough the importance of thinking outside the box in finding opportunities for stand-up experience in court. My court, the Northern District of Texas, has formalized a process for appointing lawyers where the case of an unrepresented party has withstood initial screening. Most of these cases are actions brought by detained persons, but they could involve legal representations of criminal defendants and of civil plaintiffs. Given that the lawyers are accepting the appointment as a service to the court, after the case is over, some of our judges are willing to provide appointed counsel with a feedback session, in which they will make suggestions for improvements in trial preparation.

I have published a standing order expressing my preference that lawyers with seven years or less experience will handle oral arguments. I purloined this idea from my friend Judge Bill Alsup of San Francisco, and I am delighted that many other judges have done the same with my idea. I believe judges have a unique opportunity to strongly encourage firms and clients to give the next generation the privilege to practice their craft in a real setting. For a sample of such orders, see www.NextGenLawyers.com. Many of the judges who have adopted orders similar to Judge Alsup's state that they will hear oral argument, including in *Markman* hearings construing patent terms, when they might not otherwise hear oral argument, if a junior lawyer (generally of two to seven years' experience) will make the argument. Most of us have no difficulty with more senior counsel being available during such hearings to assist and mentor junior lawyers or even to step in if that is necessary, but I make it crystal clear that I will not pull my punches or walk softly merely because a less experienced lawyer is the advocate. This is the genuine experience, warts and all.

I have a conviction that our profession will remain a critical servant to our democracy. Jury trials are a key part of our justice system. They embody our Seventh Amendment right, so the bar and the bench need to do everything we can, consistent with providing great client service, to give young lawyers real experiences that will allow them to shed the title of litigator and wear the garb of trial lawyer. ■

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have confidence in you if you do not appear to have confidence in yourself. Equally important is the fact that if you don't believe in yourself and the arguments you are making to the judge and jury, they are not going to believe you either. For young attorneys, a lack of confidence is often a matter of lack of experience. You know the law, you are familiar with all of the facts that have been unearthed in discovery, but if you lack confidence nothing else matters. Standing on your feet in the courtroom as the trial lawyer for your client puts you in a position of power. You must be comfortable with that power and confident in your abilities. If you are timid or unsure of yourself, jurors are likely to view you and your side of the case with skepticism.

Of course, projecting confidence is easier said than done. When you have never been the first- or second-chair trial lawyer before, how do you make it look so easy? How do you display that self-confidence? For all but the handful who may have been born with a true gift of public speaking, it takes some work, but it definitely can be done. Focus on the two main pillars of support that will give you the confidence you need—content and delivery. The content pillar is perhaps the easiest for young attorneys. You have read all of the cases, all of the deposition transcripts, all of the documents, and you can rattle off the law and the facts without hesitation. You know your case cold. This knowledge comes only with considerable time and effort—there is no "easy button" approach to knowing your case cold. And if you cannot bill for all of that time, you do it anyway because that is what it takes to get you to where you want and need to be.

The delivery pillar can be harder for some lawyers to master, partly because it is not what we went to law school to learn. Once we know what to say, we still need to know how to say it. How do I deliver my opening statement, my direct examinations, my cross-examinations, and my closing argument in a style that is effective and persuasive and that makes the finder of fact want to listen to and believe me? One of the least expensive, although arguably the most painful, ways to improve your presentation style is to video yourself as you practice your advocacy skills. You don't need someone sitting beside you watching it with you to pick out many things that you can and should change to make yourself a better trial lawyer. But if you can find a good trial lawyer to serve as your mentor and watch with you, so much the better. That lawyer will identify changes in your behavior and delivery style that will eliminate distracting habits, address your posture, and help you modulate your tone and pace so the fact finder will focus on what you are saying and not on how much you are swaying. Another approach is to practice in front of friends, family, and colleagues. Even practicing in front of your mirror can help. Some trial lawyers take acting lessons or work with a public-speaking coach to help zero in on changes

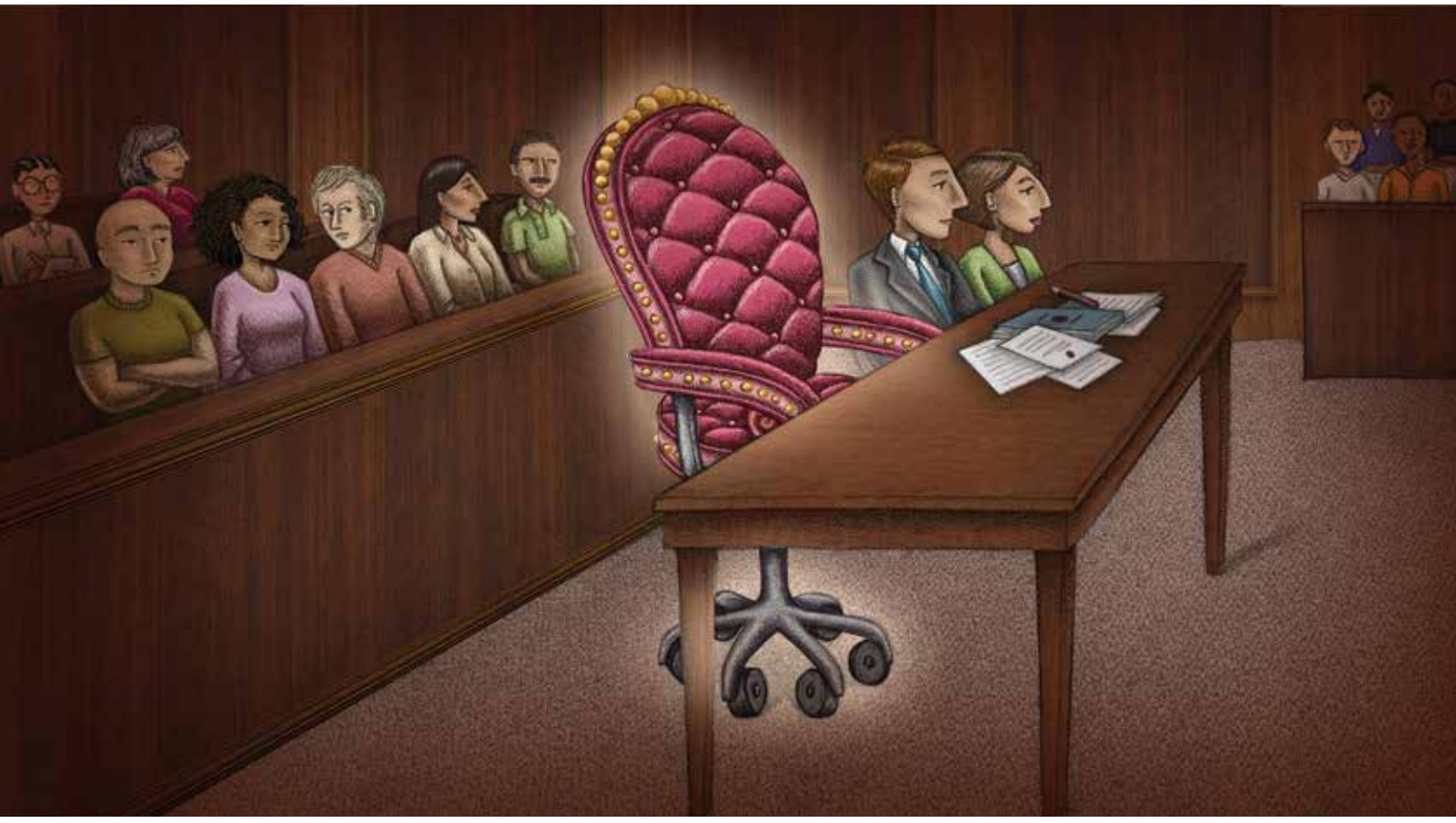

Illustration by Betsy Lyon

that noticeably improve their presentation style. The goal is not to change you into someone you are not or to teach you how to "act" in the courtroom. Rather, the point of all of this is to help you identify the distractions and then eliminate them, while maintaining the persona that is you.

## Hone Trial Skills

The challenge for young lawyers is that developing the skills and knowledge necessary for effective courtroom performance takes considerable time and effort. It is not something that you can accomplish overnight. As a young lawyer, if you are serious about becoming the best trial lawyer that you can be, then you must devote whatever time it takes, and it is likely that not all of your time can be billed to a client. Devote the time anyway; invest in yourself and know that you are worth it.

A good way to hone your trial skills is to seek out opportunities for trial simulation trainings. Some larger firms offer in-house trial training programs for their young attorneys. These firms have watched as the number of trials has dropped, and they understand the challenges that presents for their young attorneys to get first– and second-chair trial experience. Although these mock trials are not the same as the real thing, they can be a valuable step in preparing a young attorney for the real thing. The closer the simulation is to the real thing, the better the preparation it is. When a young attorney does a mock jury trial in a real courthouse with real jurors before a real (retired) judge, the adrenaline is no different and no less than it would be for a real trial. Learning to anticipate, to think and plan, to understand how different it is to carry out your advocacy skills in a place where you must bring everything in through a security check point, and where you do not have at your fingertips all of the conveniences available back in your office, helps to put you in the mind-set needed by any trial lawyer. You quickly learn that it is not enough to have prepared your opening and closing, and your direct and cross-examinations, and to be nimble with your exhibits. You need to understand the technology available for use in your courtroom or make a conscious decision to forgo technology in favor of other approaches to publishing your evidence to the jury. You need to be able to react to your adversary's examination with lightning speed, lest you waive an objection. You need to monitor your jurors and how they are reacting as the evidence is presented. You need to be mindful of your judge and be prepared to revisit motions in limine left open after your final pretrial conference. And you need to appreciate that court sessions begin and end at the sound of a gavel controlled by the judge, and no one else. The best simulations will take the real-world experience even one step further, and provide the attorney with an opportunity to watch remotely in real time as the jurors deliberate. Follow that with the opportunity to meet face to face with the jurors, hear their brutally candid feedback, and ask them questions, and you provide young attorneys with a rite of passage that will forever change how they look at what it means to try a case. If your firm does not offer this type of opportunity, ask for it. If that fails, then look for trial simulation opportunities offered by a local bar organization or other group. Sign yourself up, even if you must pay for it yourself.

> It is essential that aspiring trial lawyers take matters into their own hands.

## Watch Real Trials

Watching real trials can also help with your skills development. This is not a replacement for participating in trial simulation training, but it is an excellent way to supplement your development. Find out if any of the attorneys in your firm have a trial coming up, and take advantage of this opportunity to watch and learn. Try to learn a little bit about the case beforehand, so that you have an even better understanding and appreciation for all that you observe in the courtroom. Never mind that you cannot bill a client for the time spent observing. Remember that this is one of the most valuable investments you can make—you are investing in yourself.

To give you an example of just how valuable an experience this can be, let me tell you about my colleague Beth, who works in one of our Florida offices. Beth had been fortunate enough to get a solo bench trial as a mid-level associate—sometimes it is just being in the right place at the right time. But she grew restless as time passed, and there were no more trials. The cases she was working on that had been on the verge of trial ended up settling or went out on summary judgment motions. Beth chatted up the secretaries in her office to find out which attorneys had trials coming up. She learned that an attorney who frequently tried cases had a trial coming up that did not interfere with her responsibilities on other cases. This trial was of particular interest to Beth because it involved six different parties represented by six different law firms. Beth knew that she would get to see a wide range of styles and strategies. She went to the attorney, asked to "shadow" the trial team, and got the green light. Beth had essentially volunteered to work for free for the client, and she spent a month out of town with the trial team. She was in the courtroom during the day, where she got to

observe all that was going on, and in the evenings at the hotel she helped research issues that arose during the day and also provided "juror-like" observations during a daily briefing with the law firms that were working together. All of this came at a cost, however. Beth still had to keep up with her other work and her billable hours, which she did by working at night and on weekends on her laptop so that her "shadowing" experience did not interfere with her other case assignments. Yes, she made some significant sacrifices. Yes, she put in a lot of time that she could not bill for. Yes, the client got an extra set of eyes and ears at no cost. Would she do it again? In a heartbeat. What Beth saw and heard during that month-long jury trial could never be taught in a book or a lecture. She got to live and breathe it. She also earned a reputation for being someone who is willing to work hard and make sacrifices and who is hungry for the courtroom experience. That does not go unnoticed. Beth's example is extreme, to be sure, but the point is that there is much that you as a young attorney can learn about trying cases if you are willing to invest in yourself and spend the time.

The goal of all of this is to find and bring out your inner trial lawyer self. We can watch the greats and learn from them—finding little nuggets of technique that we can incorporate into our own style. But you must develop your own personal style—know who you are and be yourself: Don't try to imitate someone else. There was only one Clarence Darrow, and there is only one you—be yourself. You become the best trial lawyer you can be when you are a patchwork quilt of techniques and tips that you have gleaned from others but have put together and packaged into a unique style that is all your own. Jurors will quickly see through an attempt to mimic someone else or to adopt a persona that is not true to who you are.

You must first believe in yourself and that you have what it takes to claim your place at the counsel table. When you are confident in your abilities, others will see that, and it makes it easier for supervising attorneys and clients to "take a chance" on you for that first time. Before a client can be expected to agree to allow a young attorney to play at role at trial, however, the groundwork must be laid. Again, preparation is key. You must get to know the client and the client must get to know you. This, of course, requires the involvement and support of the partner with whom you are working. Ryan, a young attorney I know, told me about his experience, which demonstrates this point. Ryan had been given various opportunities throughout the case to take various depositions, draft briefs, and argue motions. The partner with whom Ryan was working obviously had confidence in Ryan and gave him these opportunities. The client became familiar with Ryan through review of the deposition transcripts, motions briefs, and oral argument transcripts. The client had also met Ryan and saw first-hand his self-confidence, poise, and mastery of a particular area of the case. This groundwork made it much easier for the client to acquiesce during trial preparation when the partner suggested that Ryan handle a portion of the trial. For his part, when Ryan joined the firm, he made it very clear that trial experience was important to him, and he repeatedly asked for opportunities. Ryan had clerked for a trial judge before joining the firm and also had worked in the public defender's office during law school, where he got to second-chair a trial. When Ryan was assigned to the case involved, he dug in and learned all that he could about the issues, and he demonstrated his solid grasp of the subject matter through depositions he took in the case. Ryan's effort and the partner's support resulted in the client agreeing that Ryan would handle several witness examinations, both direct and cross, in the upcoming trial. As Ryan's supervising partner points out, the groundwork for Ryan's trial participation was laid long before trial through Ryan's hard work, poise, and demonstrated grasp of the issues. Had that not happened, the client likely would not have gone along with the partner's recommendation that Ryan have a seat at counsel table. The only bad news for Ryan was that the court granted their summary judgment motion two days before trial. But Ryan's example demonstrates the importance of proving yourself to your supervising attorneys and the client from the very start of a case.

Ryan's story also underscores the important role that supervising attorneys can play in helping young attorneys get trial experience. When supervising attorneys are committed to helping young attorneys get that first experience, it makes a difference. They can help by enlisting a young attorney who has demonstrated her abilities to be second chair in a matter that is not a "bet the company" case. They can help by ensuring that their clients get to know their young attorneys and gain confidence in them by giving them opportunities to shine in smaller ways first, so that when bigger opportunities come along, the clients will understand why they believe in their young attorney and are recommending that she take on a role at trial.

## Positioning Yourself for an Opportunity

Once you are prepared, how do you position yourself to find that first opportunity to step into the courtroom as a trial lawyer? How does one get that first experience, especially when in many of our cases there is too much at stake to allow a rookie to sit at the trial table? Being in the right place at the right time—some might call it being "lucky"—can sometimes work. But there are things that you can do to increase your chances of being "lucky." When you are prepared, you position yourself to seize on an opportunity that may come along. You have already been working on your advocacy skills and have a solid grasp of the rules of evidence. You've been working on the case since day one and know the case as well as or better than anyone else on the team.

When the opportunity comes along, you also need to be ready to say, yes, I can do this.

As a young associate, being added to a trial team usually means that you are tasked with all of the research issues, drafting motions, reviewing documents, and other "in the trenches" duties. Rather than looking at these tasks as sheer drudgery, look at them as opportunities to take you farther. If you are the only associate on a smaller team, doing the very best that you can to complete your tasks on time and well will help develop your reputation as being reliable. Go the extra mile—think about the big-picture case strategy. Are there particular witnesses or documents that you think are being overlooked based on the research and review that you have been doing? Is there a thorny issue that may not be very exciting, and may be dense to parse through, that others haven't shown much interest in? That can be the very ticket to get you into the courtroom and into a more responsible role. When you are the one who has read countless opinions on a particular topic, has drilled down on the expert reports on both sides, and is familiar with all of the documents relating to a particular issue, you are well positioned to explain the point, what it means for your client and what it means for the opposing party, and how your side can best deal with this issue. You become the "go to" person for this point of focus. Finding these opportunities and running with them, even if it means spending countless hours on something that could numb your brain, can mean the difference between sitting back in the office and doing spot research on issues that come up during the trial and appearing in court to argue a motion in limine or conduct the direct or cross-examination of a witness.

In conversations with attorneys who have been practicing for 10 to 15 years, I learned that this approach can be very effective. These attorneys were working in the trenches doing discovery, document review, research, and brief writing, and sometimes even got to help with witness preparation. They shared stories with me about situations where they became the "go to" person and an integral part of the trial team because they had been involved in the case since the beginning; had armed themselves with vast and detailed knowledge of the case, the documents, the witnesses, and the legal issues; and became a specialist on a particular topic such that no one else had as good a grasp as they did. Developing this expertise as the "go to" for a discrete topic will serve you well and open doors for courtroom opportunities with respect to motions arguments and witness examinations.

It is important to be vocal about your desire for trial experience, but that goes hand in hand with the need to then say "yes" when someone offers you the opportunity, regardless of the circumstances. My colleague Dave shared with me how he got his first jury trial. He was a mid-level associate and was working with a partner who was trying a case in one jurisdiction and had a second trial set in another jurisdiction where his motion for a continuance was denied. Dave, who had told the partner he was thinking of leaving the firm because he wanted but was not getting jury trial experience, suddenly got his wish. It was time to put up or shut up. The partner handed him the case, which was set for trial a week later. With the help of only a paralegal, Dave seized the opportunity, worked like a fiend for a week, and then tried the case to a jury, scoring a complete defense verdict. The experience taught him lessons that he carries with him to this day and is one he got because he wasn't afraid to say "yes" when the time came.

I learned from another of my friends, Daniel, that even back in the mid-1980s there was concern about associates coming up for partner consideration without adequate trial experience. When Daniel found himself in this quandary, he quickly looked around for something to fill his experience gap. He discovered a junior partner who took pity on him and promptly passed along a case that was set to be tried very soon. It was a loser of a case, a hot potato that no one wanted, but needing the experience Daniel held his nose and took on the case. He lost, which he admits was the right result, but it gave him his start and he had nowhere to go but up on his path to becoming a trial lawyer.

> When supervising attorneys are committed to helping young attorneys get that first experience, it makes a difference.

Another colleague, David, who has been practicing law for more than 30 years, shared with me his early experiences in seeking out trial experience. He told of taking a deposition his second day on the job and then getting to third-chair a couple of cases before getting a loser case to try, all before he had been on the job for six months. David said that this early experience taught him a few lessons the hard way, including the consequences of not being truly prepared for trial, and he was never inadequately prepared for trial again. Two years later, David tried and won a significant case in which he benefited from youthful in-house counsel who wanted a new approach to the company's trial strategies. Thanks to this client's expansive

vision, David was able to build a solid foundation for his career as a trial lawyer.

David's example demonstrates the important role that clients also can play in helping young attorneys gain trial experience. The client has a good deal to say about who is on the trial team. When a client expresses confidence in a young attorney's ability to be a part of the trial team, it will be hard for the client's lead trial lawyer to ignore that voice. In many of the cases that actually go to trial today, young attorneys with no trial experience are not likely among the first candidates to be selected as part of the trial team. But in the right case, and with the right attorney, it can be the right decision. Rather than have the young attorney try to spoon-feed a partner gigabytes of data that the young attorney has amassed since the beginning of the case through reviewing documents, taking depositions, researching, and brief writing, a client is wise to consider whether the young attorney is in fact the right person for a particular witness. Clients should remember that even their "go to" trial counsel were once rookies with no experience under their belts. They, too, had a "first time."

It would be great if more clients would be open to giving attorneys like Ryan and David a seat at the trial table, but for many of today's trial lawyers, their "firsts" were much less exciting. When I asked colleagues and friends to share with me their first trial experiences, for many of them these "firsts" were nothing remarkable save for the fact that it was their "first" trial experience. Some were administrative hearings. Some were appeals from small claims court that resulted in a de novo bench trial for the client. Some were traffic cases, sometimes for paying clients, other times as a favor for clients or for partners. Some were landlord-tenant disputes or mortgage foreclosures. Some were small tort or contract cases.

An important lesson here is that you should not discount the experience to be gained from proceedings before regulatory bodies and in administrative proceedings. These settings can provide opportunities to cut your trial teeth in a slightly less intense environment but where advocacy and persuasive skills are still essential. Another important opportunity arises in evidentiary hearings, which can be like "mini-trials" where you are called upon not only to be a skillful advocate but also to have a firm grasp of the rules of evidence and be prepared to make and respond to objections that can get evidence in or keep it out. All of these settings help to build confidence and provide some comfort to your supervising attorneys when you urge them to give you more responsibility in future cases.

Others have found more creative ways to get that first– or second-chair trial experience. One of my colleagues, Peter, was a senior associate in one of our Texas offices and was soon up for partnership consideration. He wanted more trial experience, so he negotiated a deal with the firm that allowed him to volunteer at the local district attorney's office for three months, during which time he handled about 15 jury trials. At night, he put in the hours to keep up with his law firm clients' work. The experience was tiring, but well worth the effort, and it gave Peter the experience he needed to transition from "litigator" to "trial lawyer."

Today's young attorneys are also finding creative ways to get into the courtroom, especially those who understand that you must "give" to "get." Thad, who had been a summer associate in one of our California offices, was in his last semester of law school. He had accepted an associate position with our firm and knew that two attorneys with whom he had worked during the summer had taken a case on a fixed-fee basis and were already over budget as trial approached. Thad took a week off from his law school studies and volunteered to help with the trial. They covered Thad's expenses, but his time was donated. The experience got Thad into the courtroom early on in his career, and he was an integral part of the trial team. He saw from the inside out what goes into getting ready for and being in the courtroom each day. Thad is hungry for more and bigger experiences now that he has passed the bar and is an associate at the firm, but he has already demonstrated his dedication and interest in becoming a trial lawyer.

## Pro Bono Cases

Pro bono cases can be a good way for attorneys, young and old, to acquire courtroom experience. These cases yield benefits on multiple levels. Not only are you helping someone who truly needs your help; you are helping yourself to become a better trial lawyer because you are the one leading the charge, directing case strategy, conferring with and advising the client, developing the evidence, crafting the arguments, and ultimately trying the case. There are any number of legal services groups eager for assistance from lawyers, and many of these groups also offer free training in a specific area of need. Federal trial courts also need volunteer attorneys to whom they can refer cases filed pro se by indigent plaintiffs. Many of these cases involve representing prisoners asserting civil rights violations or employees alleging workplace discrimination, but other types of claims may also come along. Some of these cases involve relatively minor but important wrongs, and if a judge has determined that a case is appropriate for appointment of counsel, it suggests that the plaintiff has articulated enough of a claim that additional resources are appropriate. Of course, not all of these cases will result in a trial either, as with any other case, but they can get you into the courtroom, before a judge, and perhaps even into an evidentiary hearing if not a trial. Evidentiary hearings, although not full-blown trials, are a good way to gain essential experience. It is just as real, and the need to think on your feet is just

as great. Orders of protection require evidentiary hearings, as do a number of other smaller pro bono matters.

Lest you think that pro bono cases can't provide the same level of intensity as a paying client's trial, consider the case of Ian and Kyle, who are two associates in my office in Chicago. As young associates, they signed on to help a partner on a pro bono case that went through significant discovery and a dozen depositions over several years. The plaintiff in this Title VII/section 1981 case asserted claims against a former employer and individual defendants for retaliation and discrimination, and his damages were primarily claims of emotional distress. Having worked on the case from early on, Ian and Kyle were at counsel table as second– and third-chair trial attorneys, and each handled significant witness examinations. After deliberating for four hours, the jury awarded compensatory damages of $1.75 million. Needless to say, Ian and Kyle have their "firsts" behind them now and are poised to take on meaningful roles as members of the trial team in future cases.

If you are still lacking opportunities for courtroom and trial experience, challenge yourself to think more broadly. Look around at the attorneys in your office, and pay attention to who is taking their cases to trial. Identify specific groups or practice areas that have the most trial opportunities. If it is not an area that you have focused on, talk to the partners in that area and express your interest. Go and watch all or parts of a trial. Ask questions and read whatever you can get your hands on to help you gain a better understanding of the legal issues in this new area. Again, by taking the time to learn more about the law in a new area, you are investing in yourself and creating additional opportunities for trial experience. As one example, *Markman* hearings are a great way for attorneys in the intellectual property arena to get meaningful courtroom experience.

## When All Else Fails

Sometimes more drastic measures may be necessary. If you are intent on becoming a trial lawyer but are not finding opportunities, it may be time to change jobs. There are some obvious ways to jump-start your trial career, and many great trial lawyers cut their trial teeth by starting out as a prosecutor or a public defender, or in the military's Judge Advocate General's Corps, where JAGs get experience both prosecuting and defending matters under military law. At the equivalent of first-, second-, and third-year associates, these JAG attorneys are first-chairing both civil and criminal trials. Some young attorneys elect to transition from private practice to the government sector as a prosecutor or public defender, where they will see the inside of a courtroom far more often than they could ever hope to in private practice. Or, as Peter did, you can explore a temporary arrangement to get more trial experience.

If you clerked for a trial judge, you have some advantage, whether you realize it or not. You spent a year or two working closely with a judge, much of your time sitting inside the courtroom watching motion calls or observing trials. You reviewed motions, researched issues, drafted bench memos, and saw from the inside all that it takes to get a case ready for trial and then try it. This understanding of the process is not to be underestimated. Build on this existing insight and experience in lobbying your supervising attorneys for meaningful courtroom opportunities.

Judges can also play an important role in helping young attorneys find meaningful courtroom experience. In some jurisdictions, there are local orders issued by one or more judges who understand the challenges that attorneys, especially young attorneys, face today. For example, in some places where a motion might normally be ruled on without a hearing or oral argument, if the argument is to be handled in full or in part by an attorney who has been licensed to practice for less than seven years, the court will hear argument on the motion. Young attorneys who benefit from these types of orders should not hesitate to bring them to the attention of their supervising attorney, who may not be familiar with such orders or local practices. Of course, the order itself is not enough. The young attorney must also be sufficiently invested in the case and knowledgeable, through research and drafting, through document review and production oversight, to credibly argue for the opportunity to present argument on a pending motion. Again, there is no substitute for being prepared.

There is no single path to finding your first trial experience. But the experience of others teaches us that being prepared, investing in yourself, putting in the time and effort (even when you can't bill for it), being vocal about your desire for trial experience, demonstrating your abilities (to both supervising attorneys and the client) through mastery of every assignment that you are given, and saying "yes" whenever the opportunity arises are essential to getting that trial experience. Finding that first-time opportunity is definitely harder than it used to be, but attorneys who are hungry for the experience and committed to becoming our seasoned and savvy trial lawyers of the future can find their way if they are willing to work hard, put in the time and effort, and be persistent. Just remember, even the great trial lawyers all had a "first time." From Abe Lincoln to Clarence Darrow, Thurgood Marshall, Janet Reno, and beyond, they all had a trial that was their first. And it's likely that the finesse they displayed in the courtroom well into their careers was not quite so visible during their early forays in the courtroom. But one way or another, they found their first opportunities, seized them, learned from them, and kept at it, getting better and better with time and experience. That formula has not changed. ■