



Top Ten Tips I Learned From My First Trials

by J. Randy Roeser

Let's face it—being a young lawyer entering your very first trial can be downright daunting. From the pretrial hearing until the verdict and beyond, trials involve a myriad of new procedures, nuances and fast-paced experiences that, pardon my pun, you learn through trial by fire. Below are the Top Ten Tips I have for fellow young lawyers entering their first trial:

1 Organization, Organization, Organization. During trials, there is always one universal phrase that our firm likes to use: “Expect the unexpected.” Whether it is a witness being called out of order, certain testimony being elicited that calls for that one document you vaguely remember seeing somewhere in your trial preparation haze, or your client telling you a brand new piece of information you need to incorporate into your examination outline, organization is the key to winning trials. With the speed at which most trials proceed, the more organization you can accomplish ahead of time will be invaluable when things inevitably don't go

according to plan. So, spend that extra time preparing and fine-tuning witness outlines. Make a spreadsheet of your exhibits with notes so they are easily found. Go over trial strategy and logistics with your witnesses and team. Because when you're in the middle of trial, the less chaos the better.

2 Visit The Courtroom Before Trial. We spend countless hours preparing exhibits, witness outlines, opening statements, etc., but you should set aside time to visit the courtroom before trial to make sure you understand the lay of the land. Visiting the courtroom allows you to answer questions you probably haven't thought of, such as: (1) location of the jury box; (2) location of the podium; (3) the type of technology in the courtroom—do you have the proper cables and connectors; (4) do the jurors have individual screens, or will they struggle to see your exhibits displayed on a television across the room; (5) how many seats are at the counsel tables; (6) where will your graphics team set-up; and (7) where will you store your exhibits. Visiting the courtroom also gives you the opportunity to meet the court's staff and ask any questions you may have. One of my most recent trials was in a courtroom I had never seen in Houston, Texas. I contacted the court's coordinator a few weeks before trial to schedule a visit. During my visit, the court coordinator shared certain quirks and procedures that our judge had when it came to exhibits. This was the first I had heard of this, so needless to say, this pre-trial visit paid off in many ways.

3 Don't Be Afraid To Trust Your Instincts. We all know Irving Younger's 4th Commandment on cross-examination: "You never ask a question on cross examination to which you do not know the answer." While this wise advice should be strayed from with caution, if you've been intimately involved in the discovery process and you know your witness inside and out, don't be afraid to follow your gut and ask a question that you think will bolster your case. In one of our team's early trials, we took the deposition of the opposing party's accountant. During trial, the accountant testified that an account holding money owed to our client no longer existed. Our team's instincts told us that whatever happened to the money wasn't good, so we asked the question – what happened to the money? As it turned out, the company took the money and wrote off the account. While risky, trusting your honed trial instincts can be a game changer.

4 Stop While You're Ahead. While it is important for you to follow your instincts, sometimes you can ask one question too many. In one of my first trials, the issue came up as to whether or not my client was intoxicated at the time of the incident at issue. Opposing counsel made several references to this fact throughout the trial, so when it came time for the doctor who treated my client immediately after the incident to testify, I wanted to really drive home the fact that my client wasn't intoxicated. After establishing that the doctor would have documented whether my client was intoxicated, and eliciting testimony that the doctor didn't

recall my client being intoxicated during the examination, I asked one question too many. I followed up with, “And you didn’t smell any alcohol on my client, did you?” To which the doctor responded, “No.” Great. Point proven, let’s move on. However, on redirect examination, opposing counsel stood up and asked one question: “Doctor, do you have a sense of smell?” At which point my heart sank because surely she wouldn’t ask this question if the answer was “Yes.” Lo and behold, the doctor had no sense of smell and all the hard work I did establishing the fact that my client wasn’t intoxicated flew out the window. So, once you establish a fact, move on rather than try to drive the point home. Because who knows when you’ll be faced with a witness who can’t smell!

5 **Connect With Your Potential Jurors During *Voir Dire*.** Regardless of how it is wrongly pronounced outside of the State of Texas, *voir dire* is not the part of trial to mail it in or simply go through the motions so you can get to the meat of your case. It is one of the most important parts of the trial process, because it is one of the only opportunities you get to truly connect with your jurors—something essential to winning your case. During one of my first trials, I spent tons of time preparing for witness examinations, learning the case and the exhibits, and focusing on our overall trial strategy. However, I still spent a significant amount of time preparing my questions for *voir dire*. Not only did I want to identify potentially problematic venire members, but I also wanted to engage and connect with the remaining venire

panel personally. One of the easiest ways to do so is to tell the jury about yourself and provide them with the same information they provide you in their jury questionnaires. So, tell them where you grew up, what your spouse's name is, what your hobbies are, etc. Who knows, you may even be able to let them know that you're picking your very first jury on your 30th birthday, like I did!

6 Know The Exhibits. Knowing the exhibits wins cases. In one of my first trials, I deposed several of the opposing parties. During the depositions, the parties both admitted that certain exhibits were indeed their signed witness statements and that they prepared them without any collaboration with the other parties. At the time, I thought nothing of it. However, in preparing for trial, I became very well versed in the opposing parties' exhibits. When I compared the signed statements to each other, they were nearly identical, contained the same spelling and grammatical errors and the signatures looked strikingly similar. During trial, the parties again testified that the signatures on the witness statements were theirs and that they had indeed written those statements. As it turns out, the signed witness statements were not written by either witness, and the parties were forced to admit the documents were forged, while testifying on the stand. This goes to show that really diving into the exhibits and knowing them in and out can make the difference at trial.

7 Be Familiar With Your Judge's Trial Procedures. No one likes surprises during trial, including me. Heading into my first trial, I had no idea some judges had their own procedures specific to the trial process, and it sent me into a slight panic when the topic came up during a trial preparation meeting. Most judges follow a pretty standard trial schedule, but some judges have their own procedures specifically for the trial process. While each judge is different, these procedures are hugely important, as they set out things like: (1) deadlines to exchange exhibits and/or objections to exhibits that are used each day of trial; (2) briefing issues that come up during the exchange of exhibits each day of trial; (3) exchange of daily deposition designations to be used each day of trial; and (4) procedures on exhibits and how to organize them for the court and jury. So, always look into whether or not your judge has his/her own trial procedures so you can stay organized and on the court's schedule heading into trial.

8 Be Prepared For ALL Of Your Client's Expectations. Picture yourself in trial in rural Arkansas, staying in a historic hotel built in the late 1800s, planning on a trial lunch consisting of cold cuts and potato chips. Then imagine your trial corporate representative owns one of the largest beverage distributors in the US and has a personal chef—for every meal. Needless to say, cold cuts and potato chips will not work. Whether its food requirements, hotel accommodations, trial presentation, court security procedures, or judicial temperament, make sure you

discuss your client's expectations early and prepare both yourself and your client for all of the particulars of trial.

9 Don't Forget To Take A Few Moments To Yourself Each Day. Trials are one of the most stressful parts of being a lawyer. Trials can involve weeks of late nights away from your family with little to no sleep, countless hours of pouring over exhibits, preparing witness outlines and the constant worry about the outcome of the case. So, it is always important to take a few moments to yourself each day to maintain your sanity. Now, if I was given this advice heading into my first trial, I would have thought there is absolutely no way I can take any time for myself—when I wasn't working, I wanted to be sleeping. But, the team I was working with made it a point at the end of each day to take about half an hour to decompress as a group. We weren't allowed to talk about the trial or the upcoming day—it was really just a time to unwind and relax for a few minutes. So, however it is you like to decompress, take time each day to yourself. It really does go a long way!

10 Always Be “On”, Especially For Out-Of-Town Trials. Jurors notice everything. And unfortunately for lawyers, it is human nature to remember the bad more than the good. So, from the moment you leave your house, pretend that every person you see that day will be sitting in your jury panel when you stand up for *voir dire*. No matter how little sleep you have had or how stressed you are about the upcoming trial, you should always dress nicely and treat

everyone you meet with respect. Do not put on sweats and a t-shirt even if you are going to lock yourself in the office and work all day because you might run into a potential juror at the convenience store on your way to the office. If you go out for lunch or dinner, be friendly to your waiter or waitress. Do not excessively speed or honk at someone for pulling out in front of you or driving slow in the left lane on your way to the office or courthouse. Simply put, just be a good person and treat everyone as if they will be in the courtroom with you.

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