
TRIAL ADVOCATE QUARTERLY

Volume 35 • Number 1

WINTER 2016

INSIDE:

A Roadmap to Personal Jurisdiction

Using Plaintiffs' Experts

Flying Witnesses: Drone-Gathered
Evidence in Florida Courts

F  **LA**

FLORIDA DEFENSE LAWYERS ASSOCIATION

A PUBLICATION OF THE FLORIDA DEFENSE LAWYERS ASSOCIATION

Tips for Young Lawyers

By Wesley E. Trombley



Three Practical Tips for a More Effective Practice

Despite the endless attorney jokes, being a lawyer is one of the most interesting and rewarding professions. Frustrating at times, yes, but nothing worth fighting for is easy. Here are some suggestions for developing your effectiveness, which in turn will help you maximize the rewarding aspects of your practice.

Be Prepared but Not Comfortable

Perhaps one of the most difficult things about being a lawyer, and in particular a trial lawyer, is realizing that no matter how much you prepare you will never be one hundred percent prepared for all of the unique circumstances that will present themselves at trial. No amount of preparation can predict how a jury member will respond during jury selection, or what your opposing counsel will say in opening statement or closing argument, or what a witness under oath in front of a judge and jury will say, or how the judge may respond to your evidentiary objections. Accepting that you will never be one hundred percent prepared can be unsettling for many lawyers, both litigators and non-litigators, but do not let this dissuade you from pressing forward toward trial. Rather, let it motivate you to continue your preparation throughout your trials, instead of thinking of preparation as something that happens only before the trial starts.

Expect to continue your trial preparation every evening after the day's evidence has concluded, and plan your trial days and nights accordingly. It is often the case that trial strategy becomes more streamlined, focused and effective during the final hours. This is particularly true for the federal criminal defense practitioner, who is not entitled to pretrial depositions, witness lists or pretrial witness statements, and who is often put in a position of having to fine-tune case strategy and cross examination as the trial unfolds. However, even with the discovery

available in defending civil cases, unexpected twists and turns can and will happen during trial. Therefore, master the facts of your case, gather as much information as possible on potential witnesses, and make educated predictions on what those witnesses are likely to say on the stand, but be ready to adapt during cross-examination if the witness testimony is not as you predicted. Also, be careful not to over-commit.

Don't Make Your Case Personal — Keep the Focus On the Law and Your Client

After working as a prosecutor for several years I had the good fortune to join the law firm of Trombley and Hanes, P.A. I was immediately immersed into the defense of a federal securities fraud case with some remarkable lawyers from Florida, South Carolina and Washington DC. The case representation spanned approximately ten years and the issues were fiercely contested in motion practice and trial. During oral argument on an evidentiary motion in limine the trial judge interrupted one of the defense lawyers as he was succinctly arguing for exclusion of evidence. The judge said, "Mr. Robinson, isn't your argument today in defense of your client contrary to the argument you made several years ago when you were a federal prosecutor for the United States government?" The attorney responded, "Your Honor, that may be the case, but where you stand depends on where you sit." He went on to win that motion in favor of the defendant.¹

Your job as a lawyer is to be an advocate for and within the law, and to work diligently to achieve an effective result for your client, not yourself. Do not make cases or issues personal. Your clients will change over time and you will have to make new and evolving arguments within the law. Likewise, your opposing counsel will make arguments for his client and you should refrain from making

ABOUT THE AUTHOR

WESLEY E. TROMBLEY is a partner with Trombley & Hanes, P.A., concentrating in the areas of both criminal and civil litigation. He is a former prosecutor and has been in practice for twelve years.

emotional attacks against counsel. Use legal briefing and the court to address your doubts about opposing counsel's arguments, because that is where you will find relief.

Collaborate With Your Client but Maintain Control over the Litigation Process

As a young lawyer you will be asked to guide clients through the legal process and through complex issues that often carry great significance to your clients' personal or professional lives. Most clients will be looking to you for guidance and will be motivated to understand the issues and options their cases present. For the clients that are less motivated, encourage them to engage in the case and assist you in understanding the factual background that led to the need for legal representation. More often than not, the relevant facts of the case date back years prior to your representation. Master the facts of the case, ask your clients what they hope to achieve, and discuss with them the best path to get there.

From time to time you will encounter clients who, although well intentioned, want to lead the case representation because of their personal ties to the case or simply because they are leaders and want to maintain control over the issues. These types of clients can be a great asset to the representation because of their involvement and interest in seeing the case succeed. However, it is your responsibility to maintain control over how the case will proceed in litigation and your responsibility to tell your clients no if they have suggested a strategy that will harm the case or is contrary to the law or to your responsibilities as an officer of the court. Remember, your clients hire you because of your training and experience. Sometimes the best advice a lawyer can give is to suggest an alternative strategy designed to achieve the same result.

¹ James K. Robinson (1943-2010) was a remarkable lawyer and person, and he is missed by his friends in Florida.

Joseph J. McHugh, P.E.

Civil Engineer with over 40 years of experience

AREAS OF EXPERTISE

- Streets & Highways; Bridges
- Traffic & Transportation Engineering
- Ladders & Scaffolds
- Highway Maintenance
- Welding & Flame Cutting
- Demolition
- Roadside Hazards & Structures
- Blasting & Construction Vibration
- Agricultural Engineering
- Horse Racetracks

Please visit my website for Case Descriptions and Client list, and allow me to assist with your case.



www.McHughForensic.com
229-226-6435

www.fdla.org