



Notes to a young trial lawyer

PRACTICAL STRATEGIES FOR ASPIRING TRIAL LAWYERS TO MAXIMIZE THEIR POTENTIAL TRIAL OPPORTUNITIES

I remember the exact moment I decided I was going to be a trial lawyer. I was attending a CAALA Vegas conference with my father, registered as legal staff but sneaking into all the attorney sessions to decide if I wanted to be a lawyer. It was time for the last speaker of a session, and Bruce Broillet stood up and re-created one of his closing arguments. The entire room was enraptured. I turned to my dad, almost shaking, feeling a little like lightning had struck my body. “Dad,” I said, “I have to do that. I have to be a trial attorney.”

Many of us have their own version of that story, of the moment they knew they wanted to be a trial lawyer. But one of the biggest challenges an aspiring trial lawyer faces is simply finding the opportunity to try a case. With less than 1% of filed cases actually going to trial, a young lawyer who wants to be in the courtroom needs to know how to maximize their trial opportunities. The key to getting trial experience is to take control of your own education and experience. Whether you are new to the practice of law or just new to trials, this article will provide you with practical strategies in every phase of a case to increase your trial opportunities.

First things first

Put yourself in the correct environment

If you want to swim with dolphins, you don't go to the mountains. For any of the strategies and advice throughout the rest of this article to be effective, you first need to place yourself in an environment that aligns with your goals and vision for your future. Find a firm that either has an established history of going to trial, a firm that demonstrates a willingness to support you trying the right case, or, if you are a solo, find another attorney or firm willing to partner up with you for a trial. Just like not every lawyer has the desire to be a trial attorney, not every firm

has the interest or the means to take their cases to trial. And there is nothing wrong with that – trial is not for everyone. But if that is *your* goal, finding the environment that will put you in the best position to achieve that goal is a critical first step.

Make yourself indispensable

The best piece of advice I received early in my career (so early I had just barely finished my first-year law school exams) was simple, but invaluable: “Make yourself indispensable.” At the time I heard the advice, it was directed at how to turn my dream summer position into a long-term work home, but it is a mantra that I have applied to so many other aspects of my career, including getting trial experience early and often.

Make yourself indispensable. Be the person with the most knowledge of the granular details of the case. Be the one to have the answers to lead counsel's questions, or at least be the one to go find them. Be the one who can give additional insight and perspectives. Anticipate the issues, the evidence, and the pitfalls that can be expected at trial. Make it so they can't imagine going to trial without you.

Volunteer, volunteer, volunteer

Taking the initiative to volunteer for tasks – from drafting motions to managing discovery and depositions – not only builds your skill set but also establishes your value to the team. By consistently offering to take on responsibilities, you demonstrate reliability and a willingness to learn. This proactive approach fosters trust and increases your chances of being assigned critical roles, including handling key witnesses or trial tasks. Furthermore, by volunteering for as much as possible, you will start to become known as the person the lead counsel can always rely on. The more you can be relied on, the more opportunities you will receive in the future.

During preparation and discovery

In many firms, the day-to-day working up of a case is delegated to the associate or junior partner, those of us who hopefully will also end up being the second chair if a case goes to trial. While it feels less exciting than trial, being proactive in these early stages is a perfect way to set yourself up for future trial opportunities.

Develop the client relationship

The most important person in any case is your client. Rather than delegate all client communication to a paralegal or legal assistant, take it upon yourself to be your client's point person for the case. If you were not involved in the intake or you are newly assigned to a file, call the client to introduce yourself. Give them your email and whatever direct line of communication you are most comfortable providing, as well as asking them their preferred method of communication.

Be the one to update the client and to reach out to them for updates in turn. If you have questions about their discovery responses, meet with the client to get the answers yourself rather than delegating it to a paralegal. When it comes time for their deposition, even if you are not handling their defense, be present for their deposition preparation.

The more trust your client has in you, the more the lead attorney will as well.

Case memo and discovery plan

Creating a detailed case memo and discovery plan early in the process is crucial for staying organized and focused as the case develops. These documents should outline the case's key facts, legal theories, and discovery goals. Regularly updating your discovery plan ensures you have a clear roadmap and are prepared to address any issues that arise. Use your discovery plan to list what witnesses to depose (include name, contact information, and what key

information you believe they will provide), brainstorm written discovery you can send, and identify non-party discovery like public records requests and subpoenas.

Discovery summaries are also beneficial, especially in cases where there are multiple defendants or parties and multiple sets of discovery being issued. Create an easily updatable chart with (1) the request propounded, (2) the response, including objections and whether any documents were actually produced, (3) notes regarding that particular response, and (4) a system to easily identify areas that may require further meeting and conferring, a motion to compel, or that contain key information that could be helpful to your case.

There is no substitute for reviewing your own discovery responses and productions. While it is helpful to have a paralegal look them over, to become indispensable you need to know everything about your case. Using case memos and discovery summaries helps keep all the important information in a contained place that you can easily reference any time lead counsel has a question. They also prevent you from duplicating work because you can easily see what discovery you have already propounded without having to thumb through multiple sets of requests.

Medical exams and inspections

Yes, attending these “extras” like defense medical exams and inspections takes time away from your other assignments, but they are important and pay dividends when it comes to trial experience.

Medical exams are another opportunity to deepen your relationship and trust with your client. Most clients are apprehensive and nervous about being examined by an unknown doctor hired by the defense. Attending the examination yourself not only brings them comfort and reinforces to them that you care about them and are reliable, but you can also learn more about them, their

ongoing complaints, and the expert than you would by just reading the canned report.

Additionally, if you attended the medical exam, you are already familiar with the doctor, which could lead to you taking the deposition. If you attend the inspection, you may note irregularities, obstructions, or other things that could be useful on a future cross-exam. You are also further demonstrating your commitment to the case, which will only help at trial.

Depositions

Depositions are a cornerstone of trial preparation. Depositions are also where a newer lawyer can take concrete steps to increase the number of opportunities they will get at trial. Of course, all forms of discovery are important, and each has its specific purpose, but if your goal is to get trial experience, there is no better place to be than in a deposition. The more depositions you take, the more comfortable you will be when it is time to direct- or cross-examine a witness in front of a jury. The formula is easy – more depositions equals more trial witnesses!

Be strategic with what depositions you volunteer to take in order to get the most trial experience.

Friendly lay witnesses

Take the lead on friendly lay witnesses. To establish trust and cooperation, conduct their informal interview and deposition preparation. Be their point of contact within your office, the same as you are with the client. Defend (or take) their depositions. Building strong relationships with these witnesses increases the likelihood that you’ll handle them at trial.

If the witnesses are family members who live with your client, try to visit them at home. Not only will you build further rapport with the witnesses, but you could learn about your client.

Important but noncontroversial witnesses

Even the most complicated case has at least one relatively non-controversial

witness that will need to be deposed. These are great witnesses for you as the younger lawyer. Consider taking the depositions of any first responders, custodians of records, or treating doctors.

Remember that some of these depositions may end up functioning as trial preservation depositions, especially those of treating doctors. Treating doctors do not need to be unavailable for testimony at trial in order for their videotaped deposition to be used at trial. (Code Civ. Proc., § 2025.620, subd. (d).) These are a great way to get experience examining a witness in a virtual trial setting, since you likely will designate portions of the videotaped deposition to present at trial.

Develop an expert expertise

As a younger lawyer, it may be tempting to shy away from experts because they feel extremely important and more intimidating than your lay witnesses. After all, they are the “expert” in their field – they have degrees, decades of experience, hefty hourly rates, and trial experience you are seeking yourself. Often it feels like the expert can make or break a case. And that may be true at times, but experts can also be a place where a younger, driven attorney can set themselves apart and gain meaningful opportunities at trial sooner than expected.

The trick is to invest some time to develop your own expertise for a particular type of expert, one that is common to your cases. Do your own research, talk to and learn from your own experts, and get comfortable with a narrow field. For example, develop your own mini-expertise for experts in the fields of billing, orthopedics, forensic economics or – my personal favorite – life care planning. (It is easier to start with damages experts since they are often less case-specific, even more so if you are already reviewing medical records, deposing treaters, and attending DMEs.)

If you can’t get the deposition experience

It happens to all of us: At some point

we will volunteer to take a deposition or handle a witness at trial and be told “no.” Don’t get discouraged! As with all volunteer assignments, it is important to respect the lead attorney’s decision if your request to handle a deposition (and later a witness) is denied. Remember that we are still learning and there may be a reason the more senior attorney would rather take the deposition themselves or assign it to a different attorney. There are ways to turn that “no” into a future opportunity.

First, ask if you can sit in on that deposition. In fact, ask to sit in on as many depositions as your schedule allows. If you have already observed one, you are more likely to be given the chance to take the deposition yourself the next time one comes around. Observing more complicated depositions is a great way to learn and grow. While you can always tell yourself you will read the transcript later, there is no substitute for watching live. (Plus, let’s be honest – there will almost certainly be some other task that will steal away that reading time. It’s the life we lead as lawyers.)

Next, you can always ask the lead counsel what you can work on to get that deposition opportunity in the future.

Finally, before taking the more complicated deposition, have an in-depth discussion with the lead attorney. Go over the goals and strategies of the deposition and review your outline. The more confidence the lead attorney has in your preparation, the more likely they are to trust you with that witness, even at trial.

While preparing for trial

The case is worked up and the final status conference approaches. Now is the time to really solidify your trial opportunities.

Discuss expectations with lead counsel

Clear communication with lead counsel is vital as trial approaches. Before you get too far into intense trial preparation, have a conversation with the lead attorney about their expectations for your job duties during trial. (This is especially important if you

work for multiple attorneys and not on a specific team as each attorney has their own way of doing things.) Will you be tracking and running exhibits? Are there any pocket briefs you should draft? Are there any in-trial motions you should be anticipating? What witnesses can you prepare for?

While you always want as many opportunities as possible, it is important to remember that at this early stage in your career, your priority is supporting the lead attorney. The more indispensable you become in the trial, the more responsibility you will be given. Plus, proactively addressing these details demonstrates your readiness to take on greater responsibilities and helps avoid last-minute confusion or disappointment from a misunderstanding of your role in the courtroom.

Mock trials and focus groups

Mock trials and focus groups are invaluable tools for trial preparation. They provide insights into how jurors may perceive your case, highlighting strengths to emphasize and weaknesses to address. Use these sessions to get “on your feet” practice in front of a jury.

While in trial

Trial is also an ever-moving target, requiring game-time decisions and adaptability. How you handle those moments in this trial can impact what opportunities you will receive next time.

Be flexible

There is only so much you can control about a trial, which is what makes trial simultaneously fun and frustrating. Be ready to have your witnesses rearranged or withdrawn entirely, to pivot during testimony, to stay up all night opposing a motion without warning. The more you can roll with the punches and work on your feet, the more you will prove yourself to the lead attorney – and be included on future trial teams.

Be selfless

It should go without saying, but the

trial is not about you; it is about doing the best job for your client. There may be times when you are not the best person for a certain witness or an assignment, and you need to be okay with taking a step back for the good of the case.

In one of my trials, I was slated to handle all three damages lay witnesses. I had built the rapport with the witnesses, prepared them for their testimony, prepared their outlines, and was ready to go. The examination of my first witness went south – way south. After a frank and constructive conversation with the lead counsel, we decided to split the remaining two witnesses so the more experienced attorney could do, as I phrased it, “damage control” and ensure we still had an effective case presentation. Was I disappointed to lose one of my witnesses? Of course. But was it the best thing for our client? Absolutely. And in the next trial, my trial partner trusted me more because he knew I was willing to put the good of the case above my ego.

Be brave

Be willing and ready to say yes to whatever opportunities are offered to you, even if they scare you. In trial and in life, nothing is guaranteed. If you turn down a chance now, there’s no telling when you will get another one. (Not to mention, the more opportunities you say no to, the less inclined people will be to renew an offer.) Opportunity begets opportunity. Figure out what you need to do or tell yourself to be brave and do the things that scare you.

Every time I am nervous about standing up in front of a jury, any time I start to doubt myself in the courtroom, I take a mental step back and remember that I am part of a trial *team* – a team with the singular goal of helping our client. And I know with the utmost certainty that my trial teammate would not ask me to do anything they do not *know* I am capable of doing (even if I am not sure I am capable of it myself) or that is not in the client’s best interest. I trust them implicitly. Which means I trust their faith in me over my own self-doubt.

Outside of your own cases

CLE and workshops

As the saying goes, “Opportunity is when luck meets preparation.” So, the best way to turn luck into trial opportunities is to be prepared. Do whatever you can to learn and practice trial skills, even if you or your firm does not have any cases that are going to trial right now.

Attend CLE courses and workshops that focus on those critical trial skills. The more you already know, the better your chances of spontaneous opportunities. (My second trial came about because another associate suddenly became unavailable for trial, and the partner on the case heard I had just done mock voir dire at a CAALA workshop. I picked my first jury the next day.)

Observe other trials

Take advantage of opportunities to observe experienced attorneys in action. Whether it’s an attorney from your own firm, another CAALA member you know is in trial, or even a completely random trial going on in the courtroom next door, observing others provides valuable insights into effective strategies and techniques. Apply what you learn to your own practice to continually improve.

When observing, pay attention to how seasoned attorneys handle objections, interact with witnesses, and engage the jury. Note their demeanor and communication style. These observations can inspire new ideas and help refine your courtroom presence.

Conclusion

Trial opportunities are not going to fall into your lap overnight. To maximize them as a young lawyer requires a combination of proactive engagement, dedicated preparation, and continuous learning.

Jenna Edzant is a trial attorney at Greene Broillet & Wheeler, LLP. Her practice focuses on catastrophic personal injury, wrongful death, insurance bad faith, and employment. Ms. Edzant received her B.S. from UCLA and her J.D. from USC Gould School of Law. jedzant@gbw.law.

