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Top Five High-Profile Trial Blunders and How to Avoid Them in Your Own Practice

By Ted Brooks

INTRODUCTION

While some of the tips listed below relate primarily to high-profile matters, a few are also worthy of consideration in preparation for any trial. Some may appear obvious — even to the point that you might doubt they could ever actually occur. I can tell you that I have dealt with every issue I've addressed below during my career as a Trial/Technology Consultant. Also, I have experience in several high-profile cases to draw upon, both criminal and civil. I will not, however, imply, indicate, or attempt to indicate in any way which trial or trials from which each point stems.

So no matter how clever you are, any assumptions you might make as to which one(s) they are related will be wrong — and even if you're right, I'll deny it.

There, got that out of the way.

1. PLAN ON THE WORST-CASE SCENARIO FROM THE OUTSET — DON'T JUST ASSUME IT WILL SETTLE

Okay, this tip probably seems obvious, and unlikely to actually happen in real life, but let me say that it does not always work that way. If it did, I would never have had several “opportunities” to work up a case in a matter of only a few short days — something that should normally take weeks to prepare. In fact, of all the items I will address in this article, this one is the most common.

How does this happen? Well, I think we all try to be optimistic, saving our client precious money whenever possible and practical. Although statistically the majority of cases do indeed settle,

all it takes is one little “glitch” on the eve of trial, and you're screwed. One seemingly insignificant misunderstanding, a decimal point in the wrong place, or if you've been following current events, even a plea bargain the Court rejects.

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How can you prevent this? Work toward settlement if that is the logical choice, but never assume it's over until it's over. That stated, when it comes to trial preparation, don't wait until the final settlement attempt fails the week before the trial date to get everything in order. This includes all of the demonstratives, trial evidence database, mock trials, and everything else. Although “miracles” may sometimes happen on short-notice, you should not hope to be one of the fortunate few. Rather, prepare several weeks in advance — for larger matters, several months may be preferable.

2. WORK WITH THE BEST AVAILABLE PEOPLE — DON'T TRY TO SAVE A FEW BUCKS

It is interesting that some of the best (and highest billing) law firms in the land would go bargain hunting when looking for trial preparation and litigation support assistance. While in many cases it certainly does make sense, it is probably

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not the best way to go in high-profile matters. Assuming your client didn't contact you just because you were the cheapest firm around, it might also be assumed that they would appreciate your efforts in securing the best assistance available as well. When viewed in perspective, costs of litigation support, trial preparation, and presentation will be relatively small.

Relatively small? How much does it cost? While I can only offer a general figure for trial preparation and support (as this is primarily what our firm provides), I can say that a "typical" (read: no real such thing as a "typical" trial) one-month trial might end up running in the \$70,000 and up neighborhood.

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Other oft-neglected items include videotaping of depositions, demonstrative graphics and animations, top expert witnesses, and mock trials or focus groups. Again, it just doesn't make sense in the big picture to provide the high-profile client anything less than the best you can find.

3. MAINTAIN CONTROL OF YOUR CLIENT — DON'T LET THEM MAKE STRATEGIC DECISIONS FOR YOU

I have witnessed more than one client's attempt to take control of what needs to get done, who needs to do it, how witnesses should be handled, and so on. Fortunately, I can also say that most of the attorneys I have worked with have been able to straighten things out and remind the client of their role in the matter.

This is sometimes simple, and sometimes not. It depends on the client(s) and the way they handle the pressure and stress of trial. You should not take the fact that your client has an opinion light-

ly, but you must also remember that their opinion is probably not the most objective. It may help to bring in a third party at times — someone to help you play "good cop/bad cop." An "objective" opinion from someone other than you can often be helpful in this type of situation.

4. MEDIA COVERAGE — DON'T ASSUME THEY WILL SEE OR REPORT IT YOUR WAY

High-profile trials make for great TV coverage. Interestingly, I have actually heard reports that truly made me wonder if they came from the same courtroom I was in all day. On the other hand, I have heard and read reports that accurately described the proceedings or the intended release of information.

Entire lengthy interviews may be reduced to only a few seconds, offering only a few points of interest. These points of interest may or may not be what you wish to communicate about your case.

If you are involved in high-profile matters, you may know reporters who will work with you to generally attempt to tell the story as you see it. Others may not. Media coverage may be beneficial, or it may be very dangerous. At any rate, it is a risk to some degree — and don't forget that your opponent may wish to have their story told as well.

5. ENJOY THE EXPOSURE, PREPARE FOR NEW BUSINESS — DON'T CHANGE WHO YOU ARE

Assuming a favorable outcome, you and your entire trial team can benefit greatly as a result of your involvement. This can lead to new business, other high-profile matters, and referrals.

Although you may need to make some adjustments to handle an increased flow of work, it is always best to remember your roots. The quality of work and reputation that landed that case should never be compromised or spread so thin as to have a negative impact on your existing or new clients.

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CONCLUSION

Regardless of whether you ever have the chance to work on a high-profile matter (hey, there aren't enough for everyone to have them), you can apply each of these tips in some fashion to nearly every case. Again, some might say these are all "no-brainers," but let me remind you in closing that I have experienced and based each one on actual litigation experience.

Finally, if you think that a particular point above relates to a specific case you have in mind, you're wrong ...

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ABOUT THE AUTHOR

Ted Brooks is the President of [Litigation-Tech LLC](#), a trial technology consulting firm based in San Francisco. Ted won the Law Technology News Award for Most Innovative Use of Technology in a Trial, and is a frequent speaker and author.

Contact Ted:

E: tbrooks@litigationtech.com

T: (415) 291-9900

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