

## A Personal and Professional Milestone

By C. Meade Hartfield

**Be ready for when the time comes, and be thankful—win or lose, you will have become a better attorney.**

# Fundamentals for Your First Trial

Trials are rare, and so is a young associate's opportunity to shine in the courtroom. When your moment arrives, be prepared to make the most of the experience. Here are a few tips to help you make a favorable impression

on the judge, the jury and the firm's partner at your first trial.

### Learn from the Partner's War Stories

Unless you are flying solo at your first trial (and if you are, best of luck), you likely will have a seasoned veteran at your side. That veteran has been down this road before, probably many times. Use that past experience to benefit your first performance at trial.

The partner at trial likely has his or her share of war stories and, if he or she is like most lawyers, will not be shy about sharing them with you. Aside from the embellishments most trial lawyers are prone to indulge, those tales carry many good heat-of-the-moment decisions and probably a heap of mistakes. You may hear about the time that the partner passed out an exhibit of photographs to the jury before he or she had finished making his or her point. To correct his or her mistake, he or she told the judge in a loud voice, "Judge, I have

made a huge mistake, just terrible! I have given the exhibit to the jury. Now they are not listening to a word I'm saying, and what I have to say next is very important." That got the jury's attention. You may hear about the time that he or she asked one too many questions on a cross-examination and allowed the witness to correct a previous admission, to respond with, "What I meant to say earlier was..." Whatever the war story, there are lessons to learn. Listen closely.

### Know Your Judge

Even if you have gotten a good feel for the judge's personality and style during the course of the case, do some research to find out how the judge acts during trial. Ask your colleagues how he or she leans on evidentiary rulings, how she or she runs voir dire, and how long a typical trial day lasts. Find out if the judge has a time limit for opening or closing statements and whether he or she requires the attorney questioning a witness to make any and all objections to questions from opposing counsel.

The judge's law clerk, secretary and court reporter can be good sources for this type of information. They can tell you if the judge prefers that the exhibits be pre-marked and whether the judge wants you to write out all jury instructions or only



■ C. Meade Hartfield is an associate with Lightfoot, Franklin & White, L.L.C., in Birmingham, Alabama. She focuses her practice primarily on product liability, environmental and toxic torts, and business litigation. An active member of DRI, Ms. Hartfield currently serves as liaison for the Appellate Advocacy Committee on behalf of DRI's Young Lawyers Committee.

those that do not conform to the jurisdiction's pattern instructions. You can learn whether the judge is technology friendly or phobic, and whether he or she will have patience with you if you have technological difficulties. Ask other lawyers who have appeared before your judge about his or her temperament and courtroom practices. They will know, for example, whether the judge is likely to exclude certain types of evidence and make decisions from the bench, rather than reserve a ruling for later in the trial. They will know how far you can push the envelope, for instance, by playing a video deposition snippet in an opening statement. They will understand what makes the judge laugh, impatient, and, most importantly, angry.

Find out what you can before the trial starts, as you do not want to find out the hard way about the judge's pet peeves during trial. If a judge has a visibly or verbally negative reaction to something you or your trial team has done, the jury may side more with the most authoritative figure in the room, rather than sympathizing with your mistake. Or, worse, the judge may render a ruling that has harsh consequences for your case. While a judge often will surprise you at trial, your job is to minimize those surprises to the extent possible. Do your homework, and know your judge.

### Do Not Procrastinate

Time is your enemy at trial. When the trial begins, you are captive to the judge's orders, the jury's attention and the partner's instructions. You will not have time to write the jury charges, draft the motion for judgment as a matter of law, or research the determinative issues in the case. Why add more stress to an already stressful situation? Take care of as many paper items as you can ahead of time.

Make a list of all your drafting responsibilities well before trial, and begin the writing process as early as you can. For example, begin drafting jury charges at the outset of the case. Besides having one item already checked off when the case reaches trial, you will have a handy guide for the plaintiff's burden of proof throughout the case. This will help steer you through written discovery and depositions so that you can ask questions that shut down the plaintiff's theory one element at a time. By draft-

ing jury instructions early, you will know well in advance exactly where the plaintiff's weaknesses are and can center your trial themes on the holes in the plaintiff's case. Another easy item to draft weeks before trial is any motion in limine. After discovery closes, you will know which bad evidence you want to exclude from trial. Take time to draft relevant, well-crafted motions in limine, so that you intimately know the issues and the law. If you do, your written product and oral argument will stand out, and you will be the star of your pretrial conference if you can get the judge to grant a few of your well-drafted and skillfully argued motions.

Of course, the biggest benefit to preparation is peace of mind. The more prepared you are, the more you can absorb the trial experience—the sights, sounds and satisfaction for which you have waded through three years of law school and worked up your files for what seems like countless hours. Do not let procrastination rob you of a good first trial experience. Work hard now so that you are not working against the clock later.

### Focus on Motions In limine

When evaluating the long list of associate responsibilities at trial, motions in limine are in a category all by themselves. Motions in limine are a first-trial associate's most assured chance to get some experience on your feet. These motions provide a golden opportunity for a young associate to excel in front of the judge and the partner.

With partners focused on opening statements, closing arguments, trial themes and witness examinations, motions in limine sometimes are overlooked or treated as just another formality of the pretrial process. But aside from garden variety exclusions, motions in limine offer opportunities for creative lawyering and the chance to jump into the trenches on the tougher issues in your fight for a favorable verdict. Show the partner and the judge that you have thought through your evidentiary dilemmas, you understand the legal standard for admissibility, and the right call for the court is to exclude the harmful evidence.

Do not underestimate the potential of your motions and argument to have a huge impact on your case. Motions in limine are a very important part of the defendant's

case in chief. In many cases, a successful motion in limine on a key evidentiary issue can seriously hamstring the plaintiff's argument. For example, in a product liability case, excluded other similar incident evidence restricts the scope of the plaintiff's story to the facts at hand. Instead of telling a story about how the big, bad defendant has harmed many people in similar situations,

**Find out** what you can before the trial starts, as you do not want to find out the hard way about the judge's pet peeves during trial.

the plaintiff must convince the jury that this particular plaintiff was harmed, based solely on the particular facts in the lawsuit. Winning such a weighty motion in limine is a huge victory for your trial team.

### Make a Trial Notebook

Think of your trial notebook as the one-stop-shop for critical information that you will or may need at a moment's notice. The simple step of compiling key information in one place will help you avoid panic attacks when a partner needs an answer before he or she can finish a question. No need to shuffle through boxes looking for that key pleading, hot document, or need-it-now contact information. Just flip through your tabbed notebook and, presto, you are the go-to associate a partner learns to count on.

Essential items for your notebook include:

- The most recent scheduling order, with all pretrial deadlines;
- The latest complaint and answer;
- A checklist for both parties' motions in limine;
- Both parties' witness lists;
- A modified exhibit list that allows you to keep track of which parties' exhibits have been admitted into evidence;
- Deposition summaries or travel transcripts of key witnesses;

- A witness chart with contact information for each witness who may take the stand;
- Outlines for your witness examinations;
- A handy reference for any rules of evidence or civil procedure that may become an issue;
- Key discovery responses; and
- Key documents.

**Along with your toothpaste, pack your good attitude. No one likes a complainer, especially the partner and firm personnel with whom you are working.**

Add a section to your notebook for closing arguments, even if you are not arguing the closing. During trial, you can jot down notes about important evidence and testimony that should be addressed or highlighted during closing. Also include in the notebook your motion for judgment as a matter of law, and make notes throughout trial about the items that need to be modified before the motion is submitted.

A trial notebook may sound like a security blanket, and, in some cases, it is. But you will want a little security during your first trial. Plus, the notebook serves as a useful reference for trial details. With that said, not even the biggest, most comprehensive notebook can substitute for actually knowing the information contained in the notebook. No amount of paper can replace the hard work of preparing to win your case. Avoid spending so much time on your trusted notebook that you neglect the true focus of trial preparation—weaving together the facts, the witnesses and the law.

### Find the Firm's Best Paralegal

Chances are your firm has one or two paralegals that everyone wants to have on their trial team. There is a reason. Good paralegals can make an attorney's life so much

easier at trial. Get him or her onboard early in the trial prep process to create witness and exhibit lists, premark exhibits, make extra copies of important documents and prepare demonstrative exhibits.

At trial, a qualified paralegal is an invaluable extra pair of eyes, ears, and hands. Paralegals can handle many of the logistics and checklist items that lengthen an associate's to-do list, such as hotel reservations, reserving a war room and space for trial preparation, arranging for snacks, drinks and mints, and coordinating transportation of trial materials to and from the courthouse. An experienced paralegal will pull the jury pool list the moment it becomes available and can research potential jurors in a limited time frame. And the paralegal can help take notes during voir dire, when potential jurors are questioned and evaluated on various topics, so that you know better who to strike when the time comes.

Paralegals are also good sounding boards for trial themes. They know enough about a case to have an opinion about the parties and witnesses involved and, often, can offer a more practical perspective about an argument than an attorney obsessed and engrossed with every little detail in a case. Paralegals can bridge the gap between the trained attorney and the layperson juror's viewpoint. Engage them in the process, and listen to their input.

### Dress the Part

A trial is full of words, but there is more sight than sound. During your first trial, the jury may have little opportunity to hear you argue a point of law or take a witness. But it likely will see you every single day sitting beside or near the first-chair attorney, writing notes, shuffling exhibits, and whispering some important fact to your trial team. Jurors will watch your demeanor and will draw their conclusions about you based on what they observe.

You do not want your attire to say more than your argument. Too flashy and the jury will think you are smug and overconfident. Too shabby and the jury will think you are unprepared and unqualified. Play it safe, and keep your clothes tailored and understated. That means leave your fancy shoes, flashy watches, and your shiny crocodile bags at home. Men, save the Gucci

shoes with the jangling hardware for the office. Be careful with cufflinks. And avoid the wide banker pin stripes that look more Wall Street than Main Street. Women, pick your pearls over those trendy chandelier earrings. And avoid overpowering red suits that say, "Look at me," rather than "Listen to me."

The rule of thumb is simple: Avoid distracting the jury with your outfit. If the jury members are taking notice of your outfit, they probably are not taking notes about your case. Besides, designer duds will not give you bonus points with the judge or the jury. In fact, your clothing choices can harm more than help you. So keep it simple. Win the case with your words, not your wardrobe.

### Follow the Partner's Lead

Every attorney has his or her quirks at trial. He or she may not drink water in front of the jury, if the jury does not have the same luxury. He or she may use sticky notes rather than whispering a question. He or she may keep the counsels' table clean of exhibits and stacks of paper. He or she may not laugh in front of the jury, if the jurors are not in on the joke. Or maybe the trial team has done the unthinkable and asked you to sit in the second row, so that counsels' table does not look overcrowded with attorneys. Whether or not you follow a partner's reasoning, follow his or her lead and, if prompted quietly during trial, take the hint. Just as your mother or father said when she or he instructed you to do something when you were younger, "Listen to me. There is a reason." And, at trial, it is probably a good one.

So much of the pomp and circumstance of trial is calculated and thought out well in advance. Properly controlled behavior and body language in front of the jury sends signals that your trial team is prepared, considerate, and respectful of the jury's time. If it is easier for the jury members to like you, it is easier for them to decide that your side is right. The partner at trial knows this and has developed a pattern to convey these nonverbal cues with which he or she is comfortable. Be alert, and follow a partner's lead inside the courtroom.

### Keep Your Emotions in Check

Trials are stressful. People react differently

---

to the pressure. You may feel insecure, inadequate and nervous. You may be jumpy and feel like you are constantly on edge. You may have to deal with people who, under the circumstances, have short tempers and zero patience. You may be the one with a short fuse and no patience. You may be stuck in a small town with one dining option, poor hotel accommodations, or no copy service—or some horrid combination of all of the above. And, no doubt, at certain points throughout trial, you will be extremely tired and very hungry, often at the same time. Along with your toothpaste, pack your good attitude. No one likes a complainer, especially the partner and firm personnel with whom you are working. Negativity only breeds negativity, and your trial team does not need any more challenges than the case already presents.

Control your emotions; do not let them control you. Your name goes a lot further

than you ever will, and it only takes one tantrum to mar your reputation and earn you an unflattering nickname at the firm and the courthouse for the rest of your practicing days. No matter what you feel, resist the temptation to snap at people or to express yourself in a manner that is inappropriate for the workplace. You will regret your actions later, and you will be pegged as being difficult to work with when the pressure is on. Instead, be kind and courteous to your staff and everyone at the courthouse. Paralegals and court staff have very good, and very long, memories, and you will want to keep your good favor with them during this case and others down the road. Always express yourself in a professional manner.

While stressful, trials are also fun, and laughter is allowed in appropriate circumstances. Hopefully, the attorney with whom you are trying your first case will be that

witty and skilled partner from your firm who brings perspective to the process and has learned to ride the emotional roller-coaster of trial. Take a page from his or her book and, rather than letting your emotions get the best of you, use your feelings to add fuel to your fire for being a good advocate for your client.

### **Be Thankful**

You are finally at trial! You have made it further than most of your comrades and many attorneys with more working years under their belt. Enjoy the experience. Soak it up like a thirsty sponge. Your first trial is a personal and professional milestone. Once it is over, you will officially have your own war stories to share. And, win or lose, you will have become a better attorney. Be thankful for your first trial experience and, when the time comes, be ready. 