

EIGHT WAYS IN-HOUSE LAWYERS CAN MAKE YOU A BETTER TRIAL LAWYER

by MICHAEL S. LEBOFF

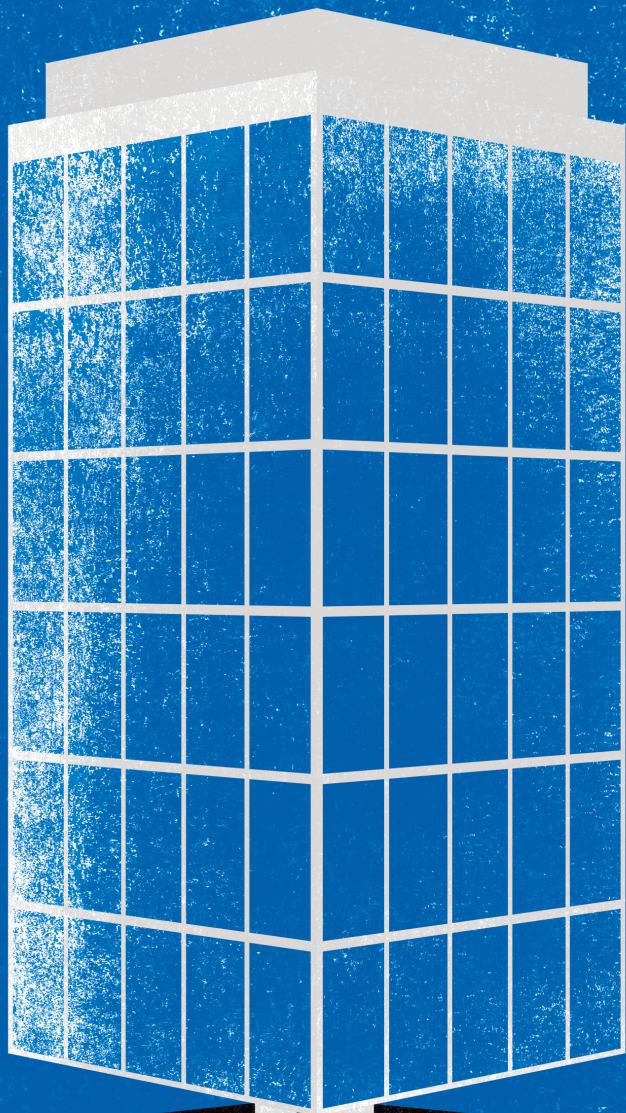
Imagine a member of your trial team had intimate knowledge of the inner workings of your corporate client. He had direct access to the highest ranking corporate executives. He is an industry expert. He has handled multiple trials for the same client and on similar issues. He has an extensive network of other subject matter experts throughout the country. While this sounds like an ideal addition to any trial team, this person is often right there: the in-house lawyer. Many trial lawyers underutilize the in-house lawyer. They may feel vulnerable asking for help, or may not want to cede control outside their firm. Whatever the reason, trial lawyers miss out on key strategy opportunities and information when they overlook an in-house counsel as a key expert in their case. This article identifies eight ways trial lawyers can incorporate in-house counsel for better results at trial.

1. Identifying and Preparing Key Witnesses: Most trials are won or lost by the witnesses. So, the key for putting your client in the best position to win at trial is to identify the best witnesses and prepare them thoroughly. Your in-house counterpart can be invaluable in this process. The in-house attorney works with these witnesses every day. He worked with them on prior disputes. He sees them at holiday parties and company picnics. He knows who can handle the pressure of cross-examination, and who will fold. He knows the skeletons in the corporate closet. Outside counsel, hired to work on one or a few lawsuits does not have

that same knowledge. Therefore, outside counsel should work with in-house lawyers to identify the witnesses that will represent the company at trial. In-house lawyers can also assist in preparing those witnesses to testify. This is particularly true with high ranking executives, where time and access can be severely limited.

2. Explaining the Documents: If the trial is not won or lost by the witnesses, then it is won or lost by the documents. In-house attorneys should be intimately familiar with many of the documents that will become trial exhibits. They work with these documents every day. Outside counsel, on the other hand, may be seeing these documents for the first time. Work closely with in-house counsel to understand the key documents and develop a way to simply and clearly explain the important aspects of the documents to the jury. In-house counsel can also assist in identifying unimportant documents that can be omitted from the trial for a more streamlined presentation.

3. Picking the Jury and Voir Dire: Corporations spend ridiculous amounts of money attempting to get into the minds of consumers. A jury is essentially just that; a panel of fourteen consumers. You should tap into that in-house knowledge to understand what makes a company likeable. What preconceptions will the average juror have about your corporate client? What the trial lawyer thinks the jurors know or will like about the company may be completely



impossible to step back and assess the bigger picture. Many in-house lawyers spent years in private practice before going in-house. If possible, in-house counsel should attend the trial. As knowledgeable observers, they can work with trial counsel to determine whether any in-game changes need to be made to the trial strategy. They can also assist with witness preparations while trial counsel is in court addressing evidentiary or legal issues.

6. Working With Experts: In-house lawyers should also have a role in working with outside expert witnesses. The in-house lawyer's unique knowledge of the company may allow her to identify issues the outside counsel and outside expert overlooked because they do not have the same level of internal information as the in-house lawyer. The in-house lawyer can also assist in identifying preeminent experts, particularly in highly-specialized fields.

7. Managing Expectations: Not every trial will be won. Thus, one of the key responsibilities of the trial lawyer is to keep the client apprised of the risks of going to trial. In-house counsel can be the essential link between the trial lawyer and the corporate executives. In-house lawyers speak your language, and can assist in communicating risks within the company.

8. Keeping Things Ethical: Non-lawyers do not always understand the complex and sometimes counterintuitive ethical rules governing the practice of law. They may not, for example, appreciate the ethical rules prohibiting contact with represented parties or the intricacies of conflict-of-interest rules. In-house attorneys, however, must comply with the same set of ethical principles as every other lawyer. Therefore, in-house counsel can be of great assistance in making sure everyone conforms to controlling ethical rules.

In short, the in-house lawyer should be treated as a key member of the trial team. They know things you do not. The end goal is to win at trial. To do that, you need to maximize all resources available, including in-house counsel.



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wrong. In-house counsel can tap into the internal corporate resources to develop voir dire questions that more effectively separate the good and bad jurors.

4. Preparing Jury Instructions: In-house counsel are experts in the laws and regulations impacting the client's line of business. If it is a bank client, the in-house lawyer is usually an expert in banking and lending regulations. The general counsel of an energy company probably knows more about energy laws than anyone else on the trial team. If it is a patent case, the in-house lawyer probably has extensive experience with patent laws. The same is

true for employment specialists. Whatever the industry or subject matter, the in-house lawyer may be able to identify nuanced legal issues and develop jury instructions addressing those industry or subject matter specific issues. In fact, having been through other trials for the same client, in-house counsel may have a library of jury instructions and special verdicts forms that can be re-purposed for your trial.

5. Tracking the Progress of the Trial: During trial, the trial lawyers are often caught up in the question-by-question, document-by-document aspect of the case, making it nearly