

# Developing Trial Lawyers in an Age of Shrinking Trial Dockets

By Margaret Lockhart

Ask law students what they want to do after law school, and many will tell you they want to be trial lawyers. The bold emphasize that they are not interested in being mere litigators; they want to be on their feet in the courtroom, telling their client's story to a jury. They have aced trial advocacy, participated in mock trials and moot court, and assisted clients through legal clinics or pro bono projects. They have that "fire in the belly" that law firms seek.

When these students become law firm associates, they want to hit the ground running. They know they will spend considerable time on research and writing, and they accept that they may be drafted for large, sometimes tedious, document projects. But they long to be questioning witnesses, cross-examining experts, and arguing evidentiary objections.

Unfortunately, fewer cases now go to trial, and there are fewer opportunities for associates to learn and practice trial skills. And when opportunities arise, clients want experienced trial lawyers to try their cases. Although they recognize the value of training, clients do not want their trial to be a lawyer's first.

Paradoxically, six or seven years later, when these associates are eligible to become partner or shareholder, many firms expect them to have had trial experience. Yet, many senior associates have not had the chance even to second-chair a bench or jury trial. Some have never even been in a courtroom.

The dilemma is troubling for everyone. Motivated associates are frustrated with the lack of opportunity and often disillusioned with their practice. Clients are concerned about young lawyers' lack of trial experience. And partners are trying to address the concerns of both while maintaining their own practices.

## Trial Advocacy Training Programs

How do law firms develop trial lawyers when there are fewer and fewer trials? Many rely on training programs sponsored by outside providers. The National Institute for Trial Advocacy and the International Association of Defense Counsel are among the many groups that sponsor intensive trial advocacy programs. Participants work with a faculty of experienced trial attorneys on a fictional case, practicing witness exams, arguments, evidentiary objections, and other trial skills. Sponsors create comprehensive case files for the training and often use real witnesses to make the experience more realistic.

Other firms develop their own in-house trial advocacy programs. Greenburg Traurig, LLP, has developed a comprehensive trial advocacy program for its mid-level associates. The firm has partnered with a litigation training consultant to develop and conduct this training. Working with the consultant, the firm creates a case file for the program, and 24 associates participate each year at an off-site location that permits the participants to focus on the training. Many of the firm's best trial lawyers serve as faculty, working with associates in small groups for three days on the variety of trial skills, and providing one-on-one feedback and video review of "on their feet" performances. On the fourth day, the associates conduct a mock trial in a real courtroom. Local actors serve as witnesses, community members serve as jurors, and former or retired judges preside. After the trial is complete, the associates watch the jury deliberate and have an opportunity to speak with the jurors. Then, the presiding judge and a Greenburg Traurig faculty member critique the associates' trial performance. The associates also receive a videotape of the trial for later review.

Ruth Bahe-Jachna, a Greenberg Traurig shareholder who helped to develop and now teaches the trial advocacy program, says that the program has been instrumental in giving associates both the skills and the confidence they need to try cases. Clients familiar with the program are more comfortable having associates involved in trying their cases. As an added benefit, the participants develop professional and mentoring relationships that continue long after the program ends. According to Bahe-Jachna, this has boosted both associate retention and morale.

## Providing Trial Opportunities Through Case Selection

Other firms develop trial advocacy skills by taking on specific types of cases. Many firms recognize that insurance-defense and subrogation cases provide opportunities for trial in smaller matters, which often can be delegated to associates with supervision. Other firms encourage associates to take criminal appointments or pro bono matters that will get them into the courtroom. Firms view the reduced rates on these matters as an investment in training. Partners must also invest time to supervise these cases, both to protect client interests and to ensure that associates do not develop bad habits.

Cooper & Walinski, LPA, an Ohio litigation firm, has volunteered to take all domestic-violence referrals from the local bar association's pro bono program. The firm's associates represent victims of domestic violence in civil-protection hearings and appeals. Those cases routinely give associates limited time to complete their investigation, prepare their witnesses and their cross-examination of adverse witnesses, organize exhibits and evidentiary issues, and try the case. The firm also volunteers associates' assistance to the local public