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Trial Pros: Pepper Hamilton's Joseph Crawford

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Joseph C. Crawford is a partner in the commercial litigation practice group of Pepper Hamilton LLP and a fellow of the American College of Trial Lawyers. He has tried cases in many areas of the law, including breach of contract, fraud, securities, product liability, defamation, insurance, cases arising out of mergers and acquisitions, death penalty litigation and other pro bono cases.

Joseph C. Crawford

Q: What's the most interesting trial you've worked on and why?

A: The most interesting trial I ever worked on is one that changed my approach on how to prepare clients to testify in depositions and for trial.

The opposing party, my client's older relative, was a wealthy man who had hired my client to run the family business and had given my client a power of attorney to sign checks and enter into business transactions. The older family member accused my client of making unauthorized payments to himself and entering into business transactions without authorization and on terms that constituted a breach of fiduciary duty.

As is typical in a family business dispute, some of the documents put my client in an unfavorable light and the older relative never challenged any payment or transaction in which there was a clear documentary record that favored my client.

Although my client was an honest, extremely intelligent person and I had used the "normal deposition preparation" that I had used with all other clients up to that point in the first ten years of my career, he lacked confidence under cross-examination and his deposition did not go well.

I decided that, if opposing counsel did not call my client as on cross-examination during trial, I would, in the course of my own direct examination in the defense case, ask him every difficult question and cover every weak point that a good cross-examiner would probe. That is exactly what occurred. I called it "Take Away Direct Examination," because the goal was to take away any possibility of opposing counsel cross-examining my client.

The result was that my client felt confident telling the whole story — the good points and the difficult points — during direct examination. When I questioned him very specifically about some of the difficult points, he knew that I believed him on the ultimate issues in the case, and it increased his ability to explain difficult facts tremendously.

This method thwarted opposing counsel's cross-examination because the client had already answered all of the challenging questions, and so the cross-examination seemed like mere repetition of points that had already been answered. I realized then how much more effective it is to address and answer the "weak points" in a case during direct examination of the client because then the "weak points" can be placed in the context of a theory of the case in which they are not fatal to the client's position.

The jury clearly appreciated the honesty of an approach that presented the whole story — our good points and our bad points. In what was a difficult case, the jury saw that the client was fundamentally telling the truth and awarded the plaintiff only one percent of the damages that he claimed, and even that verdict was reduced to zero because the plaintiff had withheld a payment that would otherwise have been owed to my client based on the claims of fraud and conversion. Now I always consider the possibility of taking away my opponent's cross-examination by addressing every likely attack point in my direct examination.

After this trial, I changed my method of preparing witnesses. When I prepare a witness for deposition or trial, after we have covered all of the key facts and documents, I conduct a "Take Away Direct Examination," which is an attempt to elicit testimony on the main strong points of our theory of the case and on all of the major subjects and questions that a good opposing counsel might probe in cross-examination. The goal is to make the client see that our theory of the case withstands the test upon examination of all of the relevant facts — both the good and the bad. Only then do we proceed to a mock "cross-examination," in which I or a colleague plays the role of opposing counsel and asks the difficult, challenging questions.

This method — i.e., making sure that the client would be able to testify on the main strong and weak points in a "direct examination" conducted by their own lawyer — is a tremendously effective tool in preparing clients to testify in response to questions by opposing counsel.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: Sometimes, it is better to be lucky than good. I tried a defamation case years ago that involved a dispute between a male political activist and my client, a woman who was a television news broadcaster at one of our local stations. The political activist's version of the event that resulted in the defamation case was that he had a respectful conversation with my client in which he criticized her journalistic ethics. He claimed that she lost her temper and struck him in the face. My client testified that the political activist, a person she had never met before, startled her by making angry, deeply offensive comments that had nothing to do with journalism. She admitted that she tried to slap him across the face, but denied striking him.

The political activist filed a defamation case because a local radio talk show host found the incident amusing, discussed it on the air repeatedly and recounted the incident primarily from the point of view of the television news broadcaster.

During all of my planned cross-examination of the political activist, he was calm, respectful and conducted himself like a perfect gentleman. I had a terrible case of the flu during the trial and perhaps because I was feeling so sick, I asked a stupid, objectionable and ineffective question at the end of my cross-examination. The question was so bad and should have been so easy to answer that my opponent decided not to object to it. Then pure, unadulterated good luck intervened.

The political activist unexpectedly screamed at me, and then he made a huge mistake by standing up in the witness box, putting his hands on the bench and leaning over and screaming in the face of the trial judge, angrily criticizing her handling of the trial. The trial judge had conducted the jury trial in an exemplary manner, and the jury clearly loved her. When the jury saw the political activist screaming in the face of the trial judge, the case was over.

Q: What does your trial prep routine consist of?

A: It is pretty much a three step process for me.

First, I personally prepare detailed summaries of all the deposition testimony by opposing witnesses and all potentially important exhibits. I make sure that I include in my summary the exact words of the witness or the exhibit if I believe there is any chance that I will use that excerpt either to control the witness's answer during trial or to impeach the witness if he or she varies from the statement in the deposition or exhibit. I find that personally preparing these summaries burns their content into my memory.

Second, I develop explicit goals, lists of exhibits and outlines for each cross and direct examination. I improve the direct examination outlines by meeting with our witnesses and preparing them to testify on direct, "Take Away Direct" and cross-examination. If my goals are sound and the methods chosen in the outlines are good, I will not need to use the outlines much during the examination of the witnesses because I will remember the goals and the methods chosen to accomplish them.

Finally, I prepare an opening statement and perhaps also a rough outline of my closing statement.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: If a new trial lawyer is extremely well prepared on the facts and has good fundamentals, his or her youth or inexperience can actually be a tremendous advantage. If the judge or the jury senses that the new trial lawyer does not have a great deal of experience, but is extremely well prepared, sincere and, importantly, is someone who gets to the point without wasting everyone's time, there will be a natural human reaction on the part of the judge and the jury to root for and give every benefit of the doubt to the first timer.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: Stephen G. Console of Philadelphia has a well-deserved reputation as one of the most outstanding plaintiffs' employment law attorneys in the United States. His trial skills are truly outstanding, but the most remarkable things about him are his professionalism in dealing with the clients and his ability to evaluate cases quickly and accurately. I invariably learn a lesson in professionalism when I have the opportunity to send a client to him and his colleagues.

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