

Who's next? Involving junior lawyers, Part 1

By: Douglas H. Wilkins and Daniel I. Small ◉ January 24, 2019



We wanted to start with one of the great challenges facing the legal profession. In an age of fewer trials, escalating hourly rates, and raised client expectations, how do newer lawyers get the real-world experience they need to decide whether they want to become trial lawyers, and to develop their skills if they do.

Literally, who's next? This is more than just lending a hand to junior lawyers. Our system of justice depends on high-quality trial attorneys, if those who enter the system are to obtain high-

quality results. Where are such lawyers to come from?

Much has been written and spoken about this issue. We suggest that the debate has too often neglected an important dimension: that of enlightened self-interest. When clients and senior attorneys explain why junior lawyers shouldn't do more, we often hear that the client (or insurer) or tactical demands of the case require personal involvement by the senior attorney.

We suggest that strategic advantage, client service, and financial benefits often all align with the more general policies of developing high-quality trial lawyers, which is beneficial for everyone individually and for the quality of justice in our courts.

The potential strategic, professional and economic benefits of involving junior counsel can include:

- Reduced rates may allow serving a client on numerous smaller, similar matters with continuity and increasing familiarity and expertise.
- If you want a hearing on a motion that is not automatically entitled to one, some judges may be receptive to a request for hearing that promises argument by a junior attorney who did the work.
- If a hearing occurs and junior counsel did the research or investigation, consider whether he or she may be better in responding to the court's questions. If so, the senior counsel will not have to stop to consult the associate before answering a question, with attendant loss of persuasiveness and credibility.
- At trial, jurors are puzzled when they see one or more lawyers sit at counsel table, apparently playing no significant role.
- Jurors enjoy a little variety among counsel and might be eager to root for an inexperienced lawyer giving it his or her best effort.
- A change of pace between examiners at trial can also signal a change in emphasis, tone or importance between successive witnesses. Some witnesses just do not require examination by senior counsel.
- Delegating the simple witness examinations can reduce the toll on senior counsel's time and concentration and may result in a better-prepared and more effective examination by the junior counsel for this witness, and better-prepared and more effective examinations of other witnesses handled by the senior counsel.

And then there is perhaps the most basic fact: You can't have a profession without professional development. Other professions routinely spread front-line opportunities beyond the most senior members. Before becoming attending physicians, junior doctors literally have hands-on experience doing real procedures on real patients, not just simulations. Performance artists don't just show up on opening night. Even after spending years learning their craft, they spend weeks or hours in rehearsals.

Sometimes the apprentice has to take the lead. That's particularly appropriate to remember during this 100th anniversary of the birth of Leonard Bernstein. He triumphed in his major conducting debut with the New York

Philharmonic Orchestra at age 25, when he stepped in at the last minute because the principal conductor, Bruno Walter, got the flu. He rose to the occasion.

The same thing happens in sports. We grant that no one is celebrating the second anniversary of Deflategate, but Tom Brady's temporary absence allowed Jimmy Garappolo to shine.

There is often great talent on the bench. Why can't the legal profession do what other professions do every day, without generating questions about efficiency or about developing talent? We think it can.

As much as judges and experienced in-house and outside lawyers complain about the lack of hands-on training for junior trial lawyers, how many are actually doing something about it? Not necessarily on a grand or formal scale, but in smaller day-to-day ways, by keeping the challenge in the back of their mind and finding ways to help? It may take some creativity and flexibility, and some diplomacy to convince all those involved that it's a good idea (judges, lawyers, clients and more). However, the results can be beneficial for all those players, and for the quality of justice in our courts.

Having discussed the theory here, we will follow up with some concrete examples in our next columns.

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