The Five Habits of Highly Successful Trial Lawyers

By: G. Christopher Ritter

No one can win every case. Indeed, famed trial lawyer Edward Bennett Williams—who represented such notable clients as Jimmy Hoffa, Frank Sinatra, Hugh Hefner, and the Reverend Sun Myung Moon—once observed that a third of all cases can never be won, a third can never be lost, and it’s the battle over the remaining third that makes or breaks a trial lawyer’s reputation.

Yet some trial lawyers seem to win more than their share. What do these lawyers know that others don’t? They know how to devote the time and effort it takes to learn their case, present it to the jurors in an understandable, interesting way, and convince those jurors that this version of events is the truth. Highly successful trial lawyers, in other words, are really highly effective advocates who know—and practice—the art of persuasion.

But how does one become such an advocate? After working on more than 1000 cases and observing hundreds of actual and mock juries, The Focal Point has identified five habits shared by this country’s most effective (and influential) attorneys.

They are good teachers.
Successful trial lawyers like to explain things; in fact, they get pleasure from explaining things to people in ways that the listeners can understand. As such, in the courtroom, successful trial lawyers aren’t always the mad dogs of the profession. But they are often more effective than their
more openly hostile counterparts. Why? Because teaching jurors what they need to know—and
how they need to learn it—impresses the jury more than putting on a show of vitriol and
aggression. In fact, jurors instinctively doubt that some “mean-as-a-snake” trial lawyer is capable
of recognizing anything as delicate as the truth, and they often reward the side that takes the time
to explain matters to them. Taking the time to teach your jurors well also shows them that you
respect them, which means they’ll listen all the more carefully to what you say.

They are good learners.
Highly successful trial lawyers revel in mastering the details of their case. Yet they learn those
details without losing the overall perspective of what is important and where they want the jury to
go. Put another way, effective advocates develop and maintain two perspectives—“one under”
and “one over.” They develop an understanding of the underlying facts, all the while maintaining
an overview of the overall case.

This is not an easy task in very technical or otherwise complicated cases. But it’s crucial if you
want to provide your jurors with something more than a dry recitation of memorized facts. (And
you do.) Instead, develop a solid chronology for the case (including events, key documents,
important quotations, and both disputed and undisputed facts). Then think about what your
perspective is on the case as a whole and what the “take away” message should be for the jury.
That core message is just as important to your case as the hundreds of facts that support it.

They follow Thoreau’s advice to “Simplify, simplify.”
Knowing all the facts is one thing. Knowing those facts so well that the case becomes
straightforward is a whole other skill. But it’s a crucial one for successful trial attorneys. Why?
Because if you tell the juror every little fact that you know, their comprehension will devolve into
boredom at a very rapid rate, and once that boredom dawns, they stop absorbing the material.

Highly persuasive advocates take the time and the energy to make their cases simple. As a result,
over time, their trial estimates get shorter, not longer; their witness lists have fewer names, not
more; and the number of their exhibits drops, rather than increases. In addition, successful
lawyers know that the key to convincing a jury isn’t adding arcane detail upon arcane detail; it’s
keeping only what’s really needed to establish your claim or defense—and then subtracting out
anything that might distract or confuse the jury. Any information that is added can only be the
kind that elucidates—rather than mucks up—your case.
They make the time to engage in “mental mining.”
This process involves uncovering familiar stories, analogies, and other images and then using those stories/images to explain unfamiliar and/or complicated points. It’s an ongoing process: really good trial lawyers start looking for good analogies and images from the very first time they see the case file, and they keep mentally mining the facts during their research, in meetings, while they’re driving to work, even when they’re in the shower. (Sometimes, in fact, the ideas come up unbidden, in the oddest circumstances!)

As in all good brainstorming sessions, their credo is “there are no bad ideas.” But at the end of the wool-gathering session, the attorneys, with the aid of a neutral listener, sort through the metaphors, similes, and adages and choose those that work best for explaining the idea.

Mental mining is not rocket science. Most of us do it all the time. Just think about the last time someone taught you something new. Most likely, there’s a good chance that as you listened, and either you or the person who was teaching you said, “is it like…?” comparing it to something you already knew or to which you could easily relate. That’s mental mining—looking for an image or analogy that is familiar to you to explain the new material.

These images and analogies come from myriad sources: popular songs, television shows, famous paintings, well-known quotations, even the sights and sounds of everyday life. What’s important is that the images and analogies are familiar to most people, and that they help make a complex concept more easily understood. Don’t be afraid to look for and use these teaching devices with your jurors. If a jury is made up of our “peers” they will more likely relate to and understand these explanations than they will those esoteric terms and concepts drilled into our brains during law school.

They know how to turn neutral jurors into partisans.
Asking jurors to sit in a room and resolve the problems of people they have never met is asking a lot. Getting them to care about those strangers is asking even more. But effective lawyers truly are able to turn jurors into active, caring partisans. Those are partisans, by the way, who not only “give a damn” about which side prevails but will fight hard for that side. The side with the most active or passionate jurors is the side that is most likely to prevail.

How do lawyers do that? They learn about their case, mine it for familiar images and concepts, simplify it, and then teach it to the jurors, using familiar concepts, persuasive language, and
interesting testimony. That helps the jurors absorb the facts—the lawyer’s version of the facts, of course—and come to see the client’s side of the matter. And that’s what wins a case.

**About the Author:**

G. Christopher Ritter, Esq. is a Member of The Focal Point LLC, this country’s premier trial strategy and graphics consulting firm. He and his colleagues have worked on hundreds of cases, including some of the largest and most highly publicized trials. He is an active member of the California Bar, a former trial lawyer and law school professor, and author of *Creating Winning Trial Strategies and Graphics* published by American Bar Association. He can be reached at chris@thefocalpoint.com.