ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl REPORT

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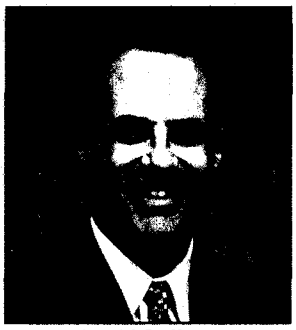
Applying Project Management Principles to Litigation

To be successful, every really big project requires both a vision and a project manager capable of leading a project team to complete the project on schedule. When John Kennedy told the world that America would put a man on the moon in the 1960's, that vision motivated the assigned team of people to accomplish the project. That team had a clear goal, a known deadline and sufficient resources to make the goal a reality. In short, the lunar space program had all of the components of a well run project – a vision, a project plan, a target date, sufficient resources and a motivated and encouraging sponsor – the American people.



David Dolkas

In some projects, the visionary and the project manager are the same. My favorite was Jim Phelps of *Mission Impossible*. Each week Jim got a tape recorder and a tape with his team's assignment. Jim had to listen carefully because the tape self-destructed immediately after it was played.

Usually, in the comfort of his living room, Jim carefully envisioned how his team would accomplish the impossible mission. (Jim followed Step One of Project Planning: He determined the scope of the project and the project requirements.)

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Also in this Issue

Preparing for and Presenting an Arbitration

More and more often, a trial lawyer's "day in court" is spent in a hotel conference room with no jurors in sight. While in law school we imagined ourselves holding twelve layman spellbound by masterful cross-examination or argument, we now must struggle to make evidence interesting to highly compensated, private judges on long afternoons in hot conference rooms. With private arbitrations becoming more prevalent every day, there are some basic lessons that a trial lawyer must consider in preparing for and presenting a case in arbitration.

Benjamin K. Riley

Don't assume that the same examination or argument technique that works well in front of a jury is the best approach in arbitration. Here are twelve suggestions to keep in mind.

Try To Be The Petitioner

Despite admonitions regarding burden of proof and deciding a case only after all of the evidence has been presented, jurors are likely to "take sides" or come to preliminary conclusions as soon as the Opening Statement or evidence begins. Whatever jurors "first believe about something is what they are likely to feel most deeply and retain most vigorously." *Cal. Trial Handbook* (3d ed. 1992) section 19.2. There is no reason to believe that arbitrators react any differently. In fact, because of the greater liberality in testimony in an arbitration, there is more opportunity to pre-condition the trier of fact.

Given this likelihood of pre-judging a case, the party that presents its case first has a distinct advantage. It can present its side of the story in a neat, understandable package, before the opponent has a chance to rebut and present its case. The first witness can convey your theme and immediately put the other side on the defensive.

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Preparing for Arbitration

Accordingly, you should take every opportunity to capture the position of "Petitioner." If a plaintiff ignores an arbitration clause and files an action in court, immediately serve and file your Demand For Arbitration, file a petition to compel arbitration with the court, and then *retain* your position as "Petitioner." Alternatively, when you know a lawsuit is coming, consider a preemptive strike and serve an Arbitration Demand seeking declaratory relief. In both situations, you can now present your case before your opponent. If you represent the "aggrieved" party and the parties have contracted for arbitration, think very hard before you file an action in court, ignoring the arbitration forum. If you should lose in your effort to avoid arbitration (which, if the other party objects, you probably will), you have just given up your client's natural advantage of being the "plaintiff."

In a recent arbitration, our client was sued in court for allegedly defective agricultural machinery. Our client successfully petitioned to compel arbitration. When the case was first arbitrated, previous counsel chose to present only a brief petitioner's case, electing to allow the "real plaintiff" to present most of the evidence and then to respond with a traditional defense case. After the first arbitration award was reversed, we presented a comprehensive petitioner's case, establishing in detail how our client fully performed the contract and was prevented from continuing performance by the plaintiff/respondent. We were able to call our opponent's key witnesses on cross in our case, challenging their credibility even before direct examination. We presented and explained each of the plaintiff's "bad" facts.

By the time we concluded our case, including adverse witnesses, the arbitrators had already heard most of the controversy from our client's perspective. Our opponent was now forced to explain its conduct as opposed to focusing on our client's alleged breach.

The lesson: if at all possible, position yourself as the Petitioner at arbitration and then use the opportunity to present your case, whether offensive or defensive, first.

Present Your Best Case in the Demand/Response

Conventional wisdom is that Demands For Arbitration, responses and other filing should be brief and without substantial legal authority. Granted, an arbitration pleading, like any other pleading, should avoid legalese and be clear and concise. But remember that unlike a Complaint, which neither judge nor jury will likely ever read, the *first thing* the arbitrator will read is the Demand For Arbitration and then the Response to Arbitration Demand. The initial pleading provides your first opportunity to persuade. Use it. Consider making your Demand or Response a complete (but still relatively brief!) Opening Statement with the key facts and law carefully marshalled. If extreme time sensitivity is not an issue, you may wish to briefly delay filing of the Demand or Response until you have investigated your facts and/or damages so that you can present a compelling case that will not have to be substantially changed later.

Also, be prepared for the first status conference with the arbitrator, when she will turn to you and say "Counsel, tell me about your case." Give her the 10-minute version of your Opening Statement illustrated by your five key documents.

Jettison "Loser" Arguments

By the time it reaches a jury, those "alternative" positions that you threw into the Complaint or Answer, just in case, have long since been dropped. Most trial lawyers will not want to present relatively weak claims to a jury or judge when they have two or three stronger claims.

This same consideration applies to arbitration – only much earlier in the process. Since the arbitrator will first judge your case based on the Demand or Response, consider whether you want to make the "fall-back" arguments in the first place. If your case proceeds efficiently, you may have to explain at the Pre-Hearing Conference how two of your five claims have now been dropped. And unlike a jury, which frequently will be unaware of tactical moves during a trial, the arbitrator will be fully apprised concerning your shifts in strategy. Substantial changes in position may cause the arbitrator to question your remaining claims.

The better practice may well be to proceed from the beginning on only your strongest claims. As the respondent, if a claim looks like a "loser," find a way to concede the obvious while still maintaining the integrity of your defense. Remember: the arbitrator, just like a jury, will be analyzing your every step. If you start and remain in the position of strength and equity, your chances of prevailing are greatly enhanced.

Be Candid

Candid and forthright advocacy is perhaps even more important in arbitration than in court. While most civil trial lawyers will not want to present a position to a jury that they cannot strongly support, the court litigation process still provides many opportunities for "strategic" positions or arguments that focus on non-central points (throwing the proverbial spaghetti on the wall in hopes something might stick).

Arbitration is a poor place for posturing. A competent, hard-working arbitrator who has been responsible for a dispute since its inception is unlikely to be swayed by irrelevant facts and overly emotional appeals. An arbitrator will strive to be dispassionate, to decide the case based on the facts. The arbitrator will look to the attorneys to accurately present the evidence. Count on it: the arbitrator *will* recognize when "zealous advocacy" becomes stalling, obfuscation or deception. Once any of these labels are pinned on you or your client, your chances of prevailing will be substantially diminished.

Most "slam-dunk" or "dog" cases settle. To win the arbitration of the closer cases, don't run away from bad facts or create issues where they do not exist. You only have to win the case, not every argument or examination. Present the case accurately, fully and logically. When your opponent strays from this advice, your client's position will appear stronger.

Organize and Agree Upon The Arbitration Exhibits

The arbitrator will expect that, prior to the commencement of the hearing, you and opposing counsel will have agreed on 75% of the arbitration exhibits. Normally, you will not want to make many foundational objections because some hearsay will probably be admissible, and

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foundational witnesses are easily subpoenaed. Don't fight unimportant battles you're probably going to lose. Agree on most of the arbitration exhibits and organize them in binders for easy access by the arbitrator. Have your paralegal update the arbitrator's exhibit binders daily. Have extra exhibit binders for the witnesses. Make the process as easy and smooth as possible.

Don't allow obstreperous counsel to prevent you from organizing and presenting the joint arbitration exhibits. The arbitrator will quickly understand the dynamics when you have agreed to admission of 75% of your opponent's evidence and he has objected to 75% of yours.

Don't Forget About Settlement/Mediation

As with court litigation, the month before an arbitration hearing will be fully occupied with preparing all the exhibits and witnesses. In arbitration, however, there is no court or judge forcing you to constantly think settlement or submit to mediation. Arbitrators may have a tendency to want to proceed to hearing and consider all of the evidence before reaching a resolution.

In the hustle to be ready for the hearing, don't forget about mediation or other settlement avenues. After expert witness reports and depositions have been completed and the hearing is looming, the issues will be clear enough and the pressure great enough to conduct meaningful settlement negotiations. An arbitration administrator, such as JAMS/Endispute or AAA, will be pleased to suggest one of their other panelists for a mediation session. Even apart from the benefits of discussing settlement, the mediator's analysis of your case will provide an important test of how the arbitrator is likely to react to your arguments. If you don't settle, you can re-tool your case for maximum impact on the arbitrator.

Request Time Limits For Presentation Of Evidence

While our business lawyer counterparts advise their clients that arbitration is "cheaper and faster," we trial lawyers know it ain't necessarily so. It can take a very long time before the hearing commences, especially where depositions are allowed or where three arbitrators and two law firms have to agree on scheduling a month long hearing. Without limits on evidence, the hearing too can take much longer than necessary.

At the first hearing before the arbitrator, propose a schedule with realistic limitations upon document discovery, any depositions and expert discovery. Discuss and schedule any dispositive motions.

Equally important, suggest time limits on the testimony by each side. An allocation of a certain number of hours of testimony (including all direct and cross-examinations by that party) works well. If your client is allocated a maximum of 42 hours of testimony, it is amazing how efficient your direct and cross-examinations will become. Your opponent will quickly whittle her witness list from 50 to 12 witnesses by the beginning of the second week of the hearing. With the help of the court reporter or the arbitrator, maintain a running log of the time used by each party and the anticipated time for the remaining witnesses. In this way, you'll know what you have to cut.

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Parallel Proceedings: Criminal and Civil Litigation

(Editor's Note: This article is continued from our last issue with a discussion of settlement considerations, the joint defense privilege and sentencing.)

Settlement Considerations

One way to free up witnesses to testify in civil proceedings is to resolve their criminal liability. Quick criminal settlements may also be advantageous for purposes of sentencing guideline calculations (*see* discussion in Part VII C., *infra*). However, as discussed above in Part V, if the criminal case is to be settled through a plea, the plea may have collateral effects in the civil litigation. Thus, if early resolution of the criminal case seems appropriate, there should be careful coordination between civil and criminal counsel to try to find a criminal resolution which is least damaging to the civil case and yet still acceptable to criminal prosecutors.

Jan Nielsen Little

In structuring criminal plea agreements, attention must also be paid to the criminal penalties to be imposed, and the effect of such penalties in the civil case. For example, a restitutionary payment in a criminal case may be viewed in the civil case as an "admission" of an amount owed, whereas a fine might not be so viewed. On the other hand, a restitutionary payment made in a criminal case might be creditable against a civil judgment, whereas a fine would not.

The Civil Case. A civil settlement between private parties will not resolve any pending criminal proceedings. It is also unlikely that private civil litigants will incorporate into a settlement agreement a promise that the aggrieved party will not report to or cooperate with law enforcement authorities if the conduct in question is otherwise punishable criminally. Such an agreement is arguably against public policy in that it undermines society's interest in deterrence and punishment of criminal conduct, and enables a financially able litigant to buy a way out of prosecution. (Conversely, it is ethically impermissible, and potentially illegal, for a lawyer to exact a civil settlement by using a threat to report criminal conduct. Disciplinary Rule DR-105; *see also*, ABA Model Rule 4.4; 519(2)). It might, however, be possible to include in a civil settlement an agreement that the aggrieved party in the civil case will notify prosecuting authorities that, at least from a monetary standpoint, the aggrieved party has been "satisfied" by the civil resolution.

Simultaneous Or "Global" Settlements. It is not uncommon for settlement negotiations to be ongoing simultaneously in civil and criminal proceedings, much in the way a civil defendant might negotiate with two different plaintiff groups suing on the same facts. Whether to settle civil and criminal cases simultaneously, or seriatim,

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will be a tactical decision unique to each case. When the government is a party to civil litigation or administrative proceedings, a "global settlement" of civil, criminal, and administrative proceedings may be sought. Caution is necessary, however, because the question whether a United States Attorney has the authority to bind other government agencies and departments is complicated and unsettled. *See generally United States v. Igbonwa*, 120 F.3d 437 (3rd Cir. 1997) (citing cases). Even if a United States Attorney has such authority, careful drafting is necessary to ensure that the proposed settlement clearly reflects her intent to exercise it – even if the United States Attorney in question is only committing to bind other United States Attorneys offices. *See, e.g., United States v. Russo*, 801 F.2d 624 (2nd Cir. 1986).

Truly "global" settlements are rare, however. Often the government is unwilling to "package" simultaneous settlements and will instead require that one action be resolved before another is considered. (For example, the IRS will generally delay resolution of civil tax liability until issue(s) relating to criminal tax liability have been resolved.) Rather than negotiating one giant settlement agreement, more often a corporation is in the position of trying to negotiate "simultaneous" settlements with various parties: with private litigants, with prosecutors, and/or with various branches or agencies of government, in civil or administrative actions. The potential advantages or disadvantages, and the availability and advisability, of simultaneous or "global" settlements will be unique to each case.

Ragesh K. Tangri

Other Issues

Retention Of Counsel. The introduction of a criminal investigation or administrative proceeding during a pending civil case will almost certainly require the retention of additional counsel. Rare is the practitioner who can function comfortably and competently in all three arenas, civil, criminal, and administrative. Moreover, there are divergent interests and strategies presented by the civil and criminal defense of the case (the classic example presented by Fifth Amendment issues) and the client is best served by receiving expert advice on all fronts.

It will also likely be necessary to retain separate counsel for some individual employees or officers, especially when criminal liability considerations are present. Conflict of interest considerations will prevent corporate counsel from representing individual officers or employees who may be asked to testify against the corporation: if employees of a company are subpoenaed to give testimony in a criminal proceeding, the company should hire separate counsel for them to avoid conflicts of interest.

It is common for corporations to pay for criminal counsel for employees, unless there is evidence that the employee knowingly committed a crime against the company, in which case indemnity is usually denied. It is not a conflict of interest for an individual's employer to pay his attorneys' fees. *See, e.g., U.S. v. Scharrer*, 614 F. Supp. 234, 240 (S.D. Fla. 1985); U.S. v. Hoffer, 423 F. Supp. 811, 818 (S.D.N.Y. 1976), *aff'd.* 556 F.2d 561 (2nd Cir. 1977). Most states have corporate indemnification statutes: for example, in California, employees have a right to indemnification for such expenses under California Labor Code § 2802, and permissive indemnification for corporate officers is provided for in California Corporations Code § 317. See also Delaware Code Title 8, § 145 (permissive indemnity of corporate officers). Many corporate by-laws also provide for indemnity for legal expenses, and usually require the employee to execute an "undertaking" to repay the expense should it later be determined that the employee acted in a manner inconsistent with the best interests of the company.

The retention of separate counsel for employees and officers becomes an expensive venture. Some economies may be achieved by one attorney representing a group of employees among whom there is no conflict. *See, e.g., In Re Grand Jury Proceedings*, 859 F.2d 1021, 1026 (1st Cir. 1988) (refusing to disqualify counsel on grounds of multiple representation absent evidence of actual conflict).

Joint Defense Privilege. Where multiple counsel have been retained, it may be desirable for some or all of them to enter into "a joint defense agreement," between the civil and the criminal counsel, or among various criminal counsel, or among civil counsel, in order to share information without fear of waiving the attorney-client privilege. The "joint defense privilege" has long been recognized in federal court. *See Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Co. v. United States*, 330 F.2d 347 (9th Cir. 1964). This privilege is an extension of the attorney-client privilege whereby communications between lawyer and client remain confidential when the lawyer shares those communications with lawyers for co-defendants to present a common defense. *Waller v. Financial Corp. of America*, 828 F.2d 579, 583 n.7 (9th Cir. 1987); *see also U.S. v. Schwimmer*, 892 F.2d 237, 243 (2nd Cir. 1989).

Key elements which should be covered in drafting a joint defense agreement include: the existence of a "common interest;" preservation of confidentiality among the joint defense group; a prohibition of dissemination of joint defense information without permission; a recognition that while the sharing of information may further common goals, the joint defense agreement does not *require* sharing of information; and provisions for withdrawal from the joint defense group and for the return of documents and preservation of confidences in the event of such withdrawal.

It is always important to consider the desirability of a joint defense agreement before sharing information with co-counsel. To avoid ambiguity, the existence and terms of such an arrangement should be clarified, preferably in writing, *before* document or information exchange begins. Bear in mind that it may *not* be in your client's best interest to be party to a joint defense agreement because of its disclosure restrictions. For example, cor-

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porate counsel contemplating a possible voluntary disclosure to the government will not desire a joint defense agreement, but will prefer to conduct an internal investigation under the attorney-client privilege provided by *Upjohn Co. v. United States*, 449 U.S. 383 (1981), and retain the option whether or not to waive that privilege.

Voluntary Disclosure Issues

Sentencing Guidelines Considerations. The Federal Sentencing Guidelines place a premium on a defendant's admission of responsibility and on his cooperation with authorities.

The guidelines applicable to individuals, effective November 1, 1987, provide that disclosure of an offense to the government (prior to the government's discovery of the offense) may provide grounds for a "downward departure" from an otherwise applicable sentencing range. Fed. Sentencing Guidelines § 5K2.16. The guidelines further provide that where an individual criminal defendant "clearly demonstrates acceptance of responsibility for his offense," which will usually come about in the context of a guilty plea, he may receive a 2-point reduction of the "offense level" otherwise applicable. Fed. Sentencing Guidelines § 3E1.1(a). And, where an individual defendant provides "substantial assistance" to governmental authorities in investigating or prosecuting others, this may also provide grounds for a "downward departure" from the otherwise applicable sentencing guideline range. Fed. Sentencing Guideline § 5K1.1. These reductions of the offense level or downward departures form the guideline range may make a substantial difference in a criminal sentence, of several months or even years of confinement.

The guidelines applicable to organizations, effective November 1, 1991, similarly provide for sentence reductions where there is cooperation and disclosure. The guidelines provide a 1-point reduction in offense level for "affirmative acceptance of responsibility," a 2-point reduction of offense level for acceptance of responsibility and "full cooperation in the investigation," and a 5-point reduction of offense level for self-reporting of an offense not previously known to the government, full cooperation, and acceptance of responsibility. Fed. Sentencing Guideline § 8C2.5(g). In addition, a downward departure from an otherwise applicable guideline range may be achieved for the providing of "substantial assistance to authorities." Fed. Sentencing Guideline § 8C4.1. Again, these reductions have the potential to make an enormous difference–potentially millions of dollars–in the fine imposed.

Because of these provisions of the sentencing guidelines, counsel representing an individual or a corporation facing substantial criminal risk may well counsel early disclosure and/or cooperation with governmental authorities, which in many cases may also require a criminal plea. In the context of existing (or possible) parallel proceedings, the disclosure and cooperation incentives of the Federal Sentencing Guidelines alter the calculus in the already difficult decision-making process. Following are just a few of the considerations counsel should consider:

- Should the corporation which discovers a potential criminal violation in its ranks make an early disclosure to the government to take advantage of the Sentencing Guidelines' incentives, even though doing so may trigger instigation of civil lawsuits or administrative proceedings?
- Where the government is already investigating criminal conduct, will there be a "race to cooperate" among individuals, or between individuals and their corporate employer?
- If a corporate criminal conviction is likely, do the potential sentencing advantages of self-reporting and cooperation outweigh the consequences in a parallel civil action of the admissions and collateral estoppel effects of a criminal conviction?
- If an individual's criminal conviction is likely, should the corporation expect that the individual will be rushing to cooperate, and strategize accordingly for a quick civil settlement before that cooperation is revealed to civil plaintiffs?

Other Voluntary Disclosures. Federal agencies also encourage, and in some instances require, disclosure of misconduct. In some regulated areas, disclosures are statutorily required. *See, e.g.*, 18 U.S.C. § 1512 (requiring government contractors to report kickbacks to their contracting agency); 12 C.F.R. § 21.11 (requiring federally insured banking institutions to report suspected bank fraud to the Comptroller of Currency); *Cf.*, California Penal Code § 387 (corporate criminal liability for non-disclosure of serious concealed danger subject to regulatory authority). "Voluntary" disclosure programs are formally in effect in other agencies: for example, the Department of Defense has a well known voluntary disclosure program for government contractors; the Department of Justice operates under a 1991 policy paper governing voluntary disclosure in environmental cases; and the Internal Revenue Service has a voluntary disclosure program. Other agencies, even if lacking a formal voluntary disclosure program, may look favorably on voluntary disclosure. Voluntary disclosures can be especially important for government contractors to avoid or minimize suspension or debarment sanctions.

In agency voluntary disclosures, the fact of disclosure is generally viewed favorably, but does not serve as a bar to criminal prosecution. Thus, except in cases where disclosure is statutorily required, the decision whether to make a voluntary disclosure is a strategic one: do the intangible benefits of disclosure (potentially more favorable consideration from the agency, the ability to "package" and present the information in the most favorable way, and potentially greater control over the transmission of information to the government) outweigh the very tangible risks of disclosure (subjecting the client to potential criminal investigation, civil lawsuits, and administrative sanctions for conduct which may otherwise have remained undiscovered, and providing the evidence, in the form of admissions, which may be used in criminal, civil, or administrative proceedings).

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Another important factor to consider in determining whether or not to make a voluntary disclosure is the fact that if a voluntary disclosure is made to criminal or administrative authorities, the materials provided to governmental authorities, *and* the work product behind those materials, may be discoverable by the government or by parties to a parallel civil case as a result of a waiver of the attorney-client privilege or work-product doctrine. In 1988, the Fourth Circuit decided the seminal case of *In Re Martin Marietta Corp.*, 856 F.2d 619 (4th Cir. 1988), *cert. denied*, 490 U.S. 1011 (1989) and held that voluntary disclosures made to government officials constituted a waiver of the attorney-client privilege and work-product protections. And, in Westinghouse Elec. Corp. v. Republic of Philippines, 951 F.2d 1414 (3rd Cir. 1991), the Third Circuit, after a lengthy analysis of the authorities in this area, found that voluntary disclosures to government agencies investigating companies waived the attorney-client privilege and exposed documents to discovery by third parties. The Third Circuit found a waiver despite the fact that (a) the companies reasonably expected the SEC and the Department of Justice to maintain the confidentiality of the information disclosed to them, and (b) the companies had followed the SEC's regulations concerning preservation of confidential documents, and had disclosed information to the Department of Justice pursuant to a stipulated court order for confidentiality. Two district courts in California recently have followed the Third Circuit's *Westinghouse* opinion and held that production of documents to a government agency waives the work product immunity. *McMorgan & Co. v. First California Mortg. Co.*, 931 F. Supp. 703 (N.D. Cal. 1996); United States v. Family Practice Associates, 162 F.R.D. 624 (S.D. Cal. 1995). *See also In re Salomon Brothers Treasury Litigation*, No. 91 Civ 5471 (RPP) (S.D.N.Y., June 30, 1993) (Salomon Brothers must turn over to civil plaintiffs its submission given to the SEC during government securities litigation). Thus, while counsel making a voluntary disclosure may try to obtain confidentiality agreements from government agencies, reliance on their enforceability is ill-advised.

In summary, there may be incentives and value in making voluntary disclosures of misconduct to government agencies, but careful thought must be given to the potential ramifications in parallel criminal or civil proceedings.

The world of parallel proceedings is marked not by straight lines and linear progressions; rather, the situation is usually one where the "civil action...is tied in a tight knot with a criminal prosecution...With patience, [however], some formidable knots may be untangled." Campbell v. Eastland, 307 F.2d 478, 479 (5th Cir. 1962) (Wisdom, J.). Patience, caution, sensitivity, and constant questioning and revisiting of issues as the knot unravels are the keys to success in this area.

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Applying Project Management Principles

Jim also had the luxury of choosing from a handful of experts and the latest electronic gadgetry. (Jim followed Step Two of Project Planning: He determined the necessary staffing and tools/resources for the project.)

The IM Force team would then assemble and agree upon the plan for accomplishing the impossible mission. (Jim and his team followed Step Three of Project Planning: They created a "work breakdown schedule.")

Week after week, Jim's team accomplished an impossible mission, then jumped in a van and sped away. Martin Landau would then rip off his plastic face and the team would go celebrate off camera. (O.K., so I embellished a bit. But the team followed another important principle of project management: They closed the project.)

Large and complex cases involve managing a variety of factors, including: reams of documents, hordes of witnesses, skillful and aggressive opposition, court imposed deadlines, budgets, calendar conflicts, unanticipated problems, etc. Without a project plan, sufficient resources, and an effective way of tracking the completion of the project tasks, the task of managing a complex case can seem like an impossible mission. Project management ("PM") principles make complex litigation much easier. High stakes litigation is simply too big, too expensive and too risky to conduct without a project leader with a detailed plan. A large and complex case simply does not drift to a successful outcome. Even if you are not convinced of the need to prepare and follow a comprehensive case plan, many sophisticated companies are requiring that you prepare and constantly update such a plan.

Important Product Management Terms

- *Critical Path* – the relationship of all of the tasks which are linked together to form the overall project plan. The sum of those relationships equals the "critical path" and will determine the duration of the project. If any one of those inter-related tasks is not completed on time, the critical path will usually be extended. For example, if the time necessary to complete all depositions is extended, completion of all discovery will probably be delayed as well.
- *Milestone* – a significant event marking either the completion of a certain phase of a project or a key event. The discovery cut-off or pre-trial conference dates are milestone dates. Milestones can be either self-imposed or externally imposed.
- *Project manager* – the person who is directly responsible for managing the project.
- *Project stakeholder or sponsor* – the person or entity who provides the financial resources and sometimes the motivation for the project. In litigation, the sponsor is the client or stakeholder.
- *Scope* – the range of tasks required to accomplish the project goals.
- *Work Breakdown Schedule* – a hierarchical breakdown of the project into many discrete, smaller tasks of shorter duration. The WBS is the backbone of any project. Accomplishing the WBS on time and within budget usually determines the success or failure of any project.

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PETER J. BENVENUTTI

On CREDITORS' RIGHTS

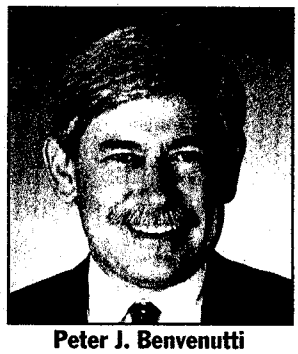
In bankruptcy, there's litigation, and then there's litigation, and there are major differences between the two. This apparent paradox can be explained by bankruptcy's distinction between *adversary proceedings*, which are functionally indistinguishable from traditional lawsuits under the Federal rules of Civil Procedure, and *contested matters*, which are much less formal and often involve neither discovery nor testimony. Misunderstanding the differences in purpose and procedure has doubtless contributed to the disdain that "real litigators" have been known to express on occasion toward their colleagues, like me, who make their living in the bankruptcy courts.

Bankruptcy is in concept a procedural system designed to allocate assets of a debtor among competing valid claims that, in the aggregate, exceed the amount or value of the assets available to satisfy them – a situation that is the very essence of insolvency. Of course, bankruptcy has other objectives too – including providing a "fresh start" for individuals who become overextended, and offering businesses a chance to reorganize in order to preserve jobs and maximize going concern value for creditors and stockholders, among others. But for purposes of understanding the differing approaches to dispute resolution, focusing on the "divide-the-pie" aspect of bankruptcy will suffice.

Economy and efficiency are logical features of a system which seeks to resolve disputes that arise in administering, liquidating and distributing insufficient assets among competing legitimate claimants. Otherwise, the very cost of resolving disputes could consume the value of the assets being administered. Accordingly, the Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provide that most disputes regarding administrative aspects of a bankruptcy case – including the sale of assets and the allowance of creditors' claims – are subject to streamlined procedures usually resembling motion practice. They are called *contested matters* under Bankruptcy Rule 9014; are initiated by motion, objection or application; and typically use declarations instead of live testimony to supply any evidentiary foundation. By far most disputes in bankruptcy are contested matters.

In contrast, there are certain types of disputes in which the parties' interest in access to the full panoply of litigation procedures takes priority over the institutional bias toward efficiency. Examples include actions to recover money or property from a third (non-debtor) party; to determine the validity, priority or extent of a creditor's lien or other property interest; to determine whether an individual debtor will receive a discharge (either across the board or with respect to a particular debt); and a proceeding to obtain an injunction or other equitable relief. Under Bankruptcy Rule 7001, these (and other enumerated disputes) are denominated *adversary proceedings*; are initiated by complaint; and are subject to substantially all of the provisions of the FRCP. Unless settled or resolved by motion to dismiss, for summary judgment or some other dispositive motion permitted by the federal rules, these disputes are litigated in the bankruptcy court under substantially the same ground rules as any other lawsuit in federal court.

Here are some additional points to assist in understanding the distinction between adversary proceedings and contested matters:



Peter J. Benvenutti

- The amount at stake does not determine how a dispute is classified. Contested matters can involve many millions of dollars; for example, a contested chapter 11 plan confirmation dispute, or a challenge to the sale of all the assets of a sizable business. Conversely, an adversary proceeding involving the dischargeability of credit card or other consumer debt is not subject to any jurisdictional minimum and might involve as little as a few hundred dollars (although usually economic reality constrains the litigation efforts and settlement demands of the parties).
- Parties to a contested matter theoretically have recourse to all discovery procedures available under the Federal Rules. In practice, they actually take advantage of those procedures only rarely, since time constraints, economics or other practical factors discourage heavy discovery practice.
- Although evidence at the hearing on a contested matter is usually presented by declaration, live testimony is permitted. Indeed, bankruptcy courts are very receptive to use of live testimony in any setting in which there is a factual dispute.
- The bankruptcy court has discretion under Bankruptcy Rule 9014 to direct that any or all of the provisions of the FRCP applicable to adversary proceedings shall be applied to a particular contested matter. Hence, the court has flexibility to shape the procedural framework to fit the needs and magnitude of the dispute. Significant contested matters, such as objections to substantial claims or disputes over confirmation of a chapter 11 plan, often will involve discovery, formal pretrial, and other practice which far more closely resembles a bench trial than a motion.

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Preparing for Arbitration

Pitch Your Case To The Arbitrators

This is an obvious, but critical suggestion. In a single arbitrator case, there is only one person you need to convince. Focus and present your case so that it will appeal to that arbitrator. Find out if he is a strict constructionist who is likely to enforce the terms of a written contract and the Evidence Code, or if he is more likely to resolve the case on the "equities." In shaping each argument and examination, think and re-think how your theme is likely to be received by the arbitrator.

In cases with three arbitrators, it is usually possible to determine which arbitrator will be the swing vote. Where one lawyer or judge is appointed along with two non-lawyer industry experts, you can be sure that the lawyer will find at least one other vote for her position. Where there are three judges or lawyers, examine their relationship to determine who is likely to be the leader and who is likely to agree with whom. Once you determine which arbitrator is most likely to sway his fellow arbitrators, pitch your presentation right at him.

Benefit From Relaxed Evidence Rules

Most procedural rules governing arbitrations will provide that the arbitrator is not bound by the rules of evidence, including the hearsay rule. *See* AAA Com. Arb. Rule 31 ("conformity to legal rules of evidence shall not be necessary"). Use these relaxed rules to shape an efficient yet compelling case. At the same time, many arbitrators will distinguish between foundational, non-controversial hearsay, and blatant out-of-court bashing of key contentions. Fight unreliable, controversial hearsay.

The less stringent rules of evidence normally applied in arbitration will provide your witnesses with greater latitude in their testimony. Your first witness can lay the foundation for the entire case, going beyond areas where he has strictly personal knowledge to subjects that will be dealt with more expansively by other witnesses. Let the witness become a mirror of your Opening Statement. Later witnesses can tie up the foundation and go into the necessary details. By using the principal witnesses in this broad manner, you should be able to eliminate purely foundational witnesses or witnesses with little to add.

As for objections to your opponent's evidence, you normally will not exclude a party's own records. While they may be hearsay, they probably qualify as business records with foundation easily established by a custodian of records. The arbitrator likely will not require the non-controversial testimony of document custodians. After testing the waters with one or two overruled objections, you probably want to agree to admissibility. But make sure the records were truly made in the ordinary course of business. If the record was made to support the litigation or to "summarize" events for counsel, it probably should not be admissible, especially where the author is unavailable to testify.

You probably also will not want to object to non-controversial third party records where the custodian would be available to testify. But remember, the witness using the document should be admonished to limit hearsay testimony to the contents of the documents and not stray into assumptions about the meaning of the document or what was said by the third-party author in a follow-up telephone call. And remember that business records foundation cannot be established simply by *receipt* of a document in the ordinary course of business. The custodian of the organization that authored the document must testify. Cal. Evidence Code section 1271; Federal Rule of Evidence 803(6). However, a document received by a party may still be admissible to explain a party's subsequent conduct, although not for the truth of the contents of the document. If a critical third party document would not generally be admissible in court and if a custodian is not available to testify about its preparation, your hearsay objection is likely to be sustained.

Finally, most arbitrators will recognize that despite the loosened evidence rules, oral statements supposedly made by third parties to party witnesses should be excluded, especially where they concern a disputed topic. Confronted with a timely objection, a witness normally will not be allowed to testify about how a third party said that your client's product was defective. Supposed oral statements by third parties are highly unreliable and subject to complete fabrication. Remind the arbitrator that there is no way for you to test the truth of the statement by cross-examination and that it should be excluded absent the declarant's testimony at the hearing.

Don't Engage In Theatrics

While there may be a place for dramatics in jury trials, avoid it in arbitrations. After several days of a recent arbitration, one of the arbitrators emphatically directed opposing counsel to stop pointing at the panel while asking if our client's witness "truly meant to tell this panel of judges...." Counsel soon quieted down. Normally, your arbitrator has seen courtroom dramatics many times, and is not about to let it influence her opinion. If anything, histrionics will count against counsel.

In argument, consider the example of an appellate lawyer who rationally and dispassionately presents his case. While your argument about credibility of the witnesses will be important, it probably should be understated in comparison to the same argument before a jury. Arguments about burden of proof and legal doctrines such as statutes of limitations and contractual limitations upon liability will become more important.

Show the arbitrator the respect her experience and expertise deserve by sticking to the facts and law and avoiding "showboating."

Constantly Re-Think Your Strategy

As you plan your case prior to the commencement of the hearing, you will not be able to predict precisely how your case will go into evidence and which witnesses will ultimately be most important or even necessary. The person that you viewed as a key expert prior to the commencement of the hearing may become unnecessary by the middle of the case.

Every night, every witness, re-think your overall case strategy and don't be afraid to change course. What has the arbitrator said or conveyed through rulings on objections or other comments? Is he apparently in agreement with your position and probably doesn't need to hear

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ZELA G. CLAIBORNE

On MEDIATION

In my role as mediator, I have been fortunate to work with many skilled lawyers who understand how to use the process effectively. Although these lawyers may take different approaches to mediation advocacy and, certainly, have different styles, they share an understanding of the skills and techniques required for successful mediation:

Thorough Preparation

As you know, preparation is the key to a successful negotiation. Know the law that governs the central issues. Know the facts of your case. Become familiar with the significant documents and talk to the important witnesses so that you know what their testimony will be. Before mediating, confer with consultants or experts to obtain their opinions and evaluations. Especially in a large and complex case, the parties will not be willing to pay vast sums to settle if no expert analysis has been completed. Spend money to prepare for mediation and save money on discovery and the litigation process.

After completing this ground work, you will be able to prepare an effective brief that outlines the law and the significant facts of your case. Also, you can prepare visuals to make your case clear and understandable. Remember that, while you must communicate the case to the mediator if the process is to succeed, it is at least as important to communicate your case to the decision-maker on the other side. That person may be the President or CEO of the company who, until the mediation, may not know the details of the case. In order to reach a successful resolution, you must outline your case clearly and impress that decision-maker with your client's view of the case.

Calls to the Mediator

Since the usual ex parte rules do not apply in a mediation context, I encourage counsel to talk with me before the mediation. Most lawyers welcome this opportunity. Not only can they outline their case and discuss sensitive points that they may wish to keep confidential, but they also can identify their client's decision-maker and discuss individual points of view on the case. If there are diversity issues or personality conflicts, they can be discussed in advance, too. Of course, this step can be accomplished at the mediation, but a pre-mediation discussion usually leads to a smoother and more efficient process, especially in a complex case.

Sometimes, particularly in a sensitive or highly contentious case, these pre-mediation discussions can lead to the establishment of ground rules for the mediation. This process increases the chances of settlement because all parties are involved in developing procedures which can be tailored to the particular case.

Limit on Discovery

Most cases can and should be mediated before discovery is complete. A good approach is to mediate after documents have been produced but before depositions are taken. Once extensive discovery has taken place, settlement becomes more difficult because party representatives will have hardened in their positions. Also, after a lot of money has been spent on discovery, settlement will be more expensive.

That said, it may not be possible for the parties to settle without knowing what the testimony of one or two key witnesses will be. In that situation, mediation will be more likely to succeed if those depositions are taken and then followed promptly by the mediation. Keep in mind, however, that this approach can be dangerous. While discovery may improve your case, it also may improve that of your opponent. Further, the longer discovery continues, the more disenchanted your client may become with the process and, maybe, even with you.

Even if most discovery is completed before the parties can agree to mediation, do not give up. Remember that a late mediation – even on the courthouse steps – will be less expensive than trial if you can reach settlement.

Zela G. Claiborne

Selection of Participants

Limit the number of people you take to mediation. A large delegation will slow the process because everyone will want a say. Also, participants will tend to reinforce each other in taking the party line, making settlement difficult.

Further, when you take the person most involved in the case to serve as your client's representative, you run the risk of being unable to settle. That person may be locked into a particular point of view, may be unable to hear or fairly evaluate the other side's case, and will not want to admit to any wrongdoing or mishandling of the situation. Instead, take someone who can be flexible in responding to information presented by the other parties at the mediation, can objectively evaluate the case, and can make a sensible business decision about the resolution of the dispute. A decision-maker who will speak in terms of issues and litigation risks while keeping emotions under control will increase the chances of settlement.

My next column will continue with more tips for effective mediation advocacy.

Ms. Claiborne is a mediator and arbitrator on the National Roster of the American Arbitration Association.

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Preparing for Arbitration

"reinforcement" evidence? Has your opponent made a new attack on a different front? Is your next witness vulnerable on that point? Are you running out of time? The ability to restructure strategy is a primary factor in making a great trial lawyer. Constantly re-evaluate your case and go with your best judgment (after obtaining your client's agreement!) as to how best to present the remainder of your case. And when your gut says it's time to stop, rest.

Submit Proposed Findings and Conclusions

Some arbitrators will forego closing argument in favor of simultaneous or responsive briefing, but consider arguing for the opposite approach. Post-arbitration briefing is expensive and time-consuming; it does not appear to add much, if anything, to a cogent oral closing argument made after one or two days of preparation.

Whether or not your arbitration concludes with closing arguments, prepare and present proposed Findings of Fact and Conclusions of Law. They normally should be brief (five to ten pages) but should highlight the key facts and law. The proposed Findings and Conclusions serve as the framework and path for the arbitrator's decision.

Also, submit a proposed form of Award. Consider submitting your proposed Award and proposed Findings of Fact and Conclusions of Law on disk. When the arbitrator finally reaches the conclusion that you were right all along, all he has to do is pull up your document, make some minor modifications, print, and sign.

Your best presentation in an arbitration hearing may be significantly different than the same case presented in court. Keep your eye on the arbitrator. Pitch your case to a position with which he or she will agree.

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Applying Project Management Principles

The PM Process

PM is the act of using the time and resources available to achieve the desired result for *the stakeholder*. Notice how I used the word "act." Effective PM requires *action* on the part of the project leader and the team. All the planning in the world will not bring the project to a successful completion. Nor do successful projects run themselves. The project plan has to be implemented and tracked effectively throughout the course of the project.

To be successful in a complex case, the case/project needs (a) a motivated and motivating team or project *leader*; (b) a clear purpose or goal for the project; (c) a realistic project plan; (d) competent and complete execution and tracking of assignments; and (e) a sponsor or stakeholder whose needs and expectations are in alignment with the project team.

Most projects have a project life cycle – meaning that they have a definite beginning, middle and end. All three phases are important because the PM performed in each phase influences the success experienced in the next phase and next project. Consequently, all phases of a project cycle are of equal importance. The project life cycle or phases consists of three defined areas: project planning, executing and tracking, and project closing. Each of these three areas is critical to successful PM.

Phase I — Project Planning

Step One: Determine the scope of the project and the project requirements. Decide what you are building. Make sure you understand your client's needs and expectations (*i.e.*, what the client wants you to build). You may believe the client hired you because you are a "take no prisoner" kind of litigator and the client wants "scorched earth litigation." However, the client may need and expect that you will do everything possible to get the case resolved, by motion or settlement, as soon as possible and within a fixed budget. You need to know the client's requirements or you will face disgruntled clients and possibly a fee dispute down the road.

To determine the project requirements, you will need a good handle on the number of potential lay witnesses, the types and numbers of expert witnesses, the volume of documents to be produced, and the motions likely to be filed. If the client asks for an estimate of fees and costs, you may be forced to perform this analysis. Regardless, you will not be able to determine the project requirements or staff the project team unless you under understand the scope of the project as early as possible.

Step Two – Determine the staff or the project team. Obviously, you want the best team that you can put together, including team members from outside your office, *e.g.*, expert witnesses, court reporters, videographers, document specialists, graphic consultants, etc. You can follow a staffing pyramid with six levels of responsibility. Level One is the "Lead Attorney" or the "top dog" (so to speak) – the leader and the visionary for the case. Lawyer One is the lawyer who ultimately decides the theme and theory of the case, makes all of the key arguments (opening and closing), and handles the key witnesses. If possible, Lawyer One should be released from details and minutia in order to soar with the eagles. (While this article strongly promotes the team approach, I do not endorse litigation "by committee." There can only be one voice to any case – the lawyer who ultimately presents the case to the jury.)

Lawyer Two is the de facto case manager. Lawyer Two is responsible for the details of the case while also assisting Lawyer One with critical tasks. Lawyer Two runs the team meetings, knows the whereabouts of all of the critical work product (*e.g.*, timelines, witness lists, damage analysis, database, deposition summaries, etc.) In sum, Lawyer Two is the road manager for the case.

Lawyer Three is the "law guru." Lawyer Three needs to know everything about the relevent law. Lawyer Three will draft motions and jury instructions and attend the jury instructions conference. Lawyer Three can also participate in some discovery of less critical witnesses and prepare witnesses for direct and cross at trial.

Lawyer Four is the "historian," who must be able to access any deposition or trial transcripts quickly and efficiently.

Levels Five and Six are typically paralegals assigned to the administration of the case. One of them must be assigned to the war room and be responsible for the

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entire case file.

Not every case will support six persons on the case team. For some cases, you may serve in the role of Lawyer One through Three and have only part-time assistance from a paralegal or an associate. Regardless, all of these roles have to be filled in every case.

Ask four questions about any prospective team member. First: Does she have the expertise or experience to accomplish the specific tasks to be assigned? (You should not, for example, assign a novice litigator to the critical depositions, unless you are prepared to train and supervise that person to perform that task.) Second: Is his calendar open when he will be needed? Third: Is she motivated to serve on the team? Fourth: Will he work well with the other team members?

Finally, as part of staffing the case, you should also determine what technology resources you will need. The following table provides an overview.

Assessing and Determining the Necessary Technology Resources	
Heavy document case	(1) Set up a database, e.g., Access® by Microsoft as the data base. (2) Scan documents onto CD and use a CD viewer, e.g., Acrobat® by Adobe.
Numerous depositions	Full text-retrieval software, e.g., LiveNote® (plus you may want real-time reporting).
Numerous video depositions	Video editing and timecoding of the deposition transcript.
Graphics and computer modeling	Retain graphics consultant early so that ideas for graphics are formulated with input from expert witnesses and the client.

Step Three – Determine the work breakdown schedule. Once you know the project's requirements and scope and determine the necessary team members, you can then (and only then) determine the work breakdown schedule. This is basically determining who is doing what by when and how long it should take.

While you can prepare a work breakdown schedule by hand, using specialized software is much faster and provides much more versatility in developing schedules, reports and making changes to the work breakdown schedule. These software programs compile and sort data behind the scenes and can be networked for access by all of the team members and the client.

In preparing the work breakdown schedule, follow these rules:

1. *Tell them what to do, not how to do it.* If you have experienced team members who are familiar with the tasks assigned, you don't need to prepare a work breakdown schedule in minute detail. For example, simply stating: "Prepare motion to dismiss" should suffice for an experienced team member. Providing too much detail runs the risk of being the dreaded role of "micro manager." The "doing it" is the assigned team member's responsibility, not yours. However, you do need to be specific about the task, *e.g.*, "prepare first draft of motion to dismiss" (good/specific) v. "assist/provide support in responding to discovery requests" (bad/nonspecific).

2. *Be a lean, mean fighting machine.* Keep your team as lean as possible. It's easier to manage and promotes bonding and better focus. You can always add members later for selective assignments or if the case enlarges.

3. *Assign individual responsibility for each task.* As a general rule to be broken only under exceptional circumstances, assign one task to one individual. You (as the project manager) want one person accountable for each and every task so you know who takes credit for the success of that task or its failure. (This will also help to avoid the two-person-ping-pong game dilemma: the ball goes down the middle past both players who each thought the other was going to return the shot.)

4. *Limit the duration of each task.* Each task must have a reasonably short duration – something less than 45 days out. Otherwise, the task becomes a separate, stand-alone project for that person.

5. *No task is done until it's done.* Preparing a motion for summary judgment that is 90% complete is not a completed task. This doesn't mean that you as project manager should not track the progress of a task. But, it does mean that the hardest part of completing most tasks is the last 5-10%. So to paraphrase Yogi Berra badly: "It ain't done, 'til its done."

6. *Assign a priority to all tasks.* This will help the team to decide what is of greatest importance when crunched for time.

Phase II — Project Executing and Tracking

Now comes probably the most difficult aspect of PM – executing and tracking the completion of the tasks on the work breakdown schedule. Most lawyers are not trained to be project managers. They may be good at managing themselves and their practice, but weak in people and team organization skills. Some lawyers may also feel that things won't get done unless they threaten and bully and, well, that might not be their cup of tea. Many of the problems can be avoided by careful team selection. Further, good old common sense and courtesy will go a long way in keeping your team motivated and on-task.

I recommend having regular team meetings at least once every two weeks before trial and every day during trial. The following is my list of the top 10 things to do to ensure these meetings are productive:

1. *Distribute your agenda for the team meeting before the meeting starts.* This will allow the team members to be ready to advise on the status or progress of tasks at the meeting. The agenda should be the revised version of the work breakdown schedule.

2. *Limit the time of the meeting.* Generally, a team meeting should not last more than 30 minutes. And, start on time! Try to schedule the team meetings for the same day/same time, so that the team always knows when they will occur.

3. *The project manager must attend and lead the meetings.* If you as the person running the project don't attend, what kind of message are you sending to the troops? If for some reason you cannot attend, have a replacement completely ready to run the meeting.

4. *Lawyer One ("top dog") should attend the meeting.* Lawyer One should attend as many team meetings as possible to confirm to the other team members that, in fact, they are on a team (as opposed to a group of people doing chores to make a single lawyer look good in court).

5. *Review the status of the Priority One items first*

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Applying Project Management Principles

before going onto any Priority Two items.

6. *Limit the chit-chat and war stories.* A Level Five or Six paralegal doesn't need to know how one of the lawyers on the team skewered a witness in a deposition. Their time is as valuable as yours. However, you as the project manager or Lawyer One should keep the team informed of significant developments, (*e.g.*, rulings on motions, newly discovered documents), so the team has the global context of the case at all times.

7. *Deal with trial, pre-trial or settlement strategy off-line and outside the team meeting.* Focus on assessing the completion of the tasks on the work breakdown schedule. It is not the time to strategize.

8. *Deal with personnel issues off-line and outside the team meeting.* If you have a team member not pulling their weight, don't take them on or down during the meeting. It will send a cold chill through the room and could be embarrassing for you and the team member. But, you need to deal with the problem quickly because that person's failings will affect the critical path of the case. If a particular team member has lost focus or interest, give a warning and expect an immediate correction. If no correction is made, replace that team member. Remember, a non-performing team member will bring down the morale of the other team members.

9. *Apply the rule – a task is not complete until it's complete.*

10. *Immediately revise and distribute the work breakdown schedule after each team meeting.*

Phase III — Project Closure

This is probably the most ignored area of project management. Many projects end with a whimper, not a bang. Cases often settle after protracted negotiations. In the meantime, the team has disassembled and moved onto other projects. There is often no time to recognize the team and officially close the project.

Try to have some sort of formal closure. Team members may take offense if they hear from other sources that the case is over. You also want the opportunity to thank team members for their contributions. Remember, you may be selecting that person again for another team. If they feel their efforts go unrecognized, they may not be a willing team member in the future.

If the project has been really challenging and difficult and the team pulled together, there may be a lot of good feelings among team members. A final meeting or a team party is a good idea. The stakeholder should be invited. Any significant contributions should be recognized and the stakeholder should be thanked for the opportunity to work on the project. If the team's project's goals were aligned with the stakeholder's and the team did everything to accomplish those goals, the stakeholder should be satisfied with the team's efforts – regardless of the final outcome of the case.

Third party vendors and experts should be notified to send any final bills. Nearby vendors or experts who made significant contributions should also be encouraged to attend the team party.

Finally, you should gather any and all work product and review it for possible later use. One of the most important things to save is the original master work breakdown schedule. You may be able to modify it for a similar case sometime down the road. Save any other motions, legal research, jury instructions, graphics or other work product that may be useful in other cases.

Conclusion

As your last act as project manager, evaluate the success of the project. Ask yourself what went right and wrong and why. (If you don't remember the past, you are condemned to repeat your mistakes on the next project.) If you encountered problems during a certain phase, retrace the steps that led up to that problem. If possible, look at the actual time incurred on the project and compare it to the initial work breakdown schedule or budget given to the client. If your initial time estimates proved to be way off, you will not want to repeat that error again. You should also give direct and constructive feedback to the team players; they like you, will view it as a learning experience and they, like you, will not repeat mistakes in the future.

These principles will not win your case or turn a sour case into a sweet one. But they will help you to get the work done quicker and more efficiently and, who knows, maybe you'll get home for dinner earlier.

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