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MANAGEMENT

Going For The Win: Clients Want Star Trial Lawyer Who's A Team Player

By James P. Flynn

Many think a lead trial lawyer should be a lone gladiator defending a client's rights. Even the labels given to the others involved in the contest, like "second chair," echo the jargon of prize fights or duels, where the individual combatants are accompanied by their "seconds" or "cornermen" who are by their very titles removed from the center of the action.

But that popular image fails to capture the reality of defending most corporations — such a defense is a team game. Thus, the best image for the champion trial attorney should come from a team sport — Michael Jordan seems the right role model, or maybe Bill Russell, the player-coach. Law firms that can implement such an ethos internally and market it externally stand the best chance of successful and repeat retentions by those in the corporate world, where teamwork is highly valued.

So Let's Look at the Team

Lead counsel: From a marketing perspective, there has to be a face to your

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franchise. That is because teams may win championships, but stars attract paying customers. So it is with important litigation for corporate clients. Such clients want an experienced, versatile star to lead their litigation team. Can the star score points during the most important cross-examination, set the tone early in the contest with the right opening, defend the key witness, and make the right call as time winds down in the closing? Clients want to see these things in their star.

But such ability is not enough. The corporate client demands tenacity and relentlessness. That is why the Jordan analogy is so apt. The reputation for competitiveness and never taking a night off is what attracts clients. It is like Willis Reed dragging himself onto the court to start that final game despite injury; such acts of perseverance and commitment impress clients and inspire colleagues. There are the mundane examples of trial lawyers foregoing vacations, family outings, or meals because of the demands of "being on trial," as well as the extraordinary examples of attorneys beginning a trial in the throes of chemotherapy for a disease from which all appeals would be exhausted mere weeks later (as my father once did) or returning to court less than one week after a midtrial lunchtime fall required the replacement of shattered hip (as my partner Ron Green just did in January). But in the end, such tenacity is

not about living up to clients' expectations but one's own expectations — as my partner noted, "I didn't come back quickly because that's what the client expected. They put my recovery first, and could not have been more supportive and caring on a personal level. They never put any pressure on me. I came back that quickly because that is what I expected of myself. I put the client's interests first, and worked my follow-up treatment around it. I couldn't imagine doing it any other way."

The second chair: This is an important role, as the winning formula required Scottie Pippen to perform alongside Michael Jordan, and for Walt Frazier to score 36 points the night Willis Reed returned to score four. Of course, such team members are important because the unforeseen can happen at any time, and the star must often depend on others to achieve victory. Thus, one has to be ready and able to lead, without pushing to lead. In that lies what has been called in another context the "paradox of second-chair leadership." Bonem & Patterson, "Three Paradoxes for Every Second Chair Leader." The effective second chair must meld the contradictions of being both subordinate and leader, of seeing the big picture while being deeply ingrained in specific details, and being happy to follow and serve while desiring to lead and act. The effective second chair transforms these potential paradoxes into potent positives and is ready when the unexpected occurs. The second chair cannot simply be a caddy never expected actually to swing a club during the competition, even if the Tiger is injured; rather second chair has to

be a cool cat ready to support the star, or star him or herself, when called on. Like one of the central characters in a novel entitled "The Second Chair" noted, "I'm already on board. The client's know me. It's good insurance." John Lescroart, "The Second Chair" (2003), at 159.

Other attorneys and paraprofessional at the firm: Bench strength, too, is important. An effective trial team relies on the diligence and hard work of others who may never address the court or question a witness. These other contributors may simply toughen up the other "players" during practice and preparation sessions or may play the role of the graduate assistant coach pouring over, in the hoops case, statistics, film and tendencies, and in the litigation sense documents, depositions, and discovery responses, who at the right time suggests in a slipped note or a whisper the perfect play.

In-house counsel: The most effective trial teams have in-house counsel playing a vital role, somewhere between general manager and player agent. That is because they most often have taken the lead in drafting the star, and then have to work to assure that the remainder of the team works as well. This includes how the team interacts with business leaders and other personnel at the company. During trial it means working out all the logistics

of witness appearances and timing, often for plaintiff's side as well as the defense, as there are likely to be many company employees called in plaintiff's case. It also means challenging the team, even its star, to perform, and performance includes explaining why certain things are happening or have to happen. Thus, it means that in-house counsel should be asking, "Why," and getting satisfactory answers.

But it also means acting as the advocate of outside counsel to the business leaders or "ownership" once in-house counsel buys into the "why." Every trial, and every trial preparation period, involves times when outside counsel knows that a winning game plan includes a certain witness at a certain time or a certain amount of preparation time with a witness, or a expending a certain sum on an expert witness or trial graphics consultant. Frequently, "ownership" does not want to compel witness cooperation or attendance except on the witness's own schedule of convenience, or does not want to add to the expense already involved. deBodo, "Building Teamwork Between In-House Counsel And Outside Litigators," *The Practical Litigator*, November 2006, at 15-16. It is in-house counsel that often plays the vital role of selling outside counsel's case to the business client. Thus, in-house counsel has to be both boss and ally to outside counsel, both GM and agent. As

noted in the November 2006 issue of *The Practical Litigator*, for inside and outside counsel,

"Their destinies are intertwined."

Team Chemistry: Look, at the end of the day, it is still about winning. As others have noted, "Litigation is one of the few white collar professions in which a scorecard is still kept.... The key to successful litigation, of course, lies in a passionate commitment to winning." Meiselman & Carton, "How To Litigate Successfully — Part II," *The Metropolitan Corporate Counsel*, May 2008 issue. Key to the team chemistry necessary for victory is a respect for each member of the team, including outside counsel, in-house attorneys, the staffs of both, and business clients.

This means that lead outside counsel must walk a fine line. While they should show that they are stars who can nonetheless work within a team framework, lead counsel must know that everyone loves a winner, the single person who wants the ball at crunch time, who will drag themselves out onto the court on one leg for Game 7 because of what it does to his team's spirits and to the opponent's confidence. Like Michael Jordan reportedly said when reminded that "There is no 'I' in 'Team'" — "Yeah, but there is in win." ■