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**From:** Graves, Jud <Jud.Graves@alston.com>  
**Sent:** Monday, February 11, 2019 3:59 PM  
**To:** Flynn Peterson, Kathleen; jday@johndaylegal.com  
**Subject:** [EXTERNAL] ACTL Initiative on Mentoring

Good afternoon. I'm a retired ACTL fellow in Atlanta; I spent my career with Alston and Bird and still run a litigation training program for new associates here.

I applaud the College initiative on mentoring and the reasoning behind it. So good luck with that. The plea for feedback/ideas to be forwarded to you has motivated me to write down and share with you my personal, single, favorite, time-tested mentoring technique for associates I wanted to take to trial with me, but whose raw inexperience invariably gave me pause. As much as I wanted to delegate trial witnesses to them, for example, it was always extremely difficult for me to "turn them loose" in front of the jury, given the fact that there were no dress rehearsals; just the real thing. I know I'm hardly alone in having this experience. Many old war horses are never able to delegate effectively due to their inability to get beyond this basic, understandable hesitancy.

So I essentially created the "dress rehearsal" for the associates I wanted to take to trial with me. Or actually, several dress rehearsals. And the key audience- indeed the only audience - for each of the dress rehearsals was me, serving and acting as the very witness they were assigned to examine.

As you would expect, this intense type of preparation usually involved adverse witnesses, or neutral witnesses we didn't control. If there were friendly witnesses or people controlled by the client, then the associates could usually practice with those witnesses themselves, under supervision of course,, and the need for ME to play the role of witness wasn't so important.

But for adverse witnesses or people we did not control, this was the only way I was ever able to get comfortable cutting a very young associate truly loose with a witness in front of the jury. The process would start weeks in advance, and I would assign them the specific witness (or witnesses) they were to be responsible for, have them craft their proposed draft examination, and then require them to rehearse their examination (direct or cross; whatever), on me, relentlessly, time after time, with me acting as the witness, until they could satisfy me they were ready. I almost always did this one-on-one, without all the other trial team members present, so I could be harder on the associate, and not embarrass them unduly, as they failed and failed, and then improved and improved, until finally getting it right. Or right enough.

This technique may sound obvious, and a lot of senior lawyers may use it. I don't know that. I DO know nobody ever took the time or made the effort to do this with me, when I was young and being mentored, and yet I know many of the older lawyers I worked for really cared about me and my progress. Yet they never practiced this particular, intense way with me to get me ready. I've never seen it taught at any trial practice seminars. A lot of examinations I did in the early years - I'm sad to say - were worked out "on the fly" and sometimes even in the courtroom, as I failed and missed stuff. And we'd then have a hurried conference at counsel table, as the jury waited, to try and set me straight. Hardly a way to learn, obviously, but that is largely how it went for me.

So when I became more experienced and began always to be in the role of lead counsel, I had to figure out some better way. So I did what I've tried to describe above. And I came to use my technique A LOT with the lawyers I trained and mentored. Many lawyers I worked with still thank me for it, and they realize how important it was in helping them get really ready, and how it enabled me to cut them loose with a greater sense of confidence they would perform well in the actual trial. So most of the obvious, rookie mistakes they would make were made in front of me, privately, in the dress rehearsals, and corrected by me on the spot. By the time they got to the actual trial, most of those mistakes were fixed

and the young folks usually performed remarkably well. And for me, it turned out to be the only prep technique that got me comfortable enough to let some of my youngsters really spread their wings in front of their first juries.

Please understand; this was not just a casual “dry run” like lots of lawyers use. I made my associates do it EXACTLY as they proposed to do it in court, using the same words, tone of voice, intonation, order of questions, duration of examination, etc, etc. They had to use the documents they were really going to use. I made them examine me exactly as they planned to examine the actual witness, and there were no short cuts. If we could use a mock courtroom, all the better. If we anticipated the witness would try and hedge, then I would hedge in my testimony, and we practiced how to take out the deposition and impeach me; and we’d rehearse what was probably going to say to try and wiggle out when impeached. In short, we tried to anticipate every detail of the examination and cover every conceivable angle.

We would do the mock exam this way from start to finish, as many times as it took. At first, of course, nearly every question was bad, or verbose, or hesitant, or poorly worded, or objectionable, or whatever, and I would rip it apart. Often they forgot to swear the witness. Or they spoke too softly. Or they stood in the wrong place. Or their documents were not marked. Whatever. And that was before we even got to the substance of the examination! The amount of time it often took, and the number of full run-throughs it took, to hash it out to becoming a satisfactory examination could get ridiculous. Of course they got better each time, and that was encouraging. And they could feel themselves getting better every time, so there was that. But for me to have to run through an entire mock witness exam with a relatively green associate 8 times or more, for example, in order to get it right enough, was not unusual.

On rare occasions we would start out with the rehearsal, and the initial examination was so bad, and the technique so bad, I would just adjourn and tell the associate to redo the outline and start the whole thing over the next day. Fortunately it was rarely that bad.

Now what every experienced trial lawyer knows is that for me to do this, I first had to know as much as possible about what that witness knew (overall); what that witness had said on deposition; what we wanted to bring out with that witness; what we wanted to stay away from; what we wanted to AVOID that witness saying, etc. In other words, I had to get totally inside that witness file and learn him or her, so I could be realistic and make this technique work. And that took a lot of time. Time that I would just as soon have devoted to other matters necessitating the time and attention of lead counsel, as opposed to associate mentoring. But I knew I was really the only person in the mix who could do this with my young associates. Plus it was very tiring, because this was work I did that was above and beyond what I “had” to do to get my part of the trial ready. But both for the sake of mentoring the young ones— and frankly for my peace of mind as well - I knew this huge amount of extra time had to be taken, and these dress rehearsals had to be done, however long they took. I just had to add all this in as part of our trial prep.

And of course the associates who worked for me knew these things were coming, and they tried hard to get better with every trial we did together. So as they gained experience, and as they learned things like how to control the witness, less and less of this was necessary with each associate. Except that they kept coming! I was a med mal defense lawyer and often tried 5-7 big cases per year, so I had many, many young associates under my wing in my cases who needed this kind of attention in their early years.

You get the idea. Sorry the explanation of the process took so long, but I wanted to capture it accurately. Over time I saw clearly what this level of mentoring did for my people in moving their competence forward, and so did they. Hope to benefit others by sharing these experiences.....

Cheers, Judson Graves