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'A Whole Different Ballgame'—What Associates Are Learning by Standing Before Juries

There's no substitute for a live jury trial when it comes to figuring out one's personal presentation style. And being on a case from start to finish will make them smarter when it comes to future pretrial maneuvering, five associates with recent trial experience said.

BY SCOTT GRAHAM

What You Need to Know

- Some law firms believe age diversity is important when it come to jury trials.
- It's hard to know if trials are what you really want to do until you've done one.
- Associates draw on diverse presentation styles and then strive to mold their own approach.

Jury trials in the intellectual property space tend to be few and far between. Even veteran IP litigators in some firms can go years between trials.

For IP associates, the opportunity to stand up before a jury—even if just briefly—is even more rare. But a handful of firms make a point of giving an associate or two a speaking role in their trials—as long as the client is OK with it.

"I think it is critical for associates to be able to start to see themselves as trial lawyers, and get a sense of what a career progression might look like," said Durie Tangri co-founder Daralyn Durie. "I also think that juries really appreciate seeing diverse trial teams, and that includes age diversity as well."

But what do the associates themselves take away from the experience? Law.com interviewed five who went to trial in the last year in high-stakes IP showdowns. All described it as a singular development opportunity—plus hard work and even some fun.

Each said it has made them better overall litigators.

"People tell you to begin with the end in mind, backward plan, think about the case you're going to make to the jury," said Russell Rennie, a third-year associate at Susman Godfrey, who examined a patent infringement expert last month. "Until you've walked through the process from A to Z, it's difficult to fully appreciate what that means."

Courtesy photo

Susman Godfrey associate Russell Rennie.

'Spend All Season Practicing'

Twelve years ago, Brett Sandford was winning Academic All American honors as a baseball player at the University of Redlands. After briefly playing professional ball in Europe, Sandford returned to California to attend UC Berkeley School of Law. He joined Latham's Silicon Valley office in 2014.

The choice of career and firm were intentional. "I thought it would be the closest I could get to that competitive team aspect, in a professional setting," he said. With trials, "like in baseball, you spend all season practicing to perfect your craft and to prepare to execute when the opportunity arises."

Sandford has already participated in a handful of jury trials and a few bench trials.

"Great opportunities in the Latham IP group here," he said.

In June's *Philip Morris Products v. R.J. Reynolds Vapor* trial over vaping patents, Sandford put on Philip Morris' damages case, including examining its damages expert. He said he was thrilled when an Eastern District of Virginia jury awarded all of the $10.75 million Philip Morris had sought for the infringed patents.

The trials have given him the opportunity to find his voice in front of a jury. "The biggest thing is just the presence in the courtroom," he said. "Some people have a natural loud, affirmative presence in the courtroom, whereas others are more soft spoken, but just as effective in how they connect with the jury."

Sandford worked with partners Max Grant and Matthew Moore on the Philip Morris team, and other Latham trial lawyers over the years. "You get to take all of those teaching moments, that experience, and then kind of mold your own path," he says. "Because everyone's different. And everyone's gonna present in a different way. The worst thing you can do is not be authentic."

To hone that skill, there's no substitute for game day.

"In front of the jury is just a whole different ballgame," Sandford said.

Early Client Contact Is Key

Kirkland & Ellis D.C. associate Tera Stone got her first chance to stand up before the International Trade Commission in January on behalf of iRobot, maker of the Roomba vacuum cleaner. There are no jurors in a 337 investigation at the ITC, but the cases move at lightning pace, with trials often held within a year of initiation.

That worked to Stone's advantage, as a Kirkland team led by partners Gregg LoCascio and Paul Brinkman prepared iRobot's patent-based challenge to archrival SharkNinja.

Due to the tight schedule, some depositions had to take place on the same day. "So I and several of the other associates on the team got opportunities that we may not have had, if it had been a more drawn out schedule," she said.

That helped make iRobot comfortable letting Stone put on iRobot's lead witness, its senior vice president and general manager for the Americas, when trial rolled around.

The goal was "to set up the rest of our witnesses for success," Stone said. That meant explaining the technology "and giving the judge an overview of what the company stood for, what their priorities were, and how they had gotten to the point of having these patents that they were filing suit on."

The case is pending an initial determination before ITC Administrative Law Judge MaryJoan McNamara.

Stone is five years out from the University of Houston Law Center, and that includes a two-year clerkship at the U.S. Court of Appeals for the Federal Circuit. She found that she liked the brisk pace of the ITC.

For IP associates at other firms looking for trial experience, she says grab those deposition opportunities whenever possible.

Photo: Diego M. Radzinschi/ALM

Kirkland & Ellis associate Tera Stone.

"That client contact really early on" was critical, she said. "Because if you show up two weeks before a trial and the partners say, 'Hey, I think Tera should take a witness at trial,' and the client says 'Who's Tera?' then it's not going to happen."

More Context for Motion Practice

As a third-year associate this spring, Durie Tangri's Joyce Li went to trial in Delaware to help defend Aptiv Services US in a patent dispute with Microchip Technology. Jurors cleared Aptiv of infringing patents related to automobile entertainment systems. Li examined one of Aptiv's two corporate witnesses.

She, too, said the experience cannot be duplicated with mock trials. "You never know what your own presentation style is in front of a jury until you've done it," she said. "There's something about the feel of being in the room with this whole spectacle happening and the jury in front of you that is completely different than doing it pretend."

Photo: Drew Bird

(Left to right) Durie Tangri associates Joyce Li and Matthaeus Martino-Weinhardt and Latham & Watkins associate Brett Sandford.

Did it help having another woman, Durie, heading up the trial team? "Daralyn is an incredible trial lawyer, and that is a benefit in itself," Li said. Plus "she offers a different voice than kind of your archetypal

trial lawyer. And I think that that is really helpful to see. Just having the opportunity to see lots of different people get up and present in different ways helps you when you don't fit that archetypal role."

Li is a graduate of UC Berkeley School of Law who clerked in Delaware federal court. She practices in Durie's San Francisco office.

Li also benefited from seeing all of the threads of a case come together at trial. "I'm still obviously learning," she said. Now she has "more context for when I'm doing things in earlier stages of cases. It sort of shifts your mindset in terms of what you think is important, and what is worth fighting about."

Only One Way to Find Out

Durie associate Matthaeus Martino-Weinhardt, also of the firm's San Francisco office, learned something important from examining three witnesses as part of Redbubble's defense of trademark and copyright claims last fall.

"I learned that a jury trial is something I really enjoy," he said. Standing in front of "interested strangers" and presenting to them turned out to be exciting. "I don't think it's really possible to know how much you like it until you really do it," he said.

Redbubble is a site that connects consumers, artists and merchandisers. Atari didn't like seeing some its marks show up on merchandise, but Redbubble argued that it's merely an online marketplace that facilitates the transactions.

The Durie team thought it would be a good idea to have Redbubble founder Martin Hosking testify about his vision for the company, and two artists testify about selling their work on the site. The idea was to avoid too heavy a focus on "business decisions or lawyers who are doing takedown notices and proactive policing and things like that."

Those three witnesses were assigned to Martino-Weinhardt, who is about six years out from Stanford Law School (including time spent clerking at the Fourth and Federal Circuits). Hosking testified remotely from Australia in the Northern District of California trial while the two artists testified remotely from around the U.S.

Jurors ultimately rejected all of Atari Interactive's claims of trademark infringement, trademark counterfeiting and copyright infringement.

Martino-Weinhardt said it was fun watching Durie in action before a jury—"the ability to both deal with technical complexity, but also to be able to cut to the heart of the story"—as well as partners Joseph Gratz and Allyson Bennett.

"I tried to learn from all of the people involved in the trial," he said. "And part of what I learned is that there is not necessarily just one right way to do this."

Watching the Clock

Susman Godfrey's Rennie said that when the firm recruited him, part of the pitch was early trial experience. It still came as something of a surprise, though, when the firm tapped him to handle direct examination of infringement expert William Mangione-Smith in *Koninklijke KPN v. Ericsson*. It was the first time before a jury for both Rennie and Mangione-Smith.

"I thought, OK, that's going to be a big job. These infringement examinations can be very long. You have to walk a jury of lay people through pretty technical concepts and unfamiliar technology," he said. "Unfamiliar to them and to me, at the start of the case."

But Rennie had worked earlier in the year with Mangione-Smith on his expert report and his deposition, and for the last nine days before trial they "holed up" in Marshall, Texas, conference rooms, "practicing, practicing, practicing."

Given the trial was only four days, Rennie had to balance thoroughness with clock management. "Every extra minute that we were spending on infringement would be one less" for the rest of the case. The examination ultimately lasted close to three hours.

It turns out they were persuasive. Jurors found infringement and awarded $31.5 million, the precise amount KPN had asked for.

Susman partner Alexandra White, who led KPN's team with partner Andres Healy, said firm founder Stephen Susman made trial opportunities for associates part of the firm culture. "All of us feel a tremendous responsibility and debt, to kind of pay that forward to the next generation," she said.

Rennie is a graduate of NYU School of Law and clerked at the Southern District of New York and the Ninth Circuit before joining Susman's New York office. He said there was one additional benefit from the trial experience. He quipped, "Now I know all the restaurants in Marshall."