

CORPORATE COUNSEL

Must-Read News,
Analysis, and Insight
for In-House Counsel

TEXAS LAWYER

ALM Properties, Inc.Page printed from: [Texas Lawyer](#)[Back to Article](#)

Working on the Clock: The Advantages of Timed Trials

More and more courts are imposing time limits for trial. In fact, courts impose time limits in some of the largest trials ever, write David Bissinger and Erica Harris. As *The National Law Journal* reported on Feb. 20 in "Judge Keeps Tight Leash in BP Litigation," U.S. District Judge Carl Barbier in New Orleans "tighten[ed] the scope" of the first of three trial phases in the litigation over the 2010 Deepwater Horizon explosion and oil spill, ensuring, as one observer noted, "a compact trial."

David Bissinger and Erica Harris

Texas Lawyer

04-02-2012

More and more courts are imposing time limits for trial. In fact, courts impose time limits in some of the largest trials ever. As *The National Law Journal* reported on Feb. 20 in "Judge Keeps Tight Leash in BP Litigation," U.S. District Judge Carl Barbier in New Orleans "tighten[ed] the scope" of the first of three trial phases in the litigation over the 2010 Deepwater Horizon explosion and oil spill, ensuring, as one observer noted, "a compact trial."

Given this trend, litigators in garden-variety cases should use caution when seeking open-ended trials from judges who may have imposed strict limits on much larger, bet-the-company cases.

While trial lawyers may seek appellate review of judgments after losing a rocket-docket trial, appellate courts have little sympathy for such arguments. For example, in *State v. Reina, et al.* (2007), a defendant had only six minutes for closing argument because of an expired time limit. The defendant appealed the district court's termination of counsel's closing, but Houston's 14th Court of Appeals rejected the claim.

The good news is that trying a case on the clock often helps more than it hurts. Time limits on trial assist lawyers and parties in at least three ways: improving presentations, controlling costs and increasing the likelihood of victory.

- *Presentation* . Trying a case on a clock is likely to be more fun. With a time limit, lawyers cannot afford the luxury of shuffling papers, playing long video clips or presenting cumulative evidence. The judge, jurors and even lawyers are less likely to be bored in a timed trial.

Consider the story that plaintiffs lawyer Mark Lanier told a group of Harvard Law School students in a speech titled "Tort War Stories," available at YouTube.com, regarding the cross-examination style of Lanier's mentor, Ernest Cannon. According to Lanier, Cannon's key deposition examination of a tort defendant's safety manager was, in part, as follows:

Q: You are the head of safety for [the defendant]?

A: Yes, sir.

Q: Well, it ain't safe to have oil where people are walking, is it?

A: No.

Q: 'Cause you can see, if you got oil where people are walking, someone's gonna slip and blow a disk out in their back. You can see that coming, can't cha?

A: Well, yeah, it could happen.

Q: Okay, that's all I got.

And that was it. According to Lanier, Cannon compared the typical tactic of day-long depositions to a burglar who checks every window in a house trying to find an open one so he can come back later and take the TV. Instead, Cannon said, "That's not the way we do it. You use the door. That's what it's there for. You walk up to the door. If they don't open it, you kick it in. You take the TV, and you walk out."

- *Cost control* . Working on a clock tends to control costs. In a matchup between a corporate party with extensive resources and employees and a party with limited resources, working on a clock is a bit of an equalizer. In a timed trial, the larger party cannot gain advantage or strain the opponent's resources by drawing out the trial or packing the witness list. Timed trials also free up the court to try or resolve more cases.

- *Victory* . Limiting the time for trial makes jurors happy, and happy jurors are a good thing. As trial lawyer Murray Fogler observed in "Lessons From the Other Side: Observations as a Lawyer on Jury Service" in the December 2010 issue of the *Texas Bar Journal* , "Just because the judge gives you a block of time doesn't mean you have to take it. We had heard some of the points hundreds of times (maybe I exaggerate), and they do not bear repeating more than once. We got it. Really."

By focusing on big story lines rather than minutiae and avoiding cumulative presentations, lawyers on a clock are more likely to win over jurors and win their cases.

Tick-Tock

With a personal commitment to shorten the trial or a mandate from the court to do so, the prepared lawyer must focus on how to try his case on a clock. Here are three suggestions.

First, the lawyer can pare down openings and closings to their essentials. Lawyers often spend far more time than necessary thanking the jury for their time, describing the value of the jury system or telling juries things they have little interest in, such as the etymology of legal terms such as *voir dire* .

Second, lawyers can reduce the time they spend on witness examinations, as Lanier describes in his "Tort War Stories" speech. This focus tends to reduce confusion. Also, the witness will not grow tired, and the lack of meandering reduces the material produced for the opponent to use on cross-examination. Likewise, a simplified and shortened cross-examination will force the trial lawyer to reduce the number of exhibits and themes to those that bear on the issues.

Third, the lawyer will find that time limits discourage objections. The parties will work harder in advance to agree to pre-admit exhibits and to hash out points in motions *in limine* . They also will tend to leave out objections unless they bear on a material issue.

In short, working on a clock makes trying a case more strategic, less expensive and more fun. As docket congestion increases, timed trials are likely to be on the rise. The timed trial presents smart lawyers with an opportunity to work against the clock in a way that makes a time limit work for them.

Copyright 2012. ALM Media Properties, LLC. All rights reserved.