

## *The Art of Rehearsing for the Courtroom*

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Somewhere along the continuum between the IBM Selectric and the iPad, courtroom presentations have moved from a formal debate podium to multi-media entertainment. Many courtrooms are wired like television studios and the medium may easily overshadow the message. As a result, rehearsal is more important than ever. Emerging, sophisticated technology has resulted in the “never quite complete” presentation because trial teams have the ability to make last minute changes “on the fly.” The advances in courtroom presentation technology have had an unintended consequence: attorneys fail to adequately rehearse the delivery of the presentation.

Few trial attorneys would dispute the notion that time spent rehearsing opening statements, mock trial presentations, and witness examinations is time well spent. But the most successful, experienced practitioners know that the actual time needed for effective, productive rehearsal sessions, is time that is difficult to schedule and time for which clients are loathe to pay. Additionally, rehearsal time is often sacrificed in the chaos of pre-trial activities such as jury instructions, in limine motions, client management, and settlement discussions. Rehearsing important presentations is a time-management issue and a trial priority. Excuses abound: “I never rehearse, because I’m only good when I’m on,” or “I don’t have enough time for this” or “I’m best when I’m winging it” or “I know this stuff cold; who needs to rehearse?” Rehearsals are about delivery of content so that delivery does not stand in the way of the message. Rehearsals in private, with colleagues, in front of a camera, and with presentation technology are the key to successful delivery of a winning style. This article outlines methods to effectively rehearse for effective courtroom presentations.

### *Rehearse is a Verb*

The Oxford American Dictionary defines rehearse: “1. Practice (a play, recital, etc.) for later public performance. 2. Hold a rehearsal. 3. Train.” Rehearsal is about speaking out loud: essentially “re-HEAR-ing.” Repetition and familiarity permit the brain to harmonize the key points throughout preparation of the presentation. Now that judges are imposing timing constraints at trial, rehearsals involve a stopwatch component as well as work on volume, clarity, pacing, and tone. Having participated in many previews, read-throughs, walk-throughs, run-throughs, practice sessions, dry-runs, and trial runs, there are reliably sound methods for effective rehearsal. The very fact that trial teams refer to this vital stage of trial preparation by so many different names is perhaps the clearest indication that the perception of its value is just as varied.

### *The Past is Prologue*

In the late 80s, big poster boards, used to visually support an attorney’s remarks or witness testimony, were the result of developed black and white film onto which large sheets of color film were hand cut and applied. The boards were finalized, approved and assembled days before an opening to accommodate print production and assembly schedules. Similarly, slide carousel presentations were the result of designing content on photographic slide film, then cut and mounted within folding plastic frames, and then dropped into the carousel of the slide projector. These two state-of-the-art technologies (at the time) had the often overlooked advantage of creating the perfect scene for finalizing content while waiting for the slides or exhibit boards to be developed and delivered. After delivery of the slides and boards, trial teams rehearsed the delivery and coordination of the spoken word and visual content. Last minute changes on the first day of trial were not contemplated. Despite the wow factor of current technology, content still drives the heart of a presentation and that content is best served by a rehearsal process that polishes, tests, clarifies and perfects the spoken word with the medium.

### *Timing Dictates Rehearsal Purpose*

Each rehearsal should build upon the prior practice segment and feedback. The early “recitals” are likely to be alone, in front of mirror, paper in hand, or even in the shower. The written scripts are the opportunity to hone the overall theme of the trial. Whether hand-written or digitally recorded, the early sessions are opportunities to improve upon the spoken content. One of the most common mistakes is that attorneys use the full script as the norm. It is exhausting to repeatedly rehearse a 60- or 90-minute presentation. Like actors in a play, attorneys are well advised to work on segments of the full presentation in short sessions with a defined purpose. Breaking the presentation into smaller thematic segments maintains a consistent level of performance and training. Also, rehearsing the transitions between segments is an often overlooked opportunity to refocus the audience on the overall theme of the case.

Current expectations for dynamic visuals have resulted in the need for another kind of rehearsal, the mechanical dry-run. It is where the lead attorney (not associates who guess what the “boss” wants to see) choreographs the spoken and visual performance. The lead attorney is both director and actor during these “choreographing” sessions; making decisions about which visuals to use, when to bring a visual up on the screen, and the transitions between thematic segments of the presentation. This process often results in reorganizing of key themes, thoughts and strategies for a more cohesive delivery.

Finally, full-length rehearsals should be used sparingly. Rehearsal of the full presentation requires energy and focus. Experienced attorneys expect to spend up to 4 hours in a full dress rehearsal of a ninety-minute opening statement.

### *Assemble the Right Test-Audience*

After the content of an opening statement has essentially been written, edited, and vetted, it is ready for rehearsal sessions. Well-meaning associates might boost and soothe the ego, but often lack the experience to provide constructive feedback on presentation delivery. Ask experienced colleagues to attend and comment on the shorter practice sessions. Give each listener the permission to critique the performance and the content and ask for a written summary of the key points. Include non-lawyers, who also have no vested income in your feelings (i.e., avoid secretaries, parents, kids), in the audience.

Willingness to ask for, accept, and implement feedback is important throughout the process. For example, a lead trial attorney stays in the room for feedback during the early rehearsals, listening attentively and making on the spot improvements in her presentation. As the opening statement day draws nearer, she leaves the room after rehearsals to permit an unfiltered critique of her performance. Another senior trial attorney facilitates the feedback session, analyzing comments, and objectively using follow up questions to clarify the feedback on key points. This follow up analysis is then shared with the lead attorney in a private session that includes the trial consultant to achieve an effective and efficient result from the rehearsal.

### *Tackle the Demon that is Procrastination*

When the BIG deadline is looming (opening statements for example), there’s nothing more counter-productive than failing to delegate tasks to the rest of the trial team. Most practitioners know to break large, intimidating tasks down to small, digestible bites to mark progress and complete the overall preparation of the case. Literally clearing a desktop, figuratively clears the mind. Reviewing trial textbooks or articles about the mechanics of oral presentations may break open a whole stream of consciousness that leads to an eloquent and persuasive delivery. Setting aside private time for reading the script out loud as opposed to doing other pretrial tasks creates space for final touch-ups.

There is often a reluctance to rehearse until everything is “perfect,” and “ready to go.” The main point of rehearsing at the early stages is to develop and refine presentation methodology. Waiting until the presentation is complete wastes good practice opportunities and causes unnecessary frustration and delay later in the trial preparation schedule. Many attorneys have wasted a rehearsal by shutting

it down when the visuals weren't perfect the first time. Remember the old adage, "a picture is worth a thousand words"? In the courtroom, "a picture represents a thousand words, but the attorney must choose those words wisely".

Experienced trial attorneys make it look easy. Rest assured, those attorneys are the ones who rehearse the most, privately and publicly. "Off the cuff" is a romantic ideal, but is not a method for experienced trial attorneys. Attorneys who do not rehearse use the stress-related adrenaline rush as a means of creating energy for last minute preparation. Feverishly finalizing content and supporting visuals throughout the night does not produce a persuasive performance. The best presentations hit the mark within two days of the opening. The lead attorney is able to "rest" the night before and manage the "peak" during the actual opening. A by-product of a timely final rehearsal is the luxury of editing. "If I had more time, I'd write a shorter note," applies here. Like it or not, the attention span of most juries are simply shorter and segmented. Teaching in 15-minute segments is most effective for any subject matter. Rehearsal of visuals, physical position and style of delivery all combine to punctuate and substantiate a compelling performance.

Though not a common problem among time-pressed attorneys, over-rehearsing deserves some mention. Rehearsing when tired or weary from subject matter familiarity produces a mechanical performance that lacks conviction and emotion. The audience is never engaged when the attorney is just "going through the 'motions.'"

### *The Art of Rehearsing is about Training*

Put simply, elite runners put in miles of training. Commitment to a training schedule requires purpose and drive. The discipline to use 5, 10, or 20-mile training runs is as important as diet, strength training, equipment and rest. Come race day, these runners, can trust the training and focus on peak performance. The same can be said for trial teams who apply this training discipline to the trial preparation schedule. Formal rehearsal schedules represent the final training regimen leading up to trial. Rehearsals are about speaking out loud with a focus on timing and delivery. Rehearse privately and with an audience. Rehearse in front of a camera and review the recording. Rehearse early and often with your trial consultant to review the demonstratives and exhibits timed to your script. Rehearse out loud with a test audience to hone the delivery. Well-rehearsed attorneys plant both feet firmly on the floor and confidently speak the tried and tested words that resonate with the jury in an easy and persuasive style.