

Trial Pros: Williams & Connolly's Paul Gaffney

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Paul B. Gaffney litigates and tries cases at Williams & Connolly LLP, where he has worked since 1992. He handles a variety of complex litigation, with an emphasis on intellectual property and licensing disputes, media litigation and professional liability defense. In these matters, Gaffney represents or has represented clients such as Genentech, MedImmune, AstraZeneca, Discovery Communications, all of the major networks and film studios, CNN, the Washington Post and the National Enquirer. In 2014, he was trial counsel for AstraZeneca in the first “pay-for-delay” antitrust case tried following the U.S. Supreme Court's decision in *FTC v. Actavis*. He has tried cases in state and federal court and before arbitration panels.



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Q: What's the most interesting trial you've worked on and why?

A: Probably my first one, in early 2000, which I tried in federal court in San Francisco. I represented the plaintiff, who started one of the first email greeting card companies after graduating from Stanford and operated it with significant success at “e-cards.com.” The defendant had a competing company that languished until it moved to “ecards.com.” After the resulting confusion cratered a lucrative acquisition, we sued for unfair competition and won a jury verdict of \$4 million, including \$3 million in punitive damages, which seemed like a lot at the time. It was the early days of the internet and it all felt very cutting-edge, although now it seems like just a run-of-the-mill confusion case.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: In that first case, one of the jurors we tried to interview after the verdict demurred because she had to get back to her kids. Then, as she was getting on the elevator, she turned to us and said, “You were just like Tom Cruise in that movie.” (Yes, I have witnesses.) It is true that we had great facts and the defense had terrible witnesses, but still, I probably should have retired on the spot. I haven't heard anything remotely close to that since then.

Q: What does your trial prep routine consist of?

A: When the case starts, if it looks possible there might be a trial, I fill a small binder with blank paper, divide it into two sections, and start keeping notes of ideas for the opening and the closing. It helps keep you focused during discovery on the facts you need to win, and makes preparing for the big events at trial more organized and less stressful.

I like to prepare witness directs and crosses starting weeks or even months out. They always change at the last minute, often on the fly, but nothing leaves you more confident to do this than this sort of advance preparation.

Don't skimp on the time you spend with your key witnesses, especially fact witness who have never testified before. It always takes more time than you think to make you, and more importantly them, comfortable with the testimony you are going to present through them.

Those on your team who are going to be in front of the jury need to take time before trial to cull the exhibit list. Inevitably, in the big cases we try these days, the junior lawyers on the team (understandably) prepare lists that include about 10 times more documents as anyone could possibly use in the case. Cutting it down is an easy way to make the judge your friend, or at least friendlier, and focus your attention on the documents that matter most.

I spend a lot of time with our graphics people. Almost everyone these days uses PowerPoint for openings and closings and directs, and all of us tend to have way too many slides. Less is more, especially when it comes to slide decks filled with bullet points. The key is a smaller number of well-designed, thoughtful slides, ones you can spend time with and keep up in front of the jury. If you aren't looking at your slides until a day or two before your opening, you're too late.

I try to move to the trial site a week ahead of time to settle in, and a few days later transition to my trial diet of strong coffee and Milk Duds.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: Take a mentor with you. Before my first trial, I asked one of the retired founders of Williams & Connolly, Jerry Collins, if he would come to San Francisco and "babysit" our two-person trial team, myself and another associate with even less experience in court. Jerry is old school, from a time before law practice distinguished between "trial lawyers" and "litigators," and in the late 1960s he probably had more jury trials every year than most of us now get in a lifetime.

Each night, Jerry would spend the first half of dinner telling us what jurors we'd already won over and what we needed to do to persuade the others. After that, we listened to him tell great Ed Williams trial stories. Those dinners went on a lot longer than they probably should have.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: Jim Hurst and Steve D'Amore of Winston & Strawn, because they beat me in my last trial. Sure, their client was the largest employer in the county where the case was tried, while mine was an out-of-state firm with a foreign parent, but a win is a win. They did a really nice job trying their case, and they and their team acted with fairness and decency throughout the case. The only drama was in the courtroom. I would recommend either of them in a minute for a case where we had a conflict.

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