

## Litigation

# It's War!

## *Tips on preparing and running a litigation war room*

By G. Christopher Ritter and Scott Hilton

Most litigators are familiar with the nature of a war room — that heralded place in which attorneys, paralegals and consultants gather immediately before and all during trial. But not all war rooms operate alike.

Yes, all are filled with hard-working people who are usually anxious about the upcoming trial. And all capture the drama of deadlines and raw emotion as well as the thrill of preparing for battle. But while some operate with well-trained troops — with each person knowing his or her role and having the resources to fulfill their duties — others suffer from a lack of preparation, organization and delegation as well as the stress that such situations engender.

The primary purpose of a war room is to allow trial team members to collaborate on finalizing the most effective courtroom presentation possible. As such, the war room is a critical part of the trial process because it is in there that the case presentation truly comes together. Walk into a well-run war room and you'll see trial lawyers rehearsing, witnesses getting prepped, graphics being finalized and changes being made based on recent judicial rulings. Despite the organization, the atmosphere is generally laced with adrenaline because even well-prepared teams have a lot to pull together before they present their case to the jury. And because most trial teams don't do this very often, there is the nervous energy associated with that perennial question: "Have we done enough?"

Indeed, due to the high percentage of cases that settle, not all litigators get a lot of experience in creating and participating in war rooms. Yet, it's those few weeks when you're in the war room when you need to be at your absolute best. With 20 years of experience as trial strategy and graphics consultants, we have observed hundreds of trials and have participated in scores of war rooms. As a result,

we've seen what strategies work in a war room as well as what strategies don't. Here are 12 strategies for preparing and running an effective war room.

### PREPARING THE WAR ROOM

#### ■ *Start early.*

When it comes to complex cases, the teams that develop their messaging strategy and courtroom presentations early are much better prepared than those who wait until they get to the war room to start developing these materials. This is due to a couple of factors. First, it takes time to develop a good story line — the kind that conveys an unequivocal version of your client's story to the jury. Second, starting early helps you refine your messaging with focus groups and in mock trials. Third, if you arrive at the war room prepared, you can take the time to rehearse two and even three times, which will help you feel more natural once you're in front of the jury and give confidence to the trial technician who may be assigned to you during your presentation.

#### ■ *Choose the right lieutenant to oversee logistics.*

This is generally a paralegal or a legal assistant who has experienced several war rooms, knows what to do and is highly efficient. The role of this person is to manage all the logistics associated with setting up the war room, timing, equipment rentals, supplies, accommodations, food and on-site technology. Never underestimate this role; it's crucial.

#### ■ *Do local reconnaissance.*

In every war room we've worked in — even the most efficient ones — a crisis of some sort has always erupted. Perhaps a printer breaks down, copies need to be made in the middle of the night, someone gets sick or packages need to be delivered by 8 a.m. the next day. This means that before you even arrive at the war room, your lieutenant needs to figure out the location of local printers, UPS stores, office supply stores and all-night supermarkets and pharmacies. Having this information at your fingertips turns a crisis into a minor inconvenience. (Hint: A really well-prepared team will post a map with flags or tacks demarcating those points.)

#### ■ *Don't skimp on people or equipment.*

We realize that attorneys (and their clients) are on budgets. But the war room is not the time to get thrifty. If you bring too few staff and something goes haywire, you won't have the bodies and minds available to get the work done. At two in the morning, having the

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extra artist that your graphics firm recommended will feel like a godsend. Additionally, if you bring too little equipment, you may hit a work product log jam, with plenty of people all standing around.

■ *Replicate the office.*

Good office chairs, big tables and high-speed Internet connections are crucial for an effective war room, along with good cell phone reception, a dedicated fax line, plenty of back-up devices and plenty of office supplies. In other words, a war room in a hotel basement — where cell phone reception may be dicey at best — is going to hobble your staff. A war room that has everything a litigation team needs is less likely to make staff spend their time searching for office supplies and finding wireless coverage. And that means the team can spend more productive time on the case.

■ *Provide the comforts of home.*

Mom was right. People perform better if they eat well and get enough sleep. So while your staff may ask for M&Ms and Red Bull, make sure they also get three square meals, nutritious snacks, plenty of drinks, access to fitness facilities and quiet places where they can work alone, call home or grab 40 winks. This is no minor detail. The human brain really doesn't operate effectively unless it's well-nourished and well-rested. We've all seen people perform at less than their best in court because they have had little to no sleep the night before.

## **RUNNING THE WAR ROOM**

■ *Select an executive officer to oversee the war room.*

Your executive officer is the "macro" person — the one who understands the case as well as the intricacies of the war room. Ideally, this person knows the witnesses,

understands the order of the case and can respond to daily rulings as well as communicate with everyone from the client to a paralegal to the lead trial attorney.

■ *Choose a single point of contact for your lead attorney.*

In most cases, lead attorneys do take part in war room activities. But sometimes they fly in a little later than others or aren't involved in all the day-to-day decisions. This can cause trouble at the last minute if they look at an associate's work, for example, and say, "I would not present it that way." Instead, make sure the chief is in the loop with every decision about what will be said or shown in the courtroom. Perhaps you can plan to talk to the lead trial lawyer every evening at 6 p.m. so that any work that needs to be done can be handled by staff that night. Whatever schedule you make, don't forget to have the lead lawyer's cell phone number and pager so that she can be reached at any time.

■ *Have faith in your team.*

Micromanaging every detail in a war room is nearly impossible, even for the most detail-oriented of war room organizers. Make sure you choose team members who you know will do a good job and whose work you can trust. Then let them do their jobs.

■ *Be a team player.*

In the war room, no one is too good for the small stuff because everything matters. That means everyone needs to be willing to do the work that needs to be done at that moment, whether it's going to UPS to pick up or deliver packages, copying documents, doing last-minute research, editing exhibits or listening to opening argument rehearsals.

■ *Be flexible.*

Not everything about your trial strategy can be decided ahead of time. You may encounter unexpected testimony from a witness, a motion *in limine* from the judge or a sheer shortage of time. While it's crucial to have your general battle plan laid out ahead of time, you need to be able to adapt to changing circumstances with grace, speed and skill.

■ *Understand triage.*

Keep in mind that flexibility is not the same thing as indecisiveness. Indeed, one of the most important qualities that an attorney can bring to a war room is the ability to make hard decisions and stick to them. Feel free to muse over options, fiddle with graphics and brainstorm on strategies in the months preceding trial. But once you're in war room mode, it's time to make decisions and, when appropriate, let go of an idea or strategy if it's no longer useful. This is not the time to create multiple versions of a particular graphic. Choose the one that makes the most sense for your case and then move on to the next.

Of course, the other key ingredient to running an effective war room is a sense of humor. Recognize that things may go wrong, nerves may get frayed, surreal rulings may be handed down. If you can keep some perspective on the daily chaos, you're well on your way not only to staying clear-headed about your case but also to keeping your team intact and functioning.

If you can accomplish all of this, the jury will also notice that your team is on top of its game. And that, above all else, is what you're after. ♦