

## Trial Advocacy: Feeding The Pipeline

The Editor interviews **Hayes Hunt**, Member, and **Benjamin E. Zuckerman**, Of Counsel, Cozen O'Connor. Both conceived and developed Cozen O'Connor's Inaugural Trial Academy.

**Editor:** Would each of you gentlemen tell us something about your professional experience?

**Zuckerman:** I have been a trial lawyer for 40 years. I began my career as an assistant district attorney in Montgomery County, Pennsylvania, where I worked for two years. Ever since, I've been engaged essentially in civil trial work representing corporations, insurance companies and other institutional entities.

**Hunt:** I began my legal career with the Defender Association of Philadelphia and gained a great deal of trial experience and courtroom confidence. I joined Cozen O'Connor in 2000, handling civil cases and am now in the firm's white collar & complex criminal defense practice group.

**Editor:** Would you share with us some of the things that attracted you to Cozen O'Connor?

**Hunt:** Cozen O'Connor has a reputation for being a young, entrepreneurial firm with a strong tradition of trial work, and it has provided me the opportunity to continue to handle cases in the courtroom and learn civil litigation.

**Zuckerman:** I've been with the firm for 10 years. The firm at which I was a partner was at a point where – with just 30 lawyers – it needed to join a larger firm to continue to attract and retain high-quality clients. Cozen O'Connor was the only firm we considered. We knew many of the people, and the culture was very attractive. Having watched the firm grow over a 30-year period, I was particularly glad to make the move.

**Editor:** Cozen O'Connor recently launched its Inaugural Trial Academy. What is the background on this?

**Zuckerman:** As a firm, we have an abundance of outstanding trial lawyers, and we understand the difference between litigators and trial lawyers. Even though most cases settle, if a firm is going to represent its clients effectively, it must have lawyers capable, when necessary, of trying complex cases. Indeed, having that capability gives Cozen O'Connor something of an edge in settlement negotiations.

The Inaugural Cozen O'Connor Trial Academy (COTA) is meant to further prepare the next generation of Cozen O'Connor attorneys to enhance their skills as effective trial lawyers for the firm's clients. The people we selected to participate are ready to serve as first chair trial attorneys or as co-counsel with our firm's most experienced lawyers in complex cases.

**Editor:** What are the skills that you seek to develop in turning litigators into trial attorneys?

**Hunt:** Let me start by saying that the generation of Steve Cozen and Pat O'Connor



Hayes Hunt

had many opportunities to try jury cases. With the development of alternative dispute resolution (ADR) and, in many jurisdictions, mandatory ADR, the chance to try cases is increasingly remote. Today, younger lawyers are not getting into court and trying cases to the same extent they were in the past.

COTA is an attempt to remedy this situation, at least in part. Twenty-four lawyers from three practice groups – general litigation, insurance litigation and subrogation – met the criteria we established for participants.

**Editor:** Speaking of faculty, how did you go about assembling the team for this program?

**Zuckerman:** As a consequence of our experience as a firm, we had an abundance of top-of-the-line trial lawyers to select from, including many with experience as prosecutors or public defenders. There are lawyers here with successful track records at other firms and those who have been Cozen O'Connor trial lawyers for their entire careers. There are a number who teach CLE programs and even a few engaged in teaching at law schools, so those particular skills were brought into the equation as well.

This was an extremely ambitious undertaking: more than a dozen senior lawyers committed to an intense week-long program, not including the extensive preparation time necessary to make the program effective. Getting that many lawyers' schedules together to accommodate this effort was nothing short of a miracle.

**Editor:** How was the curriculum developed?

**Hunt:** When Ben and I were asked to create the program, we gave a great deal of thought to what occurs at trial: opening statements, preparation of witnesses, direct examination, cross-examination/impeachment, evidentiary objections, exhibits, closing statements and so on. These are the obvious elements in any trial advocacy curriculum. However, we discussed the psychology of selecting jurors, use of appropriate vocabulary, voice/tone, demeanor in the courtroom, et al. – the nuances of trial work. We attempted to incorporate these subtleties into the program through constructive faculty technique and commentary.



Benjamin E. Zuckerman

**Editor:** And the structure of the program?

**Zuckerman:** The structure consisted of a series of presentations by faculty members, followed by 13 workshops in which the participants themselves addressed the issues and were critiqued by the faculty. This was done in sequential order: the basic approach to getting a case ready for trial, development of the case's theory and a trial strategy, drafting and refining an opening statement, and all of the other aspects that Hayes mentioned.

A full day was also devoted to dealing with expert witnesses. Eight specialists in this area lectured on the preparation of expert witnesses and their examination, direct, re-direct and cross. In addition, an effective closing argument received a great deal of attention.

The final day was devoted to full trials, in which teams of two lawyers each represented the plaintiff and the defendant in a case which they did not work on during the course of the program. They had to plan their trial strategy, meet with and prepare their witnesses, and conduct a trial that was presided over by a sitting or retired trial or appellate court judge.

We recruited people to serve as jurors who heard the entire case, rendered a verdict and provided valuable feedback to the participants.

**Hunt:** I think it is worth noting that any trial involves a considerable degree of anxiety and stress. In order to lend as much reality as possible to the trial advocacy program, we attempted to inject some of that into the process. Being called upon to perform in front of the firm's best trial lawyers assured the very highest level of preparation and effort on the part of the 24 participants, and came as close to the real thing – standing up in court – as possible. Let me add that the judges who gave their time and talents to participate in the program added immeasurably to the sense of drama and to the reality that we sought to bring to the process. It was a remarkable gesture on their part and speaks volumes of the members of the Pennsylvania judiciary and their commitment to the legal community.

**Editor:** What was the overall response to this initiative?

**Zuckerman:** That was probably the most

gratifying aspect of the program for Hayes and me. Each participant filled out a detailed questionnaire following its completion and, without exception, their enthusiasm was extraordinary. Invariably, they found the program to be a substantive, very enriching experience.

Another extremely positive response had to do with the fact that the program drew people together from all across the firm, people who normally do not have an opportunity to interact together. Bringing people together from all of our offices for an intensive, week-long experience such as this served to enhance the firm's cohesiveness and the camaraderie of everyone involved.

**Editor:** How will in-house counsel ultimately benefit from this program?

**Zuckerman:** We know that in-house counsel desire to use the best available lawyers for their needs. This program is meant to enhance the skills of our lawyers to best serve those needs.

In addition, I think a program such as this has some lessons for any law office – the company's legal department or an outside firm – seeking to engage in in-house training. You need to have a handle on your needs, the skills already in place and those that need to be developed. Once in-house counsel is convinced of the value of such an initiative – and once the legal department members have committed to it – you may wish to bring in outside counsel to help in that process.

Having been through such an exercise, we are now in a position to help plan, structure and run an appropriate training program for a corporate legal department, including administering an effective follow-up and feedback process.

**Editor:** The firm has made a considerable investment in this initiative. You've also developed some momentum. Will this program continue?

**Hunt:** In all probability, the program is going to be put on every two or three years. In the meantime, Ben and I have been asked to identify other skill areas that need to be developed, such as deposition skills and other pre-trial practice areas. As a firm, we need to foster and develop the complete litigator as well as the complete trial lawyer. We are committed to enhancing the skills of our attorneys. And, this kind of learning-by-doing program, performing in a simulated environment, is rapidly becoming part of our firm culture.

**Zuckerman:** Having worked intensively with 24 of the firm's lawyers who have been identified as ready to step up to the next level, we think we have done what is necessary now to enable them to make that transition. This is an ongoing process, however, as Hayes indicated, and in two or three years, we expect to have another group ready to undergo this type of training. The legal profession continues to change and evolve, and we are well aware that our success as a firm depends on our responsiveness to our clients' needs. Through the trial advocacy program, and similar undertakings, we'll continue to meet those needs.