

Trial Aces: Cooley's Stephen Neal

By Jess Davis

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Steered by cool logic, zealous preparation and a quick wit, Cooley LLP's Stephen Neal has steered clients to more than 35 trial wins, often in bet-the-company litigation, with a nearly 90 percent win rate that reflects his deft approach to persuasive storytelling.

Whether Neal is on the case at the outset of litigation or is called in as a pinch hitter when it becomes clear the matter is going to trial, the Law360 Trial Ace starts his work the same way. Within a few days of getting up to speed on the dispute, he sits down and outlines his closing argument.

"I use that as a wish list," he said. "Based on what I know, I write down what I would like to be able to tell the jury, what I want the story to be, how I want to deal with whatever troublesome evidence has already been highlighted. Then I try to shape everything that's done from that day forward with the aim of trying to prove what I set out in my outline."

The wish list always has to be refined, but Neal says it's remarkable how similar the stories he formulates at the beginning compare to the final versions he presents to juries.

"I formulate right off the bat what the story is, and try to manage the whole process to strengthen that story," Neal said. "I start managing everything from Day One with the idea of telling and proving our story, and putting fences around or blowing up the stuff that's troublesome for us."

Along the way, the Stanford Law School- and Harvard University-educated Neal curries favor with clients by delivering results without bloated billing statements. He says narrowing the focus of sprawling litigation by crafting the story of the case at the outset saves time and cuts costs by limiting the expert witnesses, depositions and the reach of discovery. Even if the client has "boatloads of money," Neal says his focus is on finding the efficient path to a win.

Capping off work on a handful of blockbuster pharmaceutical patent cases, Neal in 2014 guided Gilead Sciences Inc. to what's been called an "industry-defining" arbitration win over Hoffmann-LaRoche Ltd. over the hepatitis C drug sofosbuvir. Though the arbitration ruling is confidential, the finding in favor of Gilead is estimated to be worth "several tens of billions" in value to the company, which sells brand-



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name drug Sovaldi for a premium of about \$1,000 a pill.

Two months earlier, Neal landed a \$173 million sigh of relief for client Qualcomm Inc. when a Florida federal judge threw out the massive jury verdict in favor of ParkerVision Inc., agreeing with Neal's argument that the ParkerVision expert witness had provided an insufficient basis for finding that Qualcomm infringed four patents covering smartphone circuit technology. The judge found, eight months after the jury verdict, that ParkerVision's expert made concessions during cross-examination and his direct testimony that proved fatal to the company's infringement case.

More recently, he wrapped a lengthy trial in mid-May in Arizona's Maricopa County on behalf of land baron Conley Wolfswinkel and his W.V.S.V. Holdings LLC in a \$500 million real estate dispute.

In more than four decades of trial work, including at least 40 trials, 35 of which he served as first chair, Neal says the biggest change he's seen in courtrooms is the evolution of technological support. Not every piece of evidence a jury sees is blown up on a huge piece of posterboard, and associates no longer find themselves manhandling hundreds of boards and massive carts of documents.

The efficiency has enabled judges to decrease time allotments for civil trials — and Neal is a big fan of short time limits, as a general rule.

His prowess in the courtroom has at times led to midtrial settlements, as when he represented Synopsis Inc. against Monolithic System Technology Inc. in a Delaware case in which "we believed we were just routing the other side." In other cases, the ebb and flow of a trial has gone back and forth to the point settlements are struck just before a jury comes back with a verdict.

When he represented AT&T Inc. in a New York federal court trial against Microsoft Corp. over a key piece of technology invested in AT&T predecessor Bell Laboratories that's still used in cellphones around the world, a jury was weighing the case while the parties were trying to work out a deal. Ultimately, Microsoft stipulated the validity of the patent and that they were infringing and agreed to pay damages, but retained the right to challenge on appeal a narrow issue about the scope of liability for foreign infringement, Neal said.

"It was a cleverly crafted agreement," Neal said. "They stipulated to everything important to us, but they saw something in the situation they could make useful for them in other cases on other days. It was an intriguing, fascinating negotiation done almost entirely in the courtroom with the judge nearby and our jury sitting in the room."

With corporate boards, Neal rarely has trouble landing work or steering the company to a victory. His finesse in advising corporate boards includes his late-1980s representation of the General Motors Co. board in no-holds-barred litigation with billionaire H. Ross Perot over the sale of Electronic Data Systems Corp., guiding Pacific Gas and Electric Co. through its bankruptcy confirmation trial, and in 2002, leading the representation of The William and Flora Hewlett Foundation as they defeated an attempt to enjoin a merger between Hewlett-Packard Co. and Compaq Computer Corp.

Neal was named the chair of the Hewlett Foundation board this summer. He's also chairman of the board for Levi Strauss & Co. and chairs the board of trustees for the Monterey Bay Aquarium in California. And at Cooley, he's served as the firm's chairman for 14 years, balancing his administrative role with an active trial practice.

At Cooley, Neal looks for cases with what he called a "certain magnitude," saying the firm isn't equipped to efficiently handle small cases, but is instead organized to gear up for high-stakes disputes on behalf of clients with the resources available to fund a major piece of litigation.

"For the most part, they tend to be battles where we want to have ample resources to take them on," Neal said.

In his lengthy career, Neal can recall only two or three times he turned down a case or withdrew from an engagement — when he and the clients "had totally different worlds about what should be done or how it should be done." He said the problem of being not the right fit for a client tends to come up more with an individual client than a corporate entity.

"Sometimes you have to say, 'I'm just not going to get along with this client,'" Neal said. "If you're in a case, you're really locked arm-in-arm with high stakes. If you don't have a relationship with client that's good and strong, that's bad."

Neal has been called a subject and industry matter ninja because of his ability to leap with ease between shareholder disputes, fights that raise complex intellectual property questions, and high-profile, white collar criminal defense cases.

It was relatively late in his career that Neal realized he had an appetite — and an aptitude — for taking on intense white collar defense work. With the client's liberty at stake, and with an often compressed trial schedule, white collar cases can be some of the most rewarding wins and the truest tests for a trial lawyer's art and skills, he said.

Neal said by the time he understood how much he enjoyed those representations, he was too far into a law firm career to think about making a switch to a job as a public defender. Neal said some of the people he admires the most are the public defenders he's gotten to know over the years, and that "very few people understand or comprehend the enormity of the challenges they take on and the way they meet those challenges."

Known to his family as a childhood "goof-off," Neal says his later-developed intense work ethic made his late brother, former judge and arbitrator Richard C. Neal, laugh a great deal.

Neal credits his father, Phil Neal, now 96, for kick-starting his interest in the law by requiring him to spend time between his sophomore and junior year of high school reading "virtually every book ever written" about famed legal cases like the trial against anarchists Nicola Sacco and Bartolomeo Vanzetti and lawyers like Clarence Darrow, who represented John Scopes in the so-called monkey trial over teaching human evolution.

"He would say he wasn't doing any of this to convince me to be a lawyer, but he found things that really interested me," Neal said.

Growing up the second of four boys, and the son of a Stanford Law School professor and former dean of the University of Chicago Law School, Neal says he was shaped from a young age to speak in a disciplined, prepared way. At the dinner table, there were two rules in the Neal home: engage in serious discussion about current events, or be funny — and preferably both.

"You could not be unengaged at dinner time, and our dinner table conversations tended to be very

lively," Neal said. "My dad is smarter than hell, so you did have to be pretty rigorous. They were fun discussions but you had to make sense logically, you had to be clear in what you were saying and be prepared to defend it. And you didn't get through those dinners by being emotional. You could be passionate, but not emotional."

--Editing by Katherine Rautenberg and Chris Yates.

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