

JOE JAMAIL:

BEHIND THE SCENES WITH A LEGEND

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From Joe Jamail's Lawyer: My Trials and Jubilations

Famed. Flamboyant. Legendary. Such words inevitably precede any reference to Houston attorney Joe Jamail.

Of course, big actions breed big words: Jamail's \$11-billion jury award against Texaco. His 200-plus favorable verdicts. His willingness decades ago to stand up to Joe McCarthy's henchman Roy Cohn and, more recently, to confront Texas Attorney General Dan Morales for allegedly demanding political donations in exchange for a spot on the state's Big Tobacco legal team.

Jamail has donated tens of millions of dollars to Texas hospitals and universities. Even the University of Texas football field is named after the guy. No wonder Texas Monthly pronounced him "Lawyer of the Century."

And yet, having provided trial support to Jamail on two cases now—the Kendall-Montgomery v. John O'Quinn "slugfest" (as the Houston Chronicle society columnist phrased it) and a medical malpractice case that recently settled (Mackenzie Dunford v. Bayou City Medical), I've developed a parallel theory.

What makes a lawyer legendary? Big successes, sure. But also the little things: the tactics and habits that may not scream across the headlines, but that those of us behind the scenes marvel at as we watch them add up to big wins.

Assembling a strong team

Let's face it, the courtroom's no place for shrinking violets. Star attorneys develop reputations for healthy egos. And yet Jamail has impressed me as a lawyer who, despite his self-confidence in the limelight, surrounds himself with people of exemplary competence. He's smart enough to know there are a lot of other smart people out there; any personal hankerings for a starring role never take precedence over his goal of winning. In the Dunford case, Jamail ceded center stage to his cocounsel, the very organized and insightful Janet Hansen. Hansen gave the opening and directed the examination of certain key witnesses; she knew every line of testimony and every medical record cold. No

wonder this partnership has been so successful over the past 20 years.

Attorney Fred Hagans, of Hagans, Bobb & Burdine, collaborated with Jamail on the Kendall-Montgomery case, and he echoes my observations on Jamail's teamwork. "This was the first time I worked with Joe, and I was

Making other people look and feel good

There are no "little people" to Joe Jamail. Whether you're running a multimedia presentation, keeping order in the court or cross-examining his expert, Jamail honors your role in the proceedings. Clerks, bailiffs, legal assistants: all are made to feel good about themselves. Jamail is courteous, he makes genuine eye contact, he doesn't rush you. Juries appreciate his charm, and from a nonlawyer who's spent thousands of hours in courtrooms, I can safely assert that he is in a league of his own on this front.

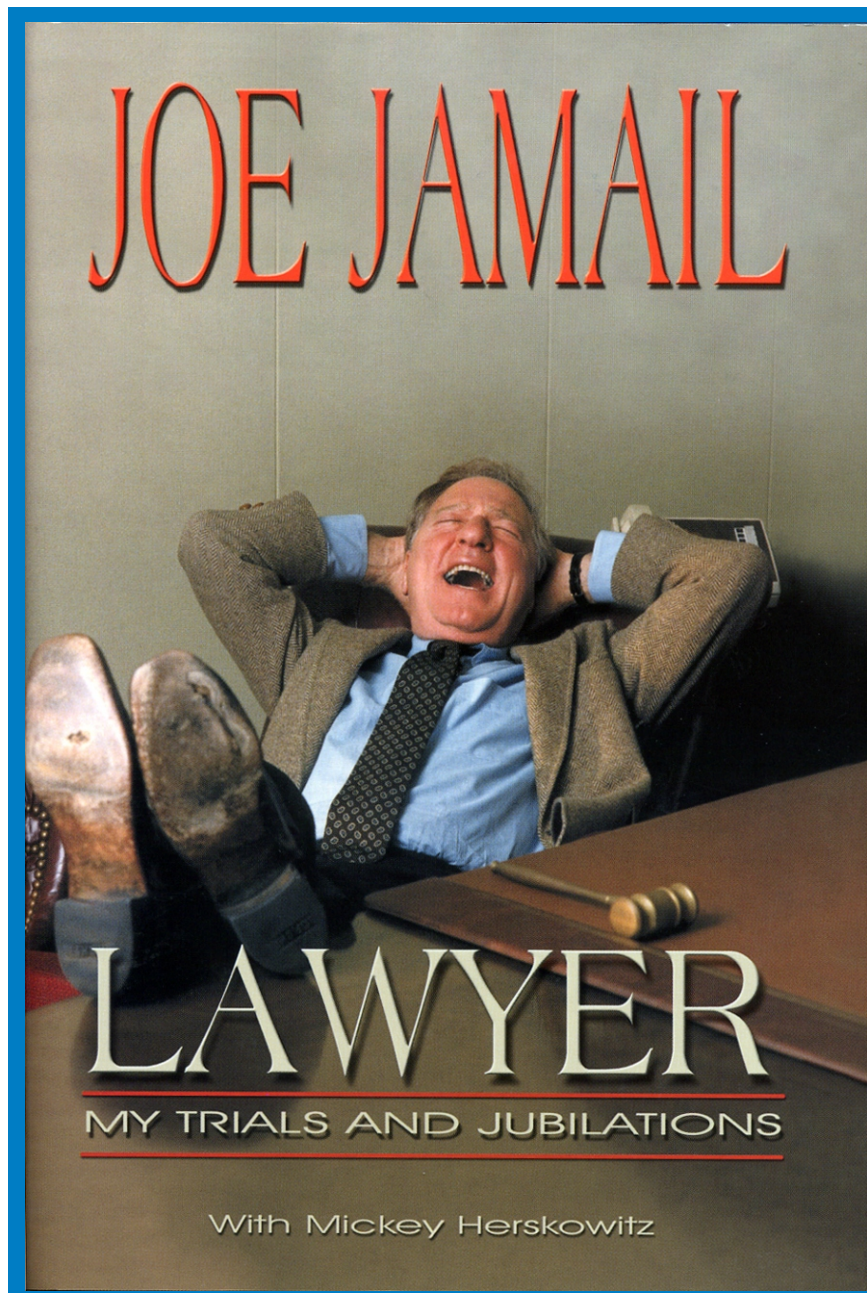
In particular, Jamail excels at presenting his experts. Some of his medical witnesses in the Dunford trial had 50 to 70 page curriculum vitae. A detailed recitation of their achievements would have bored the jurors and possibly turned them off. On the other hand, the jury needed to be convinced of the witnesses' credibility.

Jamail's strategy? He directed us to scan the experts' entire vitae along with the other trial exhibits. Then, during the trial, we showed the jury the electronic pages on our eight-by-ten-foot rear-projection screen, but with no single page appearing for more than one or two seconds. This was long enough for the jury to see the key heading—Medical Licenses—and its two pages of entries before we moved on to Publications and its 78 numbered entries. And so on.

The jury sat in impressed silence—and they got the expert's picture, in minutes, rather than hours.

"Those two minutes of silence," said the Hon. Russell P. Austin (Harris County Probate Court, No 1), "were the best credibility-builders for any expert witness I have ever seen."

Then, before intimidation could set in, Jamail's first question to the witness went something like this: "Now I know, Doctor, that you're not one to toot your own horn. But you're world-renowned in this field, aren't you?" He gave this extremely accomplished and famous individual an opportunity to be humble, a regular guy whom the jurors could relate to.



impressed that he would listen to new and different ideas, evaluate them, and then decide whether to incorporate them or not. He didn't make quick decisions; he was always open-minded to what other members of the team had to contribute."

Once Jamail hires you, he lets you do your job. He's not a micro-manager or a control freak; he knows where his expertise lies. He might tell me he wants to show a damage summary tomorrow morning, but then he'll go off to do what he does best, leaving us to do what we do best.

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Love of the sport

Like certain baseball players who appreciate their game's rich past, Jamail boasts a deep understanding of the history of the legal system, and he understands his place within it. His strategic preparedness reminds me of another legendary figure, Hall of Fame football coach Bill Walsh. Walsh would begin every San Francisco Forty-Niners game with his first 30 plays pre-scripted. Regardless of what happened during the opening minutes—fumbles, interceptions, touchdowns—he stuck to his game plan.

Jamail is equally prepared when he enters the courtroom. He and co-counsel Hagans met every day during the month leading up to the Kendall-Montgomery trial, discussing their order of witnesses and the agenda for each. “Joe is not just a ‘big picture’ guy,” Hagans says. “He knows every question he is going to ask. We fine tuned and tweaked all the way up to opening statements.”

Also, because so few cases nowadays go to trial, fewer and fewer lawyers, even those with vast experience with major firms, regularly get to argue a case before a jury. When it comes to courtrooms, Jamail has been there many a time, and it shows.

An openness to technology

Few lawyers still hover over their secretaries pecking out fifth or sixth drafts on IBM Selectrics. But how many attorneys really keep abreast of the strategic advantages technology can offer? Though born in 1925, and thus having left law school with little more equipment than a legal pad and a pencil, the 76-year-old Jamail doesn't shy away from cutting-edge technology that can benefit him in the courtroom.

For example, in the Dunford case 31 depositions were videotaped. We then digitized each video and synchronized it to witnesses' ASCII transcript. After Jamail and Hansen created a list of the line and page designations they wanted to offer, we imported the list into our editing software and immediately determined the duration of each witness's examination. As is usually the case, the first cut was too long. However, editing the video down wasn't an enormous obstacle for us. Because we had digitized the video in advance, we were able to quickly delete some designations and substantially trim the total run time. The entire process took about two hours.

Attorneys using less sophisticated technology would have still been slumped in their

Barcalounger with a bound deposition in one hand and a remote control in the other (and a pack of Roloids in their shirt pocket). Meanwhile Jamail's team was immediately able to begin fine tuning their experts' testimony. Later, we maintained maximum spontaneity going into the courtroom. Whenever testimony became irrelevant or was ruled inadmissible, I could edit out that portion of the video within seconds right there on my laptop. You couldn't do this with a VHS cassette.

Even judges—or perhaps judges most of all—appreciate attorneys' skillful use of technology. Says Judge Austin: “With so much at stake, I'm surprised I don't see more attorneys taking advantage of technology to speed up the proceedings and make their cases easier for juries to understand.”

Proving liability and damages in a trice

There's a reason the 20-20's and the Sixty Minutes news shows limit their exposés to ten or 12-minute segments. Any longer and they'd lose their audience. Yet how many attorneys continue to torment juries with one 40 to 60 minute videotape of a witness after another?

Joe Jamail has an amazing ability to key in on witnesses' crucial testimony. In the Dunford case, we put on 26 witnesses in six days, 21 of them via videotape. When the video witness referred to an exhibit, the exhibit was pre-linked to appear alongside the witness, thus allowing the jury to view exactly what the witness was discussing. Jamail would present a witness by video for ten minutes, establish liability and damages and move on to the next witness.

“His ability to reduce the depositions down to the critical nine to 12 minutes was the best I've ever seen,” Judge Austin said later. “When they told me they were going to play five-and-a-half hours of straight video one day, I thought the jury was going to lose interest and become fatigued. As it turned out, it was the most productive day of the trial and the jury never lost focus.”

Equally impressive was Jamail's ability to end his witness examination in a strategic place. Each new witness seemed to pick up on a comment or theme at which the previous witness had left off. An engaging narrative developed. Also, because many of the witnesses were called adverse, the defense declined to cross-examine them until later, knowing they would get but one shot. In effect, Jamail prevented the defense from interrupting his momentum.

Knowing when—and when not—to show your cards

Prior to the Dunford trial, we created a powerful, full-blown multimedia presentation in preparation for mediation. It included 50 to 60 slides showcasing key documents, critical testimony and compelling timelines and charts. Such presentations are usually an excellent strategy for mediation. You educate the other side's insurance representatives and/or general counsel as to the strength of your case, and in the process attempt to convince them that by settling they might spare themselves a catastrophic verdict.

However, the day before mediation, Jamail became convinced the other side was not about to settle, regardless of the strength of our case. Though we'd committed extensive resources in creating a very persuasive presentation, Jamail opted not to show it. Why tip our hand, he asked?

As Jamail predicted, we went to trial. Prior to putting on their case and after we put on 26 witnesses, the defense sized up the proceedings and both parties settled. Because Jamail had exercised restraint, he left the defendants wondering what was coming next. Evidently they realized they ought not to take a chance.

Texas is a big state that produces many big personalities. These folks may aim for the coup—the largest jury award ever, for example—and they may appreciate the spin value of a grand gesture. But few, I suspect, reach legendary status without genuine qualities and abilities that set them apart. When you watch Joe Jamail in action, whether behind the scenes or in his milieu—the courtroom—you can't help but feel that you're witnessing one for the history books.

Rick Goldberg is the president of Rick M Goldberg & Associates, a litigation-consulting firm headquartered in Houston, Texas. He serves as president of the Demonstrative Evidence Specialist Association (DESA) and frequently participates in speaking engagements in the Texas legal community. He founded Rick M Goldberg & Associates in 1994. Since then the firm has provided demonstrative evidence and trial support in 10 states and on all three coasts. He can be reached at: rick@rickmgoldberg.com