

Trial Pros: Thompson Hine's Jim Robenalt



Law360, New York (June 27, 2016, 2:27 PM ET) -- James Robenalt is a partner in Thompson Hine LLP's business litigation practice group. He has been named one of

America's Leading Lawyers in *Chambers USA: America's Leading Lawyers for Business*.

Robenalt has been listed in *The Best Lawyers in America* and has been selected for inclusion in Ohio Super Lawyers.

Since 2000, Robenalt has won major trials and arbitrations in complex litigation involving over \$161 million. He has also defended major construction cases, tax cases and professional malpractice cases. Robenalt has partnered with John W. Dean, Nixon's White House Counsel, to create a national continuing education program entitled "The Watergate CLE."

He is the author of *The Harding Affair: Love and Espionage During the Great War* (Macmillan 2009) and *January 1973: Watergate, Roe v. Wade, Vietnam, and the Month that Changed America Forever* (Chicago Review Press 2015). He is also a contributor to the forthcoming book, *The Presidents and the Constitution, A Living History* (New York University Press 2016).

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

A. Without question, an espionage case for a global labeling and packaging company. The civil trial took place in 2000 before the Honorable Donald Nugent in federal court in the Northern District of Ohio. It was a companion case to the criminal case before another federal judge that had been successfully brought against a Taiwanese company and its executives under the Economic Espionage Act of 1996, the first criminal prosecution under that statute. The Taiwanese company had paid a scientist working for our client to steal a storehouse of trade secret formulas, specifications and processing information, all of which had been shipped to Taiwan. Our client discovered the espionage scheme through a tip from a disgruntled employee from Taiwan who sought a job with them.

Two FBI sting operations were conducted; the first with the scientist and the second when the CEO of the Taiwanese company and his daughter came to the United States to meet with the spy to obtain more information. By then, the spy was cooperating and wore a wire and was filmed by the FBI in a hotel with the CEO and his daughter. I remember being in a conference room while the sting was happening over a weekend.

The civil trial took a month in front of a Cleveland jury. For me, the highlight was that one of the defense lawyers, William Bittman, had been Howard Hunt's lawyer during Watergate. He also helped Bobby Kennedy prosecute Jimmy Hoffa during the time Bittman was with the Department of Justice.

The above mentioned trial resulted in an \$81 million verdict. The verdict was affirmed in the Sixth Circuit Court of Appeals.

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

A. In that same espionage case, we put on a scientist working for our client, who was asked to identify the trade secrets found in the Taiwanese company's files and to categorize them using a chart. The list was long, and the scientist was asked to state how many copies of each trade secret had been found in the files (to show that multiple people had been given the files). After the first few repetitions of these questions, we noticed two jurors in the back row who began to bet each other on how many copies were found by holding up fingers to each other. They clearly were enjoying themselves, but it was a good sign for us that they were getting the point. Sometimes you don't need expensive jury consultants to read a jury.

Q. What does your trial prep routine consist of?

A. My trial preparations are the same in almost every case. I start by gathering all the exhibits I need to introduce and all the exhibits I expect will

be used and create as complete a list as possible. From there I start my examinations, usually trying to find a witness I can call in my case on cross-examination (especially if I am representing the plaintiff). It is risky, but I think putting on crucial evidence from the lips of your opponent is tremendously impactful.

I focus strongly on the opening statement. Studies show that the psychology of primacy is at work in any trial — jurors generally end up voting the way they feel after openings, by a wide margin. So to me it is the most important moment in a trial. I rely heavily on PowerPoints — to show documents or even play some testimony (if allowed) on video. Slides should always be simple — a PowerPoint slide becomes counterproductive if it is crowded with too many words or images. The use of a PowerPoint also enhances the ability to present extemporaneously without reading from a script. Eye contact is very important, as is an orderly and understandable presentation of the evidence.

The rest of the preparations — jury instructions, motions, evidentiary briefs — fall into place if you have these major tasks covered.

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. Make sure your entire team is ready. And today that team includes the technical consultants or firm employees who will bring up exhibits, show videos and provide assistance in opening and closing. Nothing destroys the pace of a trial more than technical glitches. Lead trial lawyers delegate so much out of necessity, but in the end, they need to

assure themselves that the electronic courtroom people are ready to go. You need to set aside time to practice with them.

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

A. There are so many. I once argued an appeal against Kenneth Starr in the Sixth Circuit Court of Appeals. He is an impressive advocate, but he did not conduct the trial. So my answer would be John Quinn of Quinn Emanuel. Quinn is one of those people you meet in law school who can cram for any exam and ace it. He did the same in the espionage case. It was impressive to see him absorb so much information in a short period of time to get ready. He also carried some habits from the days he worked with David Boies at Cravath, Swaine & Moore. My recollection is that Quinn and Boies were associates together at Cravath, perhaps even in the same class. But Boies did a couple of things that Quinn emulated, at least back in 2000. Boies always wore very plain suits, the kind you could get at J.C. Penney. Nothing fancy — basic blue suits. Simple ties, too. And he wore his watch (remember when we all wore watches?) on the outside of his cuff, so he could check the time without pushing back his shirt to see the watch. Quinn did the same.

As a result, Quinn's style with a jury was somewhat folksy (though not pandering in any way) — even admitting in his opening that he was nervous. It was masterful, as all these things helped him bond with the jurors.

Quinn possesses a rare combination of high intelligence and studied people skills. And the

espionage trial took place just as he was launching his all-litigation law firm in Los Angeles. As readers know, he has built one of the litigation powerhouses in the country, if not the world.

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