

3 reasons litigators might need fact-finding help during a trial

Teamwork is key in litigation, and investigators are important members of the team

By Philip Segal

Litigation takes teamwork like no other area of legal practice. There are many ways to be a fine solo practitioner inside a company or at a firm, but when anything but the most mundane court appearance is required, you will inevitably have to rely on others—other lawyers, experts and, sometimes, investigators.

During litigation, there is even less room than usual for error. Before you sue you can hesitate, negotiate, posture and ultimately decide not to sue today because you could always sue in a year. Once you've won judgment you have years to execute on it. But during the trial, you have a very limited amount of time to get the information you need to cross-examine a witness effectively.

That's why trials are conducted in teams. While I love fact-finding prior to, during and after litigation, there's a certain thrill to joining a legal team as new information becomes generated during discovery or even during a trial. The challenge is to take the new information and try to confirm, deny or expand upon it while being restricted by the harsh deadlines inherent in trial practice.

Why would a well-prepared litigator need fact-finding help once things are underway?

1. **Impugning witness credibility.** We once worked to help a creditor in bankruptcy court. The debtors had several proposed plans denied, but then a series of mystery men would emerge and volunteer to fund the plan with almost no prior knowledge of the debtor. It smelled fishy, and with almost no notice we were asked to figure out the litigation history of one mystery man who claimed that neither he nor his companies were the subject of any ongoing litigation. We found seven ongoing cases against him.
2. **Bolstering your own witnesses.** Our client's star witness was once demolished on the stand during cross-examination because his resume contained alleged inaccuracies. He stood by the accuracy of the resume, but since he was on the stand for a number of days we were not allowed to talk to him. The challenge was to verify his resume by the time it was our turn for re-direct examination. This was due diligence on steroids, but we were able to come up with an answer that included going through old telephone books at the Library of Congress and conducting some two-dozen telephone interviews.
3. **Dealing with new evidence that comes to light.** Evidence doesn't know there are pre-trial deadlines. Evidence just pops into view when it feels like it— inconveniently timed but impossible to ignore. In one case we participated in, a key witness on the other side steadfastly denied during discovery that he lived in a particular apartment building. We did not have the money to follow him around all day, since despite what you've seen in the movies, surveillance can be hellishly expensive. Instead, we periodically updated our database checks on him. When he foolishly moved the electricity bill into his name in the apartment he occupied, that came up (with a two month lag) on a database. We were then able to confirm his occupancy.

Adding to the thrill of making a significant contribution to the litigation team was the feeling that we were part of a group of fast-moving, unified professionals all pulling toward the same goal. It's called teamwork, and in the cases above the team included specialist investigators who gathered the information that litigators needed. Other than getting a good result for your client, teamwork is the best thing there is about litigation.