

Trial Pros: Covington & Burling's Stephen Anthony

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Steve Anthony is Covington & Burling LLP's deputy chairman of litigation. He has tried 33 cases before juries, ranging from patent infringement to white-collar criminal trials. Earlier in his career, he served more than eight years as a federal prosecutor. Since returning to private practice in 2000, he has managed complex litigation matters including multibillion-dollar frauds and high-stakes patent disputes.



Stephen P. Anthony

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

A: I once tried a criminal case where we had to educate the jury about gift-giving traditions in the culture of American Samoa. The case was tried in Washington, D.C., so one challenge was to paint a picture for Washington jurors of what it's like to live on a South Pacific island 7,000 miles away. My colleagues and I represented an elected government official who was charged with bribery, fraud and obstruction of justice. The government charged that the defendant bribed another Samoan government official by having a team of wood-carvers make and install decorative wood trim in the official's house, for free. What we showed, though, is that the two men were members of an extended family. Many Samoans provide generous gifts and assistance to their kin. Fixing someone else's house for free is nothing unusual in Samoa. People on the mainland U.S. aren't used to such generosity toward those whom we would consider distant relatives. But in the end, we were able to show that this intricately carved woodwork was not a "bribe" but instead an ordinary act of kinship.

The government also charged our client with a scheme to defeat regulations requiring competitive bidding in government procurement by "structuring" sales of school furniture. The charge was that our client divided big purchases into multiple smaller orders, allegedly to avoid triggering a bidding requirement for purchases bigger than \$10,000. The government came before the jury with a stack of purchasing forms, some of which showed multiple purchases on a single day, adding up to more than \$10,000. The prosecutors argued this was proof of a fraudulent scheme. But we brought in proof that Samoan school procurement officials divided up large purchases into little ones all the time, for everything from maps to books to computers. The government hated that evidence. Moving in limine to exclude it, the prosecutors told the judge that allowing into evidence the paperwork from those other procurements would lead to an illegitimate, "everybody-does-it" defense. We argued that it showed there were innocent reasons to break up orders, such as to arrange for delivery to different schools. The turning point came when we persuaded the judge to let the evidence in. In the end, the jurors deadlocked at 11 to 1, leaning toward acquittal, and the government dismissed the indictment. Jurors

told us afterward that our evidence let the air out of the government's whole theory.

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

A: The most amusing thing for any trial lawyer is to have the "Perry Mason moment" that we crave but that almost never happens in real life. In the same criminal trial I just described, I cross-examined a cooperating witness. When investigators had probed his government agency, he steadfastly insisted he had done nothing wrong. But later, faced with undeniable evidence of his own guilt, he agreed to plead guilty and got himself a sweeter deal by implicating my client.

On cross-examination, I questioned this witness about sworn testimony he had given in a Samoan legislative hearing, in which he had denied any involvement in bid-rigging. He danced around the inconsistencies between his old and new testimony. He gave excuses for making false statements under oath — he was "in shock" and was "very, very emotionally disturbed" when he gave his previous testimony. Another excuse he dangled was that the translation from Samoan to English might be wrong. But the questions kept coming. Finally, he threw in the towel and flat-out admitted he had lied under oath to try to get out of trouble, finishing his collapse in made-for-TV style.

Q. But the answer to my question, sir —

A. If I lied, I lied.

Q. Well, did you lie?

A. Yes, I did.

In the end, the judge gave a "perjurer's testimony" instruction regarding that witness and a second government witness who likewise had to admit he had lied under oath.

Q: What does your trial prep routine consist of?

A: I do all the things any trial lawyer does. I pore over the deposition or grand jury transcripts and the key documents. I outline direct and cross-examinations. I meet with our witnesses and prepare them for what it will feel like to be in the courtroom, answering hostile questions. I anticipate what the other side will do to try to undermine our witnesses, throw dirt on our client and disrupt our story. In many cases, we will have tested our themes in a mock trial, so we will have a good idea of how to undermine the other side's story and how to address the toughest parts of our own case. In addition to all this, as I go through an ordinary day — say, raking leaves on a weekend afternoon — I imagine myself telling the story of our case to a friend, or a stranger or to my aunt at a family reunion. After spending all that time digging through deposition transcripts and fine-print documents, it's important to step back and imagine telling the story the way I would while talking over the back fence to a neighbor.

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: Be sincere and be yourself. A key part of trial work is to convey emotion appropriately, through your body language, tone and expression. Whether that emotion is anger, or sympathy or surprise, it must be genuine. If you are faking your feelings, the jury will know right away.

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

A: I have long admired Bill Taylor of Zuckerman Spaeder. In two high-profile criminal trials, I have seen him seize control of the narrative that the prosecutors were presenting in their case-in-chief and elicit a completely different story through cross-examination of the government's own witnesses. Bill has a courtroom presence that is straightforward and warm, and jurors connect with him.

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