

## Trial Pros: Davis Wright's Lisa Marchese

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Lisa Marchese is a seasoned trial attorney and a partner at Davis Wright Tremaine LLP. In her career to date, Marchese has tried to verdict well over 100 jury trials in state and federal court, including capital cases, aggravated murders, multimillion dollar “bet the company” cases and complex commercial and wrongful death actions. She has a nationwide practice in the area of government contracts counseling and litigation. She provides full service expertise to clients doing business or seeking to do business with the federal government, including government contract formation, administration and counseling on a wide range of performance disputes and compliance matters. Marchese has advised clients on protecting and preserving intellectual property rights when entering into and performing contracts with the federal government. She has also advised and assisted clients in compliance matters related to industrial security. Marchese regularly litigates government contract claims before federal and state courts, boards of contract appeals, arbitration panels and other tribunals throughout the United States. She also has a wealth of experience representing Alaska Native Corporations and defense subcontractors within the government contracting process.



Lisa M. Marchese

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

A: I firmly believe that to be a successful trial lawyer, you have to believe that the case you are trying in that moment is the most interesting case you have ever tried. Effective advocacy and the power of persuasion come first and foremost from one's heart. If, in that moment, you don't feel that passion and enthusiasm grow from your heart for the case you are trying, you will never connect with jurors and persuade them that your position should prevail. But if I had to choose one, I would say it would be the Federici case, which was a complex, multiparty, high profile product liability case in which the plaintiff sustained catastrophic injuries. Of her many injuries, she lost her eyesight in the accident and required major facial reconstruction. The case was particularly engaging to me because I don't think I've ever been up against longer odds. The sympathy factor was overwhelming and had a profound impact upon the jury. When she testified, there was not a single juror who was not in tears. The challenge in this case was to find a way to present a zealous defense in a manner that would not alienate the jury, given the overwhelming sympathy and nullification influences in play. In such cases, there is a tendency to let fear of the sympathy factor drive the decision-making on whether otherwise favorable evidence to the defense should be offered. We obtained a complete defense verdict on behalf of our client because we altered our tone and approach but did not back away from presenting evidence of contributory and comparative fault.

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

A: I was a baby trial lawyer and working as a deputy prosecuting attorney for King County. I was trying a drug case. I was doing a direct of one of the detectives who had recovered drugs and drug paraphernalia from the defendant's home. I was so focused on laying a foundation that I didn't realize that the scales and other items had fingerprint powder all over them. During the course of the direct, I evidently touched my chin and face a few times, trying my best to strike a thoughtful pose for the jury. I couldn't figure out why everyone in the courtroom was laughing at me. I had a laid a foundation, I had asked all the right questions, I had my evidence admitted and I was parading these damning exhibits in full view of the jury. It wasn't until the bailiff called me over to the lower bench and handed me a mirror from her purse. I pretty much had fingerprint powder all over my face. The last time I was humiliated like that was in grade school when I was victimized by the "quarter" trick. But the best part of the experience is that I shrugged my shoulders and laughed with everyone else. It taught me that jurors respect levity and trial lawyers who can show they are human.

**Q: What does your trial prep routine consist of?**

A: I prepare outlines and give lots of thought and consideration to what I want to say and how I want to say it. But I do not "moot" everything and don't practice my opening or closing over and over again because I don't want to come off as rehearsed or mechanical. When I give my opening or closing, I want it to come from the heart and I want every jury to feel like I am talking to him/her — not at him/her. Additionally, all aspects of trial are dynamic in nature and you have to be willing to stay in the moment and adjust as necessary. You can't be constrained by a script.

**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: The power of persuasion comes from within. Don't buy into the notion that you have to emulate this trial lawyer's style or that lawyer's approach. Lose the fear to be yourself, first and foremost. And when you stand up in front of the jury for the first time — and through verdict — believe with all your heart that you are the best evidence in your case.

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

A: By far, my hero is Edward Bennett Williams. My first exposure to trial practice was as a law student in the Criminal Justice Clinic at Georgetown University Law Center. In that program, we tried cases in D.C., Maryland and Virginia under the student practice rules. We also had course work on trial advocacy in tandem with our clinical experience. As a distinguished alumnus, Edward Bennett Williams' influence on the clinical and trial advocacy programs at Georgetown loomed large. Our professors knew him and tried cases with him and their teaching was greatly influenced by his approach to trial practice. I once heard him speak as a young law student and I don't ever remember being more mesmerized and inspired. I remember wanting to learn everything I could about his amazing career. When Edward Bennett Williams graduated from law school, all he wanted to do was try cases — a sentiment that resonated deeply with me because when I graduated, that is all I wanted to do. I remember reading some of his legendary cross examinations from major cases. In one famous case, his cross examination was so rigorous and effective he literally made the chairman of Paramount Pictures pee his pants while he was on the stand. Edward Bennett Williams believed that preparation was the key to effective trial practice. He was fond of saying, "there is no substitute for knowing everything." He also believed that you should try a case backwards or begin with your closing argument. He started by building a closing

argument and worked to prepare the case from that point. He understood the importance of using and developing themes to tell a persuasive story of the case at trial. These are just a few of the many things about Edward Bennett Williams that inspired me to become a trial lawyer and that I strive to embrace every day in my practice. I believe Edward Bennett Williams was the greatest trial lawyer ever to practice in our generation.

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