

# The Ten Attorneys You Meet In Your Joint Defense Group

By: John Jackson and Bob Latham

## 1. The Technology Neophyte

This attorney's unfamiliarity with current technology causes him/her to commit a number of joint defense group faux pas. The most common gaffes include: (1) being unable to mute their phone when they are at the airport, home with dogs/kids or in similarly noisy surroundings; (2) leaving their blackberry too close to the phone during joint defense calls;<sup>1</sup> and (3) failing to put the phone on mute when they are hacking away at their keyboard.

## 2. The Judge's Best Friend

This attorney professes to know virtually everything that there is to know about the presiding judge. In every joint defense group, it seems that there are as many judge's best friends as there are No. 2 guys in Al Qaeda.

## 3. The Henry Fonda

Inspired by Henry Fonda's character in "Twelve Angry Men," this attorney complicates what should be routine tasks by disagreeing with the group's approach at every turn. Henry Fonda's participation dramatically increases the length of joint defense calls and often results in the addition of numerous footnotes to group pleadings, if not a separate pleading altogether. In extreme cases, Henry Fonda may even decide to retain a separate expert on invalidity issues thus potentially causing the group to run afoul of the Court's limit on the number of expert witnesses.<sup>2</sup>

## 4. The International Man of Mystery

This globe-trotting attorney has a travel schedule that makes it virtually impossible to schedule a recurring weekly call during the customary hours for joint defense calls. While other attorneys simply have another attorney cover the call when conflicts arise, The International Man of Mystery believes that his/her participation in each call is essential and that there is no point in even conducting a call if they are unable to participate. Worse yet, when the group is finally able to get a call scheduled, this attorney prefaces all their comments with gratuitous language concerning their present location. You will know that you are dealing with The International Man of Mystery if on your next joint defense call you hear something like the following: "I apologize that I have not yet been able to review the latest draft of the joint defense agreement, it is 10 pm in Lake Como and I only just returned to the villa."

## 5. The Transfer Hawk

The Transfer Hawk is a breed that often arises in joint defense groups in litigation in the Eastern District of Texas. Inspired by the Federal Circuit's rulings in *T.S. Tech* and its progeny, this attorney doggedly advocates filing a motion to transfer even though the judge assigned to the case has already construed the patents, there are 4-5 related cases in the presiding judge's court, numerous parties are located in Texas and/or the Eastern District of Texas, and there is no logical transferee forum.

## 6. The Volunteer

Either because he/she does not have enough cases to work on, because he/she is scrambling to satisfy their billable-hour requirement, or because he/she does not think that any other member of the joint defense group could adequately do the job, this attorney offers to take the lead on every group task that arises.

## 7. The Free Rider

The Free Rider is the polar opposite of The Volunteer. This attorney **never** volunteers to take the lead on any group tasks even when it is clearly his/her turn to do so. The Free Rider's failure to pull their own weight inevitably results in joint defense calls that are plagued with protracted periods of awkward silence while the group waits to see if The Free Rider will finally step up and take the lead on a task.

## 8. The Procrastinator

This attorney hinders the joint defense group's progress by repeatedly claiming that he/she does not yet have client approval to authorize the work/expense being discussed.

## 9. The Awkward-Laugh Inducer

This socially-challenged attorney feels the need to try to provide comic relief for the group by saying something that only he/she could find to be amusing. The response to these purportedly witty comments ranges from several sympathy laughs to uncomfortable silence. Because the Awkward-Laugh Inducer is especially vocal on Fridays, they can sometimes be neutralized by rescheduling the joint defense calls to earlier in the week.

## 10. The Elder Statesman

This attorney does not regularly participate in joint defense group calls and is not well versed in the facts of the case. But that does not prevent him/her from making cameo appearances to dispense pearls of general wisdom to the rest of the group.

Note: Any similarities between these 10 types of attorneys and any real person, either living or dead, is intended and not purely coincidental.

<sup>1</sup> P.S., for all the Technology Neophytes who are reading this article, leaving your blackberry too close to the phone results in an annoying buzzing sound on the call.

<sup>2</sup> Of course, The Henry Fonda is not nearly as successful at swaying the other members of the group as the real Henry Fonda.



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