

Trial Strategies – Running Into a Brick Wall, Who Wears a Black Robe: Tips for Trying a Case Before a Hostile Judge

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Part 1

In the first part of our Trial Strategy series, [Tim Mungovan](#) and [Bradley Bobroff](#), Proskauer partners and members of the firm's [Litigation](#) department, provide tips for trying a case before a hostile judge. Rather than being combative, there are several key tactics you can implement to achieve a favorable outcome for your client:

Tim Mungovan: Arguing with the judge is a mistake. If you're actually arguing, you're not persuading.

You should look to understand and engage with the judge on his or her concerns but always remain respectful and advance the arguments that you think you need to make and get the emotion out of the situation. Take the adrenaline out of the situation and think tactically and unemotionally about what you need to do.

Hostility can be a gift. It's obviously not as positive if he or she is openly supportive of your position but it's not the worst thing.

Bradley Bobroff: The only thing worse than a judge who dislikes your client and is openly obviously about it is a judge who dislikes your client and keeps his views to himself. If a judge is going to show you his cards, read them. Seize the opportunity. Take a step back. See what's bothering the judge and refocus your energy on addressing what the judge's problem is.

If you find yourself in a situation where the judge is reacting more positively to your local counsel, let your local counsel play a bigger role.

Tim Mungovan: Local counsel can help you work through how to persuade the judge and help you to assess what may be bothering the judge and what information or evidence or procedures may actually help to eliminate the judge's concerns.

Part 2

In part two of our Trial Strategy series, [Tim Mungovan](#) and [Bradley Bobroff](#) continue to explore alternative approaches to dealing with a hostile judge in a trial:

Tim Mungovan: When you're dealing with an openly hostile judge, there is a tendency to try the case differently or to present your argument differently. And that can be a mistake.

Bradley Bobroff: There's nothing more important than preserving your objections and making your record. I mean, it's a good way to lose a winnable trial twice if you don't make your objections and if you don't preserve your record.

Tim Mungovan: You need to avoid getting beaten down. If you need to get a piece of evidence in, and you believe you need that evidence but you know that it's going to result in a browbeating from the judge, you still need to make every effort you can if it is an important piece of evidence to your case.

Bradley Bobroff: Settlement's not a dirty word. It's important from the beginning, in any trial, to make it your practice to let the other side know that you're open to settlement under reasonable circumstances.

Tim Mungovan: If you're having settlement discussions following an interaction with an openly hostile judge and those settlement discussions have come up for the first time, you've made a mistake already. The way to get ready for it is to assume in advance that the judge may in fact be hostile.

At Proskauer we conduct mock trials all the time where we have the equivalent of the opposition or the red team taking on our case. Whether that's another lawyer in your firm or a group of lawyers act as the mock adversary where they will be extraordinarily difficult to deal with and they will find fault with every position that you have taken. That can be an extraordinarily effective tool for preparing in advance.

For more suggestions on dealing with a hostile judge in a courtroom, read "[Running Into a Brick Wall, Who Wears a Black Robe: Tips For Trying a Case Before a Hostile Judge.](#)"

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