

How to Gain the Court's Trust

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Whether as the fact-finder (in a bench trial) or the gatekeeper of what evidence a jury will hear, the trial judge is the single most important audience in any trial. Building a relationship of trust with the trial judge is critical; a level of trust (or a lack thereof) can have a profound impact on how a trial will play out. And the work of establishing credibility with the trial judge begins long before the trial starts. [Mike Mervis](#) discusses the art of gaining the trial judge's trust.

Transcript

Michael Mervis: It's critical that the judge trusts what you say, has confidence that when you tell her something, it's true and that there's not a spin or a different side to it.

It starts pre-trial, right? One thing that I do with my teams is that every brief that we write, every letter that we send in, we take extra care to make sure that every fact that we assert in a letter is 100% accurate. We don't do things like ellipse out language that's unhelpful from a quote, for example.

The same thing with discovery, right? People can get very excited about the discovery and take very extreme positions. That's fine unless the extreme position makes you come off as not credible and trustworthy. Sometimes, it's better to lose a mini-battle but maintain your credibility with the court than it is to win every point.

Most judges have very good detectors for truth-telling, both with witnesses and with lawyers. As important as it is to establish a relationship of trust, you don't get a second chance. If you say something to the court that's not true, not all, but most judges will take that instance and form a view of the lawyer and be skeptical or at least not fully accepting of what that lawyer tells the judge during the course of the case.

Gain credibility by being honest and accurate.

When you've earned the trust of the court, you can pick points in the case to make objections that you know are not likely to be sustained but still may influence the way the judge thinks about something.

For example, before what you expect to be a difficult cross-examination of one of your witnesses, I have at times made relevance arguments during a bench trial. Judges typically don't sustain relevance arguments in a bench trial. They're going to listen to the cross-examination. They're not going to overrule the objection, but they're going to think about why did this person who I trust tell me that this wasn't relevant. And I've had that experience with judges where they sort of looked at me sideways and said, "Really, it's not relevant?" They listened to the cross-examination, came back to me, and said, "Tell me again why it's not relevant?" And then when I got the decision, what I told her about why it wasn't relevant is what she wrote.

The more that a judge trusts you as an honest broker, the better things will go for you during the trial, whether it's the weighing of the facts, or what evidence gets to a jury, doesn't get to a jury; it makes a difference.

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