



Baditude

and Other Trial Tips

By Kenneth Eichner

Even though I have picked 150 juries and have worked as both a public defender and prosecutor, I still have a lot to learn when it comes to navigating the ins and outs of the legal system. Being an effective litigator and successful at trial is a life-long endeavor, is rarely smooth sailing, and can only come through practice and dedication. But, as of today, this is what I can share with young lawyers who are just entering the fray.

#1: LOSE THE BADITUDE

Bad attitude. Baditude. Nastiness. Lawyer ego plus client ego plus a sense of entitlement equals baditude. Lose it. It will damage your case and your reputation. Just be kind, for everyone is fighting a great battle.

#2 DON'T BE CODEPENDENT TO CORRUPTION

Your clients will ask you to do things that are far worse than anything you ever thought of in your darker moments. They will ask you to hide assets, put on false testimony, and mislead the court. You can't. You won't. Be firm and dismissive (see baditude). If it comes to it, negotiate the return of their money. Show them a legal directory and tell them there are plenty of other choices available. Show them the door.

#3 COMMUNITY

Compete with yourself, not your opponent. Aren't you trying to best your last court efforts and learn from your mistakes and missteps? Make a friend out of opposing counsel. You are a member of a community. Your opponent is also your brother and sister at the bar, as they used to say many years ago. Sure, there are some fools out there, but there are also the boys and girls that brought us seat belts, clean water, desegregation — lawyers are the social architects that have transformed society into a better place. Add a sense of humor to that, and you have some decent people to have lunch with.

#4 PREPARE FAR IN ADVANCE

Anyone can have the will to win, but only a few have the will to prepare to win. Instead of worrying about new business and search engine optimization and marketing, drill down on the cases you have. There is much to do on that file and you know it. Work the cases you have until you know every scale on the hide of the fish.

#5 DEVELOP THE STORY IN YOUR CASE

Walk away from the office. Take a break from obsessing and bickering over discovery. Grab the file and take it to a coffee shop or a park. Look outside. It's a sunny day in Colorado. (Aren't they all? It's one of the major reasons we live here.) Now look back at the file. What is the theme? What is your story? If you do not know how to construct a story, read Robert McKee's book. It is entitled, what else, *Story*. It is the bible for screenwriters. You don't like movies? Fine, read *How to Argue and Win Every Time* by Gerry Spence. Either book will serve you.

#6 JURORS: THE ULTIMATE CONSUMER OF YOUR PRODUCT

Run an ad on Craig's List for mock jurors. Try your case in front of the mock jurors at the office on a Saturday. Talk to the mock jurors. Listen. Try the case in front of a real jury. Talk to the jurors. Listen. They are the ultimate consumers of your product. You can learn a lot from them.

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#7 GOVERNMENT EXPERIENCE

If you are lucky enough to get the offer, take any position in the government that allows you to try cases. Muni or county court, public defender or prosecutor — just try cases in front of juries. It is a tremendous opportunity. You will be tossed into trial with no experience. Chances are, you will be annihilated. So what? It is a great education. You will develop a preternatural sense of ease. Short of that, the best thing to do is sit in court. Take your files, go down to the courthouse. Ask the bailiffs and courthouse staff who is in trial. Then try to find out who is worth watching. Sit in that courtroom and drink up the art of trial advocacy. A great, heartfelt story is being told with no baditude and a ton of preparation. ●

KEN EICHNER launched The Eichner Law Firm in 1996 after serving as a state prosecutor for six years. He defends individuals and corporations in state and federal criminal prosecutions, grand jury inquiries, and regulatory and government investigations in courts across the country. Having tried over 500 bench trials and 150 jury trials, Ken lends his expertise and sits on the advisory board of LYRIC (Learn Your Rights in the Community), a social justice platform that teaches teens their constitutional rights.