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Trial Pros: Susman Godfrey's Bill Carmody

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William C. Carmody

Bill Carmody heads Susman Godfrey's New York office and is a permanent member of the firm's executive committee. He is experienced in a wide range of complex business and intellectual property litigation and has handled a variety of cases including antitrust, commercial and securities fraud, structured finance and derivatives, class actions, false claims act, oil and gas, trusts and estates, trade secrets, trademark and patent infringement. He has appeared in national and international media, and his trial victories have been profiled in The Wall Street Journal, Forbes, Businessweek, Bloomberg, The National Law Journal, Texas Lawyer and The American Lawyer.

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

A: For a sheer adrenaline rush, it's hard to beat the class action that I was hired to try just six days before trial. The case had been pending for five years, but by the eve of trial my client could see that things were headed in the wrong direction. So, I got a call from an insurance company defendant on a Friday night, and jury selection began the following Thursday.

After I put down the phone, I went through a series of emotions in quick succession. First, I was excited by the challenge; then, temporarily paralyzed by the sheer magnitude of the case file. Finally, I felt liberated. With only days to get ready, I knew I could only focus on the most important aspects of the case — the very few issues that would matter to a jury. So, I chose to view the case like a juror and think about what facts would have the biggest impact on me.

It worked. With a two-lawyer SWAT team behind me — including a second-year associate — we worked around the clock. After eight days of trial, the jury took 35 minutes to return a verdict in our client's favor. That successful result confirms something I've come to learn from trying cases: 90 percent of what happens before trial doesn't affect the jury's verdict.

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

A: One of my favorite trial victories also may have been my most unexpected, given all the factors that had to play out just right to execute a novel strategy. My client, a small investment bank, faced an uphill battle as a defendant in a bet-the-company case.

When our case was set for trial, it appeared second on the court's trial docket. If the first case had

proceeded as scheduled, ours would have been bumped to a later date. Such delays are normal, but in this case it could have cost my client a decisive advantage. Up until that point, the other side had failed to depose our key expert and didn't know a crucial aspect of her trial testimony. If the case had been reset, the opposition would have been able to depose the expert before trial and erase our advantage.

To prevent the delay, over the weekend before trial I pursued the unorthodox strategy of brokering a settlement of the first case on the Monday docket. In a series of unlikely maneuvers, I convinced my client, first, of the importance of avoiding delay and second, that he should use his own money to fund a settlement of the first case. My next challenge might have been the biggest — to mediate the first case, separately convincing three different parties to settle and forgo their day in court. My client paid a total of $180,000 to get each party to walk away. It was some of the best money he ever spent.

With the first case out of the way, the judge called ours to trial. The final piece fell into place when opposing counsel announced they were ready. We did too. The trial ensued and our expert's testimony on the seminal issue took the other side by surprise. This is a fun story to tell now because our client won a take-nothing judgment and the jury validated our unprecedented strategy when it confirmed after trial that our expert's testimony had been a critical factor in its decision.

Q: What does your trial prep routine consist of?

A: The key to my trial prep is getting off the grid. I hole up somewhere outside the office — most frequently, my home — and set about mastering the body of evidence. Since I prefer to work old-school style with hard copies, this means that every tabletop, sofa and ottoman in sight (not to mention a good deal of floor space) gets covered with documents. There's a method behind the mess though: As I sort through the evidence, I identify the subset of documents truly capable of moving the needle at trial and categorize them by subject. I then take my own deposition summaries and, literally, cut up key passages and place them into the same subject category piles. In the end, all of the key documents and testimony are right at my fingertips. This method of marshaling the evidence helps me commit the critical evidence to memory and identify the cleanest way to present my client's case.

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: My message would be simple: be yourself. Being oneself enhances a lawyer's credibility. Most lawyers who haven't tried a case either don't know how to, or are afraid to, be themselves. When a lawyer tries his or her very first case, there's a temptation to imitate somebody else. That's because an inexperienced trial lawyer is nervous and defaults to presenting a stylized image of a trial lawyer. The truth is, though, that if you are pretending to be someone you aren't, jurors will recognize it — and your acting will become a barrier between yourself and the jury.

By simply being oneself — vulnerabilities and all — a lawyer gives jurors the opportunity to bond with the lawyer. Of course, it can be difficult to be genuinely comfortable in a large courtroom, speaking to a group of strangers. But what a young lawyer may not appreciate is the fact that those strangers — the jury — are equally nervous. Inexperienced lawyers may also not appreciate that their greatest power comes from being authentic. When lawyers present their most authentic selves, jurors will recognize that too. That in turn allows the jury to connect with and be protective of the inexperienced lawyer.

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

A: Gerry Spence, who is largely responsible for any wisdom in my last answer, has most impressed me.

By the year 2000, I had been trying cases for a dozen years and considered myself to be fairly good at it. But that summer, before joining Susman Godfrey, I spent some time with Gerry at his ranch in Wyoming and took away an invaluable lesson.

Gerry taught me that as a trial lawyer, your charge is to persuade others. Yet, you can't persuade someone unless you're first able to communicate with them. And you can't communicate with someone unless you're able to understand them — to step into their shoes. And here's the critical part: You can't understand someone else until you first understand — and are comfortable with — yourself. It's all about being real.

Shortly before visiting Gerry, I had lost a big jury trial in a case in which my plaintiff clients were difficult to like. That stemmed largely from abuses they had suffered in the defendant's psychiatric hospitals during their adolescence. By the time of trial, and after working with my clients for some time, I realized that I didn't like them very much. It turned out that the jury didn't either, a fact they made clear when I spoke with them after the trial.

I failed to acknowledge my clients' likeability (or lack thereof) to the jury because I was ashamed of my own feelings and somehow hoped the jury wouldn't notice or care. In retrospect, with Gerry's insight, I would have conducted my voir dire very differently and addressed my own feelings toward my clients openly during jury selection. Had I done so, I could have taken the sting out of that issue in a process over which I had control, rather than having the jury address it for the first time during deliberations.