

**The Commandments of Trial Practice and Tactics:**  
**Observations from The Bench and Caution from Counsel**

(With Apologies to the Ten Commandments)

Thou Shalt:

**MAKE THE CASE WHAT IT SHOULD BE ABOUT**

What's the core issue? Liability? Damages?  
Don't argue collateral issues.

**NOT WASTE THE COURT'S TIME**

Get to the point – the Court has a calendar of cases and you have one case.

**BE PREPARED**

Know the short and long version of the case – “cliff notes version” but prepare for detail  
Never say “It's not my case”  
Always ask yourself how is that case in a better place that you appeared?

**DEFENDANT –**

Email the Claim Professional the same day.

**PLAINTIFF & DEFENDANT –**

Do what you promised your adversary & the Court as soon as you get back to the office.  
Be the person that does what they promise, it's your reputation.  
Email the other side when you have done what you promised.  
Do it before you get sidetracked.

**BE RESPECTFUL TO THE COURT, COURT STAFF AND YOUR ADVERSARY AT ALL TIMES**

Never interrupt the Court or another attorney.  
You will have an opportunity to be heard.  
Wait your turn and take good notes.  
When you are not talking, listen and pay attention.  
You may learn something and get a different perspective.

CALL THE OTHER SIDE

Before the first substantive conference.

SUBSEQUENT CONFS - KNOW WHAT HAPPENED AT THE LAST CONF

Call the other side, discuss and at least agree on that. No surprises on either side.

IF BOTH SIDES HAVE AGREED TO DISAGREE

Be right up front on that with the Court and frame the issue for the court.

THE COURT IS THERE TO BRING BOTH SIDES TOGETHER

If there is a recommendation by the Court, report that right away.

THE UNCIVIL ADVERSARY

Dealing with the disagreeable adversary – always be civil – don't become the other idiot.

BE CONCISE IN YOUR PRESENTATION

Know when to stop talking.

THEME

What is the theme of your case?

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WRITER'S DIRECT DIAL

### 7TH COMMANDMENT

You Shall Not Bear False Witness Against Your Neighbor.

#### P.J.I. 1:22 *Falsus in Uno*

Be careful what you wish for as the Court does not define “material fact” as an “important matter;” rather than “unbelievable,” the court uses unworthy of belief.

### 8TH COMMANDMENT

Thou Shall Not Covet They Neighbor's House.

Counsel are not permitted to discuss the law in jury selection, during opening statements or closing arguments. Counsel are permitted to discuss evidence using language consistent with jury instructions, but this may be a very fine and tenuous line.

Counsel may not instruct the jury during *Voir Dire*. See 1A NY PJI3d 1:1 at 15 to 28 (2019).