

Settle Up!

Settlement Newsletter



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Adversarial Trust

We've all been through it. You come out of law school and you're loaded for bear. All you've done for three years is read outrageous cases of every kind of wrong, loss, injury and damage. Everybody is suspect. Nobody can be trusted.

After the bar exam, people start mixing it up. It's no less of a fight than being in a boxing ring. Depos, document requests, motion practice - it's all there. Get a few trials under your belt and you start feeling like a seasoned veteran.

After a few years something unexpected starts to happen. The grappling that used to be so intense becomes less so. Client billing issues start rising to the surface. Things get more streamlined.

What happened? What's made the difference? Adversarial trust. Sounds like an incongruity, but it's a reality. It's part of the way things go.

We live - and work - in an adversarial system. We fight, we challenge, we dispute. It's a big contest. And yet after a while something changes. We realize it's not worth the fight - nor the expense - to litigate every last point. It's too expensive. Sometimes the clients won't stand for it.

Once we recognize that, we suddenly realize that our perspective has changed. We find that sometimes those people who op-

posed us -- our adversaries -- begin working with us in a cooperative fashion.

It's something that we never expected straight out of law school. But we start trusting (to a limited degree, and only in some situations) our adversaries.

How does this work? It's a bit of a dance. If a client's trial budget won't withstand scorched-earth litigation, then we open up a bit of a dialogue with opposing counsel. Maybe we ask a few guarded questions about marginally important documents -- or certain witnesses - or certain testimony. Then we listen. And we listen. And listen. If the answers add up - if they make sense - then maybe we don't take that third party deposition. Maybe we don't send out the third, fourth or fifth deposition subpoena for business records. Maybe we decide to take our opponent's word on it (and maybe we don't).

It's not a new concept. Sometimes our adversaries lie to us - and sometimes they don't. Moscow and Washington have been adversaries for decades - and yet after the Cuban Missile Crisis they installed a direct hotline so they could talk to each

other (and possibly avoid potential disastrous misunderstandings). (The movie *Failsafe* with Henry Fonda and Larry Hagman shows the use of this hotline).

So how do you know when your adversary is telling the truth? That's the art of it. You don't. You make your best lawyerly guess - and then you either rely on their representations - or you don't.

*“How do you know
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is telling the truth?”*

Why does this make a difference? Because the ability to sort the truth from deception can let you know where an adversary is, what they might do, where they might go, or what they might pay. Some of your best settlement intelligence can come from the most unlikely of sources - from your own adversary. Those who recognize this early can save their clients big money, and those who don't may find themselves missing substantial opportunities.

This kind of sorting is a difficult task - but it's often worth the effort.

The foregoing article is provided for general informational purposes and should not be used in connection with any specific legal matter. Persons with legal issues or matters should consult competent legal counsel.

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