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Joshua Robbins on rethinking trial advocacy

Crowell & Moring's Joshua Robbins on why the best trial lawyers build their cases around documents instead of performances – and the one skill experience alone can teach.

SCOTUSblog co-founder Thomas C. Goldstein argued dozens of cases before the U.S. Supreme Court. But when he took the stand at his tax fraud trial in Maryland earlier this year, the jury convicted him – and at least one juror later described his testimony as a performance.

For Joshua M. Robbins, a partner in the Orange County office of Crowell & Moring LLP, the Goldstein trial illustrates a point he has built a career around: jurors come to court expecting to be pitched to, and the more a case rests on performance, the more their built-in skepticism works against it.

On the latest episode of *In the Counsel's Chair*, Robbins told host Jack Needham why trial strategy is better built around contemporaneous documents, or “witnesses who don’t forget and don’t lie and don’t have motives,” with live witnesses narrating those records and filling the gaps, rather than the other way around.

Robbins, a first-chair trial lawyer who handles high-stakes fraud litigation and investigations primarily in the health care and life science industries, traced that approach to an unconventional path. He began his career in international arbitration in Washington, D.C., a system shaped by European civil law that centers documentary evidence and offers little of the discovery U.S. litigators take for granted.

He then spent about seven years as a federal prosecutor in Los Angeles and Orange County, where



Courtesy photo

he led the investigation and prosecution of the largest insurance fraud case in California history, involving more than \$900 million in claims for spinal treatment tainted by kickbacks. He then returned to private practice. Working in systems where cases regularly went to trial, he said, taught him to prepare for that outcome from the start and to make more with less.

The conversation turned to the verdict in the *Musk v. Altman* trial and its reliance on years of emails and text messages. Robbins said

that is common in commercial disputes, which often come down to who knew or intended what, and when — and jurors will measure self-interested testimony against the written record. As he put it, “you really got to bring the receipts to trial.”

The harder task, he said, is making document-heavy cases compelling: distilling business disputes into moral concepts jurors intuitively grasp — promises, misrepresentation, trust — and having the discipline to cut. A handful of key exhibits, often five

or six, matter more than hundreds, and Robbins cited a Miles Davis line about the notes you don’t play to make the point that knowing what to leave out is as important as knowing what to put in.

Robbins, who teaches trial advocacy at UC Irvine School of Law, also weighed in on whether trial lawyers are born or made — “I think of myself as a lifelong student of this field,” he said — and the hardest skill to teach a young attorney: listening to what is actually happening in the courtroom and responding to it, rather than clinging to a script.

Beyond the podcast episode, Robbins told the *Daily Journal* that technology is reshaping his corner of the field. Fraud cases typically turn on intent, and the growing use of AI in areas such as health care billing will force courts and litigants to rethink how responsibility attaches when a system, rather than a person, makes the decisions. He also pointed to a two-sided danger from deepfake technology: fabricated evidence finding its way into court, and jurors losing trust in genuine documents and video. His advice for young advocates, meanwhile, was simpler — slow down, say less and put clarity above almost everything else.

You can watch or listen to *In the Counsel's Chair* on the *Daily Journal* website, or subscribe wherever you get your podcasts and never miss an episode.

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