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Judge is texting on his iPhone during trial. Do I say something?

Here's a very sticky situation. I'm at trial and I'm in the middle of questioning a witness, and I see the judge on the bench going ahead and texting somebody on his phone. Do I tell the judge, "Excuse me, Judge, what are you doing? Pay attention to what's going on here in the courtroom?" Or do I simply leave it alone and let it go. You want to know the answer? Come join me for a moment as I share with you some great information. Hi. I'm Gerry Oginski. I'm a New York Medical Malpractice and Personal Injury attorney, practicing law here in the State of New York.

This is a very politically sensitive topic. It's something that could affect how the jury perceives me and how the jury perceives the judge. You know at trial, during a malpractice trial or an accident trial, or wrongful death, the judge controls what happens in the courtroom. Now if the judge isn't paying attention to my witness and the jury sees this, they may think that this witness' testimony is not important. That could be very detrimental to me and my case. Now I have to be very careful. I have to tread very gently in drawing the judge's attention the fact that he's not paying attention.

Can I say something to him in front of the jury that says, "Hey Judge, by the way, we're over here. I'm asking questions. The witness is giving evidence, giving testimony. Hello? Can you pay attention?" I can't do that. I can't embarrass the judge in front of the jury. It's not appropriate, professionally, and it's not appropriate from a political standpoint within the courtroom? What can I do instead? If I notice that the judge isn't paying attention, that he's busy with his phone, he's playing on Facebook or he's doing something else that's diverting his attention from what's happening during the course of trial, I will need to speak to the judge.

In all likelihood, I'm going to do it privately. Even when I do it privately, with my adversary present, I have to tread very gently. I have to say, "Judge, I appreciate the fact that you have other things to deal with, but I noticed during the course of questioning my witness, that you were busy on your phone for a long time, and that gives the jury impression or the perception that this witness' testimony and his evidence clearly is not important and not to paid attention to. I would appreciate from my standpoint if you'd limit the amount of time that you're spending on your phone, whether it's texting or doing something else."

Now I have to see what the judge's reaction is. He may be totally apologetic and say, "You're absolutely right." On the other hand, he may deny that he was doing it, and now I have to deal with him. Now it's as if I've challenged the judge directly and now there's a possibility of recrimination where the judge is going to hold things against me and my client, where he rules against me solely because I'm trying to nit pick about things that I see going on in the courtroom. That's why I have to be pretty careful and tread very gently if I bring that to the judge's attention.

First I'm going to try and do it in a very gentle professional way and apologize. Say, "Judge, I'm sorry to have to ask you this, but I noticed during the course of trial you were on your phone for quite a while." Then I have to tell him how that affects the jury. Why have I shared this great information with you? I share it with you just to give you a sense of what can happen during the course of a trial here in the State of New York. I realize you're watching this because you have questions or concerns about your own particular matter.

If your matter did happen here in New York and you're thinking about bringing a law suit and you've got legal questions, what I encourage you to do is pick up the phone and call me. That's why I'm here. This is what I do every single day, and I'd love to talk to you. You can reach me at 516-487-8207 or by e-mail at Gerry@Oginski-law.com. That's it for today's video. I'm Gerry Oginski. Have a fantastic day.