

## Trial Pros: Mayer Brown's Mark Ryan

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Mark Ryan is a partner in Mayer Brown LLP's Washington, D.C., office and the head of the firm's global antitrust and competition group. Ryan has experience representing clients before the Federal Trade Commission and the Antitrust Division of the Department of Justice in connection with mergers and acquisitions. He recently rejoined Mayer Brown after serving as the first-ever director of litigation for the Justice Department's Antitrust Division. In that position, Ryan was responsible for overseeing and strengthening the division's litigation enforcement efforts. He worked regularly with staff lawyers and economists, as well as the senior leadership of the division, to identify transactions and conduct that violated U.S. antitrust law and to assemble investigative and litigation teams. He also participated in litigation on behalf of the United States.



Mark Ryan

Ryan joined the Department of Justice from Mayer Brown, where he held several key positions, including as a firmwide litigation practice leader and as partner-in-charge of the Washington D.C. office. In over 25 years of private practice he has appeared in federal and state courts across the nation on behalf of large multinational corporations, small companies and individuals.

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

A: The e-books price-fixing case brought by the United States in the Southern District of New York was a terrific experience. It included great lawyers all-around, strongly held views on both sides, a hard working and accomplished judge (Denise Cote), a courtroom filled each day with press and spectators, and for our team the special privilege of representing the United States. For a few of the government lawyers it was their first opportunity to participate in a trial and so there was the added fun of helping introduce young lawyers to what it is to be a trial lawyer. The teamwork and professionalism on our side, in court and behind the scenes, was exemplary. The witnesses were smart and often passionate and the experts were among the most renowned economists in the country. That we won contributes no doubt to good memories (and appeals are pending so we will see) but I suspect it was exhilarating for the lawyers on both sides. It was, for me, a career highlight.

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

A: Trials are about people and people make mistakes. An unexpected, but not amusing mistake, by a judge stands out in my mind. We were representing a man who had secured a retrial on a conviction for which he had already served two years and had at least 18 more to go. At a hearing to set bail pending

the retrial, the judge said that our client would be released without bail, a big deal to a guy with little money and to his wife who was in the courtroom. He was taken to a small holding area to be unshackled and set free when the judge's clerk approached me and said that the judge had misspoken and that there would be bail. So I had to go back to the holding area, deliver the news to our client and then watch him handcuffed again and taken back before the judge where bail was set. The judge was apologetic but firm. Ultimately, based largely on new evidence we developed and on the first day of trial, our client was released pursuant to an agreement with the state. But the bail mix-up and walking back into court with our client was an emotional and memorable experience.

**Q: What does your trial prep routine consist of?**

A: Especially during trials that last for more than a few days, it is important to try to stay rested and relaxed. It is also important to find time to focus without distraction on what will be happening next at trial and how it fits with the overall trial themes. I tend to arrive quite early in the office and to take a couple of hours reviewing the exhibits and other evidence likely to be used that day and maybe have one-on-one discussions with colleagues about how we expect things to go (and to address any surprises that may have developed overnight). Getting to court in plenty of time to unpack and settle in is important to me and, of course, making sure that I have remembered my examination outlines and witness books for any witnesses I will be handling. I very much enjoy the opportunity to chat with opposing counsel each morning. Litigation is, after all, a shared experience and almost always one's respect for opposing counsel grows during a trial. At the end of the day, all members of the team meet briefly to review good/not so good developments in court and, most important, to ask what did we learn or sense about the judge's view of the case, the jury's level of interest in different arguments and how is the other side's case unfolding. Paying attention to and learning from all the participants during a trial is critical.

**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: Law firm litigators may spend years working on a case before it gets to trial and the overwhelming majority of cases end up being settled or resolved on motion. So when a trial does happen, take a moment each day to appreciate the opportunity and to let a little enjoyment in along with the pressure and stress of standing up in court.

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

A: Larry Robbins is a litigator in D.C. who, in addition to a career filled with trial work, has argued many cases in the U.S. Supreme Court, a rare combination. Larry would often say (and likely still does but I haven't seen him recently) that trial work is really, really hard. It certainly is for me and it is good to hear that it is for a really, really smart guy like Larry. In court, Larry doesn't preach or argue; he teaches and explains. And that is when lawyers are at their most persuasive.

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