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PREPARATION AND CONDUCT OF JURY TRIALS

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As the rights of contending parties are presumed established by the trial, a great responsibility rests upon court and counsel, lest by mistake or oversight in law or fact, an erroneous conclusion may be reached. If a trial is to terminate in justice between the parties, it must be conducted carefully. The cause must be tried fully and above all, fairly and honestly. Counsel must be willing and able to concentrate their thought on the controversy, having in mind the securing of a just result.

The most certain test of the honesty of an attorney is furnished by the manner in which he conducts a jury trial. If the dishonest practitioner avails himself of opportunity of taking unfair advantage, he will soon bear the stigma and stain of his disreputable practice. No counsel has the right to enter upon a trial unless he is fully conversant with all the available facts of his case. He owes to the court and to his client the duty of examining the law in order that he may, in his pleadings give proper expression to his asserted legal claims. He must carefully examine and construe the pleadings of his adversary and ascertain the real issue upon which the case is to be tried. The ease or difficulty with which a trial is conducted depends upon the degree of his familiarity with the facts upon which his cause rests and the law applicable thereto.

Many a case has been decided erroneously through the failure of counsel to put forth the effort necessary to the proper preparation and presentation thereof. An attorney ought never enter upon a trial without being fortified with a trial brief covering each and every phase of the case, accompanying it with an index, so that citation upon the particular point before the court may be readily presented. In preparing the brief upon the law two things must be borne in mind. First, the necessity of examining the statutes, and Secondly, becoming familiar with the decisions of the state in which the action is being tried. Too often briefs are prepared and positions assumed in reliance upon foreign authority in relation to questions upon which our own court may have ruled directly contrary.
With a trial brief properly prepared, no greater aid is given a lawyer in the trial of his cause, than by the use of the plan of making memoranda reminding him of the facts, proof of which is necessary either in the establishment of plaintiff's cause of action, or in meeting or proving a defense. It should be accompanied by the names of the witnesses by whom it is expected such proof is to be furnished. Under the name of each may be the memoranda of what is expected to be established by his testimony; and as each witness is examined upon the various matters within his knowledge, and has left the stand, it will not be necessary to resort to the annoying practice of recalling him for further proof. When you have thus concluded their examination it is with an assurance that nothing has been overlooked in establishing the cause of action or defense.

With this preparation the attorney may safely enter upon the trial. The first duty then confronting him is the selection of a jury. The qualification of a juror is many times seriously affected by reason of his temperament, occupation and experience, or by having had litigation of like character. But unless there is some good reason to suspect such disqualification, there is great danger in resorting to too close and rigid an examination as to qualifications. Such examination, if not properly conducted, may convey to the juror the impression that counsel has doubt as to his fairness. The man who feels a confidence in his case has little fear of submitting it to twelve men who take their oath to decide it fairly and justly.

One of the most important duties to be performed by counsel is the presentation of his cause in the opening statement, before the introduction of proof. While some counsel for the defendant prefer to await the close of the plaintiff's case before making statement in behalf of their client, it is a method that ought rarely be pursued, as nothing will so tend to weaken the claims of the plaintiff as for defendant's counsel to immediately follow with a statement of that which he expects to prove. It serves the purpose of impressing upon the jury the facts as contended for by defendant, enabling them to more easily reconcile the plaintiff's proofs therewith.

In the examination of witnesses the inquiry ought always be confined to the issue involved, questions being framed so that they may be easily understood without suggesting the answers. If a witness manifests nervousness on the stand, inquiry ought be
made as to the matters of least importance, until he has had op-
portunity to recover his composure, and then proceed by clear
and direct inquiry. If the witness is honest but dull, great care
ought be exercised to frame the questions in simplest form. If
counsel has relied upon a statement made in advance of the trial,
which a witness seeks to contradict on the stand, it is easily dis-
covered whether this is being done dishonestly or in an honest
endeavor to correct a mistake. If counsel be taken by surprise,
only a showing made, the court will usually grant him the priv-
gele of asking a leading and direct question; especially so if it
appear that the witness is dishonest, hostile or adverse. When
this is done it will usually destroy the effect of an otherwise
detrimental answer, if shown to be in conflict with statements
previously made, and the adverse testimony thus given is usually
rendered harmless. What would thus appear to be a cross ex-
maination of your own witness is permitted as an exception to
the rule, it being deemed necessary in the interest of justice, for
if this were not allowed, a designing or untruthful witness might
fraudulently defeat a meritorious action or defense.

The privilege and duty of cross examining a witness is one
which must ever and always be exercised with great care. Many
cases have been lost by cross examination, which ought never be
resorted to unless there is a fixed and definite purpose in so doing.
Counsel should have in mind the point which is sought to be
established and the testimony to be elicited.

In the course of the trial the preservation of the record must
not be overlooked. Little advantage is gained in interposing a
demurrer on the grounds of the insufficiency of the complaint,
if under the facts it is susceptible of amendment. The objection
of insufficiency may be taken advantage of at any time through-
out the course of the litigation, unless such insufficiency in plead-
ing has been supplied by proof offered on the trial, and, upon
motion, the pleading amended to conform to the proof. Knowing
when to object and when not to, is one of the real tests of tact
of a trial lawyer. Frequent unnecessary and unavailing objec-
tions are irritating and annoying to court, counsel, jury and wit-
tesses. Interposing improper objections which of necessity must
be overruled, has a tendency to create the impression that ob-
jecting counsel does not know the law, which impression once
gained, must result in loss of standing before the court and jury.
Care should be exercised to avoid framing a question that is ob-
jectionable on the ground of calling for a conclusion and invading the province of the jury. The whole proof so far as possible should be introduced in making the case, that there be necessity for little or no rebuttal.

The impeachment of the reputation of witnesses for truth and veracity is ordinarily of doubtful service. Men cannot be impeached by their friends, and ordinarily it can be shown that witnesses willing to testify that the general reputation for truth and veracity is bad, are of a type whose enmity is such that it destroys the force of their testimony.

When, in the course of the trial a general or indefinite objection is interposed, and an inquiry is made by counsel propounding the question as to the real ground of the objection, it becomes the imperative duty of objecting counsel to advise him. It is the theory of the law that the contentions made shall be brought to the attention of the court so that upon all the facts an intelligent and proper ruling may be made.

In submitting the cause, counsel must determine for themselves whether a general or special verdict should be requested. It is not in every case that a special verdict is of advantage, but in many instances it may prove unsatisfactory. It has its place where specific findings of fact by the jury become necessary, and where, in the opinion of counsel requesting it, the issues of fact will thereby be more clearly determined.

The court is entitled to the assistance of counsel in the preparation of instructions in advance, so that ample opportunity may be given for their consideration, before being called upon to instruct the jury. Each instruction requested ought be accompanied by a citation of authority, where the correctness thereof has been approved by the court.

The argument of the cause should be clear and concise, and an honest endeavor made to reconcile the statements of each and every witness with a willingness and desire to tell the truth. Improper argument has ever met the condemnation of the court, and a good case may be lost by the creation of an unconscious prejudice in the minds of the jury where the propriety of argument has been violated. Upon the rendition of the verdict care should be exercised in the preservation of the record by the making of appropriate motions in logical and consecutive order. Good practice requires that when the orders are made and filed, copies
be preserved, bearing the indorsement of the clerk with the date of filing, that in case of loss of the originals, no question can arise as to their having been filed within the proper time.

It is always well for the counsel who tried the case to give his close and personal attention to the completion of the record, and in the event of appeal, give the same attention, as his personal recollection of what transpired upon the trial aids in reference to the record and in the presentation of the questions involved.

No lawyer has a right to enter upon the trial of a cause without having devoted his time and attention to those things essential to the preservation of his client's rights, and until he has done so, he has not fulfilled the obligations of his oath as an attorney and officer of the court. The penalty of success is ever severe. It is only by industry and fidelity to the interests of his clients and honesty with the courts that the results sought can be attained and justice done between litigants.