

Bumps in the Road

Some Challenges All Lawyers Face

The Road

Should You Be on It?

The Profession

- First Major Challenge
- Public Opinion
- Integrity, Honesty, Professional Responsibility

Work Within Law Firm

- Your First Clients
- Reliable, Thorough, Dependable

The Clients

- Expectations and Requirements
- “Trial Time”
- Requests for Advice
- Insurers and Insureds
- Caution as to Some Clients

Serving as Local Counsel

- National Counsel
- Define the Roles
- Payment for Services

We Are Advocates

Not “Your” Case

Problem Adversary

- Bully, “True Believer”, Liar
- Recognize, Prepare, Alert Client
- Maintain Professionalism
- Depositions
- Email v Regular Mail
- “Prove” Discovery Responses

Competent and Trustworthy Adversary

- Majority of Lawyers
- Learning Experience
- Upgrades The Profession
- **REMEMBER:** It's Not Your Case

Court Staff

- Get to Know Them ASAP
- WILL Need a Favor
- Make Life Easier for THEM
- Procedural/Logistical Problems Can Be Fatal

Trial Judge

- Build Credibility at Every Opportunity
- Know the Ground Rules
 - Voir Dire
 - Openings
 - Witness Examination
 - Time Limits
 - Objections
 - Court day
 - Motions, Issues, Filings

Know What Is Expected of You

- Make Judge's Job Easy
- Make Court Staff's Job Easy
- Pretrial Visit to the Court
- **Avoid Confusion in Front of the Jury**

Pre-Trial Process

- Problems Related to Pre-Trial Disclosures
- Penalties for Non-Compliance
- What to Do?
 - Advise Client ASAP
 - Seek Immediate Remedy
 - Devise Counter-Measures

Surprises At Trial

- New Theory, Witness, Document
- Anticipate Occurrence
- Anticipate Likely Result
- Have Counter-Measures Ready

Conduct/Demeanor in Response to Surprise

- Do Not:
 - Over-React
 - Get Flustered
 - Lose Control
- Deal With It and Move On
 - Try to Show Bias/Unfairness
- REMEMBER:
 - Jury Wants the Truth
 - Does Not Care About Surprise

Conduct/Demeanor Generally

- ALWAYS Polite and Courteous to All
- Silent Advocacy
- Do Not Lose Control of the Courtroom
- Do Not Interact with Jurors
- End Zone Performance:
 - “ACT Like You Have Been There Before.”

Anticipate the Problems

- Adversarial Process
- Going to Be Bad Evidence
- Have a Plan in Place
 - Do Not Ignore
 - Address
 - Move On

Problems in the Courtroom

- The Fix Is In
 - Judge
 - Jury
 - Clerk
- Size, Shape and Slope of Playing Field
- Make a Record
- Manage the Problem

Opening Statement

- Most Difficult Assignment
 - 4th Grade Class
 - “No Souls Saved After 15/20 Minutes.”
- Plan the Transition
- Golden Moment
- Plaintiff’s Dream Defense Opening
 - No Story
 - Rote
 - No Commitment
 - Over-Reaching

Plaintiff's Case

- DO NOT WIN CASES IN CROSS
- Can Do Things to Cause Loss
- Neutralize, Create Doubt
- Set Up Defense Case
 - WIN CASES IN DIRECT

Evidence Rules

- Know Them
- Identify, Predict Issues for Every Examination
- Local Issues
- Anticipate Objections
 - What Would You Do?

Objections

- Make Them
 - Know the Judge's Expectation
- Stand and Assert the Objection
 - Do Not Act Unsure
- Too Many?
 - Depends on Circumstances

Cross Examination

- You Are the Show
- Do Not Become the Jerk
- Fact, Independent, Lay Witnesses
- **MOST IMPORTANT:**
 - Identify Goals Exactly and Precisely
 - “Points to Establish”
 - When Done: **SIT DOWN**
- Hostile Witnesses

License and Permission

- Remember the Profession
- License to Make the Attack?
- Permission from the Jury?
- Credibility
- Need and Necessity
- Courtroom Control

Objections to Form

- Why?
- When Appropriate?
- Video Depositions

Orders on Motions In Limine

- Know and Understand
- **If You Think It's Close, You Are Right, It Is**
- Violations
- Offer of Proof

Opening the Door

- Cross and Direct Examination
- What Would You Do?
- Potentially Devastating Consequences
- Co-Defendant Examinations

Cross of Experts

- Biggest Challenge
- Prepare, Prepare, Prepare Some More
- “Balance”
- Citation/Reference Every Question
- DO NOT Assume Cooperation
- Peripheral Cross Issues
- Structure of Examination
 - “Directional” Comments

Use Inexperience

- Professional Witness Antics/Tactics
- Organized, Appropriate, Professional
- Let Expert Show True Colors

Expert Will Not Answer

When Looking for a Yes or No:

“Thank you for that...”

“Not my question...”

“Please read back...”

“Was that a yes or a no?”

“Try my question..”

“Can you answer yes or no?”

“Must be some confusion, my question was..”

Expert Will Not Answer

- Jury Perspective
- Introductory Comments
- Precision in Questioning
 - As to Question
 - As to Why Asking
 - As to Desired Response
- Lavin Chart
- Court Help Is Last Option

Direct Examinations

- WIN THE CASE IN DIRECT
- Let the Witness Testify
- Control With Preparation
- Control With Position in Courtroom

When Witnesses Go Bad

- Plan, Prepare, Practice, Anticipate
- The Witness Goes Off Wire:
 - Fact Witnesses
 - Experts
 - Clients
- End the Exam
 - Damage Control, Counter-Measures

Bad Examination

- Failed Cross, Over-Reach on Direct
- Identify, Accept, Move On
- Do Not Over-React
- Consider Raising in Closing

Objections to Direct Testimony

Call **ONLY** Necessary Witnesses

- Define/Articulate Specific Points
 - Do Not Over-Reach
 - Avoid Issues Best Addressed by Others
- Anticipate, Avoid, Counter-Measures
- Move On
- Offer of Proof

Exhibits and Technology

- Exhibits Ready to Be Used
- Ready for Display
- **Make Certain Jury Can See**
- Test Technology and Have Back Up

Conclusion

- *Respect the Profession and the Process*
- *Prepare and Anticipate*
- *Be Yourself*
- *Enjoy the Ride*