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## PERSPECTIVE

## Hard work, sometimes late into the night, is what makes a trial lawyer a good one

By Michael H. Brody

I have nowhere near the double- and even triple-digit number of trials I know many attorneys have, so I do not profess to be an expert by any means. But as I toil away at all hours of the morning and night preparing for trial (a trial that should be long over by the time you read this), it strikes me that the same lessons regarding preparation and hard work that my father taught me apply as much today, as ever. Although it may be true that trial lawyers have certain skills that make us more comfortable in a courtroom than say in an operating room, it is the preparation and hard work that allow us to excel – not some unseen gift.

Presenting your case at trial is like putting on a play. It is a performance calculated to influence the trier of fact to see things from your perspective. Whether your trier of fact is a judge or a jury, your case needs to be presented in an organized, coherent and easily digestible manner so that the trier of fact can follow along and, hopefully, see things from your perspective, rather than your adversary's. To do that, the attorney must know the file inside and out. The attorney must also know their client, including

the client's goals and what they hope to achieve by way of trial. Lastly, know your judge. Know what the judge expects of you and know how he or she wants it presented.

In addition to the Local Rules, judges often have their own set of courtroom-specific rules that provide additional guidance, including special deadlines and procedural requirements. If the judge has gone through the trouble of preparing special rules, find them and read them. The judge will certainly expect the attorneys to know and follow these rules. I have witnessed judges admonish attorneys for being under-prepared and it is not something for which anyone wants to be on the receiving end. There is simply no substitute for preparation and hard work. No amount of charm or wit or other ego-driven talents we trial lawyers claim to possess will do the trick. That may sound cliché, but it is a lesson that I am thankful to have been taught by my father.

The other piece of advice I would offer is to listen. I mean, really listen. This is something my father tried to teach me growing up, but that took me far too long to actually learn. Most of the judges I have worked with are friendly, collegial and helpful. When the judge speaks, there is a reason.

And when the judge speaks during trial in front of a jury, rest assured that the jurors are hanging on every word.

Jurors are listening to what the judge is saying and watching to see how the attorneys on both sides of the aisle respond. If you are not listening to the judge and responding appropriately, the jurors are quickly going to begin to wonder whether the attorney is trying to hide something and may draw unfavorable conclusions about you and your client.

Even after the jury returns with a verdict, the time for listening is not over. Spend as much time as possible speaking with and, especially, listening to as many jurors as possible after the trial. I have found that often jurors are more than happy to discuss the case with the attorneys and can provide valuable insight into the verdict, the reasons the juror voted the way they did, as well as provide their opinions on the attorneys. In addition to securing potentially relevant information for an appeal, the jurors are a wealth of information about your own performance if you are willing to listen.

As a practicing trial attorney, I am surrounded every day by highly intelligent, thoughtful and hard-working attorneys. I can say with

all sincerity that I am eminently grateful for the opportunity to work with and against such attorneys. But being a trial attorney does not mean you are in some exclusive club reserved only for certain persons who possess or, better, believe they possess, some "God-given" skill. If there are any requirements at all, they are the willingness to listen carefully – to your client, to your opposing counsel, and your judge – and the willingness to toil away at all hours of the morning and night surrounded by a mountain of papers.

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