A Trial Lawyer's Perspective on Presenting the Litigated Real Property Case

*by Daniel G. Beyer**

The circuit judge has denied your motion under MCR 2.116(C)(8), (C)(9), or (C)(10). Someone's client is "unreasonable" and there are fact issues that must be resolved. Even though trials in real estate matters are rare, *you* are going to trial. Now you have to present to the judge or jury the specific language of the contract or purchase agreement that is in question. You have to litigate the issue of whether someone is a bona fide purchaser, show facts regarding damages or fair evaluation of the property, or something else.

If the practitioner does not swim in these waters frequently, a few pointers or tidbits may be of assistance. My comments will necessarily carry personal biases or tendencies. I do not pretend to be right or wrong on all of them. If this article lapses into anecdotes, I will not apologize because anecdotes are the gist of instruction. These comments will focus on state court actions in the Circuit Court.

Judge or Jury?

Counsel may not control whether the matter is tried before a judge or jury, either in its entirety or as selected counts, or whether there are legal issues that will be resolved by the court.

A plaintiff may, but is not required to, demand a jury trial with the filing of the complaint. Prevailing practice dictates this, but the court rule allows a party to demand a jury within 21 days after the filing of the answer or a timely reply.[1] This means either counsel can consider the judge to whom the matter has been assigned and decide whether a judge or jury determination is the best option. The plaintiff can make the decision when filing and the defense can make the same determination within the 21-day window. Maybe your initial decision will not change, but you have the opportunity to revisit your decision. A party who fails to demand or pay the jury fee as required waives trial by jury.[2] This creates opportunities for strategy because if one party wants to waive a jury, that party may be able to dictate the outcome, depending on which party has demanded a jury or paid the fee. For example, a party that has demanded a jury and paid the fee may be able to waive a jury if the opposing side has neither demanded a jury nor paid the fee.

Use of Depositions at Trial

Trial lawyers appreciate that one of the biggest headaches, particularly in jury trials, is the stress of getting witnesses, including experts, into the courthouse to give testimony. Depending on the circumstances (bench trial/jury trial) or significance of the testimony, consider depositions as part of your trial presentation during the discovery process. These are not complicated concepts. These are issues of mindset.

The court rules outline the procedures for the conduct of depositions[3] and the use of depositions in court proceedings, i.e., trial.[4] When taking a deposition during "discovery," consider how the deposition may be admissible at trial. This may dictate whether a particular deposition is used actually for discovery or is in effect an examination of a potentially unprepared witness during the

1 MCR 2.508(B)(1).

2 MCR 2.508(D).

3 MCR 2.306.

4 MCR 2.308.

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"discovery" phase whose testimony may be used as part of the plaintiff's or defendant's case in chief at trial.

If a witness is deemed an expert, his or her deposition is admissible at trial as substantive evidence. A witness is an expert if the court determines that the person possesses scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence or to determine a fact in issue.[5] A witness qualifies as an expert by knowledge, skill, experience, training, or education and may testify in the form of an opinion.[6] The court must make the determination that the person is an expert. Persons with specialized knowledge include appraisers, title agents, brokers, surveyors, engineers, environmental technicians, builders, accountants, construction site managers, building inspectors, and others who have expertise and knowledge beyond the ability of laymen. Consider qualifying the witness as an expert at the deposition so the record made at the deposition will establish this without the necessity of bringing the person to trial. If the deposition is not "going your way," do not seek to qualify him or her, thereby putting the onus on the opposition to bring him or her to court, with the associated costs. Once the witness is established as an expert, the deposition may be read into the record or used at trial as an exception to the hearsay rule if the witness is not a party.[7]

The testimony of adverse parties may be used at trial. The court rules allow depositions or parts thereof to be admissible only as provided in the Michigan Rules of Evidence.[8] This means that the deposition of an opposing party or "party opponent" is admissible if proposed as evidence by the opposing party as an admission by a party opponent.[9] We learned in law school that admissions are not hearsay. Depositions of the adverse party are opportunities for cross examination that may be read into the record at trial. I have found it effective to have the adverse party actually take the witness stand at trial and the two of us will read the questions and answers given at the deposition.

5 MRE 702.

6 *Id.*

7 MRE 803(18).

8 MCR 2.308(A).

9 MRE 801(d)(2).

Depositions are admissible at trial if the witness is unavailable.[10] Deposition testimony of out of state witnesses is generally admissible at trial.[11] The rule allows for use of depositions of persons more than 100 miles away from the place of trial.[12] Only if the witness' absence from the trial was "procured" by the party offering the deposition is the deposition not admissible at trial.

Therefore, unless there is a protective order limiting the deposition for discovery purposes only,[13] a deposition of an out of state witness or a witness more than 100 miles away from the trial site should be considered a "for keeps" deposition and any admissible testimony in the deposition may be considered by the finder of fact.

A word about "discovery only" depositions: When the current court rules came into effect in 1985, the trial judge was given authority to issue an order that a deposition shall be taken only for the purpose of discovery and be admissible only for the purpose of impeachment.[14] Cost issues were addressed that will not be discussed in detail here; further guidance is in the court rule. With respect to expert opinions, there is a provision that gives the court discretion to place the cost of obtaining the opinions on the party seeking discovery. This could presumably include airfare, the expert's fee in testifying, and even the attorney fee for the opposing party "sitting through" the deposition he or she would otherwise not be attending.[15] The court rule contemplates a stipulation or order of the court for the taking of a "discovery only" deposition. A deposition that is noticed for discovery only, and not objected to before or at the time of its taking, is considered taken for discovery purposes even with the absence of an order.[16]

10 MRE 804.

11 MRE 804(b)(5).

12 The Rule was amended in 1989.

13 MCR 2.302(C)(7).

14 *Id.*

15 MCR 2.302(B)(4)(c)(ii).

16 *Petto v The Raymond Corp*, 171 Mich App 688; 431 NW2d 44 (1988). However, on April 3, 2013, the Michigan Supreme Court issued an order with proposed amendments to MCR 2.302. In particular, pursuant to proposed MCR 2.302(B)(4)(a)(ii), a discovery only deposition may be taken only upon a stipulation or order that must specify the purposes of the deposition and provide for the allocation of the fees and expenses attributable to the deposition. This proposed amend-

When noticing a deposition, it is important to also include a *duces tecum* notice or subpoena that identifies particular things the witness should bring to the deposition.[17]

It is worth considering noticing a deposition for videotape.[18] Considerations include the timing of the deposition, whether the deposition is being noticed because of the person's unavailability or lack of cooperation in appearing for a set trial date, and the "appeal" of the witness and the subject matter. Do not assume that because a witness is "cooperative" but cannot appear for trial, the deposition should be videotaped. How long will the direct examination be? How long will the cross examination be? Consider how the deposition will be presented (all at one time or in breaks), and the appearance of the witness. Is getting a person from your office to read the deposition from the witness stand a better presentation? Do you want to read all questions yourself, including the questions from adverse counsel? A videotape deposition that will take three or four or more hours to play is essentially going to take the whole trial day. It is difficult for jurors to watch a talking head for three or four hours, even with breaks. Generally, 40 pages of transcript is equivalent to about one hour of testimony. That figure declines if the deposition is read in.

Objections during depositions are frequent, and counsel's behavior during depositions is the subject of many articles, ethical considerations, and sanctions for inappropriate conduct when things get ugly. It would be prudent to review the specifics associated with objections in depositions.[19] Objections are limited to objections that would be otherwise waived, such as the qualifications of the person before whom the deposition is taken and errors or irregularities occurring at the deposition, such as the form of questions, or oath or affirmation. All other objections are not waived, but are frequently made in practice.[20] Objections must be made concisely in a civil and non-suggestive manner.[21]

Impact of Case Evaluation

Case evaluation is essentially mandatory in all Circuit Court civil actions. It may not be an appropriate or cost effective exercise depending on the circumstances. This is particularly true where equitable relief is sought and case evaluators cannot fashion a monetary remedy. Nonetheless, most Circuit Courts will routinely churn out scheduling orders that place the matter into case evaluation. Parties objecting to case evaluation must do so within 14 days after the notice of the order assigning the action to case evaluation.[22] This means that an objection to case evaluation must be made early, and many judges are reluctant to agree (often because these motions do not get filed frequently) or may consider case evaluation to be a "good thing."

The strategies of preparing case evaluation statements and presentation of case evaluation will not be discussed here, nor will the strategies and effectiveness of mediation be discussed.[23] If case evaluation is non-unanimous, an offer to stipulate to entry of judgment should be considered to impose sanctions.[24] This rule has fallen into disuse and has drifted off most attorneys' radar because the cost sanctions of this rule only come into play if there is a non-unanimous case evaluation.[25]

Bifurcation, Consolidation, and Other Housekeeping

Factors such as parties, issues (legal versus equitable), and other aspects may call for the consolidation or bifurcation of trials.[26] This is especially true where the liability aspect of the trial is relatively short and uncomplicated but once a ruling is made, the damages issue may be settled or resolved without the necessity of further litigation. This would also include legal and equitable issues. A factual resolution of one issue might result in the parties being able to resolve the entire matter without a trial of all the issues in the same proceeding. The trial judge may well be receptive to a shorter trial that might lead to settlement without the need for another protracted proceeding to resolve all remaining contested issues.

ment would presumably overrule *Petto*.

17 MCR 2.306(B).

18 MCR 2.315.

19 MCR 2.306(C)(4).

20 MCR 2.308(C)(2), 2.308(C)(3).

21 MCR 2.306(C)(4)(b).

22 MCR 2.403(C).

23 MCR 2.411.

24 MCR 2.405.

25 MCR 2.405(E).

26 MCR 2.505.

Consideration and thought should be given to the coordination and presentation of exhibits and records. Judges want parties to stipulate to the use and admissibility of records. Photocopies are acceptable in almost all cases. Forgery cases and cases where the validity of the documents themselves is an issue are exceptions. Be cognizant of privileged or other confidential material that should be eliminated or redacted from records that are presented to the judge or jury as finders of fact. These matters should be completed ahead of time. In my trial experience, a records custodian has been called exactly once to verify the genuineness of records.

Jury Selection

Most courts will allow access to jury questionnaires. Call the clerk of the court or the judge's staff a week or so before the trial date and find out what the procedure is to review the questionnaires. All potential jurors are required to fill out a questionnaire that provides some basic background. In the courtroom you may recognize names of persons who become potential jurors because the questionnaires have been reviewed.[27] Questionnaires will provide information that will be known only to you (if the other side has not done this) because you know something about that juror without having the potential juror state this information in open court for the other side to hear. You may learn something embarrassing or helpful about a juror that you would not want to ask about and expose in open court. You may learn of a basis to exclude the juror without raising a sensitive issue or question.

Don't be shy about "getting technical." Ask jurors if they are familiar with the issues and concepts that will be tried. Ask jurors if they know what title insurance policy is. Ask jurors if they know what a liquidated damages clause is. Depending on the "flow" of the voir dire questioning, you can do some explaining of these issues to determine whether the prospective juror is familiar with this concept. Even if the juror is unable to respond, or is not even selected, this provides an opportunity for the jurors who will decide the case (and those jurors in the "peanut gallery" who have not yet been called to go in the box during the selection process) to appreciate your knowledge and clarity of the subject matter.

The voir dire process should not be taken lightly. It is a very important component of the case and gives the potential jurors their first opportunity to meet you and your client and appreciate your role as advocate for your client. An effective use of the time the judge will allow for this process is invaluable.

Commentators have written articles about the psychology and strategy of juror selection; this article does not attempt to go into detail on those points. The court rules are relatively terse but not specific. Prospective jurors may be selected by any "fair and impartial method directed by the court or agreed to by the parties."[28] The court may conduct the examination of prospective jurors or may permit the attorneys to do so.[29] Jurors are generally not as comfortable as attorneys speaking in public. Still, it is best to try to ask open-ended questions to get jurors to talk rather than to elicit "yes" or "no" answers that would appear to be self-evident in the group dynamic of the voir dire process. Address potential jurors by name. The names of potential jurors are listed; as jurors are added and excluded from the box, you have to remember the names and write them down simultaneously, but it can be done. Jurors are people too, and don't want to be addressed as numbers. Even if you mispronounce someone's name, inject a bit of humor into the circumstances. Jurors appreciate humility.

Changes in the Involvement of Jurors

Revised jury instructions adopted in October, 2011 give the court and counsel much more discretion in what jurors can do, say, hear, talk about, and consider during the trial. Recently, Governor Snyder appointed to the Supreme Court Macomb County Circuit Judge David Viviano, who was a member of the committee that embraced these new rules affecting juror involvement. The court rules have been amended to widen the involvement of jurors, including taking notes (not new), reference documents, deposition summaries, presentation of expert testimony, juror questions, and juror discussion before being instructed at the end of the case.[30] Most judges will provide the parameters of these alternatives before trial, but you should be aware of them, or be prepared to be an advocate for or against these potential changes.

Preemptory Challenges

There is a distinction between challenges for cause[31]

27 MCR 2.510.

28 MCR 2.511(A)(4).

29 MCR 2.511(C).

30 M Civ JI 2.02, 2.06, 2.11, 2.13, 2.14.

31 MCR 2.511(D).

and preemptory challenges.[32] Challenges for cause are unlimited and require the court to determine whether a person has a state of mind that will prevent the person from rendering a just verdict, has opinions or conscientious scruples that would improperly influence the verdict, or is biased for or against a party or attorney.[33] Judges have tendencies in determining whether a juror is challengeable for cause. Due to concerns about appellate review, some judges will have a low threshold in deciding a juror is potentially biased and should not sit as a juror. Be aware that this tendency will burn through the jury panel much more quickly than a jury selection process being managed by a judge who is reluctant to excuse jurors for cause and who may be active in questioning or prodding the potential juror to state he or she will be fair and unbiased. If the court has rejected a party's challenge of a potential juror for cause, then the attorney who has challenged that juror for cause must use one of his or her preemptory challenges to remove the juror as a matter of tactics. Because there are only three preemptory challenges, one must be aware of how many preemptory challenges have been made before "gambling" that a juror should be challenged for cause.

As jurors are excused for any reason, you literally have to turn around in your seat to see the persons who remain. What do they look like? What did they bring to read? Are they well dressed? What are the chances that a "bad" juror will be replaced by a "good" juror?

If there is more than one plaintiff or more than one defendant, the challenges are not necessarily limited to three. When multiple parties having adverse interests are aligned on the same side, three preemptory challenges are allowed to each party represented by a different attorney and the court may allow the opposing party the total number of preemptory challenges allowed to the multiple parties.[34] You have to think about this before the jury pool is called in. Judges have sat through more jury trials than you have, so the judge may have a particular way of doing things that may be announced to the counsel just when the stress level is at a very high point, i.e., a number of strangers who will be deciding your case are walking to the courtroom. A critical component of this rule is whether the parties are "adversely aligned." For example, if there are two defendants who are not adverse and who are even cooperating with each other in the defense, preemptory challenges cannot be divided equally as each defendant cannot preempt one and one-half jurors. Make some decisions as to how this will be handled, i.e., which party's attorney will get the option to peremptorily challenge a juror, or consult with each other in the process.

Thus, in a multiple party case, you should confer with co-counsel about the number of preemptory challenges. The number of jurors that may be summoned for a given trial might be limited and the "alignment issue" can make the preemptive challenge numbers get big in a hurry. In a single party case, there would be three preemptory challenges on one side and three on the other. But what if there is one plaintiff and four defendants? Even assuming that the interests of the defendants are adverse, few judges will allow twelve preemptory challenges for the plaintiff and three for each of the four defendants. Four for the plaintiff andone for each defendant is more likely.

Where two defendants are an individual and his or her employer who is vicariously liable, there is no adversity and the two defendants would be treated as one for the purpose of identifying the number of preemptory challenges.

Consult with your co-counsel or even your client with respect to a preemptory challenge visible to the jury. It may not change your mind but productive thoughts may emerge. Jurors understand what is going on. As the selection process concludes, potential jurors sitting through this process for hours understand that each side is looking to exclude jurors that will "hurt" their case. They understand the significance of the questions being asked. They understand what lawyers are trying to do.

Opening Statements

Opening statements are described as a "full and fair statement of that party's case and the facts the party intends to prove."[35] Opening statements are critical. Depending on the degree of interaction between counsel and jurors during voir dire, this gives you the opportunity to lay the groundwork for how the evidence will be presented. Be specific. The rule allows discussion of "the facts the party intends to prove." Show facts. Show figures. Show records. Because it is a "statement" and not a final

32 MCR 2.511(E).

33 MCR 2.511(D)(2), (3), (4).

34 MCR 2.511(E)(2).

35 MCR 2.507(A) 2.513(C).

argument,[36] this is an opportunity for advocacy. Detail is important. Courts can limit the duration of opening statements and final arguments[37] but the jury has to be told what the evidence will show. This is especially true if there will be depositions read into the record by persons who are not the physical person who gave the deposition.

Demonstrative Aids

As the population ages, juries will consist of persons less and less used to obtaining information and learning by listening to things said verbally. Coupled with subject matter that might be alien to them, there is a premium on presentations that are made in a more instructive and interesting manner. Jurors generally are not familiar with surveys, financing, junior liens, construction mortgages, building codes, construction liens, owner's title policies, lender's title policies, title agents, title underwriters, commercial leases, and other contested issues in a real estate trial. Jurors often come to court expecting to be involved in a criminal matter, an auto accident case, a personal injury case, or something that "makes the papers."

If there is a contract with a couple of key passages, prepare an enlargement that shows those passages. Photographs are helpful. If there are multiple pages in a document that are important and it is too cumbersome to prepare enlargements, use a binder that can be given to each juror with appropriate Bates numbers so it can be reviewed. The court and counsel will have to be involved in agreeing or stipulating to this. Consider a PowerPoint presentation. These can be effective and instructive provided that the operator is familiar with the process and does not embarrass himself or herself in its presentation. Many law firms now have the capability and IT personnel to put these together without the cost of a separate professional. Clients appreciate the reduced cost. Make sure you go through the actual PowerPoint presentation privately before you do it in court. Talk through it, out loud, in private. It may take a lot longer than you think it will, and there might be reconsideration of the amount of detail you want to discuss. Consider sequential placement of text on a particular slide; consider use of photographs or isolation of particular documents. Include definitions of technical terms on a slide. Consider placing critical jury instructions on a slide. Consider providing definitions of important factual terms or legal terms. Jurors don't know what the terms "material breach" or "substantial performance" mean. If you lay these terms out in opening statement, they will understand them better during closing argument and presentation of jury instructions.

If you are going to show a jury instruction to the jury any time before closing, you better be darn sure it is a jury instruction that the court will give, and not one that you want but may be contested by opposing counsel. Do you want opposing counsel telling the jury that something you said or something you presented to them isn't so?

The trial presentation hinges on credibility and professionalism. The demonstrative presentation does not have to necessarily be "slick," but there are little things that can and do go wrong. How is the courtroom configured? Is there enough room to put an easel and enlargement in front of the jury given where counsel's desk is? Do your magic markers have ink in them? Does your easel work? Do not assume that the court will provide any assistance in this regard, i.e., that the court "should have an easel there." These are little things that go wrong and are embarrassing. They happen.

Offers of Proof

Problems with appeals sometimes arise because a judge denied the admission of evidence, but the proposed evidence does not make it into the trial record. Thus, the evidence rule involving offers of proof.[38] A record must be made of the character of the evidence, the form in which it was offered, and the objection made in the ruling on it. The court may require this in question and answer form.

This is something that is often overlooked, because with many issues going on, the denial of the admission of certain evidence will sometimes distract counsel from making a record of what evidence was, in counsel's mind, inappropriately excluded. If the trial record does not show what that evidence is, an appellate court cannot help you and will have its hands tied in considering a reversal of the trial court's ruling.

Jury Instructions

Before closing arguments, the courts must give the parties a reasonable opportunity to submit requests for jury instructions.[39] There are standard jury instructions that cover both general and preliminary matters and substantive issues such as no fault, general negligence, premises liabil-

36 MCR 2.507(E).

37 MCR 2.507(F); 2.513(C) & 2.513(L).

38 MRE 103(B).

39 MCR 2.513(N).

ity, malpractice, and the like. In commercial or real estate matters, it is not as easy to pick up a "form book" and craft instructions and typically the instruction will have to be modified to reflect the circumstances. The instructions are not as "standard" as you might think when you actually sit down and look at them. To the extent you have an opposing counsel who is cooperative and professional, start this process early and try to work out disputes sometime before the evening before you have to give closing arguments. If possible, have "another set of eyes" look at the proposed instructions. Typographical errors and leaving out the word "not" in an instruction because of simple clerical mistakes are embarrassing and unprofessional when the judge is actually reading the instruction to the jury.

Review of the proposed instructions with the judge and counsel can be a stressful circumstance. The trial has been going on for a while. The jury is tired. Everyone is tired. The court is expecting the case to be done by the end of the day. Your client expects that and the last thing you want is to bog down the trial with a protracted debate about jury instructions. Be prepared to horse trade with the other attorney on language. Judges don't like to make a lot of rulings about jury instructions. It is *very* time consuming to hash these things out on the record while the jury is cooling its heels in the jury room waiting for something to happen.

Final Argument

As is the case with other components of the trial, the court rules provide broad guidance.[40] During the course of the trial, after each day you should martial your thoughts and notes to outline the points you will make in your final argument. It is easier to remember things at the end if you start putting together your arguments, thoughts, and themes as you proceed. If you used demonstrative aids in your opening statement, it is helpful to reuse them or reshow them to demonstrate you have proven the facts you said you would at the start of trial. If the opposing counsel has made what are illogical or incorrect statements or assumptions, make those points with vigor. This is argument. If you represent the plaintiff, you have the opportunity for rebuttal, i.e., the "last say." The defense counsel will not have the opportunity for rebuttal. If you are representing a defendant, tell the jury that under the law you do not have the opportunity to respond to what the plaintiff's counsel will say in rebuttal, so suggest to the jurors that they consider how you would respond if you had the opportunity.

40 MCR 2.507(E).

I have found that jurors recall details better than it may be assumed, and many jurors have told me after trials that a certain point did not have to be repeated over and over again. Many jurors are listening to the case, and if only one of them is able to recall a certain fact or detail, that knowledge will be imparted to other jurors during the deliberations. The tone and demeanor of jurors changes in the course of the trial. During voir dire and even through opening statement, the jurors are abuzz about the experience, trying to grasp what is going on. As the trial continues and the case draws to a close, most jurors appreciate that this is an important case to both the plaintiff and the defense, and would appreciate that their own case would be taken seriously if any of them was a party.

Verdict Forms

Verdict forms vary depending on the case.[41] Much of the analysis applicable to the jury instructions applies to the verdict form. You will find that the verdict forms in the Michigan Civil Jury Instructions are general and will almost always have to be modified to fit your case. This is a labor intensive process, and it is *never* as easy as you think it should be. Questions and answers should progress logically. A logical sequence should be employed to preserve an appellate issue. Specific questions for each count and/or key issue should be listed. If there are particular elements of damages that are contested, the jury should assign a figure to each of the components because some will be subject to appellate review and some may not. This will make for a better appellate record and the circuit judge will thank you for being a professional and cooperating on this.

Number of Jurors Deliberating

In the absence of a stipulation in a civil action tried by six jurors, a verdict is reached when five jurors agree.[42] Some trial lawyers adhere to the maxim that no more than six jurors will decide *their* case. I won't quarrel with that; it is a matter of preference and experience. If the opposing counsel will not agree to having all jurors who have sat through a trial (sometimes seven or eight) decide the case, so be it. During the trial, a counsel may sense a juror he or she really likes or really does not like. Consider whether you are more concerned about losing a juror you like, or are you more concerned about the one

41 MCR 2.515.

42 MCR 2.514(A)(3).

out of seven or one out of eight chance you will lose the juror you do not like? I have no answers. I only raise the question.

Bench Trial Issues

This article has focused on jury trials. The difference between bench and jury trials is significant. Depending on the issues, it would be prudent to run searches through the appellate opinions to determine what decisions of this trial judge have been addressed by an appellate court. What were the issues? Was the judge reversed or affirmed? Did the appellate decisions have some snippets from the actual exchanges between counsel and the court at the trial?

Judges in bench trials will likely want briefs, possibly before and after the trial, and proposed findings of fact and rulings of law. The mechanics of the process are important. Does the judge have a law clerk? The law clerk may play a pivotal role in the court's decision, digesting the briefs and assisting the court in deciding on an important issue. Upon the completion of a bench trial, the judge may not rule right away, but may prefer to digest exhibits or deposition transcripts that may have been admitted into evidence in lieu of them being formally read into the record.

A Closing Comment

In preparing a matter for trial, do not hesitate to talk to peers, colleagues, or even past or present opponents in an appropriate and professional manner. You will make mistakes. You will learn from them. Whether you have tried 100 cases or just one, there is always angst. Improvement comes naturally. To some of the members of your jury, this may be the only time they will ever be in to a courtroom see a trial. What kind of impression do you want to leave?