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Steps in Preparation of a Lawsuit

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take the time nor could I very well outline the pertinent matters dealt with. Will call attention to our privilege of listening to The Right Honorable Sir Donald Bradley Somervell, O.B.E., M.P., K.C., Attorney General of England, from London, a Justice from a Canadian Court, Justices and Judges from our own Courts, Senators, Leading Members of our American Bar; their papers and addresses were educational and oustanding. I listened to so many that I confess that I found myself wondering if the people who listened to some of our own efforts became so tired and exhausted as I did listening to those wonder speeches. From it all I am quite determined to recommend that you read those addresses given by our American Lawyers and study the papers and reports of those sections covering the subject matters in which you as practitioners are most interested. You will then have quite a comprehensive picture of our American Bar Association.

One subject must be impressed on our minds, that is, every judge and lawyer in our entire State should be a member of the American Bar Association—a dues paying member. The Journal alone is well worth the dues of $8.00, which you pay for one year. We all subscribe to law periodicals, but in my opinion when the Journal gives us the up-to-date decisions of our United States Supreme Court, which is so necessary for every lawyer of today, to have that service alone will much more than return to you the amount of dues you give to your association. Besides that service you will have able discussions on subjects of historical value, law and legislation.

I am convinced that more of our lawyers should attend the meetings of the American Bar. No matter the cost, it is well worth the expense. One must come home with a feeling of being a better lawyer than his competitor who has missed the session. We have so many of our younger lawyers in the government service, some on the battle fronts, that we at home must not fail. We must keep up the home front by giving our services, actively, to the protection and preservation of our laws in the American way, that our government and our American institutions, created under those principles of law and equity, shall survive forever.

Respectfully submitted,

WM. G. OWENS
Member of House of Delegates
from North Dakota—Williston

STEPS IN THE PREPARATION OF A LAWSUIT

By Nels G. Johnson

THINGS THAT MAKE FOR SUCCESS IN THE LAW

One of the many things that young lawyers want to know when they are about to commence the practice of their profession is, "What makes the success in the practice of law? There is, of course, no adequate answer to that question. There are

any number of things that go into the success of a lawyer and many of these are beyond analysis; they are the intangibles that cannot be defined. They are illusive characteristics of the individuals such as personality, appearance, mannerisms and other personal characteristics. We do know, however, that the following have a definite relation to the success of every lawyer.

1. His knowledge of the fundamentals of the law.
2. His knowledge of the use of the tools of the lawyer and by which he can locate the law— his books.
3. His diligence in the preparation of his lawsuits and the legal problems that come to him for attention.

It is this last mentioned element that I wish to discuss.

The thoughts expressed here are perhaps elementary. They are not new or novel. But they are often overlooked, and especially so by a young practitioner who is just getting started. They have been gleaned from actual practice.

The trial of a lawsuit may be and is, no doubt, an art, but its preparation is simply work—hard work at that. Work will develop further knowledge of the fundamentals of the law, acquaintance and facility in the use of the tools of the lawyer—the law books.

About the only means by which a lawyer can advertise his ability, his knowledge and skill, is in the handling of the trial of a lawsuit. So I am going to discuss that one factor which helps to make for the success in the practice of the law—the proper preparation of a lawsuit. Needless to say, perhaps no two lawyers prepare a lawsuit in exactly the same way, but I think that they will all agree on the need of a thorough prepartion in every case. Preparation of a lawsuit or the case in hand is, as far as the lawsuit is concerned, what good materials are to the construction of a material object.

GET THE FACTS

The first step in the preparation of a lawsuit is to get the facts involved. This takes, or may take, considerable time. If the lawsuit is at all complicated it may not be possible to get the facts at one conference with a client or clients, but it is very essential to the prosecution of the suit or to its proper defense. The failure to get all of the facts, or to overlook some of them, means the difference between success and failure in the case. Overlooking a fact may change the entire theory of the case and may also make inapplicable nearly all of the law, or all of the law, that was thought applicable to it. It is upon the essential facts involved in every case that the lawyer must determine the theory of the case and upon that theory, what law is applicable.

In this connection it is often necessary to inquire strenuously concerning the facts, for a client or clients often do not realize how important the facts are to the lawyer in preparing a case or preparing a defense, and they often overlook relating all the facts. Sometimes it is necessary to cross-examine them thoroughly concerning their knowledge of the facts. There is also to be considered that clients shade the facts with their enthusiasm and interest in the case. Some even go so far as to hide from the lawyer certain facts that are, or may be, detrimental to their interests, and which they sense are such. That is often a difficult situation, but if discovery of that is made, the lawyer should not hesitate to tell the client how this affects his case. If it is very detrimental, frankly tell the client so. A lawyer can overlook an omission to relate all the facts, or shading the facts because of the personal interest involved, but a lawyer should deal severely with a client who has deliberately attempted to mislead him.

At the outset in the preparation of a case, procure from the client a complete list of all witnesses involved. Also ascertain what it is claimed these witnesses are able to testify to concerning the facts of the case. Do not rely on hearsay in this connection. Too much emphasis on the necessity of an interview or a conference with all witnesses before trial cannot be made. It is important that the lawyer know what the witnesses are expected to prove. It will also refresh the memory of the witness. The lawyer, after an interview with the witnesses, will have in mind what each witness is able to prove and how to elicit the information from each witness. Often witnesses are, upon being placed on the witness stand, questioned by opposing counsel as to whether they have talked over with anyone the facts of the case. They should be warned that they may be so questioned. They should readily admit that they have talked the matter over with the counsel for the party for whom they appear as witnesses. It goes without saying that no attempt should be made by any attorney to get a witness to shade his or her testimony, or deviate in any manner from the facts. But the possibility that some such claim will be made should not deter an attorney from thoroughly going over the facts with each witness involved. If asked by opposing counsel concerning whether the attorney for the client for whom they appear as witnesses told them what to say, they can readily reply, "He told us to tell the truth." That kind of a reply, and it should be the truth, usually is embarrassing to the cross-examiner and makes a good impression upon a jury.

Client should always assist his attorney in getting the names of all witnesses involved, and to help to facilitate a conference. If witnesses live in other parts of the state than where the case originates, or in other states, the addresses of the witnesses should be obtained, and contact should be made with them. If it is necessary to take a deposition, it is sometimes advisable in advance to write the witness and ascertain in a general way what the witness can prove before serving notice to take deposition.

If other witnesses are available of which client does not have any knowledge, and who become known to the attorney, he, of course, should contact such witness or witnesses. This also applies to expert witnesses. It is particularly necessary that a lawyer contact and go over the testimony with an expert witness. The expert witness can often, and does, at a conference with the lawyer involved in the trial of the case, give helpful suggestions as to the nature of the questions to be asked and the manner in which the information that he has at his command can be elicited in an understandable manner for the benefit of the jury or the court.

Failure to interview withnesses in advance is often fatal to a case, as the witness sometimes fails to testify to the knowledge that he is supposed to possess of the facts. Furthermore, the lawyer should confer with the witness so as to give the witness some idea of how he expects to give the witness a chance to relate the knowledge that he possesses. Get the witness familiar with the type of questions that will be asked and thus prepare the witness and give him some idea of the approach that he may expect, and also give him an idea of how he can relate the knowledge that he possesses in response to the questions. In this connection, it is well to remember that some witnesses under oath, especially if they are honest and sincere, become more conservative when they relate the facts on the witness stand than they were in conference in the lawyer's office. That often happens, and to bring out the facts as is fully necessary, the lawyer may need more adroitness, may need to ask more questions, each one designed to bring out the knowledge that the witness has at his command. Care, of course, must be taken not to lead the witness.

Failure of the lawyer to know exactly what a witness can prove may result in two things. First, the lawyer may find himself confronted with evidence that he did not expect, and which may be very detrimental to his client. Second, he may find that the witness does not know the facts it was claimed that the witness could produce. Thus the lawyer may find himself in court, perhaps without some vital evidence and without any time to ascertain whether the lack of evidence can be supplied or whether there is any witness having knowledge of the needed evidence. Knowledge of this lack of evidence, if obtained before trial, can be met much more successfully by the lawyer who has time to contemplate the matter and perhaps find other proof.

Avoid, if possible, subpoenaing reluctant or antagonistic witnesses. Sometimes this may be necessary. But as a rule, an antagonistic or a reluctant witness has a short memory. An antagonistic witness may even take the opportunity to volunteer damaging information. Remember that you cannot cross-examine your own witness, and should the witness surprise you, it may be very difficult to overcome the testimony that he or she has given, and if you cannot do so, you are bound by it.

(Continued Next Issue)