The following is an article written by Senior United States District Judge Gus J. Solomon for the June 1976 issue of Juris Doctor magazine. The article is based on speeches Judge Solomon frequently gave to young lawyers.

A Concise Guide to Courtroom Craft

by Gus J. Solomon

There is an ancient saying, "Know before whom you stand." It is difficult to tell a lawyer how to try a case effectively without knowing the court in which he or she will appear. I can tell you what you should and should not do in my court. I hope some of these things will apply to other courts as well.

"Not all the law is in the books." Each judge has his own way of trying a case. Merely by reading books you will never learn where to stand when you address me or the jury in my court. And you won't learn whether you stand or sit to examine a witness, or whether you may hand an exhibit to a witness yourself or must give it to a courtroom deputy.

Lessons for Litigators

When you are scheduled to appear before a judge for the first time, go to his courtroom and watch him in action. Talk to you associates. Find out how he runs his court. Will he stop a lawyer from asking an improper question without an objection? Will he rule on simple motions without arguments or will he listen to long, drawn-out arguments? Will the judge permit a lawyer to make an argument to a jury under the guise of making an opening statement? What does the judge do when you are unprepared or late? How does he handle offers of proof?

You must know these things to effectively plan your strategy and try the cases that you should win.

Don't vilify your opponent, even if he misstates the facts or the law or if he is difficult or abusive. It may make you feel better, but it won't help your case. If you make such a statement in a brief or a letter, don't let anyone else see it. Destroy it.

Always remember, the most essential attribute of a lawyer is integrity. Be honest with your colleagues and with the court. Don't bluff. The quickest way to get into trouble is to tell a lie. Never deliberately misstate the facts or the holding of a case. Don't be reluctant to concede what you know to be the facts. Opposing counsel can learn those facts by using the many discovery procedures provided by the Federal Rules. If you fail to answer a request for admissions correctly, attorney's fees and costs may be assessed against you.

Be prompt on court appearances. If your motion, call, pretrial, or trial is set for 9:30 a.m., be there on time.

Know the facts and the law of your case. A judge is responsible for seeing to it that cases don't come to trial without adequate preparation. The courts and the litigants are entitled to no less.

Judges who handle the calendar with these objectives won't win popularity contests, particularly among lawyers, but one of the advantages of being a federal judge is that being popular with lawyers is not a job requirement.

I often urge young lawyers not to get smart or belligerent with the judge, even when

they are confident that he is wrong. There is an old truth that violence begets violence, and the same can be said for belligerence.

I suggest that when you enter a courtroom, you take off your overcoat and hat and hang them on the rack. Don't put them on counsel table. It is not necessary for you to wear a formal jacket; neither should you wear an old blazer or a sport shirt without a tie. Dress neatly and tell your clients to do the same.

Going to trial

At the trial, don't rustle papers when the judge is talking or when you opponent is questioning a witness. Don't walk around the courtroom. Don't engage in unnecessary conversations with your associate or attempt to otherwise distract your opponent, the judge, or the jury. These trial tactics are used sometimes when the witness or the judge is saying something detrimental to a case. But they don't work in my court.

Don't engage in histrionics. Don't stand by a witness and point your finger at him. Make your questions short and direct. Don't ask your witness leading questions, except on a preliminary matter. Make an outline of the questions you intend to ask a witness. Don't deliberately attempt to introduce inadmissible evidence. Always cross-examine with a purpose. It is better if you know what the witness is going to say on cross-examination before you ask the question.

Never ask a witness on cross-examination why he did something. It is the most dangerous question you can ask. One of my Alaska colleagues tole me this story. A defendant was on trial for a serious offense. The government's principal witness had three felony convictions and had told a different story to the grand jury. The defendant's lawyer brought out these convictions and this discrepancy.

Instead of terminating the cross-examination, he asked the witness why his testimony now was different from his testimony before the grand jury. The witness replied, "When I told that story to the grand jury, I knew I had lied, and I felt bad about it. As I walked down the street, I came to a church. I walked in and I told the priest what I had done. The priest said to me, 'Son, there is only one thing for you to do. Go back and tell the truth.' I knew the priest was right. I went to the United States attorney and I told him the truth-the same things that I told here today."

Recently another colleague, from New York, told me about a garage owner who was being tried for receiving stolen property. The principal witness against him was a truck driver who testified that he sold the property to the defendant. The defendant's lawyer brought out that the truck driver had never met the defendant before he allegedly made the sale.

The defendant's lawyer then asked, "Why did you offer to sell stolen property to a man you had never met?" The witness replied, "I have been driving a truck on this highway for 20 years, and ever since I started I have heard many truck drivers say, 'When you've got something hot to sell, take it to this garage.'"

Good Writing Makes a Difference

Prepare your letters carefully. Write clearly and concisely. Your letters should be short, neat, clean, and unambiguous. The recipient of the letter should have no doubt of its meaning, and he should be able to understand every sentence the first time he reads it.

Except in a routine matter, or unless there is an emergency, don't send a letter the day you write it. Keep it a day or two. Then read it aloud. If you follow this advice, you may

avoid ambiguities and embarrassment. If your letter is angry or critical, don't send it for at least a day. Wait until you are less agitated. Then read it aloud and strike the abrasive language.

The authors of these excerpts from church bulletins, which were reprinted in the *Old Farmers' Almanac*, should have read their statements aloud:

"This evening there will be a meeting in the north and south ends of the church. Children will be baptized at both ends."

"Thursday, at 7:00 p.m., there will be a meeting of the Mothers' Club. All those wishing to become little mothers please meet with the minister at 7:00 p.m."

A judge usually gets his first impression of a lawyer from his written work. Avoid legalese and long and complicated words, sentences, and paragraphs. Use familiar words and be direct rather than indirect. Write with nouns and verbs. Carry your action with verbs, and don't make nouns out of verbs and adverbs out of nouns.

Make your sentences short, and don't start every sentence with the word "that." Use words precisely. The word "advise" is not a synonym for "tell" or "inform," and the word "claim" should be used for "lay claim to"; it is not a synonym for "assert," "allege," or "charge."

It is usually better to use the specific rather than the general. Use "write," "telephone," or "talk" instead of "contact" (a fad word that is generally condemned by good writers). The frequent use of lawyer-talk – like "said," "such," or "aforesaid" – labels a lawyer as either sloppy or illiterate. Avoid pompous and self-important words. Use "ask" instead of "interrogate," "call" instead of "communicate," "begin" instead of "commence," and "file" instead of "institute."

In his preface to *Margin Customers* (1949), Professor Edward Warren of Harvard Law School listed some rules on writing. I want to quote three of them: "Never dicate anything which calls for careful thinking. Write out everything (except quotations) in longhand. If you dictate, you are likely to get into a habit of using words of many syllables like 'formulated' or 'constituted.' If you write in longhand, you are likely to get into a habit of using words of one syllable like 'made' or 'was.'"

"Go over the drafts as they come back from the typist and rub and rub and rub again until you have massaged away every muddy word and every waste word."

"Let learning be your servant, not your master; the deepest learning is the learning that conceals learning....Do not spread out in full your laboratory notes....Appraise your 'productivity' not by quantity but by quality. Read much, discuss much, ponder most, write a little."

I often read these rules. You should, too. I am sure that Professor Warren would have agreed that there is no such thing as good writing, only good rewriting.

Many lawyers like to use lawyer-talk in preparing a legal document. Some time ago, on a TV program for the bar, I prepared this order, which is typical of the ones I often receive:

"This matter having come on regularly to be heard before the undersigned, a Judge of the United States District Court for the District of Oregon, on the 20th day of March, 19–, on defendant's motion to strike and dismiss for failure to state a claim upon which relief can be granted, plaintiff appearing by his attorney, John Smith, of the law firm of Smith, Brown &

Jones, and the defendant appearing by his attorney, Richard Green, of the law firm of Green, Gray & White, and the Court having heard the arguments of counsel and having considered the memoranda of law submitted by respective counsel and having taken the matter under advisement, and having found that the motion to strike and dismiss is well taken and should be allowed, and the Court being fully advised in the premises.

"Now therefore, it is ordered, adjudged and decreed that defendant's motion to strike and dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted be and the same is hereby allowed, and plaintiff's complaint is hereby stricken."

In spite of its legalese and verbosity, this is not a final order of dismissal–nor is it appealable. I suggested the following order: "On defendant's motion, this action is dismissed." It tells the whole story and is legally sufficient.

I have collected many writing samples. I want to share a few of them with you. The first is the opening paragraph of a letter of application for a clerkship. "I suspect that there must be some combination of words some talismanic formula perhaps, that could smoothly elevate me above the ranks of my well-qualified competitors, and firmly fix me in your mind as one of the most capable individuals contending for the position as your law clerk. But incantations have never been my long suit, so perhaps I had better rely upon more conventional declarations." He did not get the job; he did not even get an interview.

The next letter is from a lawyer who merely wanted to tell me that he was submitting the case on the record. "As you know, the subject matter has been set down for trial before you at 9:30 a.m. on Thursday, January –, 19 –. Please be advised that I am the attorney of record and have associated with Mr. – – – , of – – –, – – –, for the purpose of resolving the subject case in your court. Please be advised that, after discussing this with Mr. – – – this date, we do not plan on putting on any evidence at the time of trial and you are free to make your decision on the current state of the pleadings. We will await your ultimate decision."

I have never met this man, but I picture him as a young lawyer with a new, pretty secretary. He wanted to impress her, so he put a cigar in his mouth, his feet on the desk, and dictated this letter.

The next example is a paragraph which I understand is from an appellate court opinion. I submit it without comment:

"While trial lawyers devote much cogitation and intraprofessional discussion to the matter of selecting a proper jury – propriety presumably being equated with fairness and disinterestedness – nevertheless, because of the uncertainty of human reactions to often unknown or unanticipated motivating factors, the entire voir dire procedure is fraught with precariousness as to whether the desired resultant jury will be realized. Character qualities derivable from interrogation are often elusive and the answers to questions may frequently be illusory as a firm basis for any type of challenge."

I don't expect you to remember all of the things I've mentioned in this article. But I do hope you remember four of them.

1. Integrity is the most essential ingredient of a lawyer.

2. Be prepared. There is no substitute for hard work.

3. Learn the rules and practices of the court and, if possible, the judge before whom you will appear.

4. Make you written work clear, simple, and concise.