

BECOMING A TRIAL LAWYER

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INTRODUCTION

This book is the product of our desire to share what we have learned about the art of being a trial lawyer from our combined 60 years of experience trying cases, and teaching lawyers and law students to do so. It is written primarily for law students, designed to acquaint them with the basic knowledge, skills and techniques they will need to start on the road to becoming effective trial lawyers.

Trying a case is an incredibly exciting and terrifying experience, especially for new lawyers. While thorough preparation is crucial to performing effectively in court, the trial is a dynamic process that often requires even the most comprehensively prepared attorneys to adapt on the spot to the shifting sands in the courtroom. This book teaches fundamental trial advocacy skills, and it helps students both prepare systematically for what they can expect to face and to handle those sands in the courtroom as they shift.

In addition, we recognize that not all trials involve juries and unlimited time and resources, as many trial advocacy books assume. Trials are not cookie cutter, and neither is this book. We discuss the wide variety of forums in which lawyers try cases, ranging from jury trials to bench trials to administrative hearings. We discuss how to sharpen and shape your advocacy for these different settings. Further, we discuss creative strategies for trying a case with limited financial resources. The chapter on litigating poverty cases will be helpful to students in law clinics, attorneys in legal services and public defender practices, and pro bono attorneys who serve our profession and society by representing low-income clients for free. We also recognize cutting edge issues in the art of litigating. Thus, we have an entire chapter devoted to using courtroom technology to enhance your case. Courtrooms are changing, as are jury expectations and attorney capabilities. You need to understand the state-of-the-art developments in trying cases.

Our belief is that while not every trial lawyer can develop into a true artist, most can learn to become very effective in court and every attorney can at least become a competent litigator. Maximizing one's knowledge and skill as a trial lawyer is obviously important to attorneys who appear regularly in court. Less

obvious is the benefit to attorneys whose practice does not regularly involve court work. For these attorneys, possessing some knowledge of the ways of the trial lawyer will increase their confidence that they can perform ably in court should the need arise. With such confidence, the attorney may be less likely to feel the need to refer out a relatively simple case merely because it could possibly lead to a trial. Additionally, alleviating the fear some lawyers have of trying a case will reduce the psychological pressure that may cause reluctant trial lawyers to accept an unfavorable settlement.

Our experience trying cases and teaching others to do so has convinced us that the only way to become an effective trial lawyer is to actually try cases or to work on trial skills in a simulation format. Books such as this one provide necessary information and open the mind to acquiring the techniques that the lawyer needs to become a skilled advocate. As with other skills, however, those techniques can only be developed fully through practice and performance. A concert pianist needs to understand music but will become a virtuoso only through hitting those keys over and over. The same need to get one's hands dirty is true for auto mechanics, brain surgeons and golfers hoping to become experts at their craft. Accordingly, this book has an accompanying set of case files that will allow you to practice the skills and strategies discussed in this book. The case files allow you to practice all core trial advocacy skills. You will make opening and closing statements, examine fact and expert witnesses, practice impeachment techniques, and handle a wide variety of real and demonstrative exhibits. You will develop these skills through repeated practice in an assortment of cases. The case files include criminal and civil cases, as well as jury and bench trials.

Two of the case files are designed specifically to provide realistic simulations of typical poverty law cases. We hope the child custody and landlord/tenant cases will assist clinical students and attorneys in legal services offices in training for the realities of representing low-income clients in court. These two files are also appropriate for standard trial advocacy classes, because they cover the essential skills discussed in this book while exposing lawyers to new practice areas.

Allow us to offer two qualifiers before you begin reading the substance of the book. First, while the book necessarily discusses evidentiary rules and principles and offers examples of how to deal with certain specific evidentiary issues (evidence is after all the essential tool of our trade), this is not an evidence book. Second, all litigators know that the effective use of the rules of discovery and pre-trial practice in general can play a significant role in the outcome of a lawsuit. This book's focus on courtroom skills is not an implicit re-

jection of that notion but reflects the need to concentrate on one set of skills in order to improve them in a meaningful way. Therefore, the chapters of the book for the most part are devoted to the various facets of a trial.

It is our hope that this book will not only begin the process of helping you develop the skills of a trial lawyer but will also make trials seem less terrifying and even enjoyable for would-be litigators. Good luck!

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