



PREFACE

It has been 25 years since I wrote the first edition of *Fundamentals of Trial Techniques*, and during that time much has changed in the world of trials. This new book focuses on the significant changes in trial theory and practice, because trial lawyers must respond to those changes to be effective advocates in the 21st century.

The changes begin with the jurors. Media reporting of legal issues, live television coverage of sensational trials, and courtroom dramas on television and in the movies have changed jurors' attitudes about the law in general and our court system in particular. Older jurors—seniors and baby boomers—are being replaced by the younger generations—Generation X and Generation Y—and with that change come different attitudes, attention spans, and learning preferences. As the jurors change, jury research has significantly increased our understanding of how those jurors prefer to learn, how they think, and how they make decisions. These changes have significant effects on how trials today must be conducted.

Every stage of the trial now must be visual, because most jurors have been raised in the era of visual learning based largely on television and computers. Opening statements are now understood as a critical stage in which juror impressions are first made and largely retained. Courtroom exhibits and visual aids are now seen as key elements in teaching jurors about the issues and the evidence. Expert witnesses now appear in almost every trial and are subject to heightened judicial scrutiny. Jury consultants and litigation support firms now stand ready to help lawyers develop persuasive trial themes, create effective exhibits and visual aids, select jurors, and train witnesses and lawyers to be better communicators. And while all these changes have been occurring, the number of bench trials and other nonjury proceedings has been increasing.

Despite these changes in trial theory and practice, successful trial lawyers today understand that some things have not changed. Presenting a compelling and successful case still requires three essential characteristics: understanding the psychology of persuasion, undertaking pretrial preparation, and developing effective trial skills. First, successful trial lawyers know that to be effective in the courtroom, they need to consider everything from the listeners' point of view. They know how jurors prefer to receive information and how jurors make individual and group decisions. They know that before jurors will accept their version of “what really happened” and return a favorable verdict, they need to reach the jurors' hearts as well as their minds. Second, successful trial lawyers understand that trials involve a

great deal of work well before the trial starts. They know that planning and preparation are essential to developing and executing a successful trial strategy, and they develop an effective method for preparing each case for trial. Third, successful trial lawyers understand that they need effective trial skills to translate a realistic trial strategy into persuasive trial tactics. It is the combination of the three—understanding persuasion, preparing for trial, and acquiring trial skills—that produces effective trial advocacy. In short, lawyers today need to understand strategy, skills, and the new power of persuasion.

This text approaches trials the same way. It reviews what we know today about the psychology of persuasion and how this knowledge can be applied to trials. It presents a methodology for developing an effective trial strategy and preparing for trial. It explains and demonstrates the skills that must be developed and used during a trial. The text is organized around the stages of a jury trial so that the important information will be quickly accessible, whether the text is used by experienced practitioners preparing for a trial, young lawyers attending a trial advocacy program, or law students taking a trial advocacy course.

To accommodate the age of visual learning, the text is accompanied by a DVD inside the back cover. The DVD contains all the shell forms and completed forms for the trial notebook discussed in Chapter 2, as well as all the exhibits and visual aids discussed in Chapter 7. The DVD also contains additional examples of opening statements, expert direct examinations, and closing arguments.

This book is dedicated to the proposition that effective advocacy in each stage of the trial affects the outcome of many cases, particularly the close cases that get tried. Persuasive advocacy makes a difference, and persuasive advocates get better verdicts.

I am indebted to the hundreds of trial lawyers and judges I have worked and taught with over the past 25 years. In the trial world, imitation is the sincerest form of flattery. Trial lawyers learn effective courtroom techniques in large part by watching other effective trial lawyers perform during trials and adopting those techniques for future use. Like them, I have borrowed, saved, and used the techniques of many others as examples throughout this book. Please do the same during your trial career.

What's New in the Second Edition

The most significant addition to the second edition is the DVD, which includes a video of a personal injury jury trial. Students and young lawyers frequently have a poor understanding of the atmosphere of a jury trial. They don't understand the formality of the courtroom setting and how to conduct themselves before the judge and jury. They rarely go to a courthouse and watch a jury trial. This video fills that gap, by showing all the stages of a jury trial, so that students and young lawyers can see the trial process and how lawyers conduct themselves during each of its stages. The trial can be viewed in its entirety (approximately 80 minutes), or particular segments can be viewed individually.