

ASPEN COURSEBOOK SERIES

Thomas A. Mauet

TRIAL TECHNIQUES AND TRIALS

NINTH EDITION



Wolters Kluwer

Law & Business

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THOMAS A. MAUET

Director of Trial Advocacy
and Milton O. Riepe Professor of Law
University of Arizona



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PREFACE

Why this new text? And why now? Because both jurors and trials have changed, so trial lawyers must change as well to be successful in the new millennium.

In 1980, when *Fundamentals of Trial Techniques* was first published, psychological research on the jury trial process was in its infancy, and teaching trial skills through the learn-by-doing method was in its early stages. At that time, young lawyers learned trial skills by observing, then emulating, experienced, successful trial lawyers. *Trial Techniques* reflected this reality, by showing how experienced lawyers performed the various tasks involved in jury trials, and that became the blueprint for young lawyers.

By 2005, when *Trials—Strategy, Skills, and the New Powers of Persuasion* was first published, much had changed. Jury research showed how juror attitudes about lawsuits, courts, and lawyers have all changed. Jury research also extensively studied how juror clusters—seniors, Baby Boomers, Gen X, Gen Y—have different preferences in how they learn, how they think, and how they make decisions. *Trials* focused on the psychology of juror learning and decision making, and how these preferences have changed the way trial lawyers now perform the various tasks involved in jury trials.

In this new text I have combined *Trial Techniques* and *Trials* by taking the best from each book. From *Trial Techniques* I have kept the overall structure of the book and the chapters that discuss the trial process, the psychology of persuasion, trial preparation and strategy, and bench trials. From *Trials* I have incorporated the chapters that discuss jury selection, opening statements and closing arguments, and direct and cross-examinations. The remaining chapters take significantly from both books. The examples throughout the text now reflect the three principal kinds of trials—tort, criminal, and commercial—so that readers can either read all the examples or can focus immediately on the plaintiff's and defendant's side of a particular kind of case. The text's format has also been modernized, and the difference between text and examples has been made clearer.

In addition, the website (www.aspenlaw.com/lawvideos) that accompanies the new text contains an edited video of a trial so that students and lawyers can see a complete jury trial in 80 minutes. The website also contains the structure and contents of a completed trial notebook that students and lawyers can use as a blueprint to customize their own trial notebooks and forms as well as all the exhibits in full color and motion from the exhibits chapter. And the website contains additional examples of opening statements, direct examinations, and closing arguments.

Finally, the teacher's manual, available to instructors, contains my suggestions on how to organize a law school trial advocacy program and how to teach trial advocacy skills effectively.

Our understanding of jury trials has changed since 1980 in several significant ways. First, we now know that juror beliefs and attitudes heavily influence whether jurors will be receptive to particular themes, messages, and evidence. Second, we know that trials must be visual, because most jurors today have been raised largely on television and computers and expect evidence during trials to be presented the same way. Third, we know that opening statements are a critical stage of the trial process where trial themes and people stories are first presented and juror impressions are first formed. Finally, trials today must be conducted efficiently, as juror attention spans have shortened. These changes have fundamentally altered how successful trial lawyers conduct themselves in all stages of a jury trial, and are discussed and illustrated throughout the text.

Some things have not changed. Successful trial lawyers know that organization and preparation before trial remain essential. They know that they need effective trial skills to implement a realistic trial strategy. And they know that to get favorable verdicts they need to reach the jurors' hearts and minds. These concepts are also emphasized throughout the text.

It is the combination of understanding jury psychology, pretrial preparation, and executing a realistic trial strategy with persuasive courtroom skills that produces effective trial advocacy. *Trial Techniques and Trials* is the result of over 40 years I have spent as a trial lawyer and trial advocacy teacher. I hope you are pleased with the result.

Thomas A. Mauet

Tucson, Arizona
February 2013



WEBSITE INFORMATION

This text contains references to a website where certain additional materials can be accessed. These references will be called out with a “web link” icon in the margin. The website can be accessed as follows:



- Go to www.aspenlaw.com/lawvideos
- Enter the access code on the card that was included with this book
- Log in or register when prompted
- From your Download & Media Center (under My Account), locate the website and click the Access button
- Bookmark the site to return directly to it in the future

The website contains the following:

Videos

Chapter 1—video of jury trial (*Gable v. Cannon*)

Chapter 4—additional opening statements in criminal case (*State v. Rausch*) and commercial case (*Thompson v. Thermorad*)

Chapter 8—additional direct examinations of experts (pathologist in criminal case; accountant in commercial case; engineer in products case)

Chapter 9—additional closing arguments in criminal case (*State v. Rausch*) and commercial case (*Thompson v. Thermorad*)

Exhibits

Chapter 7—all exhibits in full color that are contained in the exhibits chapter

Trial Notebook

Chapter 11—example of a trial notebook and forms



SUMMARY OF CONTENTS

<i>Contents</i>	<i>ix</i>
<i>Preface</i>	<i>xxvii</i>
<i>Website Information</i>	<i>xxix</i>
CHAPTER 1	
THE TRIAL PROCESS	1
CHAPTER 2	
THE PSYCHOLOGY OF PERSUASION	13
CHAPTER 3	
JURY SELECTION	29
CHAPTER 4	
OPENING STATEMENTS	73
CHAPTER 5	
DIRECT EXAMINATIONS	109
CHAPTER 6	
CROSS-EXAMINATIONS	197
CHAPTER 7	
EXHIBITS AND VISUAL AIDS	271
CHAPTER 8	
EXPERTS	377
CHAPTER 9	
CLOSING ARGUMENTS	443
CHAPTER 10	
EVIDENTIARY OBJECTIONS	505

CHAPTER 11	
TRIAL PREPARATION AND STRATEGY	553
CHAPTER 12	
BENCH TRIALS AND OTHER CONTESTED HEARINGS	595
<i>Index</i>	<i>615</i>

CONTENTS

<i>Preface</i>	xxvii
<i>Website Information</i>	xxix

CHAPTER 1

THE TRIAL PROCESS	1
1.1 Introduction	1
1.2 Local Practices and Procedures	2
1.3 Trial Date Assignment	2
1.4 Jury Selection	3
1.5 Preliminary Instructions of Law	4
1.6 Opening Statements	4
1.7 Plaintiff's Case-in-Chief	5
1.8 Motions After Plaintiff Rests	6
1.9 Defendant's Case-in-Chief	7
1.10 Motions After Defendant Rests	7
1.11 Plaintiff's Rebuttal and Defendant's Surrebuttal Cases	8
1.12 Motions at the Close of All Evidence	8
1.13 Instructions Conference	8
1.14 Closing Arguments	8
1.15 Jury Instructions	9
1.16 Jury Deliberations and Verdict	9
1.17 Post-Trial Motions and Appeal	10
1.18 Conclusion	11
Video of Jury Trial (<i>Gable v. Cannon</i>)	See Website

CHAPTER 2

THE PSYCHOLOGY OF PERSUASION	13
2.1 Introduction	13
2.2 Behavioral Science and Jury Research	14
1. Affective Reasoning	14
2. Beliefs and Attitudes	15

3.	Decision Making	16
4.	What Influences the Jury	18
	a. Sender credibility	18
	b. Receiver capacities	19
	c. Effective messages	20
2.3	What Research Means for Trial Lawyers	22
	1. Prepare from the Jury's Point of View	22
	2. Develop a Theory of the Case	23
	3. Select Themes and Labels	24
	4. Emphasize the People	25
	5. Use Storytelling Techniques	25
	6. Focus on the Key Disputed Facts and Issues	26
	7. Understand Your Role as an Advocate	26
2.4	Conclusion	27

CHAPTER 3

JURY SELECTION		29
3.1	Introduction	29
3.2	The Law	30
	1. Number of Jurors and Alternate Jurors	30
	2. Strike and Panel Systems for Questioning Jurors	31
	3. Juror Questioning Methods	32
	4. Judge, Lawyer, and Hybrid Questioning Methods	32
	5. Scope of Questioning	33
	6. Cause Challenges	34
	7. Peremptory Challenges	34
	8. <i>Batson</i> Limitations on Peremptory Challenges	34
3.3	The Jury's Perspective	35
3.4	Create a Comfortable Environment for Self-Disclosure	36
	1. The Judge	36
	2. The Lawyers	36
3.5	Learn Juror Attitudes	37
3.6	Learn Strength of Juror Attitudes	40
3.7	Identify the Persuaders, Participants, and Nonparticipants	40
3.8	Identify the Punitive, Authoritarian, and Holdout Jurors	41
3.9	Questioning Techniques	42
	1. Create a Comfortable Environment for Self-Disclosure	42
	2. Identify Juror Attitudes on Matters Important in Case	44
	3. Learn the Strength of Juror Attitudes	47
	4. Learn if Jurors are Persuaders, Participants, or Nonparticipants	50
	5. Learn if Jurors are Punitive, Authoritarian, or Holdouts	51

3.10	Exercising Cause and Peremptory Challenges	53
1.	Challenges for Cause	53
a.	Strike System	53
b.	Panel System	54
2.	Peremptory Challenges	56
a.	Strike System	56
b.	Panel System	56
3.11	Example of Voir Dire	58
3.12	Trial Notebook	67
3.13	Common Problems	70
1.	Interrogation Environment	70
2.	Too Much Lawyer Talking	70
3.	Useless and Intrusive Questions	70
4.	Too Much General Background, Too Little Life Experiences	70
5.	Too Much "What," Too Little "Why" and "How"	71
6.	Not Using All Peremptory Challenges to Preserve Error	71

CHAPTER 4

OPENING STATEMENTS		73
4.1	Introduction	73
4.2	The Law	74
1.	Procedure	74
2.	Content	74
3.	Improper Opening Statements	75
a.	Mentioning Inadmissible Evidence	75
b.	Mentioning Unprovable Evidence	75
c.	Arguing	75
d.	Stating Personal Opinions	76
e.	Discussing the Law	76
f.	Mentioning the Opponent's Case	76
g.	Appeals to Sympathy or Prejudice	76
4.3	The Jury's Perspective	76
4.4	Content of Effective Opening Statements	77
1.	Impact Beginning	78
a.	Present Short Re-creation of Case	78
b.	Present Your Themes	79
c.	Present Building Tension	81
2.	Storytelling	82
3.	Ending	90
4.	Additional Considerations	91
a.	Focus on Liability, Not Damages	91

	b. Deal Candidly with Weaknesses and Avoid Overstating the Evidence	92
	c. Use Exhibits and Visual Aids	93
	d. Establish a Prima Facie Case	94
	e. Length of Opening Statements	94
	5. The Defense Opening	94
4.5	Delivery of Effective Opening Statements	96
4.6	Examples of Opening Statements	98
	<i>Gable v. Cannon</i> (Personal Injury)	98
	<i>Thompson v. Thermorad</i> (Commercial Case)	See Website
	<i>State v. Rausch</i> (Criminal Case)	See Website
4.7	Trial Notebook	104
4.8	Common Problems	105
	1. Weak First Minute	105
	2. Weak Themes, Not Repeated Enough	106
	3. Weak Labels	106
	4. No People Stories	106
	5. Weak Delivery	106
	6. Not Dealing with Weaknesses Candidly	106
	7. Forgetting That Jurors Know Nothing about Case	107
	8. Not Using Visual Aids	107
	9. Evidentiary Violations	107

CHAPTER 5

	DIRECT EXAMINATIONS	109
5.1	Introduction	109
5.2	The Law	110
	1. Witness Competency	110
	2. Lawyer's Questions	111
	3. Witness Testimony	111
5.3	The Jury's Perspective	112
5.4	Structure of Direct Examinations	113
	1. Chronological	113
	a. Introduction	114
	b. Background	115
	c. Scene	118
	d. Action	122
	Witness's Point of View	122
	Present Tense	122
	Pace	122
	Sensory Language	122
	Witness Demonstration	122

	Selective Repetition	122
	Challenging One's Own Witness	122
	e. Exhibits	129
	f. Aftermath	130
	g. Ending	131
	h. Incorporate Weaknesses and Anticipate Cross-Examination	132
	2. Impact	134
5.5	Language of Direct Examination	135
	1. Lawyer's Questions	135
	2. Witness's Answers	137
5.6	Preparing the Witness and Yourself	138
	1. Prepare Yourself	138
	2. Prepare the Witness	139
5.7	Occurrence Witnesses	142
	1. Example (Plaintiff in Personal Injury Case)	142
	2. Example (Defendant in Personal Injury Case)	148
	3. Example (Eyewitness in Personal Injury Case)	152
	4. Example (Victim in Criminal Case)	153
	5. Example (Defendant in Criminal Case)	157
	6. Example (Police Officer in Criminal Case)	160
5.8	Transaction Witnesses	161
	1. Example (Plaintiff in Contract Case)	162
	2. Example (Records Witness in Contract Case)	166
5.9	Character Trait Witnesses	168
	1. Character Traits Relevant to Claims, Charges, and Defenses	169
	a. Character Trait as Essential Element	169
	b. Character Trait as Circumstantial Evidence	170
	2. Character for Truthfulness to Impeach Credibility of Testifying Witnesses	172
5.10	Adverse Parties, Hostile Witnesses, and Problem Witnesses	174
	1. Adverse Parties	174
	2. Hostile Witnesses	175
	3. Problem Witnesses	176
5.11	Lay Witness Opinions	177
5.12	Conversations, Telephone Calls, and Other Communications	178
	1. Conversations	179
	2. Telephone Calls	180
	a. Call Made to or from a Known Person	180
	b. Call Made to an Unknown Person	181
	c. Call Made by an Unknown Person	182
	3. Computer-Based Conversations	183

5.13	Refreshing Memory	184
5.14	Anticipate Cross-Examination and Judge's and Jurors' Questions	186
5.15	Redirect Examination	190
5.16	Trial Notebook	192
5.17	Common Problems	195
1.	Weak Introduction	195
2.	Too Long, Too Detailed	195
3.	No Word Pictures	195
4.	Not Enough Exhibits and Visual Aids	196
5.	Not Enough Focus on Key Disputed Facts	196
6.	Weak Ending	196
7.	Not Anticipating Cross-Examination	196
8.	Not Enough Witness Preparation	196
 CHAPTER 6		
	CROSS-EXAMINATIONS	197
6.1	Introduction	197
6.2	The Law	198
1.	Cross-Examination	198
2.	Impeachment	199
a.	Impeachment Procedures	199
b.	Impeachment Methods	200
	Bias, Interest, and Motive	200
	Prior Inconsistent Statements	200
	Contradictory Facts	201
	Prior Convictions	201
	Prior Bad Acts	201
c.	Proving Up Unadmitted Important Impeachment	201
6.3	The Jury's Perspective	202
6.4	Purpose, Order, and Structure of Cross-Examination	203
6.5	Language of Cross-Examination	204
6.6	Cross-Examination Topics	209
1.	Favorable Facts from Direct	209
2.	Favorable Facts Not Yet Mentioned	210
3.	What Witness Must Admit	211
4.	What Witness Should Admit	211
5.	Attacking the Witness's Perception	212
6.	Attacking the Witness's Memory	217
7.	Attacking the Witness's Ability to Communicate	219
8.	Attacking the Witness's Conduct	220
9.	The "No Ammunition" Cross	220