

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



Wolters Kluwer
Law & Business

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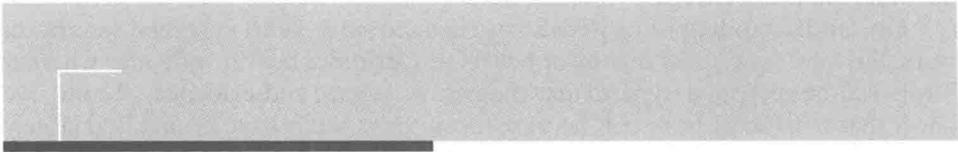
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PREFACE

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



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