

## PROLOGUE

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### An Integrated Philosophy of Advocacy

What is a chapter on philosophy doing in a legal cookbook? Theory and practice, philosophy and practicality, overlap in litigation, though not perfectly. The theoretical is relevant in litigation for good reason: Unless lawyers have a philosophical foundation for their arguments, their work will be sterile even though they may be skilled technicians. A consistent philosophy of advocacy, based on professionalism and social ethics, is the foundation for courtroom wins and, more importantly, true success both in and out of the practice of law.

Lawyers do not create social truths; they simply help jurors rediscover them. When you help jurors understand why all parties are equal before the law, then you become a member of an elite group that includes John Locke, Thomas Jefferson, Abraham Lincoln, and many others.

Other chapters in this book focus on how to try psychological injury cases. Beyond developing technical skills, to try each case properly, lawyers must:

1. Articulate the social ethics that generate the theme of each case;
2. Understand why what we do as lawyers is important;
3. Know how to adjudicate a claim economically and efficiently; and
4. Confront the personal fears that limit us.

The first step to winning advocacy is to embrace a correct philosophy. Juries and judges quickly sense the inherent legitimacy and sincerity of the lawyer who understands why advocacy is important and how it furthers the ideals of our society.

These are some precepts of an integrated philosophy:

1. The world does not need more technicians; it needs lawyers who think of ethics and morality before their own interests. Trial lawyers serve as social engineers by effectively representing the aggrieved. The resulting jury verdicts help define the legal and social relationships of our society.

2. Our judicial system is predicated upon fault and accountability. The deterrent effect of significant verdicts in product liability and medical negligence cases promotes safety within our society through financial accountability.

3. Ours is a participatory democracy. Jury service gives citizens an opportunity to make a statement about what is important for the community. The ballot box and the jury box are where citizenship is fully exercised.

4. Our liberties, our loved ones, and our personal health are our most treasured possessions.

5. Lawyers are officers of the court with responsibilities to clients, to the judicial system, to the legal profession, and ultimately to themselves as ethical human beings.

6. Each lawyer is independently accountable for acting ethically. The shortcomings of a client or another lawyer can never excuse illegal or immoral conduct.

Each generation has a new opportunity to further refine the morality of its predecessors. Explain to the jury that we need not learn a new morality, but need only reawaken what our predecessors knew, and what we have half forgotten.

The fundamental concepts of morality embodied within the instructions the court will give are:

1. All parties are equal before the law.

2. Anyone who breaks the community's rules is fully responsible for the legally defined consequences of that misconduct.

3. A wrongdoer takes the victim "as is." Predisposition is no defense. This is a subdivision of our jurisprudential system's first and broadest concept, which is that all parties are equal before the law.

4. People and safety are more important than profit.

A significant verdict is legitimized when counsel anchors its basis to community values. Do not give the jury facts and self-interested arguments alone. Provide them with moral congruence. How does a verdict for the plaintiff both affirm and further moral quality-of-life choices?

Every case has a potential theme, a proposition that rises above the facts and provides the scaffolding for your arguments. You may find it in the plight of the plaintiff, in a lie by the defendant, or in the conduct of an indifferent defense lawyer. Quicken your sensitivity to what is right and decent.

Your side will not always be pure, but as an advocate you must choreograph the facts to support the most poignant, compelling, and redeeming aspects of your case.

### *Dealing with fear*

We are all a host of inconsistencies, a mixture of brilliance, stupidity, bravery, cowardice, great vision, and blindness. The drive to excel is often a function of a motivation to avoid failure. Failure may be in the eyes of the client, of significant others—or in your own eyes.

To see how you view failure, think of yourself as: (1) who you think you are; (2) who others think you are; (3) who you want others to think you are; and finally (4) who the real you is. The first three exist; the last is only theoretical.

Most of us have difficulty reconciling who we want to be with who we believe we really are. We want to be great, but suspect that we are not, and doubt that we deserve to be. We feel scared, little, and impotent, yet we want others to see us as

