

PRAISE FOR *BECOMING A TRIAL LAWYER*

“In this amazing book, Rick Friedman plumbs the depths of the soul of a trial lawyer to reveal what scares us most and how to overcome those fears. For new lawyers and scarred veterans seeking inspiration to continue the fight, this book reminds us that it is not the fearless who are courageous, but those who, fully understanding the risk of loss, walk into the arena of the courtroom anyway.”

—Randi McGinn, president of the Inner Circle of Advocates and author of *Changing Laws, Saving Lives: How to Take On Corporate Giants and Win*

“As an aspiring young trial lawyer, it gave me some level of comfort to know that an accomplished veteran like Rick Friedman had the same fears and insecurities as me. This book inspired me to dig deeper and do better. I want to thank Mr. Friedman for writing it.”

—Matt McGill, partner of Lowder & McGill, Bowling Green, Kentucky

“Rick Friedman’s latest book provides unique insights for anyone who is a trial lawyer or aspires to be one. Without formulas, edicts, or commandments, Friedman shows how to communicate with jurors and secure justice for deserving clients. It is a book not for the library, but for the nightstand. It will give confidence to those who do not feel that they are born for the courtroom, but know they have much to offer.”

—Michael Koskoff, past president of the Inner Circle of Advocates and partner of Koskoff Koskoff & Bieder, Bridgeport, Connecticut

“I have always craved the courtroom, but I spent years never feeling satisfied no matter the verdict. I was quickly becoming someone I didn’t want to be. Friedman’s insights have made me not just a better and happier trial lawyer, but a better and happier law partner, mother, and wife. Rick proves he gets us. He *is* us. His words give us courage to survive another day.”

—Vanessa Cantley, member of the executive committee of the Kentucky Justice Association and founder of Bahe Cook Cantley & Nefzger PLC, Louisville, Kentucky

“With the intimacy of a best friend and the wisdom of a grandfather, Rick both speaks to us practically and challenges us aspirationally. Thanks for the great read.”

—Aaron V. Rocke, trial lawyer and adjunct professor at
Seattle University School of Law

“Once again, Mr. Friedman has written a book that should be in the library of every trial lawyer, particularly those in the beginning years of their careers. In the words of its author, *Becoming a Trial Lawyer* is ‘the book I wish I had found when I started practicing law,’ more than fifty years ago.”

—Edmond Burke, Justice (retired), Supreme Court of Alaska, adjunct
instructor of trial practice, University of Montana School of Law

“Rick catches the true essence of being a trial lawyer—committing to following our own paths while doing so in service to others. From Clarence Darrow through Gerry Spence and to Rick Friedman—each guides us in understanding how we are transformed when we stand and represent another.”

—Charles H. Rose, III, director of the Center for Excellence in Advocacy,
Professor of Excellence in Trial Advocacy, Stetson University College of Law

“From one of the country’s best trial lawyers comes some of the best advice about joining the wonderful, baffling, crucial profession of the trial lawyer—the profession and way of life that demands its practitioners dig deep into everything they are just to be any good. Being a trial lawyer—a good one—is a moral stance, a godsend to the wide world of those in need, and a constant campaign to get better at what you do. If that’s the life you want—more than you want the flat-line life of a corporate desk slave or insurance company lackey—then this is the next book to read.”

—David Ball, Phd, author of *David Ball on Damages*

“Even though I’ve been admitted to practice for fifteen years, I have been reluctant to go to trial, and have avoided it when I can. This book has given me new hope and enthusiasm for trial. This has to be the best lawyer book I have ever read. Every page is filled with ideas, thoughts, wisdom, humor, and insight. I wish I’d had this book when I was in law school. Once I started to read this, I couldn’t put it down. I am going to give this book to all my comrades. I am also going to give to my friends and family. This book has principles that can apply not just to lawyers, but to other occupations.”

—Steve Alvarez, attorney in Tacoma, Washington

“By his own admission, Rick is not a ‘natural’ trial lawyer. Thus, he’s uniquely suited to write this much-needed book on the soul and essence of a trial lawyer, one who represents people, not corporations or entities. The journey begins with those who are considering a life’s work as a trial lawyer. It ends with those who verge on burn-out from the tremendous drain on family and self, having tilled the fields of justice for many years. As Rick writes, the book is not about him, but about you and your journey. While he discusses technique, the spirit of the book is Rick’s ability to peel back and expose the soul of the trial lawyer, better than any writer before him. His words are direct, candid, and in the end, uplifting. An absolute must-read, no matter where you are on your journey.”

—Don Keenan, child advocate and member of the Inner Circle of Advocates

BECOMING A
TRIAL LAWYER
*A Guide for the
Lifelong Advocate*

SECOND EDITION

RICK FRIEDMAN



TRIAL GUIDES, LLC

Becoming a Trial Lawyer: A Guide for the Lifelong Advocate

Trial Guides, LLC, Portland, Oregon 97210

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*To Kirsten,
my companion
from the fire-swamp
who still saves my life
every day.*

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Trial Tactics (with Roger Dodd)

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PUBLISHER'S NOTE

This book is intended for practicing attorneys. This book does not offer legal advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment; to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book); and to make independent decisions about whether and how to apply such information, ideas, and opinions to a particular case.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

The cases described in this book are composites, and the names and other identifying details of participants, litigants, witnesses, and counsel (other than the authors of this book) have been fictionalized except where otherwise expressly stated.

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FOREWORD

This book is about you. It will change you. It will bring you face-to-face with your character, your weaknesses, and your foibles. Rick speaks with the voice of a trial lawyer and forces you to appreciate hard and uncomfortable truths. I don't know of a real trial lawyer who does not suffer from insecurity. This writing helps address the insecurity that brands each of us as trial lawyers.

This short book is for all of us who claim to be trial lawyers. Not many of us are left. And there are fewer today than yesterday. Although the number of lawyers escalates every year, the number of trials and, more significant, the number of trial lawyers continues to decline. For those of us who still claim to be trial lawyers, this book reminds us that with each new trial we are *becoming* trial lawyers.

When I was asked to write a foreword to this second edition, I had read the first edition cover to cover twice and consulted it dozens of times. This reading of the second edition makes three. To say I have learned something new with each reading would be a disservice. Rick's words have changed me. We all know from trying jury cases that changing anyone is hard work. Changing an opinionated trial lawyer with four decades of "just one more trial" is nearly impossible. But Rick's book has done it.

I have read all of Rick's works, but this book is the only one I insisted that my son, an aspiring trial lawyer, read. It is important. Is this book for newer lawyers? Yes. But this book is just as important for those of us who are not so new. We need, but often do not admit that we need, to be fertilized with new insights to keep the edge our clients deserve.

As we progress in our careers, we study and analyze (in excruciating, painful, and at times catatonic micro-inspection) every component, technique, and variable of our last trial. But what we often forget to analyze is the single biggest variable of trials:

who we are. And more important, how does that affect our skills, our techniques, and our trials? How do jurors see each of us as an individual trial lawyer?

There are many reasons not to look too closely at our inner selves. For me, that look inside was and is a scary proposition. But, if we fail to recognize that each of us is the single biggest variable at trial, how can we understand the way we affect witnesses, opponents, judges, and, most important, jurors? When we understand ourselves better, we get closer to jurors.

This book invites exploration of our inner selves. It provides potential solutions and improvements. And while this book is not autobiographical, Rick's writing shows us his inner self. Because Rick shows us his inner self and his genuine humility, it makes the prospect of me doing the same less uncomfortable. I cannot say that I will ever have the humility that characterizes Rick, but he has helped me to understand that exposing my inner self is not a weakness but a strength. Doing so projects confidence—to my opponents, to my judges, and to my jurors.

I do not agree with all of the advice in this book. And it was refreshing to read Rick admit, "My opinions may be wrong and advice misguided." Rather than being a silver bullet, this book forced me to decide what my opinions were on many varied subjects. I am writing this foreword despite the fact that he praises some of my work and then criticizes it in the same darn sentence. But that is the freedom, beauty, and value of Rick's writing. Open, direct, hard-edged. Just what a trial lawyer needs.

This book blends detailed, practical advice with suggestions for introspection. The topics covered in these pages are varied. In the realm of introspection, this book addresses what it takes to be and remain a trial lawyer, personal blind spots, self-imposed expectations, superstitions, comparisons to others, and how to deal with losing. In the realm of the practical, Rick discusses: knowing the law, learning from experience, dealing with opponents (both the disgusting and the benign), and the difference between planning the trial and the reality of trial.

I must add a special emphasis on a new chapter for this edition: chapter 28, “Luck.” I hated the title and content of this new chapter the first time I read it. Thinking of acknowledging the truth of, and eventually accepting the effects of, *luck* in trial shook my carefully constructed worldview. It made me admit that I cannot control every aspect of trial. Having now read this chapter a dozen times or more, I still don’t like it. But I cannot deny the truth of Rick’s words. That too will change me for the better.

Trial work is a lifestyle choice. Though many aspiring lawyers find trial work tempting, the actual work quickly deselected those who cannot keep up. The lifestyle is just too demanding for the vast majority, and Rick reminds us that our lifestyle choice affects our partners, staff, friends, and families. As he so precisely says, they did not choose this lifestyle. We did. We were not deselected. We choose to become trial lawyers every time we try “just one more jury trial,” even when we know that doing so will not be conducive to those important relationships.

We all know our careers are journeys; Rick has given some important mile markers for us to consider. You will not only learn from them; they may well change you. Thank you, Rick.

Roger J. Dodd

Park City, Utah

September 15, 2015

PREFACE TO THE SECOND EDITION

I still get a little thrill when someone comes up and thanks me for writing one of my books. We all want to be heard, understood, and appreciated. But there is a different quality to the exchange when someone thanks me for writing *this* book. It is not uncommon for them to be emotional—some have even had tears in their eyes.

Why?

Becoming a trial lawyer is a lifestyle choice. And the lifestyle is brutal in many ways—emotionally, physically, financially. It is easy to get lost in the brutality and overlook the opportunities for personal growth, compassion, and kindness. It is easy to get lost in the brutality and lose one's moral compass. It is easy to get lost in the brutality and become a brutal advocate—which, if you are representing plaintiffs or criminal defendants, means an *ineffective* advocate.

I like to think that this book helps lawyers see past the brutality of what we do and helps show the way to more satisfying and effective advocacy. Of the books I have written, this one is my favorite. I think it has helped the most people.

Yet it sells the least.

It is a scary book. It touches on topics that make many lawyers uncomfortable. It tries to provoke introspection in the reader. I have been as open and direct as I know how to be. Scary.

I like to tease my publisher that the reason this book sells less than my other books is because he wouldn't listen when I said my photo should not be on the cover. People would mistake the book for a memoir or autobiography, I said, and no one would want to read that. So now there is a new cover. If sales improve, I can say, "I told you so."

I never had any intention of writing a second edition to this book. I thought I would give it my best shot and then move on,

never looking back. But there are three chapters I was not mature enough to write seven years ago, two on losing and one on “the cancer of comparison.” They belong in this book, although they will increase the discomfort of some readers.

Now I will move on and not look back.

I wish for you, the reader—the trial lawyer—what every people’s advocate needs: nerves of steel and an open heart.

Rick Friedman

Bremerton, Washington

October 2015

INTRODUCTION

If you are reading this, you are likely considering the prospect of becoming a trial lawyer. Maybe you have already embarked on that difficult journey. Maybe you are having second thoughts about the wisdom of your decision.

Becoming a trial lawyer is like traveling through a thick, dark, humid jungle. The strange and unfamiliar confronts you at every turn; progress often seems imperceptible; and yes, there are very real dangers.

There are excellent books on litigation tactics, trial technique, and even law office management. These can be helpful, but they concern themselves with the externals of being a trial lawyer. Ultimately, the journey toward becoming a trial lawyer—like all great journeys—is an inward one. You are changing from one thing—whoever you are—to another thing, a trial lawyer.

There are also excellent books, by extraordinary trial lawyers, recounting how they made their own ways through the jungle. These too can be helpful; we can learn from the examples set by

others. But the paths they took are their paths, not yours. They started in different places and will end in different places.

What about *your* journey through the jungle? It is my hope that this book will serve as something of a guidebook for you. The path I took is long since overgrown. You will have to find your own, as everyone does. But if I can't tell you which path to take, perhaps I can teach you what quicksand looks like, direct you to some sweet fruit, and help you consider whether you want to make the journey at all.

This book is divided into three parts. Part one offers advice on how to get the knowledge and skill you need to be a trial lawyer. Part two identifies common errors made by trial lawyers everywhere, at all levels of experience. I chose these particular mistakes because the cause is often a psychological blind spot or misunderstanding, and the fix often seems counterintuitive and contrary to common lore and practice. I hope to not only save you the time, trouble, and heartache involved in repeating these particular mistakes but, more important, to demonstrate how crucial it is to observe clearly and think independently, whatever your level of experience or skill. Finally, part three addresses the emotional and psychological challenges facing the trial lawyer. These challenges demand that we meet them with as much determination, passion, and humility as any other aspect of our calling.

Since this book is about you and your journey, I have tried to minimize the autobiographical. The focus should be on you. Still, you need to know three things about me in order to evaluate what I have to say.

The first thing you should know is that I am not a “natural” trial lawyer, as most people would commonly understand that term. Trying cases came harder for me than it does for most. When I began practicing law, I was socially awkward and painfully shy. The first time I stood in front of a jury panel and tried to ask questions in *voir dire*, my mouth opened, but no words came out. I tried to force air out of my chest and up into my throat to make sounds, but nothing happened. There was not a sound in the courtroom while my mouth opened and closed silently, like a goldfish's.

This was not the only attempt at making sounds. After doing my goldfish imitation for about thirty seconds, I went back to my table and purposefully rustled some papers around. I walked back in front of the jury and became a goldfish again. Back to the table for a drink of water (trying to hide my trembling hand) and once again to the center of the courtroom for everyone to see, unable to make a single sound.

Finally, the judge took mercy on me and gruffly said, “Well, if you’re not going to ask them any questions, I will.” That got the trial started.

This was not an isolated event. I had equally humiliating experiences in moot court and in what passed for clinical education in law school. It was more than a decade before I could approach a jury with anything less than deep-seated dread. When my first felony trial began, I was five feet, eleven inches and weighed 160 pounds. The trial was over in five days, and I had lost ten pounds. I had been unable to eat anything at all for the entire five days. Ten years later, defending in a criminal conspiracy trial, I would have breakfast and then go to the office and throw up—every weekday for five weeks. I tried to be quiet so my partner, Jeff Rubin, wouldn’t hear. To this day, I don’t know if he did.

The next thing you should know is that, as a trial lawyer, I am largely self-taught. I learned almost nothing about trying cases in law school. I left law school and began a solo practice in Sitka, Alaska. Sitka is on a 300-square-mile island that can only be reached by boat or plane. At the time, Sitka’s total population was about seven thousand, and the lawyer population was less than ten.

I had no mentor. I had to teach myself. That forced me to read everything I could about trials and trial lawyers. I watched trials whenever I could. Over and over I listened to audiotapes and watched videotapes of great trial lawyers like Racehorse Haynes and Moe Levine. I became a connoisseur of trial advocacy training materials—articles, books, audiotapes, videotapes. I bet few people in the country have consumed as much of this material as I have. Unfortunately, as discussed later in this book, much of it

is boring, unhelpful, or worse (Haynes and Levine are among the exceptions). Finding the good stuff was a rare and joyous occasion.

I would take what I found in these books and tapes and try it out in the courtroom. I quickly had to learn the difference between good advice and bad. Over the years, I have tried all kinds of cases: drunk driving, first-degree murder, child custody, defamation, personal injury, commercial torts, products liability, and insurance bad faith. Like any self-taught practitioner, I have made just about every mistake you can imagine—and probably some that would never occur to you.

The last thing you should know is that I developed an unusual trial practice. Our firm is asked to try cases for other lawyers throughout the country. This provides the opportunity to see how law is practiced and cases are tried in a variety of locations. I have worked with, and against, some of the finest lawyers in the country. I have seen brilliant trial lawyers make mistakes and incompetents make some moves of pure genius.

While traveling around the country accumulating trial experiences, I've observed and learned from the people around me. In trying to find my way through the jungle, somewhere along the line I became a trial lawyer, but I never stopped asking what that means—and what it means for me as a person.

My hope for this book is that it can be a guide for those interested in becoming a particular kind of trial lawyer—the kind that represents people in court. I've spent a lot of time watching the other kind of trial lawyer, the kind who represents corporations and governments, but I have almost no experience navigating that jungle. If you want to enter there, this book will not be of much help.

My hope is that this book will comfort and ease your anxiety in some respects and goad you to action in others. I have tried to express my opinions and advice as directly and truthfully as I can.

I expect this book will annoy, even anger, many accomplished trial lawyers. They will note that they followed few, if any, of my suggestions. They will assume I am implying that if they didn't

follow these suggestions, they must not be skilled trial lawyers. This is not my intent. I am describing a method of navigating through the jungle that has worked for me. It is not the only method.

I have not written a bible or a rule book. I have not attempted to state a minimum “standard of care.” Instead, I offer suggestions and standards for those who want to become the best trial lawyers they can be. Aspiring to these standards—even when I fell short—helped me become a better trial lawyer. I think they will help you too.

But what is true for me may not be true for you. My opinions may be wrong and my advice misguided. There is no way to prove or disprove most of what I say except through your own personal experience. Take what seems helpful and discard the rest. It is *your* journey after all.

I have written the book I wish I had found when I started practicing law. If it can save you from some of the wounds I suffered or if it can help yours heal faster, I will consider it a success. Maybe it will even help us both find some peace in this least peaceful of professions.

Rick Friedman

September 2008

Bremerton, Washington

PART
ONE

Entering the Jungle

INTRODUCTION

Part One

Do I have what it takes to be a trial lawyer? Why should I want to be a trial lawyer? What is a trial lawyer anyway?

In this first part of the book, I address these and other questions that seem to haunt all beginning trial lawyers. To say they haunt all beginning trial lawyers is misleading, though, because that implies they do not trouble more experienced lawyers. In fact, these questions follow us all throughout our careers. For the new lawyer, they can be a source of sharp, fresh pain; to the experienced lawyer, a dull familiar ache. How you adapt to the pain or anxiety these questions raise has much to do with the sort of person, and the sort of lawyer, you become.

A story is in order, because it makes it easier for me to present this book to you. It captures the spirit in which this book is offered. It may even bring you some comfort. It was the late 1980s. I had been practicing law for nine years. In Alaska, three first-degree murder acquittals occurred in the previous year, and

one of them was my case. The defense lawyers in those three cases were asked to speak at the annual public defender conference. The conference organizers asked us to expound on the lessons we learned in achieving the acquittals.

The first lawyer to speak was one of the most brilliant trial lawyers I have ever met. When he stands before you, you know you are in the presence of greatness. The next lawyer to speak was not only extremely smart but also charming and charismatic. When he finished, it was time for the moderator to introduce me.

“Every year after these conferences,” said the moderator, “people come up to me and say things like, ‘I’ll never be as brilliant as Jim. I’ll never be as charming and charismatic as Phil.’ Here, to show you that you don’t need to be brilliant, charming, or charismatic to win a first-degree murder case is Rick Friedman.”

This is a true story. True, not only because it actually happened but because the point is well-taken. The qualities of a good trial lawyer are not generally well understood. A certain level of intelligence is required but genius is not. Charm and charisma are helpful but not essential. Instead, an odd kind of courage is required: willingness to work hard and fail, willingness to look foolish, willingness to expose yourself and risk rejection, and finally, willingness to look deep into your own soul. The job forces all of this on you. If you are up to the challenge, you might be successful. If not, you won’t be.

1

WHY BE A TRIAL LAWYER?

Why be a trial lawyer? This is worth asking at all points in your career. It's never too late to become a trial lawyer, and it's never too late to stop. You may never come up with a satisfactory answer, but the self-examination that comes from asking the question is important to your development as a trial lawyer and as a person. At a minimum, asking the question will remind you that you have a choice. No one is forcing this occupation on you. So what are you trying to get out of it?

The traditional, socially acceptable answers are variations on themes such as helping others, fighting for what is right, combating the abuse of power, and the ever popular "wanting to make a difference." Each of these themes can help give meaning to your work as a trial lawyer. But any honest exploration of the reason for being a trial lawyer requires deeper inquiry.

The first thing to recognize is that the answer is a moving target, in the same way you are a moving target. Helping others or wanting to make a difference might attract you to trial work in college or law school, when career choices are somewhat abstract

and hypothetical. But those same reasons might not be enough to sustain you at age thirty-eight, when you are working seventy-hour weeks, have two kids who need braces, and are having trouble making payroll.

Plenty of careers provide the opportunity to help others or make a difference. Most are not as all-consuming as trial work. Why be a trial lawyer? As you grow and change over time, the question requires that you constantly update the answer.

WHAT IS A TRIAL LAWYER?

For purposes of this book, I define a trial lawyer as someone who:

- Represents individuals (or small businesses) in litigation
- Is committed to developing the ability to skillfully represent his or her clients in trials before judges and juries
- Is committed to doing his or her best job in every single trial

Notice there is no quantitative aspect to this definition. I would not claim you need a certain number of trials under your belt to call yourself a trial lawyer. Bush pilots in Alaska talk about how there are pilots with a thousand hours of experience and then there are pilots with one hour of experience repeated a thousand times.

The same is true of trial lawyers. There are some who have tried many cases, but would not fit my definition of trial lawyer. On the other hand, there are lawyers going into their first trials who would. One of the major goals of this book is to examine the sort of commitment this definition requires—the commitment this job requires.

IT IS A HARD JOB

In any particular case, you will almost always be outmanned and outgunned. Although the psychological thrill of being the

underdog can be substantial, the day-to-day reality is that you are constantly stretched to your limits. The primary way to make up for this disparity of resources is through your own extraordinary effort. Simply put, to even have a chance, you have to outwork your opponents—and they work hard.

In any individual case, there is almost always more work to do: another issue to research, another witness to interview, or another line of cross-examination to construct. Many of your cases alone could be full-time jobs. But you can't afford to make any one case a full-time job. So you find yourself cutting corners or making what you hope are prudent judgment calls. When you sleep late on Sunday or go to your child's school play in the middle of a workday, are you shortchanging your client?

Let's say you are a trial lawyer with twenty cases. That means a minimum of twenty smart, well-educated, well-financed, hardworking people are spending significant portions of their time and energy trying to figure out how to beat you. While you are at the movies Friday night, one of them is drafting a set of discovery to send you on Monday. While you are sleeping late Sunday morning, one of them is drafting a summary judgment brief. In criminal cases, an entire law enforcement agency may be interviewing witnesses while you are on vacation.

In response to this pressure, many trial lawyers work constantly. They work themselves into physical illness or mental or emotional dysfunction.

Then too, as trial lawyers we must work with the people who populate the litigation landscape: disagreeable judges, disagreeable defense counsel or prosecutors, and yes, on occasion, disagreeable clients. Sometimes we even have to deal with disagreeable partners or disagreeable co-counsel. Everyone waits and watches for us to make a mistake.

Whether we represent the accused in a criminal case or a plaintiff in a civil case, the jury—and most judges—view us with suspicion. We start in a hole before the case, the hearing, or the trial even begins. Because of this, mediocre prosecutors or civil

defense lawyers can win most of their cases. A mediocre plaintiff's lawyer or criminal defense lawyer will win almost none.

Whatever your capacity for work, suffering, or sacrifice, this job demands it all. Whatever you give, you will always feel as though you are not giving enough. Why would anyone voluntarily jump into this stress pool?

OTHER TYPES OF LAWYERS DO IMPORTANT WORK

Plenty of interesting, challenging legal jobs contribute to the good of society. General practitioners help people daily—and often expose and correct governmental or corporate misconduct in the process. Class-action lawyers can help more people in a single, well-executed case than a trial lawyer can help in a lifetime. Writers and researchers at plaintiff or criminal defense firms contribute every bit as much to the result as the trial lawyers who get the credit. So why be a trial lawyer?

WHAT ABOUT THE MONEY?

Some superstar trial lawyers become enormously wealthy. Some lucky trial lawyers also become wealthy. The prospect of big money no doubt keeps many trial lawyers in the business. But being a trial lawyer is not a reliable way to become rich. The studies I have seen and the trial lawyers I have known suggest most trial lawyers make a good, but not a great, living. If they put the same creativity, time, and energy into selling real estate or cars, they would probably make more money—and make it sooner.

Being a trial lawyer involves huge risk. For every trial lawyer who makes it rich, a hundred live on the brink of financial disaster, and scores go over the edge. The old adage has some truth: "Trial lawyers live rich and die poor." Many die poor. Most do not live rich. So why be a trial lawyer?

WHY BE A TRIAL LAWYER?

The reason for being a trial lawyer varies from person to person. It also differs from time to time in any person's life. Here are a few things to think about now. But as you will see, this entire book is my attempt to answer this question—for me and for you.

Some trial lawyers will answer that they like the variety—one day you're interviewing a Hells Angel, the next you're interviewing a prize-winning physicist. No two days are ever the same. Others will tell you they like the freedom—you answer only to your conscience, your client, and your God. Gerry Spence gave a different answer—one that expresses a major theme of this book.

Spence has been my professional hero since I first heard about him in 1980. I read all his books, watched every CLE video of him I could get my hands on, and tracked down transcripts of his trials to read.

I got my first chance to meet Spence in the mid-1990s, when I received a call from one of his partners. They had a case in Alaska. Would I act as local counsel? They would do all the work; I just needed to make sure things were filed properly. What percentage would I charge?

I've never liked local counsel arrangements in which I did nothing but file pleadings prepared by someone else. It had been years since I'd agreed to one. But I saw my chance. I would do it for no fee, if the partner could arrange for me to have dinner with Gerry Spence. The partner quickly and incredulously agreed.

Spence had just finished the Randy Weaver defense in Idaho when we had our first meeting. This was the most recent in a long line of impossible cases he had won. We sat in a fancy restaurant in Anchorage, and I had the chance to ask him all the questions that had built up over the years. He was kind enough to try to give me his best answers. Finally, I worked up the courage to ask him what I most wanted to know. He had achieved more than anyone could hope to in the practice of law. He had trial victories, published books, financial success, and the adoration of tens of

thousands of young lawyers. He was pushing seventy. Given the mental, physical, and emotional strain of trial practice, why was he still doing it?

He didn't need time to search for an answer. "It's the best way I've found to learn about myself."

As is often the case when I hear Spence's advice, I wasn't ready to hear this. It sounded too pat and a little narcissistic. But in the years that followed, I've come to realize he was absolutely right.

I originally thought of trial work as applied political science. The courtroom is where the rules of society are enforced. After a short time practicing, it became obvious that trial work is also applied psychology. I observed basic psychological principles at play in the conduct of the judge, the jury, the witnesses, the opponent, and myself—all constantly interacting. After a few more years of trial work, I could see applied philosophy at work in the courtroom. What is truth? What is justice? What can we really know about a subject? What is fair, what is moral, and what deserves punishment or reward?

All of this is part of what makes trial work so interesting and rewarding. Spence was right, however. There is more to it. Trial work can also be an inward journey. Seen in this light, trial lawyering is also applied spirituality. (There's a word you don't see in legal books very often.) By spirituality, I mean the process of turning inward to find truths about ourselves and about the world, truths that can sustain us and carry us beyond ourselves.

You can hide from yourself in any job. You can sleepwalk through life, trying to stay comfortable and secure. Certainly, some trial lawyers do that. But trial work makes that approach to life very difficult. Over and over, you come face-to-face with the sadness, unfairness, and injustice of the world. Over and over, you come face-to-face with your own character, weaknesses, and foibles.

As a trial lawyer, you exist in a crucible that will reveal truths about you and the world—whether you want to see them or not. Those who don't want to see them turn to alcohol, compulsive

work habits, or various forms of narcissism. Or they cripple and blind themselves with their own cynicism. Or they find other ways to give up.

If you can resist these temptations to flinch and keep trying to become a trial lawyer, the process can be transforming. You might discover strength, maturity, courage, and compassion—in yourself and in others—that you didn't know existed. That may be the best reason to be a trial lawyer.