

## **Praise for** ***Luvera on Advocacy***

“Paul Luvera has been recognized as one of America’s most skilled trial lawyers for many years. For the last twenty, I have had the opportunity and pleasure of learning from Paul about trial practice because of our association in the Inner Circle of Advocates. Now, Paul and Lita have written *Luvera on Advocacy*, which allows anyone who is interested in trial work, whether a beginner or a seasoned veteran, to learn from them as I have. Reading and, more importantly, studying this book can do nothing but enhance your trial skills.”

—Alexander Blewett III, member of the Inner Circle of Advocates and fellow in the International Academy of Trial Lawyers, the American College of Trial Lawyers, and the International Society of Barristers

“In forty-four years of trial practice representing injured clients, I have devoured numerous books on how to ply our trade. Never have I read a jewel like *Luvera on Advocacy*. It covers our craft from the moment the client knocks on our door to the verdict and beyond with priceless insight and wisdom. This book holds magic for new and seasoned lawyers alike. I sincerely wish I’d had it decades ago.”

—Mark R Bocci, member of the Inner Circle of Advocates, the American College of Trial Lawyers, and International Academy of Trial Lawyers

“An absolute must read for any trial lawyer! Paul and Lita have a decades long jury record of success that is unmatched. Few, if any, trial lawyers can demonstrate Paul’s devotion to the art of jury trial advocacy. The uniqueness of Paul Luvera is his continual search and personal work to be a better trial lawyer, in spite of being one of the best of all time. This book shares a lifetime of experience while applying the latest learning and research. Paul’s life’s work is here to make us all better and motivate us to continue the rare art of jury trials.”

—Jude Basille, member of Inner Circle of Advocates and past president of Gerry Spence’s Trial Lawyers College

“Paul Luvera and Lita Barnett Luvera’s *Luvera on Advocacy* is the most comprehensive and information-filled book on how to try and win a case I have ever read. The book has everything from determining whether to take a case and pretrial preparation to trial (voir dire through final argument). The Luveras effectively use excerpts from trial testimony and quotes from great trial lawyers and public figures throughout history. If there is one book that should be on the desk of trial lawyers, regardless of experience levels, it is *Luvera on Advocacy*.”

—James S. Rogers, fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, the International Society of Barristers, and member of the American Board of Trial Advocates

“Paul and Lita Luvera’s book, *Luvera On Advocacy* is a must-read and keepsake for any seasoned or aspiring plaintiff’s trial lawyer. In this book, they explain how psychology and neuroscience research helps us decipher human decision-making and communicate our message persuasively. The book runs the gamut from case evaluation and screening, witness preparation, deposing defense experts, performing opening statements and improving cross-examination techniques while utilizing cross-examinations in historic cases by legendary trial lawyers. In addition, the book covers how to develop simple themes

and frames drawn from focus groups as an effective tool in obtaining successful jury verdicts for our clients. It further discusses how to make a powerful closing argument, as well as effectively arguing damages. It is a virtual “how to” handle a personal injury case from opening to closing your file. I highly recommend this excellent book by two of the most-highly regarded plaintiff trial lawyers in the country.”

—Joe Power, past president of the Inner Circle of Advocates, Public Justice, and the Illinois Trial Lawyers Association

“It has been Paul’s greatest gift to trial lawyers that he constantly strives to learn, innovate, and improve his craft. He teaches the rest of us to do the same and so it is with his and Lita’s book. It offers the 30,000-foot view of the science of persuasion, then dives down to give practical advice to incorporate those concepts. The book is comprehensive, compelling, and readable. No matter how long you’ve been trying cases, you will learn a great deal from this book.”

—Becky Roe, coauthor of the first nationwide manual for the prosecution of child abuse and has obtained millions of dollars in settlements and verdicts



---

# LUVERA ON ADVOCACY

---

Paul Luvera &  
Lita Barnett Luvera



Trial Guides, LLC, Portland, Oregon 97210

Copyright © 2020 by Paul Luvera and Lita Barnett Luvera.

All rights reserved.

TRIAL GUIDES and logo are registered trademarks of Trial Guides, LLC.

ISBN: 978-1-941007-97-6

These materials, or any parts or portions thereof, may not be reproduced in any form, written or mechanical, or be programmed into any electronic storage or retrieval system, without the express written permission of Trial Guides, LLC, unless such copying is expressly permitted by federal copyright law. Please direct inquiries to:

Trial Guides, LLC  
Attn: Permissions  
2350 NW York Street  
Portland, OR 97210  
(800) 309-6845  
[www.trialguides.com](http://www.trialguides.com)

Managing Editor: Tina Ricks

Production Editor: Travis Kremer

Copyeditor: Patricia Esposito

Cover Designer: Alexandra Starkovich

Original Interior Template Design by Laura Lind Design

Interior Layout by Travis Kremer

Printed and bound in the United States of America.

Printed on acid-free paper.

*This book is dedicated to all young trial lawyers who aspire to represent injured clients to the best of their ability. Being an advocate for these injured people, who have no voice, is a daunting task. It requires you to be the best advocate you are capable of becoming. Learning the tools and tips from this book may change the world, through you, to a better place—for your clients and for you as well. You are just one person in this world, but to your clients, you are their world. They need you to aspire to your highest level of advocacy.*

—Paul Luvera and Lita Barnett Luvera





# CONTENTS

---

Publisher's Note . . . . .	xi
Foreword . . . . .	xiii
Acknowledgments . . . . .	xv
Introduction . . . . .	xvii

## **PART ONE: ADVOCACY**

1. Why Can't A Woman Be More Like A Man? . . . . .	1
2. Using Repetition, Anchoring & Perceptual Positioning . . . . .	9
3. Political Advice for Trial Lawyers . . . . .	23
4. Who You Gonna Believe, Me or Your Own Eyes? . . . . .	35
5. Great Trial Lawyers Have the Right Attitude . . . . .	41
6. Lessons from Earl Rogers & Clarence Darrow . . . . .	53
7. Facing Unfair or Discriminatory Conduct with Courage . . . . .	65
8. Dealing with Annoying Opponents and Autocratic Judges . . . . .	71
9. Losing . . . . .	83
10. Great Trial Lawyers of the Past . . . . .	97
11. Persuasion Fundamentals for Trial Lawyers . . . . .	109
12. Professional Conduct with the Trial Judge . . . . .	121
13. Sharks and Your Trial Practice. . . . .	131

## **PART TWO: PRETRIAL**

14. Find the Yellow Brick Road . . . . .	143
15. Ten Rules for Winning Cases . . . . .	155
16. Kenny Rogers was Right! . . . . .	163
17. Some Thoughts about Mediation . . . . .	178
18. Deposition Outline for Defense Experts . . . . .	189
19. Depositions Involving Risk-Benefit Analysis . . . . .	197

## **PART THREE: TRIAL—THE JURY**

- 20. Is the CBS TV Series Bull Aptly Named? . . . . . 211
- 21. How Do Jurors Arrive at a Verdict? . . . . . 223
- 22. Understanding Jurors . . . . . 231
- 23. Identifying Juror Personality Traits in Voir Dire . . . . . 247

## **PART FOUR: TRIAL—OPENING STATEMENT**

- 24. Elements of a Great Opening Statement . . . . . 259

## **PART FIVE: TRIAL—DIRECT EXAMINATION**

- 25. Conduct Compelling Direct Examinations . . . . . 265
- 26. Direct Examination Done Right . . . . . 277
- 27. Preparing Your Clients for Testifying: Meet Your New Best Friend . 283
- 28. Improving Your Expert Witness's Testimony . . . . . 301

## **PART SIX: TRIAL—CROSS-EXAMINATION**

- 29. Cross-Examining a Medical Defense Expert . . . . . 311
- 30. Cross-Examining an Evasive Witness . . . . . 323
- 31. Dealing with Life Expectancy . . . . . 337

## **PART SEVEN: TRIAL—ARGUMENT**

- 32. Arguing the Verdict Amount . . . . . 343
- 33. Senior Citizen Personal Injury Cases . . . . . 357
- 34. Arguing Damages to the Jury . . . . . 361
- 35. Helping the Jury Understand the Reality of Suffering from Injury . 371
- Conclusion . . . . . 381

# PUBLISHER'S NOTE

---

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

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

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 publisher disclaims any liability or responsibility for loss or damages resulting from the use of this book or the information, ideas, and opinions contained in this book.



# FOREWORD

---

I've known Paul Luvera for about thirty years, first as a long-distance admirer and then, for many years, as a close friend.

A national lawyer magazine and the American Bar Association heralded his skills at office management. Thereafter, he came to national prominence as a trial lawyer who consistently succeeded with difficult and impossible cases. The Inner Circle of Advocates provided the best forum to grow our relationship, and it was here that Paul became an early mentor.

One of the first stories I'll tell about Paul is from when I traveled cross-country to this small town in Washington where Paul's office was located, complete with a totem pole in the front of the office. I went to explore how someone from a small town could have a national reputation. No sooner did I arrive when Paul said at lunch, "We are moving the office to Seattle." So much for my theory about small towns. I recount that story for what it demonstrates—the power of Paul is that he is always evolving. That's true in all aspects of his life and is clearly evident in this book.

Paul is also gifted because he wears a different set of glasses from most trial lawyers. He sees things average lawyers fail to see. Herein lies his greatness. Like a Hall of Fame quarterback, he sees "the play" develop in time to use it to its full advantage.

However, unlike almost all Hall of Fame trial lawyers, Paul is an exceptional giver. After years of national speaking, and with his many books and blogs, we've all learned from Paul. He deserves our gratitude.

You'll see there is a coauthor, Lita, Paul's long-standing wife. Lita the lawyer is also masterful at her craft, and I feel her influence on this book, especially in the witness preparation chapter.

Against the backdrop above, I feel privileged to have been asked by Paul to do this foreword.

Here are four reasons to read this book:

1. All great trial lawyers are aficionados of the former greats and consume all their books and available transcripts. Paul is no different. He quotes from Clarence Darrow, Edward Bennett Williams, Moe Levine, the almost forgotten Earl Rogers, and unknown to many as a trial lawyer, Nelson Mandela. Paul quotes from all to support his points.
2. While Paul and Lita address all aspects of trial practice, from client interview to appeal, they keep constant themes in their work, like civility, honesty, practice, preparation, and most of all, authenticity.
3. Lest you think it's a book full of lessons only from lawyers, wait till you read how Paul uses Groucho Marx, John Wayne, Yogi Berra, Martin Luther King Jr., and others to offer insights and lessons.
4. One of the aspects I enjoyed most is the many useful items for your practice that Paul provides. He offers sample checklists, actual direct and cross-exams of many types of witnesses, and advice.

You need to add this book to your library. You will use it often and learn a lot. It's not about tricks or shortcuts, but instead practical and powerful advice for your practice.

—Don Keenan, 2020

# ACKNOWLEDGMENTS

---

We have been privileged to have spent more than forty years as partners in the practice of law, as well as partners in marriage. Major decisions in both areas have always been based upon our mutual respect for each other's advice. As in all aspects of our lives, this book is truly a joint contribution and effort, made equally by both of us. The book is based on our years of experience working together on major damages cases, exclusively representing clients who were injured by the negligence of others.

This work would not have been possible without the excellent help and assistance of Tina Ricks: writer, editor, and project manager at Trial Guides. We are grateful for your hard work and effort. We'd also like to offer our thanks to Patricia Esposito, the copyeditor on this project, and Travis Kremer, the production editor.

We would be remiss in not acknowledging both of our parents. They were our role models growing up. They set the example for us of truth and ethics, and instilled the moral obligation to help others in need of our abilities. They encouraged us in our pursuit of justice for others.

There are a number of other people who also had an indirect role in the writing of this book. These are people in our lives who guided us and inspired us over the years, both lawyers and nonlawyers. They shared their knowledge and commonsense advice to make us better lawyers and human beings. They motivated us to have the determination to obtain full justice for our clients. There are too many to list, but they include our clients, family, teachers, and fellow trial lawyers. It is with humble and sincere gratitude we thank you all.

Thank you to all.

—Paul Luvera and Lita Barnett Luvera





# INTRODUCTION

---

The idea for this book sprang from a series of monthly columns my wife Lita and I originally wrote for the Washington State Association for Justice. It was a joint effort, like many of the things we've done during our more than forty years as partners in marriage and in the law firm we created. The time we were not together practicing law, we were together in the other activities of our lives. As a result, it's only natural that we would have written this book based upon our mutual ideas and experience as trial lawyers.

## Who are Paul and Lita Luvera?

Our family backgrounds have played a major role in the way we have conducted our trial practice. Paul's father emigrated with his family from Italy. His mother's family emigrated from what is now Croatia and the small island of Brac. His parents were married for sixty-five years, and they operated a family grocery store in Anacortes, Washington. He and his two sisters worked with his parents at the store. While neither of his parents had more than a sixth-grade education, they made sure Paul and his two sisters were college educated. Through high school and college, Paul worked during the summers on commercial fishing boats, traveling to Alaska to fish for salmon, then back to the state of Washington when it was time to return to school in the fall. After attending the University of Washington, he enrolled in night law school at Gonzaga University in Spokane, Washington, where he worked for a lawyer during the day and went to law school in the evening.

Lita was born and raised in the foothills of Mount Rainier National Park where her family ran a AAA-rated family resort at the southwest entrance to the park. It was a family enterprise where her parents and all five children worked together. Like her siblings, Lita worked summers and weekends while in high school. Her responsibilities included cleaning cabins, cooking, waiting on customers, pumping gas, and selling souvenirs. It was a unique opportunity to learn how to deal with people, which was a benefit to her later in her professional life when communicating with jurors and judges.

Her parents were college educated and stressed upon their children the importance of obtaining a higher education, even though in this rural area few people were educated beyond high school. In fact, Lita's mother was an English scholar and wrote poetry as well as articles for the local paper. All the children had college educations, and her brother Hollis is also a lawyer. Her parents were married for over fifty years. During that time they worked together continuously, like Paul's parents, and as we did during our married and professional lives.

Lita's role in our law firm included being the managing partner along with her trial responsibilities. One of her roles was preparing all the lawyers' clients and witnesses for depositions and trial testimony. Her skill in doing so resulted in the lawyers at the firm nicknaming her, "our secret weapon." Lita's experience in participating in client cases for over forty years equipped her with skills in communication, persuasion, and dealing with people. She shares this knowledge and experience in this book in the hopes that it will assist you in obtaining justice for your deserving clients. Our profession is a noble one, and we should be proud of being the voice for those who deserve to be heard and cannot prevail without our help.

When Paul began practicing law there were little or no discovery tools and trial was generally by surprise. In that kind of legal environment, lawyers learned to develop spontaneity and creativity. Trial lawyers needed to learn the best means of persuasion and communication, especially in small counties like the one where Paul practiced.

Our backgrounds have the advantage of providing us with similar viewpoints, which offered insight beneficial to both of us. Our interest in learning trial skills to better represent clients resulted in our attendance at seminars and other legal training opportunities. Our combined experiences proved helpful in learning new information about communication and persuasion. This in turn prompted us to share our knowledge with fellow lawyers as speakers and through legal writing. As a result, we began writing the monthly columns and now this book.

## **Who Is This Book For?**

In writing this material, our target audience was less-experienced trial lawyers who wanted to become better. However, we discovered that this material was equally relevant to more experienced trial lawyers. Our goal was to report research and information regarding plaintiff trial practice and principles of advocacy. Our material had a general application. As a result, we have tried to cover the major subjects involved in this type of law practice in an uncomplicated manner for easier understanding.

## **Why Lawyers Need to Learn about Marketing**

In our study of trial communication and persuasion, we have learned that market research has played an important role in the development of principles of good communication, like the ones outlined in this book. The earliest market research involved approaching people on the street and interviewing them regarding attitudes and shopping habits. Later researchers used phone interviews and then focus studies to

learn about effective marketing and advertising techniques. In more recent years, the internet, computers, and social media have significantly helped us study how people make decisions and what kinds of communication devices are most effective.

The problem researchers faced was the discrepancy between what people said and what was really going on in their minds. Many of our decisions and motivations occur at a subconscious level—we are not even aware of them. This problem was solved by the development of functional magnetic resonance imaging (fMRI). It allowed neuroscientists to compare what people reported they were thinking while actually seeing the brain functioning. As a result, scientists could study how decision-making relates to communication. Neuroscience studies have generated a large body of work about this over the past two decades. Neuroscientists have been able to uncover the cognitive and affective processes underlying human thoughts, feelings, and behaviors without having to rely on the subjects' reports about the process. Now we have a far more accurate understanding about communication, motivation, and human decision-making through this research.

We have attempted to incorporate how the fundamentals of the research and concepts of communication in neuroscience apply to our role as trial lawyers. Applying these concepts in our legal practice requires a willingness to try new ideas that may be outside our normal comfort zones. We need to be willing to risk failure or embarrassment by practicing concepts that we have not used in the past, but that we should use now. Overcoming our own concerns about being embarrassed or feeling uncomfortable represents growth in our trial skills.

Actor James Garner described advice he got from the English actor Charles Laughton:

“You’re afraid to be bad, and therefore you don’t do anything. You stay in the middle of the road. You’re not dull, but you aren’t interesting, either.” It shook me to the core, but I knew he was

right. I didn't care if the audience liked me, I just didn't want them to dislike me... As a result, I was mediocre.<sup>1</sup>

Laughton told him, "Don't worry about the audience. Just go out there and take the risk of being bad!" Garner noted, "I suppose that applies to life, too: You have to take the risk. You may fail, but at least you've given it your best shot."<sup>2</sup> That's excellent advice for trial lawyers. Have the courage to practice good communication and persuasion.

While we have written about winning cases and successful persuasion techniques, we can't overemphasize that great trial lawyers always put their clients' interests first. It is the obligation of every trial lawyer to represent clients in an ethical and honest way by always considering the clients best interest. Doing the right thing for the client may make others unhappy with you, but you must be honest, ethical, and professional.

## What's in This Book?

This book is about winning cases. Our goal is to teach better ways of successfully representing clients in a plaintiffs' practice. For example, we have included a chapter with ten basic rules designed to improve how you represent your clients and win cases. We discuss the importance of focused objectives in trial as well as how to establish those objectives and create a plan for achieving them. Multiple chapters cover the benefit of simplicity, a limited theme, and repetition, as well as the concepts of brevity, simplicity, and clear understanding. To illustrate putting these concepts into practice, we offer examples of great trial lawyers of the past demonstrating their skills. One of the most essential requirements for being a great trial lawyer is the need to be a genuine, unguarded, and authentic human being. We explain why

---

1. James Garner, *The Garner Files: A Memoir* (New York: Simon & Schuster, 2011) p. 39.

2. James Garner, *The Garner Files*, p. 39.

trustworthiness and credibility depend upon it. The right mental attitude is a must for great trial lawyers. In fact, having the right mental attitude is a requirement for success. We explain what that means. We also identify and explain the power of specific psychological tools of persuasion, including the proven communication devices of anchoring, repetition, and viewing situations from another's point of view. While we hope to teach winning strategy, we have included a discussion about how to deal with the pain of losing. Since we all will endure challenges and temporary defeat of some kind, we should know the best way to work our way through it.

We discuss the important process of case evaluation and case screening. Learning which cases to accept and how to evaluate the ones you do accept is a significant part of trial practice. In today's world of representing injured people, settlement discussions are overwhelmingly through mediation. We outline how the process works and offer advice about the right approach as a plaintiffs' lawyer. In addition, we suggest the best tactical information in the art of negotiation. Knowing how to negotiate is vital in representing clients.

Most importantly, we answer this question: How do people make up their minds about issues? Relying on neuroscience and jury research, we discuss how human beings make up their minds. Knowing how we decide is essential to using the right communication. For example, many of us were taught in law school that people make decisions based on a purely logical weighing of the facts, without emotional involvement. We now know that is simply untrue. As an important part of this subject, we review credibility and why people will believe something is true when it has clearly been proven untrue. Chapters cover research into the functions of the subconscious mind and human emotions in decision-making and what and who we believe. Through research and proven, effective communication experiences, you will see how to use compelling advocacy in your trial practice.

A chapter on jurors will help you understand the people who may serve on your jury. We review group decision processes and how knowing how the brain functions in decision-making helps you choose the

right approach to persuading your jury. An informative outline shows you what to look for in jury selection regarding juror personality traits and juror personality characteristics. Having reliable information about these factors when selecting a jury substantially sharpens your perception of favorable or unfavorable jury profiles. Along with this jury information, we discuss whether jury and trial consultants are a good idea or not for plaintiffs' trial lawyers.

Lita has written a chapter on the importance of client preparation for deposition and trial. Her responsibility as a trial lawyer included preparing all our firm's clients for their pretrial and trial testimony. Her many years of experience have given her important insight to this significant part of the client's case. You'll learn how to supervise what clients wear, how they should conduct themselves, and how they should testify in the most credible manner.

Whenever appropriate, we have set out sample outlines for specific kinds of depositions and trial testimony, both direct and cross-examination. For important discovery depositions, such as deposition of a defense expert in a personal injury case, our outline offers an approach you can then modify for your specific case. We provide ideas and a suggested testimony outline for risk versus benefit issues involved in trials. These issues arise frequently in cases relating to failure to diagnose a medical problem or issues of causation or proximate cause. Another outline will help you examine the defense medical expert hired. This is one of the defendant's most common steps in injury cases. The medical examiner usually minimizes the injury or challenges the cause. The outline is designed to attack the defense medical expert's credibility. You will find recommendations to better prepare your expert witnesses for testimony. Another chapter deals with common cross-examination problems you might encounter when dealing with an evasive witness, including proven techniques for controlling this kind of witness.

The defense frequently challenges future economic loss and the length of anticipated future suffering from injuries by questioning how long the injured party is expected to live. We have recommendations for how best to respond to these issues of future life expectancy. Life

expectancy issues are also part of representing senior citizens with personal injury claims—when representing senior citizens with shorter life expectancies, you must modify your strategies accordingly.

Occasionally in our trial practice, we face unfair and discriminatory treatment by our opponents or even judges. We offer ideas about how best to deal with this kind of emotionally upsetting occurrence. In addition, we outline courtroom conduct you should exhibit in your relationship with the trial judge. Knowing the right way to conduct yourself with the trial judge greatly improves your courtroom performance.

We tell you the best way to argue damages to the jury to obtain a just damages verdict, including the psychological importance of deciding the dollar amount you should ask the jury to award. To help understand what clients go through with their injuries, we examine the physical and mental anguish that injuries cause for people and what this means for our clients.

Our hope is that, by sharing what we have learned about these subjects, we will help you achieve full and deserved justice for your clients.

—Paul Luvera and Lita Barnett Luvera



---

# PART I

---

## **ADVOCACY**



# 1

## Why Can't a Woman Be More Like a Man?

---

*“Authenticity is a collection of choices that we have to make every day. It’s about the choice to show up and be real. The choice to be honest. The choice to let our true selves be seen.”*

—Brene Brown, *The Gifts of Imperfection*

**W**ait! Before you flood me with irate complaints, this is the title of the song written by Lerner and Loewe for the musical *My Fair Lady* and sung by the character Professor Higgins.<sup>1</sup> I’m only quoting it because it describes what I think is one of our problems, male or female, as trial lawyers. That is a lack of authenticity. I think it is obvious: trying to be “more like someone else” is often the reason judges and juries question our credibility, resulting in a lack of trust in what we represent. William Shakespeare, in *Hamlet*, said it well:

---

1. Musical with book and lyrics by Alan Jay Lerner and music by Frederick Loewe. 1957 Tony Award for Best Musical.

This above all: to thine own self be true,  
And it must follow, as the night the day,  
Thou canst not then be false to any man.<sup>2</sup>

I am the first to encourage self-improvement in our thinking as well as our demeanor. I am not recommending we continue to exhibit annoying or offensive conduct because we think that it's just who we are. I support a continual process of self-examination to improve ourselves professionally. I'm talking about pretending to be someone we aren't. Sure, you've heard or read this advice a thousand times, but honestly reflect on whether you are making a sincere effort to evaluate your own trial demeanor or whether you simply fall back on the easy way of just doing what you always do. Here's a brief summary of this important principle:

What is meant by *authenticity*? It generally means talking and acting in a way that is consistent with your core values and sense of purpose. Being authentic involves acting consistently with personal values and not pretending to be or act like someone you are not. It does not necessarily mean being your "natural" self because you may have characteristics that should be revised or eliminated. We have to know and be clear about what our values are and to ensure that they are morally and ethically right. We can't be authentic when we are not synchronized with our true value system or where that value system should be changed.

Start with the question, Why? Our rule as trial lawyers is to honestly persuade the court or jury that our client's position is the right one and to rule in our client's favor. If human beings were really fully rational people who made decisions based only on objective relevant evidence, it would not make any difference who the messenger was. But we know that isn't the situation. We know that most people make decisions at a subconscious level and then ratify them with their conscious minds. We know further, from research, that our decisions carry

---

2. *Hamlet* Act 1, scene 3, 78–82.

a large component of emotion with them. We also know that nonverbal communication plays a major role in our decisions. As a result, our decisions are influenced by the messenger as well as the message. We look for credibility in lawyers presenting a client's case. We know that to be trusted we must be trustworthy. A large part of our message begins with us. That's why this is an important subject.

We begin, therefore, with the fact that honesty is always the best policy. We must be honest with others always, but also, especially, with ourselves. We must be willing to face the truth even when it hurts. This is especially true when we are presenting our client's case to a jury and have negative facts or issues we must deal with. Being honest about them is the first step to a favorable impression. All people are equipped with internal lie detectors. When you put a group of jurors together, their collective ability to detect honesty, credibility, and trustworthiness is even more acute. Even the Bible says this: "The man of integrity walks securely, but he who takes crooked pass will be found out."<sup>3</sup>

The journey of self-discovery is essential for gaining an honest perspective of who we might be pretending to be and what masks we have adopted to conceal the real us. It can also reveal those personality characteristics that prevent us from being a winning trial lawyer.

Arrogant and self-centered people send out waves of negative signals to everyone they encounter. As trial lawyers, these people are toxic with both judge and jury. A thin-skinned trial lawyer has a short trial lifespan. Anger and explosive responses instead of clear reactions are typical in lawyers who suffer from this. Great trial lawyers exude calmness, clarity, and focus even in the most intense situations.

If we have an ego driven by the need to be seen as an intellectual, we are going to be unable to effectively employ the important rule of keeping things simple in trial. Lawyers who feel an intellectual need to represent their clients in a complicated manner not only are ineffective communicators, but they are boring.

---

3. Proverbs 10:9.

These and many other personality characteristics, including important nonverbal communication manners, are part of who some trial lawyers are during trial. Self-examination of both the personality we present and our interior honesty is essential to becoming someone we should be: a real and authentic person.

What, then, are the characteristics we expect an authentic person to demonstrate? Here are some of the common ones we should strive for and that have been advocated for many years:

1. **Be a good listener.** I don't mean people who pretend to be interested when they really aren't. I mean a person who really listens and even encourages others to talk about themselves. Good listening is the very first attribute of a great trial lawyer but, more importantly, of a sincere person.
2. **If you're wrong, admit it quickly and emphatically.** If there are negative issues or facts about your case, be the first to tell the jury about them. Never hide, evade, or misrepresent, but instead put the issue in the best possible light after honestly admitting it.
3. **Smile.** Nervousness promotes unnatural body language and talk. The universal signal of friendliness is a smile. Be friendly with the judge, the jury, and all the court personnel. If your opponent is someone who represents a real challenge in that regard, at least be professional.
4. **Strive to see things from the other person's point of view.** This is totally essential with regard to your client. Understand the needs of the trial judge, put yourself in the shoes of the jury listening to what is happening at that moment, and think about the motives or compelling drives of the witness who is testifying.

5. Practice what Gerry Spence calls *watchful waiting*. By that he means remaining calm, waiting without interrupting, and timing your calm, levelheaded response.

How do we go about the process of evaluating our authenticity, honesty, and sincerity as trial lawyers? Those of us who have been involved with Gerry Spence's Trial Lawyers College know that one of the primary principles he teaches is discovering the reality of what we are presenting to others and who we really are inside. *Psychodrama* is the chief technique they use for this process. Psychodrama is a form of psychotherapy, developed by Jacob Moreno, that employs dramatization, group dynamics, and role-playing to investigate and gain insight into issues in people's lives.

Aristotle wrote that "knowing yourself is the beginning of all wisdom."<sup>4</sup> The process involves self-reflection.

Following are some questions we might ask ourselves:

- "What are my core personal values?" These are the things that you believe are important in the way in which you live. These are beliefs that you see as valuable and important.
- "What makes me happy?" Things that make you happy are often directly related to your core values.
- "If money were no object, how would I live my life differently?" or "If I weren't concerned about failing, what would I try to do?"
- "What is my purpose in life?"

Living a life that's consistent with your core purpose, as you know it, is essential to having peace of mind. Another part of this self-discovery process involves a realistic appraisal of how we act and speak. Are

---

4. Aristotle, *Metaphysics* Book I, chapter 2.

what we say and how we act consistent with our inner world of values and beliefs? Or are we trying to bend what we say to fit what others think we ought to do?

“When I use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.”<sup>5</sup>

It is the congruent connection between what we say, how we act, and what we believe that makes us authentic, honest people. Probably the best description of the process of becoming real is found in Margery Williams’s children’s book *The Velveteen Rabbit* where she writes:

“Real isn’t how you are made,” said the Skin Horse. “It’s a thing that happens to you. When a child loves you for a long, long time, not just to play with, but REALLY loves you, then you become real.”

“Does it hurt?” asked the Rabbit.

“Sometimes,” said the Skin Horse, for he was always truthful. “When you are real, you don’t mind being hurt.”

“Does it happen all at once, like being wound up,” he asked, “or bit by bit?”

“It doesn’t happen all at once,” said the Skin Horse. “You become. It takes a long time. That’s why it doesn’t happen often to people who break easily, or have sharp edges, or who have to be carefully kept. Generally, by the time you are real, most of your hair has been loved off, and your eyes drop out and you get loose in the joints and very shabby. But these things don’t matter at all, because once you are real you can’t be ugly, except to people who don’t understand.”<sup>6</sup>

---

5. Lewis Carroll, *Alice’s Adventures in Wonderland* (1865).

6. Margery Williams, *The Velveteen Rabbit* (London: George H. Doran Company, 1922).



The lesson for us is that being real takes time and can sometimes hurt, but once you are real, “you can’t be ugly, except to people who don’t understand.”

## CONCLUSION

Our role is to speak on our clients’ behalf in as persuasive a matter as we are capable of. We will be listened to by others only if they perceive us as trustworthy and credible. Those qualities rely upon our basic authenticity. To be believed, we must be genuine and authentic. All persuasion starts with us and who we are perceived to be regarding credibility. To persuade, we must be real.

