Table of Contents

Preface: Sources and the Litigator’s Bookshelf ............ ix

Chapter 1: Trial Lawyers Need Principles of Life and Action ........................................ 1
   Losing Our Way and Finding It Again  1
   Principles in Action—A Story  5
   Principles in Action—How Would You ... ?  9
   Thinking about Others  13
   Counter-Narratives  16
   Sick and Tired: The Old Is Also New  17
   The Nine Principles  23

Chapter 2: Courage ........................................ 25
   The Courage to Know Who You Are  27
   Zeal, Lawyers, and Jury Trial  39
   Courage and Clarence Darrow  46
   Courage to Say, “Let’s Go to Trial”  49
   Courage to Stand Up to the Judge  55
   Courage to Confront the Jurors’ Prejudice  63
   Courage to Stand Up to the Public and the Media
   —and Your Colleagues  67

Chapter 3: Rapport ........................................ 89
   Rapport with Your Client  89
   Rapport with Your Team  93
   Rapport with Witnesses  95
   Witnesses in My Favorite Movie  99
   Rapport with Judges  101
   Rapport with Jurors  105
Chapter 4: Skepticism ........................................ 121
  Cynics and Skeptics  121
  Skepticism and Trust with Your Client  121
  Skepticism and the Human Condition  123
  Skepticism about Your Adversary  127
  Cultivating Skepticism among Jurors  132
  Telling the Judge to Be Skeptical  134

Chapter 5: Observation ..................................... 141
  “Well Observed”  141
  Learning to Observe from Different Perspectives  146
  Using Others’ Eyes and Ears—and Insights  149
  Ambiguity—for and against You  150
  Seen and Unseen Elements of the World around Us  152
  Helping Jurors to Observe  159
  Witnesses as Observers  161

Chapter 6: Preparation ..................................... 165
  Say Your Case  165
  Preparation: Organizing Evidence and Exhibits  166
  Preparation for the Tasks of Trial  172
  Preparation for Arguing to Judges  175

Chapter 7: Structure ....................................... 181
  Images of Structure  181
  Structure of Legal Rules  182
  Structure of Your Team  188
  Structure of Evidence Rules  193
  Structure of the Case Plan  194
  Structure of the Courtroom Space  199
  Structure of Opening Statement  201
  Structure of Direct Examination  213
  Structure of Cross-Examination  215
  Structure of Closing Argument  220
Chapter 8: Candor ......................................... 227
  Your Candor 227
  The Other Side’s Candor 232
  The Judge’s Candor 237
  Your Client’s Candor 240
  The Witness’s Candor 241

Chapter 9: Empowerment ................................. 245
  The Experience of Being a Juror 245
  Transparency and Empowerment 248
  A Template for Empowerment: Expert Witness 251
  Don’t Send Flowers, Plant Seeds 263

Chapter 10: Presentation ................................. 267
  Place of Presentation 267
  Dead Reckoning 271
  Exhibits: Presentation by Showing and Telling 274
  Presenting Witness Examination 276
  Markers, Tone, and Words 278
  Presenting Yourself 280

Index ............................................................ 284

About the Author ............................................. 289