

The More Things Change . . .

Skilled trial advocacy remains as it was when Cicero practiced law 2000 years ago. Ancient methods of persuasion last because they work. While the means of delivery constantly change, the song itself remains the same. Like our professional ancestors, you must gather the evidence, organize it, and then use it to persuade the judge or jury why you should win the case. In this book, I provide insights into those time-tested techniques that work for all trial lawyers and adapted specifically for family lawyers. My sources are many: I regularly study the greats to improve my skills. At the same time, I review these classic techniques in the context of a modern-day family law practice. The merger of tradition and innovation leads to excellence.

Paying It Forward

In 1995, I attended the weeklong ABA Family Law Trial Advocacy Institute. At that time, I could afford neither the tuition nor the time away from my desk. But I went anyway, anticipating the rewards from studying with divorce-lawyer superstars. I wasn't disappointed. About midweek, I noticed an enigmatic older man, who resembled Yoda, sitting in the back of the lecture hall. He was pawing an old glasses case full of different colored pens; he didn't say a word. Neither I, nor any of my classmates, knew who he was.

Toward the end of the day, he was introduced as Monroe Inker from Boston. I didn't know it at the time, but I later learned he was one of the all-time greats of our profession.

Later that day, he was brought down to the front of the lecture hall to conduct a mock cross-examination of a financial expert. He walked slowly, with his back slightly bent by the weight of his advancing years. My thought was that this guy had seen better days. But then he started his examination . . . and he DESTROYED the expert in about ten questions. Appearances are deceiving to be sure. He was a ruthless lion behind the quiet facade. Besides illustrating that you don't need to be

a blowhard to be a top gun, this story demonstrates that excellence in trial advocacy comes in many shapes and sizes. But what is common to all great courtroom advocates is hard work, mental flexibility, and a competitive fire to excel.

I was fortunate to spend some one-on-one time with him later in the week, when he critiqued one of my performances. He asked about my practice and my professional aspirations. He also gave me some advice that I follow to this day, “regardless of whatever else you are reading, always have a book about trial advocacy on your nightstand.” I later learned that he tried pro bono murder cases to refine his trial skills. I follow his example by remaining a lifelong learner, ceaselessly improving my skills to better help my clients. Many of the resources I study can be found at my Successful-Lawyer blog.¹

Throughout my week at the institute I learned from other great lawyers. They taught me the fundamentals of trying a divorce case: opening statements, direct examination, cross-examination, and closing argument. I also learned how to present and challenge financial and child custody expert witnesses. My professional success, in large part, derives from my challenging week at the institute.

The ABA Family Law Trial Advocacy Institute continues today.² I was honored to join the faculty in 2007. Although I’m now a teacher, I still consider myself a student. By reviewing the fundamentals of advocacy each year, I refine my skills and honor Monroe’s example of constant and never-ending improvement. I have stood on the shoulders of giants and this book is my opportunity to pay it forward.

Notes about the Text

This book is a complete rewrite of the *Divorce Trial Manual*, first written more than thirty years ago by two of my instructors at the institute, Lynne Z. Gold-Bikin and Stephen Kolodny. My book incorporates the spirit of the original but expands the scope. While it is written for trial advocates, the principles in this book will help any divorce lawyer who is preparing a case, whether for settlement, mediation, or trial. In fact, ironically, developing sound courtroom skills improves your chances of settling your cases. People take note when you know what you’re doing and are less likely to trifle with you. I’ve tried to limit my war stories, as I find them tiresome when other lawyers share them. But I include several in footnotes when I believe they serve as helpful illustrations for teaching points.

This book is designed to be read in conjunction with my other two ABA books, *The Family Law Trial Evidence Handbook* and *100 Days Before Trial: A Family Lawyer’s Guide to Preparation and Strategy*. This book doesn’t delve deeply into the evidentiary aspects of trial advocacy, which have been outlined in the *Family*

¹ <https://successful-lawyer.com/blog>

² For more information consult https://www.americanbar.org/groups/family_law or contact me directly.

Law Trial Evidence Handbook. Nor does it focus on trial preparation. Rather, this book is a high-level examination of how to handle a divorce case, from start to finish. Among other topics, I review working with a new client, how to organize your case file and the reams of information in the case, discovery strategies, and effective techniques for presenting your case. I also include chapters on motion practice and common challenges for divorce lawyers. Again, my goal is to give a divorce lawyer a comprehensive guide to managing and trying a divorce case.

Throughout the book I rely on Federal Rules, with occasional references to Illinois law. Of course, family law matters don't rely on federal law but it is instructive, as most states' evidence and discovery rules mirror the Federal Rules.