

# CONTENTS

Foreword	ix
Acknowledgments	xiii
Introduction	xv
About the Author	xvii

## SECTION I

### The Heritage of the Trial Lawyer

#### **CHAPTER I**

The Common Law	3
----------------	---

#### **CHAPTER 2**

Biographical Sketches of Great Trial Lawyers in History	7
Demosthenes (384 B.C.–322 B.C.)	7
Quintus Hortensius Hortalus (114 B.C.–50 B.C.)	12
Marcus Tullius Cicero (106 B.C.–43 B.C.)	12
Hortensia (50 B.C.–c. 1 B.C.)	14
Andrew Hamilton (1676–1741)	16
John Adams (1735–1826)	18
Luther Martin (1748–1826)	19
Thomas Erskine (1750–1823)	23
William Garrow (1760–1840)	25
James Scarlett (1769–1844)	28
Daniel Webster (1772–1852)	29
Lord Henry Brougham (1778–1868)	31
Charles Phillips (1787–1859)	33
Reverdy Johnson (1796–1876)	34
Rufus Choate (1799–1859)	35

## Contents

Abraham Lincoln (1809–1865)	37
Edward Henry Carson (1854–1935)	40
Clarence Darrow (1857–1938)	42
Edward Marshall Hall (1858–1927)	47
Earl Rogers (1869–1922)	50
Max D. Steuer (1870–1940)	53
Martin Wiley Littleton (1872–1934)	55
Weymouth Kirkland (1877–1965)	57
Moe Levine (1908–1974)	59
Thurgood Marshall (1908–1993)	60
Edward Bennett Williams (1920–1988)	63

## SECTION II

### The Prerequisites of the Trial Lawyer

#### **CHAPTER 3**

The Role and Qualities of the Trial Lawyer, and Beginning Your Career	69
--	----

#### **CHAPTER 4**

Orientation to the Practice of Law for the New Advocate	75
---	----

#### **CHAPTER 5**

Ethics	83
--------	----

#### **CHAPTER 6**

Professionalism and Civility	123
------------------------------	-----

#### **CHAPTER 7**

Discovery: Prelude to Trial	129
-----------------------------	-----

#### **CHAPTER 8**

Rules of Procedure and Evidence, and Policies of Individual Judges	145
---	-----

**SECTION III**  
Courtroom Rhetoric:  
The Fundamentals of Persuasion

<b>CHAPTER 9</b>	
Classical Rhetoric and the Modern Trial Lawyer	167
<b>CHAPTER 10</b>	
Overcoming the Greatest Challenge of Persuasion: Connecting with Your Listener	181
<b>CHAPTER 11</b>	
Style: The Measure of a Great Argument	187
<b>CHAPTER 12</b>	
Clarity of Expression: The Keystone of Successful Advocacy	201
<b>CHAPTER 13</b>	
Logic and Emotion: The Alpha and Omega of Persuasion	211

**SECTION IV**  
The Trial

<b>CHAPTER 14</b>	
Voir Dire, In the Beginning	227
<b>CHAPTER 15</b>	
Opening Statement	241
<b>CHAPTER 16</b>	
Direct Examination, Part 1: The Heart of the Trial	285
<b>CHAPTER 17</b>	
Direct Examination, Part 2: <i>Deus ex Machina</i> — The Expert Witness	373

Contents

<b>CHAPTER 18</b>	
Cross-Examination: A Legal Engine for Truth	413
<b>CHAPTER 19</b>	
Closing Argument	467
<b>CHAPTER 20</b>	
Preserving and Protecting the Appeal	503
<b>SECTION V</b>	
Conclusion	
<b>CHAPTER 21</b>	
Lessons Learned from Our Mistakes	511
<b>CHAPTER 22</b>	
What Judges Want from Trial Lawyers: A View from the Bench	527
<b>APPENDIX I</b>	
The Opening Statements in <i>United States v. Rosen</i>	533
<b>APPENDIX II</b>	
The Closing Arguments in <i>United States v. Rosen</i>	555
Index	605