

PERSUASIVE TRIAL ADVOCACY

TABLE OF CONTENTS

I.	Introduction	1
II.	Attitude and Approach.....	7
III.	The Psychology of Persuasive Trial Advocacy	12
IV.	Persuasive Trial Advocacy is Strategic Advocacy	15
V.	Litigation Plan	17
	A. Generally	17
	B. Estimating Costs of the Litigation.....	20
VI.	Prepare to Persuade	23
	A. Pleadings.....	23
	B. Oral and Documentary Discovery.....	24
	C. Investigations	25
	D. Discovery Plan	25
	E. Trial Plan or Scenario	27
	F. Examination of your Witnesses.....	28
	1. Generally.....	28
	2. Preparing your Witness for Chief.....	28
	3. Preparing your Witness for Cross-Examination	30
	G. Cross-Examination Plan.....	30
	H. Planning for Experts.....	32
	1. Generally.....	32
	2. Cross-Examining their Expert	34
	I. Know the Law	34
VII.	The Trial.....	35
	A. Know Your Audience	35
	B. Bias.....	37
	C. A Case of Connectivity: The <i>Frazer</i> Case	41
	D. Anchoring	43
	E. Validation and Confirmation Bias	43
	F. Juries: For Better or For Worse?	44
	G. Document Production at Trial	47
	H. Lawyer as Messenger.....	47
	I. Opening	48
	1. Generally.....	48
	2. Opening: “Jesse” and Commentary	49
	3. Be Yourself?.....	51
	4. “Weak Speak”	52
	5. Opening: “Beatrice” and Commentary	53

TABLE OF CONTENTS

6. Order your Witnesses	59
J. Examination in Chief and Re-Examination	59
1. “Fronting”.....	61
2. Examination-in-Chief of <i>Frazer</i> , Court Transcript and Commentary ...	62
K. Cross-Examination	170
1. Generally.....	170
2. Some Notions on Cross-Examination	171
3. Cross-Examination of Defendant Doctor in <i>Frazer</i> : Court Transcript and Commentary.....	181
L. Cross-Examining an Expert	269
1. Impartiality.....	269
2. Other Vulnerabilities of Opposing Experts.....	270
3. Cross-Examination of Defense Psychiatrist in <i>Frazer</i> : Court Transcript and Commentary.....	270
4. Cross-Examination of Standard of Care Expert in <i>Frazer</i> : Court Transcript and Commentary.....	325
M. Objections	393
N. Signals	395
O. Nuts and Bolts: A Few Tips	396
P. Closing.....	400
1. Some General Observations	400
2. Some Specific Observations	401
3. Judge Alone Closing Submissions.....	405
4. Written Submissions	407
Q. Post Mortem.....	409