

Chapter 1

Learning the Craft

Back in the 1990s, I thought I had learned enough about the trial of a personal injury case in New Jersey to commit those thoughts to paper. Based upon that writing, the New Jersey Institute for Continuing Legal Education (NJICLE) agreed to publish it as a small book titled, Trustworthiness: A Trial Strategy Manual for the Plaintiff's Injury Case in New Jersey (1998).

Back then, I was part of a small plaintiff's law firm, so almost all of my trial experience was from the plaintiff's side. Thus, the book was for plaintiff's attorneys. However, I do recall trying two cases for defendants, one of whom was self-insured, and the other where a young man was insured by his auto carrier, but he asked me to try the case as personal counsel.

Right out of the gate from law school and the bar exam, I tried to learn as much as I could soak up about trial work and the Rules of Evidence. As many law school students and lawyers will remember, the greatest and most popular teacher of evidence and trial technique during the 1970s and 1980s was Irving Younger. Professor Younger had been an Assistant U.S. Attorney, a trial lawyer in private practice, a judge in New York, and a law school professor. Back in the early 1980s, one of the first investments I made in my then front porch solo law office was to purchase Irving Younger's lectures on audio cassette tapes. The whole Younger oeuvre consisted of about 50 hours of lectures.

I listened to those lectures over and over, particularly as I was driving back and forth to court houses all over Northern and Central New Jersey.

Also, I tried to hear as much as I could from New Jersey trial lawyers. Prominent speakers at that time were former U.S. Attorney Herbert Stern and U.S. District Court Judge Lacey, and ICLE showcased those two. The Association of Trial Lawyers of America, now the American Association of Justice (AAJ) held very helpful seminars around the country, and I purchased cassette tapes of those lectures as well. The basic question addressed by that organization's programs was, how do you get a jury to give a client money in a personal injury case?

The New Jersey branch of the Association for Trial Lawyers of America, which is now called the New Jersey Association for Justice, really got rolling on continuing legal education as the 1980s unfolded. That organization developed

what became known as the Boardwalk Seminar down at Atlantic City every spring. The Boardwalk seminar has grown to be a huge two-day event for New Jersey lawyers seeking to improve. On Friday mornings at Boardwalk, more than 200 attorneys will typically gather at 6:30 AM for two hours of what they call Litigation at Sunrise. There each designated speaker has just 10 minutes to make a presentation on a key practice area. I got tremendous benefit from attending those NJAJ seminars over many years.

Again, back in the 1980s, Jerry Baker and others started something called the Plaintiff's Trial Academy. This was also sponsored by NJAJ and went for about twelve, two-hour sessions. This really helped me as a young attorney. Jerry Baker has devoted thousands of hours to training trial attorneys, and he is still doing so as I write.

Thus, when I started on the lecture circuit myself and wrote Trustworthiness, I not only had the benefit of my own trial and error experience, I had received the best of what sharing trial attorneys had passed on to me in continuing legal education classes. This was all before mandatory continuing legal education.

After Trustworthiness was published, it slowly developed what I came to call "a small, cult following." I began to get letters from lawyers all over the state which thanked me for the insights they believed they got from the book. I also was approached at events by lawyers telling me the same thing. Many times, these letters and oral approaches recounted very successful verdicts obtained using a technique or techniques described in Trustworthiness. However small or large the cult may be, that is one of the proudest legacies I have.

In 2009, after twenty-nine years as a lawyer devoted to trial work, I had the good luck and honor to become a Superior Court Judge in my beloved home state of New Jersey. My assignment has included several years of conducting civil jury trials. I have been the judge in more than one hundred jury trials. I have interviewed more than a thousand prospective jurors. Sitting on the judge's bench is physically elevated, and it has given me an enhanced view of civil justice. It certainly has given me an even deeper appreciation of the preciousness of our jury system.

I have observed some very great lawyers working the craft of trial advocacy. I have watched great lawyers as adversaries in a case. I have seen some serious mismatches. And, I have seen some below-average practitioners. All in all though, the trial of a lawsuit is a very honorable part of a noble profession. I hope I can impart the best of what I have observed here.

For the last couple of years, I have also served as an Adjunct Professor of Law at Rutgers Law School in a course on trial advocacy. There I get to work with full time Professor J. C. Lore and several other practical adjuncts like myself helping aspiring trial lawyer law students. That work with enthusiastic students is very invigorating, keeps me fresh, and has me always thinking about effective approaches.

It is invigorating to be part of this historic, yet vitally contemporary process. We can never forget that the resolution of a dispute through our courts' civil trial process is what provides a peaceful alternative to violence or other extra legal means. A civil case has the same root word as civilization. Civilized society based on law is one of the greatest accomplishments in human history. As lawyers and judges, we get to be part of that wonderful evolving history.

What about the word in this book's title, Redux? I first noticed this word from the title of John Updike's second book in a series about a character he called, "Rabbit." The title of that second book was Rabbit Redux, an update on the character after some years passed. Redux means brought back, revived, or restored. John Updike did not coin the term. Other novelists and poets have used the term much earlier. Since the original of this book was published almost two decades ago, a number of attorneys have suggested I update the older book with a fresh view of trustworthiness in the court room. Hence, Trustworthiness Redux.

This time around I am writing for defense attorneys and plaintiff's attorneys. Some things have changed. Some things have not. In this writing I will try to bring some suggestions up to date. However, there is much in the original book that is just as valid today as it was in the 1990's. Therefore, many of the original points will be repeated here.

The biggest substantive change slowly taking place in New Jersey trial practice is the stated goal of meaningful jury selection. Trial attorneys must be thoroughly familiar with our Supreme Court's efforts to improve the jury voir dire process. Without meaningful jury selection, trials can be easily lost because of jurors who have not been properly queried about bias or prejudice for or against the civil jury system. I will discuss the rules of proper jury selection at length in a completely rewritten analysis of the subject.

Another substantive change that has had an impact on the trial of civil lawsuits is the procedural Court Rules that were revised under the rubric of "best practices." Although this is not a book about pretrial procedures, the best practice rules are an