

PREFACE



The American jury trial is a constitutional right, enshrined in the Sixth and Seventh Amendments to the Constitution. Jury trials prevent tyranny, because ordinary citizens sitting as jurors make the final decision on guilt or liability. Jury trials epitomize Lincoln's memorable summation of our country's strength: of the People, by the People, for the People.

When we sit as jurors, we say what is right or wrong, and interpret the conduct of our fellow citizens and corporate neighbors. We decide what is acceptable, and what is not. There is no other place in our democracy where ordinary citizens play a bigger role in our society and way of life. Americans may vote every two to four years, but Americans sit on juries every day. The jury trial is a unique part of America's democracy, because citizens from all walks of life make the ultimate decision, providing both common sense and the perspective of the ordinary person as to right and wrong, guilt or innocence, and in some instances, punishment.

Today, the law school student must learn not just statutes, case law, and procedure, but also the experiential skills required to represent a client before a jury. Trying a case to a jury is a critical skill that is multi-faceted and complex. It requires legal knowledge couched in both strong communication skills and tactical thinking. At once, it requires the heart of a lion, the brain of a computer, and the skill of a surgeon. One must know the law, have complete command of the facts, and be a scholar of the human condition. It takes practice and it takes commitment.

Advocacy Excellence: The Jury Trial teaches the law student and the novice trial lawyer trial advocacy from the point of view that trial lawyers can and must influence trial outcomes in contested cases if justice is to be served. This keen, no-nonsense textbook teaches you how to fight the courtroom battle to win from the very beginning of investigation through the end game of jury deliberation. It teaches you the law, ethics, and skill of trial advocacy, and helps you anticipate your adversary's moves before they are made. It provides practice tips from the insider playbook of two successful and tenacious female trial attorneys, Camille M. Abate and Kathleen M. Mullin, who have been trying cases and practicing their craft for decades.

This is not an academic tome for the classroom pontificator or armchair advocate who hasn't set foot in a courtroom for years. They have no idea what it takes to win. This is a textbook for the gladiator, who enters the arena where fates are decided, and without whom justice will not follow. This is a text for those who want to win and who need to win for their clients, whose life trajectory hangs on the skill of their attorney. Leveraging the wisdom and experience of more than 70 years of successful trial practice, this book allows you to punch above your weight. It is an easy-to-read, soup-to-nuts guide to the art and science of twenty-first-century trial warfare, written by experienced trial lawyers for future and practicing trial lawyers.

In this updated, second edition, we have added a deep dive into cell phone and cell tower location evidence. Cell phones are ubiquitous and are now the first place any investigator looks for evidence—not just texts, emails, and social media, but critical location evidence to prove guilt or liability. But what does the cell phone connection to a cell tower during a call or text really prove? How can it be used to support or defend against assumptions in a trial? This book details the strengths and weaknesses of such evidence and gives the advocate ways to advance or fend off this kind of proof in court.

Additionally, this second edition presents a comprehensive guide to understanding DNA evidence. Once considered “unbeatable” proof, we now know that the DNA collection, testing, and replication processes are subject to human error and errors of interpretation, which makes this kind of proof vulnerable to attack by a skilled advocate.

With updated case law throughout, this second edition will further prepare you to litigate any case before any jury. One of the key features of the book, aside from the extensive coverage of topics, is the learning boxes incorporated throughout the text. We have included three distinct learning box types: “Practice Tips,” “Beware!” and “Why This Works.” These boxes, along with examples taken from real trials, provide easy access to important points and tips. The “Practice Tips” boxes all contain insider tricks for the reader, learned through our own trial and error. The “Beware!” boxes contain cautionary advice, highlighting ethics concerns and possible unanticipated consequences of decision-making. The “Why This Works” boxes are designed to amplify the specific reasons why certain skills are taught and practiced in a certain way.

Winning a trial is hard work, and takes skill. This book clarifies the steps and simplifies the process, guiding you through all the predictable steps, as well as the unpredictable ones. You will learn not to be intimidated by an opponent whose case looks good on paper. You will understand how to use evidence, defeat your opponent’s evidence, and present the most persuasive arguments in court. You will learn proven methods and tactics to bring out the most potent presentation of your evidence and your case theory. You will learn how to be tenacious and resourceful so that your courtroom demeanor is focused and confident, not fearful and hesitant. Finally, you will learn how to listen and think on your feet, how to adjust your swing to meet the curveballs that are inevitably thrown in every case. We have packaged it all with great clarity, for easy access and quick use, with step-by-step instructions.

By following the formula for trial preparation and execution offered in this book, you will quickly learn not only the fundamentals of effective advocacy but the master-level techniques that can help you experience more success, more unexpected victories, and more joy in the practice of trial law.

We hope you use this book as an authoritative guide to trial work for many successful years to come!

Camille and Kathleen

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Each author has contributed equally to this text.