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BOOKS RECEIVED

The Winning Edge: Effective Communication and Persuasion Techniques For Lawyers. By Richard H. Lucas & K. Byron McCoy. New York, New York: The Trial Practice Library. 1993. Pp. 188. Hardcover. \$95.00.

Whether talking with clients, consulting with other attorneys, or presenting a case before a trier of fact, communication is a cornerstone of the legal profession. In an era where more disputes are settled through legal avenues than through private, personal ones, lawyers must be prepared to express their intent and their client's wishes with the utmost effectiveness. Given this necessity, there is a growing need for resources which attorneys can look to in order to further their basic communicative and persuasive abilities. *The Winning Edge: Effective Communication and Persuasion Techniques For Lawyers* ["*The Winning Edge*"] is one such source.

One book in a series of publications from The Trial Practice Library, *The Winning Edge* appears to have something for all types of readers. *The Winning Edge* is a collection of the authors' own experiences, supplemented with the views of other notable commentators on communication. The result is a guidebook that walks the reader through the most elementary aspects of persuasive communication in a variety of legal situations. Building on the premise that effective communication can be mastered by everyone, *The Winning Edge* starts off by familiarizing the reader with the seven basic principles that underlie persuasive discourse. According to the book, these principles are (1) The meaning of communication is the response you get; (2) Making assumptions is the surest road to failure; (3) The foundation of successful communication is noticing, observing, and listening; (4) Learning is not an abstraction; (5) Only effort and practice will produce results; (6) Anyone can learn anything; and, (7) The person with the most flexibility has the most power. The book then demonstrates how mastery of these elements can allow a lawyer to become the most effective advocate possible.

One particularly noteworthy aspect of *The Winning Edge* is its completeness. Unlike some other "how-to" books that are limited to examination of only specific communication episodes, *The Winning Edge* not only exposes the reader to the fundamental aspects of the way an audience evaluates incoming communication, but also suggests how those aspects are played out in a variety of legal scenarios.

The first six chapters of the book provide a basic introduction to communication and examples of how it is perceived by others, as well as examples of what separates effective persuasive communication from ineffective persuasive communication. Chapter One focuses on the way people process communication. Chapters Two through Six address how to establish trust, how to ask the right questions, how people evaluate and decide, and how to effectively influence and persuade. Finally, *The Winning Edge* wraps up its introduction to the basics of communication by discussing differences in the way men and women communicate. After outlining the important aspects of effective communication, the final chapters of the book demonstrate how to use these communication fundamentals in legal situations.

The remaining chapters of the book analyze some of the best ways to apply newly developed communicative skills to situations in which the attorney is trying to tell a convincing story, trying to elicit certain information, or trying to negotiate and mediate. While the actual length of the chapters dealing with specific legal instances is relatively short (about sixty pages total), the authors manage to touch on some very salient points. For example, the chapter on persuasive storytelling does a thorough job of explaining how effective communication can be achieved during a trial by efficiently developing both the opening and closing statement, as well as playing to the specific representational system that the audience has adopted. Additionally, this chapter also discusses the most productive way of conducting an initial client interview, as well as particular techniques to increase the amount of information obtainable in a deposition or *voir dire* examination.

Even though the book contains numerous examples and countless suggestions, *The Winning Edge* is extremely well organized. Each segment of each chapter has its own section

numbers which are useful for reference and quick readings on specific aspects.

Overall, *The Winning Edge* is worth reading. The effectiveness of the examples, and the convenience of having all of these discussions compiled into one handy reference, make this book a valuable asset for trial attorneys.

Mark D. Kruthers

The Jury: Trial and Error in the American Courtroom.

By Stephen J. Adler. New York, New York: Times Books. 1994. Pp. 285. Hardcover. \$25.00.

Is an effective jury anything more than a romantic ideal? Stephen J. Adler, in *The Jury: Trial and Error in the American Courtroom*, studies the contradiction that a trial by a jury of peers has become in the American scheme of justice. Adler explores how an empowering, democratic right, designed to safeguard the liberties of American citizens, can be viewed as an inconvenience and produce inconsistent, frustrating, and even ridiculous results.

Adler examines a number of jury trials, each one chosen as a comment on a particular dynamic of our current system. Through extensive conversations with the attorneys involved in these cases, Adler immerses the reader in the intricacies of trial strategy. Because the book revolves around the jury, however, a great deal of the book's action occurs within the jury room. Adler reconstructs deliberations and daily thoughts about the case from the jurors' memories, and the result is a book which provides astonishing insight into the advantages and disadvantages of the modern jury.

The book is divided into three parts which illustrate the contradiction of the modern American jury and present Adler's suggestions for the future. The first part, entitled *The Vision*, analyzes a death penalty case and demonstrates that the modern system can live up to its ideal—i.e., that twelve of the defendant's peers, reflecting the community's strengths and weaknesses, can listen to and carefully weigh the evidence, intellectually and morally consider the appropriate law, and reach a seemingly judicious result.

The second part, comprised of Chapters Two through Six, is entitled *The Disappointment*. Chapter Two introduces the basic problem: competent, conscientious people do not al-

ways become jurors. Adler contends that too many exceptions are granted to those who claim that jury service constitutes a hardship, usually for work-related reasons. The result, according to Adler, is that most of the community's better-educated citizens do not even reach *voir dire*. Moreover, those who become prospective jurors, and who might be competent and impartial, are often excused by lawyers exercising peremptory challenges. In the process, trial attorneys painstakingly replace conscientious jurors with those who will favor their case.

The role of jury consultants in helping to "pack the jury" is the subject of Chapter Three. These consultants, who are often social scientists, employ methods already used in marketing and politics to help shape and condition the jury, and then design trial strategy based upon the jury selected. Adler maintains that although some people view consultants as helpful tools in the adversarial process, the use of "scientific data" actually results in disappointment because it bars competent people from jury service, leads to a sense of manipulation, and further disadvantages those who already cannot afford the best representation.

Chapter Four discusses how the average jury is ill-equipped to handle the complex and technical issues that often arise in modern cases. For example, Adler reconstructs an incredibly complicated tobacco industry anti-trust case in which none of the nine rural North Carolina jurors had more than a high school education and few claimed even to read books. Adler points out that it is ridiculous to expect such people to decide a case which turns on an understanding of oligopolies, market share, and predatory price discrimination. Because anyone without specialized training could be confused by such terms, the author opines that the system is especially disappointing when it deliberately asks underqualified individuals to thoughtfully evaluate complex legal arguments.

In Chapter Five, Adler addresses the problem of excessive jury awards. Juries have been inconsistent in finding liability against large, faceless corporations over the years, and the author examines a negligence case against a blood service company in order to determine how such inconsistencies might arise. Adler reports that the jury in the case fit the anti-corporate stereotype, and was strongly sympathetic to

the emotional appeals of a private individual. As a result, the jury found liability by imposing absolute safety standards, and clearly deviated from the law in order to award high damages.

Chapter Six examines the ability of jurors to determine credibility. The author claims that untrained observers have been proven to make irrational assessments regarding credibility. In reviewing a murder trial which turned on this issue, Adler points out that the jurors' rather simplistic views, such as whether a witness looked good in a suit or whether a witness was likable, led to unsupported assumptions and an overall failure to consider relevant questions.

The third part of the book is entitled *The Hope*. Despite the author's criticism of the modern jury, he advocates preservation of the system because the powerful reasons which gave rise to the jury still exist. Adler argues that the mystery of the jury should be sacrificed, and that the lessons learned from examining the jury should be embraced instead of ignored.

To that end, Adler suggests that the jury must have access to the entire community, including people with special perspectives such as education or expertise. He also claims that juries need to be given greater access to information which will better enable them to wield their decision-making power objectively. Moreover, he argues that the legal community must ensure that this information is comprehensible, so that the jury can understand its task. With these changes and others, Adler maintains that we can restore faith in our system of justice.

Todd J. Rahimi

