

# FOREWORD

It is no wonder that Stewart Edelstein's students at Yale Law School have praised the course in Civil Litigation Practice he co-teaches as "the best, most informative class to take at Yale Law School" and "a wonderful experience." The supporting evidence is readily found in this book: Stewart applies his experience, insight, and wit to produce an unusual guide to trial lawyering that is as enjoyable as it is useful.

What does a gryphon—the creature of Greek mythology that combined the body of a lion with the head and wings of an eagle—have to do with civil trial practice? Plenty. The lion and eagle were the top dogs in their respective animal categories, and the gryphon was viewed as the king of the animal kingdom, unexcelled in power and authority. But do not misinterpret the metaphor—it is not intended to embrace those trial lawyers who let their power and authority go to their heads. It is not about those trial lawyers who conduct themselves as if unbridled self-regard is the key to success. This book is not about swagger.

Instead, Stewart explains the gryphon metaphor as reinforcing the key notion that success as a trial lawyer requires mastering multiple different skills. Trial lawyers, like the gryphon, are a hybrid of skill sets. The best trial lawyers are not only persuasive advocates but also creative problem solvers. Their conduct and demeanor must adjust to the context—one must behave a little differently with a jury than with a mediator, for example—but one must never, ever descend into arrogance. Stewart Edelstein has had an enviable multi-decade career as a civil trial lawyer by serving his clients effectively and efficiently. According to the *Chambers Guide*, based on independent sources, Stewart is a "truly superb" lawyer. But "swagger" isn't in his vocabulary.

An appropriate vocabulary is important to successful trial lawyering. A trial lawyer must be a master of words whether written in a brief or spoken in court, at a deposition, or in a marketing pitch to a prospective

client. Words are important to Stewart, too. His love of words and skill at deploying them are among the joys of this book. Although Stewart's career has been as a trial advocate and teacher of the litigation process, he is also an accomplished student of etymology. His prior book, *Dubious Doublets*, is solely about words. (It discusses unlikely pairs of words that have a common origin, such as "court" and "horticulture.") Both of Stewart's books convey the pleasure he takes from words.

*How to Succeed as a Trial Lawyer* focuses on the intensely practical implications of a trial lawyer's use of words. For example, it provides advice on how to draft an e-mail—and when not to. The book's section on brief writing is a treasure trove of important advice. Although targeted at lawyers who are beginning their careers, all lawyers—no matter how experienced—can benefit from a review of this section of the book (but not only from this section).

Stewart's book is a wonderful compendium of essentially every aspect of the civil litigation process and then some, told with humor and erudition. *How to Succeed as a Trial Lawyer* does not purport to be an academic treatment of the subject. Instead, it provides practical pointers on everything from dealing with clients and adversaries to managing ethical dilemmas to marketing one's practice and learning how to avoid alienating prospective clients at the next fund-raising dinner. The section on effective deposition-taking is a first-rate primer on that subject. Taken as a whole, the book provides a comprehensive checklist and how-to guide for civil litigators. This book is equivalent to having a sophisticated and accomplished trial lawyer in the family who is willing to take the time to share the fruits of his long experience and savvy insight on everything that matters in the civil litigation process.

Two themes permeate this book. First, in the Edelstein view of the litigation process, less is almost always more. As noted, briefs should be edited to the point of gem-like brilliance. Significantly, the cogency that underlies the most effective briefs also informs other key aspects of the litigation process, from determining the necessary scope of discovery to sifting through the claims to present in a complaint or to pursue at trial. Second, every trial lawyer needs to identify the themes that will advance the client's cause and make certain that every litigation judgment is consistent with those themes. Following the precepts of this book will maximize every client's opportunity for success while minimizing the needless costs and expense that have given the contemporary litigation process such a bad reputation.

Litigation is a challenging vocation. It demands not only intellectual ability but also attention to detail, perseverance, creative problem-solving, persuasiveness, focus, integrity, and the ability to press the client's position with enthusiasm while maintaining sufficient detachment to provide the objective, independent advice the client requires. *How to Succeed as a Trial Lawyer* is an invaluable guide to each of these requirements and more.

I have attempted in this foreword to apply some of the principles that this book advocates, including this one: "When you are done, stop." Read it. Enjoy it. You'll get a lot out of it.

—Richard F. Ziegler

*Mr. Ziegler has been a litigator in the federal and state courts for more than thirty years. He was the Senior Vice President, Legal Affairs, and General Counsel of the 3M Company from 2003 to 2007. Earlier in his career he served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Southern District of New York. A graduate of Yale College and Harvard Law School, he currently is a senior litigation partner in the New York office of Jenner & Block, LLP, where he co-heads the firm's International Arbitration Practice and formerly co-chaired its Complex Commercial Litigation Practice.*