
**A TRIAL LAWYER'S STRATEGIC GUIDE
TO THE NEW JERSEY RULES OF
EVIDENCE**

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TO DIANE

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INTRODUCTION

This book will try to show trial lawyers how to use the Rules of Evidence to prove facts, to exclude objectionable evidence, to impeach witnesses and to support witnesses. The book is not intended to be an explication of the Rules of Evidence. It is short on theory, short on public policy, and short on the development of the law. It is rather a guide to the Rules. Starting from the point of the evidence to be offered or excluded, or from the point of the witnesses who must be confronted or supported, this book will try to show how the Rules of Evidence can be used to present your case effectively.

As a case develops, and the evidence is discovered and the witnesses are identified, it is necessary to formulate and refine a trial strategy for taking the best advantage of favorable evidence, and limiting or excluding the damaging evidence; for supporting favorable witnesses and confronting adverse witnesses. The outcome of this tug-of-war over the admissibility of evidence and the credibility of witnesses determines the testimony of every witness and the evidence in every trial.

In the real world, you cannot always be the best lawyer. Your experts cannot always be the best experts. Your witnesses will be human. They will sometimes say the wrong thing. Rulings will go against you. And who knows what the jury will do, even if every thing goes right – which it never does? Trial work is difficult.

The Rules of Evidence can help. The Rules are not a set of invented or arbitrary rules, as in a sport, that define the game and how it is played. The fact that the Rules are now codified may make them seem invented. However, the principles behind the Rules have evolved over hundreds of years and through thousands of cases, as common law courts have struggled to separate what is genuine from what is false. As a result, the Rules can be used as a guide on how to present evidence in its best light, and how to show its limitations. The Rules can show us not only how the game is played, but also how it can be won.

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