



From the Chair

Perspectives on

By R. Daniel Lindahl

Understanding intuition, cognitive illusion, classic and visual rhetoric: a salient skillset for the effective advocate.



The object of advocacy is persuasion. But how does one persuade? That question has challenged great minds since at least the days when Aristotle lectured about the persuasive power of ethos, pathos, and logos at the

Lyceum during the reign of his pupil, Alexander the Great.

Part of the difficulty in understanding the art and science of persuasion is that there is no single technique that applies in all circumstances; what is persuasive in one context fails in another. Consequently, the skilled advocate—the *persuasive* advocate—is able to choose the best weapon from an arsenal of persuasive strategies.

In this issue of *For The Defense*, the DRI Appellate Advocacy Committee pres-

ents a collection of articles examining persuasion from four different perspectives. John J. Bursch of Warner Norcross & Judd LLP explores cognitive illusions and intuitive fallacies, which pertain to the common tendency to intuitively form beliefs that are, in fact, wrong. His article explains the importance of identifying and refuting cognitive illusions so that the decision maker reaches the correct answer—rather than the one that *seems* correct. Matthew S. Lerner of Goldberg Segalla LLP and Dr.



■ R. Daniel Lindahl is a shareholder with Bullivant Houser Bailey, PC in Portland, Oregon, where he oversees the firm's appellate department. During his 22 years of appellate practice, he has argued more than 125 cases to state and federal appellate courts. He currently chairs the DRI Appellate Advocacy Committee and serves on the program committee of the National Foundation for Judicial Excellence.

Persuasion



James J. Delaney, professor of philosophy at Niagara University, approach persuasion from a wholly different perspective—using intuition to persuade by demonstrating that your position is the one that intuitively makes sense. They discuss the use of thought experiments as a persuasive device. Linda L. Morkan of Robinson & Cole LLP presents a fascinating exploration of visual rhetoric: the art of persuasion through a document's appearance, including the selection of font, headings, and white space. And Mary Massaron Ross of Plunkett & Cooney, P.C. looks at persuasion from the perspective of classic rhetoric. As she explains, the tools of persuasion taught by Cicero, Quintilian, and Aristotle can be used today to develop a persuasive written or oral argument. These thought-provoking articles will at least make you ponder, and perhaps even modify, your persuasion style.

This collection of articles about persuasion was the brainchild of the Appellate Advocacy Committee's superb publications chair, Raymond P. Ward of Adams

and Reese LLP in New Orleans. Persuasion is of special interest to appellate lawyers because the most important part of their job is oral and written advocacy. But appellate lawyers are not the only ones concerned with effective advocacy. Almost all lawyers are advocates at some time and can benefit from enhanced persuasive skills. With that goal in mind, Ray organized and edited this project.

The articles appearing in this issue of *For The Defense* exemplify the publishing opportunities available to Appellate Advocacy Committee members. In addition to regularly contributing feature articles to *For The Defense*, Committee members supply the content for *Certworthy*, the committee's twice-yearly newsletter. Committee members also author "Writers' Corner," which appears in every issue of *For The Defense*.

The *amicus* subcommittee provides opportunities for committee members interested in participating in noteworthy cases. Consistent with its mission to serve as the voice of the defense bar, DRI regu-

larly appears as *amicus curiae* in significant appellate cases. And when DRI elects to become involved as *amicus curiae*, it looks first to the Appellate Advocacy Committee for *amicus* counsel. Just this year committee members Ruth G. Malinas of Ball and Weed and the energetic John Bursch have written *amicus* briefs for DRI concerning cases pending in the Supreme Court of the United States. Persons interested in being considered for *amicus* briefs should contact the *amicus* subcommittee chair, Nancy C. Ciampa of Carlton Fields. She can be reached at nciampa@carltonfields.com.

The Supreme Court of the United States will be the subject of the Appellate Advocacy Committee's CLE presentation at DRI's 2007 Annual Meeting. The program, entitled *The Roberts Court: Evaluating the 2006 Term and Previewing the 2007 Term*, will feature ABC News legal correspondent Jan Crawford Greenburg, University of Texas Law School Professor Lucas A. Powe, Jr., and Supreme Court advocates Miguel Estrada and Maureen Mahoney. I will moderate the program along with Scott Burnett Smith of Bradley Arant. The panelists will debate the 2006 term's important decisions, such as *Phillip Morris USA v. Williams*, *Gonzales v. Carhart*, and *Scott v. Harris*, as well as preview the cases that will make news during the 2007 term.

The United States Supreme Court will be among the topics on the agenda at the Appellate Advocacy Committee's next seminar, which is scheduled for February 2008 in Miami Beach. Program chairs Diane B. Bratvold of Briggs and Morgan and C. Mitchell Brown of Nelson Mullins are busy assembling a distinguished and eclectic faculty of lawyers, judges, and professors for two days of entertaining and informative presentations at the spectacular Eden Roc Resort and Spa on the Atlantic's shore.

If you are interested in learning more about the committee's activities please contact either me (Dan.Lindahl@bullivant.com) or committee vice chair Scott P. Stolley (Scott.Stolley@tklaw.com). Better yet, however, attend our committee meeting at the 2007 annual meeting or our seminar in 2008; the best way to become involved in the committee is to attend our functions and meet the talented and interesting people that make up the committee. Once you do, you will be hooked for good.