

Book review

Polarizing the Case teaches lawyers to turn tables on malingering defense

by Steven L. Shaw

Get this book. GOK, so I'm not much for subtle lead-ins and exhaustive explanations. And thankfully, neither is Rick Friedman.

Polarizing the Case is Friedman's follow-up to the very successful *Rules of the Road* which our own Brad Fulton reviewed in the July 2006 issue of *Trial News*. Where *Rules* takes on the question of liability, *Polarizing* hones in on presenting medical damages, specifically on combating the malingering defense. He makes his intentions known from the very first chapter – "[I]f you even suspect the defense may try to imply your client is faking or exaggerating, you must put on your armor, pick up your sword, and charge into battle on this issue. [Defense counsel has] thrown down the gauntlet. The rest of this book will teach you how to recognize it, pick it up, and then stuff it down their throats."

Friedman begins by telling plaintiffs lawyers to 'wake up' and examine why they are losing cases when, under the law and the facts, they should be winning. He describes lawyers who lose cases because they think that more experts or more data will win the day. This gives attorneys a false sense of security because they assume jurors will process the information the same way attorneys do.

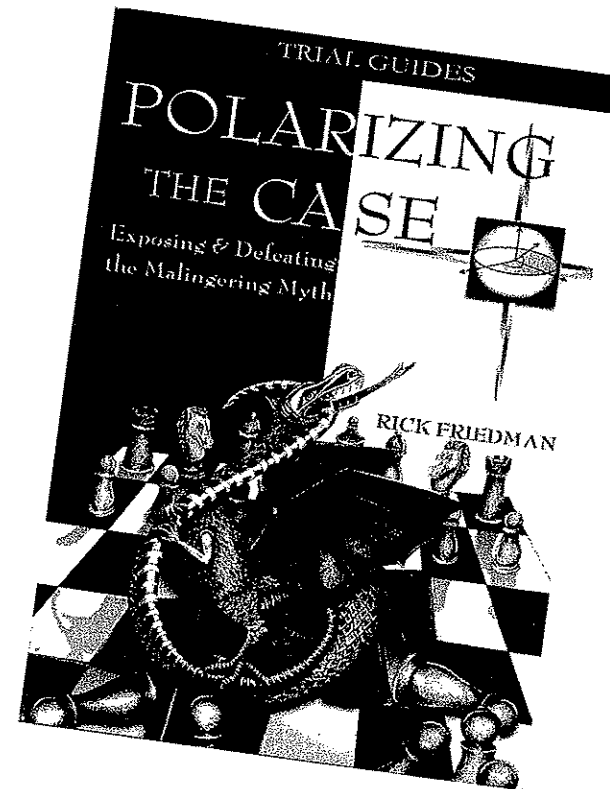
Defense attorneys like to introduce likeli-

hoods and probabilities, because it tends to spark doubt and cynicism with jurors and requires very little factual data to germinate real antipathy towards a plaintiff. Defense attorneys don't have to hit jurors over the head with evidence that plaintiffs are dishonest; they simply suggest that the evidence doesn't match the testimony and watch as the pot begins to boil.

The key, according to Friedman, is to force the defense to back up their inferences with facts and take a position. *Polarizing* teaches plaintiffs attorneys to push the defense from the very beginning on the issue of the plaintiff's medical damages. Is the plaintiff hurt, or not? Were her symptoms real or not? Was the treating doctor right or wrong?

Friedman instructs plaintiffs attorneys to work up their cases with polarization in mind. The key is to get the defense to take a stand, and force them to either back it up or abandon it completely. Either way, according to *Polarizing the Case*, you win – as long as you have prepared the case with solid lay witness testimony to bolster your client's reputation for honesty. While this book focuses on the malingering defense, I can see its application to multiple defenses that all have their basis in your clients' credibility.

The book also provides practical guidance by including sample discovery requests, dep-



osition and trial testimony questions, and motions designed to make the defense take a stand. Exam questions for medical experts are particularly good.

One thing about the book that I found daunting was imagining how it would be to implement all of these good ideas at once. Like any new concept or paradigm, one would need to break off bite sized pieces of what Friedman teaches and learn to apply them with one's own style. Given the level of detail he encourages using, some of my files would take months to prepare.

You won't get a full set of questions or discovery from *Polarizing*. The book's goal is to give you enough to set you on your way.

But I suppose the author's goal is to push you in the right direction, not carry you to where you need to go.

Friedman is very careful throughout the book to let the reader know that he does not claim a one size fits all solution. Nevertheless what he teaches seems applicable in just about any damages situation that I can think of.

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