

TRIAL PRACTICE: TAKING YOUR TRIAL SKILLS TO A NEW LEVEL

Saturday, November 6, 2010

Mohawk Valley Community College

9:00 – 12:00 p.m.

Chair: Frank J. Nebush, Jr., Esq., *Oneida County
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Speaker: Dominic Trunfio, Esq., *First Chief Assistant
District Attorney, Onondaga County District Attorney's
Office*

Sponsored by:

- **Oneida County Bar Association**
- **Oneida County Public Defender, Criminal Division**
- **Oneida County District Attorney**
- **New York State Defenders Association, Inc. (NYSDA)**

CLE Credits: 3 Credits (Skills)

The background features a large, faint watermark of the seal of the Onondaga County District Attorney's Office. The seal is circular and contains a central figure holding a scale of justice and a sword, with the words "DISTRICT ATTORNEY" and "ONONDAGA COUNTY" visible around the perimeter.

**TRIAL PRACTICE:
TAKING YOUR TRIAL SKILLS
TO A NEW LEVEL**

Presented by

First Chief Assistant District Attorney Rick Trunfio

Onondaga County District Attorney's Office

Syracuse, New York

*“Excellence is never an accident;
it is always the result of
high intention, sincere effort,
intelligent direction, skillful execution
and the vision to see obstacles as
opportunities.”*

10 Areas of Focus

1. Basics of Trial Advocacy
2. Case Analysis
3. Organizing your Case File
4. Legal Issues & Motions
5. Jury Selection
6. Witnesses & Witness Preparation
7. Direct Examination
8. Cross-Examination
9. Demonstrative Evidence
10. Opening Statements & Closing Arguments

Part I

The Basics of Trial Advocacy:

**Understanding Your Role as a
Trial Advocate**

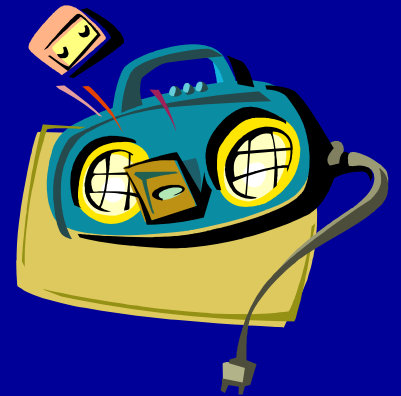
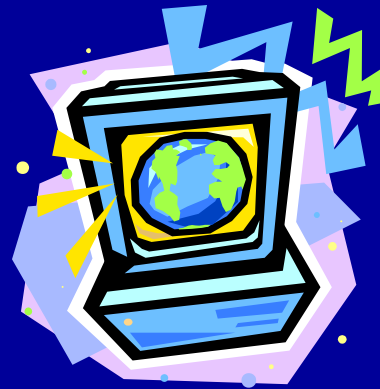
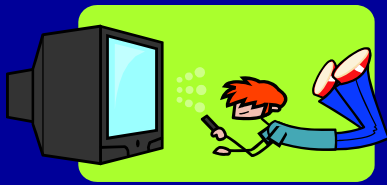
Your Role as a Trial Attorney

- Impression Management
- Persuasion
- Advocacy
- Presence

- Integrity
- Credibility
- Professional & Ethical Responsibilities

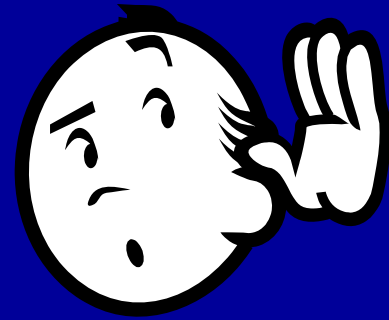
Impression Management

- Attention span of jurors
- Educational level of jurors
- Sound bite society



The Science of Persuasion

- Primacy and recency
- Emotional chronology
- Dominant emotional theme
- Societal Issues
- 65% of all communication is body language



The Art of Persuasion

- Trust and credibility
- Demeanor
- Word choice and phrasing
- How does the testimony fit in the overall impression management of the trial?
- Advocacy

Trial Advocacy

Using evidence, the law, courtroom presence and artful word choice to persuade and convince a jury that your version of the facts is the correct version of the facts

Part II
Case Analysis:
Learning ,
Thinking About &
Mastering
the Facts of Your Case

Review the Entire Case File

- Learn the Facts and Circumstances
- Note Your First Impressions
- Note Unanswered Questions, Unresolved Issues
- Start to Formulate Your Closing Argument

Know How to Obtain Information

- Police Reports
- Witness Statements
- Medical Records of Victim and Defendant
- Medical History of Victim and Defendant
- Photos of Injuries
- Photos, Sketches of Crime Scene
- Property Reports and Evidence Submission/
Chain of Custody Forms
- Forensic Testing & Lab Reports and Notes
- Social Services Records
- School Records

- EMT Records of Treatment on Scene
- 911 Tapes
- Military Service Records
- Relevant Items From Scene
- Observations of Scene
- Telephone Records
- Criminal Histories of Suspects & Witnesses
- Interviews with Everyone Associated with Victim and Defendant
- Employment Records
- Autopsy Report














- Identify & Note Important Details
- Follow-Up
 - Consult with Experts
 - Forensic Analysis
 - Obtain Medical Releases
 - Identify All Possible Witnesses
 - Carefully Review Reports and Statements

Think Out of The Box

- Be Objective
- Be Critical
- Identify the Potential Defenses

Assess the Facts and Circumstances

- Create a “Pros & Cons” Chart

+	Neutral	-
		
		
		
		
		
		
		

Develop a **Theme** and **Theory** of Your Case

- **Theme:** A psychological anchor for the case
- **Theory:** A logical and persuasive explanation for the facts that is consistent with the admissible evidence and perceptions of the average juror

Review and Study Applicable Law and Potential Jury Instructions!!

The language and elements in the legal instructions that will be given to the jury should be embedded in your trial presentation.

Part III
Organizing and
Breaking Down
Your File

Organizing Your Case File

- Trial Notebook Method
- File Folder Method
- The “Crazy Mad Professor” Method

Read, Review and Organize Information

- Reports by Police Officer or Analyst
- Affidavits/Statements by Witness
- Physical evidence
- Scientific/Forensic/Medical Evidence
- Photographs
- Sketches or diagrams
- To Do Lists
- Calendar and Schedule for Trial and Trial Prep
- Follow-up
- Law and legal issues

File Documentation

- Document discovery, Rosario and Brady material provided to the defense
 - number each page of the documents
 - make a file copy with proof of exchange or delivery
 - make a record, in court, as to what has been provided
- Written documentation of all contact, conversations and telephone calls
- Written Correspondence/e-mails

Part IV
Legal Issues &
Motions: Shaping the
Framework of Your
Trial

- Identify legal issues and address early in filing and responding to motions
- Judge's rulings on motions and legal issues will set the framework for your trial

Common Motions

- Motions to Suppress
- Motions for Discovery, Information, Documents, Witnesses, Lists, Exculpatory Information
- Motions to Inspect Grand Jury Minutes and Dismiss Indictment
- Motion for Sandoval Hearing
- Motion of Defendant's Criminal History and "Other Acts" evidence that the people intend to use against defendant at trial
- Motion for a Bill of Particulars

Bill of Particulars

- A Bill of Particulars is Not a Discovery Device; It Serves to Clarify the Pleading: *See, People v. Davis, 41 NY 2d 678*
- A Bill of Particulars is Meant to Provide What the Prosecution Intends to Prove, Not Show How They Intend To Do So
- An Indictment or Information Must Give Adequate Notice of the Charges Against the Defendant; However, the Prosecution is Not Required to Include Evidentiary Material

Offensive Use of Pre-Trial Motions

Objective of an offensive pre-trial motion is to attempt to pre-determine the conduct of all parties during the course of the trial.

Use of Offensive Motions

- Anticipate Obstruction Tactics
- Employ Special Trial Procedures
- Keep Trial Presentation Flowing Smoothly
- Limit Objections in Front of Jury
- Address a Specific Issue
- Educate the Judge
- Seek Admissibility of Crucial Evidence
- Admit “Other Acts Evidence”
- Preclude the Admissibility of Certain Testimony or Evidence

Examples of Offensive Motions

- Motions to Preclude Expert Testimony
 - Defense Expert Not Qualified to Offer Expert Opinion
 - Defense Expert Testimony Does Not Meet Minimum Standard of Frye or Daubert
 - Expert testimony is Not Relevant
 - Lack of Foundation or Improper Foundation
 - Unfounded “Syndrome Evidence”
 - Balance Motion to Preclude with Opportunity to Cross-Examine

Examples of Offensive Motions

- Motion to Admit Expert Testimony on Syndromes or Other “Hard” or “Soft” Sciences

- Motion to Admit Hearsay Evidence/Exceptions

-Medical Records

-Excited Utterances

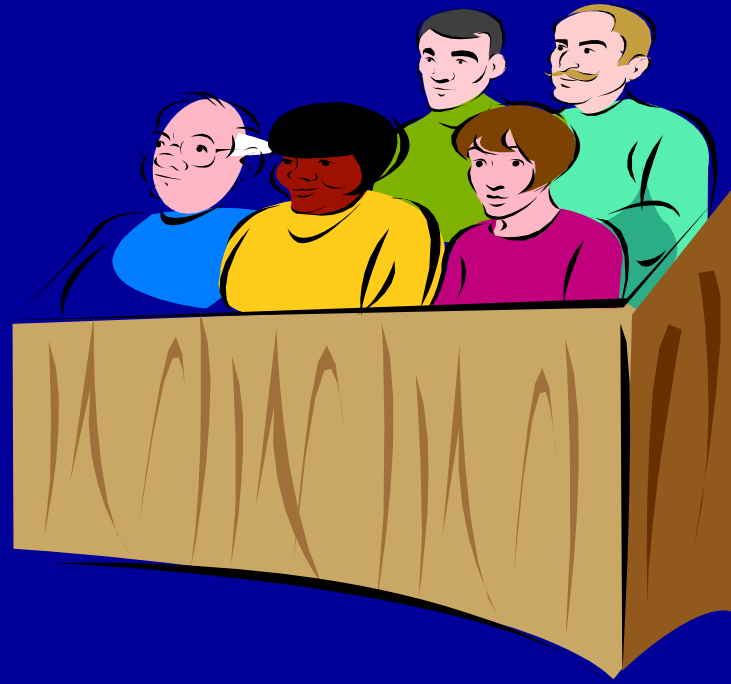
-Other Exceptions

- Motion for Special Jury Instructions
- Obtain Discovery, Assist in Trial Preparation or Obtain Additional Evidence
- Compel Examinations or Testing
- Compel Reciprocal Discovery

Examples of Offensive Motions

- Motion to Protect Victim / Witnesses
 - Motion to Limit Examinations of Child Witnesses
 - Motion for Special Procedures During the Presentation of the Child Witness's Testimony
 - Motion to Prevent Improper Impeachment of Witnesses
 - Ensure Proper Foundation Requirements
 - Motion Opposing Introduction of Victim's Prior Sexual History ("Rape Shield")

Part V
Jury Selection



“The jury system puts a ban upon intelligence and honesty, and a premium upon ignorance, stupidity, and perjury.”

Mark Twain - *Roughing It* (1872)

“Jury De-Selection”

Removing jurors that can hurt your case from the panel and choosing the best of what's left!

Never Underestimate the Critical Importance of Having the “Right” 12 People Sitting in Your Case

- Use Persuasion & Advocacy
- Understand Your Case & Current Societal Dynamics
- Read Body Language
- Use Instinct
- Rely on Experience

8 Objectives of Voir Dire

1. **Build rapport**
2. **Establish credibility**
3. **Gather information**
4. **Stimulate Conversation**
5. **Educate**
6. **Advocate**
7. **Evaluate**
 - to understand juror's values
 - exercise peremptory challenges
8. **Pick a jury favorable to your case!**

5 Steps to Selecting a Jury

- 1. Develop a strategy & jury profile**
- 2. Establishing Rapport**
- 3. Educate & Advocate (“Weed & Seed”)**
- 4. Effective and efficient use of time**
- 5. Intelligently exercising your challenges and opposing challenges**

Step 1: Develop a Strategy & Jury Profile

- What kind of case do you have?
- What are the key issues?
- Strengths and weaknesses of case?
- Is this a circumstantial case?
- Is there a chance of possible jury nullification?
- Is this a case with problem witnesses?
- Is this a case where jurors may have a difficult time reconciling the criminal conduct alleged and the impression they have of the defendant before them?

Jury Profile

- **What jurors would best identify with your theme and theory?**
- **Think of voir dire as an audition**

Use of Demographics

- Demographics are a **poor** indicator, unless . . .
 - **Race** in a case where race is at issue
 - **Gender** in a case where gender is at issue

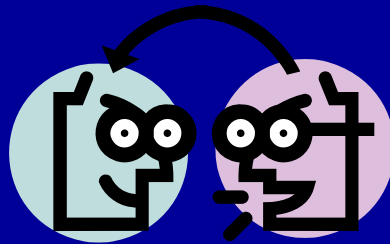
So Which Jurors?

A Few Guidelines

- **Be wary of the following jurors:**
 - **Jurors who don't want to serve**
 - **Jurors over-eager to serve**
 - **Jurors who are not very bright**
 - **Jurors who are ill-at-ease**
 - **Jurors with no stake in the community**
 - **Jurors who know too much (lawyers)**
 - **Jurors about whom you know **NOTHING****

Jury Self- Education Process

- **The process of jurors defusing the hard issues in the case & persuading their peers to their side**



- **May be 1 or 2 leaders, but individuals will learn and form opinions from each other**

Factors to Consider When Looking for Leaders

- Obviously, should be pro-prosecution
- Often juror who was well-spoken and confident during voir dire
- Generally, **older jurors**
- Older females will often follow a man rather than another woman
- Younger males are willing to be led by older females
- Better educated generally lead less-educated unless they have an attitude

Questions to Help Identify Your Leaders

- Some individuals enjoy leadership positions and others do not . Which type of person do you see yourself as?
- Your occupation (job responsibilities) could make you an influential member of this jury. How do you feel about that?
- If you were chosen as a member of this jury, how would you go about making your position heard by others during deliberation?

Step 2:

Establishing Rapport

Beware of Pre-Conceived Notions of Attorneys!

- **Impact of television and glut of legal shows**
- **Research, studies, polls, surveys of public (jurors) attitudes towards attorneys**
- **Endless litany of lawyer jokes**

Establishing Rapport

- **People who like other people want to please them**
 - Use good interview skills
 - Be sensitive & respect privacy
 - Be yourself
 - Listen effectively
 - Observe and respond appropriately

*“Knowledge speaks,
but wisdom listens.”*



-Jimi Hendrix

Rapport Building

- **The prospective jury is watching you**
 - **Be concerned about how you look and act**
 - **Look and act professional**
 - **Be prepared**
- **Observe your potential jurors and their reactions carefully**
- **Use common vocabulary and language**

Rapport Building

- **If jury sees you as one of them, they will want to help**
 - **Breakdown socioeconomic & educational barriers by showing the same thoughts, fears & feelings**
 - **Can self-disclose relevant personal information**
- **If demeaning, condescending or egotistical, they will have no reason to assist you**

Making Jurors Feel Comfortable

- **Seek individual jury selection**
- **Seek to have the judge bring jurors to the bench**
- **Seek the court to allow attorney participation**
- **Seek to have the judge ask sensitive questions**

Making Jurors Feel Comfortable

- **Increased eye contact**
- **Closer physical distance**
- **Relaxed posture**
- **Relatively great body motion**
- **Individual interviews**

Assessing Juror Attitudes

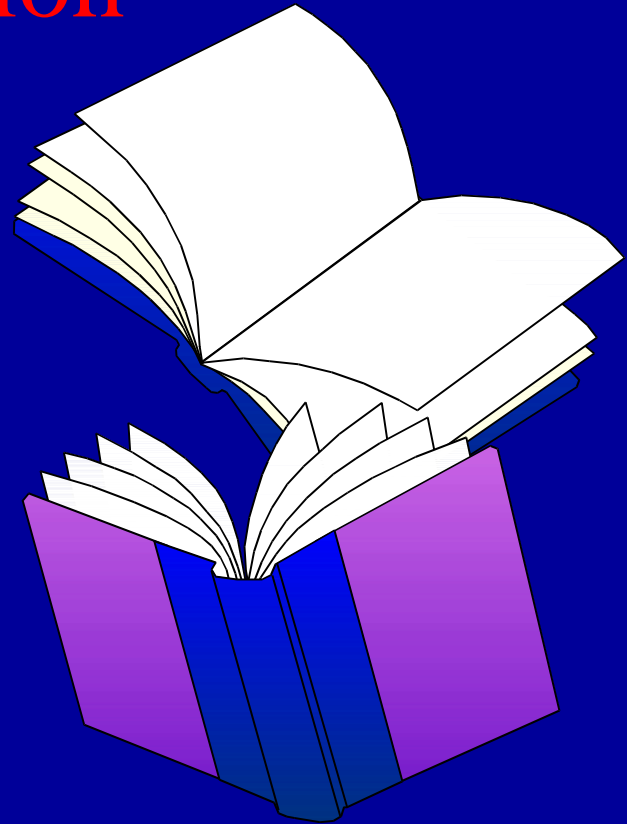
- **Manner of response: what a juror says is not as important as how he/she says it**
- **Every “experience” question should be followed up with an “attitude” question**
- **Listen for jurors with strong opinions or attitudes that appear to favor either side**

- **But, try to rehabilitate jurors with strong attitudes that may favor your case to avoid challenges for cause**

Step 3:
Educate & Advocate
(“Weed & Seed”)

Presenting Your Theme and Theory During Jury Selection

- Jurors need a **story** to put the case together
- **Lay the foundation** for the story in jury selection
- **Weave the story into the voir dire questions**



Why a story?

- **If no story is presented to jurors, they develop their own!**
- **Once jurors develop the story, it's very difficult to get them to change!**

3 Components to a Good Story

- **Consistency**
- **Plausibility**
- **Completeness**

Educate & Advocate

- Design questions & dialogue that educate jurors about issues and facts in your case
- Design questions or dialogue that advocate or promote your theme & theory

Eliciting Information

- **“Information gathering is the cornerstone of effective jury selection.”**
 - **Be conversational & avoid “legalese”**
 - **Personalize your delivery**
 - **Use open-ended questions: let juror talk, not you!**
 - **Question, probe & listen!**

Step 4: Effective and Efficient Use of Time

- **Be prepared**
- **Know the procedure**
- **Work Sheets**
- **Notes**
- **Use shorthand and symbols**
- **Jury Questionnaires**
- **Supplemental Jury Questionnaires (SJQ's)**

Supplemental Jury Questionnaires

- **Whenever court permits, consider using a supplemental jury questionnaire**
 - **work out the logistics**
 - **uses more time on the front end, less on the back**
 - **elicit much greater & more extensive information than usual voir dire**
 - **develop a rating system**

Step 5: Exercising or Opposing Challenges

- Challenges for Cause
- Peremptory Challenges
- Hunches
- Experience
- Batson Issues

Batson Inquiry

(Batson v. Kentucky, 476 US 76)

3 Steps:

1. Objecting party must demonstrate purposeful exclusion of member of a particular group.
2. Burden shifts to peremptory party to offer facially neutral reasons.
3. Trial court - determination if neutral reasons legitimate.

NY Cases Regarding Excluding Members of a Protected Group

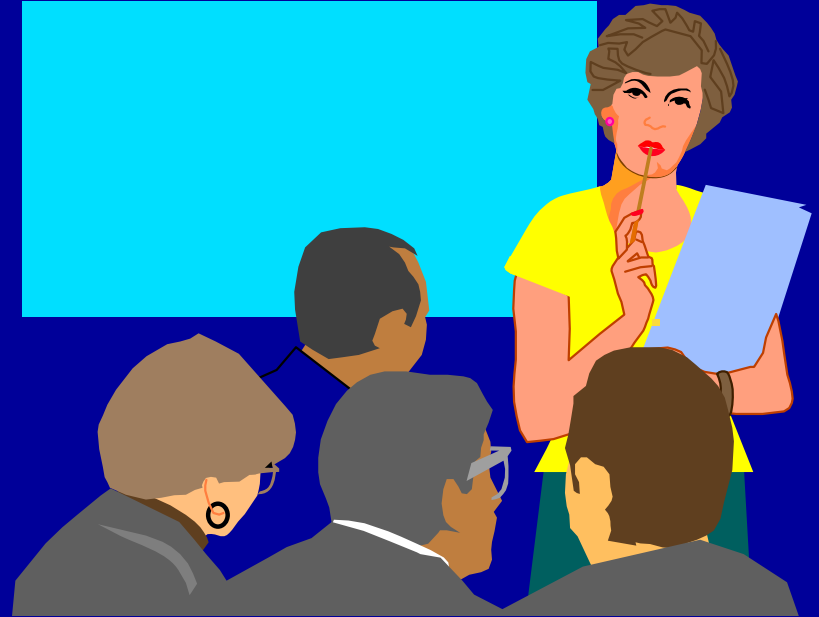
- *People v. Jenkins*, 75 NY2d 550
- *People v. Childress*, 81 NY2d 263
- *People v. Allen*, 86 NY2d 101

Time for Challenges

- **Two suggested approaches for shaping your jury . . .**
 - **The Dinner Party**
 - **The Audition**

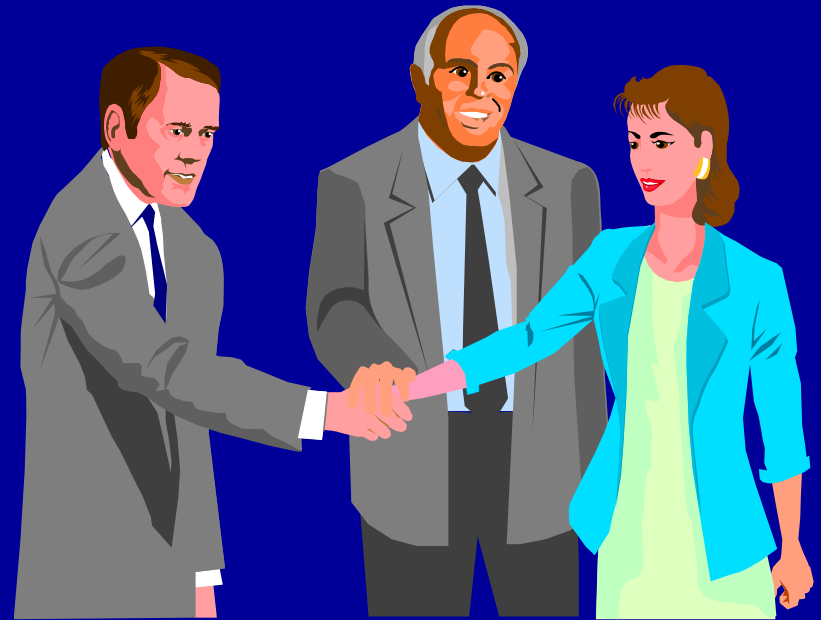
The Audition

- **Imagine that you are the casting director for a production and you are casting individuals from the community**
- **The cast is dependent upon who gets the leading roles**



The Dinner Party

- Think of jury selection like planning a dinner party
- What 12 people would fit well together?



Frequent Errors

- 1. Thinking your case has not yet started**
- 2. Talking more than jurors**
- 3. Formulating questions so that no response is desired**
- 4. Cross-examining, talking down to or embarrassing “not so bright” jurors**
- 5. Focusing questions on 1 or 2 jurors**
- 6. Making a juror uncomfortable to disagree or making a juror commit too soon or against his /her will**

- 7. Being afraid to let a juror expose personal bias**
- 8. Neglecting to address weaknesses in your case**
- 9. Failing to give feedback**
- 10. Using legalese & hypercorrect vocabulary**
- 11. Neglecting the “Dinner Party Theory”**
- 12. Allowing a juror you know little or nothing about to sit on your jury**

Part VI

Dealing with Witnesses

and

Witness Preparation

Witnesses

- Identify all potential relevant witnesses
- Draft “Tentative Order of Proof”
- Witnesses Contact
 - Schedule appointments for face to face interview
 - Do not rely on phone conversations or interviews performed by investigators or third parties!
 - Never put a witness on the stand for trial whom you have never spoken to face to face
- Create a file with witness contact information

Witness Preparation

- Prepare witness for both direct and cross-examination
- Review statement or prior testimony with witness
 - Give witness copy of prior testimony before court
 - Advise witness that the other side most likely has copies of his/her prior testimony
 - Talk to the witness about “prior inconsistent statements”
- Show witness any exhibits you intend to use during witness direct examination.

Final Tips for Witness Prep

- Finalize “Order of Proof” (Remember the rules of “primacy & recency”!)
- Prepare a tentative trial schedule with witness blocks that are logical and make sense to your desired chronological presentation
- Advise witnesses as to tentative date & time for testimony

Part VII
Direct Examination

Goals of Direct Examination

1. Provide facts and information to the jury
2. Clear & Concise Testimony
3. Credible and Persuasive Testimony
4. Keep the Jury's Attention
5. Brevity

Direct Examination

1. What information does the witness contribute?
2. Risk/benefit Analysis of witness and his effectiveness as a witness
 - is he/she able to articulate the information without damaging your case?
3. How does the witness and his/her testimony fit into your trial strategy and theme and theory?
4. What points from the witness testimony do you need for your summation?
5. Know your witness
 - evaluate ability to recall and recollect
 - eye contact, demeanor, credibility
6. Prepare your witness
 - explain where he/she fits in the case
 - review prior statements or testimony
 - compare to what others say happened or other available evidence
 - develop details needed to establish your points
 - prepare for cross-examination

Mechanics of Direct Examination

1. Direct should have a logical, chronological structure
2. Position yourself so that witness makes eye-contact with the jury
3. Control your witness
4. Clear simple questions calling for clear simple answers
5. Use plain language
6. Journalistic approach:
 - Who, what, where, when, how, why
 - “Tell us....”
 - “Describe for us...”
 - “What happened next...”

Part VIII
Cross-Examination

GENERAL PRINCIPLES

- Preparation
- Strategy
- Approach
- Control

PREPARATION

- Interview all parties and potential witnesses:
 - Go beyond affidavits, written statements and police reports
 - Listen carefully to what they have to say
- Don't limit interviews to the probable or obvious witnesses
- Compare the stories/versions of all the witnesses
- Note any relationship, biases or prejudice of the witness:
- Note personality/character traits and use them to your advantage-short temper, arrogance, nervousness, etc

STRATEGY

1. Assess the risks in cross-examining the witness
 - Can this witness *help* you on cross-examination?
 - Can this witness *hurt* you on cross-examination?

STRATEGY

2. Decide on the Objectives of Your Cross-Examination

- Can this witness be impeached or discredited?
- Point out the inconsistencies

STRATEGY

- Point out inconsistencies:
 - Was the direct testimony internally consistent?
 - Was the direct testimony consistent with the other witnesses?
 - Was the direct testimony consistent with that this witness has said before?
 - Is the testimony consistent with the physical evidence?

STRATEGY

- Demonstrate the unreasonableness of a certain position, opinion or defense.
 - Does the testimony make sense?
 - Compare testimony with other established evidence and facts
- Does the witness have a motive to lie?
- Demonstrate any bias or prejudice of the witness

STRATEGY

- Enhance or support your case or position
- Establish areas of agreement with the witness
- Enhance or support your case or position.
 - Establish areas of agreement with the witness.
 - Establish points that the witness should (or must) confirm about the facts of your particular case.

APPROACH

1. Use the Appropriate Style and Tone

- Assess the personality of the witness
- Is this witness hostile?
 - Not every cross-examination needs to be confrontational
- Use sarcasm, surprise, humor, and anger when appropriate, but always be aware of the jury's reaction
- Don't come off as a bully

APPROACH

2. Lay the Proper Foundation

- Be patient:
 - Avoid the temptation to confront the witness immediately or make your point too soon
 - Lead, Lock and “Kill”

APPROACH

Lead, Lock and “Kill”

- *Lead* the witness to a particular place
- *Lock* the witness into a certain position
- Move in for the “*kill*”

CONTROL

1. Control the Witness

- Use leading questions
 - However, non-leading questions can also be appropriate and/or effective in certain scenarios
- Know the answer to the question before you ask it
- Use short, clear questions

CONTROL

2. Control the Situation

- Anticipate objections and be able to respond to them without losing the focus of your cross examination
- Don't let your opponent or the judge interrupt your flow or focus

CONTROL

3. Control Yourself

- Set the tone of the cross-examination, but don't get carried away
- Don't argue with the witness
- Be patient

CONTROL

- Don't Ask the "One Question Too Many"
- Know when to sit down and shut up
- Make your point in closing argument

Part IX
Demonstrative
Evidence

Impression Management, Persuasion and Advocacy

- “A picture is worth a thousand words.”
- Humans learn better when they *see & hear*
- Visual aides assist learning and information retention
- Most jurors will expect to see some form of physical evidence or exhibits
- Make wise use of technology in creating and presenting trial exhibits









Trial Exhibits

- Physical items;
- Photographs;
- Sketches or diagrams;
- Documents; or
- any tangible piece of proof intended for use as evidence to be considered by the jury
- Marked and shown to a witness during trial
- Proper foundation needed for admissibility

Working with Exhibits

- Organize exhibits before meeting with witnesses
- Use a running list or chart to keep track of exhibits marked and accepted into evidence during the trial
- Know the proper foundation for introducing photographs or all forms of physical evidence
- Make a proper record as you use, refer to, and handle exhibits in trial

Part X
The Art of Advocacy

Opening Statements
and Closing Arguments

Word Choice & Phrasing

Lawyers are trained to perform one basic skill:

- **Using Words and Language,**
- **To Make Arguments in order to**
- **Convince someone that their position is correct**

Paint a Picture with Words!



Painting Word Pictures

- Create compelling images for the jury
- Use “impact” words

Effective Story-Telling

- Begin with an effective “attention step”
- Use dramatic pauses or silences
- Use powerful quotations at least once in your opening statement
- Be Creative In Your Word Choice & Phrasing
- Leave with a powerful “exit line”
- Integrate your theme and theory

What *should* you say?

What *must* you say?

How will you say it?

Practical Considerations

- Preparation
- Write out your opening statement before trial begins
- Practice, Practice, Practice
- Structure, Organization & Logical Flow
- Weave elements of offense into your story
- Look at the jury: Don't read!
- Be Brief

Introspective Checklist

- **Am I clear in my mind about what I want to say?**
- **Am I using words and phrases to convey what is in my mind in such a way that my audience will get the same picture?**
- **Am I getting meaningful feedback that tells me where my message is and isn't getting across?**
- **Am I aware of how I might be distorting information to reinforce my positions?**

Introspective Checklist

- Am I identifying my assumptions and opinions and keeping them separate from the facts?
- Am I remaining objective, or am I injecting too much of myself, my goals, my desires, etc.?
- Am I giving each point its due and helping my listener to understand it?
- Am I communicating in specific, observational terms and providing examples to illustrate what I mean?
- Am I keeping in mind the total impression I am creating, not just the words I am using?

Use Visuals

Jurors retain more information if they hear it and see it.

- Use & Display Exhibits/Evidence to Make Your Points
- Highlight Audio or Video Recordings
- Create Checklists of What You've Proven, as You Tell Them
- Use Technology and a PowerPoint Presentation

but remember...

Technology should *never* be a
substitute for convincing &
persuasive oratory

Tips

- Dress for success
- Maintain your natural style - no artificial gestures or movements
- Use humor and sarcasm if it comes naturally
- Don't read your Opening or your Summation
- Don't tell jury what you say is not evidence
- Don't tell them their job is difficult or complex
- Use inflections in your voice to make a point
- Project confidence in your case
- Remember: your job as an advocate is to persuade, convince and make sense of your case using words

Opening Statements

- **The first opportunity to advocate your position logically and persuasively**
- **Outline general facts and concepts for jury**
 - **“Table of Contents”**
 - **“Road Map”**
- **Lay out the elements of the offenses**



Key Factors to Consider

- **Most jurors make up their minds after the opening statements!**
- **Principles of Primacy-Recency**
- **Tell a story, chronologically**
- **Clear message**
- **Concise points**
- **Use your theme and theory**

Word Phrasing

- **“Opening Argument”**
- **Passive vs. Active Language**

Word Phrasing

- **Passive:** *“I believe the evidence will show that the defendant did...”*
- **Less Passive:** *“The evidence will show that the defendant did...”*
- **Less Passive:** *“Jane Doe will tell you that the defendant did...”*
- **Active:** *“This defendant did...”*

Summation

- Tell a Good Story!
- Your closing is your opportunity to bring the case together for the jury in a compelling, powerful & dramatic fashion!
- Use the principles of Primacy & Recency

This is your last opportunity to address the jury

- Look at it like your conclusion and your last time to tell the jury to do
- It should be powerful, emotional & compelling
- Ask the jury to look at all the evidence
- Ask the Jury to Apply Logic and Common sense

Issues Not to Belabor

- How gracious you are that the jury has been so attentive
- How sorry you are that the case lasted so long
- How beautiful it is that our country has a jury system
- How grateful you are to live in the U.S.A.

Issues That Should Be Addressed

1. The Law
2. Physical Evidence
3. Why we know
Witnesses are credible
or not credible
4. Elimination of non-
issues or “Red
Herrings”
5. Reasonable Doubt
6. Admission of your
weak points
7. Discussion of what
makes sense and is
logical
8. Effective final appeal to
jury to deliver verdict

- Acknowledge and address your weak points, explain why they are not crucial points to your case and move on
- Make your points no matter how obvious you think they are
- Explain what is relevant and why
- Point out where the prosecution & defense agree
- Look carefully at the facts that came out at trial, especially little details that they may have overlooked and that you can point out for them and give them to tie the case together
- Remember, jurors like, want and need corroboration even when the law doesn't require it

Practical Considerations for Your Closing

- Write out your argument before trial begins and modify it accordingly as the trial progresses
- Use your theme and theory in your summation
- Make sure you use concise points to articulate a clear message
- Use analogies to drive home complex legal concepts

- **Maintain a Summation Folder**
Keep a folder at your trial table and during the course of the trial make notes of key moments from the testimony or from the trial that help you emphasize critical points
- Order key testimony from court reporter that you can read back to jurors, verbatim
- Weave this all into the First Draft of your Closing
- Edit for good structure, organization & logical flow

TIP OF THE DAY:

Read the CJI instructions that the judge intends to charge the jury. Use the language in the CJI throughout your closing as you discuss the elements and your proof. When the jury hears the charge, they'll think: "that's exactly what the prosecutor said this case was about!"

Final Notes

- Master the facts and know the legal issues
- Know your forum (judge) and your adversary
- Be prepared
- Be proactive
- Be creative
- Be confident
- Be an advocate
- Be professional & ethical

*“Excellence is never an accident;
it is always the result of
high intention, sincere effort,
intelligent direction, skillful execution
and the vision to see obstacles as
opportunities.”*