

The Power Trial Method

The Art of Persuasion

PUBLIC SPEAKING

Memorization

Thinking under Pressure

Working with a Team

- Things they teach you NOT to do when taking education classes:
 - Competition
 - Put people on the spot

The Art of Persuasion

- Three kinds of proof or persuasive appeal:
 - Logos – Appeal to Reason
 - Pathos – Appeal to Emotion
 - Ethos – Appeal of one's character

- Time to Kill

- Why Persuasive?

- <http://www.bing.com/videos/search?q=Time+to+Kill+a+Speech&&view=detail&mid=F07FBFF1F141E72BB459F07FBFF1F141E72BB459&FORM=VRDGAR>

Supplies Assignment

1. BLACK three ring binder – have no later than Monday.
2. Two Highlighters – different colors – DUE NOW

ASSIGNMENT

- Federal Rules of Evidence
 - You must memorize all numbers and titles.
 - No Definitions YET
 - First Oral Quiz will be this FRIDAY.
 - Oral quizzes will continue everyday until the Apocalypse.
 - Written Quiz of all number and titles will be next Friday (September 8th).

Opening Statement

Plaintiff/Prosecution Opening

Defense Opening Statement

Witness Examination

P Witness # 1 Direct Examination

Cross Examination

P Witness # 2 Direct Examination

Cross Examination

P Witness # 2 Direct Examination

Cross Examination

D Witness #1 Direct Examination

Cross Examination

D Witness #2 Direct Examination

Cross Examination

D Witness #2 Direct Examination

Cross Examination

Closing Argument

Plaintiff/Prosecution Closing Argument

Defense Closing Argument

Plaintiff Prosecution Rebuttal

A vertical yellow strip on the left side of the slide contains the text "CRIME SCENE DO NOT CROSS" repeated four times. The background of the slide is a dark blue surface with yellow evidence markers and yellow crime scene tape. One marker is a square, another is a cone, and a third is a small cube. A wooden post with a ball on top is also visible.

TEAM FORMAT

Attorney 1

- Opening Statement
- Direct Examination
- Play Witness Role

Attorney 2

- Two Direct Examinations
- Two Cross Examinations
- Play Witness

Attorney 3

- Cross Examination
- Closing Argument
- Play Witness Role



CRIME SCENE DO NOT CROSS

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CRIME SCENE DO NOT CROSS



DO NOT CROSS

CRIME SCENE

Criminal Law

CRIMINAL LAW

- Crime and Punishment
- The “State” prosecutes those that have violated the law

Prosecution = the state

Defendant = the accused



A vertical strip on the left side of the slide shows a crime scene. It features yellow tape with the words "CRIME SCENE DO NOT CROSS" repeated vertically. The tape is strung around a wooden post and across the floor. Below the tape, there are several yellow evidence markers and a white string or cord on a dark, reflective surface.

Presumption of Innocence

- American justice system assumes that the defendant is innocent.
- The prosecution must **PROVE** guilt.
- The prosecution must convince a jury that the defendant is guilty **BEYOND A REASONABLE DOUBT**.
- The Defense must prove **NOTHING**.
 - EXCEPT – Affirmative Defense

Beyond a Reasonable Doubt

- Reasonable doubt exists unless the juror can say that he or she has an abiding conviction, to a moral certainty, to the truth of the charge.
- DOUBT, DOUBT, DOUBT



A vertical strip on the left side of the slide shows a crime scene. It features a wooden post with yellow crime scene tape wrapped around it. The tape has the text 'CRIME SCENE DO NOT CROSS' printed on it. Below the post, there are two yellow evidence markers on a dark surface, connected by a white string. The background of the strip is dark blue.

Elements of a Criminal Case

- Criminal code requires two aspects of every crime:
 - Actus Rea: A Physical Act
 - Mens Rea: A Culpable Mental State
 - Intent
 - Reckless disregard
- Crime requires the union of thought and action

Elements of First Degree Murder

1. The Act of Killing

2. Malice Aforethought (intent)

Intent to willfully take the life of a human being
Does not necessarily imply ill will or hatred towards the individual.

3. Premeditation

- A period of time in which the accused deliberates, or thinks the matter over, before acting.

Any interval of time between forming the intent to kill, and the execution of that intent, which is of sufficient duration for the accused to be fully conscious and mindful of what he intended willfully to set about to do, is sufficient to justify a finding of premeditation.

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CRIME

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CRIME



Applicable Law

- In the District of Columbia, D.C. Code, Sec., 22-2401 defines Murder in the first degree as follows:
 - Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison...is guilty of murder in the first degree.
- D.C. Code, Sec. 22-2403 defines Murder in the second degree as follows:
 - Whoever with malice aforethought, except as provided in Sec. 22-2401, kills another, is guilty of murder in the second degree.
- In the District of Columbia, second degree murder is a lesser included offense of first degree murder, and under an indictment charging first degree murder, the defendant may be found guilty of the necessarily included offense of second degree murder.

• Self Defense

In the District of Columbia, the standard for self-defense is that the accused:

1. given his or her situation
2. had a reasonable belief
3. that his or her life was in imminent danger.

The trier of fact (judge or jury) must put itself in the shoes of the defendant, and determine what was reasonable for the person who committed the act to believe at the time the act was committed.

BWS

- "In homicide cases where the defendant claims self defense, expert testimony regarding Battered Woman Syndrome is admissible in order to establish:

1. that the syndrome exists, and what its definition and characteristics are;

2. that the defendant was suffering from the syndrome

- Severe and frequent physical and emotional abuse
- financial dependence on the batterer
- forced isolation from family and friends
- extreme fear of retaliation if attempt escape

3. that a person suffering from battered woman syndrome may reasonably have perceptions, fears and beliefs that would not be reasonable in others.

Evidence

- **Direct Evidence**
 - The testimony of one who asserts actual knowledge of a fact (eyewitness).
- **Circumstantial Evidence**
 - Proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant.
- *The Law makes no distinction between the weight to be given to either direct or circumstantial evidence*





CRIME SCENE DO NOT CROSS

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CRIME



Assignment

- Read case packet
- Read law carefully – it will tell you what to highlight
- Highlight any fact that you believe is positive for your side of the case in one color
- Highlight any fact that you believe is negative for your side of the case in another color
- DUE TOMORROW



What should I do?

Act of Killing

Intent

Premeditation

Dana Hughes		
Tony Williams		
Jordan Bright		
Dominique Stephens		
Sidney Miller		
Bobby Phoenix		

Act of Killing

Intent

Premeditation

Dana Hughes		
Tony Williams		
Jordan Bright		
Dominique Stephens		
Sidney Miller		
Bobby Phoenix		

Civil Law

- All action that does not involve criminal matters. Civil law usually deals with private rights of individuals, groups, or businesses.

Preponderance of Evidence

- Standard of proof in a civil case – Standard requires that more than 50% of the weight of the evidence be in favor of the winning party – the mere tipping of the scales to one side or the other.

Tort

- In civil law when someone commits a wrong it is called a tort. A tort occurs when one person causes injury to another person or to another's property or reputation. It is not a crime.

Plaintiff

- The injured person

Defendant

- Person who allegedly caused the harm

Liability

- Failure to exercise reasonable care may result in legal liability.

Negligence

- Occurs when a person's failure to use reasonable care causes harm.
Negligence is an unintentional tort.

Elements

- The tort of negligence contains four elements
 1. Duty
 2. Breach of Duty
 3. Causation
 4. Damages

Duty

- The defendant owed a duty of care to the plaintiff
- Duty is basically responsibility
 - Duty to drive safely
 - Duty to not drive when intoxicated
- Society often recognizes duty through laws.

Breach

- That duty was violated, or breached, by the defendant's conduct
- Breach is “action” or “lack of action”
 - Consumes large amounts of alcohol
 - Drives a car
 - Speeding
 - Weaving
 - Going through stop signs

Causation

- The defendant's conduct (breach) caused the plaintiff's harm.
- Because the defendant **drove recklessly** they hit the pedestrian **causing** severe physical injuries
 - Broken bones
 - Internal bleeding
 - Paralysis

- **Direct Causation:** The cause in fact. To show direct cause plaintiff must establish either that
 - she would not have been harmed “**but for**” the defendant’s conduct
 - or that the defendant’s conduct was a substantial factor in bringing the harm about.

- **Proximate Cause:** Requires showing that the harm suffered by the plaintiff was both
 - a foreseeable result of the defendant's wrongful or unlawful conduct
 - and is of a type that could reasonably have been anticipated.

Damages

- The plaintiff suffered actual damages.
 - Medical Costs and Hospitalization
 - Rehab
 - Home nursing care
 - Pain and Suffering
 - Loss of Income

- The plaintiff **MUST** prove all four elements. If the plaintiff fails to prove even one of the elements. The defendant will win.

Defenses against Negligence

- Show that at least ONE of the four elements has not been proven
- Comparative Negligence
- Assumption of Risk

Comparative Negligence

- Means dividing the loss according to the degree to which each party is at fault. If the defendant can show that more than 50% of the fault lies with the plaintiff, then the plaintiff gets no damages and the defense wins.

Assumption of Risk

- May be used when the plaintiff knew there was risk but proceeded with the risky behavior anyway. This defense can be used successfully only when the plaintiff had full knowledge of and appreciated the danger, yet voluntarily exposed themselves to risk.

Punitive Damages

- Awards in excess of the proven economic loss. In a tort action, they are paid to the victim to punish the defendant and to warn others not to engage in such conduct.

Mackey v. Norodin, 115 New. Col. App. 684 (1996)

- Plaintiff in an action for negligence has the burden to prove that the defendant breached a duty to exercise reasonable care under all the circumstances. **The violation of a civil or criminal statute or other governmentally imposed requirement shows a failure to exercise reasonable care, and plaintiff may offer evidence of violation of a criminal or civil statute or governmental standard or regulation as evidence of a breach of the standard of care in an action for negligence.**
- **+ PLAINTIFF**

- (a) A person commits the offense of criminal storage of a firearm if he or she keeps, or allows to be kept for any length of time, any firearm within his or her dwelling, and a child of sixteen years of age or younger obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person.
- (b) A person will **not** be found guilty of this section if he or she:
- (1) Stores the firearm using a trigger-lock or other locking device on the firearm, which prevents the firearm from functioning, or
 - (2) Stores the firearm in a secure, locked container, or
 - (3) Takes other means reasonably designed to insure that a child of sixteen years of age or younger will not come into possession of the firearm.
- (c) The fact that a person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child of sixteen years of age or younger in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute an alleged violation.

Johnson v. Moore, 67 New. Col. App. 462 (1967)

- Normally, parents are not liable for the torts of their minor children merely because of the parent-child relationship. However, in cases involving the use of a dangerous object by a child, the standard for imposing liability upon a parent for failing to prevent the child's action is whether the parent knew, or should have known, of the child's tendency or inclination towards dangerous activity involving the object, but failed to take reasonable precautions to prevent the danger.
- + PLAINTIFF
- ? DEFENSE

New Columbia v. Scowcroft, 110 New Col. App. 161 *(1990)*

- Defendant, James Scowcroft, was convicted of criminal storage of a firearm under New Columbia Criminal Code § 105, after his five-year-old daughter shot herself with a gun that Scowcroft knew was being kept in his house. The gun belonged to Scowcroft's sister, Lisa, a New Columbia State Police Sergeant, who was visiting Scowcroft on the weekend of the shooting. Scowcroft had told his sister that he was concerned about her bringing a gun into the house. She assured Scowcroft that she was a responsible police officer and that his children would not be in danger. Despite the assurance, she left the loaded gun on top of the guestroom nightstand while she took a shower. Scowcroft's daughter found the gun and accidentally shot herself.
- The Court of Appeals **overturned** Scowcroft's conviction, holding that Scowcroft could not be held criminally liable under § 105. "He made an inquiry of an experienced police officer who was a trusted family member and he reasonably assumed, based on her simple assurance, that his child would not come into possession of the firearm. This situation satisfies the requirements of § 105 (b)(3) since, under the totality of the circumstances, Scowcroft took reasonable means to insure that his daughter would not come into possession of the firearm."
- + DEFENDANT

(b) A person will not be found guilty of this section if he or she:

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New Columbia v. Morgan, 112 New Col. App. 35 *(1992)*

- Defendant, Fred Morgan, was convicted of criminal storage of a firearm under **New Columbia Criminal Code § 105**. Morgan kept a loaded rifle in an unlocked, glass-front gun cabinet in his living room. Morgan lived alone, had no children, and received very few visitors. He hired a twelve year-old boy to clean up his basement. Unknown to Morgan, the boy took the rifle out of the gun cabinet, and brought it home with him. The boy later shot a playmate with the rifle, permanently blinding him. Morgan appealed his conviction on the ground that his actions satisfied the requirements of § 105 (b)(3) since he reasonably believed a child of sixteen years of age or younger would not come into possession of a firearm that was kept in a home where no children lived and few ever visited.
- The Court of Appeals **upheld** Morgan's conviction stating: "The statute contains two specific exemptions: one, § 105 (b)(1), for the use of a 'locking device' which keeps the weapon from functioning; the other, § 105 (b)(2) for storing the gun in a 'secure, locked container.' **Section 105 (b)(3) was clearly designed to cover alternative measures that provide the same level of security as a locking device or a secure, locked container. The actions of the defendant in this case do not even approach the level of care indicated by sections (b)(1) and (b)(2). Therefore, the action of the defendant cannot constitute 'other means reasonably designed to insure that a child of sixteen years of age or younger will not come into possession of the firearm,' as required by section (b)(3).**
- **+ PLAINTIFF**

Larson v. Miller, 158 New Col. 488 (1991)

- Until now, this state has not recognized claims by a parent for loss of a child's companionship and services. But under the circumstances present here, where the injury was so severe as to be permanently disabling, **AND** the child was providing financial support to her parents and would have continued to do so throughout the parents' lifetimes, we will recognize the claim and uphold the damage award.
- **+ DEFENDANT**

Moss v. Smart Pharmacy, Inc. 82 New Col. App 177 (1972)

- New Columbia is a ‘pure’ comparative negligence jurisdiction. Awards in a tort action are based on the degree to which each party is at fault. Thus, once a defendant is found to be at fault, and the plaintiff is also found to be at fault, plaintiff’s damage award is diminished to the extent of the plaintiff’s own fault.
- In this case, both the defendant and the plaintiff were found to be at fault. The defendant was 75% at fault and the plaintiff was 25% at fault. Therefore, the defendant must only pay the plaintiff 75% of the plaintiff’s total damages. That is, the plaintiff’s total damage award is reduced by 25%.

Criminal Law

- Crime and Punishment
- The “State” prosecutes those that have violated the law
 - Prosecution = the state
 - Defendant = the accused

The Presumption of Innocence

- American justice system assumes that the defendant is innocent.
- The prosecution must PROVE guilt.
- The prosecution must convince a jury that the defendant is guilty BEYOND A REASONABLE DOUBT.
- The Defense must prove NOTHING.

BEYOND A REASONABLE DOUBT

- Reasonable doubt exists unless the juror can say that he or she has an abiding conviction, to a moral certainty, to the truth of the charge.

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Evidence

- Direct Evidence
 - The testimony of one who asserts actual knowledge of a fact (eyewitness).
- Circumstantial Evidence
 - Proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant.
- *The Law makes no distinction between the weight to be given to either direct or circumstantial evidence*

- Self Defense

- Accused, given his or her situation, had a reasonable belief that his or her life was in imminent danger.
- What was reasonable for THAT person at that time.

TOTAL PREPARATION

The most experienced, talented advocate in the world can be made to look foolish if she does not immerse herself in the legal and factual details of her case...Nothing can paper over the lack of hard work and complacency. Lackadaisical preparation is instantaneously recognized in court.

DETAILS

DETAILS

DETAILS

- Knowing the facts permits the advocate to make full use of his imaginative powers.
- Great advocates are creative - They see things lesser advocates overlook, they make connections others fail to make, and they bring these connections to life.

- Complete knowledge of the case is impressive - IT WINS CASES

- The lawyer who has mastered procedure has a substantial advantage over her adversary.

Importance of Knowing your Adversary's Argument

- Mastery of your adversary's case - gaining the ability to identify and poke holes in the factual and legal weaknesses - can be demoralizing to the opposition.

“Lincoln learned the the pro-slavery arguments, stated them fairly, analyzed them pitilessly, turned them against their sponsors, and convicted them

Elements Analysis

- Every lawyer **MUST** ensure that he fully understands what elements must be proven to prevail.

THEORY

THEME

THEORY

THEME

THEORY

THEME

- Three Person Teams
 - Breakdown of Labor

Attorney 1

Attorney 2

Attorney 3

Each Attorney will also play one witness role

We will perform three full trials – During that time you must perform an opening or close. In other words, if you are attorney #2 for the first trial you must be attorney #1 or # 3 for the second trial.

Creating a Theory and Theme

Create a Theory of the Case

Create a one sentence description of
your case.

React to your opponent's theme

Setting the Scene

- A theory is the adaptation of your story to the legal issues
- Combines the facts, the emotion and the law in a way which leads to the conclusion that your client WINS
- Theory is your roadmap of the case

- **A Good Theory**

- Is Logical

- Is based on undisputed or provable facts

- Includes all legal elements

- Must prove every legal element necessary

- Is Simple

- Is Easy to Believe

- Eliminate all implausible elements

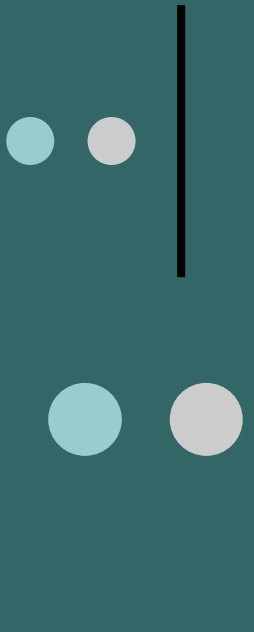
- This is your Elevator Speech

- To develop your theory ask three questions
 - What are the BEST facts for our case?
 - If the jury remembers these facts they will decide in your favor?
 - What emotions do we want the jury to feel?
 - What facts convey those emotions?
 - What is the law?
 - Prosecution: What are the elements of the crime?
 - Defense: What must we prove for our affirmative defense (self-defense).

Assignment

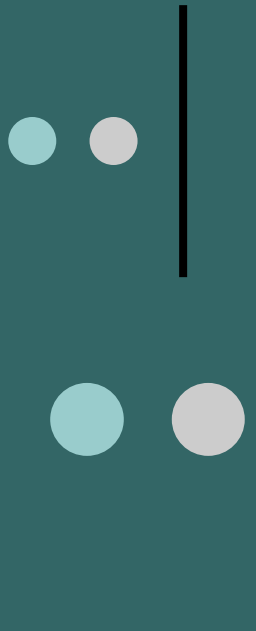
1. Write a one page Summary of the case – focus your reading on the witness affidavits.
2. Be prepared to deliver a 60 second **PERSUASIVE** speech
 - TELL THE STORY – Storyteller not attorney
 - Beginning, Middle, End.
 - Don't worry to much about the law – focus on big picture - responsibility.
 - Will be critiqued on 8 deadly sins
 - Goal is to be POWERFUL / PERSUASIVE
 - 5 WORDS – may rely on a single sheet of paper with no more than five words
 - You may not hold that paper

10 SECOND RULE



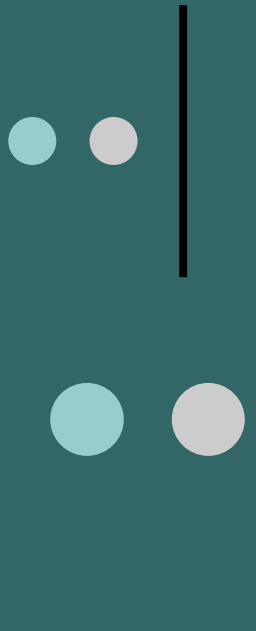
NO JAMMING

I SHALL NOT JAM MY
HANDS IN MY POCKETS



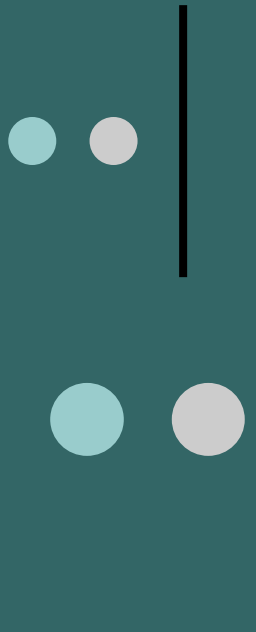
NO CLINGING

I SHALL NOT CLING TO
LECTERNS, TABLES OR
OTHER OBJECTS



NO PLAYING

I SHALL NOT TWIST, TURN,
SMOOTH, OR ADJUST MY
CLOTHING OR JEWELRY



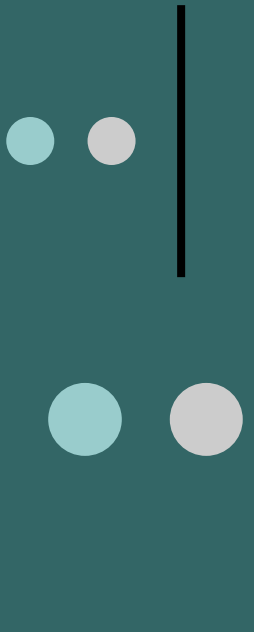
NO WRINGING

I SHALL NOT WRING OR
TWIST MY HANDS OR
FINGERS



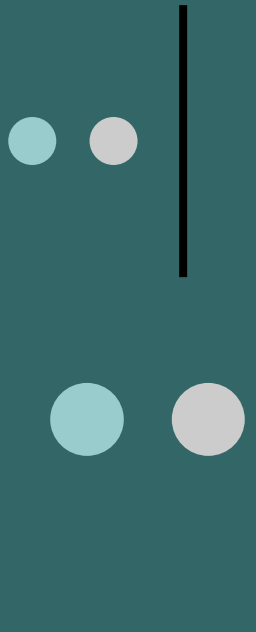
NO FILLING

I SHALL NOT USE
MEANINGLESS FILLER
WORDS, LIKE “UH,” “UM,”
AND “OKAY.”



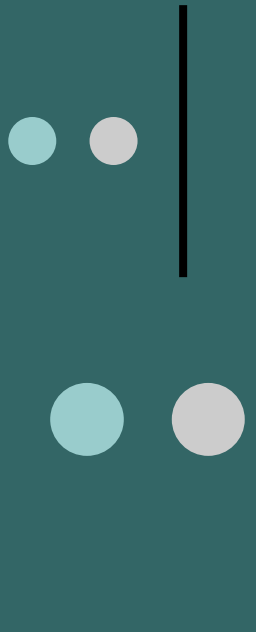
NO MUMBLING

I SHALL SPEAK CLEARLY
AND CONCISELY



NO GROOMING

I SHALL NOT TOUCH MY
HAIR, CLEAN MY NAILS
OR REMOVE THINGS
FROM MY NOSE



NO DANCING

I SHALL NOT SHUFFLE,
PACE OR SHIFT FOR NO
APPARENT REASON

THEME

- Your case title or catch phrase
- Rather than forcing yourself to come up with a theme, force yourself to describe why you should win and what the case is about in a single short phrase.
- Avoid using legal terms – specific elements

From the Movies

- “The first casualty of war is innocence.” (*Platoon*)
- “With great power comes great responsibility.” (*Spiderman*)
- “Revenge is a dish best served cold.” (*Kill Bill*)
- “This time he’s fighting for his life.” (*First Blood*)
- “Four friends made a mistake that changed their lives forever.” (*Sleepers*)
- “Seen from a distance, it’s perfect.” (*Life as a House*)
- “United by hate, divided by truth.” (*American History X*)
- “Every dream has a price.” (*Wall St.*)
- “He didn’t come looking for trouble, but trouble came looking for him.” (*El Mariachi*)

Law Movies

- “Justice has its price.” (*A Civil Action*)
- “Sooner or later a man who wears two faces forgets which one is real.” (*Primal Fear*)
- “Sometimes it’s dangerous to presume.” (*Presumed Innocent*)
- “An act of love, or an act of murder?” (*Body of Evidence*)
- “You may not like what he does, but are you prepared to give up his right to do it?” (*People vs. Larry Flynt*)
- “In a world of lies, nothing is more dangerous than the Truth.” (*Shadow of Doubt*)

- KISS – Keep it Simple Stupid
- DO NOT name the parties or go into particular facts.

- Once you have a theme:
 - Begin your opening statement with it – “this is a case about...”
 - End your opening statement with the line.
 - Return to the sentence in the beginning and end of the closing argument.

How to Introduce Your Theme

- This is a case about _____
- This case involves _____
- In this case _____
- We are going to show you that _____
- You will see that _____
- The evidence will show that _____
- We will prove that _____
- This case concerns _____
- During the trial, you will learn that _____
- (No Introduction) _____

Final Theme

- One word or very short phrase
- POWER
- One word that explains the case
 - Often explains why someone acted in a certain way
- Evokes emotion
- Memorable

- Reacting to Your Opponents Theme
 - Brainstorm possible themes that your opponent might use.
 - Strategize how you will respond.
 - LISTEN CAREFULLY
 - During the trial figure out your opponents theme – turn it around, manipulate it, use it to destroy them.

- **Setting the Scene**

- Get to the courtroom as quickly as possible (before your opponent)
- Select your table – Always take the table closest to the jury box.
- Examine the courtroom and consider:
 - How is the courtroom laid out?
 - How can you use the space?
 - Where should you start, move to and end?
 - How is the lighting?
 - How is the sound?

Direct and Cross Examination

What is Direct / What is Cross
Order of Examination

- **Direct Examination:** The examination of a non adversarial witness in which you are required to ask non-leading questions.
- **Cross Examination:** The examination of a adversarial witness in which you are permitted to ask leading questions.

- Order of Examination
 - Prosecution/plaintiff calls first witness
 - Prosecution Direct
 - Defense Cross
 - Prosecution allowed 2 redirect questions
 - Defense allowed 2 re-cross questions
 - Prosecution calls next two witnesses followed by the defenses three witnesses

How to Conduct Direct Examinations

Conduct Direct like a Talk Show

Ask Non-Leading Questions

Know Your Story

Outline Your Direct

- Conduct direct like a good talk show host
 - The witness/guest is the star.
 - Keep questions short and open ended.
 - Listen to the answers.
 - Keep things moving from topic to topic.
 - Stay in the background, guide the story.
 - Many attorneys note that you win a trial on direct. It is the principal vehicle to introduce your evidence.

RULE 611(C) - LEADING QUESTIONS

- Ask Non-Leading Questions
 - A leading question is one that suggests the answer
 - “You went **to the store**, right?”
 - Non-leading
 - “Where did you go next?”

- Create EVERY direct examination Question by using one of the following:
 - Who
 - What
 - Where
 - When
 - Why
 - How
 - Describe
 - Explain

- **AVOID STARTING ANY QUESTION WITH:**
 - Did / Didn't
 - Do
 - Although not always leading, either of these increases the likelihood you will get a leading objection.
- **OTHER WORDS TO AVOID**
 - Were / Weren't
 - Could / Couldn't
 - Should / Shouldn't
 - Have / Haven't
 - Was / Wasn't
 - So

- Did you go to the park?
- Were the gangsters killing the rabbit?
- Could you see the knife?
- Do you believe the defendant suffered from Battered Spouse Syndrome?
- Have you heard screams coming from the house?
- Should the driver have seen the old lady?
- Did you hear the explosion?
- So, the defendant ran her over?

- Objected to and sustained – Sweating profusely and don't know what to do – ASK:

- What happened next?

- What, if anything, did _____ say?

- Know Your Story

- Make sure you have a story to tell.
- Once you know the story decide which witnesses will establish all the facts that you have put into your open and close.
- Make sure you have testimony to support each of the elements of the claims or defenses.
- Keep an eye on theme: Try to use each witness to endorse or support at least your theme.
- You do not have to tell the entire story with each witness. Focus on the portion they know.

Develop Lines of Questioning

- LOQ: An ordering of questions to develop a particular argument
- Lines of Questioning are the 3-4 points you will prove with that witness
- Lines of Questioning could:
 - Develop or destroy a witnesses credibility
 - PROVE / DISPROVE THE ELEMENTS ****
 - Provide narrative of crucial events
 - Explain behavior (why did somebody do what they did)

• US v. Stephens: Lines of Questioning

- Prosecution – Elements of First Degree Murder
 - Act of Killing
 - Intent
 - Premeditation

- Defense
 - Self-Defense
 - Given situation
 - Accused had reasonable belief
 - Life was in imminent danger
 - Battered Woman's Syndrome
 - Definition and characteristics of BWS
 - Defendant was suffering from BWS
 - » Severe and frequent physical and emotional abuse
 - » Financial dependence on batterer
 - » Forced isolation from family and friends
 - » Extreme fear of retaliation if attempt escape
 - Person suffering may reasonably have perception and fears that would not be reasonable in others

- Attack Witness Credibility
- Narrative of Crucial Events
- Explain Behavior of accused/victim/witness

DIRECT EXAMINATION

Detective Sal Smith

Lines of Questioning (LOQ)

1. Capacity and skill as detective.
2. Act of Killing
3. Intent
4. Premeditation
5. No struggle - No Self-Defense

Questions and Answers	LOQ	Source	Objection/Response
Q. What is your current occupation? A. <i>Police Officer</i>	1	Para 1 / line 2 / pg 12	
Q. What did you observe when you arrived at the scene? A. <i>dead body on sidewalk distraught female pacing in front yard</i>	2	Para 3 / lines 13-16 / pg 12	
Q. What did you recover from the tree? A. <i>Bullet from handgun</i>	2	Para 4 / line 8 / pg 13	
Q. What did Mrs. X say just before she shot her husband? A. <i>I'm going to end it right now!</i>	3	Para 12 / line 15 / pg 14	802 Hearsay / 803 Hearsay Exception: State of Mind

- **Direct Examination**

- Develop 3-5 LINES OF QUESTIONING
- For each line of questioning develop a series of non-leading questions
- Each LOQ should elicit key statements/facts to support the legal elements you must prove.
- Answers – Bullet point key facts that the witness should bring out when responding to each question

Expert Witnesses

The Ideal Expert Witness

The Process

- Ideal expert has the following characteristics
 - *Likable*. People like her, you like her, they jury loves her, everybody likes her.
 - *Great Credentials*.
 - *Local Connections*. She is from the area, went to school in the area, works in the area.
 - *Subject Matter Experience*. Sufficient experience in relevant area of expertise.
 - *They are a Teacher*. Must teach difficult concepts and theories to lay people. You want to learn from her.
 - *Credibility*. Does not lie or shade the truth.
 - *Thorough*.

The Six Stages for every Expert Witness

1. Introduction
2. Qualifications
3. Basis of Opinion - educate / explain on general level
4. Opinion
5. Explanation of Opinion / Theory – specific to case

(Stages 3,4 and 5 will be repeated for each opinion)

6. Summary

- Introduction

Q. Ms Smith, What is your Job?

A. I am the Chief Engineer at Smith and George, a engineering consulting firm.

Q. Are you here to give us your opinion as to whether the Model 500 Jukeboxes received by Pizza Shack were defective?

A. Yes

(The jury now knows her job and why she is on the witness stand. They should now have the patience to sit and listen to her background and qualifications. The last question is leading, but you should get away with it – if not just move on.)

- **Qualifications**

Q. Please describe your Background?

A. Sure, I'm from Bobville, I have lived here all my life and I have been an engineer since 1985.

(You just established the local connection)

Q. Are you involved in the local Bobville community?

A. Yes, I am on the Local Planning Board, I am a Girl Scout leader, and I sing in the Big Hill Church Choir.

(The jury likes her now move on)

Q. Please tell the jury about your education?

A. I went to Bobville State and received a B.S. Degree in Electrical Engineering in 1983 and a Masters in 1985.

Q. Did you receive any honors?

A. Yes. I was magna cum laude.

Q. Did you study stability theory in school?

A. Yes. I took three engineering courses that involved stability theory.

(You just showed the jury that your expert knows a lot about stability theory – a main component of the trial)

Q. What jobs have you had?

A. I worked for ARB from 1985 to 1990. I started by working on micro-gadgets and then moved to macro-gadgets. I led the team that developed the super V component.

In 1990 I joined the Smith and George Consulting Firm, where I have been ever since. I consult with companies about their engineering problems.

(Stay out of the way and let your witness talk about their job history.)

Q. Have any of your jobs involved stability theory?

A. Yes. I had to apply stability theory in every project I worked on for ARB. As a consultant I often have to apply stability theory as well.

Q. What professional organizations are you a member of?

A. The American Society of Electrical Engineers, the local society of Electrical Engineers and The Regional Society of Electrical Engineers.

Q. Have you given any speeches on stability theory?

A. Yes. I spoke on the subject three times at our firm and five times at engineering conferences.

Q. Have you written about stability theory?

A. Yes. I am the author of two papers on stability theory, both of which were published in the Journal of American Electrical Engineering.

- **Basis of Opinion**

Q. Did you conduct an investigation of the model 500 jukeboxes received by Big Food from Just Jukes.

A. Yes.

Q. What did you do?

A. My staff and I visited Big Food's warehouse and examined the Jukeboxes. We confirmed that the wiring of each jukebox was identical. We reviewed about 3,000 pages of design documents and technical manuals prepared by Just Jukes. I also read the depositions of four engineers at Just Jukes who worked on the design and manufacture of the jukeboxes.

- Opinion

Q. Based on your years of experience and your investigation in this case, do you have an opinion as to whether the Model 500 Jukeboxes received by Big Food were defective?

A. Yes.

Q. What is your opinion?

A. They were defective because they had unstable internal wires.

(Very simple – have expert explain opinion in a sentence or two.
Now move to the explanation)

- Explanation of theory

Q. Please explain your opinion to the jury.

A. Sure, I have some photos that explain my opinions. Could we see the first photo?

(Enter photo as Exhibit)

A. In this first photo you see the three basic parts of an internal wiring system.....

(Let the witness “teach” the jury. Ask a minimal number of questions just to keep their testimony moving – throw in an occasional “please continue”.)

- **Summary**

Q. Please summarize your opinion for the jury.

A. Sure. It is my opinion that the model 500 jukeboxes received by Big Foods were defective because they had unstable internal wires. As I explained their Z wires did not work properly and this resulted in an unacceptably low stability level, which caused the machines to be susceptible to crashes.

Q. No further questions.

How to Conduct a Cross Examination

Watch Your Tone
Ask Leading Questions
Organize Lines of Cross
Use Transitions
Develop a Rhythm
Emphasize Important Points

- Watch your Tone
 - Relaxed
 - Friendly
 - Avoid Frustration
 - Avoid being drawn into an argument with witness
 - Avoid hostility
 - Kill them with the questions not drama

- Ask Leading Questions

- The core of each cross should be a statement you are making to the witness.
- Cross examinations are not really questions.
 - “You were driving the truck?”
- Develop your questions directly from the witness statements, literally word for word statements which they cannot deny without impeaching themselves.

• How to Lead

- You would agree with me that _____?
- _____, right?
- Is it not true that _____?
- _____, true?
- It is fair to say that _____?
- _____, correct?
- You agree that _____?
- It is a fact that _____?
- (State the fact) _____?

- Organize your Lines
 - A line of cross is a point you want to make with a witness.
 - Establish the point by asking a series of short, leading questions.
 - **AVOID ASKING THE ULTIMATE QUESTION**
 - Ultimates allow witness to talk and justify.
 - Your job is to pull the witness into the room the closers job is to slam the door behind them.

- Use Transitions

- Introduce your main lines of cross by making brief transitional statements.

- Mr. Smith, I want to ask you about exactly what you saw at the scene of the accident. [Begin Question]

- All right. Let's talk about your claim for damages. [Begin Question]

- Develop a Rhythm

- Goal is to create rhythm by obtaining some form of a yes answer to every question you ask.

- Get the witness to agree with everything you say.

- **Emphasize Important Points**

- You may want to place more emphasis than usual on the particular statement that underlies your question.
- Do so **ONLY** if you are certain the witness must answer yes.

- Methods to Emphasize Important Points on Cross
 - You are positive, right?
 - Confirm the negative
 - Break it down
 - Tell the jury

- You are positive, right.
 - You are absolutely positive that the light at that intersection was red, correct?
 - There is one thing we know, the traffic light was red, right?
 - There is no doubt in your mind that the traffic light was red, true?
 - You know for an absolute fact that the traffic light on that day was red?

- Confirm the Negative

Q. The light was red, right?

A. *Yes.*

Q. It was not green?

A. *That's right.*

– It was not yellow?

A. *Right.*

- Break it Down

Q. There was a traffic light, right?

A. *Yes*

Q. The traffic light had a color, right?

A. *Sure*

Q. You saw that color didn't you?

A. *Yes, I did.*

Q. And you know what that color was, right?

A. *Yeah, I do.*

Q. It was red?

A. *Yes.*

- Tell the Jury

Q. You were at the scene of the accident, right?

A. Yes.

Q. You saw the traffic light, right?

A. Yes, I did.

Q. And you were certain of what color the traffic light was, right?

A. Yes, I was.

Q. Tell the jury what color the light was.

A. Red.

- Avoid Bad Habits on Cross

- NEVER say “thank you”
- Nodding your head
- Repeating the answer
- Interrupting the witness
- Raising your voice
- Acting surprised or shocked
- Taking long pauses
- Studying your notes
- Saying “okay,” “sure,” “exactly” or any similar word.
- Walking around courtroom for no reason

- What Not To Do On Cross
 1. NEVER ask for an explanation.
 2. NEVER ask W Questions – NO who, what, when, where, why!
 3. NEVER ask a question to which you do not know the answer.
 4. NEVER argue with a witness.

- What to do on Cross
 1. Ask specific questions
 2. Obtain specific answers

- **TEAM OUTLINE - Direct and Cross Examinations**

- Prepare an outline for each of your 3 wits.

- Develop 3-5 LINES OF QUESTIONING

- For each line of questioning list several (3-5) key statements/facts from that witnesses statement that will be used to support that LOQ.

WHAT YOU NEED TO KNOW ABOUT OPENINGS

Tell a Story

KISS

Introduce your Themes

Organize your Presentation

Use Drama

Focus on Evidence

Don't Make Promises you Cannot Keep

Address your Weak Points

- Tell a Story

- The Opening permits you to tell your story to the jury the way you want to tell it.
- It is your first chance to connect to the jury.
- It will be the jury's first impression and perhaps the most important.
- Jurors listen to opening statements to see who should win the case - **BE SURE TO TELL THEM.**

- Keep it simple
 - Give an overview of the case
 - TELL A STORY
- But not too simple
 - Do not dumb it down
 - Gear it towards an audience of high school graduates

- Introduce your Themes
 - Introduce one sentence description
 - Your goal is that if you asked afterwards the jury could repeat your one sentence description back to you.

- Organize your Presentation
 - 9 times out 10 you will organize chronologically
 - May organize by themes
 - May use elements of the crime
 - May use flashback

- Use Drama

- Opening must not be argumentative so incorporating drama is challenging.
- You must focus on the facts, but the most effective openings combine the facts with emotion.

- Focus on Evidence

- Opening is a preview of what you believe the evidence will be.
- To keep the opening non-argumentative use the four magic words “the evidence will show.”
- Use the phrase just enough to remind everyone that you are not arguing.
- Magic phrase can’t make everything permissible
 - “the evidence will show that my opponent is a big fat liar”
 - “The evidence will show that no sane person would believe the stupid story that the defense will tell you.”

- How to say “the evidence will show”
 - “We will show”
 - “You will learn during the trial”
 - “You will see from the evidence”
 - “It will be clear from the evidence”
 - We will prove to you”

- Don't make promises you can't keep
 - Biggest mistake in openings is un-kept promises
 - If you promise to deliver certain evidence and don't carry through you will lose points – And a good opponent will tell you about it in close. (WL Closers pay careful attention during opening, keep track of their promises, and if they don't deliver ATTACK).

Basic Outline Opening

1. Start Strong – Theme Statement

- Get right to the point.
- Get your THEME out immediately.
- Choose the one piece of information you hope jury remember when trial is over.
- You want this section to have IMPACT.
- This could be a single sentence, a few lines or very short paragraph.

Starter Line: “Trapped in a nightmare...”

2. Tell the Full Story

- Include all necessary facts
- Set physical scene
- Include key actions and events
- Story should be dramatic

Starter Line: “Dominque Stephens nightmare began five years ago ...”

3. The Charge

- Explain the law.
- Define each legal elements (i.e. murder, self-defense).
- Jury should now know what they must decide.
- Define and explain the burden of proof – Beyond a reasonable doubt.

Starter Line: “On that tragic night, Ms. Dominique Stephens acted in self defense ...”

4. Presentation of Evidence

- Organize by the witnesses that you will call to the stand.
- This section should consist of three paragraphs – one for each witness.
- Each paragraph should highlight the key facts that witness will testify to in the trial and what legal elements those facts will establish.

Starter Line: “ We will call Dominique Stephens to the stand. Ms. Stephens will tell you...

5. Conclusion and Request a Verdict

- Power End
- Bring back your Theme Statement
- End with IMPACT
- Evoke larger themes – “justice” “fairness”
- Give the jury a duty
 - “You can end Dominique Stephens nightmare”
- Conclude with a request for the verdict
 - “A the end of this trial we will ask you to return a verdict of not guilty.”

**ASSUME THE JURY KNOWS
ABSOLUTELY NOTHING
ABOUT THE CASE!!!!**

Nine Secrets of Powerful Openings

1. Practice
2. Create Drama
3. Talk to the Jurors
4. Convey Confidence
5. Choose Impact Words
6. Persuade Subtly – Frame argument so it leads to one inescapable conclusion
7. Create Showtime
8. Use Plain English
9. Provide a Roadmap

Eight Opening Mistakes to Avoid

1. Introducing Yourself – already did that.
2. Overdoing Telling What the Evidence Will Show – technically correct but often ineffective.
3. Fumbling and Bumbling
4. Lethargic Delivery
5. Thanking the Jury
6. Confessing – “I am really nervous”
7. Telling All – Opening is a teaser. Do not go over every detail.
8. Using Hyperbole and Histrionics – Do not over state your case or become melodramatic.

Eight Powerful Speaking Techniques

1. Vivid, crisp imagery – “crippled by the manacles of segregation and the chains of discrimination.”
2. Alliteration - “they will not be judged by the color of their skin but by the content of their character.”
3. Repetition – “”I have a dream.”

4. Connection to the Audience – “When WE let freedom ring.”
5. Rhythm- “We will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together.”
6. Metaphors – “lonely island of poverty in the midst of a vast ocean of material prosperity.”

7. Vocal Energy – pacing, vitality, inflection.

8. Pauses

Four Keys to Making Your Points

1. Clearly identify the Essential Points
2. Do Not Overwhelm with Information
3. Limit the Points to Time Allowed
4. Categorize your Points

Four Effective Ways to Open your Presentation

1. Open with a Quote – *“The tragedy in life, Oscar the Grouch, is not that it ends, it is that we wait too doggone long to begin it.”* Big Bird
2. Open with a Shocking Statement – *“Look to the person on your right, look to the person on your left. If you do not drastically change your lifestyle, studies demonstrate that one of the people you have just seen will die prematurely from cancer in the next 10 years.”*

3. Open with a Brief Story – Story must be concise, dramatic and germane.
4. Open with a Question

Twelve Rules for Revising

1. Use Concrete Impact Words – Use descriptive words.
2. Use the Active Voice
3. Use the First Person (“we” and “us” –no “I” in the courtroom)
4. Use short sentences
5. Make the Message Conversational – Talk *to*, not *at* the audience

6. Avoid Hyperbole – Do not overstate your case.
7. Avoid Legal Expressions
8. Be Clear
9. Eliminate Qualifiers
10. Eliminate Offensive Language
11. Create Vivid Images
12. Eliminate Needless Words – “Do not hide your ideas in a thicket of wasted words.”

Closing Arguments that Work

The Point of Closing
What you Can and Cannot Argue
How to Argue
Strategy

- What is the Point of Closing
 - The main purpose is to ARGUE the evidence actually presented and to convince the jury that you should win.
 - Tie up all the loose ends, point out all the factual inferences your team has made and smack home all the subtle points you hope the jury was realizing during the trial.

- What Can You Argue?
 - Facts and Evidence
 - Inferences
 - Specific Testimony
 - The Law

- Facts and Evidence

- This will be your primary content.
- Focus on the facts that favor your side.
- Say things like, “the evidence showed” or “you heard at trial” or “we proved.”
- The most persuasive facts are those not disputed by the other side.
- You will have to argue disputed facts. Don’t give the other side equal time “They said this..., but we say...” Explain why the jury should believe your witness and discount the other sides witnesses.

- Drawing Inferences – Slamming the Doors Shut from Cross Examination.
 - Inferences are not always drawn from the facts the way you would like them to be SO Don't make the jury figure it out, explain it to them.

- Discuss Specific Testimony
 - Highlight what was said during the trial (this scores big points because most mock trial presentations are canned).
 - Especially effective if you have impeached a witness.

- The Law

- It is good to discuss the law in close, but it must be done carefully. Do not go into great detail
- Tell the jury what the basic law's are and then tie that into the facts.

- What You Cannot Argue
 - Misstating the Evidence
 - Misstating the Law
 - Arguing the Golden Rule
 - Unfairly Inflaming the Passion of the Jury

- Misstating the Evidence

- If you cannot tie each factual statement in your closing to something that a witness said, an exhibit that the jury saw, or a fair inference from one of those things, then you cannot say it in your close.
- Keep a checklist of “promises” or evidence you intend to enter for each element.
- May need to do some on the spot editing and omissions.

- **Misstating the Law**

- Do not mess with the law. Try to state in words as close as possible to that provided in the materials.
- Make sure you actually understand it.

- Arguing the “Golden Rule”
 - You cannot say things like “How would you feel if this happened to you?” or “What if you were in the plaintiff’s shoes?”
 - The key is you cannot urge the jury to decide the case based on how he or she would want to be treated.

Some Crafty Ways to Argue the “Golden Rule” without Arguing the “Golden Rule”.

- **Instead of**

- **How would you feel if you had been treated this way?**
- **Put yourself in the plaintiff’s shoes.**
- **I’m sure that’s not the way you would have wanted to be treated if you were the defendant.**

- **You Could Try**

- **Most reasonable people would have been offended to be treated like that.**
- **You can imagine how the plaintiff must have felt.**
- **The defendant was right to feel like he was being picked on. Any normal person would have.**

- Unfairly Inflaming the Passion of the Jury
 - You want to inflame the passion of the Jury in close (that is what it's all about), but you cannot use unfair means to get there.
 - What is Unfair? It is likely to change judge to judge, but you should not base your closing on “hot button” factors that are completely irrelevant to the legal and factual issues.
 - Suggesting the plaintiff should get a lot of money because he is poor.
 - Arguing the defendant should have to pay a lot because she is rich (unless the trial involves punitive damages, in which wealth may be legitimate)
 - Asking for a large award because insurance will pay the claim
 - Relying on salacious details of your opponents personal life (unless it is relevant to the case and came into evidence during the trial).

- How To Argue
 - Keep it Simple
 - Use plain, conversational English
 - Make it Interesting
 - Use Exhibits
 - Use Analogies and Anecdotes
 - Organize Your Thoughts
 - Tell Them What You Want
 - Consider left Brain and Right Brain

- Keep it Simple

- How would you tell the story to a stranger you met at a party?

- You would leave out irrelevant details and complicated legal points

- Entire closing should be built around your themes. Theme should be directly stated in your opening paragraph.

- The rest of your closing should focus on the evidence that supports your theme.

- Use Plain English

- Do not try to impress with polysyllabic verbiage.
- Avoid technical, dense prose.

- Make it Interesting
 - Sounds simple, but very difficult
 - The story presented in opening should run through your close – but you don't want to retell the story.

- Use Exhibits

- If you entered it wave it around, refer to it; otherwise why did you even bother putting it into evidence.

- Use Analogies and Anecdotes
 - Good way to get a complex point across
 - Make sure it is a logical fit
 - Keep it short and to the point

- Organize your Thoughts

- For your story to be persuasive it must be organized

- Two approaches

- By Witness – weaving in the legal elements that each witness supported.

- By Element – weaving in the witnesses that supported each element.

- Tell the Jury what you Want

- At the very end you must concisely and clearly tell the jury what you want

- “The evidence requires that you find Beck Martin guilty of murder”

- Consider Left and Right Brain
 - Truly great closing will appeal to both halves of the brain
 - Find the balance between too dry and clinical / too emotional and histrionic (the balance between evidence and emotion)
 - Do not overdo the drama – let the case speak for itself

- Ways to tell if you are being too dramatic
 - The jurors are rolling their eyes at you
 - The judge laughs out loud during the climatic moment of your close
 - The courtroom next door breaks into uncontrolled laughter
 - Your teammates are hiding under the table

- Questions of Strategy

- Should you mention your weak points?

- Probably – they are going to come out so take a shot at putting your spin on them – create a plausible explanation for the weak points
 - Pay attention- if opposing counsel did not bring them up don't do it for them

- Should you go negative?

- Point out their weak points but spend much more time and energy building your affirmative case (the strengths of your case)

- Should you talk about your opponents failure to deliver
 - If opposing counsel made promises in opening that they failed to keep by all means bring it up
 - Scores big mock points because it shows your ability to go off script and respond to events in the courtroom
 - Pay special attention to promises that a witness will testify to xyz – if it was excluded on an objection they cannot bring it into close

Basic Outline Closing

1. Grab the listeners attention
 - Reintroduce theme
 - Dramatic facts
 - POWER

2. The Law

- Remind jurors of the legal aspects of case
- Elements
- Burden of proof
- Don't need to define (that was open), just hit the key ideas you want them to be considering.

3. The Proof

- Organize by the legal elements
- One paragraph for each element
- Focus on how you have proven or rebutted each element.
- Draw conclusions based on the evidence
- Weave the witness testimony that the jurors just heard, the story, and exhibits into a persuasive argument
- Use the exhibits you have entered
- Don't retell the story
- Highlight admissions and inconsistencies of opposing witnesses brought forth on cross – slam all doors.

4. Defense Rebuttal

- Theme reversal destruction
- Focus on one or two points made by the prosecution and rebut
 - Highlight inconsistencies
 - Point out promises made in open that they did not follow through on
 - Emphasize how they failed to prove or support one of their key legal points.
- Prosecution will rebut after the defense closing.

5. Conclusion

- State your Theme
- Appeal to logic and emotion
- Request Verdict

Getting Documents Into Evidence

The Process To Get Evidence Admitted
How To Respond To Objections

- The Process to put Documents into Evidence
 - Approach the witness – with the courts permission.
 - Begin by asking for permission to approach the witness. Not all Judges will require it, but most will and you will not know until you ask.
 - It also looks polite to the jury.

- Have the Witness Identify the Exhibit

- Hand the witness the exhibit and say;

- “Mr. Doe, I am showing you Exhibit 1. Could you please tell the jury what the document is?”*

- Lay More Foundation, If Necessary

- “Laying Foundation” is obtaining testimony from the witness to show he or she can really identify the exhibit.

- If the exhibit bears the witnesses signature, you could ask then to confirm that his/her signature appears on the document.
 - If it is a letter, you can ask, “Did you write this letter?” and “Is that your signature that appears at the bottom of the letter?”
 - If it is map or document they did not actually create you may ask, “are you familiar with Oceanside Park?” and “is the map accurate to your knowledge?”

- Offer the Exhibit

- Have the document identified and laid the necessary foundation, OFFER THE EXHIBIT.
- Do not ask another question, do not talk about the exhibit, do not do anything except OFFER THE EXHIBIT.
- This is very easy

“Your honor, the plaintiff/respondent offers Exhibit 2 into evidence.”

How NOT to Offer Evidence

“I move exhibit 35 into evidence.”

“I move the admission of exhibit 35.”

“I move that exhibit 35 be admitted.”

“I ask the court to admit exhibit 35.”

“I would like exhibit 35 to be in evidence.”

“Could we all agree exhibit 35 is in evidence.”

“Any problem with exhibit 35 going into evidence.”

“Exhibit 35 should be in evidence.”

“I am going to close my eyes. When I open them, I want exhibit 35 to be in evidence.”

- Deal with Objections

- After you offer the other side will have a chance to object.
- WAIT! Before you argue see if the judge will make a quick ruling.
- Don't offer a response unless the Judge asks.
- If the objection is overruled keep going with your next question.
- If the objection is sustained move on. Do not show frustration. Do not look/act like you lost.

Objections

How to Make Them
When to Make Them
Hearsay Tricks

- How to make an objection
 - (1) STAND UP
 - (2) Keep it short
 - Try to keep it to two words “objection relevance”
 - If you need to explain your objection keep it brief
 - (3) Stay confident and positive
 - (4) Do not react
 - Show no reaction to the ruling
 - No smiling, smirking, frowning, crying, bursts of anger
 - Do not thank the judge

- When to Object

- The big question is how often

- OBJECT WHEN IT IS IMPORTANT AND
REFRAIN WHEN IT REALLY DOES NOT
MATTER

- Hearsay Tricks

- Attorneys can sneak “hearsay” evidence into the record by skillfully crafting their questions

- EXAMPLE OF CLEAR HEARSAY (NO SKILL)

- Q. Did you talk to Ms. Thomas?

- » A. Yes

- Q. Did Ms. Thomas tell you the date of the meeting?

- » A. Yes

- Q. What did she tell you?

- » A. The meeting was on the fifth.

- EXAMPLE OF PERHAPS SNEAKING IT IN

- Q. Did you talk with Ms. Thomas about the subject of the meeting?

- A. Yes

- Q. What did you do after that?

- A. I wrote down the date May 5th

OR

- Q. Did you talk with Ms. Thomas about the subject of the meeting?

- A. Yes

- What did you learn?

- It was held on May 5th

How to Impeach a Witness

What is Impeachment

Use their Words

Just Read it

No Need to Explain

- What is Impeachment?
 - Process to show that a witness has made a statement inconsistent with a prior statement that they made.
 - To impeach you need an impeaching document. In mock trial this will most likely be the witnesses statement.

- The deal is simple – The witness must agree with their previous statements or you will read them to the jury.
- The deal is not the witness will agree with similar statements, but rather with the exact same words used by the witness.

- Use Their Words
 - When forming cross examination questions use their exact words.

- Impeachment - Wrong Way

Q. You would agree it was raining, would you not?

A. I'm not sure I would say it was raining exactly.

Q. Did you not state in your affidavit that it was "drizzling"?

A. I sure did. That's what I mean, I did not think it was really raining, just kind of drizzling.

- Right Way

Q. It was drizzling that night, right?

A. No, it was not drizzling.

Q. On page 62, line 10 of your affidavit you stated “it was drizzling outside.” Did you give that testimony?

A. Yes, I did.

THAT’S IT

- Just Read it

- When the witness disagrees with a a statement you have the right to read it.
- You do not have the right to smirk, sigh, raise your voice, or otherwise show disgust.
- Do not comment on the Impeachment.

- **Methods to Impeach**

- Approach the witness and read the testimony to the witness in the witness box.

- Give the witness a copy and read the testimony to the witness.

- DO NOT HAVE THE WITNESS READ THE STATEMENT. KEEP CONTROL OF THE CROSS.

- Things Not to Say After Impeaching a Witness
 - Are you lying now or were lying then?
 - Which is the truth?
 - That statement contradicts what you just said, right?
 - You are having trouble keeping your story straight, aren't you?
 - The truth hurts, doesn't it?
 - One of those statements must be false, right?
 - I just impeached you, didn't I?

Rules and Tools

Six Tools to Build a Speech Foundation

1. Personal Stories
2. Examples
3. Quotations
4. Comparisons
5. Contrasts
6. Statistics

Seven Techniques for Closing a Presentation

1. Close with a Quotation
2. Close with a Story
3. Close with a Challenge – This issue is too important to our children's safety to ignore. We must act now.
4. Complete a Story – One you started in your opening.

5. Bookend the Closing with the Opening – Repeat a quotation, a statement, or observation you made in the opening of the presentation.
6. Close with a Question
7. Close with Pathos –Power and Intensity.

Eleven Secrets to Using Your Voice for Maximum Impact

1. Listen to your Voice – Videotape your presentation and critique yourself.
2. Act Enthusiastic – To persuade you must use your voice energetically.
3. Vary the Pacing of Your Delivery
4. Neither Race nor Plod
5. Compare Your Speaking Voice to Your Conversational Voice – Ideally you would use the same voice speaking before a group that you use in a one-to-one conversation

6. Graph Your Voice- Visualize your voice being monitored the way an electrocardiograph monitors the activity of a heart. Try for vocal variety – hitting low, middle and high ranges.
7. Warm Up Your Voice
8. Vary the Volume – Too high, too low, too loud, or too soft becomes monotonous.
9. Avoid Mumbling

10. Adjust Your Voice to Your Environment

11. Vary the Pitch of Your Voice

Eight Ways to Pause for Impact

1. Before you Begin Speaking
2. To Create Suspense
3. When Sharing Complicated or Technical Information
4. Before Quotations
5. When You Ask a Question
6. When They Laugh
7. When You Conclude – Don't run away
8. Practice Pausing – Highlight in red where you want to pause.

Fourteen Secrets to Gesturing Naturally

1. Believe in Your Message
2. Focus on the Audience – not yourself –
3. Never Cling
4. Drop Your Arms to Your Sides
5. Do Not Clasp Your Hands
6. Study Your Gestures on Video
7. Incorporate Planned Gestures

8. Make the Gesture Fit the Emotion
9. Do Not Gesture Repeatedly in the Same Manner
10. Make the Gestures Fit the Space
11. Eliminate Distracting Gestures
12. Avoid the Fig Leaf – in front or back.
13. Remove Your Hands From Your Hips
14. Eliminate Choppy or Frenetic Gesturing

Eight Guidelines for Movement

1. Move With a Purpose –

- Move at transitions in your story or from one point to the next
- Move to signal a change in the mood or tempo of a story
- Move to demonstrate space or location
- Move while covering less significant information, then stop, pause, and plant yourself when you want the audience to really focus

2. Never Plant Yourself in One Spot

3. Never Dance
4. Stop Swaying
5. Stop Pacing
6. Stay Close to the Crowd, But Not too close
7. Stand with Conviction – Lean forward, with your weight shifted forward onto the balls of your feet, your shoulders back and squared to the audience.
8. Face the Audience

Five Secrets to Mastering Eye Contact

1. Establish Eye Contact Before You Speak
2. Focus on the Audience
3. Deliver Key Points to Individuals
4. Sustain the Eye Contact
5. Do Not Stare Eye to Eye – Line up opposite eyes

Ten Ways to Communicate Confidence

1. Act Confident
2. Maintain High Energy
3. Stand With Conviction
4. Eliminate Nervous Mannerisms
5. Honor Personal Space
6. Focus on the Listener
7. RELAX
8. Anticipate –Know the weaknesses of your case.
9. Establish Rapport with the Jury – be friendly, reasonable and approachable.
10. Gesture with Conviction