FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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OPENING STATEMENTS

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The Opening Statement

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Opening Statements

- Purposes of opening:
  - Get their attention
  - Tell the story in a cohesive way
  - Develop rapport and confidence with the jury
  - Get them thinking (processing information) like you
  - Present your theme and theory in a memorable way

Opening Statement

Powerful Openings:

- Advance theme and theory
- Tell a story
- Create word pictures using descriptive language
- Personalize the victim/witnesses
- Draw the sting on weaknesses
- Use visuals where appropriate

First Impressions Last

- Appearance - All eyes are on you
- Non-Verbal Communication
- Confidence
- Organization

Opening Statements

- What to Avoid:
  - -Legal mumbo-jumbo (i.e., legalese)
  - -Excessive introductions
  - -What I say is not evidence…
  - -The evidence will show…
  - -The purpose of the opening statement…
  - - Inform about the law
  - -The witness will testify that….

Opening statements

- Opening Outline
  - Theme
    - Communicate your theme and get the jury's attention
  - Story (Theory)
    - Preview the case with compelling storytelling
    - Deal with weaknesses up front and on your terms
  - Charges
    - Relate facts to charges
  - End with a call to action/Theme

Opening Statements

"Never promise more than you can perform"

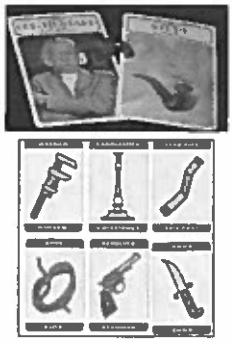
Publilius Syrus
(c42 B.C.)

Theme and Theory

- Theory
- "Why the LAW says you win"
  - Simple factual statement that incorporates all facts into a cohesive account.
  - Legal=elements (who, what, when, where)
  - Factual=why and how

- Theme
- "Why the jury WANTS you to win"
  - Moral Persuasion
  - "This is a case about…"
  - What did D do that deserves punishment?
  - What *values* do we share as a community that makes this illegal?

Theory



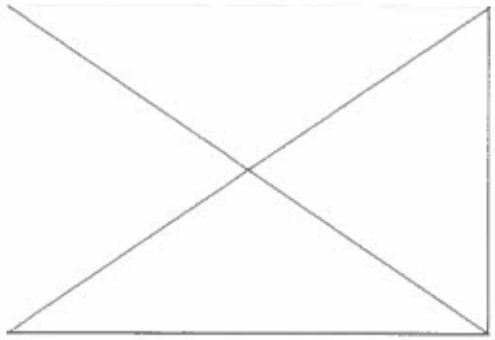
- How was the crime committed???
- Accomplice Liability or actual defendant acts?
- Actual or Constructive Possession?
- APC or Driving? Both?

You can live without a theme; you will die without a theory.

Theme

- A phrase or idea that explains what the Defendant did that deserves punishment
  - Why should the jurors care?
- Often, the theme should address your case's WEAKNESS (*i.e.*, the defense)
  - How is he going to try to beat you
- EXAMPLES:

Don't Think Themes are Effective?



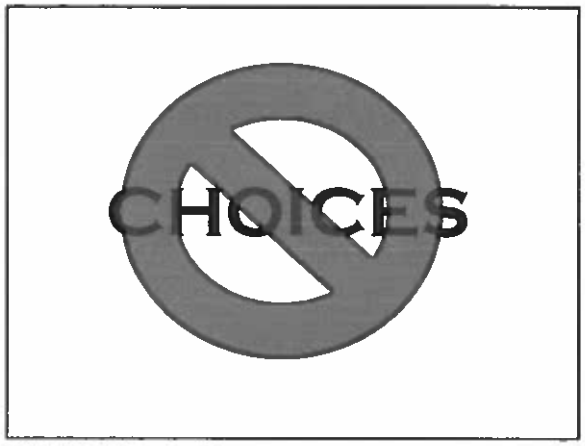
State v. Adam Chavez

The Case:

- Felony Murder
- Defendant on trial for death of co-defendant who was shot and killed by police
- Both men unarmed while fleeing

- State's Theme:

"Adam Chavez is the driving force behind the bullet that killed Matthew Clowers. He thinks because he didn't pull the trigger, you'll let him get away with it. Your verdict will determine whether he's right"



THEME: State v. Jackson

- What did the Defendant do that deserves punishment?
- How is he going to try to beat you?

Narrative - Where to Begin

- Determine the Order
  - Chronological
    - Crime
    - Discovery
  - Start at end and explain how it got to that point
  - Start at a significant point in the story
- Determine the Point of View
  - Storytelling is more compelling when you pick a narrative perspective of an involved party rather than an omnipotent POV

Goal of Clarity and Simplicity:

- Possible Points of View
  1. The Victim
  2. The Defendant
  3. An important witness

  The police officer who wrote the DR

  Choosing an interesting narrative perspective will make your story much more engaging, compelling, and easy to follow

Descriptive Language

- Contrast :
- "The Defendant pulled out a gun and pointed it at the victim" with…
- "The Defendant stabbed the victim 14 times causing horrible injuries" with…

Descriptive Language

Anticipate Defenses

<u>Subtly</u> address these

Do not make promises about the Defense's case

Think about how the Defendant plans to beat you

"Bad" Facts

- Address problems head-on
  - Victim/Witness with criminal history
  - Mishandled investigation or lack of evidence
- It's not enough just to draw the sting. You must incorporate the "bad" facts into your theory.
  - Example: The victim's criminal past in this case is no accident. The Defendant chose a victim he thought would never tell, and was confident that even if she did, no one would believe her.

Dealing with Weakness

- Attribute "bad facts" to the Defendant
  - Who chooses who the witnesses and victims are in a criminal case?
  - No fingerprints? No videotape? No DNA? – that's exactly the way the Defendant wanted it
  - Then incorporate into theme/theory: Defendant preys upon the weak; never the powerful, or those with a voice, only the defenseless, the kind he thinks no one cares about

Dealing with Weakness

- Show to the jury you gave them the truth, and the whole truth
  - Weakness is not a big deal they should consider
  - Actually a strength
  - Defendant is still guilty

State the Charges

- At the conclusion of your story, relate the facts to your charges in this case
- "For these reasons, Defendant is charged with…"

Finish Strong

- Theme
- Call to Action

Opening Statements

- A word about delivery
  - Use of notes
  - Word choice
  - Movement for impact vs. pacing
  - Use of podium
  - Use of exhibits

Opening Statements

- Primacy
  - People will believe what they hear first
- Start out strong!
- Get their attention
- This is your chance to shape the narrative of your case
- Recency
  - People will remember what they hear last
- End strong! – go back to your theme
- Be confident in telling the jury what you want.

Questions???

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