



Colorado River Indian Tribes Criminal Trial Advocacy Training

Charging Decisions & Documents

Brady Disclosures

Witness Prep (Lay & Expert)

Openings & Closings

Direct & Cross Exams

Impeachment

Evidence & Exhibits

Courtroom Communication

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Charging Decisions & Documents

This session will focus on criminal charging decisions and documents.

***Brady* Disclosures**

Prosecutor: *I know I have to give the defense something, but just how much and what?*

Defense: *I know I'm entitled to something, but how do I make sure I get what I'm entitled to?*



***There are no complex cases,
but there are lawyers who
make cases complex.”***

**Hon. S. James Otero
U.S. Dist. Ct. for C.D. Cal., March 1, 2016**

Who are the Experts?

- Doctor?
- EMT?
- Crime Lab?
- Police Officer(s)?

Direct is where you tell your story....

- Jury's opportunity to re-live reality from your side's perspective.
- The witness is the center of attention.
- Credibility is determined by *background, content, and demeanor*.

Cross Examination



Effective Impeachment

- Avoid trivial impeachment
 - *Today you testified that the shirt Joseph Spotted Tail was wearing was turquoise?*
 - *In your report, you wrote that the shirt was blue?*
- Don't inject recollection
 - *Do you recall saying "I found the bag of heroin on the floor at Carlos Flores' house?"*
- Avoid the "Why" question
 - *Why did you say something different today?*

Shoot the Question!

- **Mr. Westbrook:** *How did the bid get in the hands of Thompson Aviation if in fact the bids were sealed, the State of Indiana, or at least its employees, did not remove it from safekeeping until the day the bids were officially and publicly opened, and the security at Templeton was better than Ft. Knox?*
- **Ms. Barton:** *Objections! But, by the time I finished stating the grounds every male in this courtroom would have a beard.*
- **Court:** *Mr. Westbrook, shoot the question and reload – try again!*

Exhibit Foundation Requirements

- *B* Best Evidence
- *A* Authentication
- *R* Relevant
- *P* Not privileged
- *H* Not Hearsay
- *O* Original
- *P* Not Privileged
- *R* Relevant
- *A* Authentication
- *H* Not Hearsay

Closing Arguments

“Words to Regret”

- “This is the most complex case I have ever tried to a jury. Hopefully, you are smart enough to understand it.”
- “Fortunately it is a group of six jurors judging this case and we know that you are all smart enough to get this right.”
- “You may not trust me or my client, but this shouldn’t affect how you judge this case.”

Effective Communication Starts With Knowing Your Audience

■ THE JUDGE – Someone who:

- > you may or may not know
- > you will be with for the entire case
- > has a busy case load well beyond your case
- > is inundated with lawyer BS every day
- > you need to maintain credibility with

■ THE JURY – People who:

- > you assuredly do not know
- > you probably will never see again
- > don't want to be here
- > don't think much of lawyers to begin with
- > know nothing about your case