

Garden State CLE Presents: An interactive learning experience:

Cinema CLE:

Teachable Moments from American Cinema



Lesson Plan

“It stinks.”



The Man Who Wasn't There (2001)

Developing a strategic vision of your case that the jury might possibly believe instead of the truth.

"Say my name."



The Man Who Wasn't There (2001)

Perception, reality, objective truth and reasonable doubt.

Note how Freddie suggests alternative versions of the truth to his client. Again, he only *suggests* to help her remember.

The scientific method referred to in the scene is known as the "Heisenberg Principle"

State's Direct Examination



Death On A Factory Farm (2009)

This case involves an animal cruelty prosecution. The purported acts of cruelty were surreptitiously recorded.

The strategic problem in the case is how to handle shocking, highly charged, emotional evidence.

Exclusion of evidence under NJRE 403 vs. constant exposure under the theory of diminishing marginal utility

NJRE 403 - The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Cross-Examination State's Witness



Death On A Factory Farm (2009)

If the credibility of an important witness does not directly affect the strategic plan of the defense, is there any value in impeaching him?

One the other hand, it is impossible to predict the cumulative effect that impeachment will have on the fact-finder in the context of all the evidence. For example, impeachment of one important witness may sour or poison the fact-finder's view of the entire State's case.

How would you handle the disguise issue?

Expert Direct-Examination



Death On A Factory Farm (2009)

Note that the objective viewpoint and experience of the expert contrasts with the lay-opinion of the prosecution's witness.

Note the lack of "net opinion" from expert witness.

N.J.R.E. 703 addresses the foundation for expert testimony. It mandates that expert opinion be grounded in “ ‘facts or data derived from (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts.

The net opinion rule is a “corollary of N.J.R.E. 703.. which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data. The rule requires that an expert give the why and wherefore that supports the opinion, rather than a mere conclusion. Townsend v. Pierre, 221 NJ 36, 53-54 (2015).

Expert Cross by State



Death On A Factory Farm (2009)

Does the prosecutor diminish the defense case as a result of this cross-examination?

Closing Arguments



Death On A Factory Farm (2009)

Municipal Court provides an opportunity that never occurs in a jury trial - the attorneys can lawfully engage in a colloquy with the judge during the summations. This is a tactic that can have enormous benefits (as seen here) and should be invited by attorneys in a bench trial.

Note that the defense closings do not dispute the facts in any significant way, but rather stress that the conduct does not constitute a violation of the law.

This is a classic example of the strategy, "Admit the act - win the case."

Decision



Death On A Factory Farm (2009)

Compare how the judge's decision comports with the defense summations.

Witness Trial Preparation

“Don’t equivocate. Be positive.”



The Verdict (1982)

Note that the witness was not given the most important piece of advice - "Don't volunteer!"

Never assume that your witness does not need preparation...NEVER!****

“And why did you do that?”



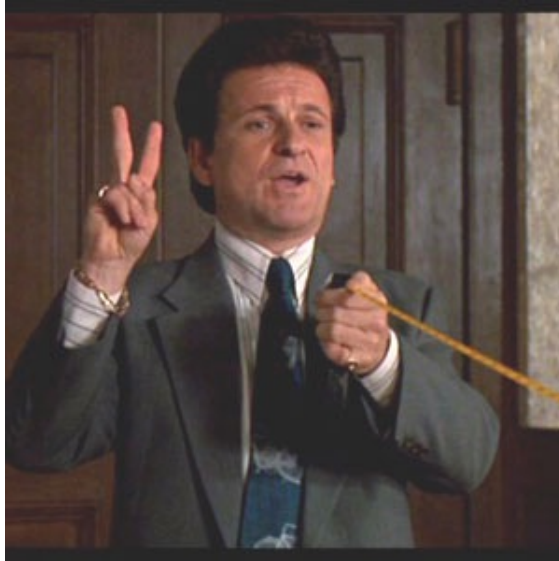
The Verdict (1982)

The subtlety in this scene requires almost a frame-by-frame analysis. Among the many dozens of issues in this scene, note the poor witness preparation, the setting of the trap by the plaintiff, the loss of composure and focus by the defense attorney, his failure to quick while ahead.

Watch for a young Bruce Willis as a member of the audience.

Courtroom demonstrations

“Did you always wear glasses that thick?”



My Cousin Vinny (1992)

Courtroom demonstrations can have a powerful impact on juries, but when they are done wrong, the results can be catastrophic.

To be effective, the advocate must have a high probability that the demonstration will turn out as he intended.

Courtroom demonstrations

If it doesn't fit...



The People v. O.J. Simpson (2016)

In this infamous instance, at least one side knew how the demonstration would turn out and did not share that information with the adversary. The results will live in infamy.

“All my pictures turn out!”



Anatomy of a Murder (1959)

The search for perfect information

In trial perfect information about a witness who is subject to cross-examination may exist prior to the trial as a result of admissions, depositions and the like. However, on occasion it develops during the trial.

This short scene demonstrates the power of perfect information in a cross examination. Note how attorney Paul Biegler immediately realizes he has perfect information and then takes his time to exploit the information during cross-examination before the jury.

Objective Evidence at trial

“Is that it, do you wish I was dead?”



A Place in the Sun (1951)

Note that from an objective standpoint, there is a renunciation of criminal purpose and no crime as depicted in this scene. Of course, unless there is an electronic recording or photograph, juries decide cases on levels of belief...not objective truth.

Guilty!

“I’ll tell you one thing, you know your lying...”



A Place in the Sun (1951)

Before he went over to the "dark side", Perry Mason was a county prosecutor in rural Wisconsin.

**The fact that the defendant is objectively innocent, is irrelevant.
The natural inferences from the circumstantial evidence are
overwhelming.**

"However, when a combination of the factors exist, the test has been met. It is enough to say that the record fairly shrieks of defendant's guilt." State v. Scher, 278 NJ Super. 249, 271 (App. Div. 1994). See other "shrieking guilt" cases:

State v. Frost, 158 NJ 76 (1999)

State v. Lane, 288 NJ Super. 1 (App. Div. 1995)

State v. Boiardo, 111 NJ Super. 219 (App. Div. 1970)

State v. Buhl, 269 NJ Super. 344 (App. Div. 1994)

As digital technology becomes more prevalent, our society is demanding objective evidence as a basis for decision-making. This is especially true in sports (professional baseball and football) and increasingly among jurors in the courtroom.

Effective Appellate Advocacy

“Mr. Chief Justice, my it please the court.”



Gideon's Trumpet (1980)

In all courtroom scenes the dialog is taken straight from the trial transcript.

Gideon v. Wainwright, 372 U.S. 335 (1963).