

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

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LESSON PLAN AND EVALUATION**

PREPARING FOR ARGUMENT BEFORE THE NJ SUPREME COURT

Featuring

Evan Levow, Esq.
Senior Garden State CLE Instructor

Joseph P. Rem, Jr., Esq.
Senior Garden State CLE Instructor

John Sitzler, Esq.
Senior Garden State CLE Instructor

Richard R. Uslan, Esq.
Senior Garden State CLE Instructor

Robert Ramsey, Esq.
Senior Garden State CLE Instructor

Program description

Come with us as we go behind the scenes with one advocate as he prepares for oral argument before the New Jersey Supreme Court.

I. Introduction

- **State v. Chun, 194 NJ 54 (2008) – decided St. Patrick’s day**
- **Chun related to scientific reliability of the Alcotest – a computer based breath testing device used by law enforcement**
- **Majority opinion written by Justice Hoens – the Alcotest machine was generally scientifically reliable but certain modifications would be required for the State to continue using the machine**
- **As part of decision, Court published Order directing the Attorney General to make certain changes to software that powers the Alcotest machine**
- **Changes were to be made with the manufacturer of the machine “forthwith”**
- **Evan Levow represented Jane Chun in the case – argued that without certain changes to the Alcotest software that neither scientifically reliable nor fit for use in prosecutions in NJ**
- **Levow continued to await the software changes that the Court required**
- **5 years after the Court’s order – no required software changes were implemented**
- **Levow joined forces with other drunk driving defense attorneys and petitioned the Court that without the changes the Alcotest was unfit for drunk driving prosecutions in NJ**
- **NJ Attorney General responded by explaining that the Alcotest model currently in use would be discontinued by the manufacturer therefore the State’s resources were better used by preparing for a new model of the Alcotest as opposed to updating the current model**
- **A powerful brief is indispensable for appellate advocacy**
- **Persuasive oral advocacy is powerful adjunct to a strong brief**
- **This video will take you behind the scenes to see how one advocate prepared for oral argument before the NJ Supreme Court**

II. Chapter 1 – Brainstorming with the Stars

- **State v. Chun, Docket A72341 – Motion in Aid of Litigant’s Rights**
- **Caffe Lamberti – 70 hours before oral argument**
- **Advocacy based on practicality**
- **Plan A or Plan B – give Justices an option**
- **If they ask for a possible option, then you must be prepared to answer the question**
- **Cannot have tunnel vision**
- **Notes on arguing before the Supreme Court**
 - **Advocacy based on public policy**
- **Argument must resonate with the justices and the judicial system – trust by the public that there is accurate information being used to prosecute offenders**
- **Trust and public confidence – reliability in the system**
- **For the general public to abide by the law, it is necessary to have trust in the system**
- **If the court ignores its own orders, then it is going to degrade the respect of the court and confidence in the court**
- **Integrity of the judiciary – transparency**
- **Trust in the machine and trust in the system**
- **Break down the Order and distinguish what was and what was not done**
- **What if...**
 - **Be prepared to suggest answers to the “what if” question by the justices**
 - **Suggest solutions to the court in response to “what if”**
 - **Point out that the adversary does not have a contingency plan**
- **What difference does it make?**
- **It is effective to call a Justice by name – but be prepared – know what they look like so you don’t make a mistake**
- **List of issues the parties agree on**

III. Chapter 2 – Moot Court Exercise: Questions, Confrontations and Free Legal Advice

- **Practical impact**

- **Court anticipated issues – delay in implementation of changes to software**
- **Downside to ruling for adversary**
- **Credibility of the court is on the line**
- **Structure talking points**
- **First words must be compelling**

IV. Chapter 3 – In the Show

- **Evan Levow argues before the NJ Supreme Court**

V. Chapter 4 – Aftermath and Debriefing

- **Generally speaking, how do you think it went?**
 - **You never know what questions you will get from the bench**
 - **You can only prepare for the content**
- **Do you feel you were prepared?**
 - **Conversant with the material? – then prepared**
 - **Moot court experience was very helpful**
 - **You can always prepare more**
 - **Made points needed to make and answered questions that the Justices proposed**
 - **Able to focus the defense agenda into their questions**
 - **In the end, they got the defense perspective**
- **You've argued before the Supreme Court before – do you think this was your best appearance?**
 - **The moot court really helped so yes – best appearance**
 - **CLE classes/seminars presenting the issues also helped with preparation**
- **Did you feel that you had left anything undone or wish you had prepared differently?**
 - **You can over-prepare – would have liked to have done more of the moot argument or more discussion but not sure if that would have made much of a difference**
 - **You must know the material when you are there and before the court**
 - **Answering in such a way to advance your position – prepare with all prep that was done**

- **Did you take an educational approach during your argument because 4 of the justices did not sit on the original case?**
 - **We assumed that the court was following the case as it progressed due to the numbers of cases that are generated for drunk driving**
 - **Court did not have an understanding of the circumstances that was different from what was expected**
 - **Expected Justice Hoens to lead the charge and the court to be angry with the State – by the middle of the argument the justices started to understand that**
 - **Justices got something out of the oral argument that was different from what was in the papers**
 - **The goal was to educate the court – the papers should have educated the court but the argument became the education**
- **Should have gone through the order like in the seminars and that would have been very effective – would have directed the court as to where and why to be angry with the State**

VI. Chapter 5 – Judgement

- **On September 18, 2013, the NJ supreme court issued an order denying the relief sought by Mr. Levow except for that relating to women over 60, the Justices authorized the continued use of the Alcotest and relieved the State from strict compliance with its order**
- **The Court's decision is reported at 215 NJ 489**