

PREPARATION OF DIRECT EXAMINATION AS AN ESSENTIAL ELEMENT TO VICTORY

BY: ROBERT J. FICKMAN



I. TRIAL IS BATTLE

1. STUDY “THE ART OF WAR”
2. FIGHT HARD
3. DON'T BE A JERK



II. PREPARATION IS THE KEY TO VICTORY

ZHANG YU

“THE VICTORIOUS WARRIORS WIN
FIRST AND THEN GO TO WAR, WHILE
DEFEATED WARRIORS GO TO WAR
FIRST AND THEN SEEK TO WIN”



III. EVALUATING THE STRENGTHS AND WEAKNESSES OF BOTH SIDES BEFORE BATTLE

--WHY?

1. WHICH LAWYER IS BETTER ABLE TO MOTIVATE HIS OWN WITNESSES?
2. WHICH LAWYER HAS A BETTER RELATIONSHIP WITH THE COURT?
3. WHO HAS BETTER CONTROL OF THEIR WITNESSES?
4. WHOSE WITNESSES POSSESS THE MOST POWERFUL INFORMATION?
5. WHOSE WITNESSES ARE BETTER PREPARED?

IV. DEFENSE THEORY AS “THE PATH” TO A NOT GUILTY VERDICT

JIA LIN

“THE PATH MEANS THE WAY TO ADJUST TO THE SITUATION AND ESTABLISH VICTORY—FIND THIS AND YOU SURVIVE, LOSE THIS AND YOU PERISH.”



V. THE DEFENSE THEORY MUST
TAKE THE MORAL HIGH
GROUND

DU MU

“FIGHT GOING DOWN, NOT
CLIMBING UP”

NOTE—THAT’S WHY THE NATIONS CAPITAL IS IN WASHINGTON D.C.
AND NOT NASHVILLE



VI. THE DEFENSE THEORY
MUST BE THE BEST STORY

JUST ASK ANTHONY HOPKINS
IN THE MOVE AMISTEAD



VII. VISUALIZE THE BATTLEFIELD

1. WHO ARE THE STATE WITNESSES
2. WHO ARE THE DEFENSIVE WITNESSES



VIII. TRIAL AS A BATTLEFIELD

GUILTY

NOT GUILTY



THE BALL



THE DEFENSE

THE PROSECUTION




IX. MAKE SURE DEFENSE
WITNESSES UNDERSTAND:

1. DEFENSE THEORY OR “THE PATH”
2. THEIR PLACE IN THE BATTLE PLAN



X. WHAT WORK MUST BE DONE BEFORE DIRECT EXAMINATION CAN BE PREPARED

1. READ THE OFFENSE REPORT AND TAKE NOTES
 2. INTERVIEW ADVERSE WITNESSES
 3. THOROUGHLY INTERVIEW THE DEFENDANT
 4. THOROUGHLY INTERVIEW ALL DEFENSE WITNESSES
 5. VISIT THE SCENE
 6. PHOTOGRAPH THE SCENE
 7. EXAMINE THE PHYSICAL EVIDENCE
 8. RE-INTERVIEW ALL DEFENSE WITNESSES
 9. RE-INTERVIEW THE DEFENDANT (USE WHAT YOU LEARN)
- 

XI. DIFFERENT TECHNIQUES FOR PREPARING DIRECT EXAMINATION

1. NOTES
2. OUTLINE
3. QUESTION FORMAT



XII. PREPARE DIRECT EXAMINATION OF THE DEFENDANT FIRST

1. WHY?
2. BECAUSE HE IS THE GLOBAL WITNESS
3. USE DIRECT EXAMINATION OF DEFENDANT AS TEMPLATE TO PREPARE:
 - DIRECT OF OTHER WITNESSES
 - CROSS OF STATE WITNESSES
 - VOIRE DIRE (ARCHETYPES-HYPOS)
 - OPENING

XIII. REVIEW DIRECT EXAMINATION WITH WITNESSES

1. REVIEW DIRECT AND STEP ON TOES
2. CORRECT DIRECT EXAMINATION FOR THE WITNESSES
3. RE-REVIEW DIRECT EXAMINATION AND TWO STEP LIKE JOHN TRAVOLTA
4. WOODSHED WITNESSES
5. ADD PHOTOS, EXHIBITS, AND DEMONSTRATIONS

(GOOD DEMOS LEAD TO T.V. SHOWS)



XIV. SPECIAL INSTRUCTIONS TO WITNESSES IN PREPARATION FOR DIRECT EXAMINATION

1. TELL THE TRUTH
2. THE “BALL THROWING ANALOGY”
3. THE “NEIGHBOR ANALOGY”
4. LOOK “EM IN THE EYES”
5. POSITIVE BODY LANGUAGE



XV. PREPARING THE CLIENT FOR CROSS-EXAMINATION

1. SUCCESSFUL DIRECT REQUIRES SUCCESSFUL CROSS
2. THE “BOXING ANALOGY”
3. THE “CARTOON BALLOON ANALOGY” OR “THE JANITOR KNOWS THE ANSWER, WHY DON’T YOU?”
4. THE “PROTECT THE FORT ANALOGY”

XVI. THE FICKMAN SCHOOL OF CROSS-EXAMINATION FOR DEFENSE WITNESSES

1. CROSS EXAMINATION AS THERAPY FOR THE DEFENSE LAWYER
2. GUTTING THE FISH WHO LIE
3. GRADING THE WITNESS
4. NOBODY LIKES AN “OVERCOOKED TURKEY”



XVII. RE-BUILDING DEFENSE WITNESSES AFTER YOU HAVE DESTROYED THEM

1. WATCH OTHER TRIALS
2. SIT IN “THE CHAIR”
3. WATCH OTHER WITNESSES
4. THE PEP TALK: “WE FEW, WE HAPPY FEW”

GOOD LUCK

