



Preparing for Trial

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Beginning

...From the first call to the scene –
everything you do – is preparation for
trial...

The Perfect Crime

- No Witnesses
- No Evidence
- **Not Guilty Verdict**

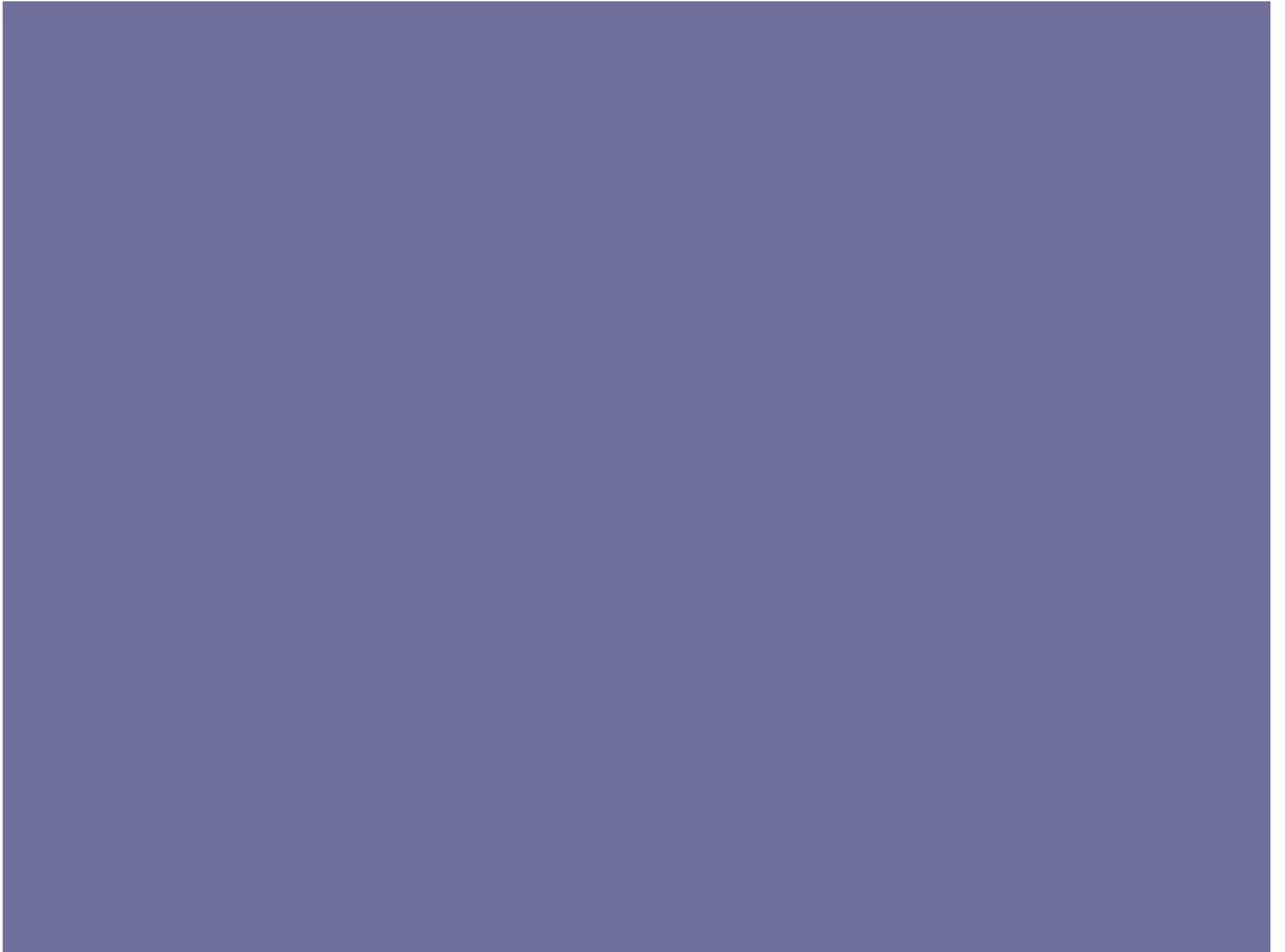
WHAT IS A CRIMINAL TRIAL?

- **NOT** an exercise to determine guilt
- **NOT** an exercise to see what the people of the community think should be done
- **NOT** an opportunity to present both sides
- **NOT** the victim's or the defendant's day in court
- **NOT** a search for the truth

The TRUTH is an overrated
commodity. It simply is

NOT

GOOD ENOUGH!!!



Media Relations

- Protect the case
- Avoid releasing -
 - Evidence
 - Confessions
 - Witness information
- Who does the release?
- What do you release?
 - WHY?
 - Prosecutors Ethical Responsibility

Jurisdictional Practice

- Lead Investigator
- Partnership
- Team
- Prosecuting Attorney role

Challenges

- Type of Investigation

- Unsympathetic...

- Jury
- Community
- Victim
- Witness

- Victim Appeal

- Ethnicity
- Criminal History

- CSI Effect

- Medical Examiner/
Coroner

- Experts

...Game not over with
the arrest...

Challenges

- Go to the Post Exam
- VIEW THE EVIDENCE
 - View with the Prosecutor
 - Do not wait until the defense looks at it
- Plea Deals
 - Consulted?

Witnesses and Their Testimony

- In order to qualify as a witness, a person:
 - Must have relevant information
 - Must be competent
 - Must be able to remember and tell what happened
 - Must be able to distinguish fact from fantasy
 - Must declare that he/she will testify truthfully

Legal Issues

- Search Warrants
- Arrest Warrants
- Miranda
- 6th Amendment issues

Preparing

- Trial Meetings
 - Mock Trial
- Demonstrative Evidence
 - Be prepared to bring the victim to life and kill the victim again
- Photographs
 - Make *Real* the *Un-real*
- Motive
 - Juries want to hear the motive

Roles and Goals

- Know Your Case!
 - Role
 - Responsibility
- Advisory Witness
- Jury Selection
 - Know the Street
- Jury sees YOU as an Expert – Believes you and the Prosecution are a TEAM
- Know what you will testify to
 - Do not make the case on your testimony

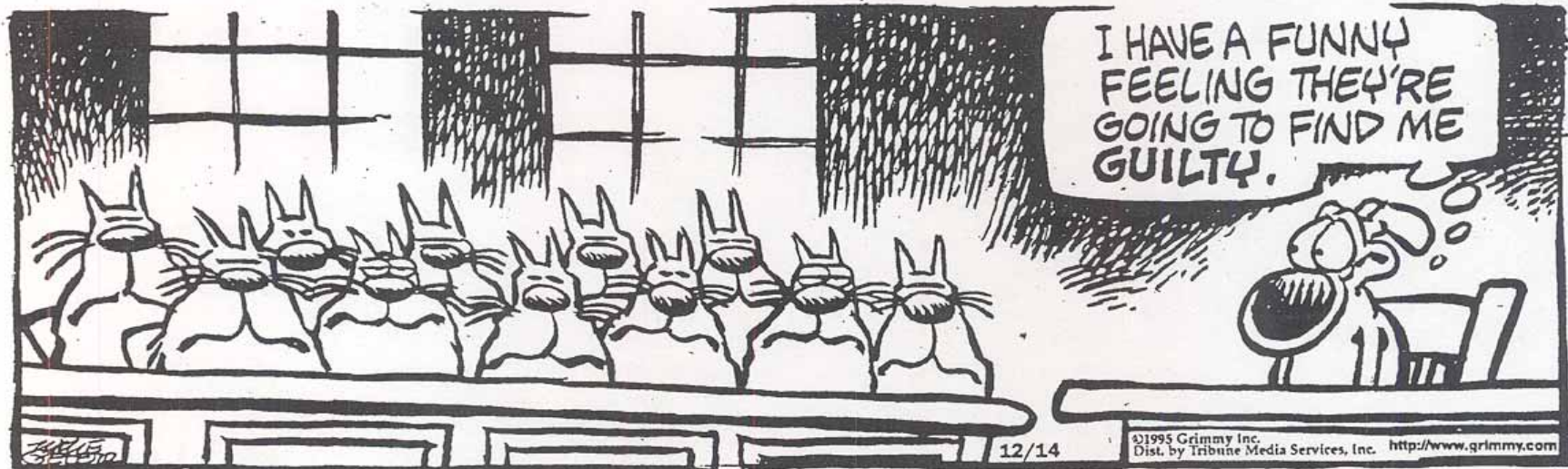
Trial

- Who is the Trier of fact?
- How do jurors make decisions?
- Biases, prejudices, sensory impressions
- Expectations
 - Before trial
 - During trial

The Jury Panel

MOTHER GOOSE & GRIMM

Mike Pe



CLASSIC HERMAN®

Jim Unger



“Members of the jury, I ask you, does my client look like a man of violence?”

What do jurors really use to make a decision?

What shapes their perceptions?

- Prejudices
- Sensory images
- Psychological/
Emotional needs

A jury of your peers

We have a criminal jury system which is superior to any in the world, and its efficiency is only marred by the difficulty of finding twelve men every day who don't know anything and can't read

- Mark Twain

Preparing for Testimony

- Expert vs. evidentiary witness
- Qualification as an expert
- Testifying as an evidentiary witness
- Cross examination tactics

Types of evidence:

- Direct Evidence
- Circumstantial Evidence
- Demonstrative Evidence
- Testimonial Evidence

Testifying During Direct Examination

● Techniques:

- State your background and qualifications
- Provide a clear overview
- Use a systematic, easy-to-follow plan for describing your methods
- Practice testifying
- Be fair
- Avoid vagueness

Testifying During Cross-examination

- Recommendations and practices:
 - Never guess
 - Use your own words
 - Be prepared for challenging pre-constructed questions
 - Did you use more than one tool?
 - Some questions can cause conflicting answers
 - Rapid-fire questions
 - Be aware of the jury

Testifying During Cross-examination

- Recommendations and practices:
 - Attorneys make speeches and phrase them as questions
 - Attorneys might put words in your mouth
 - Be patient
 - Keep a vigorous demeanor and use energetic speech
 - Avoid feeling stressed and losing control

The most effective witness

- True to themselves
- True to their duty
- Do their homework
- Diligent, honest, objective, credible
- Clear, succinct, unflappable
- Strong but not arrogant
- Knows the topic
- Knows their own (and case) limitations
- Knows the forum

10 commandments of cross-examination

- Tell The Truth
- Don't Get Angry
- Take Your Time
- Listen To The Question
- Answer The Question Asked
- The Shortest Answer Is Best
- If You Don't Understand Or Don't Know - Say So
- Be Polite
- Don't Argue
- Don't Elaborate Or Explain

The Requirements of Relevancy, Materiality, and Competency

- Evidence must address a material fact
- Be relevant to that fact
- Able to affect the probable truth or falsity of that fact by being competent
- A fact is material if it will affect the result of a trial
- Evidence is relevant if it has a tendency to make fact more or less probable
- Any evidence that is relevant and reliable and not otherwise excludable is competent

Rules for Courtroom Testimony

- Be well prepared
- Dress conservatively
- Speak slowly and distinctly
 - Not Robotic
- Look at judge (or jury)
 - If natural
- Wait until the question is completely asked before answering
- You **MUST** be comfortable in Court

What Wins the Trial

- Truth – does not win the trial
- Facts – does not win the trial
- Difference:
 - Facts
 - Evidence
 - Perception

The Three Classic Appeals

- **LOGOS (REASON)**
- **PATHOS (EMOTION)**
- **ETHOS (SPEAKER'S CHARACTER)**

Credibility

- Source credibility
- Non-verbal communication
- Actual message

...People trust those who know their stuff...

- Impacts on credibility
 - Pre-existing biases
 - Prior experiences
 - Communication issues
 - Other?

Criteria Proposed in Daubert

1. Testability

Is the theory or technique based on a methodology that can and has been tested?

2. Peer-review and publication

Has the theory or technique been the subject of peer-review and publication?

3. Error rate

What is the known or potential error rate associated with the proposed technique?

4. General Acceptability (or reliability)

Testifying as an Expert

- Impartiality –objective, cautious
- Rationality – logical progression
- Connectivity – how this opinion fits in the big picture of the case, the existing environment...
- Clarity – simple, clear, logical
- Understanding, familiarity
- Teach
- Persuade

Testifying as an Expert

- Qualifications, experience, reputation
- Familiarity, research, understanding
- Objectivity
- Presentation skills
 - Visual
 - Auditory
 - Kinesics
- Demeanor
 - Who you are
 - More important than what you say
- How you deal with opposing evidence, questions

Facts

- Measurable
- Observable
- Experiential
- Sometimes assumed or hypothetical

Cross-examination

- Prepare and have no fear
- Purpose:
 - to clarify differences
 - to cast doubts
 - expose inconsistencies
- General issues
 - leading questions
 - attack expertise or preparation?
 - question facts
 - check consistency
 - test assumptions

Pointers

- Don't dance
- Admit mistakes
- Do not make unnecessary concessions
- Avoid emotion and argument
- Body language
- Ask to see documents referred to in cross-examination
- Avoid talking to counsel during breaks

Qualifying as an Expert

- Foundation questions
 - Expertise
 - Background
 - Training

Actual testimony - Expert qualifications

- **Q: Are you qualified to give a urine sample?**
- **A. Yes, I have been since early childhood.**

Successful Prosecution

- Hold the RIGHT person responsible

Testifying in Court

● Dress for court

- The way you dress sends a message
- The judge and jury thinks of government witnesses as “experts”

● Be respectful

- Stand when the judge enters
- Do not make conversation in the courtroom
- Do not eat, chew gum or drink anything in the courtroom
- Avoid bringing children

Dress for Court

- Always be clean
- Never put anything on your hair that makes it look shiny or greasy
- Never wear sunglasses, or glasses that change tint as the light changes - People must see your eyes if they're to believe you
- Never wear any jewelry that is not functional - keep it simple
- If you have a choice, wear an expensive tie
- Never take off your suit jacket unless you have to - It weakens your authority
- **FACT:** People who look successful and present well receive preferential treatment in almost all of their social and business encounters

Cold Case Preparation

- Case Condition
- Evidence
- Witnesses
- New Technology
- New Information