



# CASE ANALYSIS THEORY DEVELOPMENT & PREPARATION-CRIM

‘An advocate’s theory of the case is his total and integrated view of all the facts, and the law which applies to them, in conformity with his objectives’ Marcus Stone, ‘Cross-examination in Criminal Trials’, 2<sup>nd</sup> ed. 1995, p.110. [See specimen theory – Higgins v. Higgins].

# THE LAW [1/1]

1. **IDENTIFY THE LEGAL ISSUES – DOCUMENT THEM – PROPERLY PREPARE THEM**
2. **ORGANISE AUTHORITIES IN PROPERLY MARKED FOLDERS**
3. **MARK AUTHORITIES** (annotate only your copies, flag copies for Bench and other side). Flagging is important. Do not be intrusive).
4. **BE EXHAUSTIVE** (it is better to have more than you need. Trimming may follow. Brief everything carefully - authorities in support and against).
5. **INDEX YOUR MATERIAL. PREPARE BUNDLES** (make it easy for Bench and other side to follow. Always facilitate the Tribunal and the other side in reading and understanding your presentation)

# THE EVIDENCE [1/1]

## 1. **FACTS IN ISSUE.**

- BE CONVERSANT WITH ALL THE MATERIALS IN THE CASE. KNOW YOUR CASE.
- THE PROSECUTION HAS A LEGAL BURDEN. YOU HAVE TO PERSUADE THE JURY TO SEE THE FACTS IN YOUR FAVOUR – SO THAT THEY FEEL SURE.
- EXAMINE CAREFULLY THE INTERPLAY BETWEEN THE FACTS IN ISSUE AND THE LAW (EVIDENTIAL & SUBSTANTIVE).

## 2. **PROOF OF FACTS IN ISSUE**

- DECISION ON EVD TO BE CALLED: PERSONS, EXHIBITS.
- PREPARATION OF EVD TO BE CALLED.
- ADMISSIBILITY OF EVD – PREPARE CHECK LISTS TO DEAL WITH ADMISSIBILITY OF EXHIBITS AND OTHER PROCEDURAL MATTERS. BE READY TO MOUNT/STAVE OF CHALLENGES.
- APPLICATIONS/SUBMISSIONS/PROCEDURE. PARTICULAR ATTENTION SHOULD BE GIVEN TO NO CASE SUBMISSIONS. DEFENCE TO PREPARE IN ADVANCE BASED ON CASE ANALYSIS ('CA'). PROSECUTION TO ANTICIPATE AND PREPARE TO MEET.

## 3. **DEFENCE'S EVIDENTIAL BURDEN (FEW CASES) – MAKING THE DEFENCE A LIVE ISSUE.**

# CLOSING SUBMISSIONS [1/5]

## 1. PROVIDES A GUIDE FOR ADDUCING EVIDENCE

THE ELEMENTS OF THE OFFENCE – PROOF OF THE OFFENCE.

- PAY CLOSE ATTENTION TO YOUR CHIEF – ESPECIALLY THE PROSECUTION. DEFENCE TO PAY CLOSE ATTENTION TO XXMN. CHIEF IS IMPORTANT FOR THE DEFENCE. BUT YOU CAN END THE CASE AT THE CLOSE OF THE PROSECUTION' S CASE. PROSECUTION STANDS OR FALLS ON CHIEF.
- NO CASE SUBMISSION IS TO BE PREPARED BASED ON THE CA.
- PREPARE THE POINTS YOU WISH/INTEND TO MAKE IN CLOSING ARGUMENTS. REMEMBER REBUTTAL POINTS.
- EVIDENCE ADDUCED MUST BE LINKED TO CLOSING POINTS.

# CLOSING SUBMISSIONS [2/5]

## 2. TELL A STORY AND ARGUE.

- ❑ ISSUES, EVIDENCE, FACTS. BURDEN ON CROWN. DEFENCE TO RAISE REASONABLE DOUBT [do not argue law before jury, must argue law in Bench trials].
- ❑ ANALYSE - ASK JURY TO MAKE FINDINGS – PROVIDE EVIDENTIAL SUPPORT; SHOW HOW ARGUMENTS LOGICALLY LEAD TO CONCLUSION SOUGHT. **USE THE EVD.**
- ❑ ASK JURY TO SEE DISPUTED FACTS IN A CERTAIN WAY. DO NOT FORCE THEM. INVITE THEM. MAKE IT EASY FOR THEM TO FIND FOR YOU.
- ❑ USE EVIDENCE TO DEVELOP STORY. RECENCY & PRIMACY. START & END STRONG.

# CLOSING SUBMISSIONS [3/5]

## **3. ANSWER ARGUMENTS MADE BY OTHER SIDE**

- THE FIRST SPEAKER HAS TO ANTICIPATE THE ARGUMENTS OF THE OTHER SIDE
- LISTEN CAREFULLY. ACTIVE LISTENING
- BE FAITHFUL IN REPRESENTATION OF THEIR ARGUMENTS
- NOTE THEIR ARGUMENTS VERBATIM ON SEPARATE PAD

# CLOSING SUBMISSIONS [4/5]

## 4. USE EXHIBITS

- ❑ MOST OF WHAT WE KNOW COMES THROUGH SIGHT. COMBINE AUDIO WITH VISUALS.
- ❑ USE EXHIBITS TO SUPPORT & HIGHLIGHT MAIN POINTS.
- ❑ USE TO REBUT POINTS OF OTHER SIDE
- ❑ USE EXHIBITS

# CLOSING SUBMISSIONS [5/5]

## 5. DEAL FRONTALLY WITH DIFFICULTIES

- DO NOT TRY TO AVOID WEAKNESSES AND HOPE. SHOW, IF THEY ARE ACCEPTED, HOW THEY DO NOT ULTIMATELY AFFECT DESIRED OUTCOME.
- BE CREDIBLE IN DEALING WITH WEAKNESSES.
- IF YOU CANNOT CREDIBLY DEAL WITH WEAKNESSES AVOID THEM AND FOCUS ON YOUR MANY STRENGTHS.



# OPENING SUBMISSIONS (PROS) [1/2]

## 1. INTRODUCTION OF PARTIES

## 2. ROLE OF: JURY, JUDGE, PROSECUTION, WITNESSES DEFENDANT. EXPLAIN BURDEN & STANDARD OF PROOF

## 3. SUMMARISE CASE

- OUTLINE AND EXPLAIN NATURE OF THE CHARGES
- PARTIES - MAKE THEM LIVING
- EVIDENCE – BROADLY – SINGLE OUT MAJOR PORTIONS
- WITNESSES. MAKE THEM LIVING. GIVE SUMMARY OF EVD OF EACH WITNESS. EXPLAIN ROLE IN STORY.
- IDENTIFY MAIN SCENES

## OPENING SUBMISSIONS [2/2]

### 4. **CLEARLY EXPLAIN THE CONCLUSION THE JURY IS BEING ASKED TO MAKE AT END**

- SUMMARISE THE MAIN FINDINGS OF FACT THAT THE JURY IS BEING ASKED TO MAKE AT THE END OF THE EVIDENCE. THIS IS TO BE BROADLY DONE. NO DETAILS
  
- BE CONCISE, COMPREHENSIVE AND COMPREHENSIBLE & ACCURATE.

