

GARDEN STATE CLE LESSON PLAN

A 1.5 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUATION

ANATOMY OF A DEATH PENALTY MURDER TRIAL – CASE FOR THE DEFENSE

WITH

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Program Description

What greater responsibility can be entrusted to a defense lawyer than the life of his client? This CLE seminar will explore the steps that one team of zealous defense attorneys took in a desperate bid to defend a client on trial for his life.

I. INTRODUCTION

II. EXPERIENCED DEATH PENALTY COUNSEL APPOINTED BY THE COURT AND PUBLIC DEFENDER'S OFFICE

III. HOW DO YOU PREPARE FOR A DEATH PENALTY CASE?

- Start at the end, the death penalty phase, presume your client will be convicted
- Line up your investigators and experts
- Investigate client's life, family etc. immediately because people and cooperation disappear

IV. JURY SELECTION

- Scott Johnson example: State v. Johnson, 309 N.J. Super. 237 (App. Div. 1998)
- Other examples
- At formative stage of the defense the selection of a jury is critical to consider
- How will jurors react to the dropoff of the child at the day care in Johnson.
- Racial components: poor black young man with a criminal history and a middle class white woman victim, carjacked with a child
- Politics is in the mix in every death penalty case. In the Johnson case, the appointed Prosecutor decided to take the trial.

**v. START AT THE PENALTY PHASE AND
DOUBLE TRACK THE GUILT PHASE**

- Publicity problems for the defense
- Defense got lucky at the motion phase by making motions to change venue. Court in reply decided to demonstrate that a fair jury could be picked and scheduled a mock jury selection and allowed many of the defense requests
- The Court gave the defense a free shot

VI. JURY CONSULTANTS

- Allow the jury consultant to do their job and you as counsel must be part of the team
- Choosing a LAW ENFORCEMENT jury e.g.
- Know your venire/pool of jurors. Contrast Middlesex with Mercer juries, contrast Piscataway with E. Brunswick etc.

VII. JURY SELECTION

- Arizona system. Select jurors and send them home with a date to return in the future.
- Peremptory challenges expanded for this case
- Attorney conducted *voir dire* is an exception allowed in some death penalty trials
- Create a juror profile and make it a checklist

- The ultimate chess game: the use of peremptory challenges
- Unanimity requirement suggests that picking a SINGLE juror for the defendant's case is all that is needed: provided a single holdout can be strong enough to hold out for life versus death.
- Target the juror you think you need to focus in on; make your arguments generally to the jury with the juror you think favors you in mind; body language

VIII. THE DEATH PENALTY IS TILTED TOWARD DEATH

- Example: Jurors are asked if they can kill the defendant BEFORE guilt is determined

IX. THE GUILT PHASE CAN BE USED TO ADMIT EVIDENCE USED IN THE PENALTY PHASE

- Psychologists in guilt phase will be helpful in the penalty phase

X. OPENINGS IN THE PENALTY PHASE

- a. Understand the gravity
- b. Three choices: guilt, innocence, or not sure
- c. Individual beliefs matter and you are entitled to stay with your beliefs; don't change to be part of the crowd

XI. TRIAL IN THE PENALTY PHASE

- a. Use of an expert by the Prosecutor entitled the defense to cross examine the Prosecution's expert to again relate all of the *favorable* facts about the Defendant
- b. Rules of Evidence do not apply in the penalty phase to the DEFENSE. Hearsay was allowed, even the single party videotape of the middle school teacher of Scott Johnson
- c. Defendant's family witness: daughter. Shows some redeemable quality.

XII. SUMMATION IN THE PENALTY PHASE

- The right of allocution is allowed by State v. Zola, 112 N.J. 384 (1988) and was declined in the Johnson case.
- A defendant can ruin what you created in as little as 30 seconds

xiii. PENALTY PHASE VERDICT

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