



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
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**SIGNATURE SERIES:
TRIAL SKILLS**
**The Art of Voir Dire and Powerful Opening
Statements**

FACULTY:

Hon. Eric Sachs, District Court Judge

**Daniel A. Russo, Esq.,
Administrator Assigned Counsel Defender Plan of Suffolk County**

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Suffolk County Bar Association, New York

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Hon. Eric Sachs - District Court Judge in Suffolk County, Acting County Court Judge Kendra's Law

He earned his Juris Doctorate at Brooklyn Law School in 1985. From 1985 to 1989, Judge Sachs was an Assistant District Attorney in Bronx County, where he was responsible for the prosecution of all criminal matters, including the trials of violations through violent felonies. Judge Sachs has over 33 years experience handling criminal matters; 30 years experience defending individuals accused of DWI related offenses in New York State and other States. This has led him to being relied upon as an instructor for the Legal Aid Society at the City of New York, Nassau County and Suffolk County and has taught countless attorneys in the area of DWI defense. He has been a program coordinator and presenter for the Suffolk County Bar Association. Judge Sachs has been a lecturer in the areas of DWI, Evidence, Trial Practice as well as representing airmen and mechanics in FAA related matters. Judge Sachs was a sole practitioner, whose practice focused on DWI defense and was a General Member of the National College for DUI Defense and the National Association of Criminal Defense Lawyers. Judge Sachs was also an Aircraft Owners and Pilots Association referral attorney. Judge Sachs has also published a book regarding DWI defense and an ebook entitled [NYC or Long Island DWI Arrest? Useful Info Revealed That May Help Fight Your DWI Case.](#)





Daniel A. Russo, Esq. – Administrator for the Suffolk County Assigned Counsel Plan

Daniel Russo has served as Administrator for the Suffolk County Assigned Counsel Plan since April of 2017. In that capacity the SCACP has increased to include full time services for assigned counsel. Mr. Russo manages two full time private investigators, a full-time social worker and Spanish interpreter. The office provides counsel with expert witnesses and support services.

From 2003 – 2017 Daniel A. Russo was a full-time attorney with a private practice focusing primarily in criminal defense. Throughout that time Mr. Russo has represented clients facing every kind of criminal charge. Many of these matters resulted in trials and verdicts.

From 1998 – 2003 Daniel A. Russo was an Assistant District Attorney with the Suffolk County District Attorney's Office. During that tenure Mr. Russo served in the Narcotics, Major Crime and Special Investigations Bureau. During that tenure Mr. Russo prosecuted various cases involving violent street crime resulting in convictions.

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and

Powerful Opening Statements

ERIC SACHS

**District Court and Acting County Court
Judge, Suffolk County**

Daniel A. Russo, Esq.,

Administrator

**Assigned Counsel Defender Plan of Suffolk
County**

VOIR DIRE

- “To Speak the Truth” (French)
- A preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury (Black’s Law Dictionary)

Incorporate your theory

- Like the overture to a musical

USE WORDS THAT YOU WILL USE DURING YOUR
EXAMINATION

ie Recipe in a DWI case

harass or annoy

pain or no pain



- I have always viewed VOIR DIRE as the MOST CRUCIAL aspect of a trial to establish credibility and believability with the jurors.

- There is a crucial need to set the stage correctly and deal with the time constraints which vary from judge to judge
- Take into Account the Social Interaction and Lack of Social Interaction Between Jurors due to COVID

Don't Waste Your Time

- Ask questions that serve a purpose
- You only have 3 challenges in a Misdemeanor trial
- Felony Trials vary depending on the charge
- 20 challenges for a Class A Felony
- 15 for B & C Felonies
- 10 for all other

- Introduce your theme
- Cover an area of concern
 - ie. The elephant in the room
 - Bias
 - B R D
 - Right Not to Testify
 - Social Distancing of Jurors During the Trial

RIGHT NOT TO TESTIFY

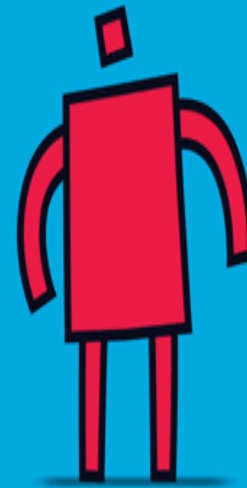
- Now, if somebody was accused of a crime that he didn't commit, do you think he would want to say so?
- Do you think some people lie to get themselves out of trouble?
- Would you think someone who didn't testify had something to hide?

- So if CLIENT testifies some of you may think she is lying, but if she doesn't, some of you may think she is hiding something?
- Is it fair for Ms. CLIENT to start in such a position?
- What are we going to do about that?

- Can you think of any reasons why an innocent person might not want to testify?
- Afraid of public speaking?
- Afraid you would think he was lying?



Questions to Ponder



What Questions do you Ask?



OPENING STATEMENTS



What is an Opening Statement?

- At the outset of a trial, an advocate's statement giving the fact-finder a preview of the case and of the evidence to be presented... (Black's)
- An Opening Statement should be looked at like the overture to a musical

- Each thought and word should be one that you have used in VOIR DIRE and will use in the EXAMINATION of a witness AND again in SUMMATION
- TRILOGY
 - People need to be told things 3 times to remember

“The Evidence Will Show...” And Other Qualifying Phrases Have Got To Go

- Statements such as “I believe the evidence will show,” or “I think you will hear,” or “we hope to bring you” are all phrases that cause the jury to be non committed as opposed to committed.

Trilogies

- People and thus, Jurors, need to hear things THREE TIMES
- For some unexplainable reason, people learn in threes.
- In school, we are taught the “ABC’s” and not the “AB’s” or the “ABCD’s.”
- Traditional wedding vows employ trilogies (honor, love, and cherish) and we even express allegiance to our country in a trilogy of colors (red, white, and blue).

Eye Contact

- nonverbal communication is a powerful tool that lawyers must use more effectively.
- Eye contact with your jurors solidifies the bonding process.

- Rather than standing up and saying, “Good morning ladies and gentlemen of the jury,” the lawyer is better off standing up and saying, “Good morning ladies,” and looking at each one of the women on the jury and then saying, “Gentlemen,” and looking at each one of the men on the jury.
- The lawyer should then begin the case.

Visual Aids

- Another important lesson we gleaned from television is that people learn with their eyes.
- When someone SPEAKS to a jury for an HOUR without interruption, you can reasonably expect that the jury will recall and retain **FIFTEEN** percent of everything they heard.

- When a lawyer employs VISUAL AIDS to assist or enhance the learning process, juror recall increases dramatically to **SIXTY-FIVE** percent.

- Hundreds of post trial interviews with jurors taught us one unequivocal lesson: Jurors respect and follow the attorney who **simplifies the case** for them
- Remember the 5th grader

- The chronology line is an important demonstrative aid because it puts the relevant events into perspective
- lawyers normally rely on repetition and closing argument to order sequentially the relevant events.

- The problem with this approach is that in many instances, it falls upon deaf ears because most jurors have already made up their minds

- To communicate your case more effectively to the jury during the opening statement, prepare and use a chronology line or other visual aid to keep things fresh for the jury

K I S S

- IN PLAIN ENGLISH, WHAT IS THIS CASE ABOUT?
- ADDRESS THE ELEPHANT IN THE ROOM
 - » Bad facts in your case
 - » Remember, **over 60% of juries will decide the case by opening statements**

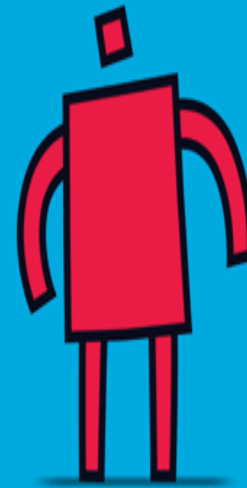
What Does that Mean?

- Plain, Simple English
- Your Jurors are 5th Graders
- What do you want the Jury to Focus On?

Persuasive Opening?



Questions to Ponder



Or, How Not to Make an Opening Statement



Questions?

Thank You



SCBA Lawyers Helping Lawyers Committee

The SCBA Lawyers Helping Lawyers Committee provides free and confidential assistance to those in the legal community who are concerned about their alcohol or drug use and/or mental health or wellbeing or that of a colleague or family member.

Assistance is available to the legal community including attorneys, members of the judiciary, law students, and family members dealing with alcohol or substance abuse disorder, other addictive disorders, anxiety, depression, vicarious trauma, age related cognitive decline and other mental health concerns that affect one's well-being and professional conduct.

**Please call the
Lawyers Helping Lawyers Helpline at (631) 697-2499
to speak with an attorney who will provide support and recommend
resources. All calls are private and confidentiality is protected under
Judiciary Law Section 499. (Lawyer Assistance Committee)**

Feel Free to Join Us at Our Weekly Recovery Meeting