



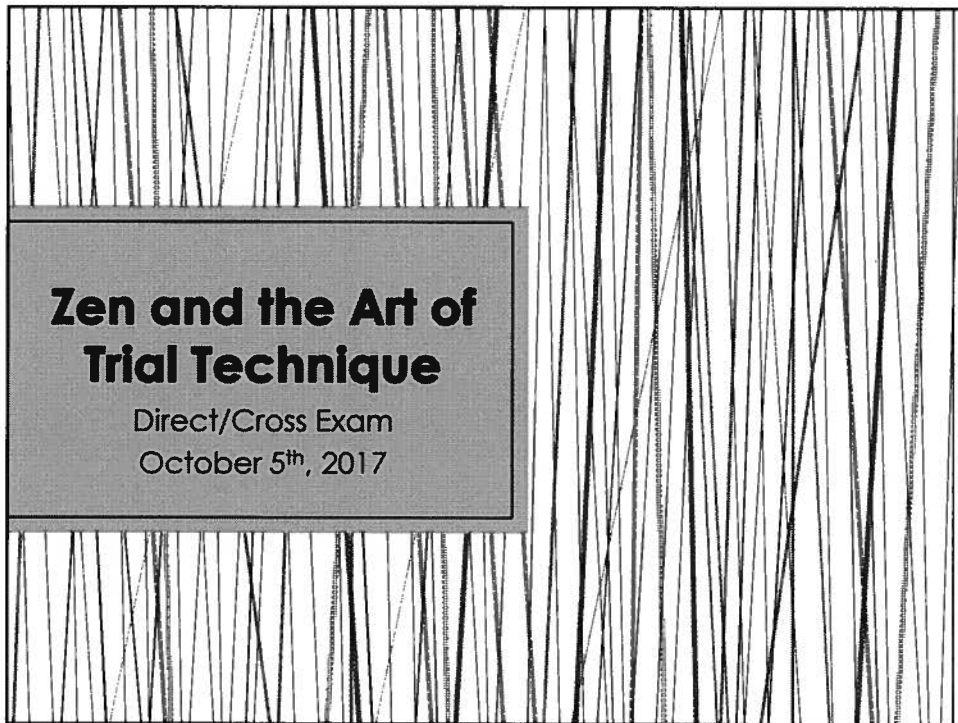
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CRIMINAL TRIAL TECHNIQUES & OVI DEFENSE

**Are You Doing Direct
Examination/Cross Examination
Correctly?**

**Craig J. Morgan, Deputy Chief Prosecutor,
Akron Prosecutor's Office**

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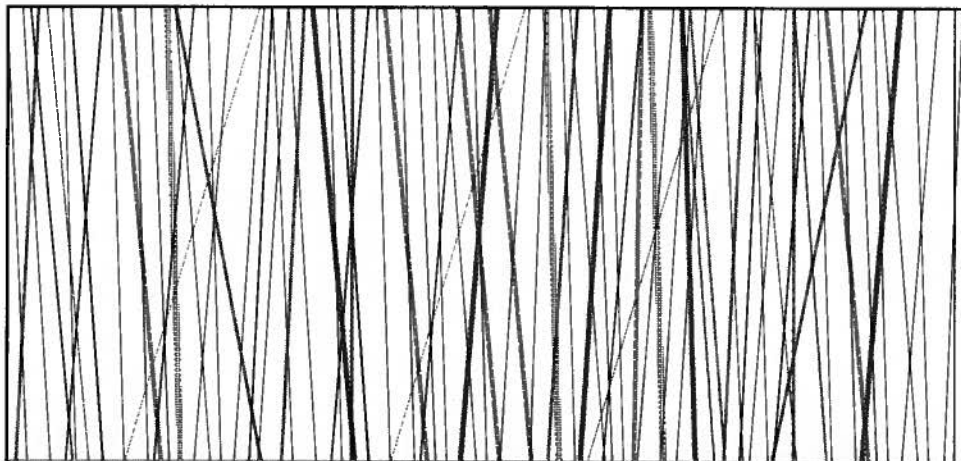
**Zen and the Art
of Trial Technique**
Direct/Cross Exam
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INTRODUCTION

Bowing is an expression of gratitude and respect. In effect, you are thanking your opponent for giving you the opportunity to improve your technique.



Zen and the Art of Trial Technique

A. Direct Exam

DIRECT EXAM

Pay attention to every detail, immersing yourself in your activity to such a degree that you become the activity.

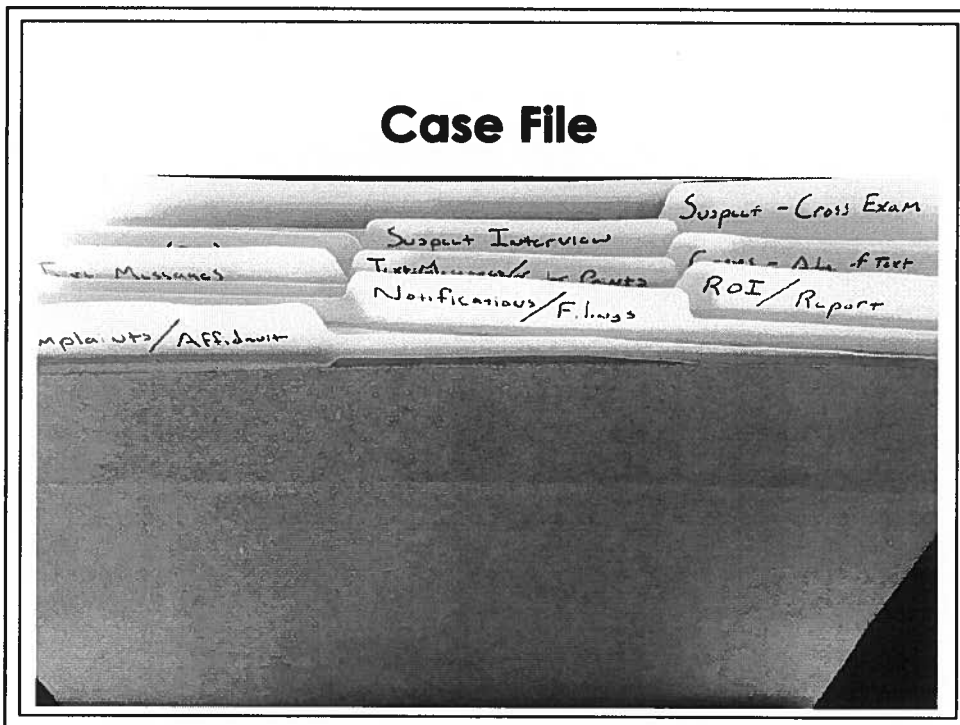
Three Great Pillars

- Organize
- Prepare
- Inoculate

Organize

- Case File
- Witnesses
- Exhibits

Case File



Witnesses & Exhibits

- There should be no surprises.
- Direct exam should be scripted.
(because there should be no surprises)
- Exhibits should be marked ahead of time.
(because there should be no surprises)

Witnesses & Exhibits

10. What did you observe when you entered the property?
11. Can you describe the conditions inside of the home?
12. Did you document, or photograph the conditions you observed?

EXHIBIT C: Picture taken in basement of property showing multiple animals in crates

13. Do you recognize this picture?
14. Did you take this picture?
15. Is it a true and accurate reflection of the condition inside the property?
16. Could you describe what is depicted in the picture?

Prepare

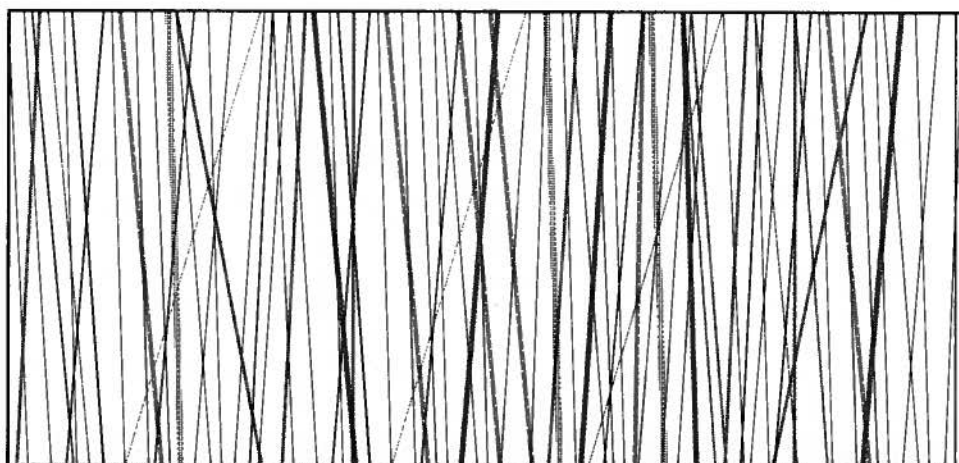
- Draft questions for witnesses.
- Read through questions with witnesses.
- **Listen to witnesses answer the question.**
- Anticipate conflicts over admissibility of evidence and testimony.

Inoculate

*Appear weak when you are strong,
and strong when you are weak.*

Practitioner's Notes for Direct Exam

- Avoid duplicative testimony if possible.
(minimize potential lines of counter)
- Developing a "conversation" with your witness is acceptable as long as you've already had the same conversation prior to trial.



Zen and the Art of Trial Technique

B. Cross Exam

CROSS EXAM

Truth is not what you want it to be; it is what it is, and you must bend to its power or live a lie.

The Sun and the Moon

- The Defendant
- All other Witnesses

Cross Exam All other Witnesses

- Cross exam does not have to be cross.
(Never has a cliché been more accurate)
- Use your knowledge of the details to point out obvious inconsistencies, or bias.
- Make your point and sit down.

Cross Exam The Defendant

- Keep them off balance mentally and physically.
- Find something intimately personal to attack in the very first moments, if not the first question.
- Yes, they've been prepped, now give them something no one has prepared them for.
- Let go...Feel, don't think.
- Leave nothing behind, hold nothing back.

Practitioner's Notes for Cross Exam

- *Move only if there is a real advantage to be gained.*
(Applicable to all witnesses except the Defendant)
- Never interrupt your opponent while they are making a mistake.

CONCLUSION

A true warrior thinks not of victory, or defeat. A true warrior seeks only to test their skills against a worthy opponent.