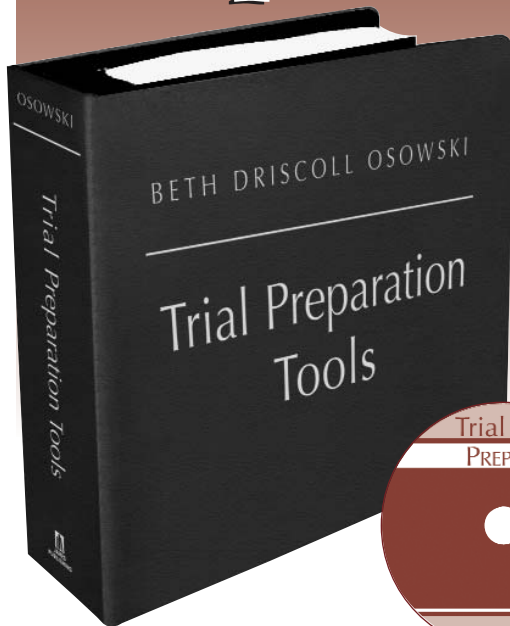


New!

Preparing a Case for Trial:

The Last 120 Days



9 practice tips from the book

1. Quantifying pain and suffering. “Try to make the subjective seem a little less so with references to objective signs normal people would associate with pain, such as swelling, bruising, screaming, blood, certain facial expressions, flinching, and limping. While reviewing the file, make note of other references to pain, suffering, disability, worry, humiliation, and embarrassment. Pay attention to descriptive terms, such as deep/superficial, sharp/dull, stabbing, shooting, and burning. Scour the early medical records and list all of the different areas where the plaintiff reported pain. In addition to pain, record evidence of limitations. The injured party may be too embarrassed to freely talk about limitations in activities of daily living and self-care, but this may be the testimony that has the most impact on the jury. Use this log....” §1:63

2. Building a theme log. “The refreshing review is a good time to start brainstorming themes. Reduce your case to a couple of unifying principles that are broader than the case itself. Think of many different approaches, and then list any evidence from your review of the file that seems to support that theme. No matter the type of case, I always start with the theme of responsibility, because it seems that one overwhelming purpose of trial law is to hold culpable parties responsible. Following is a sample theme log for a typical motor vehicle accident....” §1:64

Tips continued inside...

Tools

- Case logs, to-do checklists, and countdown calendars
- Proof rubrics, motion arguments, and evidence checklists
- Pattern themes, openings, and closings

and Tips

- Effective discovery
- Picking juries
- Proving facts

Competing cases and clients can keep you from bringing enough hours, analysis, and organization to readying your cases for trial.

Beth D. Osowski’s *Trial Preparation Tools* can help. Use its strategies, tips, forms, checklists, calendars, and idea lists to be better prepared, organized, and efficient. You receive:

Proof rubric and trial logs

- Preparing the elements of proof rubric, with model. §1:20
- The importance of refreshing your recollection of your initial client impressions. §1:40
- The best method for organizing medical records. §1:51
- Using a log to quantify pain and suffering. §1:63
- 120-day countdown calendar. *Form 1-01*

Trial notebook

- Checklist of contents, with models. §2:11
- Recommended tracking aids. §2:20
- 5 samples. *Forms 2-01 to 2-05*

Filling gaps in your proof rubric

- 10 questions for determining what is needed. §3:02
- Investigation checklists by type of case. §3:13
- Limiting interrogatories to these types of questions. §3:42
- Using the opposition’s own terms in requests for production. §3:51

Looking at the big picture

- A lengthy list of themes to choose from. §4:44
- Case-specific theme ideas. §4:45
- When the opponent’s strategy is not obvious in discovery. §4:51

- Guidelines for effective focus groups. §4:71
- Saving an inadequately-funded case. §4:98
- Figures to know before making that first demand/offer (with chart). §5:13
- Methods for divining an acceptable settlement range. §5:14

Using motions in limine

- Checklist of non-obvious prejudicial material to consider excluding. §6:27
- Overlooked but persuasive reasons to use in your motion. §6:29
- Briefing checklist. §6:32
- Pattern motions and briefs addressing relevance, prejudice, other acts, confusion, habit, collateral source rule, family history, subsequent remediation, judicial notice, spoliation, dead man’s statutes, science, learned treatises, opinion, and severance. §6:40
- Checklist for preparing for a pretrial conference. §6:91

Effective voir dire

- The application of case themes to juror selection. §7:21
- Witness considerations. §7:23
- Juror occupations and your case type. §7:25
- Checklist of experiences. §7:32

List continued inside...

Practice Tips (continued from front page)

3. Past expenditures. "The one aspect of past expenditures that can be tricky is for those bills that have yet to arrive. Unfortunately, I probably settled dozens of cases in the early years only to be surprised months later with a late bill from an expert, medical record provider, or court reporter. Sometimes the problem was that I forgot about the requested service, and other times, the bill came from someone who had irregular billing practices. Regardless of the cause, doing primarily plaintiff's work, these bills were normally paid by me rather than my client. To avoid this happening, I now ask my entire staff to keep a running list of requests that are made. Once the service is provided and the bill arrives, we check off the item. When the case is evaluated or about to be settled, we are able to make quick calls to determine the outstanding expenses. Sometimes if a case settles, we are able to cancel the service before the charge is incurred. See Form 4-07 for an example of an Expense Log." §4:92

In the courtroom

4. Voir dire. "It seems that at the conclusion of nearly every voir dire, there is one potential juror that I failed to learn anything about: the silent juror. The silent juror always finds a way to avoid volunteering for any question that I cared enough about to follow up on. The silent juror seemingly has no relevant experiences or opinions. When faced with decisions on my peremptory challenges, the silent juror often creates the biggest challenge. I look toward the silent juror, not knowing whether the juror is the best or worst of the panel. If body language and my gut do not provide the guidance, in the end, the decision on whether or not to keep the silent juror usually depends upon how many other jurors I am confident that I want to strike. I reason that the silent juror is probably better than those I really find objectionable, but worse than those for whom I am indifferent." §7:82

5. Effective opening techniques. "Add a little color to your presentation with some of the following 17 techniques:

- Break up the didactic presentation with the use of rhetorical questions.
- Highlight key points with dramatic pauses, extra eye contact, gestures, or movement.
- Start by attacking the opposition.
- Create a little tension to help keep attention.

- Include short personal stories if effective and everyone can relate.
- Place the most important items for the jury to remember first and last.
- Double the number of adverbs and adjectives...." §8:74

6. Witness secrets. "The last thing I usually do in preparing a lay witness is to ask: "Now, what are you most afraid you will be asked?" The witnesses frequently have something on their minds they failed to warn me about. I have also learned a lot of secrets." §9:91

Closing argument

7. Juror reaction to injuries. "When preparing the case-specific closing argument outline prior to the start of trial, recall that jurors may observe the seriously injured plaintiff and look for reasons that the same horrific things could not happen to them. They may spend the entire trial searching for distinguishing features. Plaintiffs need to realize this potential, and rather than focusing on the victim or the harm, they should focus a good share of their arguments on the actions of the defendant. In contrast, defendants may want to capitalize on this defense mechanism and continue to stress the faults of the plaintiff." §11:55

8. Burden of proof examples. "Lay jurors commonly believe that the standard of proof is what they hear repeatedly in the criminal trials dramatized on television. If the civil burdens of proof are not adequately explained, there is a risk that the jury will impose a higher standard than is appropriate. As percentages are not always fully understood by lay jurors, use examples that are more visual and more familiar. Consider the following more picturesque examples...." §11:56

9. Asking the jury for money. "Every time the jury awarded exactly the number I requested, I kicked myself for not asking for a little more. On one occasion, I struggled with the issue to such a degree that I found myself standing before the jury, glancing at my closing argument outline, wondering what was going to come out of my mouth to fill the blank for damages. To my horror, I heard myself saying simply that I trusted the jury to be fair. The jury's verdict for pain and suffering was my largest ever, and according to the best information available, still the largest in that county. The award was nearly twenty-five times larger than the best settlement offer." §11:57

About the Book and CD

Beth D. Osowski's *Trial Preparation Tools* contains 600 letter-sized pages in a sturdy and tabbed 3-ring binder. The book provides strategies, tips, forms, checklists, calendars, idea lists and more for efficient and effective preparation and trial.

Included at no extra charge is an intuitive, full-text CD which requires no installation before use. It may be searched by key word, case name, topic, or form. The CD's forms and chapters are also provided in Word in case you do not want to work with the CD's database.

§99 buys the book and CD. The book is updated annually with replacement pages and a new CD for \$59.99 plus \$6.98 shipping. Both the book and its annual updates are sold on a 30-day trial basis, and may be returned if not to your liking. The update service may be cancelled at any time.

(800) 440-4780 or
www.JamesPublishing.com

About the Author

Beth D. Osowski represents civil litigants in many areas, including motor vehicle accidents, premises and product liability, medical and legal malpractice, contract and business litigation, construction disputes, will contests, real estate and landlord/tenant matters. In 2007, she received what is believed to be the largest jury verdict in her county's history for a premises liability case.

She has presented many legal seminars as well as authored dozens of outlines for continuing legal education courses, including: Trial Techniques, Selecting a Jury, Themes for Maximum Jury Appeal, Quantifying Pain and Suffering Damages for the Jury, Expert Witnesses, Crossing the Defense Medical Examiner at Trial, Rebuttals, Problematic Jury Deliberations, Building the Plaintiff's Case, Nuts and Bolts of Discovery, Pros and Cons of ADR, ERISA Subrogation, Construction Cases, and Premises Liability Cases. She is a frequent guest on the local public television show, *It's Your Law*.

Ms. Osowski serves as a district committee member for the Wisconsin Office of Lawyer Regulation and serves as Chair for the City of Oshkosh Board of Review. She ranked first in her University of North Dakota law school class all three years, and was awarded Moot Court Champion and Best Oralist.



(List continued from front page)

- Learning juror characteristics and attitudes, with checklist and pattern questions. §7:42
- Voir dire questions that get quiet jurors talking. §7:44
- Non-verbal clues. §7:45
- Six types of juror matrixes, with examples. §7:70

Evidence checklists

- Motor vehicle accidents. §9:30
- Medical negligence. §9:31
- Premises liability. §9:32
- Products liability. §9:33
- Wrongful death. §9:34

- Property line dispute. §9:35
- Construction dispute. §9:36

Witness checklists

- Lay witness value checklist. §9:50
- Lay witness preparation checklist. §9:91
- Expert witness preparation checklist. §9:111

Better openings and closings

- Admitting weaknesses and neutralizing negatives, with pattern language. *Form 8-04*
- Prohibited arguments. §11:21

- Structural outline. §11:43
- Reasonable person analogies. §11:54
- Checklist for supporting your side of the story when witness accounts differ. §11:55
- Checklist for highlighting what the opposition promised in its opening but failed to deliver. §11:82
- 30 items to avoid in closing. §11:101
- Sample lines to end your argument. *Form 11-07*

Post-trial aids

- Checklist of post-trial tasks. §13:02

- Calculation tables for analyzing the monetary success of the trial. Plaintiff, §13:10; defendant §13:11.
- Court error checklist to use for appeals or negotiating post-verdict. §13:21
- Brainstorming list of potential post-trial questions for jurors. §13:42
- Checklist of improvements for the next trial. §13:50
- Analyzing the accuracy of your pre-trial juror profiles. §13:51
- Considerations for deciding to appeal. §13:70

122 forms and checklists

File Review, Trial Logs and Checklists

Checklist of Evidence for Each Element in Proof Rubric, Checklist of Logs, Countdown Calendar Checklist, 120 Day Countdown Calendar, Pleadings Index Form, Employment Record Summary Form, Medical Record Summary Form, Medical Specials Forms, Demonstrative Evidence Logs Forms, Quantifying Pain and Suffering Forms, Theme Log Forms

Trial Notebook Forms

You receive sample trial notebook tables of contents for motor vehicle accidents, construction contracts, defamation, product liability, and slip-and-fall cases. There are samples demonstrating chronological, alphabetical, subject matter, elements of proof, numerical, and outline sequencing. Several formats are used, including a single binder with supplementary materials, multiple binders, a rotating box, computer presentation, note cards, and legal pads.

Discovery and Investigation

Interrogatories: Background of Individual, Background of Corporation, Witnesses and Evidence Introduced at Trial, Dog Bite, Product Liability

Depositions: Cross Examination of Defendant Driver in MVA, Notice of Subpoena Duces Tecum, Direct Examination Questions for Own Chiropractic Expert's Qualifications, Outline of Cross Examination of Non-Treating Medical Examiner

Requests for Production: Definition of Documents, Commer-

cial Truck Accident, Claims Against an Estate

Requests for Admissions: Contract and Professional Negligence, Product Liability, Real Estate Dispute, Construction Contractor Dispute

Motions to Compel: Plaintiffs', Defendants', Brief in Support, Affidavit in Support

Strategies

Jury Questionnaire: Checklist of Background Information, Exclusion for Cause, Revealing Questions, Personal Injury Claims

Request for Jury View, Expense Log, Future Expense Estimates, Recommended Expenses Client Letter

ADR & Settlement

Settlement Spreadsheet, Settlement Packet Table of Contents, Statement of the Case/Demand Letter, Statement of the Case/Offer Solicitation, Recorded Statement, Demand Letter, Mediation Submission Packet Table of Contents, 2 Letters to Mediator, Letter From Mediator, Post-Mediation Agreement, 2 Arbitration Awards

Motions in Limine

Briefs in Support of Motions in Limine: Relevance, Prejudice, Confusion, and Delay-Accidental Shooting, Prejudice (and Use of Stipulation)-Seat Belt Use

Response to Claimed Prejudice--Computer Simulation, Response to Claimed Cumulativeness--Computerized Simulation, Response to Claimed Scientific Errors--Computer Simula-

tion, Response to Motion to Exclude Subsequent Remedial Measures--Railroad Grade Crossing, Response to Claimed Prejudice and Spoliation-Leaving the Scene, Response to Claimed Other Crimes, Wrongs, or Acts-Prior OWI Convictions, Response to Request for bifurcation and Stay-Insurance Coverage

Collateral Source Rule, Judicial Notice-Twilight Times, Dead Man's Statute, Trial Brief on Issue of Law-OSHA Confined Space, Response to Opposition's Notice of Intent to File Learned Treatises, Motion for a Jury View

Jury Selection

Information from Community, Juror Questionnaire, Key Case Considerations, Juror Profile, Voir Dire Questions, Spreadsheet Matrix

Opening Statement

Opening With the Theme: Effective First Lines, Introduction of the Parties, Introduction of Evidence: Products Liability, Neutralizing the Negatives/Admitting Weakness in a Favorable Light, Opening Statement Conclusions, Injured Child, Introducing Damages, Civil v. Criminal Burdens of Proof, Personal Injury Opening, Construction Case Opening

Documentary Evidence

Completed Witness List, Brief in Opposition to Motion to Limit the Scope of Testimony, Completed Opposition Witness List, Rules of Cross Examination,

Completed Court Error List, Completed Closing Argument Notes, Impeachments with Deposition Transcripts, Refreshing Witness' Recollection

Closing Argument

Closing Outlines: Greetings and Reminders about Obligations, Theory and Explaining How the Evidence Supports the Elements, Greeting and Theme and Theory, Arguing the Evidence in Dispute, Arguing About Causation of Injury with Pre-Existing Problems, Arguing the Damages, Sample Lines to End the Argument

Verdict and Judgment

Negligence General Verdict, Multi-Party Negligence and Safe Place (Statutory Claim) Special Verdict, Comparative Fault Special Verdict, Intentional Act Special Verdict, Punitive Damage Special Verdict, Product Liability Special Verdict Form, Strict Liability and Negligence Special Verdict, Federal §1983 Claim Special Verdict, Fair Housing Violation Special Verdict Form, Order for Judgment, Judgment, Notice of Entry of Judgment, Bill of Costs, Affidavit in Support of Bill of Costs, Notice of Taxation of Costs

Post-Trial

Notice of Appeal, Petition for Leave to Appeal, Docketing Statement, Transcript Order Form, Brief Cover Sheet, Certificate of Mailing, Notice of Motion after Verdict, Motion after Verdict, Motion after Verdict Brief, Precedent Index

VIII. FORMS

Form 1-01 120-Day Countdown Calendar

A.	120 days:	Perform a Refreshing Review of Entire File. See Ch. 1, <i>File Review, Proof Rubric, Trial Logs, and Checklists</i> .
B.	110 days:	Scout Discovery Requests to Fill the Gaps. See Ch. 3, <i>Discovery and Investigation to Fill Gaps in Proof Rubric</i> .
C.	100 days:	Analyze the Big Picture. See Ch. 4, <i>Strategies, Themes, Budgets, and Jury Considerations</i> .
D.	90 days:	Attempt Settlement. See Ch. 5, <i>ADR and Settlement</i> .
E.	75 days:	Review New Discovery Responses and Follow Up. See Ch. 3, <i>Discovery and Investigation to Fill Gaps in Proof Rubric</i> .
F.	60 days:	Pare the Issues, and Draft Trial Briefs and Motions in Limine Consistent with Those Issues. See Ch. 6, <i>Pretrial Submissions and Conferences: Stipulations, Motions in Limine, Trial Briefs, and Jury Instructions</i> .
G.	45 days:	Decide on and Begin Assembling Visual Aids, Demonstrative Evidence, and Trial Exhibits, and Be Certain Equipment is Available. See Ch. 10, <i>Demonstrative Evidence and Tools</i> .
H.	30 days:	Draft Questions for Potential Witnesses. See Ch. 9, <i>Testimonial and Documentary Evidence</i> .
I.	20 days:	Meet with Trial Witnesses and Serve Trial Subpoenas. See Ch. 9, <i>Testimonial and Documentary Evidence</i> .
J.	15 days:	Scout the Opposition. See Ch. 4, <i>Strategies, Themes, Budgets & Jury Considerations</i> .
K.	10 days:	Confirm that Demonstrative and Trial Evidence is Prepared. See Ch. 10, <i>Demonstrative Evidence and Tools</i> .
L.	7 days:	Prepare Opening Statement, Juror Profile, Voir Dire, and Outline Closing Statement. See Ch. 7, <i>Jury Selection</i> , Ch. 8, <i>Opening Statement</i> , and Ch. 12, <i>Closing Argument</i> .
M.	3 days:	Reconnect with Witnesses.
N.	2 days:	Complete Final Review with Themes in Mind.
O.	1 day:	Rehearse, Organize, Pack, Pace.

Calendars and checklists.

You receive dozens of practical checklists—like this countdown calendar and its accompanying to-do checklist.

Idea triggers.
From theme possibilities through initial opening phrases to sentences for concluding closings, the lists will help you brainstorm possibilities for your cases.

§4:44 A Whole Lot of Themes to Choose From

- Responsibility.
- Civility.
- Truth.
- Justice.
- Greed.
- Defendant was running late.
- Quality of life.
- Good versus evil.
- Weak versus the powerful.
- Compassion.
- Consideration.
- The Defendant experimented with lives.
- Honesty.
- Courage.
- Forgiveness.
- Caring.
- Faith.
- Poor versus rich.
- Determination.
- Patience.
- Glattony.
- Staff happens.
- Perseverance.
- Sacrifice.
- Obedience.
- Pride.
- Joy.
- Hope.
- Beauty.
- Respect.
- Humility.
- Order.
- Plaintiff will never be normal again.
- Service.
- Devotion.
- Loyalty.
- Expectation
- Love.
- Lust.
- Trustworthiness.
- No objective evidence.
- Generosity.
- Excellence.
- Diligence.
- Fraud.

- Sloth.
- Why are we here?
- Reliability.
- Honor.
- Normalcy.
- Anger.
- Plaintiff was a good neighbor.
- It was just an accident.
- Credibility.
- Integrity.
- Cooperation.
- Self-discipline.

§4:45 Case-Specific Theme Ideas

Following are some suggestions of themes that may fit the unique needs of different types of cases:

QUICK TIP:

You will likely want to insert actual names or more personal titles for the Plaintiff (P) and Defendant (D).

Motor Vehicle Accident

- P: Honesty ("D claimed it was only a slight tap.")
 Consideration ("D was running five minutes late.")
- D: Just an accident ("Sometimes accidents happen through no one's fault.")
 Credibility ("P's claims just don't add up.")

Slip-and-Fall

- P: Expectations ("Customers expect warnings for known hazards.")
 Diligence ("Diligent employers check the sidewalk after a freezing rain.")

- D: Self-discipline ("We all have to watch where we walk.")
 Pride ("D took great pride in his store.")

L.I.S.T.

- P: Responsibility ("For six months, the D knew the brakes were bad.")

Abbreviated Contents

1. File Review, Proof Rubric, Trial Logs and Checklists

Reviewing Case 120 Days Before Trial, Claims and Defenses and Pleadings Index, Elements-of-Proof Rubric, Record Summaries, Working Logs

2. Trial Notebook

Process, Pretrial Notebook, Sample Checklist, Trial Tracking Aids, Format

3. Discovery and Investigation to Fill Gaps in Proof Rubric

Discovery Goals Checklist, Informal Discovery Checklists: Motor Vehicle Accidents, Medical Negligence, Premises, Products Liability, Wrongful Death

Interrogatories, Requests for Production of Documents, Requests for Production of Electronic Information,

Requests for Admissions
 Depositions: Your Client/Witness, Opposing Witness, Your Expert, Opposing Expert

Inspections and Examinations, Motions to Compel

4. Strategies, Themes, Funding, and Jury Considerations

Stepping Back, Trial Team Assignments, The Other Players, Case Themes, Opposing Party's Strategy, Special Jury Considerations, Funding Issues

5. ADR and Settlement

Checklist for Preparing the Client for ADR, The Art of Negotiation Methods for Divining an Acceptable Settlement Range, Settlement Spreadsheet, Hints for Opening Offer/Demand, Facilitating Earlier Settlements, Selecting the Evaluator, Checklist for Choosing a Mediator, Advantages and Disadvantages of

Mediation, Advantages and Disadvantages of Arbitration, Summary Jury Trial/Mini Trial, Online Settlement

6. Motions in Limine, Trial Briefs, and Jury Instructions

Narrowing the Issues, Motions in Limine and Supporting Briefs, Quick Briefing Guide, Motion-in-Limine Topics
 Jury Instructions and Verdict Forms: Beyond the Elements-of-Proof Rubric, Steps in Drafting an Instruction, Steps in Drafting a Verdict Form, Pretrial Conference Checklist

7. Jury Selection

Establishing Rapport With Jurors, Questionnaires, Jury Research, Jury Consultants, Checklist for Hiring a Jury Consultant

Key Case Considerations for Jury Selection: Case Theme Questions, Factual and Legal Issues, Witness Considerations,

Strategies, Occupations and Types of Case

Getting to Know Your Jurors: Information from the Community, Checklist of Characteristics and Attitudes, Checklist of Experiences, Basic Demographics

Juror Profile: Easy Questions About Juror Experience, More Challenging Discoveries of Characteristics and Attitudes, Examples of Voir Dire Questions by Characteristics, Fall-Back Questions, Final Profile, Juror Selection Matrix

Voir Dire: Voir Dire Tips, The Silent Juror, Changing Juror Biases, Group Voir Dire, Alternatives to Group Voir Dire, Challenges

8. Opening Statement

Checklist of Opening Statement Goals, Theme-Reinforcing Words, Humanizing the Players, Attorney Credibility, Effective Techniques, Mistakes to Avoid

Continued on next page...

§7:43 Examples of Voir Dire Questions by Characteristics

Following are some possible questions you may want to try in order to discover which of the opposing characteristics listed above are more accurate.

Leader or follower?

- Have you served in an elected position in any civic organizations?
- Have you ever run for office/considered running for office?
- Have you ever worked as a manager?
- Do you dislike following someone else's rules?

Experienced or naive?

- Have you traveled abroad?
- Do you speak any foreign languages fluently?
- Did you ever discover that you were the victim (or attempted victim) of a scam?

Sensitive or impervious?

- Do you ever cry at sad movies?
- Are you bothered by criticism?
- Are you easily angered?
- Have you ever given money to a homeless person?
- Are you a lover of music, art, or animals?
- Do you ever feel physically ill when others are in pain?

Cautious or adventurous?

- What are your hobbies?
- Do you take part in any activities excluded by life insurance?
- Do you like wild rides at amusement parks?
- Do you regularly read the warning labels?
- Would you accept if you were offered a spot on your favorite reality show?
- Have you ever asked your boss for a raise or promotion?
- What is the wildest style choice you've made in the last year?

Humble or arrogant?

- What is your biggest accomplishment?
- Do you think that you intimidate people?
- Are you confident in your opinions?
- Do you consider yourself a specialist?
- Are you competitive?

Idealistic or cynical?

- Do you prefer movies with realistic or happy endings?
- What do you think about astrology?
- Have you ever had a lucky object?
- Do you believe in fate or coincidence?
- Is there such a thing as love at first sight?

Creative or logical?

- What types of puzzles do you enjoy?
- Have you played a musical instrument for longer than five years?
- Who in the family helps the kids with math problems?
- What was your favorite subject in school?
- Do you like a wide variety of music or mainly one style?
- Do you agree with the statement that most people take life way too seriously?

Sociable or shy?

- Do you prefer solitude over social gatherings?
- How often do you strike up a conversation with a stranger?
- What is your idea of a great night out?
- Do you try to avoid being the one to order pizza?
- Do you have lots of few friends?
- When being waited on in a restaurant, do you usually talk to the waiter about more than your order?

Trusting or suspicious?

- Do you open all of your emails?
- Have you hitchhiked in past five years?
- How many friends do you consider close enough to you to share any secret?
- Do you agree with the statement that you trust someone until given reason not to?
- Do you agree that it is really easy to know if someone is lying?
- Do you honestly answer personal questions when someone is taking a survey by phone?

Calls expert or do-it-yourselfer?

- Do you buy products unassembled or pay more to have them assembled?
- If you hear a strange noise coming from something, are you more likely to grab a tool belt or telephone?
- How many tools do you own that plug in?

Voir dire aids. Learn juror characteristics with Ms. Oowski's voir dire questions and juror questionnaires. Record and analyze your results with her juror selection matrices.

VII. FORMS: SAMPLE OPENING STATEMENTS

Form 8-01 Opening With the Theme: Effective First Lines

Following are some effective first lines:

This is a case about [e.g., a sign].

This may work well in a case in which you want to persuade the jury to ignore all the other complexities and distractions of the trial to focus on one prime cause. It also helps to simplify that cause.

The surgery was supposed to be routine.

Such a line acts like a teaser to capture the jurors' attention, while it is also aimed to make the jurors feel. Everyone experiences routine events, and thus, a line similar to this might remind jurors that the harmful event could happen to anyone.

The Plaintiff had a very unlucky day.

This opening may be used by a Defendant that needs to admit that bad things happened to the Defendant, but it was nothing more than bad luck—not an event caused by the Defendant.

The corporation said "trust me" when it invited Mary into its doors.

This opening line may work to draw the jury's attention to the great trust customers place on businesses, and the corresponding obligations which businesses must meet.

Don't let the finger pointing cause you to ignore the simple fact that [e.g., the Plaintiff was not seriously hurt.]

If one of the parties acted in a disproportionately bad way—such as by driving drunk—the opposition may be attempting to inflame the jury against the drunk driver. An opening such as this may help the jury to focus on some other facts, such as the other driver was also negligent or was not hurt very seriously. The finger pointing also may become an issue when there is more than one Defendant. As a Plaintiff's lawyer, I am often fearful when there are multiple Defendants pointing the fingers at each other that the jury may be left too confused to find anyone sufficiently negligent.

The fewer the years remaining, the more precious each one is.

At times, when an elderly person is severely hurt or killed, Defendants will emphasize the limited number of years remaining in the Plaintiff's life expectancy in an effort to limit the damages. Plaintiffs would want to turn that around to make those few years seem more precious.

Napoleon Bonaparte was reported to have said, "If you wish to be a success in the world, promise everything, deliver nothing."

This line could be used to get the jury to focus on a party's actions who is alleged to have failed to deliver on a promise. It certainly suggests a selfish motivation and greed, and thus, may also risk being too argumentative.

The simplest explanations are often the best.

Such an opening line may help the jury to focus on a simple explanation that favors your client, over a far more complex explanation offered by the opposition.

Sometimes life is more painful than death.

Catastrophic injuries can be very difficult for a jury to measure. For an injured person who has severe brain damage, lives in a permanent vegetative state, or who is so severely physically injured such that death may have been more humane, then this statement may help the jurors to put the extent of the pain and suffering in perspective.

See §8:22 regarding beginning an opening statement with your theme.

Powerful openings. Sample themes, writing suggestions, and delivery tips help you start persuasively.

Contents (continued)

9. Testimonial and Documentary Evidence

Trial Preparedness Checklist, Considering Your Witness Options, Special Needs of Your Case, Case Weaknesses

Case-Specific Evidence Checklists: Motor Vehicle, Medical Negligence, Premises, Products Liability, Wrongful Death, Property Line Dispute, Construction Dispute

Selecting Your Witnesses, Order of Proof, Anticipating the Opposition, Compiling Witness Documents

Examination of Lay Witnesses, Checklist for Preparing Your Lay Witnesses, Addressing Difficult Questions in Cross Examination

Checklist for Preparing Your Expert Witnesses, Qualifying Experts, Testimony of Scientific, Technical, and Other Specialized Knowledge, Learned Treatises, Inadmissible Facts or

Data, Expert Testimony Without an Expert

Witness Testimony Outlines: Economists, Treating Medical Experts, Defense Medical Examiners, Liability Experts

10. Demonstrative Evidence and Tools

Key Decisions, Admissibility, Learning Styles of Jurors, Displaying and Obtaining Demonstrative Evidence, Sources, Checklist for Creating Demonstrative Evidence, Types, Presentation

Case-Specific Demonstrative Evidence and Tools: Motor Vehicle, Medical Negligence, Premises, Products Liability, Wrongful Death

11. Closing Argument

Put the Puzzle Together, Checklist of Closing Argument Goals, Summation Formalities,

Summation Legal Quandaries, Outlining Techniques, Closing Argument Outline Guide, Preparing a Case-Specific Outline Discussing Damages, The Opposition's Strategy, Witness Testimony

Successful Summation Techniques: Rhetorical Questions, Stories and Personal Anecdotes, Suspense, Demonstrative Evidence and Tools, Quotes, What Is Most Important, Passion, Exchange Biases, New Twist, Stop

12. Deliberations, Verdict and Judgment

Instructing the Jury as to Procedure, Checklist of Advice for the Jury, Checklist for Trial Exhibits, Communication with the Jury, Juror Misconduct, Dealing with Misconduct Prior

to Verdict, Juror Discharge, Checklist for Drafting the Verdict Form, Checklist for Editing the Verdict Form Before Deliberations

Problem Verdicts, Impeachment of the Verdict, Judgment, Objections, Court Error List

13. Post-Trial Activities

Checklist of Post-Trial Tasks, Analyzing the Success of the Trial

Post-Trial Juror Interview Considerations, Brainstorming Questions for the Jurors, Interviewing Other Participants

Checklist of Improvements for Next Trial, Juror Profile Analysis, Jury Consultant Analysis, Post-Verdict Motions

Appeals Deadline Log, Briefing Tips, Brief Outline, Briefs of Intervenors and Amicus Curiae, Oral Argument Tips, Precedent Index



Trial Preparation Tools

Send me Beth D. Osowski's *Trial Preparation Tools* and its CD with an invoice for \$99 plus \$7.98 shipping. If not satisfied, I may return the book within 30 days. Send the annual supplements, which cost \$59.99 plus \$6.98 shipping, on the same 30-day review basis. I may cancel the annual updates at any time.

Copyright © 2009 James Publishing

Four Easy Ways to Order...

TPT1

MAIL: James Publishing, Inc. / P.O. Box 25202 / Santa Ana, CA 92799-5202 PHONE: 800-440-4780 FAX: 714-751-2709 INTERNET: www.jamespublishing.com

Prepay and save \$7.98 shipping

- Check enclosed for \$99
(CA residents add \$8.17 sales tax / Make check payable to James Publishing)
- Charge \$99 to my credit card: Visa Mastercard AMEX



Invoice option

(I do not wish to take advantage of the free shipping offer)

- Bill firm \$106.98 (\$7.98 shipping included/ CA residents add \$8.17 sales tax)
- Bill me the same

Card #: _____ Exp. Date: _____ 3(or 4)-digit security code: _____

Please complete all blanks, providing a street address for your office.

Printed Name: _____

Firm Name: _____

Office Address: _____ Suite: _____
(not residence)

City, State, Zip: _____

Telephone: (____) _____ Fax: (____) _____

Bar #: _____ E-mail: _____

Signature: _____

PRSRT STD
U.S. Postage
Paid
James Publishing

New! Streamline your trial preparation

In addition to its courtroom-tested strategies for success, Beth D. Osowski's *Trial Preparation Tools* contains 122 time-saving and omission-avoiding forms, checklists, logs, calendars, idea lists, tables, spreadsheets, and more. For example:

120-day review

- Checklist of evidence for each element in the proof rubric. \$1:80
- Checklist of logs. \$1:81
- 120-day countdown calendar. Form 1-01
- Quantifying pain and suffering form. Form 1-07
- Theme log forms. Form 1-08

Openings

- Effective first lines. Form 8-01
- Neutralizing the negatives. Form 8-04
- Introducing damages. Form 8-08
- Burdens of proof. Form 8-09

Closings

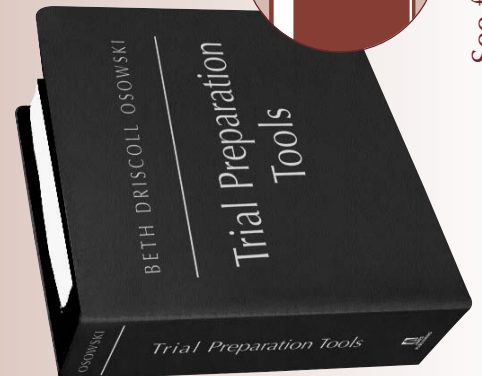
- Reminders about obligations. Form 11-01
- Arguing causation when pre-existing injuries. Form 11-05
- Arguing the damages. Form 11-06
- Sample lines to end the argument. Form 11-07

Jury

- Jury questionnaires. Form 7-02
- Voir dire questions. Form 7-05
- Juror-rating matrix. Form 7-06

And dozens more. Complete list inside.

This 600-page strategy and forms guide covers 120 days before trial to post-trial wrap-up. \$99



See front page for 9 practice tips...