

Information Tech & Communication Skills in Trial

Training Your Defense Team to Win

TCDLA

Waco, April 17, 2015

A trial is a STORY about EMOTIONS

- The reason why good BOOKS, PLAYS, SONGS and MOVIES are successful
 - Because they tell as STORY
- People naturally follow STORIES
 - Because they are EMOTIONALLY TRUE

“Trials are storytelling, nothing more... The problem is that we, as lawyers have forgotten how to speak to ordinary folks... Lawyers long ago abandoned ordinary English.”

-Gerry Spence

The Jury is your only SAVIOR

- The jury will only rescue your client if they have an emotional bond with your client
- The jury will only form the emotional bond if they trust you to tell a true story
- They will only trust you if you are totally honest with them

What is the Emotional Truth to Your Story?

- Discover the Story
- Every Client has a story
- Every Case has a story
- Discover yourself
- Be yourself

Technical Approach vs. Emotional Approach

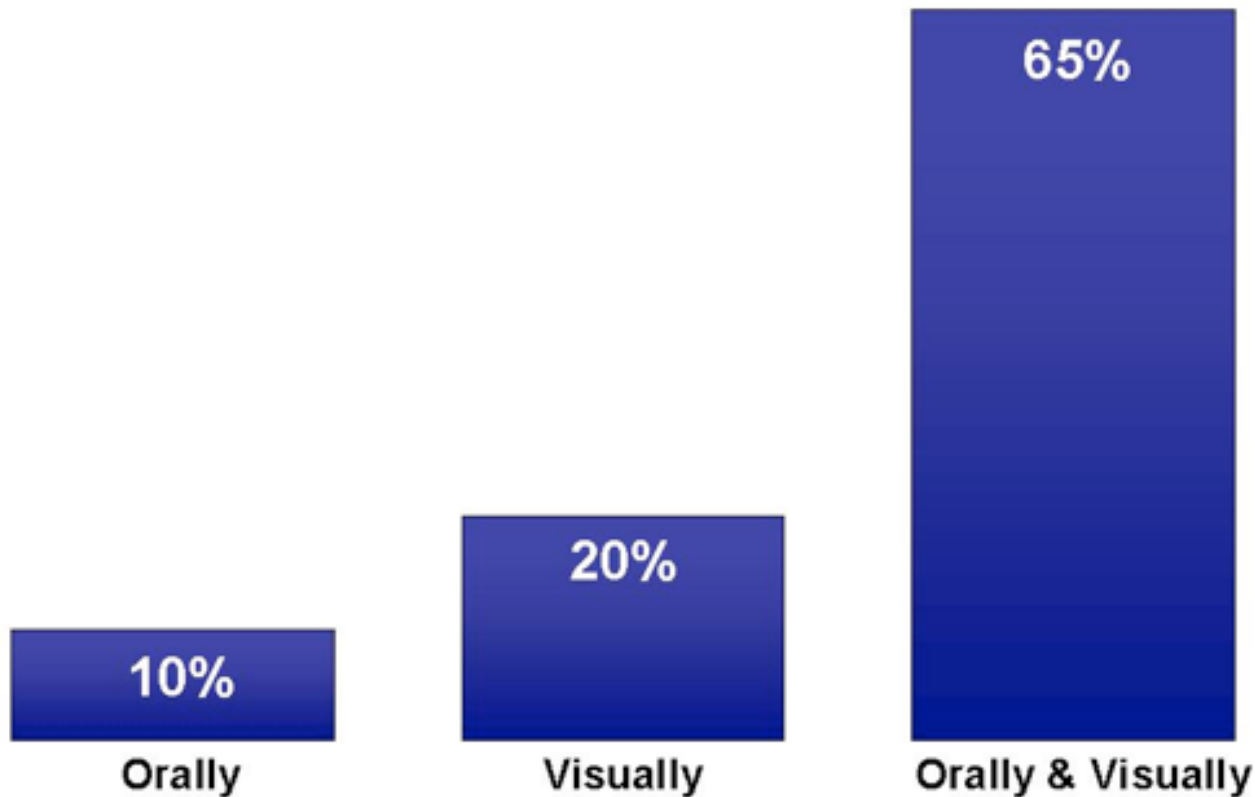
- Technical Approach
 - Analytical side of the Juror's Mind
- Emotional/Communicative Approach
 - Appeals to the Emotion Truth of the Case
 - People make decisions based on there emotions
 - Why was Tony Soprano the Hero?

Technical Approach

- Power point display of questions
 - Using Power Point to focus attention on issues
- Jury Selection Apps

Are you going to remember this?

Retention After 72 Hours



1. H. Weiss and J. B. McGrath, *Technically Speaking: Oral Communication for Engineers Scientists and Technical Personnel*, New York: McGraw-Hill 1963.

Emotional Approach to Voir Dire

- **What if you had no Strikes?**
 - Communicate as if you didn't
- Building a relationship with your jury
- Share who you are
- Listen, Listen, Listen
- Rethink:
 - Educate/Eliminate

Voir Dire

- Identify **Danger Points**
- Where does the Danger come from with me?
- Share my **fear**
- Invite Jurors to share/show theirs
- **Accept** and **honor** the Jurors gifts
- Build a **Tribe**
- Include Yourself and Client in the **Tribe**

All Groups are Unique

- Treat your panel like:
 - An individual
 - Living, breathing organism
- You are part of the panel
- The Judge and prosecutor are NOT part of the group

Example of Power Point Voir Dire

Lets talk!

- Are you the right Juror?
- Is this the right case?
- Why is your job important?
- No wrong answers?
- If you don't talk, we wont know if you are right for the job.

**Who thinks Armando Ramirez
is Not Guilty?**

What is the “Presumption of Innocence”?

- Mr. Ramirez sits before you **not guilty**
- This is Bexar County’s law suit
- Do we have to prove anything in this case?

What does it mean to “presume”?

- Webster’s Dictionary:
 - to expect or assume especially with confidence

When does “Presumption of Innocence” begin and end?

- Begins: NOW
- Ends: at the END of the case

What can you assume or presume about this case?

- You must assume Armando is not guilty!
- Can you assume anything else about the case?
- When will you make up your mind about this case?

Are there Two Sides to a Story?

- When should you decide who's story is correct?
- After you hear both sides!

**Is there a difference between
not guilty and innocent?**

Burden of Proof:
Proof Beyond Reasonable Doubt

Armando Ramirez's Proof?

- What does Armando have to prove in this case?

Armando Ramirez's Proof

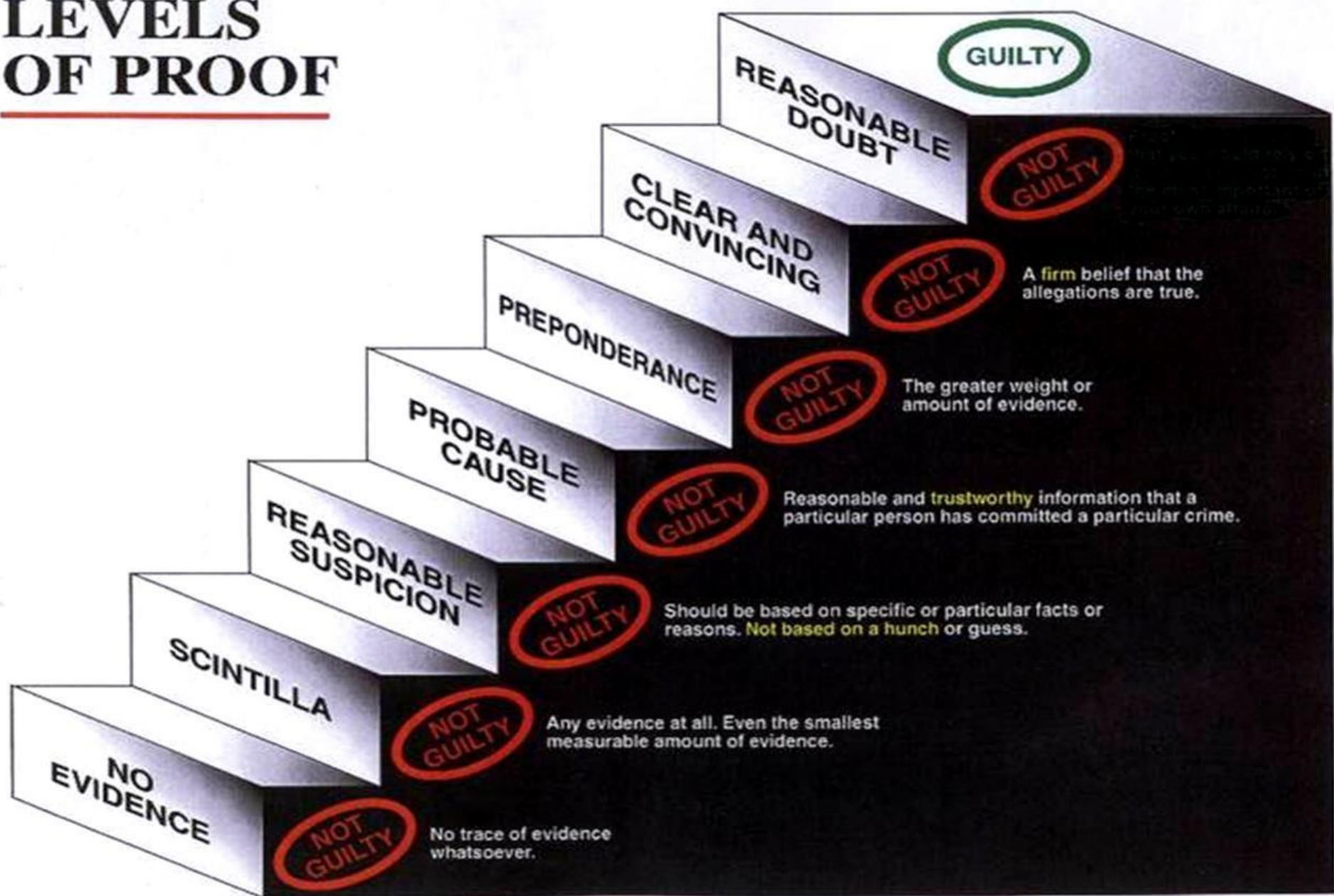
**NOTHING! NOTHING!
NOTHING!**

- He is PRESUMED INNOCENT
- He is ASSUMED INNOCENT

What is Proof Beyond Reasonable Doubt?

- Do you have a doubt about the proof?
- Are you a reasonable person?
- How much proof is enough?

LEVELS OF PROOF



How much Reasonable Doubt is needed for acquittal of “DWI”?

- Is the presumption of innocence different in an DWI case?

**Is there doubt in the
prosecutors case?**

Are you a reasonable person?

NOT SURE = NOT GUILTY

Does an accused person need to testify?

- Why would an accused person not testify?
- What does it mean to have the right to remain silent?

Does the defense have to put on any evidence?

- Why wouldn't the defense have to present evidence?
- Why wouldn't defense witnesses want to come testify?

Have you ever been accused?

- Accused by enemy?
- Accused by misinformed person?
- How does it feel to be wrongfully accused?
- What would you do?

A Good Defense

- Do you want a good lawyer?
- Does a fighting lawyer mean you are guilty?
- Shouldn't innocent people fight just as hard or harder?

Do CRIMINALS have too many rights?

**Do CITIZENS have too many
rights?**

**Do YOU have too many
rights?**

Don't you want to be fair?

- Is the Presumption of innocence fair?
- Is the Burden of Proof fair?
- Is the Right to Remain Silent fair?
- What if you were on trial, would you want fairness?

Jury Selection Apps

- iJuror
 - Jury Tracker
 - Jury Strike
 - iJury
-
- Help manage information quickly
 - Works on iPad or iPad mini
 - Some work on android systems

iJuror:

Keep track of your panel without all of those sticky-notes. Keep information on perspective jurors...

iPad 8:37 PM 83%

Dislike - 28 Year Old, Caucasian Female with No Kids...

26 Year Old		Alaskan Native			Some High School	Like
27 Year Old	Male	Asian	Married		High School Grad	Maybe
28 Year Old	Female	Caucasian	Single	No Kids	Some College	Dislike
29 Year Old		Hispanic	Divorced	1 Kid	Bachelor Degree	
30 Year Old		Native American		2 Kids	Masters Degree	

N/A			N/A
No Police in Family			No Prior Jury Service
Police in Family	N/A	N/A	Grand Jury - Verdict
	No Prior Arrest	Not Prior Victim	Criminal Jury - Verdict
	Prior Arrest	Prior Victim	Civil Jury - Verdict

Peremptory Us Dismiss for Cause Peremptory Them

Delete Juror

Switch to Notes Mode

Home

10/04/2010 - The State Vs. Jones



0 Peremptory Them



0 Peremptory Us



0 for Cause

All Dismissed Jurors

Choose Trial to Show

Juror Stats



Graph Juror Demographics

LitigationWorld
TechnoScore A+

Home

Enter your custom juror questions below

Have you ever filed a civil suit because of a car accident?

Save

Import Questions from another Trial

Reorder or Delete Questions Below

Enter Custom Questions Per Trial

LitigationWorld
TechnoScore A+

1. Do you favor gun control?



Jury Tracker:

Allows you to input the facial expressions of jurors and track how they are responding to different parts of the trial.



Facial
expressions,
Body language,
Personality,
RED FLAGS

Main Menu Juror Observation SAVE

Joe

Plaintiff Presenting
Plaintiff Total Time: 00:01:58

Plaintiff Status: [Icons]

Facial Expressions: [Smiley, Neutral, Sad, Angry, Disgust, Fear, Shock, No]

Takes Notes	Attentive	Eye Contact	Body Language	Watches Time	Fidgets	Day Dreams
[Icon]	[Icon]	[Icon]	[Icon]	[Icon]	[Icon]	[Icon]

Prediction: [A] [Z] [?]

Personality: Follower Leader None

Key Juror: ON

Flag: [Red] [Green] [Blue]

Notes :
03-DEC-2010 18:39:02 Smiles with witness, Body Language Open, Fidgets

Enter Custom Notes Below :
[Text Area]

Note : Please go to Reports for prior entries.

Note : Custom Note should be less than 50 characters.

Jury Strike



Set up your Panel

AT&T LTE 1:17 PM 30%

jury strike Start New Case

1. Set Up 2. Questions 3. General VD 4. Individual VD 5. Strike Jury 6. Seat Jury

Customize the arrangement of your jury box by setting the parameters below:

Case Name

Venue

Judge

Jurors Called

Row Width Seats

Seating Direction

View Venire

Start New Case My Cases My Questions Juror Profiles

Edit the Panel

AT&T LTE 1:18 PM 30%

jury strike Start New Case

1. Set L

Custo

Case N

Judge

Row W

at Jury

Venire Preview X

31	32	33	34	35	36	37	38	39	40
21	22	23	24	25	26	27	28	29	30
11	12	13	14	15	16	17	18	19	20
1	2	3	4	5	6	7	8	9	10

Edit Venire

Enter Questions

Input the General Questions

The screenshot shows a mobile application interface with a dark red header and a white modal dialog box in the center. The header displays 'AT&T LTE', '1:20 PM', and '30%' battery. The modal dialog has a close button 'X' in the top right corner. Inside the modal, the title 'General Question' is followed by a text input field containing 'Who has been a party to a lawsuit?'. Below this, the section 'Related Follow Up Questions (Individual Voir Dire)' includes a red 'Edit' button and a text input field with 'Were you a plaintiff or a defendant?'. At the bottom of the modal are two buttons: 'Add Follow Up Question' and 'Submit'. The background of the app shows a list of questions and a bottom navigation bar with buttons for 'Start New Case', 'My Cases', 'My Questions', and 'Juror Profiles'.

AT&T LTE 1:20 PM 30%

jury strike

1. Set U at Jury

X

General Question

Who has been a party to a lawsuit?

Related Follow Up Questions (Individual Voir Dire) Edit

Were you a plaintiff or a defendant?

Add Follow Up Question Submit

Start New Case My Cases My Questions Juror Profiles

General Questions

AT&T LTE

1:21 PM

30%

jury strike

1. Set Up

2. Questions

3. General VD

4. Individual VD

5. Strike Jury

6. Seat Jury

1. Who has been a party to a lawsuit?
☒ Read

31	32	33	34	35	36	37	38	39	40
21	22	23	24	25	26	27	28	29	30
11	12	13	14	15	16	17	18	19	20
1	2	3	4	5	6	7	8	9	10

Add Question

Start New Case

My Cases

My Questions

Juror Profiles

Individual Questions

The screenshot shows the 'jury strike' app interface. At the top is a red header with the app name 'jury strike' and an information icon. Below this is a navigation bar with six tabs: '1. Set Up', '2. Questions', '3. General VD', '4. Individual VD', '5. Strike Jury', and '6. Seat Jury'. The '4. Individual VD' tab is selected. The main content area is divided into two panels. The left panel is a list of jurors from JUROR 1 to JUROR 10. JUROR 1, Sam Smith, is highlighted with a green thumbs-up icon. The right panel displays the profile for JUROR 1 - Sam Smith, including a thumbs-up icon, occupation (Farmer), age (20), and education (High School). Below this, there are sections for 'Notes' (containing the text 'Said that he doesn't trust lawyers.') and 'Follow Up Questions' (containing the question '1. Who has been a party to a lawsuit?' with a sub-bullet '• Were you a plaintiff or a defendant?'). At the bottom of the right panel is a 'View/Update Profile' button and a close icon. The bottom of the screen features four red buttons: 'Start New Case', 'My Cases', 'My Questions', and 'Juror Profiles'.

jury strike

1. Set Up 2. Questions 3. General VD 4. Individual VD 5. Strike Jury 6. Seat Jury

JUROR 1 - Sam Smith JUROR 2 JUROR 3 JUROR 4 JUROR 5 JUROR 6 JUROR 7 JUROR 8 JUROR 9 JUROR 10

JUROR 1 - Sam Smith

Occupation: Farmer Age: 20 Education: High School

Notes

Said that he doesn't trust lawyers.

Follow Up Questions

1. Who has been a party to a lawsuit?
• Were you a plaintiff or a defendant?

View/Update Profile

Start New Case My Cases My Questions Juror Profiles

View profile

AT&T LTE 1:22 PM 30%

jury strike

1. Set U

JUROR 1

JUROR 2

JUROR 3

JUROR 4

JUROR 5

JUROR 6

JUROR 7

JUROR 8

JUROR 9

JUROR 10

at Jury

View profile

X

Name

Occupation

Age

Race

Marital Status

Education

Spouse's Name

Spouse's Occupation

Submit

Start New Case **My Cases** **My Questions** **Juror Profiles**

Strike list

jury strike

1:24 PM 30%

1. Set Up 2. Questions 3. General VD 4. Individual VD 5. Strike Jury 6. Seat Jury

31	32	33	34	35	36	37	38	39	40
P	D	23	24	25	26	27	28	29	30
P	12	D	14	D	P	17	P	D	P
X	P	3	D	5	X	7	D	9	P

Stricken By

D Defendant P Plaintiff X Challenge for Cause

Seat Jury

Start New Case My Cases My Questions Juror Profiles

Final Jury



iJury

Example Case

12:13 AM

Group Score/Notes

101

7 / 7

Scott Golden

65

9 / 9

Eugene Graham

15

26 / 16

Julia Desai

111

30 / 28

Danny Davidson

100

26 / 9

Ronnie Cowan

226

14 / 17

Geraldine Davis

176

27 / 20

Kristin Alexander

173

24 / 30

Donna Adkins

53

12 / 12

Jason Cross

91

41 / 21

Kelly Bowman

59

52 / 43

Pat Allen

105

28 / 5

Patricia Abrams

Close Patricia Abrams

Patricia Abrams 105

50 years old Social Security

Teacher African American

Divorced Middle College

Unknown Male Female

Pre-Court Score 28 / 5

30

24

18

12

6

0

+

-

iJury

- iJury has a valuable Rating System
- You can assess positive or negative points to jurors

Track Statistical Information



Emotional Approach to Opening

- Set the Scene
- Identify the Villain
- Trust and Betrayal
- The damage to client – PRISON
- Retribution and Justice – client deserves Freedom

Example of Using Power Point in Opening

Tragic Accident

Eugene is **NOT GUILTY** because:

1. Eugene was **NOT** intoxicated
2. Eugene did **NOT** cause the accident
3. Eugene is **NOT** responsible for the death

Eugene was **NOT intoxicated**

- Eugene was **not intoxicated at any point** on Dec 17, 2004
- Eugene had **only 2** cocktails **long before** the collision
- He is **SOBER** on the roadside video
- His **Blood Alcohol Concentration** was virtually **ZERO** at the time of the collision
- Eugene **NEVER lost the normal use** of his **mental** or **physical faculties**

Eugene did **NOT** cause the **collision**

- The collision was **UNAVOIDABLE**
 1. Intoxication did not cause the collision because Eugene was **not intoxicated**
 2. Eugene's driving did not cause the collision, an **unavoidable mechanical reason** is to **blame**
- Eugene could **not** have **prevented** the collision
- It was not Eugene's fault
- **Experts will testify**

Eugene did NOT cause the death

1. Intoxication did not cause the death because Eugene was not intoxicated
2. Eugene's driving did not cause the death, another unfortunate situation is to blame
 - Eugene could not have prevented the death
 - It was not Eugene's fault
 - Experts will testify

Eugene was arrested because a child died

- The first office that came in contact with Eugene said he had “faint” odor of alcohol
- Once it was clear a child died everything changed
- Since there was a **fatality**, there had to be an **arrest**
- Despite the fact that he did not show signs of intoxication

Who is Eugene Malloy?

- A **single father** that raised two girls from ages 5 and 9
- Now his girls have college degrees
- A proud **retired veteran** of the **U.S. Air Force**
- He is decorated and served in the Gulf War and in Kosovo
- He has **NO CRIMINAL HISTORY**
- Never had a DWI conviction
- Is **not** a heavy drinker, only drinks socially

What was life like for Eugene in Dec 2008

- Eugene lives in Converse
- Eugene was Retired
- Eugene was raising his daughter who was a senior in high school
- Eugene was single
- Sometimes on Wednesday he would attend **“Working Women’s Wednesday”** at a restaurant and bar, “Cabos”

What really happened on Dec. 17, 2008

- **Cold, wet, rainy** day
- His daughter got home from soccer practice around 5 pm
- He waited for her to get home
- They talked about her day and he left between 5 pm and 6 pm
- He had nothing to drink before he left
- Converse to Cabo on Bandera via 1604
- Trip took about 45 min

What did Eugene Malloy do at Cabo Bar and Grill?

- He arrived at Cabo around 6 pm
- People knew him there, he liked to socialize on Wednesdays.
- He would usually leave around 8 or 9
- He ordered one vodka and cranberry at 6:44
- He ordered one vodka and cranberry at 8:03
- Witnesses will testify
- Receipts prove it

Eugene was **NOT intoxicated**

- Eugene was **not intoxicated at any point** on Dec 17, 2004
- Eugene had **only 2** cocktails **long before** the collision
- His **Blood Alcohol Content** was virtually **ZERO** at the time of the collision
- Eugene **NEVER lost the normal use** of his **mental** or **physical faculties**

The Collision on Bandera

- The road was wet and slippery
- Visibility was bad and misty
- Eugene lost control during a lane change due to a mechanical issue
- Both vehicles swerved
- The Safari Van lost control and rolled
- Experts will testify

The Collision on Bandera

- Collision occurred at **9:19** pm
- There were 5 people in the Safari Van
- Tragically one person was ejected
- **Eugene** did **not** cause the **death**
- **Intoxication** did **not** cause the **death**
- Experts will testify about the true cause of death

After the Collision

- First officer notice “faint” odor of alcohol
- Eugene was immediately taken into custody without determining intoxication
- One hour later, special DWI officers arrived
- Eugene consented to take the SFST
- He was given and passed the SFST
- Experts will testify

Eugene **PASSED** the **SFST**

- **NO clues** on HGN test
- **NO clues** on the Walk and Turn test
- **NO clues** on the One Legged Stand
- Watch for yourself
- Your **EYES DON'T LIE**
- Eugene **PASSED** even with 80% disability for hip hip replacement
- Experts will testify
- Eugene **consented** to a **Blood Draw**

Major problem with the **Blood Test Result**

- Blood Alcohol Concentration Test result is .15
- Twice the legal limit
- At 11:36, two hours after the collision
- Three hours after last drink
- **IMPOSSIBLE**, something is very wrong!
- Experts will testify

Major problem with the **Blood Test Result**

- The result should be 0.0 BAC at 11:36
- If only one drink at 6:44 and one drink at 8:03
- **IMPOSSIBLE**, something is very wrong!
- Experts will testify

Signs and Symptoms of 0.15 BAC

- Emotionally unstable
- Loss of critical judgment
- Impairment of perception memory and comprehension
- Decreased sensory response
- Increased reaction time
- Reduced visual acuity
- Sensory-motor incoordination
- Impaired balance
- Drowsiness

Watch the SFST Video

- He looks sober
- He shows NO signs and symptoms of 0.15 BAC
- He shows signs of 0.0 BAC
- Experts will testify

Time line

- **Left home** in Converse around **5:30ish** pm
 - At least 45 minute drive
- Arrive at **Cabo** after **6** pm
- **One** drink at **6:44** pm
- **One** drink at **8:03** pm
- **Left** Cabo around **9:00** pm
- Collision **9:19** pm
- **SFST** around **10:20**
- **Blood Draw** at **11:36**

Eugene is **NOT GUILTY** because:

1. Eugene was **NOT** intoxicated
2. Eugene did **NOT** cause the accident
3. Eugene is **NOT** responsible for the death

TRAGIC CASE

- Horrible accident
- No one is to blame
- **Don't** make it a **Double Tragedy**

Using Technology to Show the Lies

- Enhance video
- Compare and contrast various views

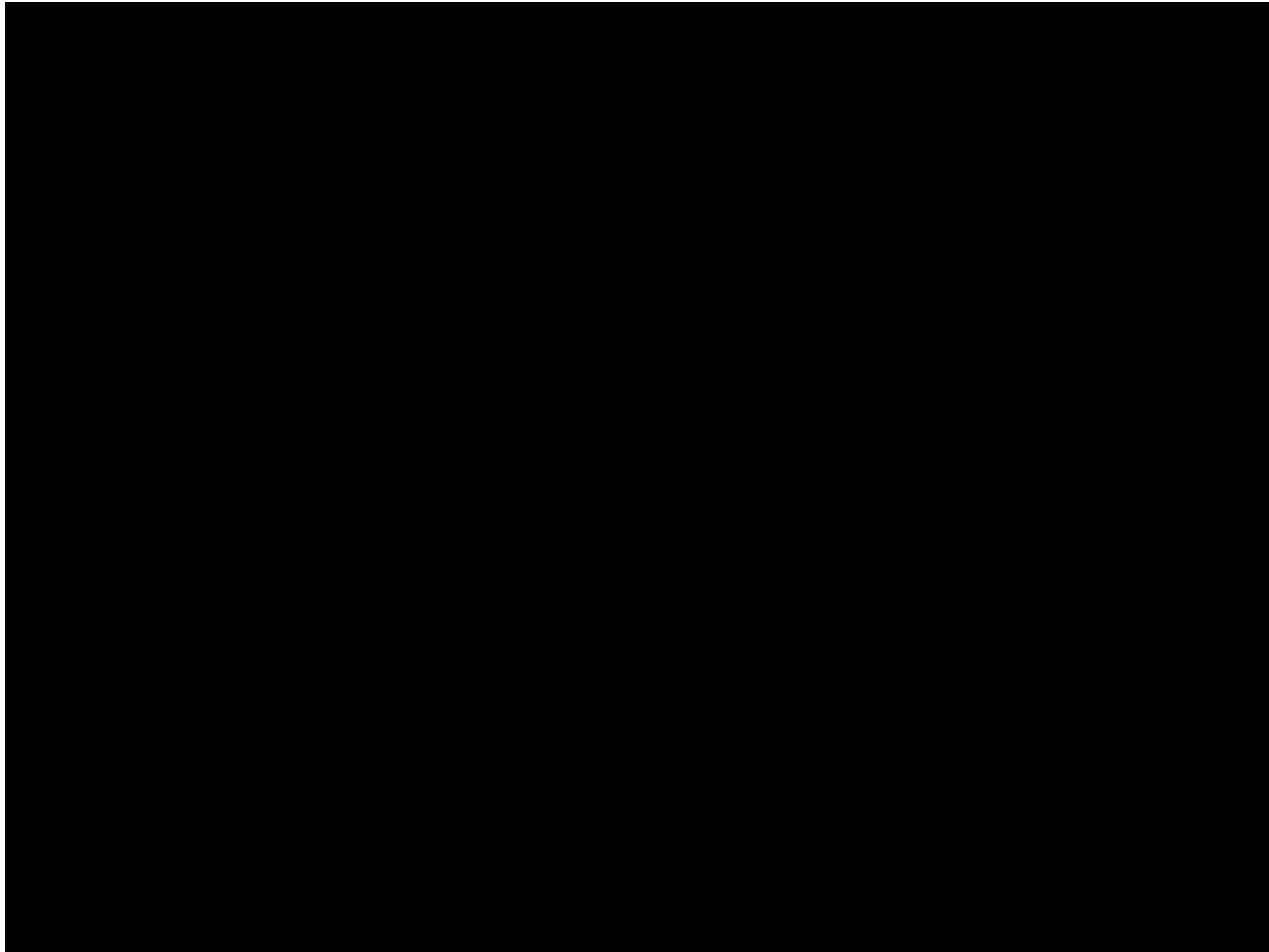
State's DWI Video

- Clues on HGN
- Not walking heel to toe
- Bad turn X
- Sway X

Get the News Footage

- Art. 38.111. NEWS MEDIA RECORDINGS. **Extrinsic evidence of the authenticity** of evidence as a condition precedent to the admissibility of the evidence in a criminal proceeding **is not required** with respect to a **recording that purports to be a broadcast by a radio or television station** that holds a license issued by the Federal Communications Commission at the time of the recording. **The court may take judicial notice of the recording license** as provided by Rule 201, Texas Rules of Evidence.

Get the News Footage







Direct-X

- **Story** USE PRESENT TENSE
- Big Picture
- Witness
- **Show Me – (Action)** USE PRESENT TENSE
- Scene Setting
- Let the witness set the scene
- Role Reversal with the witness to show the story
- FOCUS IS ON THE WITNESS
- “(Witness), would it help you to give more accurate testimony for you to come down here and show me what happened”
- Put important things in **Action**

Cross-X

- Story - Know the story, tell the story
- Empathy
- You don't have to be in control
- Serve someone else other than yourself during cross. Serve the jury
- Sometimes you have more control when you give up control
- Sometimes you have the most power when you are the most vulnerable
- Give up the fear that it is a competition of credibility with the jury
- When you get angry at a witness, you become a surrogate for the jurors emotions
- You NEVER need to get angry

Cross-X

- The problem with cross is we focus on the LIE and not the WHY
- Don't say "So" or "but" those are argumentative
- Prior to Cross, think of the witness:
 - Describe who they are and why they are afraid of
 - Think of how you can relate to them
- Tell a story, no legalize
- Witness is saying "Wah, wah, wah"
- Exercise: "Once upon a time, CROSS" ready a nursery book to the jury
- Turn the witness around so his back is to the jury

Closing

- Closing is the Story of the Trial
- Find the Trial Villain
- Id the Villain's role in Betrayal
- Righteous Indignation/ Moral Outrage
- Associate betrayal to Universal truths or themes
- Know and ask for the Justice that you want
- Show how justice Benefits jurors
- Transfer responsibility to jurors

**Weave Technology in to
your Communication**



**KEEP
CALM
AND
VICTORY
IS OUR'S**

Closing

- Don't share closing with other lawyer
- One lawyer for Voir Dire, Opening, Closing
-
- Don't hold back things for closing
- Have a Call to Action
- Decision making is driven by emotions
- Stifling emotions are NOT calls to Action
- Best call for action is when the jurors feel a combination of Anger and Disgust
- Stifling emotions
 - Sadness
 - Sorrow
 - Surprise
 - Shame
- Empowering emotions
 - Anger
 - Disgust
 - Happiness
 - Fear