

# **Trial Attorneys As Fact Witnesses**

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# **You are looking for answers to...**

Who...

What...

When...

Where...

Why...

# **You are not looking for...**

Speculation...

Supposition...

Maybes...

Possibilities...

Probabilities...

# Must develop the human intel...



# Range of experiences....



# Range of experiences....

Nice.....Asshole

Transparent.....Ambiguous

Honest.....Lying sack of shit

Gives a shit.....Cannot remember name

Talkative.....Evasive

Communicative.....Secretive

Client focused.....Self-interested

Anxious.....Calm

# Prep...and more prep

- Obtain and review the attorney's file, pay particular attention to:
  - Timesheets (if you have them);
  - Memos;
  - Correspondence;
  - E-file requests.
- Obtain and review court file and transcripts
- Use those items to create a calendar of events

# Other Sources....

- Westlaw and Lexis Search...
  - As a term, party and attorney search
- Case Net ...
  - Check name changes
- Nexis search
- Local Legal News
- Files of investigators/paralegals/experts



# Bar Information...

Current Name: **Laurence E. Komp**

Current Registration: Active

Admission: 05/16/1994

Discipline and Sanction History: No

Registration Number: 0060142

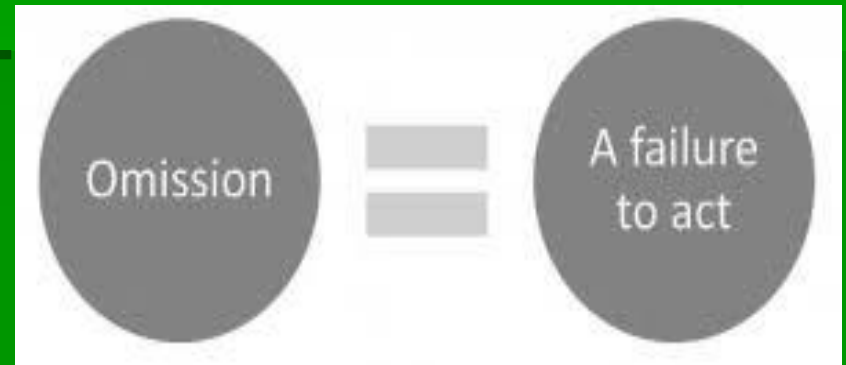
# What you must do...

- Mine all the above materials for gems and the grist that you will need to keep them in line...

4/24/95	Call to court reporter, re: changing hearing date; calls with co-counsel and DA's office	.5
4/25/95	Call to DA's office	.3
5/2/95	Draft order, re: changing hearing date	.5
5/17/95	Call with Judge's office, Clerk's office, re: order	1.0

# What are you looking for...

## Crimes of Omission



# Omissions...

- **Make sure you use their words.**
  - And then the how, what, where and why?
- Always remember your anchor is the facts contained in:
  - Memos
  - investigative notes
  - E- requests
  - Pleadings

# No Perry Mason Moment (Really, its not about you!)

- Do Not Be Cute
- The earth will not change its axis if you try for the home run, but your ego will allow this attorney to confabulate, or if not confabulate, become ensconced in an unhelpful narrative ...



# Look for gems in the file...

- Next Slide....
  - Memo of first visit with client;
  - Written by a law clerk that had failed the bar exam; and,
  - Went unsupervised to see client.

# Look for gems in the file...

DATE: 9-18-01

RE: JAN MICHAEL BRAWNER, JR.

SUBJECT: INTERVIEW WITH MR. BRAWNER ON THIS DATE

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On this date, I drove to the Tate County Jail in Senatobia to interview Mr. Brawner, discuss the state's discovery response with him, and a possible plea deal with the state. Michael and I went through the discovery response and discussed it. I then presented Michael a possible plea deal. In exchange for his plea of guilty, we would attempt to have the state drop its pursuit of the death penalty. The Judge would then have the option to either sentence Michael to life with parole or life without parole. Michael rejected this possible plea offer. He said it was his desire to suffer the death penalty than to spend the rest of his life in prison. He would choose death over life. We discussed this in detail, and at the end of our discussions, Michael did not change his

# How did it end?

- “I left Michael on good terms with him thanking me for talking with him. I wished him well.”



# My response to that memo....

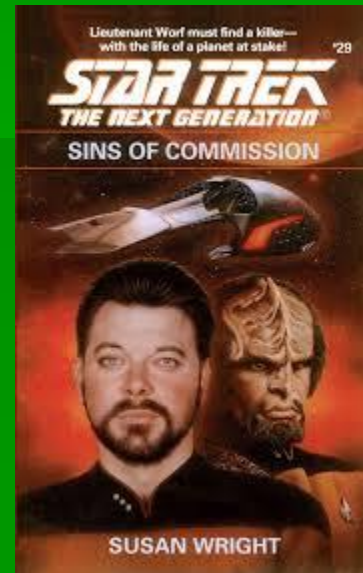
- Whiskey
- Tango
- Foxtrot!



# What are you looking for...

## Sins of Commission

Taking an action ...  
that should  
not be taken...



# Things not to do...

- Maintain the integrity of the trial file as it comes to you....
  - To avoid later issues, have someone index it and certify that this is how the file came to you....
- DO NOT REORGANIZE IT!



# Trial counsel interviews...

- Very defensive, very guarded, and either very anxious or very apathetic...
- Do not lead – keep it open...
- Always ask them about court imposed or prosecutorial cheap shots...
- Remind them that they owe a continuing duty of loyalty to your client...

**...these open ended  
questions will invariably...**



Bear Fruit



or

Hang Them

# Memory problems...



# Shut the hell up...





# Gold Standard...

Handling trial counsel is an incredible amount of work,  
and as a result:

- 1) Preparation is of absolute significance;
- 2) Preparation for lines of questioning at a hearing rests upon an extensive and thorough investigation – premised upon a strong foundation of properly conducted interview;
- 3) Preparation is key to anticipating where the attorney may try to hurt you and preparing to proactively limit those efforts and cushion any damage; and,
- 4) You must be prepared to commit the time and resources to get that accomplished for your client.