



How to Win a Case: Thinking Big Picture from the Very Start

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Presenters



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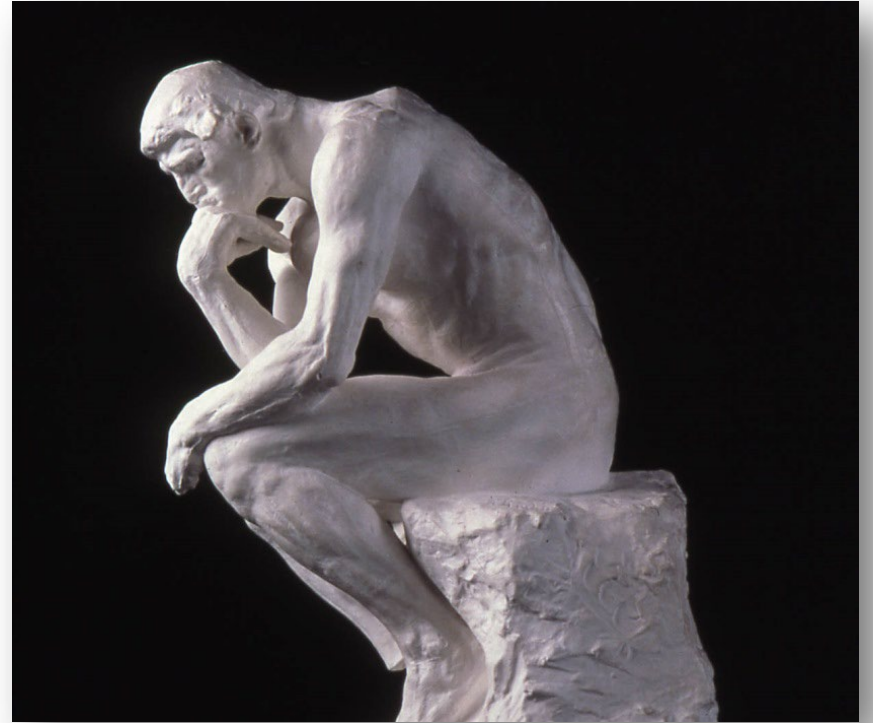
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Key Points

- 1. Define your objectives**
- 2. Establish a game plan**
- 3. Co-defendants, third parties and other varmints**
- 4. Fund the pot**
- 5. Plan your trial strategy early**

Define Your Objectives

- **Fundamental considerations**
 - Client goals (what is a “win”?)
 - Stakes/Cost
 - Other proceedings
 - Precedent
 - Adversary’s goals



Define Your Objectives

- **Initial case assessment**
 - Liability
 - Damages
 - Injunction
 - Who decides?
 - Venue
 - Motion? Cert? Trial? Appeal?
- **Settlement**
- **Timing**



Establish a Game Plan

- **Develop the best trial hand**
- **Put your adversary at risk**
- **Impact third parties for leverage**



Establish a Game Plan

- **Develop the best trial hand**
 - Improve your forum (removal arbitration)
 - Early motions, Anti-SLAPP
 - Stay (IPR, Collateral proceedings)
 - Aggressive discovery
 - Early mock exercises
 - Summary Judgment
 - Establish best evidence/defenses
 - Class certification issues
 - Experts



Establish a Game Plan

- **Put your adversary at risk**
 - Counterclaims
 - Cross-claims/related parties
 - Publicity
 - Discovery from management, board of directors
 - Spoliation
 - Cost



Establish a Game Plan

- **Impact third parties for leverage**

Who:

- Board members
- Customers
- Vendors
- Lenders
- Business partners
- Investors

How:

- Cross-claims
- Discovery
- Investigation
- Publicity



Co-Defendants, Third Parties and Varmints

- **Joint Defense Agreements**
- **Adding third parties**
- **Dealing with miscreants**



Fund the Pot (Other People's Money)

- **Sources:**
 - Co-defendants
 - Third Parties:
 - Lawyers
 - Accountants
 - Other Professionals
 - Insurers
- **Strategy:**
 - Can you wait?
 - Who gets money?
 - Will it simplify/complicate settlement?



Plan your jury trial strategy early

- 1. Mock trial exercises**
- 2. Witnesses you need at trial to tell your story**
- 3. Quality over quantity when it comes to themes and arguments**
- 4. Design around issues**
- 5. Nature of damages rebuttal**

Questions?
