



Garden State CLE
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GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

INTRO TO MURDER

With

Robert Ramsey

Author, NJ Arrest, Search & Seizure Review 2012-13

And

Lewis Korngut

***Assistant Prosecutor, Chief of Homicide at
Mercer County Prosecutor's Office***

Program description

Some people devote their lives to tracking down murderers and putting them away where they can't hurt anyone else. Lewis Korngut is a career prosecutor who strives to put murderers where they belong, in prison. This 1.0 credit CLE will show you all the tools he uses.

I. Introduction

- **26 years as a prosecutor at Mercer County Prosecutor's Office and Attorney General's Office**
- **Tried 2-3 capital murder cases, including *State v. Timmendequas*, 161 NJ 515 (1999), at Mercer County Prosecutor's Office**
- **Went to Attorney General's Office – tried 1 murder case there**
- **Returned to Prosecutor's Office – handles 15 files and tries cases**

II. The Job of a Prosecutor

- **As a prosecutor/public servant – helping people, the family of the victim to bring them justice – cannot bring the deceased back but bring finality and justice**
- **Want to do justice for the victims**
- **Client for the prosecutor is the State of NJ and the people of the state – the client is not the victim or victim's family**
- **Need to understand a balance – as much as you want to prosecute but also have to remember to bring justice to victim's families but also to those who are accused and possibly wrongfully accused – huge discretion to bring charges or not**
- **Abide by RPC 3.8 – Special Responsibilities of a Prosecutor – individual justice in individual cases – when you know that a person is guilty but you don't have the evidence, then you have to tell the victim's family that may not have enough evidence to bring the case now but will continue to investigate**
- **Case is only as good as the witnesses who are out there – people are reluctant to come forward**
- **Gather as much evidence as possible and then evaluate the case**

III. Visiting the Crime Scene

A. "On Call" Prosecutors

- **Duty of prosecutor goes to crime scenes – "on call" once a week – any time there is a homicide during "on call" week – it is the responsibility of the prosecutor to investigate and prosecute – use discretion whether to visit scene or not depending on the case**
- **Majority of times respond to crime scene because crime "comes alive" – able to see the body and where it is located and see evidence at the scene – give the feeling of how the crime occurred**
- **Going to the scene makes the prosecutor able to bring the scene to the jury during trial – brings the crime alive to the jury/fact**

- finder – visualize to the jury what it was like at the time of the homicide**
- **Majority of time the body is already gone by the time the prosecutor gets called to the scene – already at medical examiner’s office or hospital**
- B. Responsibilities at the crime scene and investigation**
- **Professional detectives from local municipality and prosecutor’s office who are trained homicide detectives and know what physical evidence to take (casings, fingerprints)**
- **However, prosecutor has the authority to interject if he/she feels that something specific should be addressed**
- **Legal advisor during a search – detectives will turn to prosecutor for legal advice**
- **Prosecutor’s office has turned to obtaining search warrants for most circumstances to cover the case just in case an issue must be litigated**
- **Miranda issues will be brought to the prosecutor for legal advice**
- **Standard Miranda warnings**
- **All defendants must be videotaped**
- **Prosecutors will evaluate whether a suspect clearly invoked his rights under Miranda or not**
- **The ambiguities become an issue – the unclear invocation of someone’s rights and what the obligation is of the detective during that time**
- **If suspect is under the influence of drugs or alcohol – the officer asking questions has to be knowledgeable about indicia of intoxication or drug use – on video – so the jury will see the conduct of the suspect – must still go through Miranda rights and make sure suspect understands his rights and questions being asked – knowing and voluntary waiver of rights**
- IV. Death Penalty Cases**
- **Cases are won and lost in jury selection**
- **If you cannot get a NJ jury to vote for death in the most extreme cases, then we are wasting our time to have the death penalty**
- **Cost-benefit analysis of having the death penalty**
- **The demographics of NJ residents makes it difficult to obtain the death penalty**
- **There should be some cases, some circumstances where we should be able to prosecute people and utilize the death penalty**

- **People argue that the prosecutor gets too much discretion – differences between counties makes it unfair**
- **The death penalty will come back after a horrible incident with a huge public outcry**
- **Committee in each prosecutor’s office to determine whether a case is death eligible – whether the office would present the case as a death eligible case to the grand jury**
- **Practical aspects of prosecuting a case as a death penalty case – time and resources**
- **You must have your heart and soul in these cases in order to do this type of work – “take cases home”**
- **Job can be frustrating – but help a lot of people and brought justice**
- **No regrets on death penalty cases – prosecuted 3 death penalty cases – 2 returned a death verdict (Supreme Court overturned convictions) and one was hung jury**
- **Difficult for jurors to make the ultimate decision in the death penalty cases**

V. The Basics of Murder and Prosecuting a Murder Case

- **NJ definition of murder**
 - **NJSA 2C:11-3: criminal homicide constitutes murder when: (1) the actor purposely causes death or serious bodily injury resulting in death; or (2) the actor knowingly causes death or serious bodily injury resulting in death.**
- **Act purposely or knowingly – state of mind**
- **Don’t need to explain to a jury – in most cases, defendant uses a deadly weapon – so it is not whether murder occurred – it is whether it is murder or a lesser offense, such as aggravated manslaughter**
- **Current case: defendant in a dispute with victim, grabs victim and throws victim onto the ground, victim regains consciousness at the scene but then goes to the hospital and dies from bleeding on the brain – the issue then becomes what to charge**
 - **Manslaughter**
 - **Victim had cocaine in his system and was on a blood thinner – issue then becomes whether there was an intervening cause that lead to the victim’s death**
- **A murder trial is an aggravated assault where the victim died**

- **Pressure is high – media attention – but ultimately murder is an aggravated assault and someone dies**
- **In NJ – we follow the “UDDA” – Uniform Determination of Death Act – NJ adopted**
 - **New Jersey’s legal definition of death includes “brain death.” *Strachan v. John F. Kennedy Memorial Hospital*, 109 NJ 523, 513-533 (1988)**
 - **Section 1 of the UDDA defines death as “an individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead...”**
- **There are hybrid situations where a body is being “kept alive” in order to harvest the organs but the person is still clinically dead – not the usual situation in a murder case**
- **Autopsy is required under the law – manner and cause of death is determined**
- **Not a homicide until the medical examiner or a doctor says that the person is dead**
- **Must prove the person is dead beyond a reasonable doubt as an element of the offense**
- **4 options as a defense in a homicide case:**
 - **“I didn’t do it”**
 - **“I had to do it” (self defense)**
 - **“I’m not responsible” (diminished capacity, insanity, some mental defense)**
 - **“It’s not a murder” (lesser offense, i.e. aggravated manslaughter or manslaughter)**
- **If you are going to prosecute for murder, look for one of three things:**
 - **Purposely: he wanted this person dead and it was a conscious object for this victim to die**
 - **If defendant shot someone numerous times – common sense tells us that this type of behavior illustrates that the person’s conscious object was to cause the victim’s death**
 - **Maybe the defendant stabbed someone one or two times but not near vital organs, then getting into issue of whether person intended to cause serious bodily injury or to cause death**

- **Must evaluate injuries sustained by the individual as to whether it was purposely or knowingly causing SBI or death**
- **Must prove what was in the defendant's mind through inferential evidence – must explain to the jury – evaluate surrounding circumstances – use common sense and every day experiences to determine what defendant's intent was**
- **Need a cogent story so that jury understands it**
- **Knowingly: defendant knew that his action was certain to bring about death or practically certain to bring about death**
 - **Defendant goes to a door and knocks, victim answers and slams door in his face, defendant starts shooting through the door – reckless? Or certain that someone on the other side is going to be killed**
 - **Law school example: Someone goes into a plane and detonates a bomb on a plane and then the plane crashes and people die – practically certain that actions will bring about death**
- **Felony Murder (robbery, sexual assault, arson, burglary, kidnapping, carjacking, criminal escape, terrorism)**
 - **Don't have to prove any state of mind for this type of offense**
 - **Strict liability offense**
 - **Makes the case easier to prosecute**
 - **Interesting issues, i.e. whether actor can be responsible for murder of co-conspirator during course of felony; responsible for death of patron in the bank who is shot by the security guard trying to shoot at the bank robbers**
 - **When robbers are escaping the police are chasing and officer has heart attack and dies – “flight therefrom” – technically it is a homicide but must look at totality of circumstances**
- **Purposely and knowingly may blend together**
- **Need to be sure that jury understands the law and the facts and weave the facts into the relevant law**
- **Murder/Life without parole – aggravating factor that used to make someone death eligible now allows for life without parole**

- **Age of victim**
- **Felony murder**
- **Murder for hire**
- **Plea bargaining is difficult because of the No Early Release Act – if you plead someone to aggravated manslaughter – must do 85% of sentence before eligible for parole**
- **Knowing vs. Reckless**
 - **Must determine what is reckless conduct – not an intent of knowing or purposeful**
 - **One level of recklessness is the likelihood of someone dying is very high – aggravated manslaughter/vehicular homicide**
 - **Second level of recklessness is mere possibility of death – manslaughter**
 - **Depends on circumstances to determine degree of recklessness – could be careless as well**
 - **Someone can run a stop light and ends up killing someone – is this reckless? Is this careless?**
 - **Reckless = jail**
 - **Careless = no criminal conduct**
 - **How can you prove reckless – just because someone is dead from a motor vehicle accident does not necessarily equate to recklessness or criminal conduct**
 - **Fine line between carelessness and recklessness**
 - **Someone's speed can be a factor to determine recklessness; time of day; people in the area – this is what juries are for – to determine the community's feelings on these issues**
 - **People have different considerations of recklessness v. careless**
- **Must think like a juror when determining the charges for a particular case – how is the jury going to see the fact pattern? How is the jury going to perceive it?**
- **Jury appeal is very important – you must understand the demographics of the jury pool – if you don't believe in your case then neither will the jury**
- **Prosecutors have discretion to take cases or not and using experience to determine whether to spend resources**
- **Unsympathetic victim – jury appeal?**
 - **Have to argue that there is a fine line – vigilante justice is not allowed – everybody is protected by the law equally – Lady Justice is blind**

- **The law is blind as to who the victim is**
- **May influence plea offer**
- **Have to sit down with the family and discuss the possibility of a not guilty because of decedent's background and jury will take that into consideration even though they are not supposed to – no guarantees**
- **Practical nature of these situations**
- **Part of the proofs is the background of the victim – even though the jury should not be considering it**
- **A plea is a guaranteed result – must explain to victim's family**
- **Victim's family should be in the courtroom – sitting on State's side of the courtroom**
- **Victim's family member may be a witness – sequestration issues depending on what they have to testify to – judges may relax sequestration for victim's family**
- **Victims' Rights Act just recently allowed family to have picture of victim in courtroom – but would not suggest it**
- **Autopsies – must separate yourself from evidence; cannot be emotional**
 - **Fine line between probative and prejudicial**
 - **Have some sort of reasoning to show photos to the jury**
 - **Better to use diagrams as opposed to photographs – but sometimes need to show photographs to prove the elements of the offense, i.e. state of mind**
- **Case where body was dumped – husband had stabbed wife but body was so decomposed could not determine how many stab wounds or the depth of the wounds; defendant had other wives and other prior acts of domestic violence and that evidence was admitted at trial – motive evidence**