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ANATOMY OF TRIAL, A TRIAL SKILLS SERIES:
PART 1 -JURY SELECTION

Live Streamed – September 10, 2021

Materials by:
Andrew J. Smiley, Esq.

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Office: 518.438.8987 | Fax: 518.435.0881
AlbanyInvestigation.com
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New York State Department of State: 11000045080

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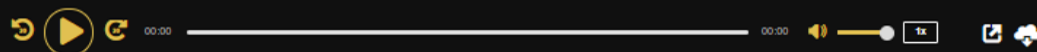
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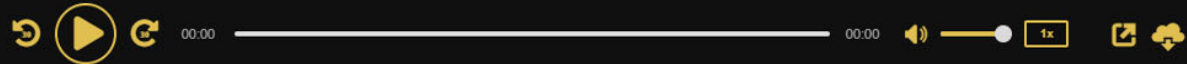
INTERVIEW

CHRIS PAIZ, ESQ

Season 2 – Episode 9: Racing Cars with Chris Paiz

JANUARY 26, 2021 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - Andrew interviews Chris Paiz, a fellow lawyer and car racing enthusiast.



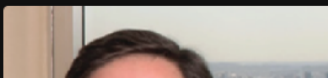
INTERVIEW

DA ERIC GONZALEZ

Season 2 – Episode 8: An Interview with Brooklyn, New York's DA Eric Gonzalez

DECEMBER 29, 2020 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - In this week's episode, Andrew welcomes the District Attorney of Kings County in Brooklyn, New York, Eric Gonzalez.



Season 2 – Episode 7: Fighting Through the Dark

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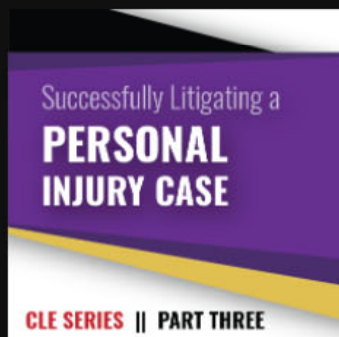
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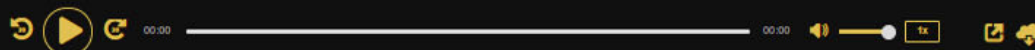
-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.



CLE: How to Successfully Litigate a Personal Injury Case Series Part 3

MARCH 9, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES

- Video Episode - Andrew discusses adversaries, the preliminary conference, and the initial discovery. 1.5 CLE credits.





The Mentor, Esq.



Hosted By

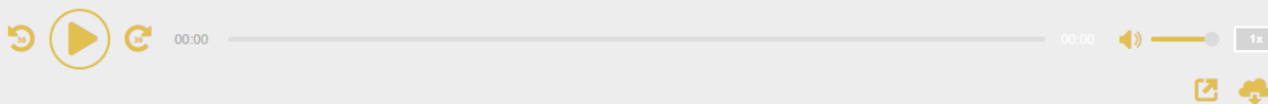
Andrew J. Smiley, Esq.

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CLE: Taking the “Umm...” out of SUM/UM Coverage

FEBRUARY 23, 2021 / ADMIN / CLE EPISODES, SEASON 2, VIDEO EPISODES / COMMENTS OFF



In Andrew's current CLE series, “How to Litigate a Personal Injury Case”, the topic of SUM and UM coverage has come up several times. In fact, it came up so many times during the Q&A sessions that the Mentor, Esq. worked with the Academy to do an entire CLE on the topic!

If you are listening and would like to answer the poll in the program for **1.5** CLE credits, you can do so by emailing the Academy at info@trialacademy.org.

Contact Andrew Smiley at andrew@thementoresq.com.

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- › [CLE: How to Successfully Litigate a Personal Injury Case Series Part 2](#) February 9, 2021



CLE - Taking the “Umm” out of SUM/UM Coverage





Andrew J. Smiley, Esq.
Smiley & Smiley, LLP
122 East 42nd Street, NYC 10168
212.986.2022
asmiley@smileylaw.com
www.smileylaw.com
www.thementoresq.com

CURRICULUM VITAE

Education:

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence For The Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation.

Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District & Southern District of New York
- United State District Court of Vermont.

Organizations/Affiliations:

- New York State Academy of Trial Lawyers
 - Immediate Past President (May 2018- May 2019)
 - President (May 2017 – May 2018)
 - President-Elect – (April 2016- May 2017)
 - Vice President – 1st Dept. (July 2013-May 2016)
 - Executive Committee (May 2019 – present)
 - Board of Directors (2013- present)
 - Judicial Screening Committee (2013- present)
- New York City Trial Lawyers Alliance
 - Chairman of Board of Governors (July 2017 – July 2019)
 - President (July 2015 – July 2017)
 - Vice President (June 2013 – July 2015)
 - Treasurer (June 2011 – June 2013)
 - Secretary (June 2009- June 2011)
 - Board of Directors (2000-present)
- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
 - Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- The American Association for Justice
- American Bar Association
- Brooklyn Law School Alumni Association
- National Order of Barristers
- Friars Club - member

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Continuing Legal Education (CLE) Presentations:

How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit, New York State Academy of Trial Lawyers, February 3, 2021

How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File, New York State Academy of Trial Lawyers, January 6, 2021

Brick by Brick: Building a Personal Injury Practice, New York State Academy of Trial Lawyers, December 10, 2020

Working with Experts to Build Your Case, New York State Academy of Trial Lawyers, October 8, 2020

Fitness Industry Liability: Gyms, Trainers and Waivers, The Mentor Esq. Podcast, September 8, 2020

Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court, New York State Academy of Trial Lawyers, June 9, 2020

Crisis Management - The Corona Virus Pandemic, The Mentor Esq. Podcast, April 9, 2020

Do You Have a Federal Tort Claims Act Case in Your Office, New York State Academy of Trial Lawyers, December 10, 2019

Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts, New York State Bar Association, September 9, 2019

Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective, The Defense Association of New York, March 12, 2019

Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions, The Defense Association of New York, January 31, 2019

Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives, The Defense Association of New York, September 17, 2018

Punitive Damages – What to Plead, What to Prove: Medical Malpractice, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

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Continuing Legal Education (CLE) Presentations Continued:

Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA, New York State Bar Association, October 11, 2015

Effectively Using Experts in Personal Injury Cases, Lawline, October 8, 2015

Killer Cross Examination Strategies, Clear Law Institute, April 21, 2015

Powerful Opening Statements, Clear Law Institute, January 13, 2015

The Dram Shop Law: New York Liquor Liability, Lawline.com, November 20, 2014

Killer Cross Examination Strategies, Lawline.com, November 20, 2014

Trial Techniques: Tricks of the Trade Update, Lawline.com, October 14, 2014

Personal Trainer Negligence Update, Lawline.com, October 14, 2014

Trial Techniques – Part 2: Cross- Examination & Closing Arguments, Brooklyn Bar Association, May 15, 2014

Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination, Brooklyn Bar Association, May 7, 2014

Health, Fitness & Adventure Sports Liability, New York State Bar Association, August 1, 2013

Direct Exams: How To Make Your Witnesses Shine, New York State Academy of Trial Lawyers, May 6, 2013

Opening Statements: A Recipe for Success, Lawline.com, August 7, 2012

“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement, New York State Academy of Trial Lawyers, April 1, 2012

Preparing the Construction Accident Case, New York County Lawyers Association, March 26, 2012

The Nuts and Bolts of a Trial, New York State Academy of Trial Lawyers, October 24, 2011

Personal Trainer Negligence, Lawline.com, March 22, 2011

Effectively Using Experts in Personal Injury Cases, Lawline.com, May 4, 2011

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Continuing Legal Education (CLE) Presentations Continued:

Trial Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011

Practice Makes Perfect: Learn to Practice Like a Pro, Lawline.com, January 18, 2011

Jury Selection 101, New York State Academy of Trial Lawyers, December 14, 2010

Practical Guidelines for Getting Items into Evidence, Lawline.com, March, 2010

Winning Your Case: Trial Skills that Count, Lawline.com, August 21, 2009

Television Appearances – Legal Commentary:

Fox News Channel

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
 - America's News Room
 - Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

Tennis, Porsche Club, Sim Racing, Yoga, Cooking

Section 202.33 Conduct of the Voir Dire.

- (a) Trial Judge. All references to the trial judge in this section shall include any judge designated by the administrative judge in those instances where the case processing system or other logistical considerations do not permit the trial judge to perform the acts set forth in this section.
- (b) Pre-Voir Dire Settlement Conference. Where the court has directed that jury selection begin, the trial judge shall meet prior to the actual commencement of jury selection with counsel who will be conducting the voir dire and shall attempt to bring about a disposition of the action.
- (c) Method of Jury Selection. The trial judge shall direct the method of jury selection that shall be used for the voir dire from among the methods specified in subdivision (f) of this section.
- (d) Time Limitations. The trial judge shall establish time limitations for the questioning of prospective jurors during the voir dire. At the discretion of the judge, the limits established may consist of a general period for the completion of the questioning, a period after which attorneys shall report back to the judge on the progress of the voir dire, and/or specific time periods for the questioning of Panels of jurors or individual jurors.
- (e) Presence of Judge at the Voir Dire. In order to ensure an efficient and dignified selection process, the trial judge shall preside at the commencement of the voir dire and open the voir dire proceeding. The trial judge shall determine whether supervision of the voir dire should continue after the voir dire has commenced and, in his or her discretion, preside over part of or all of the remainder of the voir dire.
- (f) Methods of Jury Selection. Counsel shall select prospective jurors in accordance with the general principles applicable to jury selection set forth in subdivision (g) of this section and using the method designated by the judge pursuant to subdivision (c) of this section. The methods that may be selected are:
- (1) "White's method," as set forth in subdivision (g) of this section;
 - (2) "struck method," as set forth in subdivision (g) of this section;
 - (3) "strike and replace method," in districts where the specifics of that method have been submitted to the Chief Administrator by the Administrative Judge and approved by the Chief Administrator for that district. The strike and replace method shall be approved only in those districts where the Chief Administrator, in his or her discretion, has determined that experience with the method in the district has resulted in an efficient and orderly selection process; or
 - (4) other methods that may be submitted to the Chief Administrator for use on an experimental basis by the appropriate Administrative Judge and approved by the Chief Administrator.
- (g) Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

APPENDIX E

Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

A. General principles applicable to jury selection. Selection of jurors pursuant to any of the methods authorized by section 202.33(e) of the Rules of the Chief Administrator shall be governed by the following:

- (1) If for any reason jury selection cannot proceed immediately, counsel shall return promptly to the courtroom of the assigned trial judge or the Trial Assignment Part or any other designated location for further instructions.

(2) Generally, a total of eight jurors, including two alternates, shall be selected. The court may permit a greater number of alternates if a lengthy trial is expected or for any appropriate reason. Counsel may consent to the use of "nondesignated" alternate jurors, in which event no distinction shall be made during jury selection between jurors and alternates, but the number of peremptory challenges in such cases shall consist of the sum of the peremptory challenges that would have been available to challenge both jurors and designated alternates.

(3) All prospective jurors shall complete a background questionnaire supplied by the court in a form approved by the Chief Administrator. Prior to the commencement of jury selection, completed questionnaires shall be made available to counsel. Upon completion of jury selection, or upon removal of a prospective juror, the questionnaires shall be either returned to the respective jurors or collected and discarded by court staff in a manner that ensures juror privacy. With Court approval, which shall take into consideration concern for juror privacy, the parties may supplement the questionnaire to address concerns unique to a specific case.

(4) During the voir dire each attorney may state generally the contentions of his or her client, and identify the parties, attorneys and the witnesses likely to be called. However, counsel may not read from any of the pleadings in the action or inform potential jurors of the amount of money at issue.

(5) Counsel shall exercise peremptory challenges outside of the presence of the Panel of prospective jurors.

(6) Counsel shall avoid discussing legal concepts such as burden of proof, which are the province of the court.

(7) If an unusual delay or a lengthy trial is anticipated, counsel may so advise prospective jurors.

(8) If counsel objects to anything said or done by any other counsel during the selection process, the objecting counsel shall unobtrusively request that all counsel step outside of the juror's presence, and counsel shall make a determined effort to resolve the problem. Should that effort fail, counsel shall immediately bring the problem to the attention of the assigned trial judge, the Trial Assignment Part judge or any other designated judge.

(9) After jury selection is completed, counsel shall advise the clerk of the assigned Trial Part or of the Trial Assignment Part or other designated part. If counsel anticipates the need during trial of special equipment (if available) or special assistance, such as an interpreter, counsel shall so inform the clerk at that time.

B. "White's Method"

(1) Prior to the identification of the prospective jurors to be seated in the jury box, counsel shall ask questions generally to all of the jurors in the room to determine whether any prospective juror in the room has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(2) After general questions have been asked to the group of prospective jurors, jury selection shall continue in rounds, with each round to consist of the following: (1) seating prospective jurors in the jury box; (2) questioning of seated prospective jurors; and (3) removal of seated prospective jurors upon exercise of challenges. Jurors removed for cause shall immediately be replaced during each round. The first round shall begin initially with the seating of six prospective jurors (where undesignated alternates are used, additional prospective jurors equal to the number of alternate jurors shall be seated as well).

(3) In each round, the questioning of the seated prospective jurors shall be conducted first by counsel for the plaintiff, followed by counsel for the remaining parties in the order in which their names appear in the caption. Counsel may be permitted to ask follow-up questions. Within each round, challenges for cause shall be exercised by any party prior to the exercise of peremptory challenges and as soon as the reason therefor

becomes apparent. Upon replacement of a prospective juror removed for cause, questioning shall revert to the plaintiff.

(4) Following questioning and the exercise of challenges for cause, peremptory challenges shall be exercised one at a time and alternately as follows: In the first round, in caption order, each attorney shall exercise one peremptory challenge by removing a prospective juror's name from a "board" passed back and forth between or among counsel. An attorney alternatively may waive the making of a peremptory challenge. An attorney may exercise a second, single peremptory challenge within the round only after all other attorneys have either exercised or waived their first peremptory challenges. The board shall continue to circulate among the attorneys until no other peremptory challenges are exercised. An attorney who waives a challenge may not thereafter exercise a peremptory challenge within the round, but may exercise remaining peremptory challenges in subsequent rounds. The counsel last able to exercise a peremptory challenge in a round is not confined to the exercise of a single challenge but may then exercise one or more peremptory challenges.

(5) In subsequent rounds, the first exercise of peremptory challenges shall alternate from side to side. Where a side consists of multiple parties, commencement of the exercise of peremptory challenges in subsequent rounds shall rotate among the parties within the side. In each such round, before the board is to be passed to the other side, the board must be passed to all remaining parties within the side, in caption order, starting from the first party in the rotation for that round.

(6) At the end of each round, those seated jurors who remain unchallenged shall be sworn and removed from the room. The challenged jurors shall be replaced, and a new round shall commence.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Designated alternate jurors shall be selected in the same manner as described above, with the order of exercise of peremptory challenges continuing as the next round following the last completed round of challenges to regular jurors. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

C. "Struck Method"

(1) Unless otherwise ordered by the Court, selection of jurors shall be made from an initial Panel of 25 prospective jurors, who shall be seated randomly and who shall maintain the order of seating throughout the voir dire. If fewer prospective jurors are needed due to the use of designated alternate jurors or for any other reason, the size of the Panel may be decreased.

(2) Counsel first shall ask questions generally to the prospective jurors as a group to determine whether any prospective juror has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires further elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(3) After the general questioning has been completed, in an action with one plaintiff and one defendant, counsel for the plaintiff initially shall question the prospective jurors, followed by questioning by defendant's counsel. Counsel may be permitted to ask follow-up questions. In cases with multiple parties, questioning shall be undertaken by counsel in the order in which the parties' names appear in the caption. A challenge for cause may be made by counsel to any party as soon as the reason therefor becomes apparent. At the end of the period, all challenges for cause to any prospective juror on the Panel must have been exercised by respective counsel.

(4) After challenges for cause are exercised, the number of prospective jurors remaining shall be counted. If that number is less than the total number of jurors to be selected (including alternates, where non-designated alternates are being used) plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties (such sum shall be referred to as the "jury Panel

number"), additional prospective jurors shall be added until the number of prospective jurors not subject to challenge for cause equals or exceeds the jury Panel number. Counsel for each party then shall question each replacement juror pursuant to the procedure set forth in paragraph (3).

(5) After all prospective jurors in the Panel have been questioned, and all challenges for cause have been made, counsel for each party, one at a time beginning with counsel for the plaintiff, shall then exercise allowable peremptory challenges by alternately striking a single juror's name from a list or ballot passed back and forth between or among counsel until all challenges are exhausted or waived. In cases with multiple plaintiffs and/or defendants, peremptory challenges shall be exercised by counsel in the order in which the parties' names appear in the caption, unless following that order would, in the opinion of the court, unduly favor a side. In that event, the court, after consulting with the parties, shall specify the order in which the peremptory challenges shall be exercised in a manner that shall balance the interests of the parties. An attorney who waives a challenge may not thereafter exercise a peremptory challenge. Any Batson or other objections shall be resolved by the court before any of the struck jurors are dismissed.

(6) After all peremptory challenges have been made, the trial jurors (including alternates when non-designated alternates are used) then shall be selected in the order in which they have been seated from those prospective jurors remaining on the Panel.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Counsel shall select designated alternates in the same manner set forth in these rules, but with an initial Panel of not more than 10 prospective alternates unless otherwise directed by the court. The jury Panel number for designated alternate jurors shall be equal to the number of alternates plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

Historical Note

Sec. filed Dec. 7, 1995 eff. Jan. 1, 1996.

Amadeo - July Selection

I. welcome - Intro - ^{big II - OSM Amadeo} Overview - motor - CAC [audi]
NO PCF
J.A.R. ^{Series injuries}
Learn A BSI
Same Q's - listen to G
Concerns - when come to front - Private
GC - we believe evidence will show fault of A -

II. derives CAC motorcycle
- been on one
- own one
- friend or family

CAROL Lynch
smack it
failing to
use reasonable
care while
driving CAC
~~photos~~
~~photos~~

Think motorcycle at fault

CAC accident

Any specific thoughts
about motorcycle operators?

Been P
LNP: GCP.

III. Chile - Immigrant - accented

- 1st or 2nd gen immigrant?
- Problem w/ immigrant bringing claim
- strong accent - back w/ him so he doesn't need to use translator?

Even playing field
OK
Think
it
must be
@?
fault?

promise to keep an open mind?

July Selection (2)

II. Injuries

- 2nd Phase
- medical testimony
- IT testimony

- ~~Upper limb~~ lower left leg
- ① - Fractured rib fib
 - ② - Rod
 - ③ - 3 surgeries
 - ④ - Fasciotomy
- ③ stroke
|
complaint

- Fractured leg? - surgery?] you or close friend/loved one
- Respirator?] long stay
- Impact on your life / friend / family

- Stroke?
- Physical Therapy
- Orthopedist?
- Neurologist?

III. News Source? 0

Jury Selection (3)

IV. Thoughts on concept of Compensation

- OK w/ position to award money

- prove case

- CAN'T ring bell

- civil justice system

If prove serious injuries from accident
any problem compensating him?

Thoughts: - Limit no
matter what?
- restricts

How feel about fact it bringing
lawsuit? Going to ask to
be compensated.

Poice officer

been sued

wife student

case

Dept Commerce

3 boys

Ben victim

Brother Marky Account

case

case

case

case

case

suod

+

Paulen Chm 32

Dunya Enriquez 55

Lin Leung 76

Christi Scarlett 29

from P.R. School Aide

Isabelino Calato 67

single hotel engineer 1876 son

Douglas Sandy 40

Drive for enterprise

marketing

case problem with the giving

Doesn't drive alone a weapon

Jacob #12

may relate to A

case knows intersection

Refined gender 1 met alone testified in CT

Ch1 and times

Jacob #3

Husband drove 2 on the 5 q.als! been sued

Stephen has exciting motorcycle

from Brazil

Ben victim

Ins. 2nd

Pauls apt 3/14

Laurel General Counsel Ben sued

case

Chifon Lofton 50

Salina No 33

Antonia Bernstein 72

Denise Peralta 37

Laura Castellano 38

Leuren Simow 07 09

Husband killed by car in

Says she's been sued

with min. - smoke

Not if she can be left

case

never driven
Ch. 1
SF5
Grandma
tell to
Buckley
Forrest
muse

chronia
15 yrs ago july
Cause
not sure can be
fair
Lucina Ventana
SF
♀
Sing

Costa
Lila
4B
or
Doranna
rides
motorcycle
Yuequin SLAK

JUL
#4
Jimmie
rest. mmye
stuck nothing
27
or
Koonabit Lin

Just
#1
OK but
needs to
end only
for
shutbot
Drives
reptilly
to be worse
IT for
shannon
separation
STUART Shulman
needs to
leave by
3pm
Friday

Angel girls
SF
or
pandora
Gibson
burn
Mrs
motorcycle
License
SABRINA
Colosi

June 6

Kathleen
Collins

53 ♀

(6) Dance teacher
special ed

ALT
#1

Maria
Lopes

33
♀
AA

(7) - cousin
has motorcycle
- used to
drive

cause

Doesn't drive

Friend of mine
Stanley

Semir
Pentfield

Reminds me
of Polly

ART
#12

Clara Smith

44
♀
♀

Kennan

(9) MBA
Blind

10

June 5

Margie

(2) ♀

Nikolas

Koukoulidakis

rides motorcycle
has 2 bikes

(5)

Benny

14 CLASSIC

501C
or
CRS

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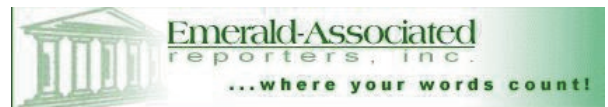
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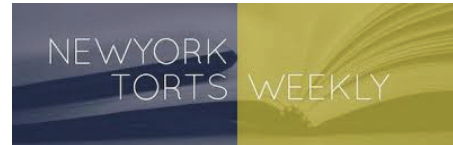
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