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HOW TO SUCCESSFULLY LITIGATE A
PERSONAL INJURY CASE SERIES –
PART 6: THE TRIAL

Live Streamed – June 2, 2021

Materials by:
Andrew J. Smiley, Esq.



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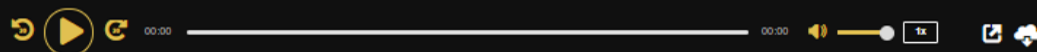
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CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

APRIL 13, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES / 01:22:36

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



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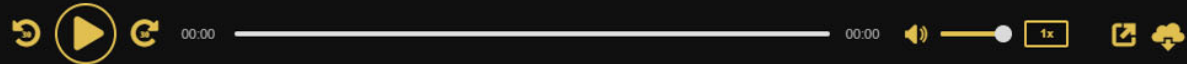
INTERVIEW

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.



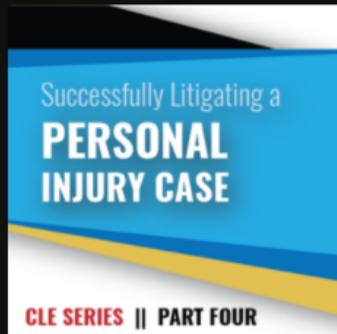
Season 2 – Episode 7: Fighting Through the Dark

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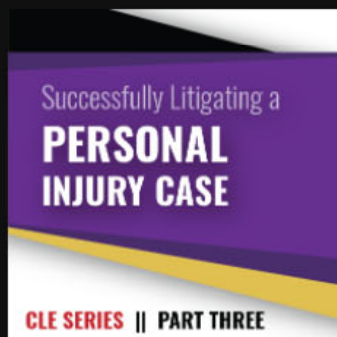
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CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

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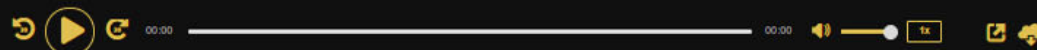
-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.



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.



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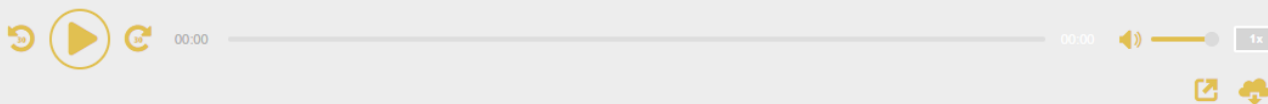
Andrew J. Smiley, Esq.

We hope you enjoy this highly rated podcast hosted by Andrew J. Smiley, Esq. and featuring interviews with other experts in law and litigation, CLE and educational series, and great legal advice.



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.

<http://www.smileylaw.com/podcast>

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- > [CLE: Taking the “Umm...” out of SUM/UM Coverage](#) February 23, 2021
- > [CLE: How to Successfully Litigate a Personal Injury Case Series Part 2](#) February 9, 2021





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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, 2021

· Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern 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

Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 3

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

Andrew J. Smiley, Esq. Curriculum Vitae, Page 4

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

Andrew J. Smiley, Esq. Curriculum Vitae, Page 5

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

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NYCourts Guide to NY Evidence

PDF Download:

[https://www.nycourts.gov/judges/
evidence/](https://www.nycourts.gov/judges/evidence/)

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Federal Rules of Evidence

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https://www.uscourts.gov/sites/default/files/evidence-rules-procedure-dec2017_0.pdf

How to Litigate a Personal Injury Case Series

Part 6- The Trial

ANDREW J. SMILEY, ESQ.
SMILEY & SMILEY, LLP
TheMentorEsq.com
asmiley@smileylaw.com

I. Jury Selection

- a. Your first impression – make it count!
- b. Be prepared – know what you want to learn about this jury that will impact your specific case
 - i. what are the weakness in your case (i.e. client was intoxicated)
 - ii. how do they feel about lawsuits
 - iii. do they have a problem giving money
- c. Look at their body language when answering
- d. Don't be long winded
- e. Dress nicely

II. Opening Statement

- a. Take Control of the Courtroom – position – movement – no podium – eye contact
- b. Your first chance to give YOUR unedited version of the case – take advantage
- c. Do Not Read Notes – EVER!!!
- d. Have a theme
- e. Prepare an Outline
 - i. Intro brief fact pattern about case

- ii. Who is your client – introduce and personalize
- iii. What happened to your client
- iv. Who is responsible and why
- v. It all Could Have been prevented
- vi. But for the Negligence of Defendant(s)
- vii. Damage to your client

III. Direct Examination

- a. Position at end of jury box
- b. Everything is for your summation basket – apple picking analogy
- c. Crisp short methodical questions – get to the point – jurors don't like long
winded questioning
- d. Must have an outline or actual questions ready so that you do not stumble
- e. Prepare witness in advance
 - i. Review flow of questions
 - ii. Review answers
 - iii. Review exhibits (photos, diagrams, reports)
 - iv. Explain how to handle objections – how to respond to leading
- f. Plaintiff/lay witness
- g. Expert witness
- h. Demonstrative Evidence

IV. Cross Examination

- a. Digest the transcript
- b. Obtain prior transcripts (expert)

- c. Google the witness
- d. Prepare the 5 to 10 points that you want to make for summation
 - i. Collateral questions (expert or lay with negative background)
- e. Courtroom position
 - i. Podium v. No podium
- f. Lead & Control the witness – make sure you get your answer
- g. Always know your last question
- h. Do not end on an objection

V. Closing Argument

- a. Organize the basket
- b. Prepare – Prepare – Prepare
- c. Outline
 - i. Brief fact overview
 - ii. Liability
 - iii. The defense argument
 - iv. damages
- d. Summarize key exhibits
- e. Prepare the courtroom
- f. Engage the jury – do not read notes
- g. Use analogies – Common Sense
- h. Empower the jury

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