

A wireframe illustration of Lady Justice, the personification of the goddess of justice. She is depicted from the waist up, holding a pair of scales of justice in her left hand and a sword in her right hand. The figure is composed of a network of thin, dark lines forming a mesh-like structure. The background is a solid dark blue with some faint, scattered white dots.

FIELD MANUAL

FOR TRIAL LAWYERS

& LITIGATORS

INTRODUCTION

A CONDENSED PRACTICE MANUAL TO HELP TRIAL LAWYERS AND LITIGATORS WIN THEIR CASES.

Before opening my own law firm, I worked for over a decade at a small personal injury firm spending countless hours preparing for and trying catastrophic injury and wrongful death cases. During that time, I became a partner in the firm and was responsible for managing the firm's tobacco litigation division. My team averaged around 3-4 tobacco trials per year between 2015 and 2020. During that time I had the privilege to represent my clients as lead counsel in approximately 12 multi-week trials.

During the 5 year period between 2015 and 2020, as lead trial attorney, my team obtained over \$100 million in verdicts for our clients. After every trial, our team got together and performed an After Action Review, something I learned when reading stories of the victories, and selfless sacrifices of United States Navy Seals, our military elite.

This book is meant to be a quick reference guide of tips and strategies that have been collected from those After Action meetings. This is not an exhaustive list of do's and don't's, but a short list of some of my top helpful strategies that have led to significant victories in the Courtroom.



GET YOUR CASE SET FOR TRIAL

SET YOUR CASE FOR TRIAL.

I know this sounds simple but I can guarantee you that if you look at your case list right now, you have cases that are not set for trial. So now is the time to get it set!

SCHEDULING ORDER.

Once the case is set for trial, you need to get a scheduling order put in place. That scheduling order will keep your case on track to get resolved.

MEET THE DEADLINES.

Once you have a scheduling order in place. You must meet the deadlines. Do not ask for extensions. Don't miss a deadline because every time you do that, you give the opposing side a reason to move the trial date or obtain a continuance.



YOUR WORK BEGINS LONG BEFORE YOU STEP FOOT IN THE COURTROOM

PRACTICE PUBLIC SPEAKING.

I was always terrified of public speaking when I was in high school, college, and law school. Some people are born naturally talented at public speaking, I am not one of those people. How do you get better at public speaking? Practice!

DON'T WALK INTO THE COURTROOM COLD.

Put yourself in situations where you must speak in front of a group of people. Between trials, find time to volunteer to speak to a group of people and practice speaking. The more you speak to a group of people and practice, the more comfortable you're going to feel. When you arrive at your next trial, the jury will be your audience. And speaking to them will be no different than the dozens of other times you spoke to a group of people.



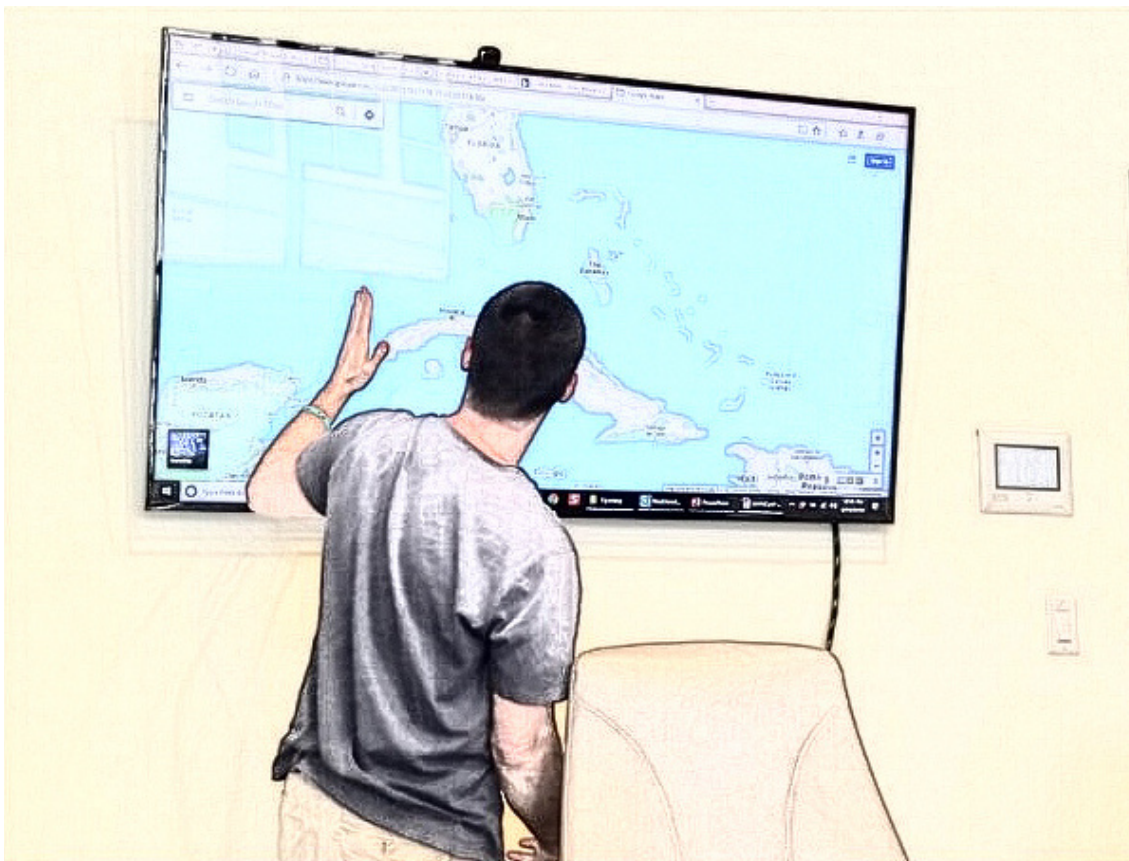
DRAFT THE JURY INSTRUCTIONS EARLY IN THE CASE

HAVE A ROADMAP FOR YOUR CASE.

By drafting a set of jury instructions early on, you will have a guide as to what you need to prove at trial. This will assist you in taking depositions, serving discovery, and preparing for trial.

MODIFY AS NEEDED.

Once you get to trial, the instructions may need a little bit of modification. But ultimately, you'll be ready and you won't be scrambling at the last minute to put the jury instructions or verdict form together.



WORK SMARTER, NOT HARDER

DEPOSITION DESIGNATIONS.

When I first started practicing, I would print out a deposition transcript and highlight all the portions of the transcript that I wanted to read or play for the jury. Then I would have my paralegal or myself type up the page and line designations. This process took forever and one of the most tedious things to do before trial when you're getting prepared. Stop doing this.

ADOPT TECHNOLOGY FOR DEPOSITION DESIGNATIONS.

If you're still doing this tedious process, please allow me to introduce you to my secret weapon - Transcript Pad. There are other options out there like Opus2 and other similar programs. The programs will allow you do designate testimony and with the push of a button convert those designations to pages and lines, which can then be served on the opposing party. Do the research and pick one of the programs. Transcript Pad works on an iPad. All testimony is located in one place and quickly searchable. This becomes extremely helpful not only during depositions, but also during trial. You will see another tactic I use with Transcript Pad during trial later on in the book.



KEEP YOUR EVIDENCE ORGANIZED

PRE-MARK EXHIBITS

We routinely admit hundreds of exhibits during our tobacco trials. This is done seamlessly because they are all pre-marked. We also exchange them in this form before trial so there are no surprises. If you want your trial to run smoothly, pre-mark your exhibits.

KNOW PREFERENCES OF JUDGE AND CLERK:

Check with your judge's clerk or assistant to find out the court's preferences. Some judges or clerks may have specific instructions on pre-marking exhibits. If they do not, prepare a list of exhibits you intend to use at trial and pre-mark the exhibits with basic names or abbreviations and create an index. Pre-marked exhibits will keep you organized and make a clear record, and the jury will appreciate a seamless examination.



KNOW YOUR AUDIENCE

WE HAVE ALL HEARD THIS, BUT SOME PEOPLE AREN'T LISTENING.

When you're presenting your opening statement, drop the legalese. Using legal jargon that the jury doesn't understand is a quick way to lose their interest. I always do my best to speak to the jury as if I'm speaking to friends or a classroom of students.

TELL THEM THE STORY.

Be yourself. Take off your "lawyer hat" because it's not authentic. More often than not, people don't want to listen to someone talking down to them during an opening statement or a closing argument. They just want to hear someone tell a great story, tell it authentically, and tell them how you really feel about your case. Be true to yourself, and I know you'll get an outstanding result.



KNOW THE JUDGE'S PREFERENCES

LEARN HOW THE JUDGE PERFORMS VOIR DIRE.

Speak to other attorneys about the judge, especially concerning how they conduct jury selection. It has been my experience that some judges are more involved than others in questioning jurors. You will also want to know ahead of time whether a questionnaire will be used and if so, what specific questions are asked. You may want to submit your own questionnaires.

PEREMPTORY CHALLENGES AND CAUSE CHALLENGES.

You want to know how that judge decides where jurors are going to sit, how he's going to conduct peremptory strikes, and cause challenges. This is critically important. There is an old saying, "there is more than one way to skin a cat." I have no idea where that saying came from, and honestly, I don't want to know. But the point is this, I have tried cases in front of many judges, and it seems like they all do jury selection differently. You want to know how they do it so you can be fully prepared.



EFFECTIVE IN-COURT TECHNOLOGY

SCOUTING OUT THE COURTROOM.

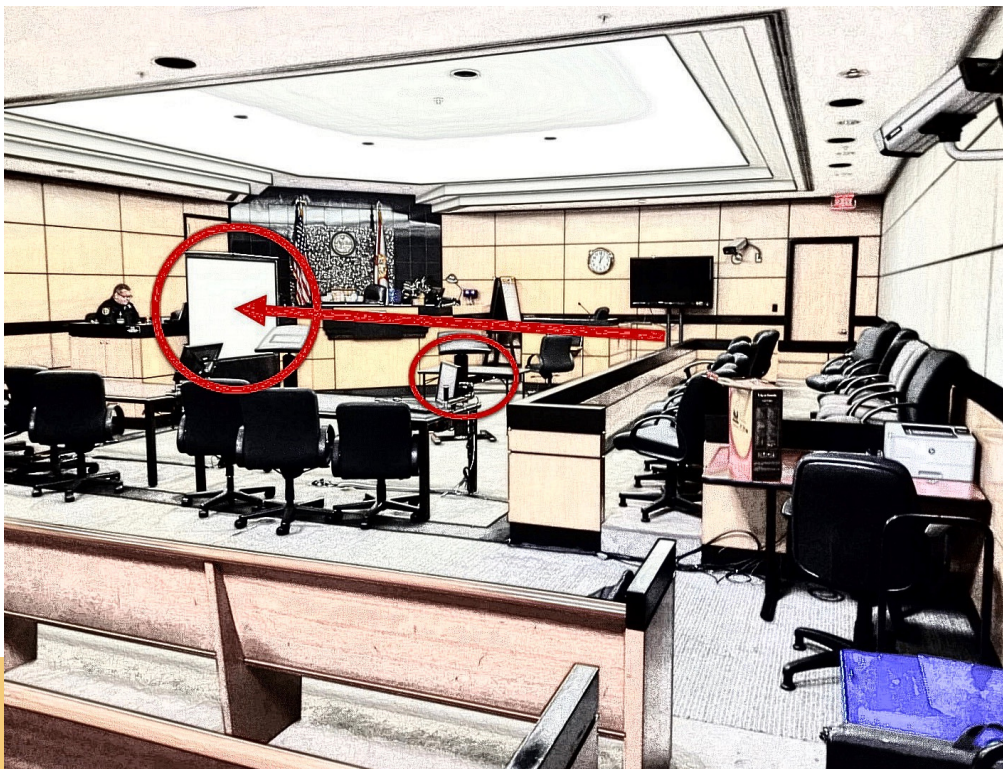
Prior to trial, head to the courthouse and locate all the power outlets and connections in the courtroom and assess the availability of various forms of technology. If you have an in-court tech, bring them with you.

STRATEGIZE VIDEO SCREEN LOCATIONS.

In Broward County, Florida, there are video screens placed in front of the jurors. During trial, if the jurors are looking down at the video screens, they're not looking up at you or at the witness. Sometimes this is okay and sometimes it is not. In past trials, we turn off any screens that are in front of the jury, and bring our own large-screen TV into the courtroom so that we can position it and have control over where the jurors are looking during presentations. This will keep the jurors interacting with you and the images that you're providing.

LESS IS MORE.

Do not have too many words or texts on your slides. These can be distracting and difficult to read. When you're presenting an opening or closing argument or presenting a witness, make sure that the jurors are getting the most important facts possible and they are seeing it in a powerful and impactful way.



STAY COMFORTABLE DURING TRIAL

TIME IS LIMITED.

Time is critical and breaks are unpredictable. It's important to assume that you won't get breaks when jurors do. The judge may ask you to stick around and go over certain matters while the jurors are at lunch. You or your opposing counsel may have issues that you need to raise with the court. The list of things that could keep you from taking a break goes on and on.

BRING A COOLER WITH YOU TO COURT.

I routinely bring a cooler to court. A cooler on wheels is easy to manage and gets through security easily. Target has a great one manufactured by Igloo. Many others are available on Amazon. Load it up with food, drinks and snacks. You will eliminate the risk of food not being delivered on time or having to leave the courthouse. Ignore the jokes from your colleagues and bring that cooler to court.



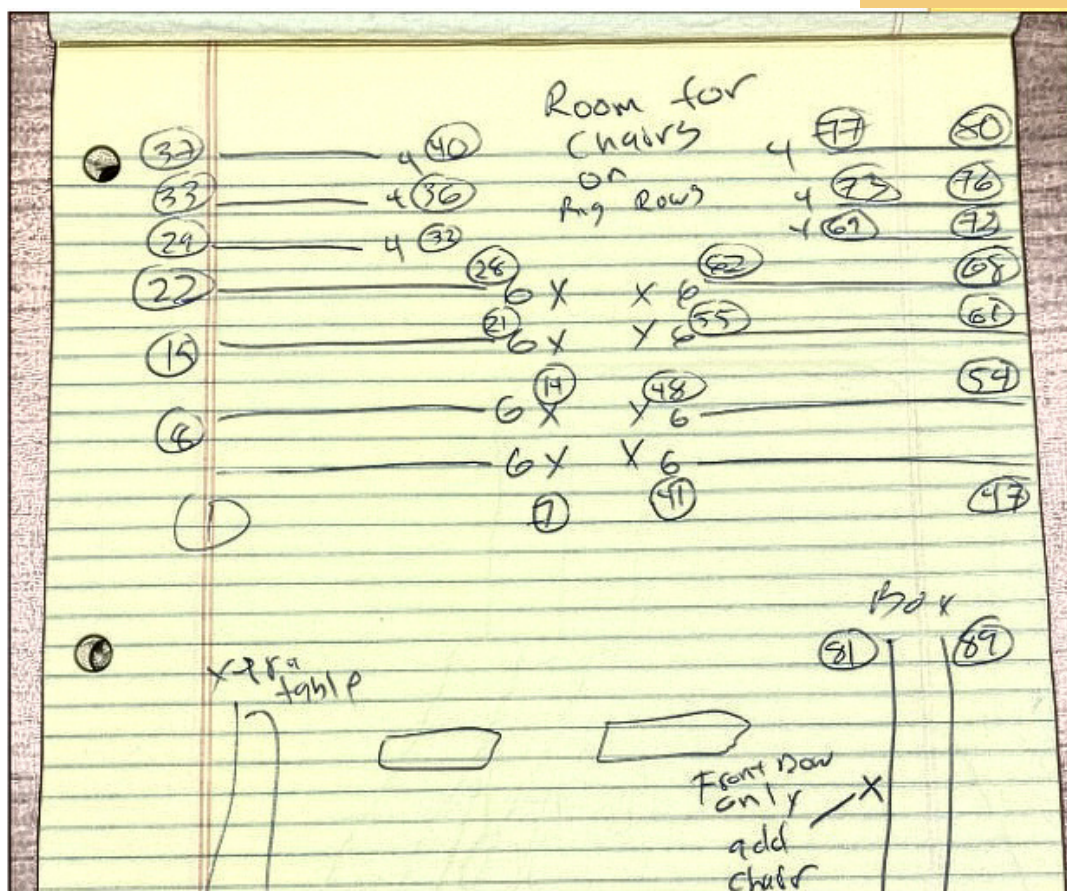
AVOIDING DISASTERS DURING JURY SELECTION

PREPARING FOR JURY SELECTION.

Show up early and not just on the day of trial. You should show up a week, two weeks, or even a month before trial. Meet with the judge, the in-court clerk, the deputy, and opposing counsel to make sure everyone is on the same page as to how jurors will be seated when they walk in. This is critical.

CREATE THE SEATING CHART AHEAD OF TIME.

The last thing you want is to have to create a chart and figure out who each juror is and where they're sitting. When you show up to the status conference, bring a camera. Take photos of the courtroom layout and draw your charts then. Suggest to the judge that if a juror is struck from the panel, nobody moves. You do not want jurors shifting around and causing you to switch up your chart while you are questioning jurors.



STAYING ORGANIZED DURING JURY SELECTION

KEEPING A CLEAN RECORD.

It's crucial that you, your team, the court reporter, and the judge all know who you are talking to when going through jury selection. One tried and true method to keep organized is using paddles for jury questioning. You can also use name tag stickers with numbers on them.

USING PADDLES OR NUMBERED NAME TAGS.

The venire in my cases typically range from 75 to 125 prospective jurors. We gave each juror a paddle with a number on it. Each time I asked a question to the panel, the paddles would go up. We'd quickly identify the number. Find it on our chart and know exactly whom I was speaking to.

EVERYONE IS ON THE SAME PAGE.

My team, the court reporter, and the judge all knew who I was talking to. Everyone was on the same page. This method minimized the amount of times the judge had to interrupt to figure out whom I was speaking to. Whether you're questioning a group of 16, 30, or 100 people the paddle trick will help you make accurate notes and keep you organized.

BLOW UP THE FONT SIZE.

Just make sure the numbers are written legibly and sized large enough to easily read them when jurors are sitting down.



UNDERSTAND HOW JURORS RECEIVE INFORMATION IN THE AGE OF TECHNOLOGY

THE WORLD OF SOCIAL MEDIA.

The way that people receive information is much different today than it was before. With sites like Twitter, TikTok, YouTube, Facebook and Instagram information comes at us quickly. We process and make quick judgments based on this quickly delivered information.

INCORPORATE TECHNOLOGY.

How can you try your cases and communicate effectively given this way of decision-making? Incorporate technology and streamline the presentation of your case. The last thing you want is to present a case that has no impact or that the people in the room, most importantly, your jurors, lose interest. If your jurors aren't engaged they will miss important facts.

CUT DOWN YOUR PRESENTATION.

Decide which facts are most important and which will resonate with the juror most. Be as prepared as possible before trial. Do not waste your jurors' time. Look at the facts of your case. Cut it down to what's most important. They're going to receive that information quickly and be able to process it during deliberations.



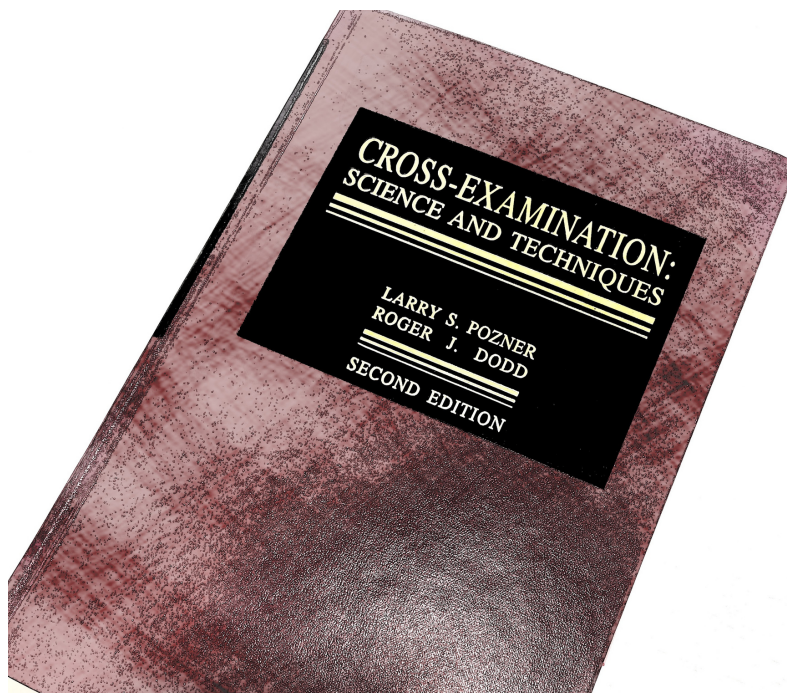
PREPARE THE CROSS EXAMINATION OF WITNESSES PRIOR TO TRIAL

IF YOU ARE ON TIME, YOU ARE LATE.

If you're preparing for cross-examination while the witness is testifying, you are at a severe disadvantage. You should know the questions that you're going to ask during cross-examination prior to that witness ever taking the witness stand. You should know what they will say on direct prior to trial.

USE YOUR DEPOSITION TESTIMONY WISELY.

That's why it's critically important to always take the depositions of witnesses prior to trial. In doing this you will know what they're going to say and can use that testimony against them. Scrambling around while listening to what they're saying and trying to write down notes to prepare your cross-examination while they're testifying is never a good move.



USING DEMONSTRATIVE EXHIBITS

INCORPORATE MULTIPLE FORMS OF DEMONSTRATIVE AIDS.

When preparing for trial, use demonstrative exhibits and other forms of exhibits effectively and efficiently. Use various different mediums to showcase evidence. Mix up the use of an overhead projector and PowerPoint presentation. Go old school and bring out the big boards to help make your points.

BE CREATIVE.

I remember seeing my mentor in trial for the first time. He had half of a car in the courtroom. For real. He used it to show how the driver was seated and how the seatbelt failed during a rollover crash. During another trial where the walking speed of a pedestrian was an important issue, we brought a treadmill to court. As a young associate at time, I was tasked with walking and then running on the treadmill during a direct examination. That is creativity. The jury appreciated it.



A PRO TIP FOR CLOSING ARGUMENTS

THE POWER OF TRANSCRIPTPAD DURING TRIAL.

If you recall earlier in the book, you already know that I've mentioned the Transcript Pad application. This application has been a game-changer. This application allows me to store every deposition and trial transcript on my iPad. I can quickly search every transcript to confirm the witness testimony.

HERE IS THE PRO TIP.

During closing arguments, listen carefully to opposing counsel's representations. If the attorney says something inaccurate or incomplete about witness testimony, use TranscriptPad to search the trial transcript. You can then cut and paste what was actually said by the witness and create a PowerPoint slide for rebuttal to show the jury what was actually said during trial. It is very powerful to show the jury complete and accurate testimony during the closing arguments. I have done this many times and it is a powerful tool in your tool box.



AFTER ACTION REPORTS ARE A MUST

THE AFTER-ACTION MEETING.

Why are Navy Seals so successful? Because after every mission, whether it's training or real combat, the teams hold a meeting to review every aspect of the operation. From there, the elite soldiers adapt, modify, and improve for the next mission. After every trial, you should get together with your team and conduct an after-action meeting on different aspects of the trial. The idea is to see what worked and what didn't. Discuss how you can improve for your next case.

THE GOAL OF THE AFTER-ACTION MEETING.

Your goal should be to continually improve the way that you practice law and provide the best representation for your clients. Look at the trial preparation and the month leading up to trial. Look at what motions in limine were filed and what other motions in limine you could have filed to help the case. Look at deposition designations that were used and discuss others that you could have filed. Look at jury selection and what questions the jurors were asked and how they responded. Were there additional questions you could've asked that you should on the next case? Look at opening statements and closing arguments. Look at the demonstrative evidence that you and your opposing counsel used. What was most effective?

THE AFTER-ACTION REPORT.

Write down everything you learned during the after-action meeting. Study the jury instructions, verdict form, and other basic preparation. The critical aspect of every after-action report is writing down the things that you learned during trial. Make a list of action items that you need to take for your next case and follow through. If you prepare an after action report after every significant event, litigation and after trial, you're going to develop a list of best practices to help you win your cases.



For more information, or if you would like a copy of my firm's After Action Report template, email us at:

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Our passion is helping our clients, and other lawyers, win their case.



Eric Rosen

Eric Rosen is a Florida Bar Board Certified Civil Trial Lawyer. With a proven record of over \$100 million in verdicts, Eric and his team at Rosen Injury Law help clients and lawyers with their injury cases using strategies that secured numerous 7 and 8 figure jury verdicts against Big Tobacco. Rosen Injury Law exclusively represents plaintiffs who have suffered injuries in a wide range of different accidents, such as motor vehicle accidents, pedestrian accidents, products liability, and medical negligence cases.