



LITIGATION MANAGEMENT: SETTLEMENT AND NEGOTIATION STRATEGIES

*THE KEY TO
SUCCESS IN
GETTING RESULTS
FOR YOUR CLIENT*



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WHAT IS LITIGATION MANAGEMENT?

The effective planning, organization, delegation, and supervision of litigated matters so as to gain the advantage crucial to achieving an acceptable and timely resolution of the dispute.



THE “PLATEAU” IN LITIGATION!

- The point at which enough has been done that *persuasive* case evaluation can be accomplished with documentation, including expert reports
- This applies to *both* liability and damages.
- You sense there is a receptive “audience”



ACCOUNTABILITY

Who is responsible for carrying the case to resolution?



RESPONSIBILITY

- Who has been delegated the responsibility for getting a task completed?



KEEPING THE CLIENT INFORMED...

In every case, remember that it is the Client's case. You must keep the client informed at all times about...



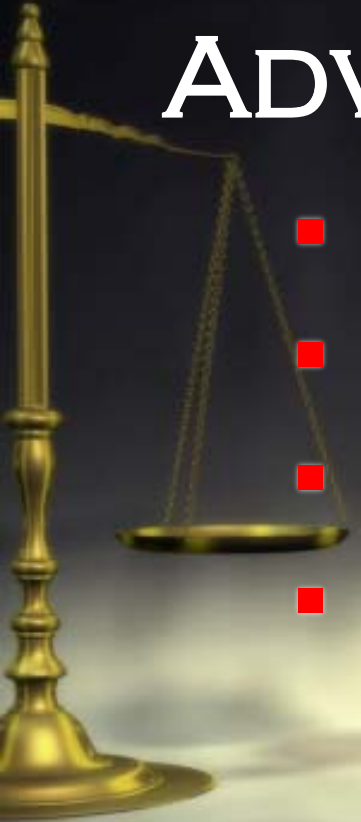
KEEPING THE CLIENT INFORMED, CONT'D.

- ✓ The progress of the case
- ✓ Significant developments
- ✓ Settlement offers
- ✓ Your assessment, particularly if there is a significant change!



THE KEY: GAINING THE ADVANTAGE

- Not total victory
- Maintain control
- Gain the advantage
- Acquire information



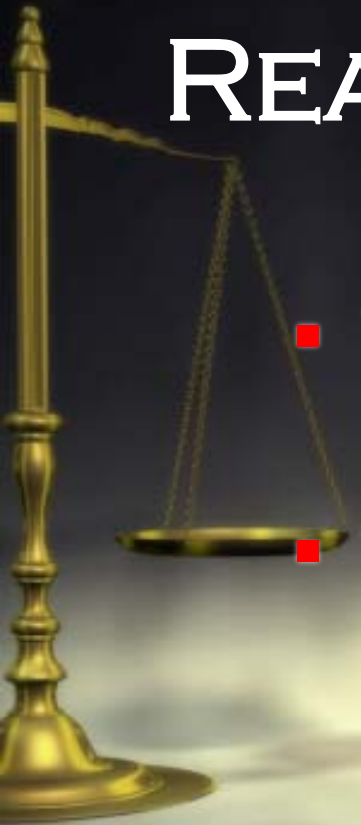
THE “THEATER OF THE REAL”

Consider what you are doing...



THE “THEATER OF THE REAL” CONT’D.

- This is STORYTELLING
- The forum is the THEATER OF THE REAL



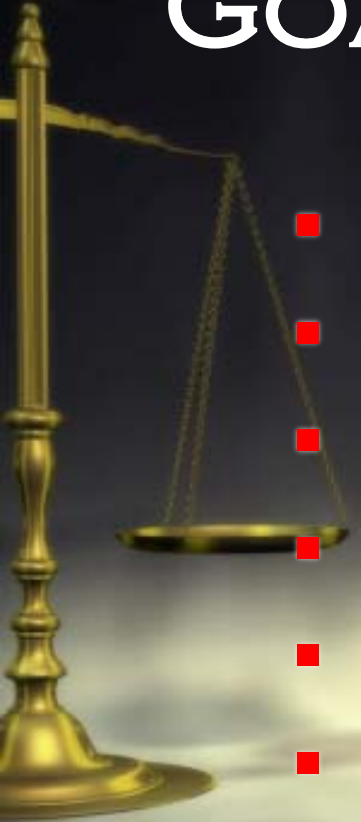
THE “THEATER OF THE REAL” CONT’D.

A REAL STORY WHICH CALLS UP
REAL RESPONSES...EMOTIONAL
AS WELL AS INTELLECTUAL



GOALS

- Identify the issues
- Gather the facts
- Evaluate the case
- Plan a strategy
- Identify the risks
- Project the costs
- Determine the optimum point of resolution



KEYS TO SUCCESS?

- 
- What are your client's goals?
 - What is the most acceptable resolution?
 - How can it best be achieved?
 - What is the plan for getting there?
 - What do you need to do to make the plan work?

COMPONENTS OF THE LITIGATION PLAN

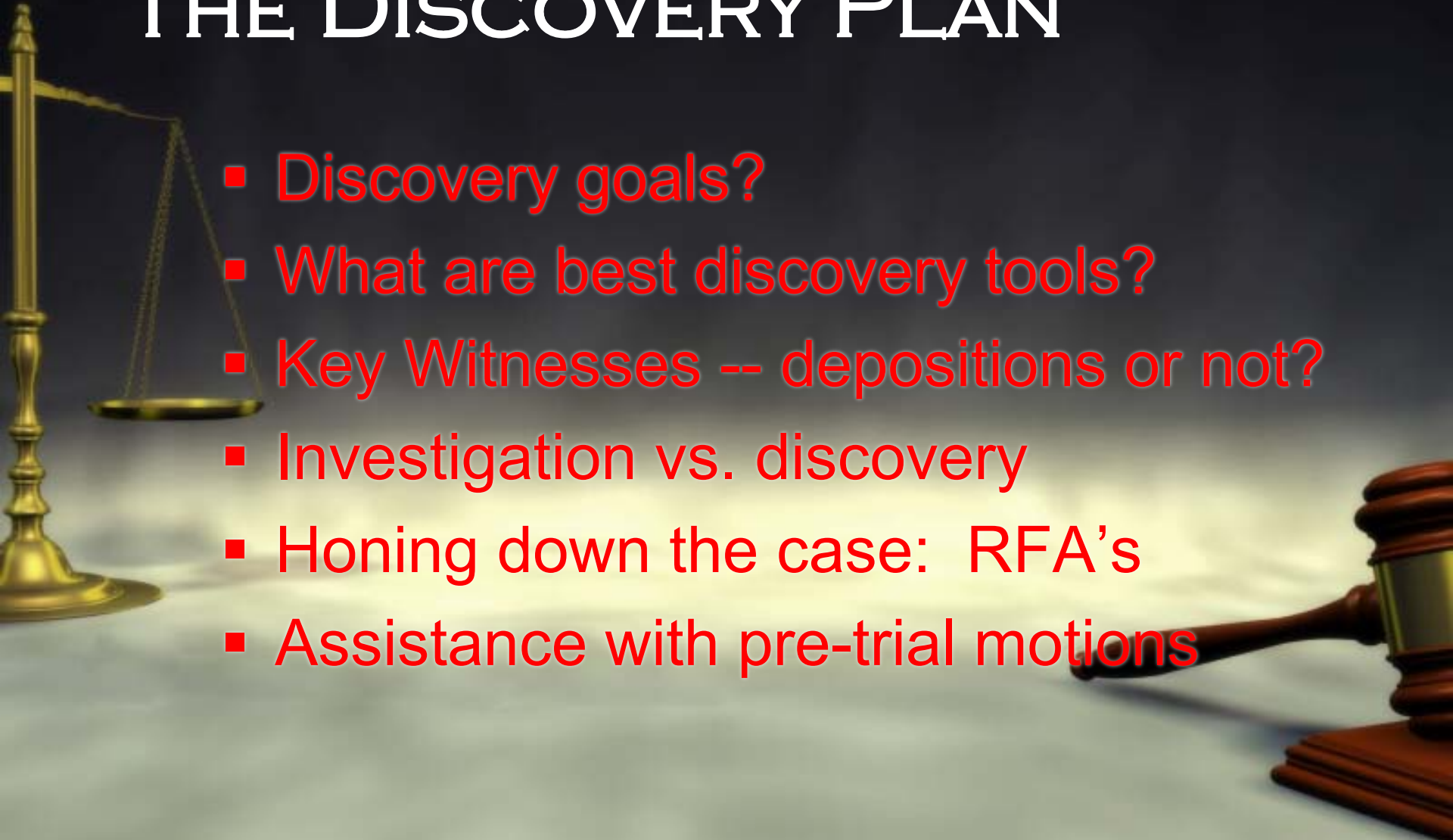
- Evaluating the Issues
- Assessing the Risks of Trial
- Projecting the Financial Costs
- Evaluating the Ultimate Recovery:
Settlement vs. Trial




FACTORS TO CONSIDER

- 
- Venue
 - Jurisdiction
 - Parties
 - Legal Theories/Defenses
 - Discovery Issues
 - Pre-trial Motions
 - Trial Issues

THE DISCOVERY PLAN

- 
- Discovery goals?
 - What are best discovery tools?
 - Key Witnesses -- depositions or not?
 - Investigation vs. discovery
 - Honing down the case: RFA's
 - Assistance with pre-trial motions

EVALUATING DAMAGES

- 
- What are your client's damages
 - Tort or contract? Why is this important?
 - How do we establish? What is our workup? CPA's? Economists?
 - Does the potential recovery justify the cost of litigation?
 - Impact on settlement!

EVALUATION OF EMOTIONAL ISSUES.....

- What is the story your client will tell?
- Who are the story tellers?
- What impact will they have on the trier of fact -- court or jury?
- Who are the other witnesses who will impact the storytelling



ATTITUDE AND APPROACH

- Pessimist in Preparation
- Optimist in Trial
- Anticipate Your Opposition!



DISCOVERY CONSIDERATIONS

- Have a plan
- Use the discovery tools
- Be aggressive
- Don't back down: If you use a tool be prepared to get what you came for
- Use the rules as they are written



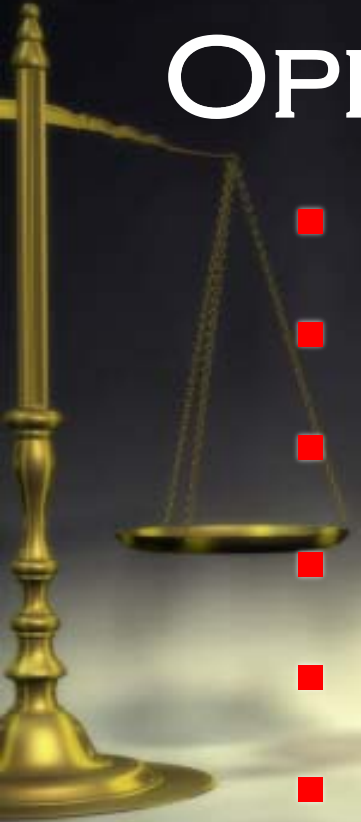
SETTLEMENT ALTERNATIVES

- Direct Negotiations
- Court Annexed ADR
- Private Mediation
- Other Alternatives



RECOGNIZING SETTLEMENT OPPORTUNITIES

- Early resolution may be best
- Know your case
- Plot out a settlement strategy
- Be prepared to implement
- Know your case and yourself
- How do you best negotiate -- use a strategy that works for you and your client!

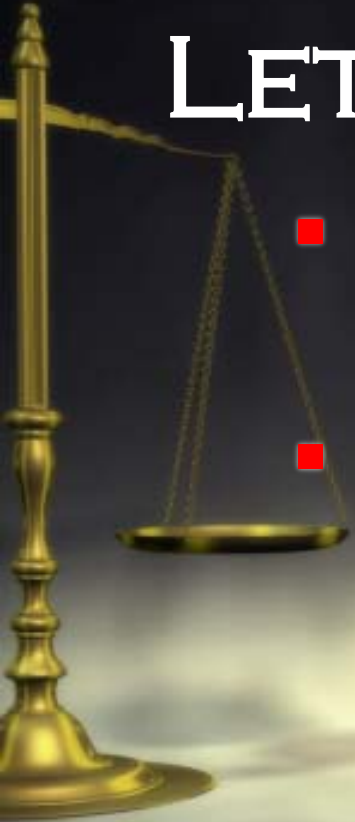


PREPARING DEMAND LETTERS

- Are you at a plateau where there is likely to be a “welcome” response?
- Do you have all the information you need to prepare a demand letter that is effective?
- Have you consulted with your client about this process and explained it; does the client understand?

PREPARING DEMAND LETTERS, CONT'D.

- Do you have all facts regarding liability and damages?
- Do you have WRITTEN expert reports or information that will be persuasive and support your demand?

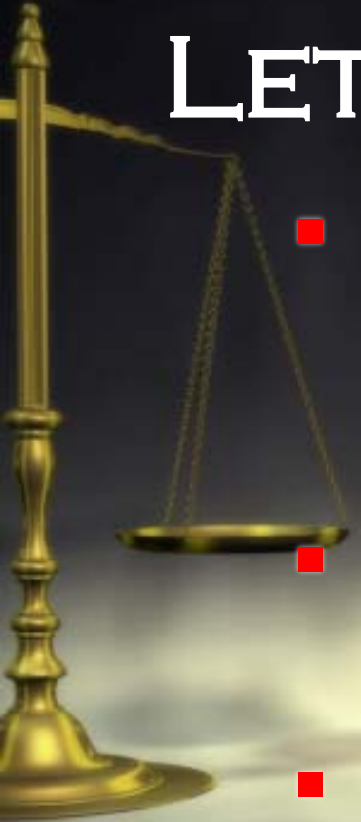


THE OUTLINE OF YOUR DEMAND LETTER -

- Case status
- Purpose of demand letter – E.C. 1152 (confidential) or not (set up)?
- Why is it timely?
- Brief overview of the case
- Outline of liability case with police and investigative reports; expert reports

OUTLINE OF YOUR DEMAND LETTER, CONT'D.

- Legal authorities re liability – statutes, comparative fault – hit this “head on”
- Outline of damages – use medical reports to confirm injuries
- Medical reports re future consequences/impairment



OUTLINE OF YOUR DEMAND LETTER, CONT'D.

- General damages – comprehensive outline of the impact on life – past and future
- Discuss pain with medical and research backup
- Importance of impact on work life – ego, personal satisfaction, feeling of being productive

OUTLINE OF YOUR DEMAND LETTER, CONT'D.

- Impact on family relationships
- Change in life – loss of job, inability to contribute to family support
- Psychological evaluation and treatment as it relates to general damages
- Examples: AA flight attendants

WHY CASES DON'T SETTLE

- Lack of commitment to resolution
- Lack of information
- Lack of lawyer support
- Lack of communication
- Failure to appreciate the “economics” of the case

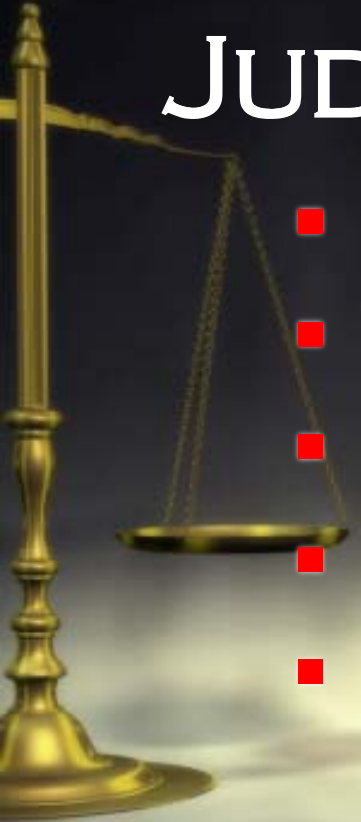


REMEMBER:

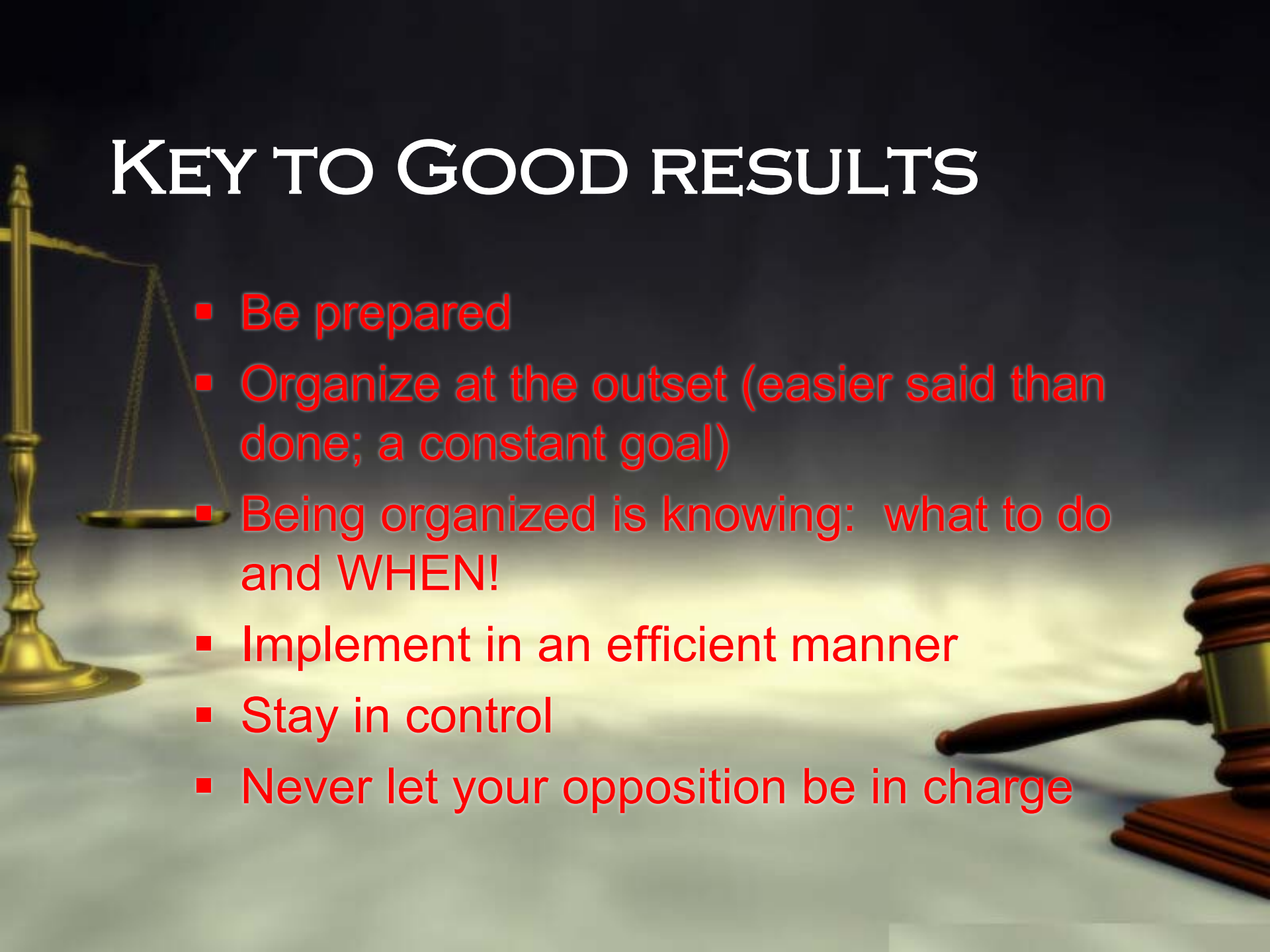
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- Plaintiffs are not litigating for profit but compensation
 - Defendants are not litigating for revenge but responsibility
 - No one is litigating for principle

MOTIONS FOR SUMMARY JUDGMENT

- Burdens are Heavy
- What's to gain?
- Smoke out your opposition?
- Price of losing?
- Impact on settlement opportunities?
Lessen or increase the value of your case!



KEY TO GOOD RESULTS

- 
- Be prepared
 - Organize at the outset (easier said than done; a constant goal)
 - Being organized is knowing: what to do and WHEN!
 - Implement in an efficient manner
 - Stay in control
 - Never let your opposition be in charge



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