

STORYTELLING CLOSING ARGUMENTS

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“May it please the court, opposing counsel...Ladies and Gentlemen, thank you for listening to all the evidence.....” Just about this time, juries’ eyes glaze over; they shift focus, and start day dreaming. You have just lost the jury.

The best trial lawyers are gifted story tellers. The trial lawyer will connect with the jury by relating the case to something the jury can understand and feel. Closing is the only time you may deduce from the evidence and pull at the jurors emotional heart strings with your client’s story. Sometimes your client has suffered pain, been a loser, been irresponsible, done evil, or have been no good their entire lives. Now, you must stand before twelve (12) human beings who do not care and make them care. You cannot pull out a script and read it, you cannot play a movie for them, or hide behind Power Point. Instead, you must stand before (12) twelve people naked and vulnerable, but not ashamed. It is your job to let them see themselves in your client. The following are real closing trial stories that will do just that.

1. **HUNTING STORY/** Rush to Judgment, New Officer, Seeing What You Want To See

The first time I went hunting with my little brother, it was an overcast fall weekend. But my little brother woke me up and said “Come on, I want to shoot a deer.” We bundled up, he grabbed the thermos of hot chocolate and I grabbed the rifle, ammo, and binoculars. We’re just sitting in the blind telling jokes and trying to keep warm when all of a sudden there they were: deer, appearing out of the woods and into the clearing in the meadow. I grab the binoculars and look at the deer. It’s all does and fawns. My brother is looking through the site on the rifle and then I hear the safety click off. Still looking through the binoculars, I ask “what are you doing?” He whispers, “I’m gonna shoot my first buck.” “What buck?” I say. “The one right there at the edge of the trees,” he responds. I reply, “That’s just a doe and those are branches.” He refuses to believe me. I tell him, “We are in a one buck county, you shoot that deer, you’re gonna have to bury her because I’m not getting in trouble with Dad. Put down the gun, and just look through these binoculars.” He puts the safety back on and I hand him the binoculars. He focuses in and just then the deer bends down to eat and leaves her “antlers” in the tree. Because they weren’t antlers, they were just branches. It was my brother’s desire to kill his first big buck that made him believe a buck was down there; not reality.¹

Just like my brother, this officer, so badly wanted to see that big buck DWI. He’s been training and riding along with other officers for months, he just wanted to see that DWI so bad. But it’s not a big buck DWI, it’s a doe. I’m going to take off my binoculars and give them to you, ladies and gentlemen, and let you see it for yourself.

2. **PUZZLES/** Beyond a Reasonable Doubt, Complete Investigation, Crucial Evidence

¹ Thanks to National College for DUI Defense 2007 Summer Session at Harvard University. <http://www.ncdd.com>

When I was young, my mother would make my brothers and I put puzzles together before we could go out and play on Saturday mornings. I hated it, but we could not go out until we put those awful puzzles together. We had to put every piece together and figure out what went where before a picture would slowly start to develop. I did not realize what my mother was doing until years later. She was teaching us to think in logical sequence. You cannot force puzzles together if you wanted the right picture. You have to be patient and go step by step in order to complete the image.

I thought about those puzzles when I examined the investigation in this case. Did Officer Smith reach a conclusion before he put all of the pieces together? Now the State loves to tell you that you know what the picture is without all the pieces, beyond a reasonable doubt. But the truth is, if you are missing a crucial piece it makes all the difference, i.e. a puzzle of a gun and the missing piece is the tip of the gun which tells you if it's a toy, bb, or real gun.

3. SPAGHETTI/ Untruthful Witness, Impeached Testimony, Rotten Evidence, Snitches

When I was a little boy, my mother would cook spaghetti every Saturday. I would watch her as she made her delicious sauce. She would start with the tomatoes and then add the basil, garlic, salt, pepper, Italian seasoning, and lots of ground meat. Then she would stir all of the ingredients with a large wooden spoon. One day, while stirring her famous pasta sauce, she saw a cockroach in the pot. Now what do you think she did? Did she just scoop out the part that had the cockroach and let us eat the rest? Or, did she get rid of the whole pot of spaghetti sauce?

Now, when Mr. Hunter told you that he was looking at a life sentence and did not expect anything from his cooperation with the State, do we digest that lie with rest of his testimony, or do we throw his entire story out? It doesn't take much to taint the entire pot of sauce.

4. DOC HOLLYWOOD/ Client Is Different, Get To Know the Defendant, Punishment

The other night, my wife and I were watching TV and this old movie came on: Doc Hollywood. It's a movie from the early nineties where Michael J. Fox plays this big city, LA doctor who wrecks his car and gets stuck in a small town. And, there is this one scene in the movie that really reminded me of this case. It's where this country couple brings in their son and he can barely breathe, he's just turning blue. Michael J. Fox gets him on a table and examines him and then says "I know what this is, I saw it in my training back in LA, it's very rare, it's juvenile acute right ventricle myocardial infarction." Michael J. Fox starts hooking the kid up to all these machines and the nurse goes out into the hall to call old Dr. Hogue. She hollers to Michael J. Fox from across the hallway, "Doc Hogue says give him a Coke." Michael J. Fox goes sliding out of the room and grabs the phone and yells in it "if you don't get your lazy ass out of bed, this kid's gonna die," and hangs up the phone. They wheel the kid out of the little hospital and the old ambulance is there waiting for Life Flight to come in, when Doc Hogue's old boat of a car comes sliding to a stop; spraying up the gravel in the parking lot. Doc Hogue lumbers out of his car and he's dressed only in a robe. He goes up to the kid, looks down at him, and asks "you been taking that antacid I gave you?" The little kid's face is covered up by an oxygen mask. The kid nods his head up and down. Doc Hogue then asks him "you been getting in to your daddy's chaw?" The kid doesn't move. Doc Hogue leans closer and asks again, louder "you been getting into your daddy's chaw?!" Slowly the little boy

starts nodding his head up and down. Doc Hogue raises the mask off the little kid's face and onto his forehead. Then, Doc Hogue reaches into the pocket of his robe and pulls out a can of Coke. He opens it. He raises the little kid's head and the kid takes a sip. He exhales, "aaahhhh" and the color rushes back into his face. Doc Hogue looks at the worried parents and says "That'll be 35 cents." Doc Hogue then grabs Michael J. Fox by the arm and walks him a bit away and tells him "Next time, before you crack a little kid's chest open, why don't you get to know your patient."

And that's exactly what happened in this case. The police, relying on all their big city training, and rules and procedures, forgot the take five minutes and get to know Mr. Smith. You see Mr. Smith is different, he's not intoxicated. And it's not illegal to be different. Now, you've gotten to know Mr. Smith pretty well and yall don't have to crack his chest open, you can just give him a Coke.

5. BIRD IN THE HANDS/ Punishment

I recently heard an old Chinese proverb that made me think about this case. It's about this cheeky boy who wanted to challenge the old wise man in town. The boy went into the woods and caught a little bird. He then took this bird back into town and went to see the old wise man. The boy cupped his hands perfectly around the little bird to make sure that you couldn't see what was in his hands. He went up to the old wise man and said, "Old wise man, please tell me what I have in my hands." The old wise man replied, "You have a bird, my son." The boy was furious that the old wise man got it right. So the boy thought for a minute and then asked, "Old wise man, if you're so smart, now tell me is this bird alive or is it dead?" The old man was silent and the boy knew that he finally had the old wise man. Because if the old wise man said the bird was alive, he would simply squeeze his hands together and crush the little bird. And if the old wise man said that the bird was dead, then the boy would just open his hands and let the bird fly free. There was no way that the old wise man could be correct. The old wise man was still silent, and then finally responded, "Well that is entirely up to you, my son. After all, the bird is in your hands."²

And just like that little bird, Mr. Davis and his life are in your hands. You 6/12 jurors will decide whether you let him go and see what great heights he can achieve, or to crush the life out of him. But ultimately, his life, his future, and his family's lives and futures are in your hands.

6. SNAKE/ Gruesome Violence, Unlikeable Complaining Witness or Decedent

When I was a little boy, my brothers and I would go out in the back yard and throw rocks at each other. One day we were throwing rocks and a big snake slithered over and curled up at the base of the gate preventing us from getting out of the yard. We creamed and screamed until a neighbor noticed and ran to get my mother. My mother was also afraid of snakes, but she got a shovel and she ran out to protect us. She took that shovel and then hit that snake again, and she hit that snake and when that snake pulled away, she hit that snake again and again. Even when the snake was dead she continued to hit that snake. We had to finally grab her to stop her.

² Thanks to Gerry Spence and the Trial Lawyers College. <http://www.triallawyerscollege.com>

Mr. Smith, the man killed by my client, was a snake.

7. COBY/ Snitches, Untruthful Witnesses, Trust Your Gut

Those who have dogs know they are amazing animals. I had a dog named Coby. I raised Coby from a pup until he died of old age. Coby could tell when I came to the yard with a leash whether I was taking him to the vet, taking him to get washed, or just taking him for a walk to the park. He seemed to sense something in me that I could not see myself. I've learned that we all have that sense but most of us never use it.

For example: when Ms. Smith, the lady with the red hair, said she had never seen my client before that evening, what did you sense? When Officer David said he could smell marijuana as my client passed in his car, in the opposite direction, what did you sense, etc... You heard what they said but what did you really sense? You are allowed to, and should, follow your senses.

8. WIFFLE BALL/ Proper Investigation, Rush to Judgment, Priors, Punishment

Every summer, my younger brother and I would go spend about a month with my grandparents in West Texas. Now it wasn't a big town and we knew all of the kids in the neighborhood. And every summer we'd spend the days playing wiffle ball baseball. My brother and I were always pretty athletic so we were never allowed on the same team. The neighborhood guys always loved having extra guys on the field so we could play on the big field with the railroad track at the back edge. But when we played on that field anything on or over the tracks was considered a homerun, because you had to look both ways and take time before crossing the tracks. Well, one day, it was a real close game. It came down to the bottom of the ninth with two outs and my team was winning by one run. My little brother, was the last up to bat, one man on third, and I was pitching. He kept taunting me and calling his shot, and switching sides to bat from. Finally we settled down, and I hurled that wiffle ball with all my skill right down the pipe. Whap! He connected. I don't know how, but he did. The ball went flying way over my head. It cleared the second baseman, and landed just before the tracks and bounced over. The centerfielder ran all the way back, looked both ways and grabbed the ball. Ground roll double, right? No, his whole team was screaming to keep running and he didn't stop at second. He was rounding third by the time the throw came in to second. I went to cover the catcher at home. The ball and Adam came in at the same time. His team came out screaming with joy. My team ran from the field towards home plate screaming that it hit before the tracks. Everyone is screaming back and forth, and my brother out of nowhere, who was just so happy he won the game, became so upset that he grabbed the wiffle ball bat and whacked me behind my knees. Everyone fell silent. The blow crippled me and he took off running. It seemed like an eternity, but I got up, grabbed the wiffle bat and tore off after him. He ran all the way through the neighborhood with me chasing him with the wiffle bat. I was about to catch him as he blast through the side door fence into the back yard of our grandparents house. He ran right past my grandma who was in her tomato garden. Her head perked up and she saw me coming full steam ahead, red faced, crazed look in my eyes, waiving a wiffle ball bat. She grabbed the bat from me and began to

paddle me on the bottom with it, asking why I always had to torment my little brother and why was I always picking on him?³

I never forgot that. Why? Because the only thing worse than being punished is being wrongfully punished. Had my grandmother just been there, had she just asked one of the 15 or 16 other kids, had she just asked my brother, asked me, done some sort of investigation..... But she didn't. And just like my grandma, these police officers didn't do a proper investigation either. Now the State is asking you to punish Mr. Smith without having the whole story. But you can't find him guilty or punish him without investigating and knowing the circumstances surrounding this case. Remember, the only thing worse than being accused of a crime, is being wrongfully accused of a crime.

We all have barriers that prevent us from truly connecting with other human beings. I'm too fat, skinny, bald, old, etc... I am not perfect. When a lawyer stands up to address a jury, everything that lawyer has ever done and everything that lawyer ever intends to do stands before that jury. The lawyer is just as much a part of the story as the story itself. You are the narrator, so your credibility is always an issue. If the lawyer cannot tell their own story, how can they tell their client's story. The most important part of a final argument is to be genuine. Whether you adapt one of these stories or create your own, make sure it's genuine. In order to make a great closing argument you must tell a compelling story and the story starts with you.

³ Thanks to Shawn Dorward of The McShane Firm <http://www.themcshanefirm.com/> and the National College of DUI Defense.