CLOSING – THE ART OF STORYTELLING
HAVE I GOT A STORY FOR YOU!
Or
"YOU GOT TO BE THE VOICE OF THAT POOR SON-OF-A-BITCH AND SAY WHAT **HE** WOULD SAY IF HE WAS AS SMART AS YOU ARE."

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**Thanks to Jodie English for letting me steal huge pieces of her work

Once upon a time, when people made more of their own things, they created more stories about their life experiences. They told these tales to each other regularly, gracefully, and productively. They did it to give each other *insights*, to *entertain* each other, and to *engage* each other in times of celebration, trial, mourning and reverence. But primarily, they did it to *connect* with each other. Sharing real-life stories was an essential element in forging friendships, alliances, families, and communities. It brought individuals a greater *intimacy* with each other and simultaneously, a stronger sense of self. (Jack McGuire)

In a trial, the jury is most important. What do you hope for with the jury – to connect with each other. You hope to give them insights, engage them, entertain them. The great lawyer creates intimacy between herself or himself and the jury.

STORYTELLING is the way to achieve these goals. A story is a way to say something that can't be said any other way (Flannery O'Conner) The stories that people tell are the container that holds their world together and gives meaning to their lives. (Andrew Ramer) It is said that people live through stories, and God made people because (s)he loves stories.

The telling of the story can transform the player but also the situation, it becomes about people, lives, feelings, flesh and blood; not walls, formality, stiff chairs and bald facts.

STORY IEDAS: So, you need to tell a story. You have read the discovery, listened to the client and you know there is a story in there somewhere - now what? For some of us, the stories just pop into our heads. For others, you will have to work harder. Whatever their nature, stories begin and have always begun, quite simply: with a moment, an experience, a feeling. (Jimmy Neil Smith) Here are some suggestions on how to begin to *think* of stories:

A) What does this case make me think of?

B) What did I feel when I read or listened?
   - Why that feeling? What life story made me feel that way too? How about other people?

C) Does this case make me think of a story I have read? Or does the feeling make me think of a story I have read?
   - What about that story do I like, can relate, hate, etc…

Story ideas can be conjured from places, things, feelings, people, ideas, remembrances, experiences, the past, the future, what ifs. Remembering binds us together. (Meinrad Craighead)

One exercise I use is when I have read the discovery or talked with the client, I say, "If I could tell **any** story I want to about this case, what would it be." I do this because we tend to get bogged down by facts. It is as if "facts" turn off our creative juices. We need to work the facts into our best story rather than work our best story into the facts. It is really about control rather than being controlled. Work the law into our best story rather than work our best story into the law. True does not mean factual; true means accurately reflecting human experience. In the presence of a true story, we say, yes, this is how it feels; this is how it would happen; this is what one might think. (Daniel Taylor) The truth is more important than the facts. (Frank Lloyd Wright)

Exercises: The people: Who are they, what do they look like, what do they represent, who are they really, who cares about them, who respects them, who despises them, what motivates them, etc…

The place: what is it, where is it, what does it look like, what are the sounds there, what does it smell like, what does it represent, what is it's history, its future, what other place is it like, etc…

The things: what things are around, describe them, why are they there, to whom do they belong, what do they mean, who handled them, who changed them, what is their history, what is their future, are they changed by the events that took place here?

The feelings: try to recreate the feelings of all the players, what is it like to really be afraid, what does it remind you of, how did you feel, what are situations we encounter in our lives that might make us have that feeling that you have identified? Our feelings are our most genuine path to knowledge. (Audre Lorde)

Listeners and hearers. If we become better at listening, noticing what it is that makes us listen, we can script a story that is receivable. Start with the client, think about your listening experiences. To speak is to sow, to listen is to reap. (Turkish Proverb)

Openings and closings are your first chance to be the storyteller and to tell the **story of the** case. Before you begin to write an opening or closing, think about what the **story of the case** has in it for a jury, a sea of interested listeners. What does your client have about him or her that the jury will like, identify with, warm to, connect with, feel justified about, want to protect, or be afraid to injure. You must have a story to tell and the story must be about why the jury will do the right thing. Here are some ideas I have collected or stolen from criminal defense lawyers around the country. When you read these ideas, try them on for your personality. Never be disingenuous with the jury, if you can't do "Lady and the Tramp", don't try! Believing comes from your soul. First find your soul and then find the story of the case.

Snitch Cases:

A.) Inconsistent snitch testimony: Track the pattern language regarding the kind of evidence one would need before relying upon it unhesitatingly in our most important affairs e.g. using our life savings to purchase a home. "I now take you to Snitch Realty. We enter the office to find Mr. Snitch X snorting cocaine with a sawed off shotgun by his side. Mr. Snitch tells us that for our money he has a great three story house with a pool. When we come back a few weeks later, that property is described by Snitch Y as a two story with a view of the water; later Snitch X seems to have forgotten the pool, but when we remind him, he comments - "pool, oh yes of course there's a pool"!" Members of the jury, the prosecution wants you to rely on Snitch Realty, we say pick up your money. Don't buy.

B.) Consistent but bad record - high motive - can't count on them: 1) For Christmas every year my spouse gives me a bar of expensive delicious chocolate. I love chocolate and anticipate the moment of opening the finely wrapped chocolate and savoring that first bite. Imagine, if you will, waking on Christmas morning, finding the finely wrapped package, anxiously pulling off the wrapping, tearing open the paper and sinking your teeth into a big bar of chocolate. And only then do you find the maggots. The chocolate, with all of it's practiced finery is full of maggots. The government says just pick out that piece and go ahead and eat the rest. The testimony is rancid, infected, Don't swallow it. 2) Can you rely on Mr. Snitch? You are the ones that must accept him as a trustworthy, citizen just trying to "do the right thing - the deal doesn't matter." Imagine ladies and gentlemen of the jury that you are lost in the vast Sahara desert. Your thirst is endless. You are perilously close to dying of dehydration. You come to a crossroads. There are two ways to go. One way is water and the promise of survival. The other way is dry and certain death. At that crossroads stands Mr. Snitch. You ask him, "which way to water and life?" He hesitates, smiles, and points to the right. Will you trust your life to him? Falsus inuno, falsus in omnibus, False in one, false in all. If you lie today, you'll lie tomorrow.

Sloppy Police work or the things they should have done: In the closing, call the lead detective. Lawyer becomes the detective and testify as to all the things that a good investigation would have done, the tests, and sent to the lab and all the reasons it should be done, what happens when it is not done. Lawyer then says, "Don't you wish that is what would have really happened? It would make your job so easy. They didn't do their job and now they have left you with not proven, not guilty."

Constructive possession cases: 1) Drugs: A) a sweet and Low packet is 1 gm. Tape several in your clothing and remove the packets in closing to show the snitch could easily have hidden sufficient drugs to frame your client to show that the pre-surveillance search of the snitch wasn't patient enough to rule out the frame. B) Put a closed bag on the jury rail and argue though the jurors are near it, that doesn't amount to any evidence they know what is inside. Suggest that if one of them rode home with the other, they might not know there was contraband in the car. C) Tape plastic baggies with flour in

them to the underside of the prosecutor's table and pull them out in closing. The prosecutor's surprise and anger is what it is all about.
2) **Guns**: A) No fingerprints? Call the gun to the witness stand:

Q: State your name for the record.

A: Mr. Smith and Wesson. Glad to be here. I like it when people let the guns do the talking.

Q: Where were you born?

A: Springfield, Conn.

Q: Have you ever met Mr. Client?

A: No, never saw him before in my life.

Q: You're sure Mr. Client never touched you?

A: Absolutely, we remember when people touch us, right? Officer Jones put his big greasy hands all over me and obliterated the fingerprints of the man who really owned me - the other guy in the car, codefendant Smith.

B) Gun found under car seat in which your client sat? Draw a picture of a gun and then tape it to the bottom of the prosecutor's chair. Wait for the fireworks.

Self defense case with typical rough client: If Mr. Client had been a police officer and had acted just like the client acted, there would be no question that he was acting in self defense. But because the client (name) is an ex gang banger he is seen in a different light. Then start calling client Officer Client (use last name) for the rest of the closing. 2) When client shot in self defense but shot more than once (over kill): Here in the west, we have the Diamondback Rattler. They strike swiftly and their bite is deadly. I'm sure you all have heard stories about farmers who go out to irrigate, shovel in hand. They come upon the Diamondback, maybe sunning itself, maybe coiled to strike. No farmer only struck once with that shovel. When danger springs into your path, you react. And you react to remove the danger. It's kill or be killed. (Remember the incidents of police shooting citizens multiple times in cases around the country.)

Mental illness: To counteract the concept that even though the client may have been mentally ill at some other time, it comes and goes and was gone when this happened: Wear the same jacket everyday of the trial. In closing, tell the jury that you are sure that they have noticed and that the purpose is to show how client's mental illness is here with us everyday. She can't chose when to wear it and when not to. I can chose to take off my jacket but hers' is like a straight jacket, locked in place, tied to her and a part of her life everyday.

Cops lying: One bad apple: Closing begins with a bushel of apples being placed on defense table or near the bar if you can get that close. You take one out, "this is officer Jones. He told you when he got to the crime scene thus and so. Put the apple on the table, the beginning of a row. The next apple. "Officer Hughs, he did thus and so (summing up his involvement) You go through the cops that you give the jury permission to believe and then you pull out a BAD APPLE, get a discolored, rotten, at least shriveled apple. "This is officer Smith, he is a bad apple, tell them the reasons why and then as you put the good apples back in, "Don't let one bad apple spoil the rest. Tell him no, he is rotten and you don't and won't believe him.

Battered woman: Bird of paradise: There is a flower in South America called the bird of paradise, and it is named after a bird, so small and so beautiful that people go to great lengths to win the bird so as to always possess its beauty. Because the bird is so very small and its beauty so very delicate and subtle, the only way the bird's beauty can truly be appreciated is for the bird to be perfectly still. So the bird is caged, over many months in increasingly confining cages. Towards the end, the cages are so small that the bird can neither fly nor walk. And then the cage can be taken away because the cage becomes part of the bird's mind. It is all she knows. That is the phenomenon the psychologists term "learned helplessness" And that is why, my client could not leave after years of brutal abuse, the cage was in her mind.

Fear mongering (not merely for the prosecution):
A) For if an innocent man goes to prison, we have not solved one crime, we have committed another. B) If you do "beyond a reasonable doubt": look for analogies that resonate with the life experience of the power brokers on the jury where small errors have lethal consequences. E.g. Busy nurse in inner city emergency room unsure whether the needle was used on the patient with AIDS; hunter sees flash of movement, not sure that it isn't the orange of another hunter's clothing, so doesn't shoot; after the first freeze do you let your child skate on the new ice over the river; cracks in the flood wall of the rising Mississippi River; tremors before or aftershocks from the San Francisco earthquake.

Other general ideas about images: **Castles in the sand**:
The government has built this case like a castle in the sand. Told you it is a murder and it was committed by client. The prosecutor has shaped and formed the rooms anyway he desires, sand castles are like that. But you the jury are like the ocean. It is your job to test that castle, push against it. Push up against those walls, those rooms and test its strength, the strength of the government's evidence. This castle in the sand must go the way of other sand castles reduced to nothingness by you the ocean of juries. (Jimi Hendrix- sort of)

My grandmother's tablecloth: As I was growing up, My grandmother had a beautiful tablecloth. She loved the tablecloth. On all special occasions, Grandma would drag out the tablecloth and place it on the table. But the tablecloth was irregular, it didn't fit

grandma's table. It was as if she didn't see the irregularities or she didn't care. She would fuss with it, fiddle with it, and finally declare that the tablecloth fit. This case, is like my grandmother's tablecloth. The government has fussed with, fiddled with, and turned up the edges. It doesn't fit, just like my grandmother's tablecloth.

Dominos: If you have a closing that lends itself to the idea that if the jury can throw out one fact, the rest fall like dominos or a house of cards, use dominos. Have a box of dominos, get close to the jury, on the rail if you can and it is flat, on a table if not. Pull out a domino, explain what fact it represents and why. Pull out the dominos, place them carefully and then explain that the jury has to believe each and every piece of the evidence, explain what each piece represents. If any of them fail -- then push the dominos and watch them fall. YOU MUST PRACTICE THIS SEVERAL TIMES SO THAT IT HAPPENS EVERYTIME.

Jury nullification language: (and doing the right thing)

You [jury] have been given the power by the government to do the right thing. That is the juror's oath. You don't have to do what you feel is not right. You don't have to do the awful thing the prosecutor asks you to do for him.

[when talking about the decision they are to make] A decision you will remember 10, 20, 30 years from now (giving them some subtle idea of how long your client will be in prison) as you are having a cup of coffee, thinking about those moments in your life that defined what kind of person you are. Even 40 years from now when you are explaining to your grandchild or a great grandchild, the time you served on a jury, when you were a younger man or woman. (you don't have to talk about the rightness or wrongness of different verdicts, merely the permanence.)