Advice from the Masters

Sticky Situations in Trial
By Ronald H. Rouda

Forum Editor Sharon Arkin asked if I might share how I might have managed escape “sticky situations” during trial. Let me give you two examples.

EXAMPLE ONE: Put away your written notes during final argument

By the time you reach final argument the jurors expect you to be thoroughly familiar with the facts and the law applicable to the case, and may become distracted by your reading from notes.

I recall a jury trial in Contra Costa County I tried with my law partner Tim Tietjen. I had written down my entire final argument. I included the famous line from Shakespeare’s Romeo and Juliet, Act 11, Scene 2: “He jests at scars that never felt a wound.” I felt that the line was important because I wanted to demonstrate that the defendant was being callous to my client’s scars from a serious electrical burn injury.

During a recess, Tim prudently reminded me that it might be best if I weaned myself away from my written notes, and to speak directly from the heart to the jury. I followed Tim’s good advice and discarded my notes, putting them down on the counsel table. However, in the heat of the moment, during my final summation, I realized that I forgot to use the wonderful line from Shakespeare. I began to argue that the defense ignored the seriousness of my client’s electrical burn scars. Then, I grabbed my notes from the table to be sure that I would not misquote the famous line. However, by the time I grabbed my notes, and read the line from Shakespeare, it seemed out of context, and fell somewhat flat. That taught me a lesson. The lesson is: “Speak from the heart.” Practice and rehearse your final argument several times before a focus group. The focus group can be members of your law office – even family members. Put away your notes. Look directly at the jurors when you are arguing your case. Use graphics, power point, etc., but do not read from your notes during your closing argument to the jury. It is far better to be looking directly at the jurors using your powers of persuasion. Take the time to memorize any famous quotes, whether it is from Abe Lincoln, Thomas Jefferson, and yes, even Shakespeare.

EXAMPLE TWO: Meeting the challenge of arguing wrongful death cases involving the death of a child

“The goal of a personal injury or wrongful death trial is to get money for your client.”

The above quote was written by David Ball, Ph.D., in his book entitled “David Ball on Damages.”

However, there are people who have strong negative feelings about the law that permits the parents of a child who they believe died due to someone else’s negligence to bring a lawsuit to recover money damages for the loss of the love, companionship, care, comfort and society of their child.

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There are people who have a personal or religious belief that the death of a child is an act of God, and should not be the subject of a lawsuit.

To meet this challenge I suggest that when you prepare for trial you spend some time at your client’s home; that you collect and organize photographs, videos, cards, notes and treasured objects.

A proper courtroom graphic presentation would be to show how the child was the center of the family, and how everything has changed since the child is gone.

Some time ago, I handled a case involving the death of an eight-year-old boy who was struck and killed in a crosswalk by a distracted driver of a van. The front wheel of the van crushed the boy’s head. If the driver had braked before impact the right front tire would not have rolled over his head, crushing him to death.

The challenge was how to argue the enormity of the loss of the child to the family.

I told the jury that they were serving as jurors in a case involving the most tragic of all human losses, the death of child:

In the old testament of the Bible it is written that the greatest injury to parents is to follow their child in a funeral procession. Fortunately, for the defendant, this case was not being decided during biblical times under the law of an eye-for-an-eye, a tooth-for-a-tooth. Indeed, the child’s parents would not want the driver to pay for their child’s death with his own life. If asked, they would say, “Let him go free.” So how does this community compensate for the enormity of the loss? The child (Jimmy) was priceless to his parents. They looked forward to millions of moments of joy and tears with their son. Their grief at the gravesite is past and gone. What remains is what the law allows them as full compensation for the loss of love, care, companionship, affection, comfort, society and protection of their son. It has been said that our children are our most valuable resource, and a wise observer once said that some children are like wheelbarrows – not good unless pushed; some children are like canoes – they’ve got to be paddled; and a few are like a good watch – open-faced, pure gold, quietly busy and full of good works. To his parents Jimmy was that good watch and their treasure.

Children make a poor man rich, for there is not a person who would part with one of them for all of the wealth you could offer.

Jimmy’s greatest gift was the gift of love. It is not just the loss of Jimmy, but it is the loss of the root and all of its branches. The parents will never see Jimmy’s children or their grandchildren. They will never hear Jimmy practice the piano, and maybe someday give a recital or a concert. They will never enjoy looking at his artwork, and maybe someday, a great painting. They will never again walk with him in the park and enjoy family holidays. Millions of things for millions of moments will forever be lost to Jimmy’s parents. It is the loss of human potential that must be reflected in your verdict. And it would be callous and cruel if defense counsel argued that other remaining members of the family lessen Jimmy loss. If you lose a limb, but you can function, it would be callous and cruel to argue that the loss isn’t so bad because you have remaining another member of your body.

I do not ask you to assess damages to the parents to reflect anger, because the parents do not have anger.

I do not ask you to assess damages for revenge, for Jimmy’s parents do not seek revenge.

I do ask you to assess damages to express the value of human life.

I ask you not to give the parents a handful of ashes, but rather to honor their son by your verdict – building a monument to Jimmy’s memory.

We live at a time when trillions of dollars are spent by governments to protect the dignity of human beings around the globe. I ask you, on behalf of Jimmy’s parents to put a value on his life commensurate with the profound loss they have suffered, and to make up for the debt that the defendant has created.

Years from now Jimmy’s parents will know that at one shining moment you honored their son by your verdict. Whether they will bear their tragic loss knowing that justice has been done is up to you. We trust that you will make the right decision. Thank you.

And the jury did just that.