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Emotional
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The story of their lives: Using a story to prove
non-economic damages

— Deborah Chang



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The story of their lives

Telling the jury a story to prove non-economic damages

"Stories, well told, are the engines by which we win."

— **Gerry Spence**

On December 8, 2008, Don Yoon kissed his wife and two infant daughters goodbye and left for work. Hours later, a U.S. Marine fighter jet crashed into his family home in San Diego, incinerating the house and killing his wife, children and mother-in-law. In that moment, Don Yoon lost his family and all of his possessions. As the smoke cleared, firefighters at his house found photographs scattered throughout the property, and they gathered them in a cardboard box to give to the devastated husband and father. They felt bad that they couldn't salvage more, but the small box of singed photographs was all they had to offer him. To Don Yoon, however, it was everything.

Working through his grief, he talked to experts around the country to learn how to remove the soot and burned ashes from the photographs to preserve the images, and he painstakingly soaked and dried each precious photograph. That box and its contents became his prized possession and he never let them out of his sight. For in this box, was the story of his precious family's life together.

There was not a dry eye in the courtroom when he testified at the wrongful-death trial in the U.S District Court for the Southern District of California, before the Hon. Jeffrey Miller. Don Yoon did not care about how the crash occurred, or how

much his wife would have made as a nurse had she lived, or how the economic damages were calculated. Those things meant nothing to him. All he wanted was to remember and honor how they lived; how he had waited to meet the love of his life, and how his wife had such a big heart that she put her younger siblings through school and became a nurse to help others.

He recounted how his wife made him a traditional Korean breakfast with a bowl of rice topped with a heart she fashioned out of beans to show him how much she loved him – and how she called him every night at work to see when he was leaving so that she could time the preparation of his dinner to ensure that it was served at the perfect temperature. He marveled at how his extraordinary mother-in-law dropped everything to fly from South Korea to San Diego to help them with the birth of their new daughter, Rachel, and to help take care of their other daughter, 15-month-old Grace, who was just starting to talk. By all accounts, the girls would have been raised in the traditional Korean culture that emphasized love and devotion to parents and family. The only thing Don Yoon wanted was to be reunited with his family one day, and he testified, "That is all I have to look forward to."

Judge Miller's sixteen-page decision in this case sets forth in remarkable detail the story of the lives of Don Yoon, the decedents, and the rest of his wife's family members who were

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all tragically altered by their deaths. The story began in a remote village in South Korea and included the culture and traditions of a loving family. Not surprisingly, the largest portion of the amount awarded was non-economic damages.

Whenever I think about what is important in a case, I think about that little cardboard box clutched in Don Yoon's hands – and the precious photographs inside. I remember the photograph of the bowl of rice with a heart made out of beans, and the photographs showing how happy they looked at their wedding and when Grace was born. The story of their lives was all in that box – and couldn't be destroyed by a fiery inferno.

Non-economic damages make the difference

What makes the difference in the size of verdicts in wrongful-death or personal-injury trials? In most cases, it will be the size of the award of non-economic damages. Despite this, many trial lawyers focus the least amount of time on this aspect of their case. It is only when we, as trial lawyers, can truly find and tell the story of our client's lives that we can succeed in convincing jurors of the magnitude of their loss. Jurors can never appreciate what the plaintiffs have lost

until they know what they had and who they were before the incident.

Too often, lawyers confuse the story of their clients' lives with the story of the incident. Others confuse the story of their clients' lives with their demographic statistics: age, life expectancy, gender, occupation, marital status, place of residence. That is definitely *not* the story.

This concept was effectively demonstrated in Steven Spielberg's movie, *Amistad*, which was based on a true story of the 1839 mutiny aboard a slave ship by Africans who were illegally captured and sold into slavery. After the ship was apprehended off the coast of Long Island, New York, the fate of the Africans lay in the courts of the United States. In the movie, an abolitionist named Theodore Joadson (played by Morgan Freeman) seeks advice from former President John Quincy Adams (played by Anthony Hopkins), who eventually argued the case before the United States Supreme Court:

John Quincy Adams: *In the courtroom, whoever tells the best story wins. What is their story, by the way?*

Theodore Joadson: *Sir?*

John Quincy Adams: *What is their story?*

Theodore Joadson: *Why, they're um . . . they're from West Africa.*

John Quincy Adams: *No. What is their story? Mr. Joadson, you're from where originally?*

Theodore Joadson: *Why, Georgia, sir.*

John Quincy Adams: *Georgia.*

Theodore Joadson: *Yes, sir.*

John Quincy Adams: *Does that pretty much sum up what you are? A Georgian? Is that your story? No. You're an ex-slave who has devoted his life to the abolition of slavery, and overcoming the obstacles and hardships along the way, I should imagine. That's your story, isn't it?*

You and this young so-called lawyer have proven you know what they are. They're Africans. Congratulations. What you don't know, and as far as I can tell haven't bothered in the least to discover, is who they are.

Finding the story of your client's lives is discovering who they are. What is his or her life story? What makes him or her unique? The process takes time and patience, because the facts are never discovered in a way that is organized in an effective story format. Often, your clients won't even know the full story. It is up to you to gather the facts, find the story, and determine the most effective ways to tell that story at trial.

The importance of the story

Recent studies and advances in neuroscience have demonstrated that our brains are actually hardwired to receive and respond to a story. It is the way we best learn and process information. Neurons in our brain are actually activated by a good story so that we can empathize with and learn from the story. Simply put, we are genetically programmed to crave and respond to a story told well.

From the earliest gatherings of people around the fire in cave dwellings and their rudimentary drawings scratched onto the cave walls, humans have depended on stories to understand life. Author Reynolds Price described this need when he wrote:

A need to tell and hear stories is essential to the species *Homo sapiens* – second in necessity apparently after nourishment and before love and shelter.

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Throughout history, prominent leaders and teachers such as Moses, Jesus, Plato, and Socrates all used stories to effectuate great change while satisfying this need. Although today's technology has provided us with enhanced tools to tell stories with words, images and sounds, this basic need for great stories has remained unchanged. Jurors are no different: they need to hear important information and facts in a story format – and they are transfixed by a good story told by a great storyteller.

What makes a spellbinding story? It is obviously not a mere recitation of pertinent facts, names, descriptions and information. It is not a brief or memorandum. A great story emerges when one creatively arranges a tapestry of carefully selected words and images to recreate a series of events in an interesting way that inspires, entertains or moves the listener. The art of finding, recognizing and crafting the story from actual facts and events requires time, creativity and practice. There is no way to predict when the story will emerge from the accumulated facts and details in the case. Sometimes the story is obvious; other times, you may not recognize it until it slowly evolves from multiple discarded drafts. But like pornography, you will know it when you see it.

To find, recognize and craft a great story requires one to have a great passion for and an appreciation of well-told stories. Film buffs and voracious readers of everything from mysteries, romances, science fiction, biographies, and even *People* magazine know a good story when they see one. Having creativity, imagination, empathy, or the ability to express emotions also helps. Fortunately, these traits are abundant in effective trial attorneys. The next time you think you are too busy to read a really good novel or see a movie, think again. That book or movie may inspire you to find an innovative way to craft the story of your case.



The Story of Their Lives

Finding the story

In order to find the story of your clients' lives, you have to first spend time with your clients and/or their families. It is important to remember that the purpose of these meetings is not to find out what happened in the case, but to learn the full story of their lives. I prefer to meet them in their homes, if possible, to see how they lived before the incident, how they live after the incident, and how they interact with their families. Being in a place in which they are comfortable enables them to relax and feel free to discuss their lives in detail. They can easily find and show you photographs, scrapbooks, letters, cards, notes, videos, and other memorabilia that help bring their stories to life.

As you talk to your clients, think about the elements of non-economic damages you will have to prove at trial, and make a special point of asking about and listening for these elements during your interviews. In wrongful-death actions, look for various examples of the decedent's love, companionship, comfort, care, assistance, protection, society, guidance and moral support. If your case is a personal-injury case, listen for that portion of the story that relates to your client's pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, anxiety, inconvenience, humiliation, and/or emotional distress. I always have a list of these elements with me.

If your clients are naturally shy or not very talkative, getting the facts and details necessary for the story is not always easy. Photographs – often found hanging on the walls, in frames on coffee tables, or in scrapbooks and albums – are often the best way to get clients talking about their lives and loved ones. They are the first things I look for. By going to your clients' homes, you are able to view all of the family's photographs and choose the ones you want – instead of being dependent on those few that your clients bring to you. A

great story can unfold from photographs alone.

One of the best demonstrations of this fact came out during the Michael Jackson wrongful-death trial. When a young Michael Jackson was still living at home with his mother and family at Hayvenhurst, he had a secret project that he worked on behind locked doors. His mother, Katherine Jackson, testified: "He took all my pictures . . . I was wondering, 'Where are my pictures going?' He took all the pictures, enlarged them, and . . . he just put them all around the wall and invited the whole family. And he said, 'Here's your surprise. Come in.'" When the family came in, they first saw a plaque that he created that stated:

To take a picture
Is to capture a moment.
To stop time.
To preserve the way we were.
The way we are.
So with these photographs,
I will recreate some wonderful, magical moments in our lives.
Hopefully this journey into the past,
In picturesque form will be a stimulant
To create a brighter successful tomorrow.

— **Michael Jackson**

Climbing the stairs, the family saw a life-sized photograph covering the wall
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depicting a young Michael Jackson and his brothers when they were children with the words, “JUST KIDS WITH A DREAM.” And when they entered the room, they saw huge photographs of their lives together that were enlarged and made into wallpaper that covered every inch of the walls and ceiling: photographs of their maternal grandfather; their parents’ wedding certificate, the children as babies in Gary, Indiana, the older brothers on a baseball team, Katherine Jackson’s 1973 California driver’s license, the Jackson Five meeting the Queen of England, Michael posing with ET, and Michael emerging as a superstar. So precious is this room to Katherine Jackson that it remains intact long after the rest of the house was remodeled.

Obviously, not all clients will have this many photographs. Always ask for videos, music, notes, cards, letters, programs, yearbooks, school records, and/or any other pertinent memorabilia. Remember to get a list of names of friends, co-workers, bosses, teachers or neighbors who knew the decedent or your clients before and after the incident, and meet with and interview those individuals.

To capture the rest of the story of your clients, think about the five senses to get your clients and witnesses talking and remembering important details that can bring the story to life:

What did they *see*?

Examples from *Rennie v. Fed Ex Ground Package System*:

“When I saw Chelsea on her bike, I knew everything was right in the world. It put a smile on my face whenever I saw her.”

“I looked over at her grandfather, and tears were streaming down his face. He was so proud of her.”

“All I could see was this massive curly red hair. I could always pick her out in the crowd.”

Examples from *Casillas v. Landstar Ranger*:

“His leg looked like raw meat down to the bone.”

“His bone was splintered and sticking through the muscle and the skin.”

“His stump is ugly. It’s disgusting.”

“I was not prepared for what I saw. His leg was black and swollen with pus coming out of it. I wanted to scream but I couldn’t. I could see him watching me.”

What did they *hear*?

Examples from *Rennie v. Fed Ex Ground Package System*:

“All I could hear was her killer clarinet solo. She stood there with one spotlight on her. You could hear a pin drop and then she started to play. So beautiful and moving. She held the last note so long. It was an electrifying moment. It was just so beautiful. This has to be one of my absolute favorite moments.”

“There was always music at the house. Of all different kinds. And now it is just silent.”
“Hearing her music brought the community together.”

“Often I’d hear her praying and hear the little murmurings in there, and I knew she was talking to God, and I thought that she was so comforting to me. That was wonderful.”

Example from *Casillas v. Landstar Ranger*:

“He screamed like a wounded animal for the entire 15 minutes. I couldn’t stand to hear it.”

“It was so disturbing to hear him scream like that.”

What did they *smell*?

Examples from *Casillas v. Landstar Ranger*:

“I have a bad smell in my leg.”

“His leg and the room smelled like rotting meat.”

“The soft tissue was dying and it does not smell good. Everyone who came close to the room could smell this.”

What did they *taste*?

Examples from *Villamariona v. CBS Corp.*:

“He always made the special holiday turkey with the special secret sauce. It was so delicious. The sauce was the key. And no one can make it now.”

“He had dinner ready. I ate his chicken and I said, ‘you are the best cook.’”

“I would wake up to the best hot breakfast that he made for me.”

What did they *feel*?

Examples from *Villamariona v. CBS Corp.*:

“His big hugs made you feel so safe and protected and loved.”

Example from *Casillas v. Landstar Ranger*:

“Even the slightest touch would make this kid scream.”

“This area here feels bumpy and this feels like a tunnel that I can stick my finger in.”

Example from *Rennie v. Fed Ex Ground Package System*:

“I could always feel her leaning into me when we sat next to each other.”

Telling the story

Once you have the information to begin crafting your story, you want to put it together in a way that will captivate and interest the jurors. Where should you start the story and in what order should you tell the story? What is the theme of your story?

The theme of the story is the main idea or underlying, recurrent message or lesson that the storyteller is trying to convey. If you had to distill your story down to one sentence, what would it be?

Think of a Hollywood producer or writer trying to pitch a story to the studio by articulating its theme in a clever, memorable way. The movie tagline can make or break a movie.

Themes have always been used to motivate and stir people into action.

When telling the story of your clients’ lives, you must do the same thing for a jury with the theme of the case. It is the one phrase that most embodies what the case is about. It is the first, the central, and the overriding element of any case story. Gerry Spence refers to the theme of the trial as “a descriptive phrase or metaphor that symbolizes the soul of the case – a refrain perhaps.” An effective story will hook the jury from the very beginning and keep

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jurors interested throughout the trial. Its theme will resonate with them and motivate them to complete the story with a just and satisfying ending. The story should provide enough details to bring the story to life – but it should not contain too many unnecessary details that confuse the storyline. As you craft your story, consider the graphics, slides, photographs, videos, or other exhibits that you will want to show to further enhance the story. The technology that we now have in our courtrooms makes storytelling easier and more effective.

All of the stories of our clients' lives are stories of remarkable and brave people who have endured a tragic loss or painful trauma that brought them into the courtroom. They would have preferred to live ordinary lives, but were ultimately changed forever by what happened to them. They therefore have something meaningful to say that can provide valuable life lessons. It is our duty and privilege to find, craft, and tell the story of their lives.

Examples from recent cases

The following excerpts from rough approximations of the stories of two recent cases tried in Los Angeles and Orange County are being provided to illustrate ways to start your story.

• *Casillas v. Landstar Ranger*

Nineteen years old. That's how old Alan Casillas was on the day that he became forever disabled. He had just turned 19 less than two months before that terrible day that changed his life.

And like most 19-year-old boys enjoying their last year of being a teenager, Alan Casillas thought he would be healthy, athletic and active forever. Working out and keeping fit was a passion for Alan. At 5 feet 4 inches, he didn't want to be known only as "El Enano" or "the short one" in his neighborhood; he wanted to be the most fit. Adopting a "life is a workout" mentality, he found a way to work exercise into his everyday life. When he woke up on the morning of Friday, December 7, 2012, he was in the best shape of his young life.

On that morning, he was looking forward to a Friday full of fun and relaxation. After working hard all week at a construction job he loved, he had Friday off. Alan received a call from a friend inviting him over to play the new "Call of Duty" video game – and he hopped on his bike that he rode everywhere.

He never made it to his friend's house. By 8:37 that morning, he was lying on a sidewalk and screaming in pain after the rear wheels of a 60,000-pound tractor-trailer rolled over the sidewalk he was on and struck him, severely crushing and mangling his left leg.

What Alan did not know that morning, when he so eagerly jumped on his bike as a carefree 19 year old, was that it was the beginning of the longest journey of his young life. Instead of playing video games or running or playing basketball or dancing like most other young men his age, Alan has, for the last two years, endured over 20 different procedures – including an amputation of his left leg that was followed by heart-breaking complications and setbacks. In those two years, he learned for the first time what true pain really is. And unfortunately for Alan, this difficult journey has not ended; it will last him another 55 years.

• *Rennie v. Fed Ex Ground Package System*

This case is a story about the girl with the curly red hair. From the time that she was born on September 19, 1990, Chelsea Joy Kashergen's hair was her calling card. You will hear how her mother, Nancy Kashergen Rennie, could instantly spot her child in a crowd by the color of her hair. It was the first thing that people noticed about Chelsea – until they realized how gifted, talented and special she was.

This is also a story about the extraordinary and unique relationship between a mother and her daughter. The evidence in this case will show that it was always Nancy and Chelsea together: bonded together and inseparable after Chelsea was born and so close even at the time of her untimely death at the age of 22.

For 22 years, Chelsea lived with her mother in the same house and in the same

neighborhood in Fullerton. It was a house filled with music and love and laughter, and in it, Chelsea blossomed into an accomplished musician who played five different wind instruments and the piano, arranged and composed her own music, and sang beautifully. You will hear people describe her as an "old soul" who loved jazz music and the Dixieland bands that she first grew to love as a little girl with her mother at Disneyland. Chelsea could light up any room with her bright, upbeat music, her creativity and passion, and, of course, her trademark curly red hair.

And finally, this is also a story about what happens when the music suddenly dies, and the house is suddenly dark and silent because the light that once shone so bright is now extinguished forever.

Chelsea died on June 20, 2013, after being struck by a FedEx Ground vehicle while she was riding a bicycle not far from her home in the neighborhood that she knew so well. The defendants have admitted liability for this tragedy. So why are we here?

Because the most important task has yet to be done: The reason why we are all here is for you, as a jury, to assess the relationship that Nancy Rennie had with her only child – and to determine how she has been affected by the loss of Chelsea's love, companionship, comfort, care, assistance, protection, affection, society, guidance and moral support.

Deborah S. Chang is an attorney with Panish Shea & Boyle LLP in Los Angeles. Her practice has focused on wrongful death, complex torts, catastrophic injuries, and products liability cases for over 25 years. She is licensed in California, Connecticut, and Florida. She is a member of the Los Angeles chapter of ABOTA, and serves on its Executive Committee, and is included in the Best Lawyers in America and Southern California Super Lawyers. She serves on the Executive Committee of the CAOC and is the Chairman of its Diversity Committee. In 2014, she was recognized as the CAOC Consumer Attorney of the Year. ☞