

## ***Inspiring With Your Trial Story***

IF YOU ARE A trial lawyer, you have told inspiring stories. Through the opening statement, examination of witnesses, and closing arguments, you have narrated events that teach lessons in courage, grit, perseverance, honor, decency and humility. You've also told tales that condemn bigotry, insensitivity, the abuse of power and authority, arrogance, indifference, and brutality. We tell our client's stories in the hope they will lead our audience to justice. Still, the challenge sometimes seems overwhelming, given today's political climate. For the last quarter century, insurance companies and corporations have propagandized the American public to believe that the problems of the country can be blamed on trial lawyers, that people who sue for personal injuries are just "playing the lottery," that courts and juries keep the country from "heading in the right direction" and that we are awash in frivolous cases that cause people to lose jobs and businesses to fail. I often ask questions whether Atticus faced more prejudice and bias than trial lawyers representing injured claimants do today.

A trial lawyer's first challenge is to deselect from the venire those who have bought into the myths, lies, and distortions the insurance companies and corporations have spread over the last twenty-five years. People who are free of anticonsumer, probusiness prejudice can be inspired by a trial story involving a wrongfully injured plaintiff seeking fair and just compensation. The trial lawyer's job is to help people up who have been knocked down. But we are not the heroes. Jurors must feel that they are the John Waynes or Clint Eastwoods in our stories.

The moral of a trial story is about empowerment. Inspiring the jury to do something for someone who is weak, vulnerable, and not able to make things right without the jury's help but the lawyer's boot camp prepares its recruits poorly for courtroom wars pver the hearts and souls of ordinary citizens. Legal education denies emotion. Students are taught the cold logic of inductive reasoning—a thought process essential to law review commentary, legal brief writing, and analysis of appellate court decisions. As Professor Kingsfield of *The Paper Chase* says, "mush" has no place in the lawyer's mental atlas. Nut inductive analysis is a faulty road map for the courtroom. Ordinary citizens resolve conflicts by deciding first what seems "right" and then making the facts fit their sense of justice. Legal thought offers few signposts to guide the average person's approach of making decisions based on emotional and validating them with logic.

Yet legal education seems committed to the proposition that the fleet that carries the precious cargo of justice is made more roadworthy by draining the crankcase of all hman emotion. The inductive reasoning that is the cornerstone of legal analysis condemns as illogical the pull of the heart toward what feels "just, fair, and right." Victor Frankl in *Man's Search for Meaning* suggests that man's core desire is to matter. Trial Lawyers should ask themselves, "What part or aspect of the story can inspire jurors

to believe that their verdict is important? How will the verdict make a difference in the world?"

Although the trial lawyer does not have the dramatist's freedom to construct character and plot from a preconceived these, this should not paralyze the effort to make the case mean something. The lawyer who represents someone wronged is charged with writing a play that empowers the jury. The jury writes a final act that brings some meaning to the enigmatic riddle, "How can bad things happen to good people?"

The plaintiff's these is justice, and the only way to get it is by persevering against superior forces. The dramatic parallels are *Rocky*, *the Longest Yard*, *Hoosiers*, and *Field of Dreams*. People admire and respect the trial lawyer who is a true champion of his cause. Trial counsel who muddle and ramble through their cases in a disorganized, half-hearted, perfunctory manner put their clients and their causes in grave jeopardy. Successful plaintiff's advocates convey by the way they know their case and present it that they not only have confidence in their client, the case, and the civil justice system, but that they are also willing to fight for them. In the words of the late Senator Richard Russell, "You fight until hell freezes over. Then you fight on the ice."

Successful plaintiff's lawyers understand the values and motivations at play in the average citizen's intrinsic schema. These are, in essence, cause-an-effect statements people apply in their everyday lives. They may also be termed core values.

## **CORE VALUES THAT WORK FOR PLAINTIFFS**

The following core values are held by many Americans. Trial lawyers use them as the morals of their stories.

- *People should take responsibility for their actions.*

People should not blame others for their lack of success, personal problems, or shortcomings. People should be held to written agreements they sign. Corporations should stand behind their products.

Of all the potential themes, the one that currently holds great promise is that of a personal responsibility. Plaintiffs can turn this popular defense theme to their own advantage. A cornerstone of many recent political campaigns, this idea has been twisted by the rhetoric into a contorted premise that people should be responsible for any tragedy that befalls them. Victim advocates can anticipate a defense argument that says, "The plaintiff refuses to accept responsibility and looks to blame anybody else." We serve our client's cause best by admitting at the outset that our client expects to be responsible for his or her actions. Isn't it fair to expect the defendant to do the same?

The premise of accountability motivates jurors, regardless of their political persuasion. It empowers them to protect innocent victims against the abuse of power by corporate profiteers, uncaring professionals, and insensitive managed care entities. Trial lawyers can mold the personal responsibility these into a memorable phrase such

as, "Mrs. Rodriguez trusted the wrong people to do the right thing." The attorney simplifies the essential facts to what the plaintiff did right and what the defendant did wrong. The casual connection leaps out from the defendant's irresponsible actions and refusal now to be held accountable for the harm done. The cognitive theme incorporates in part the affective value of accountability.

At the end of the case, after the jury has heard all the evidence, the plaintiff injects the affective theme. The plaintiff's affective theme is the moral of the story. While the cognitive theme anchors the plot and synthesizes the facts and science, the affective theme inspires jurors to action. They cannot get the moral until they've heard and understood the whole story. Affective themes of wrongdoers trying to escape accountability work in small as well as large cases.

It is a cold, clear, crisp evening in Dallas. Margaret Randall is looking forward to a few days off after working the New Year's holiday at the Southwest Airlines check-in counter at Love Field. After she gets on the Central Expressway at Mockingbird, the traffic starts backing up. Margaret applies her brakes and comes to a stop. A second or two later, she hears the squealing of brakes and feels the impact. A Suburban driven by David Warren crashes into the rear of her small Datsun. Margaret goes to the hospital that night in an ambulance. The emergency room doctor diagnoses a cervical strain, puts her in a neck collar, gives her pain medication, and sends her home. She continues to have pain in her neck and shoulder. The family doctor she sees the next day refers her to an orthopedist. The orthopedist sees her for nine months, prescribing physical therapy. Margaret makes fifteen visits to the physical therapist and misses twenty-one days for work. The orthopedist discharges her as having reached maximum medical recovery and approves her return to full duty. She still has problems lifting luggage.

Because the defendant will not accept his responsibility, Margaret files suit. His lawyers answer and deny any liability in their written pleading and answers to written questions. They claim the wreck was all Margaret's fault. When the defendant gives his deposition, his justification is that he "just didn't have time to stop." He admits that everyone else did because there were no other wrecks on the freeway. He is not able to point to anything he claims Margaret did wrong.

"We told you during the jury selection and opening statements that if Margaret has any responsibility, she accepts it. All she is looking for is restitution, repayment in the form of reasonable damages."

"There are two kinds of people. Some folks accept responsibility and want to square up and make things right. Others will do anything to avoid being accountable. They bag their limit by taking from those they've abused. They play with our sacred system of civil justice like a child plays with a toy. If they can break it for one person, what does it mean for the rest of us?"

The story the plaintiff tells is that if a defendant carelessly impacting and changing the life of a decent, hard-working citizen and then refusing to be responsible. Justice is not a matter of simple arithmetic, and jurors not calculators. The culpable compound the offence by arrogantly suggesting "Let me pay what you're out of pocket and call it square." 'When someone's carelessness hurts you, sends you to a doctor to wait around until he can see you, makes you drive across town to the physical therapist who is trying to heal your body, imposes on your family who has to deal with your convalescence, and puts your job in jeopardy because you're taking tie off, he ought to be willing to do more than bring your bank account back in balance. Instead of accepting responsibility, he puts you through two years of waiting, worrying and watching him play the system, hoping he can find a judge or juror committed to denying justice to anyone who has a damaged body instead of a damaged business.

START CHECKING FROM THIS POINT UP!

Negligence doesn't just lift from the pocketbook, it writes checks against happiness, security, well-being, and contentment. These are human damages as deserving of restitution as economic damages. Perhaps more so. The moral, the affective theme, becomes, "We can set things right for someone who doesn't have the power to do it herself."

Refusal to be accountable resonates loudly when significant injury follows from the mischief of a large corporation. In a products liability case, the moral or affective theme might be that we must all stand up against corporate irresponsibility. Or it might be that we have the power to make manufacturers listen to us, treat us with respect, and be careful with their products. "Business as usual" shouldn't be walking away when you hurt someone. The plaintiff appeals for the responsible exercise of power. The power is the jury's. An affective theme might be, "They wouldn't listen to Robert, but maybe they'll listen to you," or, "These defendants have refused to answer this family's question. Today, you can give them the answer they deserve."

- *Rules are good and should be followed.*

The rule of law comes from religious principles. If someone breaks the law he ought to be punished. Professions and industry should comply with established standards. An institution's rules and regulations should be followed by its staff. Rule breakers are responsible to those they hurt.

The world was a poor place three thousand years ago. Palaces were hovels, a man was old if he reached his fourth decade, the average person's most valuable possessions were the clothes on his back, and a family was rich if it owned two oxen. In those crude and meager times, man turned to his Creator for guidance about how he should treat others. Our religious lessons had one

common theme—the value of the human being. Today we know all too well that some cultures do not share this principle. Our belief that every man, woman, and child is unique and precious is the cornerstone of our civil justice system.

Many people have managed to survive the hurt or tragedy carelessness hammered in them because of their faith. Their belief that there is a just God and that he would not allow injustice to escape the final accounting by the law sustains them. The same principles that measured restitution three millennia ago in bushels of wheat or flocks of sheep still guide us in defining justice. Health, happiness, and life itself, when taken wrongfully, deserve recompense. Unlike the impoverished ancients, we have the unbridled wealth of an affluent society as a reservoir to repair injuries caused by civil wrongdoing.

The only thing that makes people responsible is legal accountability. When citizens and corporations are held to their obligation to act safely, they learn from their mistakes. As children, we learn that if we break the rules, we bear the consequences. So we learn we must behave and follow the rules. Every consumer who buys a product is relying on promises from the manufacturer. Every patient who agrees to treatment has an implied covenant with the health-care provider. The expectations and obligations are that the rules will be followed. Trust is betrayed when they are not. Trial stories often revolve around the violation of written standards. In the products case, these may be governmental, industrial, or corporate standards. Industrial injuries may be related to a plant's skirting OSHA's regulations. The malpractice victim contends that the standards of a medical specialty, hospital, or medical school facility were abused. Violators like to pervert minimal rules in the form of standards into "guidelines," guidelines become suggestions, and crossing the line of good, safe practice is only an honest mistake or a matter of judgment.

The injured victim didn't make the rules. Corporations have significant input into the crafting of governmental and association standards. Members of the medical and nursing staff write protocols and standards for the hospital. When defendants break the rules, they violate the principles they set up for themselves. Surely the defense isn't so callous as to say the rules they made do not apply to them. Surely they don't suggest that mangling their own mandate didn't make any difference. If it didn't make any difference, why did they have the rule? "They didn't make rules that didn't mean anything, and they didn't make rules just so they could be broken."

Sometimes the plaintiff cannot point to a specific written rule or standard that the defendant violated. Often this is because the standards were set too low. If business or medical practices allow and condone perilous imprudence, then maybe they need to be changed. In one form or another, every plaintiff's case is about change. Changing business practices, the way products are designed or marketed, the policies of hospitals, security decisions for premises, the way a doctor practices. Anything less than full justice is a signal that we will tolerate what the defendant is doing. Any discount from decency encourages

dangerous practices. Any markdown of restitution is a pat on the back for carelessness.

The plaintiff develops a trial story with the defendant's testimony that he didn't do anything wrong and wouldn't do anything different. The manufacturer's representative admits that they wouldn't change the design of their product or the way it was marketed. The doctor admits that if a similar patient walked in today with the same complaints, she would treat him as she did the plaintiff. Other witnesses and experts describe how careless and dangerous these practices are. The plaintiff's affective theme becomes, "They say they don't intend to change a thing. Maybe after they hear your verdict they'll change their mind."

- *Hard work and perseverance will eventually triumph.*

The ordinary person who works hard, follows the rules, and obeys the law should be rewarded. For a plaintiff to be seen as deserving of a damage award, jurors must be convinced that she met her responsibilities.

The trial story is about people as much as it is about events. Justice shouldn't depend on character. Everyone, regardless of past trespasses or personality flaws, deserves the full measure of law. Ideally this may be so, but the harsh reality is that people are more likely to help those they like and admire. There is little to revere in whiners, complainers, quitters, liars, or pessimists. But even the cynical have a hard time finding fault with those who represent candor, courage, initiative, dignity, and loyalty. No protagonist is without flaws. The defense will highlight these, but only the most hypocritical look for perfection. The plaintiff's character colors the story. The essence of the person is a part of the affective theme.

A simple rule from the Psalms is that we are to trust in the Lord and do good. The book of Ezekiel teaches that we are to render true judgments between man and man. Many of us follow the teachings of a man who admonished us that we are to act with charity in our hearts and see that men get their due under the law. The Apostle Paul said:

Be not deceived; God is not mocked: For whatsoever a man soweth, that shall he also reap.

Our faith teaches that we are judged on how we live. We earn our full measure of justice by being good citizens. The plaintiff worked hard for everything she has. She paid her taxes, she obeyed the law, cared for her family, contributed to the community, was responsible and committed. Should we not give people like this our full consideration and commitment to what is just and due? Isn't it time we say to people like this that it is time we did something right

for them? The affective message is summarized with, “Who would deny justice to someone who has earned it?”

Courage in one form or another can be found in many plaintiffs’ stories. We don’t have time-share when loved ones are lost. You can’t lease out someone else’s mother or child or husband. When a child dies, she is gone forever. There is valor to be found in parents who can continue despite their overwhelming grief. Men and women maimed and crippled by the negligence of others continue to look for work even after they’ve been turned down many times. No matter how hard things get, they are more concerned about their family than themselves. These kinds of people don’t talk about family values like the politicians do—they live them.

Perseverance is demanded from anyone seeking civil justice. Not only must plaintiffs deal with their own injuries and losses, they must withstand the abuse that is all too commonly heaped on those who call others to account. Being a plaintiff in a lawsuit strips you of privacy, dignity, and contentment. Defendants search employment records, tax returns, medical records. They may point to trivial and remote medical conditions and ailments as an explanation for present problems. Plaintiffs are humiliated by suggestions that they are troublemakers or irresponsible if there is a notation of a problem in years past with a coworker. The human flaws that defendants may trifle with are limitless. Many people are offended when an innocent person is libeled because he has had the temerity to seek redress. In these cases, an affective theme might be, “They don’t care who they have to hurt to win.”

Then there are the delays. The interminable delays in scheduling depositions, producing documents, and getting to trial. Defense interests know that if they delay long enough they can deny justice. There is no limit of time or treasure to be sacrificed to avoid the final accounting. Only the most determined ever see their neighbors in the jury box. Many people throw in the petition and give up rather than continue to wrestle with powerful interests. They know that even if they win, there will be an appeal. Only those possessed of great perseverance ever see full justice. The trial narrative may lead to a theme: “The defense efforts at detouring this search for justice have failed. Don’t let Sally’s hard trip be in vain.”

- *Honesty will eventually be rewarded.*

The corollary is, of course, *Deceit and dishonesty will be punished.* Juries award high damages as a way of getting the defendant to acknowledge its responsibilities and correct the problem so it does not happen again.

There are two kinds of greed: trying to get more than you are entitled to and trying to avoid paying all you owe. The mother’s milk of avarice is deception. What could be more reprehensible than a negligent defendant who steals a part of a citizen’s freedom and then lies and distorts to avoid

accountability? It has become all too common for corporations and institutions to destroy or change records, resist producing documents, manufacture critical entries, fabricate and bear false witness in the name of “fair litigation tactics.” Many corporations and institutions believe that those who seek to hold them accountable are misguided, corrupted by perverse lawyers, greedy and loathsome. What they see in others are just reflections of themselves. So anything goes in the name of protecting the corporate vaults from raiding by desplicables. One hand washes the other, one lie leads to another, all in the name of “company loyalty.”

Should we not demand the highest degree of forthrightness in evidence, aboveboard defenses and bona fide documents when someone is called to account for the death of a child or parent? The crippling of a wage earner? The hamstringing of a single working mother?

Insurance companies and business interests rant against frivolous lawsuits. Should we not be just as outraged by the frivolous defenses? Many times the defense is nothing more than contrived excuses, alibis, and song-and-dance evasions. Defense counsel offers up a shopping cart cluttered with fish stories, whitewash, and shell games. The thinking is that if they pile the cart high enough, put in enough bows on the packages, some gullible jurors will pull out one they like.

Of all the affective themes, the victim’s vulnerability enhances this one best. What should we do about corporations that will invent, fabricate, and fictionalize to defeat the claim of an elderly person? How should we respond to those called to account for the injury to a child when they deceive and falsify? Two thousand years ago a man reminded us, “Inasmuch as ye have done it unto one of the least of these brethren, ye have done it unto me.”

Witnesses can sometimes add to the affective theme. The doctor, who backs up the patient’s contention of malpractice, even though he knows there will be retribution from the local medical community, exemplifies integrity. The coworker willing to risk sanction to verify that machinery was unsafe is courageous. The corporate representative, who rather than go along with the cover-up tells the truth, shows valor. The nurse who bucks the will of the hospital and admits to dangerous medical practice is heroic.

Justice Louis Brandeis once said that sunlight is the best disinfectant. Sometimes it is only the voices willing to speak from tightly sealed walls that bring rays of light in. In *The Mystery of Courage*, William Ian Miller writes that moral courage differs from physical courage in that it is “lonely courage.” It means “making a stand, calling attention to yourself, or running the risk of being singled out in an unpleasant and painful way.” Moral courage demands that the person speaking have “the capacity to overcome the fear of shame and humiliation in order to admit one’s mistakes, to confess a wrong, to reject evil conformity, to denounce injustice, and also to defy immoral or imprudent orders.”

People who speak out and tell the truth even when they may lose that which is dear to them are like the heroes of September 11. They are willing to run in while everyone else is running out. They are characters in a drama where honesty and courage prevail.

- *Good people will come to the aid of those wrongfully injured and deserving.*

Most people agree that the courtroom is an uneven playing field. The side with the most money always has the best chance of winning. Juries composed of ordinary, decent citizens will not be corrupted or intimidated but will see that justice is done.

The right to live free from oppression and be independent of all constraints except those imposed by nature is the essence of the American spirit. Men and women died breaking the chains of British rule. The blood of old and young alike was shed on the battlefields of the Civil War so that people of color could have a seat at the table of liberty. It is not just native soil that has seen sacrifice in the name of freedom. Americans have died all over the world ridding others of tyrants and ideologues whose goal was to enslave people.

Every serious injury represents a loss of freedom. The theft of something valuable is civil larceny. When negligence damages a life, takes away a part of the promise of the human condition, the careless party has damaged and injured something that the plaintiff worked hard to get. When a defendant's negligence causes a permanent disability, the victim finds himself imprisoned in his own body. A coyote will chew its leg off in an effort to get out of a trap. Enslaved people have risked flogging, having a foot cut off, or death in an effort to be free. Wealthy parents have paid fortunes to get their kidnapped child back. Some years ago we spent millions of dollars in an effort to free a young child trapped in a well. Americans will devote vast resources to rescue downed pilots, boaters adrift at sea, and mountain climbers lost in a sudden snowstorm. We do these things because we prize freedom and insist that it is the birthright of every American.

Good, ordinary, innocent people, wrongfully injured, face lopsided mismatches from the beginning. They look across the table at America's prime legal talent representing hospitals, corporations, and professionals who have under their control all the information, research, and documents relating to what happened. The defense stands with legs spread and fists raised, defiant Jimmy Cagneys shouting, "Come and get me copper!"

The American courtroom is the one place where the poor are the equal of the richest corporation. From the beginning, our democratic experiment has searched for the meaning of equality. Today we have laws to insure equal opportunity for all regardless of race, gender, or religion. These legislative and judicial pronouncements are aimed at protecting our personal rights and

individual liberties. Personal rights are just as important as property rights. For some of us they are even more significant. The working man may not have a financial statement that show assets like a corporation, but what he could earn and what he is to his family is just as valuable as the piece of equipment that can make millions of dollars in profits each year. The homemaker may not earn a wage, but it would take a small fortune to even attempt to replace what she contributes to her family and community. A disabling injury to the single working mother takes a greater toll than it does on the corporate executive, even though his annual income may be many multiples of her modest wages.

We should salute those who are courageous enough to put their cause to a jury. Instead, these brave citizens are often criticized as being greedy, malingering players in an ill-advised justice lottery. Those who do go to verdict have been caned daily for years by the brutality of the injuries the defendant's conduct visited on them. It is bad enough that their injuries are often the result of corporate or professional decisions reflecting the job skills of a Gomer Pyle, but some defendants compound the offense with an Enronesque allegiance to truthful documentation and record keeping. Corporate records are changed and destroyed, and critical witnesses are intimidated. Medical records appear that have had more doctoring performed on them than that given the patient. Once in trial, our clients are subject to daily flogging in the public halls of justice by those who show no remorse for their wrong but will endorse counterfeit and guileful defenses. They impugn our clients' personal habits and family history, no matter how remote they are to the issues. Each day in court sees a new excuse du jour. They pile on those who are often vulnerable, hurt, and wounded by the defendant's wrong. This picture offends most Americans who believe that decency and fairness should color the courtroom drama. Sometimes the only way this is done is by a jury taking matters into its own hands. Good people will fight for the poor, the powerless, those who can't fight for themselves, if we give them the reasons and rationale to do it.

There will always be those who will say, "It might cost me something if I approve a verdict awarding this plaintiff significant damages for her personal injuries." To them, worry and pain are just a part of life. Bad stuff happens. Get over it. If you're unlucky enough to be in the way of irresponsible, thoughtless drivers, you're on your own. If you are the unfortunate one who is hurt using a defective product, show a little backbone and bear the loss. If you're the one cursed by the tragedy of a medical misadventure, it's just the luck of the draw. All we can say to someone that cynical is that the laws we are committed to enforcing were written for all of us. It is the law our elected representatives put in place. It is the law approved by the judges since the birth of our Republic. It is the law that has protected thousands of others and mandated that the repayment be full and adequate. It's not my law or the law of the person seeking redress or the law of the person called to account. It's everyone's law. "We have to look out for each other" echoes this theme.

- *Simple and uneducated working men and women possess a special ability to recognize truth and cannot be easily deceived.*

The average person is apt to assess the merits of a legal dispute in terms of right and wrong. He aims for what is morally correct, rather than what is legally correct. The juror's role is to find truth by ferreting out the motives of the parties and witnesses. He will determine who is being fair and who is trying to distort or deceive.

A party's motive can give rise to an affective theme. Plaintiffs must be motivated in their cause by more than money. Does the widow in a wrongful death action worry about how she will care for and educate her children? Does the fear of how she will provide for herself drive the single woman to sue after she is seriously injured in a car accident? Will the parents of a brain-damaged child continue to care for their son after significant damages are rewarded? A part of the plaintiff's affective theme is making the "why" of suing acceptable and honorable.

An acceptable motivation to populist jurors is that the plaintiff is seeking answers, not just money, from those responsible for injuring the public. Plaintiffs are seen as courageous champions for the public. They do not sue for themselves or their children alone; they want to be sure this does not happen to anyone else.

Defendants who callously walk by the plaintiff's problems, stonewall efforts to find the truth, berate the injured, manufacture or destroy evidence, or misrepresent facts may unwillingly be writing the script that leads to outrage. Questionable science, insincere, contrived excuses, and insensitivity to the plaintiff's plight put in issue a defendant's commitment to assist fact finders to discover what is true.

Jurors not only look for the motivation of the parties but also for what drives the lawyer. Emory Buckner was an American trial lawyer who practiced in the 1920s and 1930s. He won a lot of court cases on the proposition that he didn't try to make the jury feel that the client was fortunate to have him as a lawyer. Rather, he wanted the jury to know that he was the lucky one because the client who had such a deserving and just cause had chosen him for representation.

- *People help those who help themselves.*

The civil justice system is a safety net to catch innocent people wronged by others, who might otherwise be left helpless and destitute. Jurors need to know that if they award adequate damages the victim will continue trying to make the most out of life despite his tragedy.

Carlos Herrera was thirty-two years old, working as a window washer, when defective scaffolding caused him to fall four stories to the pavement below. He survived his broken legs, but the fracture of his spine left him paralyzed from the waist down. It is no appeal to sympathy to remind jurors that a full and adequate award for pain and suffering, loss of earnings, and future medical expenses will not mean that Carlos will have it easy. He still has to face life's challenges in a maimed and crippled body. The affective theme underscores the plaintiff's determination.

Carlos came to the courtroom looking for a hand up, not a handout. He doesn't expect someone else to push his wheel-chair; he just wants to know *he can* always have a good, modern wheelchair. He doesn't expect someone to share the worry, the torment, and uncertainty, every time he sees a doctor for one of the medical complications that are associated with paraplegics. He does want to be sure *he can* get to and afford the doctor. He doesn't want someone to share the agony and frustration that goes with physical therapy. But he wants to know that *he can* get all the physical therapy that would benefit him and allow him to realize his full potential. Carlos doesn't expect anyone to help him raise his two young daughters, to help them with their school lessons, see that they are in church regularly, counsel them on all the issues that trouble young girls as they grow up. He just wants the security of knowing *he can* give them the things they will need. He doesn't look for anyone to share the embarrassment and humiliation of disability. He just wants to be *repaid* for what he would have made for the rest of his working life if he had not been robbed of the ability, the rewards, and the dignity of work. He doesn't ask that anyone give him peace of mind because *he'll find* that, if it is possible, the best way *he can*. He doesn't ask that the defendant or you share his pain. *He'll bear* it, but fairness says he should be fully paid for it.

Carlos doesn't expect anyone to climb the ladder for him. He just needs help in getting up high enough so that *he can* grab hold of the first rung. If we do that for him, he'll climb the rest of the way with the help of his family. He'll have some friends to inspire him. The same friends that have helped him this far, his constant companions of determination, courage, resolve, patience, and tenacity.

There's a big difference between living and being alive. Carlos needs your help to live. He will never be alive like the rest of us. Most of you remember *Star Wars*. When Princess Leia faced disaster, she called on a Jedi Knight: "Help me, Obi-Wan Kenobi. You're my only hope." We have Jedi Knights today. They are called jurors. They have the power to rescue and protect. Carlos needs your protection.

He deserves your help. All he asks for is justice. As William Penn said, "Anything less than full justice is cruelty."

Some suggest that an affective theme should dramatically capture the essence of the plaintiff's loss or injury. I disagree. In my forty years in court, I have never seen a substantial plaintiff's verdict motivated primarily by sympathy. Jurors find big damages when they are offended and angered by the defense or inspired by what the plaintiff and her witnesses represent. Plaintiff's advocates use symbols, picturesque speech, and tag lines to bring meaning to the plaintiff's loss. "You don't have to wonder why no mirrors are around" captures the essence of disfigurement. "I speak for a man who can no longer speak for himself," or, "Who will be with her when she is lonely?" may animate the damage argument in a death case. Physical pain is made real when jurors are reminded that "It doesn't work eight hours a day. It doesn't check in and out. It works overtime and is always there." A brain-damaged child or adult paraplegic or quadriplegic is "a prisoner in the smallest cell possible, his own body." But in my opinion these are not persuasive, affective theses. The affective theme, like the cognitive, ties everything together. Sympathy is too light a rope to anchor the plaintiff's case. Why? Because by itself it can never inspire justice on either liability or damages. Everyone has seen tragedy that has no explanation except in the eyes of God. Sympathy can't be the moral, but a strong moral may justify the audience to exercise its human understanding in deciding the issues.

Every case has a soul, a moral, an appeal to the heart with what feels right and inspires dedication to full justice. The visceral tug may come from the story of Susanna, which reminds that justice is an inspired concept. We find truth and do good through independent juries that are the progeny of Edward Bushell and eleven other affirmed Englishmen. Almost a century ago, twelve Idaho farmers affirmed in the pages of American legal history that all men, even unpopular ones, are to receive equal treatment at the bar. The courage of judges like James E. Horton, lawyers like Clarence Darrow and Belva Lockwood, and litigants like Joseph A. DeLaine reminds us that courage and perseverance are essential to maintaining the freedoms guaranteed by our system of justice.

The ideals of fair play, looking out for each other, demanding change, the value of family, getting what you deserve, respect for the civil justice system, reverence for personal rights, and just making things right for those powerless to do it for themselves are just a few of the values in the grab bag of affective themes a plaintiff can use to empower the jury.

Being a trial lawyer is hard cheese. During the past few years I have run into many dedicated advocates, people's lawyers who have become discouraged, frustrated, and demoralized. Even the most meritorious cases are defended on technical, frivolous grounds. Our rules of procedure have become traps

for the unwary, and the preparation of cases has devolved into paper wars and endless depositions. Even if the litigant gets by all the pitfalls, she then must face an antagonistic audience that has bought hook, line, and sinker the insurance-corporate propaganda that vilifies civil plaintiffs, demonizes their lawyers and considers our legal system with independent juries an institution that has no redeeming value in American society.

When I become disheartened, I remember the stories in this book.

I think of the prophet whose inspired rule of procedure saved an innocent woman from death. Susana is like most of our clients. She was an ordinary housewife who men of power and influence thought they could abuse. But young Daniel, by suggesting a procedure that was unique in his day, exposed their deceit.

I think of the Englishman who risked a safe and comfortable life for the principle that juries should be independent and free. Today, many take for granted the right to present civil grievances to an independent citizen jury. Many called to jury service complain that it is inconvenient and disruptive. Edward Bushell was criminalized and sent to prison because he would not participate in converting William Penn and William Mead, two pacifists. Bushell's Case is the precedent upon which our founding fathers built our constitutional guarantee for trial by jury.

I recall the legendary lawyer who championed the cause of a labor leader who had every powerful interest in the country clamoring that he be hanged. Clarence Darrow did not concern himself with whether his client's cause was popular. He spent days on a voir dire examination that excluded those who had bought into the probusiness propaganda and myths of the day. Because he was so diligent with his jury selection, he was able to obtain an acquittal.

When I consider whether it is best to be right or popular, I reflect on the gallant integrity of Judge Hanes Horton, who refused to allow a verdict sponsored by prejudice to stand against an innocent young black man. The Scottsboro Boys is a shameful episode in American legal history. But Judge Horton is remembered because of his courage in standing up to mob mentality.

As my clients struggle to survive through the economic and personal tortures of extended litigation, I ponder the sacrifices that the Reverend Joseph DeLaine and his group of black farmers made to end the disgrace and degradation of segregation in America.

All of these stories inspire me.

And I remember Atticus.