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Off the Back: How to Use Stories to Distinguish Yourself From the Competition - By Stephen Gustitis

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Stories are the vehicle through which criminal defense lawyers typically communicate with juries. Since the jury decides whether a defense case is persuasive or not, it must be built from their point of view. And since juries are people oriented, rather than law oriented, they use their feelings and emotions to make decisions more often than logic. That's why the story is such an effective way to communicate with them. Juries determine how plausible a case is by placing the story next to their own ideas about how the world works. Consequently, criminal defense attorneys are usually great storytellers. That being the case, what other ways could defense lawyers use stories in their law practices to help them be more successful? Put another way, how could you use stories to address the essential needs of a potential new client and distinguish yourself from the competition at the same time?

When you interview prospective clients who just bonded out of county jail, they are scared and worried about an uncertain future. In that case, they have an inherent need to be comforted. What if, for example, during the intake interview with a potential client you used stories, based on your experience, to show the client you've handled their kind of case before and were able to achieve results they may be hoping for? Telling them about the history of your firm, about your aggressive courtroom capabilities, or telling them how many jury trials you've litigated neither comforts them nor does it distinguish you from your competitors. Almost everyone could say those things about their law practice. The marketplace is replete with claims of tough, top-tier, former prosecutors claiming to be experienced and aggressive criminal defense lawyers. These types of credibility statements are becoming cliché. Furthermore, if you focus only on your skills, rather than results, you'll never address the client's bigger underlying need for comfort. Instead, use stories to highlight your firm's track record of accomplishing favorable results for other clients who faced similar problems.

Utilizing stories of past success is not the same as guaranteeing future results. The Texas Disciplinary Rules of Professional Conduct provide guidance in this matter. Rule 7.02(a)(2) states: "A lawyer shall not make a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it: . . . (2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law. Tex. Disciplinary Rules Prof'l Conduct R. 7.02(a)(2). Therefore, to avoid running afoul of the disciplinary rules, make sure your account of past success is accompanied by appropriate qualifications or disclaimers to guard against the prospective client believing that similar results will be

obtained for them without reference to their specific factual and legal circumstances. In other words, use your story like a client referral. Use it to affirm your experience with similar cases, to affirm your capabilities, and to affirm your record of success.

Furthermore, when done appropriately, recounting stories of past outcomes does not violate client confidentiality nor does it label you as a bragger. Rather, a good story about a former client in a similar situation may help the prospective client to reason that "depending upon the circumstances of my case, if this lawyer can get those kinds of results for other people, maybe he can do it for me, too." You could highlight a story from a former client with the same criminal charges and relate some compelling facts that share similarities with the prospect's case. In fact, you could create a list of 2-3 stories related to the particular kind of case the prospect has now and know them inside out. At the same time you're comforting them with accounts of your past favorable outcomes, you can use the stories to distinguish yourself from your competition since no list of trial skills on your resume is as convincing as a factual success story based on your professional experience helping others with similar problems.

But what if you are young or just beginning your criminal law practice? What if you lack the breadth of experience from which these factual success stories come? Don't worry. With some ingenuity, patience, and sacrifice you can begin to amass a varied and impressive story-base of your own. Accepting court appointments is always the best place to start. The leading defense lawyers I know all started their careers accepting court-appointed cases. Court appointments come in all shapes and sizes. There's no better place to obtain experience in handling forensic evidence and cross-examination. And whether they are misdemeanors or felonies, defending court-appointed cases not only hones your defense lawyer skills, it develops a base of experience from which your success stories will flow. Another way to get experience is to offer your time to colleagues defending criminal cases. The more difficult and complicated the case, the better. Your story about sitting second chair will be just as compelling as any other. Beyond this, you'll build a reputation among your professional peers for being determined and hard-working.

Using stories to showcase your past successes can help comfort potential new clients. When you talk to them about tangible benefits and potential results you could achieve for them, you provide the peace-of-mind every worried client desires. Furthermore, these success stories help distinguish you from the competition as you contend with other lawyers for the same business. And when done appropriately, you are not guaranteeing future results. Rather, you are affirming your experience and capabilities solving similar problems. So, since criminal defense lawyers are such great storytellers, why not leverage past successes into concrete benefits for both you and a potential new client?

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