TLC Methods at Work

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There are only two or three human stories, and they go on repeating themselves as fiercely as if they had never happened before.

Willa Cather, *O Pioneers!*

If you are reading this article, you are one of a fraction of a fringe of a small subset of lawyers. You are on the short list of people who mustered the wherewithal to leave their families and their practices for three to four weeks, travel to rural Fremont County, Wyoming, or gave up one of your few precious weekends to attend a regional seminar and accept the challenge to abandon comfort in lieu of risk. You felt the light turn on when you first experienced your client's whole story, and you hazarded the awkwardness of trying to be honest with jurors for the first time. And you more than likely had at least a few moments of exhilaration in taking those risks and making them work, in the safety of the TLC magic courtroom where juries always find in favor of our clients and no one gets held in contempt.

But with time and distance from Thunderhead Ranch, the actual application of TLC methods can become a daunting prospect. How exactly do we take that wild-eyed experiment from the John Johnson barn and haul it into the courtroom? Is a first-person presentation always appropriate? Are we really supposed to rack our brains for something to sing in every trial? How much of a courtroom risk is too much?

I don't pretend to have answers to all of those questions. But I take guidance in preparation of my own trials from the experiences of those who truly have worked to incorporate TLC methods into their regular trial practice, rather than just saving TLC as a pleasant memory or sporadically trying out something seen at the Ranch. The warriors who are my role models do not just talk the talk; and they know the difference between a courtroom stunt, versus a meaningful vehicle for bringing the jury and judge into the client's experience of whatever trauma brought the client into court.

What follows is an effort at answering the questions of how that follow the learning of what. Here is how some of the very best practitioners of TLC methods have used those methods in each phase of the trial, to ultimately win justice for their clients.

VOIR DIRE—IDENTIFYING THE ISSUES

The lawyer: Jude Basile, San Luis Obispo, California (TLC '94)

The case: wrongful death of a 16-year-old girl; Jude represented the girl's mother.

The problem: how to lead the jury to consider the value of a teenage girl's life. No lost income; no future medical expenses; no other special damages that make it easy to conceptualize a value for the case—and thus no crutch for discussing money with a jury. The only value to be considered was the value of love between a parent and a child.

Jude began his voir dire plan well before the trial, doing his own role reversal both with the young girl and with her mother. He thought of his own intense feelings about his family; and he realized on a very deep level that the love between a parent and child is the most basic, simple, and unique feeling—and most basic instinct that humans can experience. In part, Jude mused, this is because what flows from a parent's love for her child is her own preservation and her own immortality.

So how does that translate into putting a value on that basic, unique feeling? How to ascribe a dollar figure to something that is so elemental? Katlin Larimer, who assisted Jude with the preparation of the case and its trial, observed that asking jurors to put money on the love for a child (and from a child) is comparable to how a doctor must feel in telling a patient that he has cancer, but that it is treatable. In other words, this is news that you don't want to tell, but you have to do so and the good news is that something can be done about it.

There was an additional quandary imposed by the rather unfriendly judge, that being that Jude was ordered to not mention any numbers during his voir dire. So Jude began by saying:

> Folks, we have to do something in this case that I really don't feel good about doing. It is ugly to do—it is to put a cold, hard, money value on the love this daughter would have given her mother. How can we do that? Why ***should*** we do that?

There was a long pregnant pause. Resisting the urge to say something to fill up the silence, Jude just let it hang there for awhile. Finally, one woman raised her hand, and said, I don't know how, but I do know it would be a lot of money. And I'd like to know what these other jurors think! Jude replied that he agreed that it would be a tremendous amount, and agreed that he too would like to hear from the others.

And thus the ice was broken. Other jurors joined in the discussion, which morphed into a dialogue about how to look at the relationship between a parent and child and, more importantly, a dialogue about ***why*** this needs to be done. It concluded as a discussion of making the defendant responsible for this unique, profound loss.

Jude observes that this trial began with him, as any trial must begin with its lawyer. Before we ever haul file boxes into the courtroom or even pick up our suits from the dry cleaners, we must first identify the matters that are most troubling about the trial, and do the work to acknowledge how we truly feel about the client and the troubling matters so that we can express those feelings to the jury. In Jude's words, the most beneficial building block for the whole process is being willing to spend the time and effort to discover who we are. Only then can we more fully begin to understand others.

OPENING STATEMENT: FIRST PERSON

The lawyer: Rafe Foreman, Flower Mound, Texas (TLC '02)

The case: Rafe represented the owner of Poco's Angel Feather, a/k/a Angel, a sorrel Appaloosa mare that, as a filly, had been bred as a result of the defendant's failure to keep Angel confined to her stall while she was in heat. The defendant owned the stalls where Angel's owner kept Angel; and turned Angel out into pasture with the stallions against Angel's owner's express instructions; the result was a baby colt when none had been planned for, and diminished value of both the colt and Angel.

The problem: how could a case about a livestock contract captivate a jury's sense of justice, and make the jury care one way or the other about whether a horse had been bred before she should have been.

Rafe used the first-person method to bring drama to what could have been just a dry contract case, in a most unusual way. He talked to the jury, speaking in first person as Angel, the horse. While ordinarily a transition is important so as to give the jury a map of where you're going, Rafe felt in the moment that the story had to begin with Angel.

And so the first words out of Rafe's mouth were, I am Poco's Angel Feather most people call me Angel. Speaking as the horse, he set the scene by telling the jury how Angel's owner had left instructions with the defendant to keep Angel safe while Angel's owner was in the hospital. He then moved to the drama of the story:

> I was trembling with fear from the moment that I was turned out into the pasture. Earl was in the pasture next to me, but I was only separated from him by three tiny wires only 42 inches high. He took one whiff of me and flared his nostrils and immediately jumped the fence. I ran as fast as I could toward the stall but he was right on my heels. When I got to the barn he cornered me and began to bite me, kick me and roll me. I was lost in the dust and the heat. I could feel the tears in my skin from his teeth and from the fence which I was pinned up against. He tried to mount me but I moved quickly which angered him so he kicked and bit me until I could not stand. While I was on the ground with my nostrils full of dirt he tried again to mount me. I raised up but I couldn't stand. He withdrew to bite me some more, when I saw the neighbor yelling in the next pasture over. I thought for a moment that I was safe. I stood up in hopes that the neighbor would run to my aid and before I knew it, I could feel hooves digging into my withers. I felt the hot breath on my neck. I could smell the dust, manure and the blood. I heard the loudest noise that I had ever heard in my life, it sounded like a train was running over me from behind. Then I felt my insides rip apart and heard the whinny of laughter from Earl as I stood there in terror and pain while he forced himself on me. My legs buckled under his weight and so he bit my neck more fiercely than ever but I could not regain my stance. Finally I lay there in a torn and bloody heap while Earl raced across the pasture as if to brag about his conquest. I couldn't stand for awhile, as the neighbor finally tried to put me back in my stall. Earl came back for more but the neighbor put him back in the other pasture. I was then able to stand and walk back into my secure stall away from the beast.

Rafe's engaging description put all five senses into action, to the total confusion of an opposing counsel who had come to court with the plan to plod through a dry livestock contract case. Because of his careful preparation before trial, Rafe knew the location of every scrape, cut and bite mark on Angel's body, and took care to match his first-person description exactly to the evidence. The description was so vivid that, after Rafe's opening, the judge himself expressed some question as to whether Rafe was talking about a horse or a human woman who had been violently attacked. Rafe says, everyone in that room saw Earl rape Angel, and that was all I was trying to accomplish.

The verdict was for Angel's owner although the jury may well have felt that its verdict was for Angel herself.

DIRECT EXAMINATION: THE ACTION DIRECT

The lawyer: Nelson Tyrone, Atlanta, Georgia (TLC October '00).

The case: woman is beaten, stabbed and sexually assaulted by violent felon on intensive supervision probation. Probation officer has failed to respond when felon repeatedly violated terms of probation, despite that woman reports to probation officer that felon is stalking her.

The problem: the woman has borderline intellectual function with some level of retardation. She furthermore takes a daily cocktail of antidepressant and antianxiety medication. The medications leave her with very little emotional affect; and the retardation renders her unable to find the words to meaningfully describe her attack.

One possible solution was to use another witness to convey the horror and violence of the assault scene. That witness, however, was the arresting officer who had smashed through the door mid-assault to save the woman's life. The officer was not a very animated witness, and appeared ready to simply read aloud from his incident report when called to testify. A traditional direct examination would have done very little to bring the attack to life any more than the emotionally-damaged woman herself could have done.

So Nelson concluded that the answer was to show us, don't tell us. With the officer still on the stand, Nelson asked the judge for permission to bring the officer down from the stand so that he could demonstrate what had happened. To say that the judge was reluctant would be an understatement. Although opposing counsel was not objecting to Nelson's request (perhaps out of curiosity over what was going to happen next), the judge refused to let the officer leave the witness stand until Nelson made it clear that this needed to happen that it would not be a waste of the Court's time, and that it would make it easier for the Court to understand what had happened. At that point, the judge finally relented, with no small amount of suspicion: Well, I've never seen a trial lawyer do this before, but I guess what can it hurt.

Nelson had the officer set the scene, marking off the perimeter of the room, the bed, the door, and other objects that played a part in the assault scene. Under Nelson's direction, the officer approached the door just as he had on the night of the assault. He showed how he had paused long enough to hear screams of terror, and then dropped his shoulder and smashed through the imaginary door, drawing his weapon. The officer showed how he had to pull the attacker off of the client and how the attacker then pulled a bookshelf onto the officer. He described the total cacophany, with the attacker screaming curses and threats and kicking and thrashing around while two officers tried to get him under control, with a terrified victim huddled, weeping, in the corner.

The other solution came through unleashing Katlin Larimer on the client. Katlin had also assisted in preparing the client for her deposition, so the client knew Katlin and was comfortable talking to her. In a caring and slow-paced but definitely not boring manner that was responsive to the client's limited intellectual function, Katlin helped the client to understand what the most important parts of her testimony would be. She helped the client to be able to simply describe events in the right sequence (which had been troublesome for the client) and to trust that her lawyer would not ask her any questions that she could not answer. Through that patient approach, the client grew more courageous to try to be more descriptive and less self-conscious.

> In Jude's words, the most beneficial building block for the whole process is being willing to spend the time and effort to discover who we are. Only then can we more fully begin to understand others.

The end result was that the client testified beautifully; Nelson directed the officer in generating true excitement in the courtroom in his testimony; and ultimately, a conservative judge returned a verdict in favor of the plaintiff, stating in his opinion that obviously the event of the attack was terrifying. He awarded damages in an amount that reflected and respected what the client had survived. Without Nelson's innovative creativity, however, the horror of the attack would not have been brought to life in such an affecting way. Nelson's observation is that from TLC, I really learned that the key is just getting the judge to relent and let you get your foot in the door. That is the battle. Once the testimony begins, he will likely be too entertained to remember his misgivings.

CROSS-EXAMINATION THROUGH PSYCHODRAMA

The lawyer: Mike Strain, Sturgis, South Dakota (TLC '95)

The case: a personal injury action for damages sustained when the plaintiff, an elderly woman who was waiting for a car in front of her to turn left, was struck from behind and was injured.

The problem: The only witness to the collision had no interest in the outcome of the trial, but was curiously oppositional to the plaintiff when it came to her assessment of who caused the wreck. Neither Mike nor his co-counsel, David Goldenberg, had had the opportunity to meet the witness before the trial. They had only a six-line statement that the witness had given to the police on the date of the collision.

Why would this witness be so accusatory toward an elderly lady whom she had never met? Mike realized that she was fully prepared to be hostile to the plaintiff, despite having had no direct involvement in the wreck except as a witness. It struck him that the jury needed to consciously understand that there was, in fact, hostility lurking under the witness' testimony and what the motivation for that hostility was.

The only way to get to that motivation was through the use of psychodramatic methods. In the courtroom, putting himself into the director's role, Mike acknowledged to the witness, "it must have been hard on you to be part of this experience," and asked her: "Can you help us to understand it better?" She agreed to try.

Feeling the emotion behind the witness' words as it connected to his director's questions, Mike took the witness back into the scene of the wreck, and took the jury along as the audience to the drama. He pointed out the emotions she was feeling as the wreck unfolded starting with the fact that she was nearly involved in the wreck herself. There was fear; there

was anxiety; there was relief at escaping the wreck; and after her feeling of those emotions was established, it became clear that the witness had also felt anger over the fact that she had had this close call. Mike felt it and the jurors felt it too.

Thus, Mike was at the rare moment of asking a question without knowing how the witness would answer, but knowing that there was no answer that could hurt his case—a moment that is reached only by taking the time to first explore, and then direct the witness to acknowledge, what is going on inside that witness. Had the witness agreed that she was angry, Mike could have taken the approach that we often make mistakes when we are angry, or it is easy to misjudge a situation when we're angry.

But this witness denied being angry. By that point, Mike's psychodramatic exploration of the witness' feelings had obtained enough admissions from the witness that her denial of feeling angry did not ring true. The jury knew it was untrue and was thus ready to hear the rest of the story not from the witness, but from an attorney who had earned its trust by communicating feelings that the jurors could connect to. Mike converted his approach from this point to a story-telling cross and showed that the witness was mad at her own close call, and blamed the old lady driver for her own feeling of fear that she, too, was going to be hurt in this wreck.

The result was a verdict in favor of Mike and David's client even with the defendant and the sole eyewitness claiming that the plaintiff had stopped in the middle of the road for no reason. It was proof that the facts are only part of what happens; it is the feelings that people remember, and it is the feelings that drive what facts are remembered.

CROSS-EXAMINATION THROUGH STORYTELLING

The lawyer: L. Joane Garcia-Colson, Palm Springs, California (TLC '96)

The case: Breach of fiduciary duty, elder abuse and real estate fraud, brought by an elderly lady who was very seriously bilked out of the true value of her Napa Valley property

The problem: the defendant real estate agent, on first blush, was a sympathetic guy. He had a pleasant demeanor, was confined to a wheelchair, and was a player in the local business community with an active real estate practice. He was furthermore braced and prepared for a hostile cross-examination, and thus had his defenses up and was ready to lie.

Joane's work began with her role reversal with the defendant. With the help of her co-counsel Matt Bishop (TLC '02) and Katlin Larimer, Joane delved into the defendant's own story and his actions so that she could understand his motivation to cheat a sweet, gentle elderly woman and leave her destitute. What Joane learned was that the defendant was well aware of his fiduciary and ethical obligations, and that he was well aware of how much trust his clients had to place in him. She learned that he wanted to be thought of as a professional who understood his professional duties and responsibilities that he wanted to project an image of being such a perfect fiduciary that he would never have done what Joane and Matt had alleged.

Joane then took the time to write out the story she needed to tell, one line at a time which then became the prologue to the cross-examination:

> It is safe to say that you are familiar with the duties you owe your clients, true?
>
> You have a fiduciary duty of utmost care, integrity, honesty and loyalty in dealing with the seller.
>
> You would agree, wouldn't you, that when you have a fiduciary relationship, it means you have a relationship of trust and confidence.
>
> As a licensed real estate agent, you need your clients to trust you.
>
> And you want your clients to trust you.
>
> And you have a duty to them to be trustworthy.
>
> Having a fiduciary duty means having respect for your client's interest.
>
> And trying to do what's best for the client.
>
> As a licensed and professional real estate agent, you take your duties very seriously.
>
> Those duties are important to you.
>
> You can't share any confidential information from a client with the other party to a transaction.
>
> Because that would be unethical.
>
> You want your clients to trust you.
>
> You want your clients to know you are looking out for their best interests.

The result was that the defendant was caught off-guard by the story-telling cross-examination. All of Joane's questions were phrased such that he believed she was making him look good. At one point, the defendant actually volunteered that he carried errors and omissions insurance coverage. Joane took advantage of the power of silence at that moment just waited quietly while the jury heard and processed that admission.

Having invited the defendant to commit himself to the image he wanted to project as a professional who understands his professional responsibilities, Joane then built on that foundation with the documents that showed how the defendant had unspeakably betrayed the elderly woman's trust. By this time, there could be no claim that the defendant didn't really understand his fiduciary duty. Nor could the defendant claim that his professional duties meant something flexible and subjective because Joane had already used leading questions to establish that his professional duties are black-and-white, and do mean what they say. The end result was that the jurors were furious at the realtor, and were ready to accept Joane's and Matt's invitation to set things right for the elderly lady. Joane never once actually said herself that the defendant was a liar she allowed him to admit it to the jury all by himself.

CROSS-EXAMINATION IN THE FIRST PERSON

The lawyer: Joey Low, Newport Beach, California (TLC '98)

The case: Joey's client has confessed, on tape, to the theft of firearms. The defense is that the client confessed only out of loyalty to his friends, not because he actu-

ally did it—he was willing to take the rap for his friends.

The problem: Joey's client will not be testifying, for a host of reasons. And the tape of the confession is of the confession only. It does not include the dialogue preceding the confession, in which the officer wheedled the client into confessing even though it was clear that the client was not the guilty party. Without testimony from the client, how can Joey communicate to the jury what must sound completely incredible—the notion of confessing to a crime that one did not commit?

Joey began with questions designed to set the scene of the interrogation, putting the officer back into the emotion and the feelings present at that time. Joey then physically moved himself to stand directly behind his client. He told the officer to say exactly what she had said to the client in the interrogation room, speaking to him as the client. The officer's first response was a mumbling, monotonal paraphrase of the interrogation remarks, complete with the officer's running commentary.

Joey confronted the officer, saying, I really don't think that's how you normally speak when you're interrogating someone. Come on—what you just said isn't going to inspire anyone to confess. The officer had already admitted that she had wanted to persuade or seduce the client to confess, so Joey again challenged her to show the jury exactly what she had done in that interrogation. Still standing behind his client, Joey instructed the officer, you're there now I am my client, so what do you have to say to me?

Finally, the officer relented. She said, Okay, [client], you seem like a really nice guy. You seem like someone who wants to do the right thing. And the dialogue came to life, with Joey speaking as his client and the officer staying in role as herself to reenact the interrogation:

> Joey: I do want to do the right thing. I do want to work with you.
>
> Officer: Okay, then tell us what happened.
>
> Joey: Well, wait—if I do, will my friends get in trouble?
>
> Officer: Why do you ask?
>
> Joey: Well, I'm not gonna rat on them.
>
> Officer: Look, all we want is for you to just tell us where the weapons are. If you tell us, then that's all we need and we won't go after anyone. We just want the weapons.
>
> Joey: So, if I tell you where they are, you won't go after my friends and you won't file charges against me, right?
>
> Officer: Yes, that's...

The officer then realized what she had just shown the jury, and slipped out of role. She began to backpedal, left the moment of the scene and started explaining to the jury that she was not authorized to make any kind of deal and therefore wouldn't have made any kind of deal.

> It was proof that the facts are only part of what happens; it is the feelings that people remember, and it is the feelings that drive what facts are remembered.

Joey stayed in role as his client, though:

> Joey: Why did you lie to me about letting me go? I thought police were supposed to tell the truth.
>
> Officer: [Silence.]
>
> Joey: You said that if I told you where the guns were, then nothing would happen to me and nothing would happen to my friends, remember?
>
> Officer: [Mumbling, trying to explain and justify the lie.]
>
> Joey: You knew the only reason I told you I knew where the guns were, and then later told you I was the only one who stole them, was because you promised me that me and my friends wouldn't get in trouble. Remember?
>
> Officer: [More mumbling, more attempts at justification.]
>
> Joey: You knew I didn't steal the second and third guns. That's why you were investigating my friends—so why did you want me to confess to it?

At that point, the prosecutor objected. The objection was overruled. The prosecutor demanded a sidebar, and got one. What the prosecutor did not get, however, was much help from the judge. The judge's comment was:

> Judge: Mr. Prosecutor, it is true that we do not get many attorneys in here who will test you as much as Mr. Low seems to test you but I suggest you just sit down and take some notes instead of complaining about it.

For the moment, however brief, this very unusual method allowed Joey's client to testify as to the truth behind the confession, and to paint the State's key witness as a scheming liar—all without ever taking the stand.

FINAL ARGUMENT— RIGHTEOUS INDIGNATION

The lawyer: Jim Nugent, Orange, Connecticut (TLC '98)

The case: Jim's client was charged with seventeen felonies, from weapons possession all the way up to murder. After a fistfight with the 16-year-old victim, Jim's client had chased down his victim and stabbed him in the stomach, in the heart, and an extra stab in the eye for being a snitch.

The problem: Given those facts, who would believe that the stabbing happened in self-defense? But that was the defense. To make matters worse, during jury selection, Jim's client (who was in custody) leapt from his seat at counsel table, bolted from the courtroom and fled from the courthouse. He was apprehended by the marshal and by Jim himself, who took off sprinting after his client and hauled his

client back into the courtroom to stand trial.

Through crawling into his client's hide long before trial, Jim found out why the client had to confront the victim for ratting him out. The victim—Jim's client's best friend—claimed that Jim's client had broken into a house and stolen eight guns so that he could commit suicide by cop. The victim's two uncles, as it happened, were officers on the very police force that Jim's client intended to employ for his suicide by cop plan. Hence, the victim turned in Jim's client and elaborated stupendously on where Jim's client had obtained his guns, even to the point of lying about where the guns came from. He wanted Jim's client to be picked up before he could carry out his scheme, and was too young and vulnerable to realize how his uncles, the police officers, would use that tip and manipulate him into a statement full of lies.

Over the course of the trial, Jim showed the jury that his client had obtained the victim's statement from his public defender, and had thus learned that the victim had ratted on him. The victim had never understood that Jim's client would eventually see his statement, and had figured that his name would never come up. Once the victim realized that the cat was out of the bag, and that Jim's client knew that he had made a statement filled with lies at the behest of his uncles, the victim now was prepared to attack Jim's client with a knife in order to protect his uncles and himself from exposure as liars.

Jim never disputed that the fight between his client and the victim, which led to the victim's death, was incited by his client. In his final argument, Jim spoke in the first person as the victim, to show the jury why the victim pulled a knife in the heat of the fight: my uncles spoon-fed me the statement I made. I have to protect my uncles now and I'm going to do it. He then reenacted the struggle for the knife, the chase and his client stabbing the victim, showing how it all happened so fast that there was no time for his client to develop the requisite intent to murder. Jim then vocalized what his client was thinking immediately after the stabbing:

> Holy shit—what just happened here? No one's gonna believe me! I'm just a Puerto Rican kid with no one backing me up. Louis' uncles already created this lie with him about me, and now what are they gonna do to me?

And he showed how, on those thoughts, his client dragged the victim's body into the woods, without digging a grave or trying to hide the body, just moving the body out of panic.

And then came the righteous indignation. Jim told the jury:

> The Wyoming Mountains play host to many flockherds of sheep. Sheep travel around in flock for a number of reasons, one of the most obvious is for security and protection. The mature and healthy sheep are in charge of the flock. During the spring their job is to bring the flock safely down to the valley floor to eat the beautiful green grass. The mature and healthy sheep also have the responsibility of returning the flock to the mountaintops during the summer months. These leader sheep dictate the pace at which the flock shall travel. The flock also has a companion: the wolf. The wolf attempts to feed on the herd, one sacrificial sheep, whether a ram or a ewe, at a time. The wolf will target the very young as well as the very sick and the very old. The young, the sick, and the old typically are unable to keep pace with the flock. As a result these members of the flock are at times left alone, and at other times more frequently, are out on the perimeter of the flock. Once there, either left alone or out on the perimeter of the flock, they fall easy prey to the hungry wolf. The leaders of the flock that set the pace have very little sympathy for the elimination of one of its own. Actually, it is viewed at times as a positive, a cleansing of the flock/herd of the weak, the sick, and the unwanted. As you would imagine, this attitude sits just fine with the wolf.
>
> As the years pass, the leaders of the flock themselves grow old, become sick, or their status as leaders change and they become unwanted and unwelcome in the flock. Soon, they find themselves on the outer perimeter of the flock, or left alone entirely, and they become the target of the wolf.
>
> As I sat preparing my closing argument, I thought of Akov. I thought of how it must feel to be that sacrificial sheep pushed out to the outer perimeter of the flock. I tried to imagine what it must feel like to sit but a few feet away from the wolf and all of its witnesses (motion to government's table) who want to devour him.
>
> Fortunately, human life is perceived to be more valuable than that of a sheep's. For that reason, we have certain procedures. Before we ask all of you to determine whether a member of our herd should be fed to the wolf, we require that the wolf come and speak to all of you and convince each and every one of you beyond any and all reasonable doubt why he should be fed this particular sheep.
>
> We further place two important burdens on the wolf. First, we truly and sincerely believe that the sheep whom he wants to eat is healthy, vibrant and most importantly "innocent" of the wolf's allegations. Secondly, we demand that the wolf convince each and every one of us that each and every allegation upon which the wolf relies be proven beyond any and all reasonable doubt.

It was proof that the facts are only part of what happens; it is the feelings that people remember, and it is the feelings that drive what facts are remembered.

It is hard to view Akov as a member of our flock. As a truly innocent person. The media portrays those as charged as GUILTY. The presumption is of guilt, not innocence. All the charges the state piled on to Akov is an effort to convince you he should not be part of our flock, that he should be devoured. It is only natural to feel that way, since we are programmed to want to feel safe.

You have already heard the proof the wolf relies upon in convincing you. But has the wolf proven each and every element beyond any and all reasonable doubt?

It is very hard and dangerous from my perspective, that being the advocate for the sheep the wolf wants to eat, to stand before you and say no, there is reasonable doubt, Akov is healthy, Akov should not be the sacrificial herd member for the wolf. It is much more beneficial for me as his advocate to not only be able to emphasize that reasonable doubt exists, but also that there's a better candidate to be on trial, to be judged worthy of wolf food.

> Where is Steve Chagnon? Where is George Ryer? Where are they? Where is either one? Why were they not presented to this or any other tribunal and have the wolf make its case against either one or both of them? Why?
>
> The wolf is hungry, but does he get to devour this sheep (motioning to Akov)?

That was Jim's rhetorical question. Every time Jim finished with a section of his argument on reasonable doubt, he would point to the prosecutor and say, the wolf is hungry; he would then place his hand on his client's shoulder and ask, are you going to let him devour this sheep?

Jim had to address the fact that his client had tried to escape during jury selection. The jurors knew it; it had been covered in the local papers. He argued the attempted escape with imagery and role reversal:

> Think of a raccoon. Hands, faces likes us, washes his food like us, but does he stick around to talk reason to the trapper, hoping the trapper will set him free. No, he gnaws his leg off to save his life.
>
> It's not right to run. But perhaps that is what would cause an innocent man to run. Not a consciousness of guilt, but a consciousness of the fact that the government wants him at all costs. After all two uncles are without a nephew—and perhaps one of the uncles has blood on his hands. Evidence is hidden under the prosecutor's table. Witnesses aren't called who should be called. Akov knew this trial wouldn't be fair, long before I ever realized it. It would cause a young man to lose faith in the system, and run.

The jury knew it was untrue and was thus ready to hear the rest of the story not from the witness, but from an attorney who had earned its trust by communicating feelings that the jurors could connect to.

And again, he returned to his client: The wolf is hungry, ladies and gentlemen. Does he get to devour this sheep?

The jury was out for twelve days, a record in the state of Connecticut. During those twelve days, the judge angrily delivered Allen charges, essentially ordering the jury to get back in the jury room and convict the defendant. Finally, on the twelfth day, the jury returned its verdict. On all but one relatively minor charge, the jury was hung.

Most significantly, the jury was hung on the murder charge. The wolf may have been hungry; and the wolf most certainly was angry but on that day, it did not get to devour Jim's sheep.

CONCLUSION

This article is, granted, a listing of rather advanced application of TLC methods these warriors are heavy lifters when it comes to consistent and thoughtful use of these skills. I think they would tell us that all of these methods were used not extemporaneously, but with a great deal of consideration of which arrow to pull from the quiver. They would tell us that their choices of which methods to use became clear after much careful preparation, learning the facts, and spending time both in communication with the client and in role-reversal with the client, the witnesses and ultimately the jurors.

I think they would also tell us that not every TLC method is always appropriate for every case. For example, the first-person presentation may be exactly what is needed to communicate a troubling issue in one case and to show the jury a witness' motivation in another case, but may come off as a contrived stunt if the facts, the dynamics and the lawyer's own connection to the case is not just right. The answer to how do I use these methods, and when always begins with the lawyer's examination of himself or herself, and with his or her honest feelings about the case. It begins with acknowledging our own fears regarding our client and our own doubts, and even feelings we may be ashamed to admit concerning the thorny issues in the case.

And once we have accepted and embraced those feelings and resisted the urge to say, it's a great case, I'm not worried about anything in it out of defensiveness then we can look for the right way to help jurors take the same transition we took, from doubting to believing. The final connection to the client comes in that transition of understanding: if jurors trust us to lead them on that journey, they too will make that connection.

To quote the last lines of Thornton Wilder's *The Bridge of San Luis Rey*,

> [t]here is a land of the living and a land of the dead, and the bridge is love, the only survival, the only meaning.

It is up to us, the warriors, to build that bridge.