

PRAISE FOR
COURTROOM STORYTELLING

“With this book, Jim Perdue gives the reader the opportunity to stand on the shoulders of a giant and benefit from a lifetime of trial experience. Reading this book is like sitting on the front porch and discussing trial tactics with one of the greatest trial lawyers of our time. Hard-earned trial lessons are conveyed with a mix of legal history, entertaining case examples, and shrewd observations about what it is that actually persuades a jury. In this book, you will see not only the mind but the heart that goes into the making of a great trial lawyer.”

—Rick Friedman, coauthor of *Rules of the Road* and past president of the Inner Circle of Advocates

“Jim Perdue is the best storyteller of our time. When reading this book you don’t just see the words—you feel them. It is definitely a must-read for all who want to better understand the art of telling a story, which is what jury trials are all about.”

—Charla Aldous, member of the Inner Circle of Advocates and the International Society of Barristers

“In a trial, the side with the best story wins. Your facts may be better than the other side’s facts. But victory may hinge on the storyteller. Without the power to properly relate your client’s story to the jury, the other side can wind up in the winner’s circle. Jim Perdue’s book helps you find the power that’s sitting right there inside you, and then unleash it in the courtroom. Follow this book’s guidance and I guarantee you will win more of your cases, with more significant verdicts than you imagined. I have read every book Jim Perdue has written. This is his best. A classic by one of the world’s best trial lawyers.”

—Randall L. Kinnard, member of the Inner Circle of Advocates and 2020 recipient of the ABA’s Pursuit of Justice Award

“Jim Perdue was a legendary Texas trial lawyer for several decades before leaving the courtroom to become a renowned law professor and storyteller. In his latest book, he once again demonstrates he is also a brilliant writer. The memories of cases gone by, the details, the clients, and [the] trials are told in a masterful fashion and with astounding recall. I found the book to be an outstanding source of successful trial tactics, invaluable courtroom lessons, and ‘people skills’ that are critically important guides to winning trials.”

—Steve Yerrid, member of the Inner Circle of Advocates and recipient of the Florida Justice Association’s Perry Nichols Award

“Jim Perdue’s new book is a gift to the trial lawyer community and a ‘must read’ for young trial lawyers who want to try cases before juries. Throughout the book, Jim teaches methods for telling stories in the courtroom. He uses a lifetime of epic courtroom battles as practical examples for his methods. Unlike many other trial books, Jim weaves his lessons about how to tell stories by telling stories about his own courtroom battles. I am sincerely grateful to him for having written this book; my copy will be dog-eared, highlighted, and used in my own practice for years to come.”

—Rich Newsome, past president of the Florida Justice Association and recipient of the AAJ’s Steven C. Sharpe Public Service Award

“Jim Perdue remains one of America’s finest storytellers and one of the greatest trial lawyers in a generation. His teaching remains relevant and important despite his long tenure at the top. What I enjoyed the most is that he shares the art of storytelling by telling stories. Jim is funny, irreverent, poignant, sad, hopeful, and extraordinarily wise. This book is a must-read for all who aspire to this calling.”

—Mel C. Orchard, member of the Inner Circle of Advocates and former senior faculty member and board member at the Trial Lawyer’s College in Wyoming

“Jim Perdue is a master storyteller. My first exposure to Mr. Perdue as a storyteller was in 1994 at an advanced trial advocacy workshop at the University of Houston Law Center. I will never forget it. He gave

a demonstration on ‘using story in opening statements’ and it was riveting. This book chronicles his journey, not just as a lawyer, but as a student of human nature, to reach that ‘master storyteller’ status. *Courtroom Storytelling* has it all... not just the ‘how to,’ but also the ‘why’ and the stories that make this story.”

—James E. Lawrence, executive director of the Blakely Advocacy Institute at the University of Houston Law Center, and director of the A.A. White Dispute Resolution Center

“Jim Perdue doesn’t just tell us how to win at trial. He shows us. This book includes lessons based on actual opening statements, witness examinations, and closing arguments that drive home Jim’s teaching points. Read it and be reminded of the value of hard work, courage, and a good heart. Jim shares his experience and wisdom with lessons for rookies and veteran trial lawyers alike who trudge the road to justice.”

—James E. Fitzgerald, member of the Inner Circle of Advocates and the International Academy of Trial Lawyers

“This is a book with essential information about the role of storytelling skills and their application to trial and offers concrete examples from actual trials including opening statement, cross-examination, and summation. It should be included in every plaintiff’s lawyer’s source of learning.”

—Paul Luvera, member emeritus of the Inner Circle of Advocates and past president of the Washington State Association for Justice

“Jim Perdue is the Ted Williams of trial lawyers. Superlatives describe his career. He is ranked among the very best ever to have walked into a courtroom. But unlike Williams, Jim has put everything together—his years of learning, experience, and teaching—into this book, *Courtroom Storytelling*. And the object is not Jim’s success, but to help those who will learn from him to hit something more elusive than a baseball. Justice.”

—James Bartimus, past president of the International Society of Barristers and the Missouri Association of Trial Attorneys

“What a magnificent treatise! Jim Perdue’s *Courtroom Storytelling* is at the pinnacle of the art. Perdue’s stories cover a lifetime of creative and compelling jury arguments in significant cases, a number of which ultimately made or changed Texas law to the betterment of victims state-wide. To say this work is just about storytelling is an understatement. Perdue provides not only unique case insights, but also great context for his stories with an understanding of the times, with the underlying psychology, and with his personal journey and perspectives underpinning them. As someone who tried more than one of these cases to verdict with Jim, I can personally attest to the power of his stories and how they changed many lives as a result. Don’t expect to breeze through this book on-the-fly; it is a work that cannot truly be perceived unless it is perused and processed in a deliberate and thoughtful manner. Take your time with it, savor it, as the stories come to life and the nuances are revealed. If you do, I think you’ll find yourself rewarded with inspiration, growth, and valuable ideas to approach and deliver the stories that your clients deserve.”

—Mark D. Clore, member of the American Board of Trial Advocates and board-certified in civil trial advocacy, professional medical negligence, and personal injury trial law

“Jim Perdue’s book, *Courtroom Storytelling*, is one of the most interesting books I have read. Certainly the tale he told of how storytelling helps make it easier for everyone to understand the case was interesting. However, the thing that really made it interesting for me, as a doctor, was the way he discussed medical malpractice lawsuits, because it revealed many things that doctors must be careful and aware of, since not attending to these issues could leave them much more vulnerable in the event they were sued, and possibly leave them more vulnerable to a lawsuit. I would recommend this book to all physicians who are not retired.”

—Judy Cook, MD, retired psychiatrist and author of *To Die or Not To Die* and *Skills That Pills Can’t Give You*

COURTROOM STORYTELLING

Jim M. Perdue



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ISBN: 978-1-951962-57-9

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Developmental Editor: Tina Ricks
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Cover Designer: Micah Kassell
Original Interior Template Design by Laura Lind Design

Printed and bound in the United States of America.
Printed on acid-free paper.

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PUBLISHER'S NOTE

This book is intended for practicing attorneys. This book does not offer legal advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment; to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book); and to make independent decisions about whether and how to apply such information, ideas, and opinions to a particular case.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case. The cases described in this book are actual cases, and the names and other identifying details of participants, litigants, witnesses, and counsel have been fictionalized except where otherwise expressly stated.

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FOREWORD

What is it in the red dirt and the air of the state of Texas that grows colorful storytellers and courtroom giants? Legendary trial lawyers like Richard “Racehorse” Haynes, Percy Foreman, Joe Jamail, and Charla Aldous. Striding tall amongst them is Jim Perdue... the super star who left the courtroom for the classroom.

For more than a dozen years, he has been whispering the secrets of persuasion into the ears of law students, training up an army—the next generation of trial lawyers who will pursue justice on behalf of the Davids (or their spouses) against the Goliaths of this world. Once again, he has written a book for those of us who did not have the great good fortune to learn directly from this guru of the bar in law school.

Courtroom Storytelling is a master class in how to find success in the courtroom. He, she, or they who tell the best story to the jury, win. This extraordinary book teaches you how to be that person, no matter where you start out in this world. Through his example, he shows how anyone can achieve greatness in court.

Like many famous lawyers, Jim did not come from a wealthy background. Growing up poor, he found his way to education by working nights at a smelter while continuing to live with his mother and attending classes during the day. Jim was not handed success. He learned to fight for others by first fighting for himself. That background developed in him the fearlessness that allowed him to do what he now advises others, “charge hell with a bucket of ice water.”

Just when he thought he had reached the pinnacle of his young life—graduating from the University of Houston Law Center—he volunteered for active duty and found himself at the bottom of the pecking order, subject to the whims of his superior officers. No life experience is wasted. This twist of fate taught Jim to be humble and respectful of legal assistants and paralegals (who he recognized knew more than him as a young lawyer), courtroom staff and judges (even when they are wrong). He became their favorite lawyer.

Jim has always given back to the profession. Over thirty years ago, when he was a lad of fifty, he shared the secret sauce to his success in his first book, *Who Will Speak for the Victim: A Practical Treatise on Jury Argument*. In that book, which is now on the shelves of every serious trial lawyer in the country, he put forward a new thesis: Creating a persuasive argument at trial was not just a matter of stacking up a pile of facts, but was all about telling a great story that touched the hearts of the jurors.

This new, career-capping book updates and expands on that now-accepted idea and, through examples of actual different kinds of cases (trucking, nursing home, birth injuries, medical malpractice, etc.) teaches you what Jim has learned in a lifetime studying the art of storytelling.

This is the new book every lawyer needs in their library. Best of all, because it contains tales of loss and fury at injustice in the world, as told by a remarkable raconteur who expresses his joy in the law on every page, you will have a ball reading this book.

Pull up a chair by the fire with a glass of wine, beer or a smoothie and jump into Jim Perdue's world. You may even learn some of the wonderful phrases that may help you talk like a Texan.

Randi McGinn
December, 2022

ACKNOWLEDGMENTS

Bringing forth a tome such as this is similar to the birth of a child. While it may not “take a village,” it requires the efforts and dedication of many. It is with great appreciation I acknowledge the contribution of Tina Ricks. She proved invaluable in her corrections and substantive editing, researched case citations and materials, and as a literary critic helped with ideas. She proved to be indispensable to completing this ambitious work as it continued to grow during its undertaking. My acknowledgements must also include the efforts of my copy editors, Travis Kremer and Patricia who helped with my form, substance, and grammar as well as verifying my extensive source material.

I never had a single mentor I could acknowledge for helping me improve my trial skills. Instead, I have had several. In 2000, I was speaking at an out-of-state conference when I was approached by a major-league lawyer from Kansas City, Jim Bartimus, who invited me to join a small group of trial advocates, which included the late Mike Koskoff from Connecticut, Chicago’s Todd Smith, Jim Fitzgerald of Wyoming, Gary Fox out of Miami, and Atlanta’s Don Keenan, who was later singularly responsible for my invitation into the Inner Circle of Advocates. We would visit other members’ offices and exchange ideas on various topics, including case management, expert witnesses, and approaches to jury persuasion. Over the next years, through these visits and exchanges, our friendships grew and I began to hone my trial skills. My good fortune would continue to grow as I taught and learned at trial programs across the country. One of the cardinal characteristics of successful plaintiffs’ lawyers is their willingness to “pay it forward” and aspire for the day when every citizen wronged by the conduct of others has access to a qualified champion.

Good trial lawyers get their inspiration for creative trial techniques and strategies from someone. Few get the opportunity to thank them and acknowledge their role in professional growth that writing this book has given me.

INTRODUCTION

*I have answered the demand with a cannon shot, and our flag still waves proudly from the walls. I shall never surrender or retreat!*¹

Those are the words William Barret Travis sent from the Alamo in 1836. Travis and 150 Texians, as they were then called, were surrounded by more than a thousand soldiers of the Mexican Army led by General Santa Ana.

The generalissimo gave an ultimatum:

Unless Travis surrenders, the Alamo defenders will be put to the sword!

Like all real Texans, Travis didn't consider surrender an option. He wrote that he was determined to "die like a soldier" and concluded his letter: "Victory or death!"

Reinforcements never arrived. The Texians' bodies were hacked to pieces and burned until there was nothing but charred bones left in the weeds. But the homicidal slaughter of Travis and the cremation of his and his fellow Alamo defenders' remains by Mexican troops lit a prairie fire that drove the Texians to win their independence forty-five days later at the Battle of San Jacinto. In a brawl that took less time than a WWE chain match, General Sam Houston and the Texian Army gave General Santa Ana a Texas-sized whipping.

All Texas lawyers learn in school the history of how our nation was born. That lesson is: It's not the size of the army that counts; it's the justness of the cause and the dedication of those willing to fight for it.

Texas lawyers have gotten some of the largest verdicts in American jurisprudence history, both in Texas and in other states. But our history and tradition is not measured by those notable accomplishments. The

1. William Barret Travis' Letter from the Alamo, 1836, available at www.tsl.texas.gov/treasures/republic/alamo/travis-full-text.html.

code of the Texas trial lawyer lives all across our state and is reflected in smaller cases, in what might be in comparison more modest results. In every big city and small town, you will find a champion of the oppressed, the disenfranchised, the neglected, and the voiceless. And those champions have one thing in common: they are accomplished courtroom storytellers. While our state is known for its tall tales, we are also known for our courtroom advocates willing to charge hell with a bucket of ice water if it means righting a wrong and bringing injustice to heel before surrogates of our community.

A HUMBLE BEGINNING

One of the advantages I had as a trial lawyer was going into active duty as an enlisted man two days after I finished the bar exam. If serving as the lowest of the low in military service teaches anything, it is humility and respect.

I didn't go to work at a big firm thinking I was special because I had a bar card. How could I? I had grown up so poor that if a ticket around the world cost a dollar, I could not have made it to Oklahoma. My only path to becoming a lawyer was to live at home and go to the local law school.

UNIVERSITY OF HOUSTON LAW CENTER

The University of Houston Law Center (UHLC) was founded in 1947 primarily for men returning from service after World War II and later Korea. Most of the GI Bill students were married and working. I worked nights and went to class during the day, or worked days and went to class at night.

This is not to say we were not graduating some top hands. Several of those early graduates went on to high-profile legal careers, such as legendary criminal defense lawyer Richard "Racehorse" Haynes (the other

graduate of my university in the exclusive Trial Lawyers Hall of Fame) and Wendell Odom, who served as the chief justice of our highest-level criminal appeals court for thirteen years. But we were not considered a *top* law school at that time. We knew we had to earn any success after we graduated. We were hungry law students from hardscrabble backgrounds, seeking a seat at the table. We had learned that if we were not seated at the table, then we were on the menu. I was only the third UHLC graduate in our history to be hired by a large law firm.

ME AS A NEW LAWYER

Many of the new lawyers at the big firm where I began my legal career came in with elitist ideas, having graduated from prominent law schools on the East Coast, or one of the big-name schools in Texas. From our discussions, it was obvious that I knew as much, if not more, about Texas law and procedure than their big-name law schools had given them. But, I knew as much about handling real-world legal issues as a city dude knew about breaking a bronc. I told the secretaries, “Ma’am, you know more than I do, and I will be looking for you to keep me out of trouble.”

Later, I would learn that, because of this, I was one of their favorite young lawyers. It is a lesson I tried to teach my law students and young lawyers trying to find their way. Be humble, be respectful, and always be courteous. Quiet modesty will inspire loyalty, commitment, and zeal, not only with those who may work with you, around you, or under you, but also with court personnel and juries.

I have tried cases against Texas lawyers as well as those from out of state. Some view their courtroom opposition with the disdain you would expect if you were someone who cut them off on the freeway that morning or had insulted their mother. I learned that this approach goes over with judges and juries about as well as a skunk at a church social.

MY QUALIFICATIONS AS A COURTROOM STORYTELLER

In 1989, I wrote *Who Will Speak for the Victim? A Practical Treatise on Plaintiff's Jury Argument*, which is now in its fourth printing.² In it, I suggested the importance of incorporating narratives when arguing various issues of liability and damages. The response over the years has been incredibly rewarding, and many lawyers have remarked, in person or by email, on how it helped them not only with ideas for closing summation, but also with their entire approach to advocacy. For many, that now thirty-three-year-old opus was part of their genesis for abandoning the conventional stack-of-facts orthodoxy in favor of using a narrative to present the plaintiff's cause of action. In other words, tell a story to convince a jury.

I expanded my storytelling thesis in *Winning with Stories: Using the Narrative to Persuade in Trials, Speeches, and Lectures*.³ In 2009, I stepped away from the courtroom in order to develop and teach a class on storytelling at the University of Houston Law Center. Part of the course development included using the initial draft of this book as assigned reading for each class. Every semester, we filled our student limit for each class within minutes and carried a significant number on the standby list. Over the following years, I made several in-person and virtual appearances around the country to deliver presentations on the essentials of storytelling as a core for trial advocacy.

In 2022, the Inner Circle of Advocates (an invitation-only organization of the top one hundred trial lawyers in America) held its first storytelling competition, where I was named winner and champion.

2. Jim M. Perdue, *Who Will Speak for the Victim: A Practical Treatise on Plaintiff's Jury Argument* (Austin: State Bar of Texas, 1989).

3. Jim M. Perdue, *Winning with Stories: Using the Narrative to Persuade in Trials, Speeches, and Lectures* (Austin: State Bar of Texas, 2006).

Later that year, I was inducted into the Trial Lawyer Hall of Fame, located at Temple University in Philadelphia.⁴ My portrait now hangs with such legendary trial lawyers and storytellers as Clarence Darrow, Thurgood Marshall, and Melvin Belli.

And so, dear reader, I can say, with all due modesty, I believe I have done everything that could be expected to put me in a position to help you develop and refine your abilities as a courtroom storyteller and gifted advocate.

ABOUT THIS BOOK

The first part of this book, chapters 1–2, “Home is Where the Story Begins,” is from my early life—I think it’s important that readers know me and where I came from, as it colors my approach to my law practice throughout my career.

The second part of this book, chapters 3–16, “Stories from Life and the Courtroom” are stories from court cases throughout my career, from the 1960s to the late 1990s, showing how my ideas have evolved and changed during that time. I used examples of cases I tried and storytelling techniques I developed both before and after my emergence as a courtroom storyteller.

In the late 2000s, I developed some medical issues that took me from the courtroom and into the classroom about the time I was beginning to think I knew what I was doing. The third part of this book, chapters 18–25, “Essentials of Storytelling for the Courtroom” are based on my years of experience teaching law students to be trial lawyers. I share some of my techniques that I used to take novice law students and prepare them to be “war ready” for the courtroom.

Throughout this book, I also share some information from my life about the challenges I have faced along the way. I know that many

4. See <http://www.triallawyerhalloffame.org/inductees>.

readers may be facing personal, financial, or professional challenges that may seem insurmountable. I hope that my experiences and lessons will encourage you to achieve your goal to becoming a respected and accomplished trial advocate. Now into my eighth decade, this is likely to be my last writing. I will have done my job if you find this entertaining, informative, and maybe even a little inspiring.

PART I

HOME IS WHERE
THE STORY BEGINS

1

The Values We Learn as Children

If you have ever known an accomplished and respected trial lawyer, you probably wondered where they got their drive. The long hours, the weeks without weekends, and the struggles that drain the body of more insulin than normal sedentary work could ordinarily impose. The sleepless nights bear witness to an experience few might voluntarily choose. But they do. And behind all those memorable jury verdicts, professional recognitions, and awards is a young boy or girl who had a life experience that eventually molded that driven personality.

Robert Fulghum's bestseller, *All I Really Need to Know I Learned in Kindergarten*, contends that most of life's lessons that we need to succeed were found in the sandbox playing with other children. I learned some of mine, not in the sandbox, but rather sitting on the floor around a Monopoly board in the summer of 1944.¹

I don't remember my father leaving for service in the Navy in 1942. My first recollection is living with my grandmother.

1. Robert Fulghum, *All I Really Need to Know I Learned in Kindergarten* (New York: Ballantine Books, 1986).

My mother worked downtown as a secretary in a government office. This left my brother and me alone during the day with our only caretaker. My grandmother's home was an old two-story brick house, a little over two thousand square feet. This was wartime—housing was tight. My grandmother ran a rooming house. A dozen women rented small rooms on the second floor. Most were two to a room. The downstairs was a living and dining area, a room where my grandmother slept and sewed, and a small room for my mother, younger brother, and me. The house smelled of old wood, upholstered furnishings, and lemon oil.

Although I did not learn until years later how poor we really were, my grandmother Moni made her modest living from the rooms she let and her talent as a seamstress. She was a devout Southern Baptist of average height, with jet-black hair maintained with regular dyeing. In 1944, I graduated from kindergarten, and I was looking forward to my first stint in public school. It was summer, every day was a play day, and I could always use a new friend.

THE GREATEST GIFT IS SIMPLE KINDNESS

My grandmother told me there was a new boy about my age in the neighborhood. She met the boy's mother, and she would love for me to meet her son so we could play together.

Tommy's house was on the other end of our block, on Junius Street in Dallas. Moni gave me the address. I skipped down to the two-story brick house with the large front porch, and I rang the doorbell. Waiting, I heard the click-click of women's heels on the wood floor before the door opened. Tommy's mother was a kind-looking blond woman about my mother's age. I introduced myself and told her my grandmother sent me to meet her son and to play with him. Excitement and pleasure filled her face, and it broke into a broad smile.

I followed her after her pleasant voice offered a welcome invitation. “Come on back and let me introduce you to Tommy.”

In the back room was a boy about my age with an open face, freckles, and reddish-brown hair. He smiled, extended his hand, and said, “Glad to meet you, Jim. I’m Tommy.” I was dumbstruck, clueless, without any reaction. Tommy was in a wheelchair! He couldn’t run. He couldn’t play. He couldn’t even walk!

“Do you know how to play Monopoly?” he asked. My face probably looked like an expression from the Alfred E. Neuman character in *MAD* magazine—smiling but trying not to look too out of touch or just plain stupid. I came down to play with a boy, maybe throw a football around, climb some trees in his yard, or draw some hopscotch squares on the sidewalk. That was what the boys I knew did and enjoyed. Tommy couldn’t do any of those things. He never would.

Slowly my synapses fired, and his question registered. “What is Monopoly?” I replied.

My new friend’s eyes sparkled as he said, “Let me show you. It’s easy.”

His mother pulled the game box from a shelf in his room, put it on the floor, and helped her young son out of his wheelchair and onto the floor. I could see this familiar exercise was painful to Tommy as well as to his mom.

After my tutorial we began our pursuit of buying properties, houses, and hotels. My fortune built, as did Tommy’s, and we became lost in our private world of finance and property management.

The sun kissing the horizon called me home. I didn’t want to leave, but Tommy’s mother reminded me it’s suppertime. My grandmother had been concerned about me. “You must have enjoyed your visit. You’ve been down there all afternoon,” my grandmother commented after I settled in at the dinner table.

“I did, Moni. But Tommy can’t play. He is paralyzed and is in a wheelchair.”

“Jim, if he can’t play, what have you been doing all afternoon?”

“Playing Monopoly?” I responded. I know I sounded uncertain, waiting for my grandmother’s response.

“Was it fun?”

I told her I had a great time, and I was excited to learn how to play this new game.

My grandmother was not an educated woman. I doubt she graduated from high school. But she was wise beyond any formal education.

THERE BUT FOR THE GRACE OF GOD . . .

“Jim, Tommy has polio. It is a terrible disease. It is God’s blessing that you never had it and a tragedy that Tommy and so many other children did.” Years later, I would learn that, in those days, some parents did not want their children playing with polio victims because of the perceived risk of infection from those afflicted. Thankfully, my grandmother and the mothers of my friends either had not heard of this “junk science,” or if they had, they wisely chose not to believe it.

She shifted to the war that was raging and filling the news every day. Moni reminded me of the young men in our neighborhood who had returned from the war permanently scarred in so many ways. I had seen a couple of our neighbors’ veteran relatives. One was missing an arm to the shoulder. Another was in a wheelchair with only nubs for legs.

Moni continued with her lesson. “Hopefully, your father will come home without any serious wounds or injuries.” (He would, more than a year later.) “But always remember what the Bible teaches, ‘There but for the grace of God go I.’”²

Even though I was six years old, my grandmother’s comment struck an emotional note. Here I was, completely healthy and robust, and I was disappointed that another boy my age was not. I am sure I

2. It was only years later that I learned that my grandmother was only partly right. Those words do not appear in the Bible, but rather come from a treatise on prayer by Edward Bickersteth. Bickersteth attributed it to the Protestant Reformer, John Bradford, whom the Catholic queen Mary Tudor had condemned to be executed by burning at the stake. Once when Bradford saw a poor criminal being led to execution, he exclaimed, “There but for the grace of God, goes John Bradford.” But that insistence on historical accuracy would have been lost on a six-year-old. The lesson Moni presented was not.

hung my head after hearing Moni's mini sermon. As I would discover that summer and in years to come, there is a narrow line between shame and inspiration. Shame comes from realizing we should be better people. Thankfully, inspiration can follow—we can become inspired to become better people.

KINDNESS REWARDED: FUN AND FRESH COOKIES

The next day, I found two other friends that I knew in the neighborhood, and together we went to Tommy's house. His mother invited us in and later favored us with fresh-baked cookies. The afternoons that followed that summer were filled with gatherings at Tommy's house, with competitive six- and seven-year-olds all vying for the imaginary fortune that would come if we were lucky enough to land on Boardwalk or Park Place.

I will always remember that summer fondly, not for the hours of fun with Tommy and the other boys in the neighborhood, but rather for my grandmother's lesson. It is one I would try to live out for the rest of my life.

UNDERSTANDING THE LIMITS OF THE GOLDEN RULE

I am sure other accomplished trial lawyers have had similar experiences and wondered how we can bring that lesson to our juries without breaking the prohibition against arguing the Golden Rule. Almost all states condemn suggesting that the jury should put themselves in the place of the plaintiff. But in Texas and many other states, the prohibition is not nearly as broad as defense attorneys

want to interpret it. It applies only to the question of damages. If the rule was as broad as the defense wants to suggest, it would bar them from arguing that the defendant's conduct must be viewed from the defendant's perspective.

When I was a young defense lawyer at Fulbright and Jaworski, many of our lawyers were amazed at the results that another defense lawyer in town was achieving with a small defense firm. Henry Giessel won many cases involving rear-end collisions on our streets and freeways. Henry would argue that the jury could not condemn the defendant's action without "walking in his moccasins." He would then stress how impractical it was to follow cars at the legally approved distances on our freeways. "If you allowed the distance between cars that the plaintiff would require on our freeways, it wouldn't be too long before you were going backward," he would say. Of course, everyone had the experience of trying to leave a safe distance between the car in front of you, only to have other drivers switch lanes. No matter how hard you tried, it was impossible to maintain that safe, assured, clear distance.

No plaintiff ever succeeded in prohibiting Henry from making his argument: "You can't judge this defendant without walking a mile in his moccasins." That was because that argument was not a violation of the Golden Rule argument—the prohibition applied exclusively to damages. The law simply says that you can't suggest that the jury must ask themselves what they would take in damages if they had suffered the same harms and losses as the plaintiff.

To avoid violating the Golden Rule argument, many lawyers point out to the jury, "In determining damages you cannot ask yourself what you would take to endure what Mrs. Jackson has. If you do that, you lose your objectivity and become an advocate, which is an improper role for you."

CAN YOU PLEAD FOR MERCY?

But does the Golden Rule prohibition prevent a plaintiff from pleading for mercy? People fear making the wrong decision. But a wise man once said, if you base your decision on mercy and generosity, you will be right 90 percent of the time.

Generosity is your decision to act in opposition to hate, contempt, envy, and even indifference. Mercy is at the foundation of all faiths. In the Gospel of Matthew, the Beatitudes teach, “Blessed are the merciful, for they will receive mercy.” Rabbinical scholars believe that the teachings of Leviticus, “Love thy neighbor as thyself,” can only mean justice must be tempered with mercy. Mercy is simply a reminder we must care for each other. And, as my summer afternoons with Tommy taught me—to convey another’s injustice, afflictions, or struggles you must first live it with them.

CARING FOR OTHERS IS THE MARK OF A CIVILIZED PEOPLE

Noted archeologist Margaret Mead has suggested that the first evidence of civilization was a fifteen-thousand-year-old healed fractured femur found in an archaeological site. In societies without the benefits of modern medicine, it takes about six weeks of rest for a fractured femur to heal. The fact that someone survived breaking their leg indicates that someone had helped the injured person by providing them with food and water and protecting them from the ravages of predatory animals.

“Helping someone else through difficulty is where civilization starts,” Mead said. “Never doubt that a small group of thoughtful,

committed citizens can change the world; For, indeed, that's all who ever have."³

To be successful advocates, we must believe that when we improve the life of one person, we have changed that part of the world.

So we plow on, championing our clients' causes, knowing all the while that even though we cannot do all the good the world needs, the world needs all the good that we can do.

3. Margaret Mead, *Coming of Age in Samoa: A Psychological Study of Primitive Youth for Western Civilization* (Morrow, 1961).