



What Trial Lawyers Can Learn From a Songwriter to Strengthen Their Case

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(Originally published in June 2012 on [Cogent Legal's blog](#).)



At the [American Society of Trial Consultants](#) annual conference in New Orleans last week, I had the opportunity to be on a panel discussion about social media and blogging for the legal profession. One of my main pieces of advice was to avoid making blogging predominantly about “me-formation”—that is, self-promoting news about yourself—instead of information. Taking my own advice, I’ll blog about my experience at the conference later and first share information about one of the best presentations for trial attorneys I have seen in years.

How many MCLE’s have you attended where within a few minutes you’re biting your lip to not cry? No, this wasn’t about a tragic case where a family lost everything. Rather, it was an attorney presenting a moving song about a girl riding her bike and telling her dad she was ready for him to let go: It’s time for her to do it on her own. With that little piece of a story, sung by [E. Thomas McCarthy, Jr.](#), a songwriter/attorney from Michigan, the hook was set. ([Click here to hear the MP3](#).) His presentation, “[What Trial Lawyers and Consultants Can Learn From Songwriters](#),” showed how to bring the art of songwriting and storytelling to the courtroom, and it was really entertaining and useful.

To start with, McCarthy explained that any good song has the same elements of any good story: a beginning, middle and end. In a song, the chorus is the bridge that weaves the entire thing together, and the hook is the piece that you cannot get out of your head that summarizes the entire song. This same concept should apply equally as strongly in the telling of a case. Remember that any case has humans making decisions that have consequences. This is the entire reason you all are in the courtroom for any given case.

Every Song and Every Case Needs a Theme

Many songs have similar overall themes that can veer quickly toward the cliché and boring. Half the songs out there are written about love, loss of love, happiness, friendship and/or sadness. In the same way, most every case can be summarized along themes such



as responsibility, safety, rules, honesty or greed. Simply saying that this is a case about honesty, for example, is no more interesting than a song called “When I was 17, I had a girlfriend that I loved.”

McCarthy played the song *The House that Built Me*, by written by Tom Douglas and Allen Shamblin and sung by Miranda Lambert. The song starts with the lyrics:

I know they say you can't go home again/I just had to come back one last time/Ma'am, I know you don't know me from Adam/But these handprints on the front steps are mine

Within the first lines you know you have a person returning to their childhood home and interacting with the current owner. It sets up a tension that you clearly want to know more about. The chorus gives the bridge to the story of why this person returned to their childhood home.

I thought if I could touch this place or feel it/This brokenness inside me might start healing/Out here it's like I'm someone else/I thought that maybe I could find myself

It speaks to a longing in everyone to find a way to reconnect with that person they were as a child, and it leaves a powerful image of a lost person trying anything to reconnect with the world.

For any case you try, if you dig beneath the themes of responsibility, safety, greed and the like in order to get to the example or imagery that sums up that theme, then you will have a more powerful case. The image of the person standing at a stranger’s door in a desperate attempt to reconnect to the past is much more powerful than simply saying, “This is a song about lost childhood.”

Every Song and Every Case Needs a Hook

In *The House That Built Me*, the theme is a loss of childhood, but its hook is on the play of words, “the house that built me,” which makes it memorable as it reverses the more common phrase “The house I built.”

What, may you ask, is the hook in a case? McCarthy gave a great example of a “visual hook” that he used in defending a complex legal malpractice case where negligence was admitted, but damages were highly contested over extremely complex facts including bankruptcy proceedings and the like. He prepared a timeline that had all the key relevant dates and events, but he included a small orange box that stated the damages were only \$57,000 for



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this whole case. So no matter how complex the facts seemed, no matter how negligent the facts might show what the attorneys did, the case revolved only around that orange box. He also asked all the experts to look at his timeline and got them all to agree that the orange box was the only issue, and it was correct.

By the end of the trial, he had plaintiff counsel and the judge referring to the orange box. Before closing, counsel for plaintiff had enough and the case settled.

I had a similar situation with a case of a client falling through an opening that the defendant employee had cut three sides of the plywood in a roof and walked away for my client to step upon and fall. Defendant contested liability. My partner, Jonathan Davis, and I tried that case, and we both used the term “trapdoor” so often that the defense attorney and judge—often without thinking of it—referred to “the trapdoor” when asking a question of a witness. Needless to say, we won that case as well.

I really appreciated and will use the idea of a hook in any case we work on in the future. What is the key visual or idea that you want the jury to have emblazoned upon their minds when they start deliberation, and how can you create that hook? Attorneys should always ask themselves that question before they try a case.

*Morgan Smith is the owner of **Cogent Legal**, a litigation graphics and trial strategy firm based in the San Francisco Bay Area that develops clear and compelling visual presentations for attorneys to use in mediation or trial. Services include animations, 2D and 3D graphics, medical illustrations, PowerPoint or Keynote presentations, interactive timelines, videos, strategic consulting and trial support. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.*