

Willkie Team Wins Big with Art of Storytelling

By Jenna Greene
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There's an art to deploying successful anecdotes at trial—ones that jurors find relatable, that make the lawyer (and by extension, the client) seem likable, and that tie together overarching themes of the case.

For an example of how to do it right, check out the opening and closing arguments by Willkie Farr & Gallagher white collar partners Michael Schachter and Randall Jackson, who won acquittal on Monday for their client Jean Boustani on all charges stemming from an alleged \$2 billion fraud and kickback scheme.

It was a major win for the Willkie team, which also included associates Casey Donnelly and Philip DiSanto, after a six-week jury trial in U.S. District Court for the Eastern District of New York.

Boustani was a lead salesman for international shipbuilding company Privinvest. According to Justice Department prosecutor Molly Moeser, he wanted to do business in Mozambique. "But instead of winning Mozambique's business honestly, the defendant paid over \$100 million in bribes to get Mozambique officials to approve three projects for his company worth nearly \$2 billion," Moeser said in her opening, according to a transcript of the proceedings.

If this had been a Foreign Corrupt Practices Act case, it would have been a slam dunk for the feds.

Schachter in his opening straight-up admitted that if "what the prosecution needed to prove here, that Jean Boustani was involved in paying millions of dollars to Mozambican officials, well, then, this



Randall Jackson, left, and Michael Schachter, right, of Willkie Farr & Gallagher LLP.

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would be a very short trial because I'm telling you right now, that happened."

Alrighty then. Way to get in front of bad facts.

But Schachter stressed that Boustani, a Lebanese citizen, was not charged with the crime of making payments to Mozambican officials. (Presumably, Boustani was outside the FCPA's reach, since he was not an agent of a domestic concern, nor did he so much as speak to or email anyone in the United States, let alone set foot in the country.)

Instead, the feds charged him with conspiracy to commit wire fraud for defrauding investors,

conspiracy to commit securities fraud and conspiracy to commit money laundering.

The government put on a solid case. As U.S. District Judge William Kuntz II said when he rejected the defense's Rule 29 motion for acquittal, "The testimony of witnesses in this case, including bankers, law enforcement officials, admitted and convicted co-conspirators who testified in this case for days on end, together with the plethora of documents in evidence, including e-mails, loan agreements, modifications of loan agreements, transfers of funds, group bank account, payments to Mozambique government officials, constitute a universe of evidence more than sufficient to sustain a conviction should this jury find them credible."

Gulp.

So how did the Willkie lawyers convince the jury to side with their client on all charges?

One factor may have been their storytelling ability—weaving a narrative that Boustani was really just a boat salesman who had nothing to do with defrauding highly sophisticated investors, and also that paying bribes is the cost of doing business in Mozambique.

Schachter, a former SDNY prosecutor, gave the opening statement. He led off with an anecdote. It's long, but I don't want to cut it.

"In 1983, a magician named David Copperfield made the Statue of Liberty disappear," Schachter told the jurors. "I was a kid at the time. I remember it was a major television event. David Copperfield was on a stage right in front of the Statue of Liberty.

"It was nighttime, so it was dark, and there was a live studio—live audience that was right there on the stage with him. And they were looking at the Statue of Liberty through two huge brightly lit scaffolding towers, and as they looked at the Statue of Liberty, right above the Statue of Liberty's head was a helicopter and the Statue of Liberty was ringed by a circle of lights.

"And then they took the curtain and they hoisted it up across the two scaffolds, the towers, so that the audience couldn't see the Statue of Liberty

anymore. And then there was really loud music and David Copperfield gave a long speech about how if you take your liberty for granted, you can lose it. And then he put his fingers to his temple as if he was willing the Statue of Liberty to disappear.

"The curtain dropped, and there with the helicopter, there was the ring of lights but the Statue of Liberty was gone. How did David Copperfield do it?

"What David Copperfield did is called misdirection. That's where a magician directs the audience's attention to one thing to distract them from what's important, to distract them from what they should really be looking at.

"You see, while David Copperfield was distracting the audience with his loud music and the speech that he was giving about liberty, he literally moved the audience. The audience—the entire stage, the platform, was like a giant lazy Susan. It was movable. And as the loud music played, very slowly and just a little, the stage moved so that—and then when they dropped the curtain, the audience was now no longer looking at the Statue of Liberty, they were looking out at New Jersey.

"The scaffolding tower, which had moved, blocked their view, and the helicopter moved over a little bit and there was a duplicate ring of lights so it looked to the audience as if the Statue of Liberty had disappeared. But really they had just been distracted. Their attention had been misdirected."

First of all, I never knew how this trick was done, so I appreciate the explanation. And second, you see where this is going, right? And how it could be used by more or less every single defendant facing charges by the feds?

That is: If you, the jurors, fall for the prosecution's misdirection, not only are you suckers, but liberty itself will *literally* disappear.

It's so perfect.

For the closing, Jackson, a fellow former SDNY prosecutor, circled back to his colleague's theme. When Schachter "stood up at the beginning of this case," Jackson said, "he told you that the government was going to try to use misdirection to

magically turn a bunch of proof about payments on the other side of the world into some kind of fraud case, into some kind of money laundering case.”

And then Jackson dove into an anecdote of his own—one that likely resonated with jurors, who may have found talk of “Reg S” securities and loan participation notes and “big boy letters” quite alien.

“Years ago, many years ago, before I was an attorney, okay, I actually was a waiter, right, at the worst Friday’s restaurant in the entire world. It was the Friday’s in Detroit, Michigan, okay?” Jackson said.

Being a TGIF waiter isn’t easy. “There is a huge amount of data that you have to study in order to be a waiter at Fridays,” he said. “You have to take a test that’s the length of the SAT. You have to learn all of the menu items, all of the regulations.

“And one of the obscure rules that we were taught at a Friday’s was that no matter what, no matter how much any customer begged, no matter how much they pleaded, no matter how much they clenched their fists, under no circumstances were we to supply them with additional Jack Daniels sauce.

“That Jack Daniels menu was extraordinarily popular and it was a rule you cannot provide more Jack Daniels sauce under any circumstances. Why? I don’t know. But it was explained in training very clearly.

“And it was so popular at the Friday’s in Detroit this was almost a matter of life and death. On multiple occasions, okay, people would be begging with me. I even had a situation once where a guy literally said to me, ‘Hey, youngblood, I will give you an extra tip if you can just get me another little thing of this Jack Daniels sauce for my Jack Daniels shrimp.’

“Now, why is that relevant? Because I, as an employee, at Friday’s, knew that it was a violation of Friday’s’ rules to provide him with that Jack Daniels sauce. I arguably was under some sort of duty or responsibility in terms of my relationship to Friday’s. I guess, I don’t see how it could be the case, but I guess these prosecutors could even theorize that if I had taken that extra tip and provided this guy with the extra Jack Daniels sauce maybe I would have been responsible as the employee for defrauding the investors at Friday’s.

“Maybe they would say that. I wouldn’t agree, but maybe they would say that. What I cannot countenance is the idea that the guy who offered me that extra tip, who had never seen the Friday’s manuals and had no legal relationship to Friday’s itself, and certainly not to its investors who we never met, would have been engaged in an attempt to defraud the investors in Friday’s. That would make no sense whatsoever and that is exactly what we’re dealing with here.”

So ... is this a perfectly analogous example? Eh, close enough.

But more importantly, it provided the jurors with a framework to evaluate the charges—and to reject them based on the tried and true doctrine of common sense.

And also, now I want some shrimp with Jack Daniels sauce.

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