

Richard Sharpstein Was The Ultimate Courtroom Performer

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01/25/12-- Miami-- Richard A. Sharpstein, with Jorden Burt LLP. *J. Albert Diaz*

Miami has lost an outspoken lawyer-public citizen. This past December, my friend and colleague Richard Sharpstein died by his own hand. If you knew Richard you knew he was part criminal lawyer, part social commentator and all showman.

I attended his funeral at Temple Beth Sholom on Miami Beach. The rabbis didn't fatuously intone religious cliches or excuses. While they expressed dismay over Richard's death, they didn't try to sugar coat it. Rabbi Glickstein said this was not the day to ask why—it is a day to ask how. How Richard led his life. "How" is my theme as well.

I can't tell you how he was as a father, a husband or even a close friend; but I know how he performed in a courtroom. Richard was known for his dramatic final arguments. He was a performer—extroverted, florid and uninhibited. He physically acted out the story of his case like a minor league Robin Williams. It made them memorable with little affection for orthodoxy, but as they say, there are no "normal" people in our history

books. At times I sensed the trial was just the pesky prologue on the way to his final argument. Then he could throw off the rigid rules of evidence and get to the story.

Gravel voiced, singularly recognizable, Richard was a storyteller who intuitively knew the power of narrative and themes to sell his defense. He used, what I coined, the Cirque du Soleil style of argument. Not the classic method and perhaps subject to criticism as sometimes too far over the top. Yet he didn't care, he was there to advocate, not placate. He had disdain for the lazy lawyer method that diminished an argument into a "summation" – the dry repetition of witness testimony as if the jurors hadn't been in the courtroom. It is easy to get up there and read trial notes like a third-grade teacher reading from the textbook. I guess the jury was supposed to figure it out for themselves.

We lawyers are there to add meaning to the evidence. To explain, to point out, to persuade, to add a fresh perspective. Our courtrooms are full of lawyers droning on with their technical arguments, filled with subtle points which are relevant only to them. While the helpless jurors are bolted to their seats to prevent them from running out of the courtroom screaming "beam me up Scotty." Instead of storytelling and drama they get the gruel of cold legal analysis.

Dale Carnegie taught in his public speaking course that when dealing with human beings we must remember that "we are not talking about creatures of logic. We are talking about creatures of emotion." Hollywood loves trials because they are inherently dramatic. Think of Paul Newman in "The Verdict" or Gregory Peck in "To Kill a Mockingbird." These films and similar television shows work because the audience loves the clash of personalities. They want to figure out who committed the crime, who was right and who was wrong, and who was going to suffer the consequences.

However, most trial lawyers manage to suck the drama out of their final argument. Our Bar is full of timid mice afraid to step out of the ordinary. The lawyer is the director and the performer. He has to deliver on the jury's expectation. The jury craves excitement. Any salesman will tell you that you can't sell by boring the customer. The goal is to build a compelling story and then have the jury absorb, process and act on the story and your point of view.

Richard added intricate stagecraft to his storytelling. He loved acting out various roles the assigned to the prosecutor and the witnesses. Let me give you one example. In a federal drug case, the prosecutor had reluctant witnesses who had to be lavishly incentivized with plea bargains to get them to court. To illustrate his theme that the cooperators would mouth any script the prosecutor needed, he assumed the role of lion tamer. Richard grabbed a chair and flexed his imaginary whip at the witness/lions to force them out of their cages. He kept beating and yelling, demanding them to come out and tell the prosecutor's story. We were transported to the

circus. I looked around expecting elephants and clowns to appear at any moment. Now that was painting a picture the jury could see.

He loved role playing, playing the physical space, using gestures to reveal what he was "seeing" in his mind's eye. He told the story through the motions of physically acting out the scene, using more than language, using his heart, his emotions, his body and his mind.

This is not to say that Richard couldn't overdo it. Sometimes his showmanship would get the better of him. But so what? He let it all hang out there. He gave his all. He had the courage to speak his mind and make his points and speak for the client who couldn't speak for himself.

I just watched a tape of the director Michael Bay at the Consumer Electronics Convention suffering a meltdown because his Teleprompter stopped working. He ran off the stage saying "excuse me. I'm sorry. I'm sorry." Later he tweeted, "I guess live shows aren't my thing." Well, live shows are our "thing" and the real trial lawyers, the veterans, the advocates, like Richard, have the courage and confidence to look the jury in the eye and, without a script or a Teleprompter, on the first and only "take," tell them the truth.

So you have to take risks. You can't give the same warmed-over argument trial after trial, for soon it becomes rancid. Open up. Take risks. It is about being present. Being in the moment. Being engaged. Being connected. There is no effort at connection that doesn't take risk. The risk of rejection. But without the risk, without connection, what is there to life? If only his arguments were preserved on tape to be studied by future trial lawyers. The dry transcripts fail to capture their essence.

We have all suffered a loss, but the greatest loss is for those students of trial advocacy who will miss the ultimate courtroom performer. "All those moments will be lost in time, like tears in rain ..."

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