The 3 "Rs" of Sentencing Storytelling.

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No matter what the case, there are only three types of sentencing stories defense lawyers ever tell. I call them the 3 "Rs", and they are: REASONS, RELATIVITY and REDEMPTION. Every case has at least one. With a little bit of luck and whole lot of elbow grease, you may uncover all three.

Understanding these three categories will get your story juices flowing and serve as a roadmap for everything you do to prepare for sentencing. In other words, knowing the 3 Rs will help you identify, shape, and tell your most powerful and persuasive sentencing stories.

So, let's dig in.

Reasons: Explain the "why" of the case.

Reasons are not excuses. Reasons are designed to counter the government's narrative and give the judge a different perspective on the case and client. When offering up reasons for the offense, what the client is really saying is, "Yes, your honor, I did it. I accept full responsibility. In order to help you make the right decision in this case, it is important for you to understand exactly what led to my crimes. Once you take that journey with me, you will have a better understanding of who I am and why I did what I did."

One example of an effective "reasons" story would be a client who knowingly perpetrates fraud while under control of an abusive, manipulative spouse. Another may be the client who commits a violent act but suffers from a traumatic brain injury that compromises decision-making and impulse control.

Relativity: Compare the client, his culpability, or potential punishment to other relevant groups of people.

Relativity stories come in many forms. Done right, they help counsel craft a powerful and credible story of how their client is different than the rest. Because judges often rely on "sentencing parity" to justify imposing similar sentences for similar crimes, this can be a particularly important area of sentencing storytelling.

Can you compare your client's culpability to that of co-defendants, cooperators or unindicted co-conspirators? How about comparing your client's stellar performance on supervision or in drug treatment compared to the typical defendant?

One of the most common forms of comparison can be found in analyzing sentencing statistics. It is important to know what kind of sentences others who have committed similar crimes are getting. A good resource for federal guidelines is www.sentencingstats.com. Looking at sentences for those who have committed more serious crimes can also be helpful. For example, is the recommended sentence for your fraudster higher than the average sentence for a person who commits a sexual assault or murder?

Another point of comparison could be the unique punitive effect of incarceration a client would suffer based on age, infirmity or other special needs. For example, a period of incarceration would be far more punitive for a client on the Autism Spectrum. The sounds, smells, and interpersonal complexities of the

prison environment would wreak havoc on a client with those kinds of sensory and social issues. Consider employing an expert on prison conditions when telling a story like this.

Redemption: Reveal the past and present redeeming qualities of a person, and their hope for future redemption.

Unlike the "Reasons" stories explaining why a client did what he did, redemption stories show the judge why he won't do it again. The big idea here comes from Bryan Stevenson, that, "Each of us is more than the worst thing we've ever done."

Often, the very best redemption stories are the ones where your client has made sincere and substantial efforts to right the wrongs of his criminal conduct. Even better, did he do that before the whirlwind of the criminal justice system rocked his world?

Has he gone through rehab to ensure he will never commit a drug-motivated crime again? Has he prepared a sincere and thoughtful apology or taken other steps to let a victim know how he feels? Has he paid back restitution, which is rarely ever done?

If a client has not yet had the opportunity to make amends, another redemption arc is, as my colleague Alan Ellis (www.alanellis.com) calls it, "the things he did when no one was keeping score." Tell stories about your client's life's work that reveal his inherent goodness. Does he care for his father with Alzheimer's? Has he given generously to charity? Saved lives? Changed lives? Achieved some special skill or honor? Overcome seemingly insurmountable challenges in life?

In telling these stories, we help the judge see something more than just a "criminal". He sees a fallen hero who, although temporarily blown off his moral course, will assuredly return to his best and truest self.

Here's the good news: Even if you can't tell a past or present redemption story, with some work on your part and genuine buy-in from the client, you can still show the judge that your client is beginning the long and arduous walk on the road to redemption.

For example, can you research exactly the right treatment program for your client and arrange for his admittance? Can you research the perfect prison placement that would allow your client the opportunity to learn that trade he has always wanted to learn? In federal cases, the definitive resource for researching prison programming is The Federal Prison Guidebook, by Alan Ellis.

By showing the judge your client has carefully considered what his future looks like and putting a concrete plan of action in place, you demonstrate your client's genuine commitment to bettering himself. Not only that, but you challenge the judge (and even the prosecutor) to become players, dare I say heroes, in this redemption story. After all, they are the ones who ultimately have the power to give him the chance to prove he is serious about turning his life around.

I must admit, redemption stories are my favorite. Why? Because these are stories of hope, and, let's face it– we need as much hope as we can get in this system– and in this lifetime. As Andy Dufresne in Shawshank Redemption says:

"Hope is a good thing, maybe the best of things, and no good thing ever dies."