

GRAND IDEAS

In this issue, we have published some viewpoints on the proper jury instruction regarding the loss of life's pleasures. It seemed a pretty good time to spend a few minutes with Richard Grand, one of Arizona's most-renowned personal injury trial lawyers.

Grand was born in 1930, and he came to the United States in 1939. He is pleased to tell you that he has been married for 53 years. He has been in Tucson since asthma brought him west in 1951. Leaving New York, where he earned his undergraduate degree at NYU, he attended the University of Arizona Law School. He recalls that he worked for Raul Castro as a Deputy County Attorney for 14 weeks. In that time, he tried 15 jury trials—and lost 14. Things have gotten much better since.

He is known best for starting the Inner Circle of Advocates, a national society limited to 100 lawyers, each of whom has tried 50 personal injury cases to conclusion to a jury, and each of whom has had at least a \$1 million verdict (Los Angeles attorney Johnnie Cochran was a member). The Circle is 34 years old (see www.innercircle.org).

A British counterpart to the Inner Circle—appropriately named The Richard Grand Society—accomplishes the same goal of sharing information among trial lawyers (see www.richardgrandsociety.com).

Grand also sponsors two competitions at the UA Law School, one a legal writing contest, and the other an oral argument on damages.

For years, Grand has compiled a list of aphorisms that he has titled "Grand Ideas for Future Trial Lawyers." Some of their meanings are self-evident, but others require linguistic journeys. We recently spoke with Richard about his words of advice for trial lawyers.

ARIZONA ATTORNEY: Richard, thank you for talking with me today. Over the years, you've compiled a list of what I'll call "Richardisms," for lack of a better word. I'd like to ask you for your explanation of a few of these "Grand Ideas for Future Trial Lawyers."

Let's try this one: "Judges can be trusted. They work hard and are underappreciated. You too will be underappreciated."

RICHARD GRAND: People look down at trial lawyers. They think they're ambulance chasers, that they're overly dramatic. Once television started to feature a lot of court syndications, we have more respect now in the last few years than we ever did. But it's all been through TV.

The judge's job is so hard. He's expected to know criminal law, civil law, juvenile law, business law. There is no single lawyer who would ever know what a judge is expected to know. And you always hear lawyers bitching about judges; they're always complaining, they're always critical.

I was brought up in Europe. There, there's this great respect for judges and doctors and even lawyers. So I just find that the students must learn to respect the judges.

AZAT: You write, "I have unraveled many a knot but not the master knot." What is the master knot?

GRAND: The master knot is how do you live your life. Trial lawyers do not lead balanced lives, and most lawyers don't lead balanced lives. They sacrifice, particularly when they're young, for their work. And you can't ever get it back. If you lost a hundred-dollar bill out of your pocket, you'd go searching all over for it. But if you waste five days, you think nothing of it. You think that time is infinite, and no one teaches you about that.

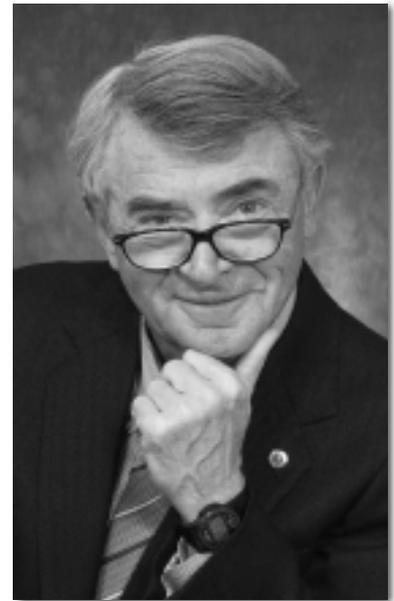
That comes, by the way, from the Rubáiyát of Omar Khayyám. The master knot is how to really live, because we're going to die.

AZAT: I assume you mean something similar when you write, "We are born astride a grave." But how do you use it in trial?

GRAND: I picture a woman astride a grave, dropping the baby. And life is from the time she drops us until we end up in the grave. Again, life is finite. Everybody lives it like it isn't.

Then you translate this with a jury by explaining the most valuable thing is life itself, the enjoyment of living. I tell the jury, if you worked all the time, you'd be a slave. If you slept all the time, you'd be dead. And we work and we sleep for the

enjoyment of living, and they've deprived our client of the enjoyment of living.



Tucson trial lawyer Richard Grand

AZAT: What do you mean by "Sit on a hard chair and sweat"?

GRAND: I went to NYU, and in my first course in business writing, my professor said, "There's only one thing you need to remember: Sit on a hard chair and sweat."

If you sit on a hard chair long enough, you've got to think. So don't do stuff by rote. All these phrases we've given for students, they're not transparent. [For example, lawyers tell juries about] "bubble reputation." That sounds nice. What it means is that a reputation is fragile. But lawyers don't always want to think; they just want to projectile vomit out a bunch of words.

You've got to keep the language simple. My biggest advantage was that until the age of 9, I never spoke a word of English; I spoke four other languages. So my English has never caught up, and I still speak ordinary language. That has stood me in good stead.

And it resonates with juries. If you say "bubble reputation," it means reputation is like a soap bubble, and you know how a soap bubble can suddenly break. Every juror says, "I could say that, I understand that, I could put a phrase together like that." They feel proud of themselves. They realize that you've helped them, given them a great sense of self-worth. And therefore they're willing to vote with you.

AZAT: I know you have a great affinity for those who try cases before juries. So you must feel strongly about this: "A litigator is not necessarily a trial lawyer. One who tries lawsuits to juries is a trial lawyer. No other name fits. Be yourself."

What do you mean by that final phrase "Be yourself"?

GRAND: If I try a two- or three-day case, the other guy or woman has got as much of a chance to beat me as I have of beating them, if the facts are good. If I'm in trial for a week or two weeks, a jury will see I'm genuine. I will win time after time because most lawyers are not genuine.

The English call it "money for old rope." If a chandler would give you old rope when you came in for your sails but charged you for your new sails, he'd put one over on you.

You can't learn to be a trial lawyer. You can't learn to be persuasive unless you truly believe in it.

The good phonies can do it for two or three days. They can smile, they can make jokes, they get people to laugh.

I never make a jury cry or smile. Once they cry, they won't give you money; they've given you all they've got.

The courtroom is a very, very serious place. I am not there to have them like me.

Most people come in and make little jokes or make faces. And that doesn't work. This is not a game. At least on the levels that I try cases, this is life.

AZAT: Some of your "Grand Ideas" are aphorisms from your own personal history that could assist trial lawyers. What do you mean by "Dream—No charge for alterations"?

GRAND: That's from my father. In Europe, particularly in the men's shops, there would always be a big sign in the window, "No Charge for Alterations." So he said "Dream." Anyone can understand that.

AZAT: How about "He ran all the way"?

GRAND: When I was a young man, I felt I would die at the age of 35. I was absolutely and totally convinced that I would not live longer than that—because everyone got killed in my family except my mother and dad in the [Nazi concentration] camps. So I felt I had gotten away with something, and God was going to pay me back. In the Jewish religion in which I was brought up, God does a lot of punishing.

That was my first epitaph: "He ran all the way." That described me; I never stopped. I worked from beginning to end. That's what I used to be proud of. But 40 years later, I don't want an epitaph, I just want to be cremated, forgotten.

AZAT: What should your one-word directive "Permanency" mean to the trial lawyer?

GRAND: In arguing damages, what they have done is this: They have rented your body as one rents a room. So if you've broken an arm and the man now has a crooked arm, and he's got a life expectancy of 40 years, they have to pay rent per day, 40 times 365. I even break it down by the hour. I say, "There is no Sears, Roebuck catalog where you can price an ounce of pain or a yard of suffering."

If you don't have permanency, you should never go to court in any injury.

AZAT: This next one is rather grim, and it's hard to believe you have used it in trial: "Happy Death Day to you."

GRAND: I tried a death case for a man by the name of Crane who was killed when a crane collapsed on the outhouse. It was very early in my career, and I wanted to let the jury know that

on every birthday, Christmas, Father's Day, she'd remember her husband. And it suddenly occurred to me—it was a really dumb thing, but it really worked—I was standing behind her, and I said, "They've added another day besides Christmas, his birthday, their wedding anniversary; they've created a Death Day. November 12, 1968, the day he died. What happens on that day? Does somebody come up to you and say, 'Happy Death Day to You ...'?" And the courtroom was just quiet. "They've added a new remembrance for Death Day, and of course it's anything but happy, and so they've got to pay for that."

Most of these things come about during trial and they fit in. We don't really win a case; the other side loses the case.

What you're doing with a jury is you're listening to them. They don't speak to you word-wise. They are speaking to you, but silently. They say, "Give me something." Or "I don't like what you're doing," and you're going to have to suddenly backtrack. Sometimes, if the vibes are really bad, you look at the other lawyer and mouth, "Is the offer still open?"

But many lawyers have everything pre-prepared; they're just reading it. They're not watching for the reaction.

All I'm trying to do is get jurors to think. I usually end up by saying "I wish I could wave a magic wand. I wish I could bring Billy back into this courtroom, and these parents would pick him up and they would fly out of here. But you can't wave a magic wand."

These are all crisp sentences, but they wrap up a bale of thought.

AZAT: You have a lot of respect for juries.

GRAND: Yes. In the beginning, I tell them that the jury grows a communal nose, and it smells out the strengths and weaknesses of a case. "There are 12 of you sitting here, each with your little nose, and it gets to be huge," and I walk back, as if the nose were growing and pushing against me.

You can't fool them, but you can only persuade them, not only with the words, but the way you use them.

They should be respected; they're human beings. You're either respectful or you're not. It's old-fashioned stuff; it's good manners.

AZAT: What was your greatest victory?

GRAND: It was in 1962. I represented a woman who was charged with murdering her husband. And the jury was told it could convict on first-degree, second-degree or manslaughter, or acquittal. There was no defense of self-defense, no defense of insanity, no defense of intoxication, no defense of irresistible impulse, no defense of diminished responsibility.

We admitted when she was on the stand that when her husband was asleep, she took the revolver and shot and killed him.

The county attorney said, "You may properly assess the death penalty."

I was scared of the death penalty, because all of my relatives

were gassed [in the Holocaust]. And in those days, if your client got the death penalty, you weren't required to be at the execution, but, by God, you'd better be there. The last thing I wanted to do was be present at an execution. So when he said that, I said to the jury, "Did you hear what he said? He said 'You may properly assess the death penalty.' Well. He's wrong: You *must* assess the death penalty. Just look at her: She's a cockeyed, fat slob. She shot and killed her husband. You should put her to death."

People thought I had blown a gasket.

And the jury, in spite of me, acquitted her. And the reason was, the county attorney was against her, her own lawyer was against her.

Would I do that today? No. But I was 32 years old; I took a risk. And if she got convicted, they probably would have set it aside for negligent counsel.

AZAT: You certainly enjoy the use of words.

GRAND: I'm in love with words; I have been for my whole life.

Somebody once asked me to describe myself.

When you go to the circus, there's a guy walking around with a tray with two leather straps, and he's got stuff on it: popcorn, candy. But my tray is filled with these little tiny squares, like a typesetter used to use, but instead of being letters in each one, there are words.

I go into my little squares, pick out words, like "bubble reputation," which is Shakespeare, get my string and put them together.

They get results. I got the first million-dollar verdict in the state of Arizona. The next year I got the largest verdict in the history of the United States in a rear-end collision. The proof of the pudding is that it works.

I know nothing about basketball, football, any sport. I don't play golf; I don't play tennis. But if it has anything to do with words in a courtroom, watch out.

I walk in with the bandoliers, like the cowboys used to have that cross on your chest, and each leather loop has got a bullet in it. Well, I've got two bandoliers full of phrases, and one way or another, after doing this for 48 years, they'll just pop out.

AZAT: Did your love of language begin early?

GRAND: I was fluent in Yiddish, Hebrew, German and Polish, with some Russian and a bit of French by the time I was 10 years old. But that's how Europe was.

But I had no English. I decided I would never be embarrassed [by my failure to speak a language]. I ended up working stacking books in a library for many years, and I read anything and everything that I could.

But the real basis for my success was this: My parents couldn't afford magazines, but there was an incinerator on every floor of our apartment building. But the newspapers and magazines you piled up during the war to reuse the paper. Well, I took all the magazines to read them.

There used to be a magazine called "Coronet." I read a story in it that talked about a man who had three sons, and they worked for a chandler—the guy who outfits ships.

The father said, "I don't understand. I've got three sons, and you pay one \$100 a week, one \$200 a week, one \$500 a week. What's the difference?"

The guy said, "I'll show you."

And he called the first son and says, "Get me the inventory on the *Santa Maria*."

The guy came back in six hours and listed everything on the ship.

He called the second son in and gave him the same instruction.

He came back in six hours and listed everything on the ship, but wrote down "Store the gold, trade the leather, sell the apples." He made suggestions.

Of course, the \$500 son got the same instructions. He was gone for two days. And he said, "I stored the gold, I traded the leather, I sold the apples."

In a real trial, you have to take risks. You've got to be willing to lose. Most people don't want that, so they stay out of the courtroom.

AZAT: You haven't shared these thoughts before, Richard. Why now?

GRAND: When you're 75, you've got so many people dying around you, you start to realize it's going to end. So I just wanted to share my stuff with somebody else. I figure, "Well, I better pass it on, maybe somebody can do some good with it. If they don't, there it goes." 

I'm in love with words; I have been for my whole life. I know nothing about baseball, basketball, football, any sport. I don't play golf; I don't play tennis. But if it has anything to do with words in a courtroom, watch out.