Why We Do What We Do

One must, from time to time, attempt something beyond one’s own capacity.

—Renoir

It was April 12, 1961.
In the pre-dawn darkness, NATO radar stations detected the launch of a Soviet rocket. At 5:30 a.m., Eastern Standard Time, Moscow News Radio announced that Yuri Gagarin, a 27-year-old Soviet Air Force pilot, had just become the first human being to fly into space. Americans awoke that morning to the news that they had lost the “race to space.”
The impact of the announcement shook the world. President John F. Kennedy, barely three months into his administration, was already deeply immersed in the Cold War with the Soviet Union. Fiercely competitive by nature, Kennedy fired off a memo to Vice President Lyndon Johnson a week later, asking him if he thought America could achieve anything significant in space exploration that would trump the Soviets, such as sending a rocket to orbit the moon or even landing a man on the moon.
Although not that interested in space, and fearful that the staggering cost of developing and maintaining a federal space exploration program could easily capsize other more pressing social programs,
Kennedy nevertheless recognized that the United States could not afford to allow the Soviets to prevail. The very survival of the country depended on it, for the Soviets had convincingly demonstrated that they possessed the ability to strike a nuclear blow at the very heart of America.

On May 25, a mere six weeks after Gagarin’s flight, the president announced the most ambitious and audacious goal ever undertaken by humans:

*I believe that this nation should commit itself to achieving the goal, before this decade is out, of landing a man on the moon, and returning him safely to the earth.*

The declaration came as a startling surprise to everyone, especially the fledgling organization known as NASA (the National Aeronautics and Space Administration). At the time Kennedy made the speech, the task was impossible to achieve. It had never been done, no one knew how to do it, and virtually none of the technology or hardware that would accomplish it had yet been invented. Indeed, prior to that point, America’s sole achievement in “manned” space exploration had been to launch a chimpanzee named “Ham” into space on a 16-minute sub-orbital flight, utilizing a rocket that was notorious for exploding on the launch pad.1 The total budget for NASA at the time was $1 million for the entire year. By the time Neil Armstrong’s boot sank softly into the powdery gray lunar surface barely eight years later, NASA was spending $1 million every three hours.

To say it was an extraordinary achievement is an understatement. Closer to superhuman, it required a level of singleminded national commitment and purpose of both government and private-sector effort not seen since the Manhattan Project developed the atomic bomb during World War II.2 In the final analysis, what drove us to

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1 The first American astronaut into space, Alan Shepard, was launched May 5, just 23 days after Gagarin. His flight was also sub-orbital, and lasted a mere 15 minutes. Ham therefore remained the more experienced of the two until Shepard flew again in 1971, this time to the moon aboard Apollo 14.

2 While the country was committed to winning World War II, only a relatively select few individuals were ever aware of the existence of the bomb project. In contrast, following Kennedy’s announcement, the entire nation was not only aware of and
successfully land on the moon and fulfill President Kennedy’s mandate amounted to far more than the sum of the parts it took to get us there. We simply believed we could. We chose not to fail. As NASA Flight Director Gene Kranz is famously credited for saying, “Failure is not an option.”

As a criminal defense trial lawyer, and especially a public defender, your task is enormous, and the effort required to succeed seems no less daunting than undertaking a successful moon launch. You represent people who are in many ways “unrepresentable.” The jury doesn’t like them and doesn’t understand why you represent them. The bias against your clients is almost palpable. The trial hasn’t even begun and already you feel a sense of panic and desperation. Acquittal seems impossible. Their freedom, and sometimes their very lives, are in your hands. You are terrified of failure. You soon realize that committed to the goal, but it was undertaken at a time when America was days away from the disastrous Bay of Pigs fiasco, fully involved in prosecuting the Vietnam War, and later reeling from bloody riots and student unrest on college campuses throughout the nation, suffering from violence and murders of citizens and civil rights workers throughout the South, the assassinations of President Kennedy, Malcolm X, Martin Luther King Jr. and Robert Kennedy, not to mention the horrifying deaths of three astronauts in a fire in the command module during a ground test of Apollo 1, which delayed the program for eighteen months. Yet, despite all of these events, the nation’s steadfast determination and commitment to succeed at all costs remained undeterred. As one senior engineer wistfully noted, “If we had known at the time what it would actually take to do it, we wouldn’t have done it.”

At the height of the Apollo program, NASA employed over 32,000 engineers. Including contractors and subcontractors, the total number of persons involved was around 400,000. There were few computers, and they used data punch cards for each inquiry, the answers to which took hours or even days. Many calculations were done with slide rulers. NASA thus developed the first “real-time” computing utilizing the newly invented solid-state integrated circuit in order to solve problems that required solutions instantaneously. The hard-wired memory loaded into the guidance computers aboard the Apollo command modules was hand-assembled, literally wire by wire, by women skilled at sewing. It took six weeks to complete each one, and it could perform over 87,000 calculations per second. By comparison, the 2018 i-Phone X can perform over 5 trillion. The engineers and technicians at MIT and other laboratories were literally working out the mathematical calculations to solve the mystery of how to negotiate flying through space and land men on the moon, while simultaneously creating the very computers and other hardware that would use those calculations to get them there. The commitment to perfection was so ingrained at NASA that, during the entire Apollo program, including six lunar landings, there was not one single failure of any software or hardware component. They all worked perfectly the first time. They had to.
your clients do not need a lawyer—they need a warrior, as big as they can get. More than that, they need someone who believes in them as human beings with value. Failure is not an option.

In trial advocacy, it all comes down to your client’s story and how well you deliver it. To put it bluntly, in this business you must “Go Big or Go Home.” Whoever tells the best story wins. You cannot tell your client’s story unless you believe in it. In order to believe in your client’s story, you must first be able to believe in yourself and your ability to persuasively tell it. And you start believing in yourself by choosing not to fail.

By choosing not to fail, we begin to see ourselves as good lawyers—as warriors for our clients. It is entertaining to see good lawyering. We see so little of it in real life. But that’s what gets juries excited. That’s what wins cases: getting the jury to believe. It all comes down to theater—the presentation, the show. Give them their money’s worth. Something to remember. A reason to believe that “justice” is not a sterile abstract notion, but a real phenomenon that we create when we need it most. Just like in the movies. We as trial lawyers must believe in it—and ourselves—that deeply in order to empower the jury to create it.

Much like the NASA engineers who must have gazed at the moon in 1961 and thought that it would take a miracle to get there and back, we have to believe in the miracle of securing our client’s acquittal. That is why movies like E.T., The Natural, Field of Dreams, and The Verdict work. That is why Christmas works and why Las Vegas works. We believe the magic is real because we suspend our disbelief, if only for a few hours. But it is more than just believing in a fantasy. The thing is, like Neil Armstrong’s first tentative step off the LEM landing pad, it happens just often enough in real life to remind us that it’s real.4

Being a trial lawyer is unlike any other profession. We do not create anything; instead, we are in the business of asking others to do it. To confound matters further, once created, it exists only momentarily

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4 Go on YouTube and watch Secretariat in the 1973 Belmont Stakes; the 1980 U.S. Olympic Men’s Hockey Team in the semi-final; Kirk Gibson’s home run in Game 1 of the 1988 World Series; or Kerri Strug’s final vault in the 1996 Olympic Women’s Gymnastics Championship. Do you believe in miracles?
and then vanishes forever, never to appear in that form again. Though fleeting in existence, its effect is immensely profound and everlasting. Priceless beyond measure, it changes people’s lives and has even altered the course of history and shifted social consciousness. Eternally noble in concept and often impossible to describe, it is the very purpose for which we who call ourselves trial lawyers choose to live. It is known simply as “justice,” and it is forged in the crucible of jury deliberation by those who, like you, believe in the miracle.

One of the most profound statements ever uttered by humankind is “tell me a story.” Since the time we first huddled in caves and gathered around campfires, we have been telling stories. We were telling stories long before there was even a written language. We communicated history, social norms, the raising of children, news of the day, the passing of life, the great deeds accomplished by others, and the creation and enforcement of laws, all through telling stories. As a species, we need stories. We enjoy listening to them. Great stories are powerful; they have meaning. As children we crave them. A good story well told is one of life’s sweetest joys.

Thus, it should be no surprise that jurors feel the same way. Yet, despite eons of human development, those whose chosen profession literally hinges on the ability to tell stories—trial lawyers—often seem incapable of doing so. A legal education or the “law school experience” have possibly made us doubt, or perhaps more accurately, forget, that we once believed. As does a child who, one day, no longer believes in Santa Claus. That sad day, marked so poignantly in the book *The Polar Express*, describes when we no longer hear the tinkling of one of Santa’s sleigh bells, believing the bell has fallen silent because it is broken, not realizing that through our impatience to mature into rational and sober adulthood, we lost our faith in our ability to believe in the miracle.

A trial lawyer’s power is derived from faith—faith in the power of our client’s story and faith in our ability to tell it. The great trial lawyers believe in the power of that story, for great stories describe great truths. It is the passionate belief in the truth of the story that enables them—and most importantly the jurors—to hear once again the ringing of the bell. And to believe.

It is for those who believe, and those who once again want to believe, that this manual is written.