

# Team Work Makes the Dream Work



*Trial Lawyers and TLC Alumni David Smith and Jacqui Ford*

## Jacquelyn Ford, TLC Sept '13

In April of 2013, my dear friend and TLC Faculty member, David Smith asked me to second chair him on the highest profile case in Norman, Oklahoma at that time. A very esteemed college professor had been accused of molesting six different girls all under the age of 16, including three counts of raping his mentally challenged stepdaughter. I could not have been more honored to be asked by David Smith, and I wondered why in the world he “needed” my help anyway—but of course I said, “Yes!”

David sent the discovery: three page information charging the client, two large three ring binders worth of information, six DVDs of the forensic interviews, and copies of preliminary hearing transcripts. I called David and said, “Uh, our boy is in big trouble. This is terrible, and if nothing else, he’s getting convicted for being creepy!” The client’s statements and behaviors were not the kind of things that people in conservative Oklahoma would accept or be able to relate to. I soon learned our defendant, Dr. Dwain Pellebon is unique indeed. Dwain is extremely affectionate and bursts with a loving spirit. When I spoke he listened intently, seeming to peer into my soul with his knowing, compassionate eyes.

David agreed that we had an uphill battle, but he believed in our client’s innocence 100%. He asked me to join him at the local library for a work group with his friends from the Trial Lawyers College, so I went.

### MY FIRST TASTE OF TLC

I had heard of the Trial Lawyers College before; the good, the bad, and the rumors. There were a lot of lawyers at the library

that day. Some of them I knew, some I knew only by reputation, and many I did not know at all. David introduced me to a man from Texas who had given up his entire Friday to come work with us. This man was Ron Estefan.

After a quick “warm-up” Ron asked me if I would feel comfortable doing a little work on my feet today. He placed a kind hand on my shoulder and then David Smith came and placed a hand on my other shoulder. I politely declined, “I’m not really prepared to do an opening statement, I’ve only read discovery once. I’m really just here to observe!” Those boys gave me some incredible encouragement, assuring me that we would not worry about my lack of experience or knowledge of the case. Before I knew it, I was on my feet in front of twenty plus attorneys, terrified, yet, as I know now, saying “no” was not an option.

Within minutes I was presenting an opening statement in the first person. I was setting a scene in a house I had never been in. I was confronting the villain, (a truly awful police detective) and role reversing with the villain. After doing the work, I no longer felt terrified of Dwain’s case. I was really excited about this case and did not think my client was so creepy after all.

The support from the group was amazing. I cried in front of strangers for the first time in my adult life. After that day in the library, I was finally open to what David had been telling me about TLC. He never pushed me hard and never made me do anything I did not want to do. He and Ron were amazing teachers and leaders. At their invitation, I signed up for the Texas Regional the following weekend which left me even more inspired. I felt reenergized and excited about finding this group of like-minded people.

I knew I needed more, I knew I wanted more and I wished I had done this sooner. Dwain's trial was scheduled to begin in just a few weeks, when the prosecution asked for a continuance. This was discouraging to Dwain—he had spent two years sleeping on friends' couches, unemployed, waiting to get his life back. The delay added to Dwain's fear that this would never end. In retrospect, what a blessing it is that the judge granted that continuance over our objection. The continuance gave David Smith one last chance of getting the best possible second-chair. He asked me to apply to the September class at the Ranch, so I applied, was accepted and went.

I took two cases to the Ranch. Dwain's case mattered the most and had the most on the line. We worked this case for three weeks. Every trial skill I learned, we used in Dwain's defense.

### THE DEFENSE IS READY

I returned from Wyoming eleven days before trial. TLC alums in Oklahoma set up one last work group for us with mock jurors who would evaluate Dwain's testimony. I role-reversed with the prosecutor, the most evil woman to ever step foot in a courtroom. She is so filled with hate and venom that I struggled with coming out of her role after our work group. In her role, I worked Dwain over in ways that felt so dirty and cruel, but it was the only way for him to really feel what it would be like to be cross-examined by her.

Getting into role as this prosecutor, and doing it right (not just as a caricature), was difficult. I knew her only by

reputation. I had never tried a case against her, but the stories were like folklore. You cannot say her name in Oklahoma without grown men quivering and the most serious of trial lawyers feeling that tinge of pain in your spine shoot down your back. Everyone had a story about this woman.

I had to try to start really thinking like she would think, and viewing the world through her eyes. On the night before our work group I imagined what it was like to be in her head; to know what it felt like to be so full of hate and venom. I thought what I imagine to be her thoughts, so full of self-hatred that I felt physically heavier. The next morning, I drank my coffee black, put on support hose, and did not have a nice word to say to anyone. I was introduced to the mock jurors as the prosecutor and we hit the ground running. I yelled at Dwain, called him a liar, made myself believe that he was a child molesting monster and let myself believe that I was doing amazing things for my community by berating him and sending him to prison for the

rest of his life. I attacked him like a rabid dog.

When the exercise ended, I shared with David how awful I felt and that I needed to get out of that role. I felt I needed a shower, if not an exorcism. I excused myself, left the room, and apologized to Dwain. He completely understood and was great at making me feel better, shaking off the devil role so that I could rejoin the group and be present for Dwain.

The work group was exactly what we needed for the final push before trial. Support came flooding in through the list serve, the FB pages, lawyers all over the country some that I had never met sent me the most inspiring messages in those days leading up to trial. We were on fire!

Norman, Oklahoma is home to a large number of Filipino families. The Filipino community is very tight knit and they act more like a family than most families I know. Big dinners and parties with adults and all the kids occur regularly. Oftentimes

dinners are held at the Pellebons' home, and the Pellebons were very well known in the community.

Like most groups of people, however, the Filipino community had its inner group issues. Dwain, his wife, and a small group of the other women decided they would not associate with a particular woman and her crew any longer because she always started problems and was a big gossip—they had simply had enough. As we all know, no one likes a rejection, so this woman attacked Dwain with all her might. She had contacted police to say that she had a bad feeling about Dwain and his relationship to several of the children in the group,

including his stepdaughter, who had severe mental issues. This allegation sparked a fire that would soon destroy Dwain's world.

The initial report led to nine counts of felony sexual assault. Three of the alleged offenses were actual sexual acts with his stepdaughter. The other counts included things like a kiss on the cheek, a back massage, and an allegedly lecherous look across the room (to look upon in a sexual manner). These charges were crazy, and we knew that in order to convict on the counts against his daughter, they had to throw these charges too—to make him seem overly affectionate, or creepy. They alleged he was grooming the other children. To add to our problems, Dwain taught Human Sexuality classes. The investigators suggested that his teaching experience made Dwain smarter than the average child-molesting bear, *i.e.*, he knew how to do it undetected. We had to get these girls on our side.

David and I arrived on Saturday evening before trial. He had of course met Dwain's family previously, but this was my first

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opportunity. Several of the women were cooking a big Filipino dinner and several of the girls were there as well. We met each girl individually, talked about their family, friends, school and then about who I was and why I was there. Most of the mothers were subpoenaed as witnesses for the State as well: they had many questions for me, and also had so much information that I could never take it in all in one night. We talked at length about what was going to happen next and tried to ease some of the anxiety that had been growing for two years.

We met the young ladies, several who were listed as “victims” of Dwain. We talked at length about the relationships between the girls, Dwain and the other members of the Filipino community. We talked a lot about Dwain’s very sweet daughter, Micah. Micah’s friends love her, and they told me so much about her: that she was weird and different but they did not care; that she had a wild imagination; that she talks to people who are not there; that she makes up stories that people know are not true but they never challenge her or confront her about it because that was just the way she was, and because her stories had never hurt anyone before.

I met with Micah herself, and we colored together in her room. We sat on Micah’s pink princess bed and talked and got to know one another. She is a beautiful girl, who had been taken advantage of by the aggressive detective and by a system designed to convict even innocent people. Micah missed her dad and her family, and she really had no idea what was going on or what the next couple of weeks of trial would mean. She could not have understood how much damage her storytelling had inflicted. Nor could Micah understand the sadness that her family had suffered, just because she had wanted the cop and the interviewer to like her, so she told them what they suggested to her numerous times. It was tragic. Micah just wanted to be accepted by everyone.

I did not talk with Micah about her allegations against her dad. We talked about everything else, music, movies, books, family, school, work, her dreams and wishes. As the week went on, I met Micah nearly every night to learn more about her. Micah has a condition that prohibits her from being able to distinguish reality from fiction. On a very basic level she knows this, but it is not something that she can change, at least not at this young age. The doctors call it confabulation, meaning she fills in gaps in her memory with stories that she has fabricated. By the time she has told the story, she likely already believes it to be true. Many times these stories are stories that could be true, likely stories and the only way you know they are not true is to know Micah and just know that it is not true.

For example, during the trial her brother’s friend was over at the house nearly every night studying and hanging out. One night he was complaining of stomach pains and it became so bad, they rushed him to the emergency room and he had emergency appendectomy. All Micah knew was that he was in a lot of pain, got a lot of attention, went to the hospital and then eventually felt better. The next day I came to the house to drop off some things for Micah’s mother, Micah began telling me about the surgery she just had on her stomach—that she had to go to

the hospital, she talked to the doctors, and on and on. I knew this was not true, but the story itself was not so outlandish that it screamed “lie!” on its face. She had confabulated to me, right there in the doorway with no provocation.

Thus, it was critical for me to have a good relationship with Micah. I need her to trust me, so that she and I could have a productive conversation in front of the jury. David Smith had hired me to cross Micah, and he made it clear to me that his only expectation was for me to find a way to show the jury how she confabulates.

I spent time with Dwain’s other family as well. We shared time together, laughed, cried, and prayed. I spent nearly every night at the home Dwain could not return to, preparing myself for the next day’s witnesses and preparing his family for what to expect on the witness stand.

Dwain’s wife and I shared stories. She shared her journal of everything that had happened, starting with the phone call in which she learned that Dwain had been arrested for molesting Micah. She put her faith in me. She reminded me that I was her last hope at ever having her family reunited. Police had stripped both of her children from her home and had placed them in the custody of the State. She worked diligently to get her children back and on pain of losing her children again, she did not talk about the allegations with her daughter. She was ordered to be supportive of Micah’s allegations or else Micah would be taken, again. This was the major mistake of the prosecution: Dwain’s wife and her other female Filipino friends were not meek women who just bowed down to their men—they are strong and determined female warriors.

She told me the story of Micah’s birth. She lived in the Philippines at the time with her son in a run-down apartment building. She had made the biggest move of her life when she left Micah’s abusive father, and now was raising her son alone and pregnant. She was determined to make a better life for herself and her babies. Late one night, she woke up in a lot of pain; she went to the bathroom and gave birth to Micah in the toilet. Miles from anywhere, with no one around, she screamed for help, trying to wake the neighbors and find a way to the hospital. Eventually someone wakes and they call her a taxi. She traveled for over eleven hours looking for someone to help her. She had no money, no insurance and was turned away from hospital after hospital. Finally, she found a hospital run by nuns, and she offered up her only daughter and her own soul if the sisters would just help her infant daughter.

I listened as she recalled the fears, the smells, the sounds of the road in the taxi, what it felt like to hold her baby that long in a vehicle and how many times she thought it was over. I was struck by the incongruity of how the prosecutor presented Dwain’s wife and the reality. This is a heroic, powerful woman who was willing to die for her daughter—who, immediately after giving birth, traveled for eleven hours via taxi in the middle of the night, suffering rejection by hospital after hospital. She was not the character the prosecutors had drawn of a meek submissive woman who just pined for her child-molesting husband to come home and continue violating her only daughter.

With her permission, I gave a 20-minute portion of my opening statement in role as Dwain's wife, giving birth in the toilet, screaming until someone came, traveling in that car, walking up to that convent, learning her daughter would survive—and then flashing forward to Norman, Oklahoma when the government jerked Micah from her arms and told her she was an unfit mother who allowed a predator in her home to abuse her child. I did not muster the guts to deliver her story in her role until I had begun my opening. I knew I was writing a big check that we would have to cash at some point—but I also knew Dwain's wife would tell that story to the jurors in a way that I never could.

Our client was actively involved in the defense, the strategy, and the input of dealing with the witnesses, especially those that were hostile to us. Dwain allowed me to read some of his most personal diary entries. He had to make charts and diagrams to keep all the players straight and all the Filipino players and stories in line. Dwain worked with us over lunch, at dinner, all night via text and email.

His assistance was vital to our preparation for cross-examination of the vengeful woman whose report started Dwain's family's nightmare. Dwain really wanted me to destroy her on the stand, but we knew that she would never concede that she had lied. She was a smart lady, and she would be on high alert for any tricky lawyer moves. Instead, using Dwain's charts and timelines and all his insight, I was able to prepare and tell a story on her cross-examination that showed the jury that she had the motive and the willingness to fabricate a story, and the lack of a governor to stop her from doing so. As she agreed on cross-examination, she had the power in the Filipino community, and no one would cross her because she had a duty to protect the entire community. She admitted she had never seen anything inappropriate, and that her allegations were based just on her gut feelings—feelings that, she admitted, only developed *after* she was no longer invited to the Pellebons' events. She admitted that she personally felt my client was creepy, and acknowledged that subjective creepiness is not a crime.

The witness did not have to admit that she was retaliating; it became obvious. She did not have to admit that she had exaggerated to the police; again, it became obvious. She did not have to break down and cry and admit to lying; that, at the end of her cross-examination, was obvious.

David crossed the detective as carefully as a surgeon performing open-heart surgery. David had worked hard to learn the detective's story. The detective had stated on the record that if a child says it happened, then he would investigate the case on the assumption that it really did happen. The detective had also stated on the record that in his mind, the accused bears the burden of proving it did not happen. David's work pre-trial was based on not killing the cop on the stand. He was so furious with this detective that he wanted the detective to suffer—and was thus in danger of his own anger overcoming the need to tell the true story on cross-examination. Fortunately, David had identified this problem during our sessions with TLC workgroups, and his work there helped him at trial to rein in his hatred and spite. David baby-stepped this officer on cross-examination so artfully

that I think even the cop was disappointed with himself when he got off the stand.

After each day of trial, the defense team rallied at David's office and checked in with each other. It was a strange feeling for me to walk out of courtroom, not angry, not feeling violated by the judge or the prosecutor. We had plenty of fights and many rulings did not go our way, but what was different was that I was trying this case unlike I had ever tried a case before: through teamwork, with love!

And when Dwain's wife stepped up on to the stand as our last witness, she showed that jury there was not one damn thing she would not do to protect her daughter. She brought the story I told in opening statement to life, and she stood respectfully firm against the government when the prosecutor cross-examined her. She gave the jury the final blessing it needed to accept David's urging, in final argument, to end the nightmare and free Dwain to return to his family.

We used all of the skills I learned through TLC. It worked. After two grueling weeks of battle, our client was acquitted of all counts. Victory was something I was used to, but this was different. This victory was not about me. This victory was about Dr. Dwain Pellebon and his family. This victory belonged to TLC. This victory was full of love!

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On the Monday morning after trial, the foreman, a 67-year-old African American retired Army officer called my office. We spoke for nearly an hour. He shared with me his fear of living in a city that would work so hard to convict a clearly innocent man; he and his wife were discussing moving. More powerful than that, he told me he has watched our client for two weeks, he had watched his supporters, primarily female come and go from the courtroom, he had watched him interact with David and I, and he was certain that Dwain did not have many male friends. He told me he wanted to be that friend, he wanted to take Dwain for a beer, asked me for his contact information and promised he would be in touch soon.

Dwain stays in touch. He shares photos of the family, exchanges e-mails and thoughts from time to time. He recently began hosting a radio show in the Oklahoma City metro and invited me to discuss the topic of domestic violence. On November 13, 2014, I had the privilege of visiting with Dwain on KTLV 1220 AM Radio in Oklahoma City about legal perspectives of both the accused and the accuser, as well as how we as a community can end violence everywhere. 95