

MY PERFECT F#\$*!@G CLOSING ARGUMENT

*[Warning: Adult Language and Themes ahead --
“bad” words repeated repeatedly]*

Remember when I said that I had never given a “perfect” closing argument? That was not exactly true. This one time, long ago, when the stars aligned and inspiration overtook commonsense, I gave the most perfect fucking closing argument of all time.

A little backstory. One of the many things I did in my pre-JAG life, literally in the previous century, was work as a staff attorney for the Washington State Court of Appeals. Day after day (*i.e.*, ad nauseam), I drafted opinions for my judges. There were bright spots. One opinion I drafted involved an implied consent/driving-under-the-influence defendant who claimed that his retort “bullshit” to the officer who was trying to secure his consent to a breath test was not an “unequivocal refusal” (which is bad under Washington state law) but simply his way of expressing his confusion about what the officer was asking of him (which would have been better for him).

Thus, I decided I had to address the meaning of the word “bullshit” and wrote the following in the draft opinion:

As to the “confusion” defense, WB’s counsel asserts that WB’s particular rejoinder “clearly exhibited that he did not believe or understand the consequences of refusal.” Though the argument may have had some force if the rejoinder “bullshit” had been uttered but once, it loses validity after being uttered for the fifth time in response to direct questioning.

*[footnote] At the risk of glorifying its utility, we take judicial notice of the fact that the word “bullshit” has acquired an arguably unfortunate prominence in this country’s vernacular. Depending, of course, on whether WB intended to use it as a noun or an adjective, the word “bullshit” is generally defined as “nonsense: esp. foolish insolent talk—usu. Considered vulgar.” Webster’s Third New Int’l Dictionary at 249. It is often derisively chanted at sporting events to express disagreement with official rulings. It is often derisively chanted at protests to express displeasure with a point of view or official demand to disperse, often followed by the famous melody “Hell no, we won’t go.” Its use pervades all facets of exclamation: some utter it with disdain when required to perform an act they would rather not; some utter it with disbelief when confronted with a peculiar statement; some utter it in disagreement with a repugnant suggestion; some utter it as a critique of an outlandish prevarication; some utter it to express displeasure with a condition or situation; some even utter it with disgust when presented with arguments devoid of merit. But it is not uttered, over and over again, to express confusion with a pointed query. To argue otherwise strains every ounce of counsel’s credibility (*i.e.*, it is “bullshit”).*

My written eloquence did not carry the day and the “ode to bullshit” did not survive into the final opinion. But my day would come.

It happened at an indecent-language/indecent-assault special court-martial at Cannon Air Force Base in 2002, when I was but a baby JAG and brand-new Area Defense Counsel. My client was alleged to have said “fuck you” to the woman he alleged had just indecently assaulted. Here is part of my closing (written out and memorized, contrary to my current practice (A) because I was young and nervous; and (B) figured I probably should say it exactly as written given the “adult” subject matter):

Language is important, words have meaning and that meaning is often determined by circumstances and context--that is no truer than it is here. Take for example the worst of the words uttered by Airman Jones--*fuck you*. Trial counsel read you half of the definition of indecent language, let me read you the rest:

Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts; that is, a lustful, lewd, or salacious connotation, either expressly or by implication from the circumstances under which it was spoken. The test is whether the particular language employed is calculated to corrupt morals or incite libidinous thoughts, and not whether the words themselves are impure.

Yes, context is important. If you'll indulge me for a moment, the word "fuck" is fascinating. Out of all of the English words it is one of the two immediately identifiable by its first letter--the F-word. It's the one magical word. Just by its sound it can describe pain, pleasure, hate, or love.

In English the word falls into many grammatical categories. Clearly it has a sexual component to vulgarly describe a sex act, such as Johnny fucked Shirley, or Shirley fucks.

But more importantly, its use does not always have a sexual component. For example, it can be used as an adjective (as in *Johnny is doing all the fucking work*), as part of an adverb (*Shirley talks too fucking much*), as an adverb enhancing an adjective (*Shirley is fucking beautiful*) or as a noun (*I don't give a fuck*). And it is also very versatile outside its sexual component. It can be used to describe being defrauded (*I got fucked at the used-car garage*), and to express dismay (*fuck it*), trouble (*I guess I'm really fucked now*), aggression (*Don't fuck with me, buddy!*), difficulty (*I don't understand this fucking question*), inquiry (*Who the fuck was that?*), or dissatisfaction (*I don't like the fuck what is going on here*), and on and on all outside the sexual context.

Most importantly, it can be used, and was used here, to express anger--"fuck you," or "go to hell." While it might have been rude, while it might have been vulgar, it was not "calculated to corrupt morals or incite libidinous thoughts." To argue to the contrary, well, is un-fucking-believable.

The content was not original to me; I stole it from the Internet and was inspired to craft it by a similar scene in the movie *From The Hip* (Greatest Legal Movie ... Of. All. Time.) in which Robin "Stormy" Weathers was arguing admissibility of the word "ass." This was one of those times I actually gave the judge a head's up that the content of my argument would have an "adult-theme" based on the language in the charge, and in the end my recollection (maybe clouded through the lens of time) was that Judge Pavlik thought it was great. Not that counsel's arguments win cases, the facts do, but the members acquitted on the indecent-language charge ... not so much on some of the other charges.

Thus, I was back up in sentencing and continued the theme: "Don't worry, I am not going to drop any more F-words on you, though I certainly could to express dismay at the unreasonable and unbelievable sentence requested by trial counsel." Maybe I had gained a little credibility with the members from the creativity of the closing argument ... I'll take the fact that the sentence was only hard labor and a reprimand as some proof of that. That perfect fucking closing argument was just what the facts of that case called for ... and it was a classic litigation moment--when else do you get to drop the F-word that many times in a court-martial and not then face your own.