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CRAIG MCCLELLAN ARGUES COMPLICATED
CASES FOR TWO-MINUTE MINDS



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CRAIG McCLELLAN

The McClellan Law Firm

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DRIVEN

Craig McClellan argues complicated cases
for two-minute minds

BY JOE MULLICH PHOTOGRAPHY BY DUSTIN SNIPES

It was literally a he said/she said case.

In 1999, plaintiff attorney Craig McClellan's client said she crashed into a concrete barrier alongside the freeway when the defendant's truck swerved into her lane. The defendant denied he had gone over the line. Witness accounts differed. McClellan knew he had to make a complicated scenario clear for the jury.

That's where the model and photos came in. McClellan had one witness point out the position of the truck and his client's car on a small model of the crash site he'd set up in the courtroom. Then McClellan pulled out his phone and snapped a picture of the model. Then he took a photo of the witness. He texted the images to his laptop, and showed them to the witness, who confirmed their accuracy. The jury was puzzled. *What was the point of all that?*

It was this: He put the photos in front of the jury to keep the defense from later challenging which witness said what.

"When the testimony of each was modeled, then photographed so it could be put in perspective, everything fit," McClellan says. His client was awarded more than \$8 million.

McClellan's meticulous approach has resulted in 110 cases with settlements or verdicts in excess of \$1 million. His cases have resulted in dangerous vehicles being banned in the U.S.; forced automakers to offer training to car buyers; and changed federal seatbelt laws. Ralph Nader has written about his cases, and *20/20* and *60 Minutes* have covered them.



In Guantanamo Bay, Cuba. "When I came out of the Marine Corps," he says, "I knew there was nothing I couldn't get through."

Amid such high stakes, McClellan remains calm and soft-spoken.

"He never loses his cool," says Wayne Peterson, former presiding judge of the San Diego Superior Court. "His thoughts are always collected, and he is civil to his adversary."

In conversation, McClellan has a tendency to classify his thoughts neatly and automatically into bullet points—"three key points" or "two aspects"—and laughs when this is pointed out.

"I tend to think ahead and have already pictured what I'm going to communicate," he says. The same is true in a courtroom. "Before the trial, I prepare the case to death. The only time I don't get nervous is if I know more than anyone else in the courtroom."

HE CAME TO THE LAW IN AN UNUSUAL

way—via his high school girlfriend's father, a trial attorney, who enthralled him with tales of the courtroom whenever he picked up the daughter for a date. "Every story had an outcome that made a difference in someone's life," McClellan remembers, "and that outcome could be accomplished in part from persuasion and hard work."

Law school was delayed by the Vietnam War. When his deferment ran out in 1969, he took a commission and went to officer candidate school for the Marines. "My

brother had been in the Marines, and I thought it was the best branch of the service," he says. "I'm the kind of person who wants to do something all the way."

His unit provided security for one of the Navy's two amphibious command ships. More, the Corps taught him about discipline and hardship. "When you practice law," he says, "you go through hard trials where you get no sleep. When I came out of the Marine Corps, I knew there was nothing I couldn't get through."

After he joined Luce Forward Hamilton & Scripps in 1976, his first million-dollar verdict, in 1981, provided lessons that have guided his career.

He was representing an advertising executive whose home started to crumble, and who sued the contractor and the insurance company for bad faith. Early in the trial, the insurance company made a motion to dismiss, and McClellan feared the judge might grant the motion. Then he remembered advice a colleague had given him on the eve of the trial: *Anytime you get in trouble, go back to your strongest evidence*. For him, it was a memo from the insurance company's in-house counsel that used the damning phrase "bad exposure."

"I basically said to the judge, 'If what they're saying is true in the motion, I wouldn't have exhibit A about bad exposure.'" The judge denied the motion.

More lessons followed. During McClellan's closing argument, two jurors he thought were on his side started shaking their heads. Were they questioning his argument? The amount of punitive damages requested? No. "We didn't need to hear any more," the jurors told him afterward. *Get to the point*.

"When I started, everyone thought oration was a big deal," he says, "harkening back to the days when people would gather and listen to Clarence Darrow give a final argument that lasted two days. Today, if you spend more than six minutes without changing the subject in a closing argument, the jury will be thinking about what to have for dinner or what they'll be doing this weekend." He adds, "I try cases to the two-minute mind."

A headline-making Porsche case from 1983 encapsulates McClellan's methodical style, creativity and technological know-how.

A woman was driving a Porsche 930 when she lost control and crashed into an oncoming car, killing a man in the passenger seat; McClellan represented the man's widow. Preparing the case against Porsche, McClellan read countless reviews of the 930 that mentioned the turbo charger, a new device that gave the car an extra burst of power. He spoke to race car drivers who explained the effect.

"A driver who wasn't expecting that burst would take their foot off the pedal," he says. "When you do that, the weight of the vehicle transfers forward, just as if you had hit the brake." More: When most vehicles spin out of control, the car will right itself if you let go of the wheel. With the 930, you needed to turn the wheel to right it. "It was like a plane pilot who was used to a plane going up when he pulled back on the wheel but in this case it went down," McClellan says.

Personal injury attorney Virginia Nelson, who has known McClellan for decades, still talks about the case with awe. She recalls that Porsche filmed a re-enactment of the crash, which McClellan subpoenaed and had digitized.

"It was so incredible," she says. "He figured out the movements of the people and the car position on the roadway to plot measurements and figure out the actual trajectory of the car. It was an incredibly progressive way to do it, and a good example of what he's like: He's a game-changer who thinks outside the box and applies new

techniques or thinking to prove his case. The people he represents are very lucky to have someone who goes to that level."

As here: The jury awarded his client \$2.5 million, tying the then-record for a wrongful-death award in California.

McClellan's reward? In the aftermath, he went to his mailbox and found a box of chocolate perforated with tiny holes, suggesting someone had poisoned it. "There are some devoted Porsche fans who don't like their vehicles attacked," he says. "I shrugged it off."

What Porsche fans don't know is that their enemy is a kindred spirit. As a member of the Sports Car Club of America, McClellan races cars himself. "I like the speed, the maneuvering, the thrill of it, the smell of it," he says. "It makes it easier for me as a lawyer, because I can communicate with the experts more easily and I don't need to explain it to the jury in a geeky fashion." Even so, post-trial, he sold his Porsche, figuring none of the local dealers would do business with him when it needed repairs.

McClellan is so at home in a garage that he actually bought one. Each morning, he and his employees park in a garage he bought in 1989 that also stores vehicles from ongoing cases—currently, four crushed cars, a motorcycle and a bicycle. "The injuries they witnessed include death, quadriplegia, brain injury and the loss of a leg," McClellan says. "They serve as a constant motivation, and incentivize us to do the most, and the best, for those that suffered or died."

The garage can be a source of great hubbub, as when a vehicle is on a hydraulic lift surrounded by experts using lights, cameras, and laser tracking and measuring equipment. It's even served as a courtroom. Fifteen years ago, McClellan wanted the jury to view a BMW involved in a crash. "We had the garage made into a courtroom, with an area for the jury, the judge and all the other members of the court," he says.

Car cases keep coming to him. In the late '80s, McClellan litigated a number of three-wheel ATV cases against Honda. One of the largest verdicts, concerning a 9-year-old girl who was rendered quadriplegic, was featured on *60 Minutes*. In another ATV case, he compelled the president of Honda Motors to testify; and

on the stand, the CEO broke into tears when McClellan confronted him with a list of all the children who had been killed or maimed on his company's three-wheelers. McClellan lost that one anyway.

"The jury didn't have any sympathy for [the CEO] but felt that if the ATVs were really unsafe the government would have taken action. It did—about six months after the verdict." In fact, the Justice Department used information from the case to ban all three-wheel ATVs in the U.S.

WHEN VISITORS ENTER THE AIRY

environment of the McClellan firm, founded in 1986, they see framed photos of actors Andy Griffith (*Matlock*) and Raymond Burr (*Perry Mason*).


"I learn a lot from those shows," McClellan says. "I'll take a snippet from a damage argument a character makes and put it in my file to use in that kind of case."

Some of his cases have wound up on those shows as well. During the Porsche trial, McClellan received a package in the mail with a copy of a company report on the vehicle's handling and performance. The official report said the car operated fine, but this one, when translated from the original German, detailed the oversteer

issue, calling it "poisonous." McClellan confronted the Porsche CEO on the stand, asking, "When did you have the report altered?" All hell broke loose. With certain details altered, the incident was resurrected on an episode of *L.A. Law*.

By design, McClellan's firm has stayed small: seven employees, 15 active cases, each of which must have seven-figure potential. "It's tough to be out there on your own," says Herbert Hoffman, a retired superior court judge. "He's usually up against insurance companies and major law firms. He's taking on high-stakes, complex cases without an army of lawyers."

But that's how McClellan likes it. He's currently litigating a case against USC and a USC public safety officer who was allegedly driving 69 mph through a 25-mph campus zone when he hit a student, killing her. "This isn't only about that one incident," he says. "It's about protecting all the students who are affected by public safety officers who aren't properly trained or supervised."

He adds, "It's important to make a case bigger than just the incident of the case." 

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The Million-Dollar Verdict McClellan Doesn't Want to Talk About

McClellan has received a lot of publicity for his 110 seven-figure cases, but there's one he wishes hadn't made headlines: a \$1.1 million verdict for a woman who was wrongly accused of shoplifting a 25-cent pair of pantyhose.

A Target security guard tried to get the woman to sign a confession that she had switched price tags. In his research, McClellan found the guards were subject to a quota system, so they would accuse people of shoplifting, have them sign a confession, then let them go.

"During the settlement discussions," he says. "I told them, 'I am going to up my demand by \$50,000 a day, and you can stop it anytime.'" On the stand, he made mincemeat of the guard, pointing out that the perforated price tag couldn't be switched without falling apart. He also cross-examined a store executive named King, who, McClellan says, "acted like a king." Target settled.

The bad part? "All the publicity from the case," he says. "I didn't want to become known as the 25-cent pantyhose lawyer."

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