

4 Things Attys Can Learn From 'Miracle On 34th Street'

By **Carmen Germaine**

Law360, New York (December 22, 2015, 5:09 PM ET) -- The 1947 holiday classic "Miracle on 34th Street" ends with a special treat for lawyers — a thrilling trial before the New York Supreme Court to determine whether the Macy's in-house Santa Claus, the white-bearded Kris Kringle, is the real deal or just an old man who presents a danger to society. But perhaps few have realized the lessons to be learned from the admittedly outlandish trial.



It took more than a tug on the beard to prove Santa's authenticity in a "Miracle on 34th Street," but the film's climactic trial holds lessons for lawyers. Credit: Twentieth Century-Fox Film Corp.

Some have been looking to the beloved Christmas flick for years — professor Michael Cassidy of Boston College Law School explained that he even shows his students the scene when lawyer Fred Gailey dumps children's letters to Santa on the judge's desk to illustrate the doctrine of implied assertions: Because the children wrote the letters to assert their Christmas wishlists and not the existence of Santa Claus, the letters are admissible to help prove Santa's case.

There are far more lessons from the light-hearted film, from how to handle your opponent to how to sway the judge. Here, Law360 looks at what lawyers can learn from "Miracle on 34th Street."

Know When to Stop (and When to Keep Going)

In the film, the trial opens with the district attorney calling Kringle to the stand and asking him only three questions: what his name is, where he lives, and whether he believes himself to be Santa Claus. When Kringle answers "of course" to the third, the prosecutor says simply, "The state rests, your honor."

As Shelley Ericsson, a partner at Armstrong Teasdale LLP, recalled, her young, aspiring-lawyer daughter turned around when watching the scene and asked whether that was all

an attorney had to do.

"Sometimes that's the most important thing, is knowing when to stop," Ericsson said she had told her daughter. She explained that young attorneys will often go after incriminating or otherwise promising statements in depositions, then suddenly realize they've asked too many questions.

But Ericsson said her next thought as a defense lawyer was that by resting his case, the district attorney had missed the point of the commitment hearing — to determine whether Kringle was a danger to society — and that the defense counsel could have moved for a directed verdict that the would-be Santa Claus posed no immediate harm.

"You've gotta keep your eye on the burden of proof and what needs to be established," Ericsson explained.

Ericsson added that the district attorney had also erred by asking Kringle's attorney, Gailey, to provide more proof, prompting Gailey to produce the buckets of mail sent to Santa Claus.

"Watch what you ask for," Ericsson said. "You need to make sure that you're ready to deal with the consequences."

Mark Reardon, the co-chair of Eckert Seamans Cherin & Mellott LLC's mass tort group, also said the prosecutor had missed a major opportunity by merely relying on Kringle's admission that he believed himself to be Santa Claus.

Reardon added that with modern evidence such as surveillance video, background checks and medical records — let alone the difficulty of proving Santa's ability to physically bilocate — Kringle's case would have fallen apart, but that fortunately for the holiday film, the district attorney neglected to provide any evidence at all.

"Don't underestimate your opponent," Reardon concluded, calling it a "big lesson from the district attorney."

Consider Your Witness

Of course, another problem for the district attorney was Kris Kringle himself. Kringle's assured, jovial — and unabashedly Santa-like — presence on the witness stand, which helped him win over the judge and the public, presents another lesson for lawyers, experts said.

"The strength of Santa's case in the courtroom was his absolute authenticity," Reardon said.

Reardon explained that Gailey's decision to allow Kringle to present himself as Santa and restraint from coaching Kringle in any way, helped the case by highlighting the strength of Kringle's identification as Santa Claus.

"Clients who aren't true to themselves, who try to fake it, judges and juries see through that right away," Reardon said. "He so deeply knew he was Santa that that authenticity carried the day."

Ericsson added that it was Kringle's poise on the witness stand that allowed the judge, and the public, to trust his testimony.

"Santa was just so comfortable and so assured of himself," Ericsson said. "I think everybody picked up on that."

Ericsson said that ensuring a witness is calm and doesn't fidget before a judge or jury can help keep focus on the testimony itself, rather than distracting from the case.

"I think it's always interesting that I have a witness who's on the stand and their testimony comes in and on paper is persuasive and arguably correct but the body language will undo everything that comes out of their mouth," Ericsson said.

Jurors are quick to pick up on the body language of witnesses, Ericsson said, and often distrust any witness who presents themselves as uncomfortable, even if the person on the stand is simply unfamiliar with the courtroom or has habitual nervous tics. She added that lawyers should be aware of how their witness will appear to jurors and judges.

As an example, Ericsson compared Kringle's calm, cheerful demeanor to that of the Macy's psychiatrist, Granville Sawyer, the villain of the piece, who leads the push for committing the Santa and has a nervous habit of pulling on his eyebrow.

"Santa didn't have those kind of nervous tics, and you trusted him," Ericsson said.

Judges Are People, Too

Even before the trial begins, the venerable Judge Henry Harper of the New York Supreme Court is urged to drop the case — by a friend worried about Judge Harper's election prospects, and by his grandkids, who refuse to hug their grandfather in protest.

As Judge Harper searches for ways to avoid jeopardizing his career or his relationship with the grandkids, it's clear that there's more at play in his decision than the evidence before him — something all attorneys can learn from, experts said.

Reardon said that Judge Harper's decision shows how most courtroom decisions are made by "deductive reasoning."

"Clearly the judge came into this case feeling better about this world and himself by believing that there is a Santa Claus, so he looked for any evidence to support that belief," Reardon said. "That's deductive thinking."

Ericsson added that successful lawyers will either help the judge reach that outcome he or she has in mind, or show the judge how to come to an airtight ruling on the other side and avoid being reversed.

"As a lawyer, it's your job to create opportunities for the court to hang their hat on," Ericsson said. "The more you can tee that up and satisfy them that they're going down the right road and their ruling is going to be held up, the better."

Both Cassidy and Ericsson said political influence is one reason many states, including their home states of Massachusetts and Missouri, have moved away from electing judges.

As Cassidy explained, the film shows how judges are "human beings" who may be influenced by the will of the people.

"They're going to read a headline the next day in the newspaper about the result of their ruling," Cassidy said. "We would be expecting them to act like computers and not like human beings if they weren't cognizant that there were going to be repercussions of their rulings."

On the flip side, Cassidy said, Judge Harper has a redeeming message for lawyers, illustrating the role that judges play in "doing justice and fairness."

"Judges can take into account issues of love and mercy," Cassidy said. "Judges aren't robots that are just supposed to apply the facts to the law. They're supposed to do what seems fair to them in light of the person before them."

Follow Your Heart

Ultimately, perhaps the most important holiday lesson for lawyers comes in the example of the defense attorney himself, who proves himself willing to toss aside a comfortable job at Haislip Haislip Sherman Mackenzie & Haislip to take on a case he believes in — and, of course, to win the love of Doris Walker.

"He was really putting his career in the balance by picking up this cause," Ericsson said. "I thought that was pretty powerful."

In Ericsson's words, Gailey opted for "Christmas stockings instead of silk stockings," choosing to represent a client he admires in the hopes of restoring holiday spirit instead of pursuing a more lucrative career at a major firm.

Reardon said that Gailey's verve in taking on the case against the odds showed "one of the admirable qualities of our profession."

"That is zealous advocacy taken to the highest level," he said.

As Reardon explained, that kind of selflessness is actually common in the legal profession, saying he's seen many examples of colleagues who took on pro bono work or left large firms to work for nonprofits, but it can be easy to forget the noble role that many lawyers play.

Gailey's heartfelt advocacy for Kringle, in many ways, fits perfectly with what Cassidy identified as the theme of the holiday season and the film's "message of love and generosity."

"It's all about expanding our hearts, I think," Cassidy said.

--Editing by Jeremy Barker and Patricia K. Cole.