

Do the right thing

*In the following closing, attorney **Gregory S. Cusimano**, of Gadsden, Alabama, argued on behalf of his client, who was fired from truck manufacturer Heil Company after being injured on the job and pursuing a workers' compensation claim. The jury found for the plaintiff and awarded punitive damages. (Crowley v. Heil Co., No. CV-92-232 (Ala. DeKalb County Civ. Ct. Oct. 6, 1993).)*

It's a pleasure to finally get to talk directly to you after all these many days of trial. I know there are times that we have made eye contact and I had this tremendous urge to speak to you and couldn't, or we would be in the hall and have to look away because we're not supposed to communicate. It almost feels funny for the judge now to say, OK, you can talk to these people. It's a pleasure to do that because you've been very attentive in what has turned out to be a long trial, and Mike and Cheryl appreciate your kindness.

Mike Crowley was injured and made a claim for workers' compensation benefits. He was mistreated and fired because he got hurt and made that claim. In Alabama, we have a worker's compensation law provision, and, basically, it's something you're probably all familiar with. If you're injured on a job, you're entitled to both the protections and benefits of the workers' compensation law.

If that injury requires that you have medical care and you claim your medical benefits under the workers' compensation law, you're entitled to that. If the injury causes you to be out of work and you claim wages, then according to a formula, you're entitled to that.

You're entitled to exercise that right freely, without fear of retaliation, without fear of punishment, without fear of your employer – the people you're working for – coming down on you because of it. And because you're supposed to be able to exercise that right freely, there is a law that brings us here today, and it is called retaliatory discharge.

What we have tried to show you, and must show you, is that Mike was hurt on the job, that he made a claim for his medical benefits, that he got part of that, and that he was terminated.

Once we show you that Mike was injured on the job, and from the facts that he was mistreated and terminated because of the injury and the claim, it's up to the defense to prove to you that he was fired for a real reason, a legitimate reason, a legal reason. And, then, it's up to us to say, "Hey, that's bunk, look at the facts."

If you'll remember, when I was questioning you, I talked about reasonable satisfaction, that this wasn't a criminal case. We didn't have to prove anything to you beyond a reasonable doubt, that if you were reasonably satisfied from the evidence that what we say is true, that's all we have to do.

I like to think in terms of a scale with coffee beans. If it's perfectly balanced and you take one bean from this side of the scale and put it on the other side, the scale tips ever so slightly from the weight of the evidence. I suggest to you, we haven't tipped the scale ever so slightly, we've knocked the bottom out.

Now, you know, we don't live in a dream world. We're not watching Perry Mason. This isn't *L.A. Law*. I wish I could be as articulate and glib as some of those folks on TV. But nobody is going to jump up out there during my closing and say, "I did it, I lied, I fired the man because they told me to." That ain't gonna happen.

Heil Company is not going to come in here and say, "Yeah, yeah, yeah, we fired him, we didn't like him, we thought he was hurt, he wasn't working like he ought to; he wasn't cost effective for us, we just fired him. We fired him, so what?"

That doesn't happen in the real world, and that's why you're here. They come here and act as if they treat their people by the golden rule.

They don't treat them by the golden rule that you and I know about. They have their own version: "We've got the gold, so we make the rules." But we know how they really work.

Let's consider what we know. We know that Mike Crowley was a good employee before he was injured. How do we know it? Do we know it based on what Heil has told us? No, we know it from their own records. We know it because Mike Crowley was hired on September 6, 1989, worked for them, got all the raises when he was supposed to get them, and there was not one notation in his file about one negative thing that he did until May 14, 1990, when he was five minutes late coming back from a break. There was not another one until he was injured. They can't run from that.

Mike Crowley was a good employee. That's what Heil's records clearly show. They didn't show any tardiness, they didn't show any absence from work and failure to call in. They didn't show refusal to work, they didn't show he was five feet from where he was supposed to be when the horn blew. They didn't show any of that because it didn't happen.

Now, they want to make you think he was a sorry employee all along. "he was a sorry employee all along even though we didn't write it down until after he was injured," they would say. We know, Mike was a good employee, not because of what they say, but because of what we know.

It reminds me of the parents who had a baby boy, and the boy got to be one year old. He was walking OK, but he wasn't saying daddy and mama. He got to be one and a half and still wasn't saying daddy and mama. Daddy and mama weren't happy about it. He got to be two, and the baby boy still wasn't talking. The parents were really worried.

Then, one day when the boy was eating breakfast, he took a spoon and put it in his oatmeal, looked at his mama, and said, "This is cold."

And the mama said, "You can talk, Johnny, I'm so happy you can talk."

And the daddy said, "We're so happy you can talk, why haven't you said anything before?"

And the little boy said, "Well, everything was all right up until now."

That's the way Heil sounds. Everything was fine until Mike got hurt. Everything was all right up until then.

What else do we know? We know Mike was confined to a room after he was injured. Most of the time under the workers' comp law, if you're injured and you can't go back to work because of your injury and you can't do your job, you stay home and you get well. That's not the Heil way. They put you in a room. They confine you in a room.

I don't think there is any question based on testimony you've heard – there is nothing in the room. No writing, nothing to write with, no, no, no, no. No TV, no, no, no, no. No Bible, no cards, no entertainment, no crossword puzzles, no nothing. Stay in that room eight hours a day. You can come out 15 minutes twice a day and go to the bathroom if we don't spot you somewhere that we think you shouldn't be.

Boy, that's humane treatment – confine somebody in a room by themselves. Heil put him in a computer room, solitary confinement. What did Mr. Genelin, the plant manager, say they did it for? "Money. We do it for money. It's cost effective. It's cost effective." That's what he told us.

What else do we know? I'm not talking about information that's debatable, I'm talking about information you and I know. We know now that they had control over the handbook, they had control over the rules. Work seven days a week, 12 hours a day.

Mr. Genelin says it costs \$30,000 an employee for hiring 170 of them. If my arithmetic is correct, that's over \$5 million – over \$5 million to check out people. But once they decide they want to get rid of them they don't even take minutes of the meetings. They don't even keep a copy of the ballot. That's what he said. So they can say and do what they want to, and this isn't the first time they've done it, either.

You heard Nat Williams testify. He had an injury in January of '91, just like Mike. He made a claim for his workers' compensation benefits and medical benefits, just like Mike. He was finally stuck in a room when he got to work, confined to a room, just like Mike. And he was ultimately able to go back to work, just like Mike. And they fired Nat Williams, just like Mike. He was a victim of the process, just like Mike.

Do you know what else we know? They tried to make out like they could fire someone anytime they wanted to. Why, shucks, folks, we could let Mike go anytime we wanted. We could have fired him because he didn't have his earplugs in. We could have fired him because we didn't like the way he stood on the ladder. We could have fired him because he came in cross-eyed one day.

They didn't fire him until Dr. Decker released him completely from under his care. My job would have been a lot easier had they fired him when he was still under the doctor's care. These people aren't stupid. They know what they're doing. They didn't get to be number one by being stupid. Mike was under the doctor's care all that time and he was released from the doctor's care on Friday.

And how long did it take to fire him? Not even 20 minutes, not even 15 minutes, the first day he reported back. Every witness we heard that they called draws a paycheck from the Heil Company. Now, I'm just saying, that's tough. They value their jobs. You've seen the kind of control the company exerts. I asked Ms. Ellis, the personnel manager, doesn't it bother you to try to keep the man in that room? And, she said, "Well, I'm getting paid for it." I understand.

What else do we know? We know that the rulebook was fixed so that the company could use it any way they wanted to, anytime they wanted to. And we know they could interpret it to say what they wanted it to say. That write-up in May never said anything about productivity, lack of it, or anything else, but it was interpreted to mean that, so it would fit, so the paperwork would fit, so that they could come in here and show it to you if Mike decided to do something. So we know they make their decisions based on the bottom line of what is cost effective. We know that because they told us that.

We know what they did to Mike Crowley and his family. You heard Cheryl Crowley's testimony. You heard what they went through, trying to find work all over Alabama. Mike Crowley was stripped of his dignity. He was stripped of his manhood. What do we have, except being able to work and being a good husband, a good father, a good provider?

Imagine what it must have felt like to lose things that they had worked for all their lives. The mental agony of feeling responsible for that. Heil took away his ability to be the kind of father he wanted to be. They took away his ability to be the kind of husband he had always been and wanted to be. They took away his ability to be a provider. And he'll live with that the rest of his life.

The law says that you're entitled to set a sum to compensate for that. And it needs to be substantial. You can set a sum of money for his lost wages while he was out of work. And then you can set a sum of money to tell the Heil Company up in Milwaukee, Wisconsin, and the corporate officers, "Uh-uh, folks, we're not tolerating this in DeKalb County, Alabama. We're not a colony, we're not gonna let you treat our people like that.

Now, you can talk to them the only way they understand, unfortunately, the only way you will get their attention. I'll be able to talk to you a little bit more about this later. Thank you for your attention.

Closing argument rebuttal.

I want to get around to the important part of this case. This case is bigger than my friend, Mike Crowley, it's bigger than Heil in Fort Payne, it's bigger than me, it's bigger than you. I say that because we're all here, not representing just ourselves, but someone else.

Mike Crowley is representing all the employees of Heil Company all over the world, and he's representing all the employees in this country who get hurt on the job and who claim workers' comp benefits. And he's representing all the people who work an honest day's work and expect an honest day's dollar.

Now, who does Heil represent? They represent all companies that are more concerned about production and the bottom line than they are about the people who work for them. All the companies that think staying number one is the most important thing in the world, that are willing to sacrifice their employees on the altars of corporate profit. That's who Heil Company represents.

And you, you have the most important role because you represent all the people in this community. You represent all the people in this state, and you represent the people in this country.

You know there's a beautiful thing in the law called punitive damages. The purpose of punitive damages is to punish conduct that you know is wrong and to teach others not to do the same thing. Punitive damages are designed to enforce our standards – we the people; we can make a big difference.

You have the power. You have the ability to do it. You can say to Heil, and any company, "No, absolutely not. No more, no more, no more. I don't care if you're the number-one garbage truck manufacturer in the world. I don't care if you're the number-one dump truck manufacturer in the world. I don't care if you're the number-one aluminum tanker truck manufacturer in the world. I don't care who you are. Pay a little attention to us."

You've got to make Heil Company feel your verdict.

What will it take? What will it take to get on the agenda in that big berry-brown walnut-walled boardroom? You've got to speak to them in a way that they will hear you. You've got to let them know in all their many facilities.

Let them know in Athens, Tennessee. Let them know in Lancaster, Pennsylvania; let them know in Phoenix, Arizona; let them know in Tishamingo, Mississippi. Let your

verdict ring out in Louisville, Kentucky; in Huntsville, Texas; and in Linden, New Jersey. Let them know in Helend, Scotland, but most of all, let them know in Milwaukee, Wisconsin.

Let them know that you're not going to stand for that kind of treatment of employees and that you want that kind of behavior changed.

Please take your chance. Do something you can be proud of. Help the people in this state, this country. You know, this whole week, you folks are special, and somehow, I think you know it. I think you feel it, one another, that we believe in you. We trust in you. We think you'll do the right thing – the right thing.

For further reading

Charles L. Becton, *Using your voice in closing argument*, TRIAL, Jan. 1997, at 68.

Phillip H. Corboy Sr., *Final argument*, TRIAL, Feb. 1992, at 60.

Leonard M. Ring, *Effective closing arguments in civil trials*, TRIAL, Oct. 1993, at 61.

Larry S. Stewart, *Arguing pain and suffering damages in summation*. TRIAL, Mar. 1992, at 55.