

Storytelling in the Courtroom

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We tell ourselves stories in order to make sense of life. Narrative is reassuring. There are days when life is so absurd, it's crippling-nothing makes sense, but stories bring order to absurdity. Relief is provided by the narrative's beginning, middle and end.

Norman Mailer

- I. **Introduction – Stories** have been around since the evolution of spoken language. One of the very first recorded stories was what we commonly think of as a war story:

“I, Keokok, have slain a bear,
Ayi-ayi-ayi-
A great bear, a fierce bear,
Ayi-ayi-ayi
With might have I slain him,
Ayi-ayi-ayi.
Great are the muscles of my arm-
Strong for spear throwing-
Strong for kayak going,
I, Keokok, have slain a bear,
Ayi-ayi-ayi.”

Every mainstream religion has used storytelling to teach moral principles and educate their congregants regarding historical doctrine.

Political entities including governing bodies, political parties and individual politicians have relied on storytelling to convey a sense of history, rile up political fervor, and establish a personal connection to the pressing issues of the day. One need only refer back to political conventions to see how politicians use story to create meaning.

Educators have always used stories to bring subject matter alive. Currently, there is a renewed emphasis on the use of story in the public school classroom. Private educational movements such as Waldorf make storytelling the major educational vehicle in their classrooms.

II. Why is storytelling persuasive to a jury?

A. Very little of what we have learned in law school prepares us to persuade jurors.

1. Applying facts to law impresses law professors and some judges; not jurors.
2. Attorneys who talk like attorneys are boring, incomprehensible or even worse, unbelievable.
3. Juries see trials as morality plays. Jurors do not search for evidence beyond a reasonable doubt; they search for hidden truths and deeper meanings.

B. Aristotle had this to say about persuasion:

Of the modes of persuasion furnished by the spoken word, there are three kinds.

The first mode of persuasion depends on the proof provided by the words of the speech itself. Persuasion is the persuasive arguments suitable to the case in question. (**Logos**)

The second mode of persuasion depends on the personal character of the speaker. Persuasion is achieved by the speaker's personal character when the speech is so spoken as to make us think him credible. We believe good men more fully and more readily than others. This is true generally whatever the question is, and absolutely true when exact certainty is impossible and opinions are divided. The speaker's character may be called the most effective means of persuasion he possesses. (**Ethos**)

The third mode of persuasion depends on putting the audience into a certain frame of mind. Persuasion comes through the hearers, when the speech stirs the emotions. (**Pathos**)¹

C. Storytelling provides the most effective format for conveying persuasive, memorable arguments. Storytelling allows the character of the teller to augment the persuasive nature of the argument. Storytelling allows the teller and the jury to relate to the material viscerally thereby creating a greater connection between the teller and the story, the teller and the jury, and most importantly, the story and the jury. A story is a thought machine by which we test out our ideas and feelings about some human quality and try to learn more about it.

III. Storytelling conveys information that captures the minds of jurors in a logical format.

A. A story is the most effective way of conveying information that is memorable and logically consistent.

1. A story allows us to stimulate the trial instead of reacting to the trial.
2. A story is the easiest way to remember a series of facts. We all remember important events in the form of a story. Facts are

¹ ARISTOTLE, *Rhetoric*, Book I, Chapter 2

uninteresting and fleeting. Stories are dynamic and possess sticking power. Rules and legalities are deadly. Stories are full of vivacity. Once the jury organizes the facts of the case through the lens of the story that you have prepared, it is very difficult for them to see those same facts through a competing account of what transpired. Jurors will selectively filter information presented to them to maintain a coherent story. While the story is elaborated upon throughout the trial, there will be a strong tendency for jurors to discard information inconsistent with the main story line. Witnesses will be viewed in the context of how they provide validation of your story. Witnesses who seem to contradict your story will be viewed with skepticism.

3. Stories create order out of chaos. Information in the form of a chronological narrative, where one piece of evidence flows naturally from another, is the most logical way to make sense of the meaning of a case. As communicating beings, we begin to organize ideas into a narrative format as soon as we begin to relate our personal experiences to other people. Jurors who are not given a narrative framework with which they can organize the facts of a given case will create a narrative framework of their own in order to make sense of the information before them. If we don't tell them what the story is, they will come up with their own!
4. We all measure the validity of what we hear by comparing it with our own experiences. A story that is complete, internally consistent, and conforms to our notions of common sense, creates a framework from which we are able to make logical comparisons with our own experience.

B. A story offers the best context in which to evaluate witness motivations and bias.

C. We are a visual society.

1. According to one study, jurors forget 40% of what they hear 20 minutes after they hear it, 55% after an hour, and 60% by the end of the day. But – jurors remember pictures they see and images they have imagined.
2. Jurors are increasingly becoming predominantly visual in their ability to take in new information. A story gives people a visual reference through which they can recall the facts of the case.
3. Narration and logic are processed in different parts of the brain. The narrative part of the brain has better recall.

D. Stories are interesting to fast thinkers.

1. We talk at approximately 160 words per minute. We think at approximately 400 words per minute. A story helps fill up our imagination with thoughts related to the case instead of lunch.

IV. Storytelling projects the character of the speaker to the jurors in an unforgettable presentation.

A. We trust people who can tell a good story – that is true.

- B. Understanding the story of the case creates a bond between the attorney and the story of the case.
- C. The stronger an attorney connects to the story of a case, the more confidence the attorney feels when relating the story to a jury.
- D. When an attorney connects with the heart and truth of the story of the case, the attorney projects a true belief in the rightness of the cause.
- E. A true belief is the most important resource that an attorney possesses.

1. The most important persuasive ability we have is our integrity. Jurors believe truth seekers, not game players. We cannot be a truth seeker if we do not believe in the truth of the cause we are representing. We cannot believe in the truth of the cause we are representing unless we experience a genuine connection with our client and their story. A genuine connection with our client and their story allows us to tell their story in a way that is real and true. The attorney/storyteller communicates a story that conveys truthfulness and integrity.

2. We cannot fake a true belief. The majority of information that we communicate is non-verbal. According to one study:

55% of what we communicate is what people see
 38% of what we communicate is the sound of our voice
 7% of what we communicate is what we are actually saying

3. A belief held true, counters the fear of public speaking. The greatest fear that the human animal experiences, is the fear of public speaking. (Death is 2nd and snakes 3rd). The fear of public speaking is a psychological condition that leads to a physiological reaction. This reaction is caused by unnecessary and counterproductive attention placed upon ourselves. We imagine a standard of perfection and then judge ourselves against this imaginary and unattainable standard. This fear abates when we stop evaluating ourselves and refocus our attention on what is important . . . telling the story of an innocent client. When we invest our mind and spirit towards the quest of exonerating the innocent, we do not concern ourselves with attaining an illusory standard of perfection.

4. When we hold a true belief in our hearts - our voice, our body, and our hearts all march to the beat of the same drummer. Our presentation becomes more interesting, more natural and most importantly, more believable.

- F. Stories allow us to give our opinion of a witness without ever giving our opinion of a witness. Attorneys are not allowed to comment on the veracity or truthfulness of a witness but we can do that in subtle or not so subtle ways through a story.

V. Storytelling brings the emotion of the case to the hearts of the jurors.

- A. Jurors make decisions with their hearts and then rationalize their way to a legal decision that conforms to their feelings about the case.

1. Jurors are not lawyers; they care mostly about right and wrong not burdens and presumptions.
 2. Marketing experts suggest that as much as 90% of our decision making is based on feelings that we then rationalize. The most persuasive professionals in modern western civilization are marketers. Marketers appeal to emotions, not logic. When the spirit moves, the mind and body follow.
- B. Understanding our client's story is the most effective way of getting inside the heart and soul of the case. The story allows the attorney to try the case from the inside out rather than standing on the outside looking in. Getting inside the story of the case allows, in fact requires, the attorney to bring the case to a gut level as well as an intellectual exercise. Jurors don't care how much we know until they know how much we care.
- C. Storytelling is an art. Like any art, storytelling moves an audience by creating empathetic responses. A heartfelt story creates an emotional connection in the storyteller, which in turn creates an emotional connection in the listener. When telling the story of our client it is imperative to connect to that part of the story that is personal to us as storytellers. The attorney who experiences the deeper meanings implicit in the retelling of any heroic journey is able to communicate the depth of this connection to the jury. The attorney serves as a conduit for a truthful connection between the client, the client's story and the jurors in their role as participating audience members.
- D. Storytelling allows an audience to connect to the story at an intuitive or archetypal level thereby allowing the audience to reach a deeper level of understanding and connection.

VI. Storytelling suggestions:

- A. Tell the story from the inside out. The key to telling an effective story is to tell the story from inside of the story, rather than standing on the outside looking in. The root of the telling is the deep desire to share an important story-the desire to openly share something that has been deeply moving to the teller. Storytelling is a sharing experience. When we tell a heartfelt story, we show our willingness to be vulnerable-to expose our deepest feelings and values. This kind of naked vulnerability invites the jury to listen with open minds, and more importantly, open hearts. It is the teller's life experience and commitment to the story that makes the story ring true.
- B. Live with the story. The teller must live with the story for a significant period of time. A well told story is not created at the last minute. It takes time for a teller to create a relationship with the story, to live with the story and give it breath.
- C. Find your own voice. Stay true to your own style and personality. Watch other storytellers and learn from them. Do not try to imitate another teller though, rather find your own storytelling voice and incorporate ideas and techniques. When we try to imitate another storyteller we risk appearing unbelievable or insincere. Every person can tell a story that is sincere, heartfelt and persuasive, in his or her own voice.

- D. Use themes. Themes are dramatic abstractions that help jurors define the “case story.” The theme is akin to the moral of a parable; for example, “The Good Samaritan.” Themes are important because they promote unity and help organize the point of the story for the jury. A good theme should have broad appeal, evoke an emotional response in the listener, and be described in one sentence. There can be more than one theme in a case but there should be no more than three to five themes. If there is more than one theme, than all themes must be compatible.
- E. Consider your audience and do not over tell the story. Understand the stories in your jurisdiction. Likewise, the jury must see an attorney telling the story of what happened. The jury should not see a storyteller. The story must be effortless and natural and appropriate to the members of your jury panel.
- F. Storytelling is not recitation and should never be read or memorized. The story has to come from a place inside the teller’s heart and should and must flow in the moment of the telling. The story should be practiced but not over rehearsed.
- G. Storytelling is not acting. The storyteller is not an actor, but rather the medium through which the story is passed. Overly animated gestures or gimmicks should generally be avoided unless they are organic to your own personal style. Voices should be used sparingly and with caution. The focus should be on the story, not the storyteller. (This should in no way be interpreted to mean that the story should not be interesting. It must be interesting. Every person has the ability to tell an honest story in their own voice in a way that is interesting and not “acted.)
- H. Carefully examine the characters that make up your story. Who are the characters in your morality play and what are they like? What are their motivations? What biases do they have? What gives them color? What makes them unique? What makes them like the jurors or others characters in the story? Are they manipulating or being manipulated? Are they mistaken, lying, delusional? What does each of the characters symbolize? What deeper meanings can be found in the roles they play in this story? Our story must explain why as well as what. How do you as a participant in the unfolding of the ongoing story, feel about the various witnesses? Not just “I think the witness is a liar” but rather “I feel contempt for this witness and what he stands for.”
- I. Incorporate all of the facts of the case. The story must be complete, consistent and coherent. All facts, good and bad, must be incorporated into the story of the case.
- J. Don’t describe every leaf on every tree. This is insulting and more importantly boring.
- K. “Once upon a time . . .” Prior to beginning to tell the story take some time to connect with the jury. Invite them into your circle prior to speaking. Recall the dominant emotional themes of the case. Remind yourself of that essential part of the story that you connect with personally. When we begin from that part of the story that we are connected to, the story will be ours as well as our client’s. Reach for that place that touches you-breathe deeply-and begin.
- L. Start with a hook or headline. The first sentence of the story should be interesting and somewhat provocative. The jury should want to hear more.

- M. Visualize the story. Familiarity with the various settings of the story is crucial. If at all possible, visit any locations that will be referred to during the trial. It is impossible to convey the actual truth of a story without seeing the story unfold in our mind's eye. As we tell the story we should actually see it taking place in the present. If we allow ourselves the opportunity to see the story as we are telling it, we will give the jury the time and permission to watch along with us.
- N. Make real eye contact and speak to one juror at a time. It is important to develop individual relationships with the various jurors. Jurors who are allowed to blend in with the crowd are too easily prone to going along with a conviction out of a "bystander" reluctance to speak up.
- O. If possible, eliminate all obstacles between yourself and your audience. Get rid of podiums, legal pads, pens, etc.
- P. Create word pictures. Find ways to create images that the jury can see in their minds.
- Q. Use all of the senses. Not only what the person saw, but also what taste did they have in their mouth, how did their skin feel, etc.
- R. Structure the story. Telling a story doesn't happen through magic. A story can be told in a magical way, but it takes work. How should this particular story be structured? What does the dramatic arc look like? When does the story end? We are the writers, directors and editors of the story of our client. Clients provide us with fascinating raw material to work with. We are the artists who must shape their story into something that makes sense, has deeper meanings and engenders impassioned feelings about the subject matter. Preparation is essential. The story that we will tell in court must be well thought out and organized. Preparation for the story we will tell begins the very first time we meet our client.
- S. Bring the story into the present. Make sure that the story is tied to the hero's journey that each individual juror has before them. Each juror is now part of the story and will write its ending. This is an awesome responsibility and must be acknowledged. The story is not told in a vacuum, it exists right here, right now.
- T. Practice telling the story out loud – to non-attorneys. The brain processes information differently when it translates thoughts into voice. The more you can practice telling stories the better. The story that you are going to tell in court should be practiced to the point of intimate familiarity, but not to the point where the story feels rehearsed or tired. It is important to try your story out on non-attorneys. Pay attention to what information they would like to have that you have not provided in your story. It doesn't really matter if it is legally relevant if the information is important to a non-lawyer's understanding of the development of the unfolding human drama.
- U. Use your voice to make the story interesting. Use inflection, pacing and rhythm to punctuate and create suspense.
- V. Use silence. Silence is one of the most effective tools in a storyteller's repertoire.
- W. Use rhetorical devices that flow naturally within the context of the story.

Alliteration

Analogy
 Contrast
 Key words and phrases
 Lists
 Primacy and recency
 Quotes
 Rhetorical questions
 Rhyme
 Repetition
 Trilogies

- X. Create and use consistent space within the courtroom. Areas of the courtroom can serve as any space outside the courtroom that we can conceive of. We just have to really see the space and maintain its integrity.
- Y. Tell the story in the moment. This is one of the most difficult goals to accomplish; to be in the moment of the story and not thinking about the prosecutor, the judge or whether your fly is open. When a teller stays in the moment of the story, the story comes alive, the jury takes notice and electricity fills the air.

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PERIODICALS

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