

Tell me a story...

Courtroom Techniques by Douglas Filter

The universe is made of stories, not atoms.
—**Muriel Rukeyser**

Stories have power — over our imaginations, our beliefs, and our fears. A frightened child will beg a parent, “Tell me a story...” to get his mind off a bad dream.

As adults we gather in groups at work or cocktail parties and someone will inevitably say, “Let me tell you what happened last week; it’s a great story.” Good storytellers draw their audience around them and hold their rapt attention — intuitively knowing when to draw out a point for dramatic effect and when to wrap it up before losing our attention.

We cast our lives and those around us in terms of “a great story” with characters, plot lines, good guys and bad. Even the nightly news never just recounts facts, but rather tells stories, complete with teasers in the hours leading up to the broadcast. Whatever it takes to get us to tune in and learn how it turned out. Tom Brokaw said, “It’s all storytelling, you know. That’s what journalism is all about.”

As humans (and audience members) we understand storytelling and are comfortable with its conventions. From brief TV shows to epic, multi-part movies and series, we are able to follow characters, identify with heroics and humanity, hold our breath in suspense and sigh our relief when the story wraps up neatly.

Tell the jury a story

The first law of story-telling.... Every man is bound to leave a story better than he found it.
—**Mary Augusta Ward** (British novelist)

Trial attorneys create and spin stories for a living. A successful trial attorney must present the facts of the case — the story — in a better way than the other side. You must leave the story in better shape than you found it. You often have to puzzle through tremendous reams and boxes of information to learn the case basics and details. The volume of information can be staggering even for those who had weeks or months to prepare. So, how can we expect an individual juror to make sense of days of detail? Deliver the story, not just the facts.

Understand that your jury is looking for the “big picture” (the plot) as well as the details. Beginning creative writing and journalism classes always start with the basic elements of story. In journalism (as in the courtroom) these should be facts, whereas creative writing students are free to build their own basic W’s (Who, What, When, Where, Why and How). Your jury will need the same story elements.

- ✚ Who is involved (and what “kind of people” are they)? These are your characters with their back-stories and character traits. Do I like this character or not?
- ✚ What happened? This is your plot, which the jury will pick apart for holes.

- ✚ When did these events take place? The audience will want to make sure the story makes sense. We all relate to the world in chronological order and so will the jury.
- ✚ Where did it happen? Your setting can prove to be very important.
- ✚ Why did the characters do these things? Motivation is extremely important to successful storytelling. If the audience thinks, “I just don’t believe she would have done that,” then the what, where and when become meaningless.
- ✚ How did it happen? This is the fabric, or context, that weaves together all circumstances, leading up to the big finish.

If you do not provide all the information your jury needs to understand the story in terms of the W’s, they will likely fill in the blanks for themselves. Can your case afford to have 12 jurors each completing your story based on their own imaginations, backgrounds and experiences?

For example, mothers may be overly sympathetic toward young people, while older gentlemen may be more suspicious. It’s up to you to control the story and the imagery in your jurors’ minds.

From elements to emotion

Human beings are full of emotion, and the teacher who knows how to use it will have dedicated learners. It means sending dominant signals instead of submissive ones with your eyes, body and voice.—Leon Lessinger

You are teaching your jury about the facts of your case. Now that you have the basic elements of storytelling in your teaching kit, you need to bring the right emotional tenor to the delivery. Titillate the jurors’ senses and intellect; make them feel the emotional core of your argument.

Engage as many senses as possible in your delivery. Don’t just say something “smelled bad,” describe the stomach-churning smell of acrid chemicals. Rather than mentioning a “loud bang,” let your audience hear and imagine the sound of shattering glass, screaming tires, violent metal shredding and screeching against metal.

Let them also “hear” different “characters” in your drama in your voice, pacing and delivery. And, of course, let them “see” your case with compelling visuals, timelines, demonstratives or animations (more on this in the “Showing versus telling” section.)

As people, we make emotional connections with each other and the inherent drama in our lives. We’re fascinated by each other’s human-interest stories. So, don’t just describe concepts; instead, introduce them to living, breathing people. A “kind man” can have many meanings to a juror. Less imprecise is a man who always rushed to a neighbor’s aid whether they needed help painting a house or changing a tire and who volunteered his time to deliver meals to the elderly.

A good story or a true story?

*What a word is truth. Slippery, tricky, unreliable.
—Lillian Hellman*

The difficult part, of course, in this courtroom storytelling is that your opposing counsel is trying to tell the exact same story from a different viewpoint. The jury's role is to determine the truth from these opposing narratives.

All courtroom cases, all lawsuits are built on foundation materials — evidence. Evidence is simply the pieces of a puzzle. Documents, statements by real people, contradictions, facts, opinions, and illustrations ... all of these disparate elements are simply the components of a story.

Unlike the movie-maker or a journalist, your role as a persuader is to make your case more believable than the other. Your audience and especially your opposing counsel both will be critical of your story and attempt to find the holes or gaps in logic, events, and circumstances. In a trial, the audience has the opportunity to hear two stories, supposedly based on the same 'facts', but with two different outcomes, depending on how the listeners will be engaged, depending on who they trust, depending on who is more believable.

Your story has to be perceived as true life. The actors you will introduce in your drama are often right there in the courtroom for the jury to see. Though the when, where, why and how are up to you to weave into a compelling tale. A story more believable than the other side will tell.

Many of us have watched action movies and become engrossed in the plot and characters unfolding before us. We think we know what an explosion looks like based on what movie-makers have fed us. We believe we may understand gunshots and other drama. But, books and movies don't require us to grasp the laws of physics and understand exactly how something may have occurred.

In the courtroom, you may often have to make a jury understand the nitty-gritty details that take your story from the "possible" to the "actual." Your version of the story simply must seem "more true" to the jury.

Showing versus telling

We think in generalities; we live in detail.
—Alfred North Whitehead

Your jury may "hear" generality, but allow them to "understand" the detail by showing in conjunction with telling. A Chinese proverb says "I hear and I forget, I see and I remember".

You can certainly use precise words to describe exactly how a truck struck a school bus and how many times the school bus flipped over and where the children landed on the pavement. Nevertheless, your words will conjure vastly different pictures for each juror based on their own experience. They may picture a truck they once owned driving down a street from their neighborhood and the school bus from their childhood and their own children on the street.

Now imagine the impact of allowing the jury to see — really see — the accident through a three-dimensional animation. Each tree in precisely the right geographic location. The physical damage to all vehicles in the right places. The bus turning and

twisting as it really happened. This is drama that remains in the viewer's mind. Once seen, it is hard to dispel that image.

Graphics and animations were used by both sides in a North Carolina case in which novelist Michael Peterson was found guilty of murdering his wife. The defense maintained that the wife had slipped and fallen down the stairs in what seemed like an anatomically impossible manner. CNN reported specifically on the 3D animation and the jury reaction the day the defence finally allowed them to “see” their theoretical fall. The jury had clearly not been convinced by any of the days of excruciatingly detailed expert testimony so far — each juror displaying closed and disproving body language, sometimes even absent-mindedly shaking their heads in disbelief. Yet, upon “seeing” the alleged fall, they finally began really listening to the defense.

However, the prosecutors had their own compelling visuals with a much more plausible storyline. Sometimes the simplest explanation is the best. The jury believed the simpler story that seemed “truer.” Yet, the impact of both sets of visuals became central to telling this grisly story from both points of view.

Good storytelling is not an impossible goal. We all have storytelling skills in our genes from prehistoric times. But laying out a storyline, selecting the content that not only supports that story, but provides a reasonable and believable background for your story is the secret to a successful outcome.