

THE ATTORNEY’S GUIDE TO STORYTELLING

CONTINUING LEGAL EDUCATION COURSE

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I. What is Storytelling?

Say the word “storytelling” and many images may leap to mind. You may think of a fable, designed to impart an important pragmatic tip or moral lesson. You may think of entertainment, or a pleasant diversion, like the books your Third Grade teacher read aloud to quiet the class after recess. Or you may think of fantasy fiction or movies, firing the imagination with scenes unheard of in real life.

Or, you might also consider the most ubiquitous form of storytelling, that which we find prolifically present throughout basic human communication. It is a quintessential human function to share stories when communicating within families, among friends, or between coworkers. It is what human communication is mostly about.

Recognize that we do not communicate in pure, unconnected facts. I do not answer “salsa”, “washing machine” and “traffic” in response to my coworker’s question about how my morning is going. Instead, I might respond: “Are you asking about before or after I had to spend an extra hour running my clothes through a stubborn washing machine after I dumped salsa on my lamp instead of my omelet, only to have to sit in an extra 45 minutes of traffic in still-damp clothes?” This real-life response relates the same basic facts but demonstrates how they each relate to one another and creates a scene with a character (me), taking specific actions (spilling salsa, washing clothes, stuck in traffic in damp clothes) that in turn convey and elicit emotional content (frustration, exasperation, anxiety, discomfort). Rather than breeding pure confusion, I have woven the static facts of my morning into a story conveying meaning that my listener can understand, relate to, and may feel the need to act on. I have revealed that I am frustrated and upset, provided a context that justifies my feelings, and perhaps even generated a feeling of sympathy or empathy that will evoke kind words, gestures or even gracious acts, all of which are psychologically (or even physically) valuable to me.

The lesson of the foregoing is, we are all storytellers and engage in storytelling constantly when we are engaged in communication (especially conversation) with those around us.

Why do we spend so much of our time engaged in this type of basic storytelling? The reason is simple. As humans, our brains have evolved to process the world through stories. Faced with a pile of unconnected facts – *a red brick, a brown dog, an abandoned warehouse, a torn sweater* – our brains can do little. We may struggle to find meaning – to fill in the gaps or connect the facts – but will most likely just end up frustrated or confused. But, faced with a story that connects the facts together into an event or scene that we can relate to our own prior experiences or to which we can apply our furtive imaginations, we can draw exceptionally deep meaning from the same set of facts.

Imagine the red brick mentioned above is found hurtling from the outstretched hand of a six-year-old girl wearing the torn sweater while backed up against the wall of an abandoned warehouse where a snarling Doberman has cornered her. The facts, in this most basic story form, give our brains much to create meaning with. We immediately fear for the girl and recognize that the brown dog is a sign of grave peril. We recognize the girl's situation as especially dire because the dog has apparently already ripped her sweater and she is in a physical location where a six-year-old should not be, and where she is unlikely to find help before it is too late. Her act of throwing a brick expresses desperation and fear.

Now imagine this story is told by a breathless friend who is pointing three blocks up the road toward an old warehouse district. If our friend merely blurted out “red brick, brown dog, torn sweater” we may struggle to divine any meaning. But, if the friend yells out “a six-year-old with a torn sweater is cornered against the old warehouse down the road by a snarling Doberman and is trying to fend it off with a brick,” we are likely roused to immediate concern and action. We recognize there is something happening we should care about and even act on. We are naturally compelled to race down the road and help. And that is most important aspect of storytelling in the trial lawyer context. It takes basic facts and turns them into meaningful conclusions and emotions that can powerfully spur action, particularly action designed to help your client.

So, at its heart, lawyer storytelling is nothing more than extending into the courtroom a natural, everyday activity we have engaged in since we learned to talk, and that we continue to practice many times a day. And we should take great comfort in that. It means we are blessed by our common experience and longstanding communication skills with the tools to create substantial and motivating meaning for those we are engaged to persuade. And, once we've mastered the facts and know precisely *what* story we want to tell, we can tap into intuitive skills to express it. Knowing that, we can relieve ourselves of the burden of thinking that presenting a case is something strange, foreign or requiring truly special skills or experience.

II. Advantages of Becoming a Good Storyteller.

A. Persuasion Enhancement.

Advocacy scholars and students have, for eons, recognized that the most powerful form of persuasion is the presentation that does not try and force a conclusion on the listener or decision-maker, but which encourages that person to reach the conclusion the speaker wants through an internal cognitive process that feels, to them, instinctive and personal. The listener who reaches a conclusion or value judgment that they believe is their own idea is far more deeply convinced and

stirred to action on the idea than one who feels they have been pressured to accept someone else's idea.

Consider the impact of the following two presentation on you:

1. You will need to find Mr. Baker negligent because you will see that he failed to consider or apply the warnings that came with his new chain saw. Someone who doesn't bother to take the time to read clear warning instructions and instead purposefully does things he would have been warned not to do violates the duty of care our law holds them to. That is negligence, and you'll have no choice but to find Mr. Baker one hundred percent at fault here.
2. Mr. Baker, who had never owned or used a chain saw, unboxed his new chain saw after having downed 7 beers in a half hour. It was midnight, and pitch black outside. Rather than reading the instruction manual which warned him not to use the chain saw if he'd been drinking, and to only use it on wood, Baker used the manual to light a fire to give him a little light. He did so right before he placed the spinning blade against a heavy steel pole he wanted to cut in half. After about five seconds of sparks flying from the steel, the chain snapped and cut off Mr. Baker's right hand.

There is nothing inaccurate about the first presentation. It will fit the facts of the case. But consider that humans are, on the whole, a curious, cynical and skeptical lot. There are many people who will naturally balk at statements like "you will need to" which sound like challenges to their autonomy, or perhaps their intelligence. Consider the Missouri motto – "show me".

And, had the presentation stopped with the statements in paragraph 1, how certain would you be of the conclusion that Mr. Baker was negligent? How easy might it be for someone (the opposing counsel) to offer you conflicting facts that might change your mind? Think, for example, how easy it might be to undermine your confidence in the conclusion the presenter told you to accept if the opponent merely offered the following single fact: The box in which the chain saw came was adorned with bright red lettering in huge font proclaiming: "Ready for immediate use; no assembly or set-up required!"

Now, think about your own reaction to the story told in the second presentation. Do you even need to be told that Mr. Baker was negligent, or would you have reached that conclusion, or perhaps an even more damning perception of Mr. Baker's irresponsibility, all by yourself? And now consider how difficult it would have been to change your mind by adding additional facts. It might take a lot more than the "Ready for immediate use" statement on the box to convince you that the accident was not wholly Mr. Baker's fault. That is the power of a story, even a simple one, to create strong, immovable conclusions in your client's favor. It further reflects how dangerous it is to rely on argument or the lawyer's characterizations of events rather than a simple story.

The foregoing also demonstrates that a lawyer who structures their message around complex legal standards or concepts, or who uses "legalisms" to try and convey conclusions and elicit favor for their client is making a huge mistake. They are especially ineffective if facing a

good storyteller. Keep in mind that humans intuitively process stories, but have to work to follow logical constructs, syllogisms or the like. Thus, the storyteller is far more likely to keep the audience's attention and to reduce the risk that distractions caused by inattention, boredom or confusion will impede their message. Finally, it is a very natural phenomena for people to believe that concepts they easily grasp must be true, and for them to disregard or be suspicious of messages they must struggle to understand. A simply told story will generate this automated sense of credibility, while a convoluted or more academic discussion that sounds like a layered argument will not.

This concept is worth repeating, for many lawyers fall into the trap of believing that they must speak to judges, or juries, or hearing officers in complex terms, showing off their elaborate vocabulary and deft analytical skills. This is not an entirely illogical assumption given our training. We are tested on complex analytical skills just to get into law school, and then spend years being challenged with understanding complex legal concepts and unraveling the nuances of contorted legal precedent. We are actually rewarded for finding as many subtle exceptions or potentially material details in exam hypotheticals, and for weaving those details into as many "creative" legal arguments as possible. Any appreciation for simplicity is washed out of us in our formal legal training.

But, to be effective advocates we must recognize that all that complexity has a relatively singular purpose – and it sometimes has little to do with the ultimate goal of our craft – persuading others to think and act in a way that helps our clients. True, we must understand the legal theories we are asking a judge or jury to apply; but mostly so that the story we tell supports a viable claim or defense. The odds are against you finding a judge, jury, arbitrator or other decision-maker who is more persuaded by which attorney appears to be the most articulate, or creative, or legally nuanced. In fact, slick, glib speech or arguments that aggressively strain common sense or common experience will only fuel unfavorable contrasts to your opponent's simplified storytelling. The bottom line is that legal decision-makers rarely add "style points". Rather, they are looking for a story that is easily understood, relatable to their own life experience, and that tells them which side of the case is deserving of their help. A "clever" argument by a polished lawyer whipping legal jargon around the courtroom is the antithesis of this.

B. Universal Fit.

Also keep in mind that the foregoing dynamics are not limited to just juries or persons who are not skilled in legal concepts. Instead, "judges are people too." As human analysis of any situation forms first from stories, judges or other legal specialists to whom you are appealing are equally programmed to automatically seek the story in your presentation. If they find none, or find the story ambiguous or scattered, you may have lost them from the outset. They are unlikely to care enough about the legal argument you might lay on top of that story to pay a great deal of attention to it.

On the other hand, if your legal theory requires some fancy legal footwork, but rests on a compelling, relatable story, you are way ahead. A decision-maker who understands your story, relates to it, and finds something to care about in it will likely be more willing to invest time in understanding the more nuanced legal standards under which that story entitles your side to victory

or relief. So, the act and art of storytelling may be even more critical to the attorney whose legal theory requires the decision-maker to thread an intellectual needle.

Consider, for instance, the lawyer whose client's avoidance of a murder conviction depends on a unique, little-invoked self-defense theory not yet recognized in this jurisdiction. Perhaps it is a defense afforded only to persons who were under no immediate threat from the victim at the time of the killing, but had been so frequently threatened and abused by the victim in the past that their mortal fear of the victim is justified by the mere physical proximity of that victim. The lawyer who pins his or her argument on trying to develop an elaborate policy argument for the extension of the defense and explain why the courts should modify existing law and recognize a special exception for their client could face an uphill battle with a judge who has tried many similar cases and understands that the common self-defense theory is not applicable to the facts before her.

Now imagine, instead, that the lawyer first ensures the judge understands the full story of the client's relationship with the victim, and uses credible evidence and testimony to show: 1) that the client was physically attacked by the victim, her husband, on a daily basis in front of her two and four-year-old children; 2) that her husband outweighed her by 100 pounds and had been a cage fighter; 3) that her husband routinely told her that if she did not submit to his beatings, he was going to start beating the children instead; 4) that her husband had once strangled the family dog because he thought his wife was paying it too much attention; 5) that her husband carried a large knife on his belt at all times; 6) that her husband used to put out lit cigarettes on her while she slept; and 7) that on several occasions her husband had locked her in the bathroom with no food for several days when she had tried to get a job. How much easier, given the emotional context supplied by this story, would it be to convince the judge that she should recognize a special extension of the self-defense doctrine?

The key point here is to recognize that storytelling is equally as effective, and as important, in all advocacy contexts, no matter how sophisticated the audience.

III. Characteristics of the Effective Story.

Knowing how important storytelling is to our role as advocates, we need to understand the elements of good storytelling. What follows are some of the key elements.

A. A Clear Theme.

A good story has a single theme which is well defined by the facts used to tell it. So, what is a theme?

Trial lawyers should be richly familiar with the concept of a trial theme. The theme is the short, plain statement that summarizes the essential point or organizing principal of your case. It creates both a factual and emotional structure that counsel intends the trier to use in organizing the evidence they hear and see. In your role as a storyteller, the theme is the "moral of the story".

Themes may be a short descriptive statement about the case, such as: "International Wheat and Amber Corp. puts corporate profits ahead of customer safety"; or "the workplace at Simpson

Oil and Laundry Co. was like a never-ending frat party.” Or it may employ well-worn clichés, like: “In this case, Councilman Reed did everything he could to prove to Ms. Johnson that you just can’t fight City Hall.” And, it may use a common analogy: “To All-Corp’s owners, its marketing plan was like your great aunt’s secret blueberry pie recipe.” The well-crafted theme assists the trier to answer the question “what is this case all about?” without ever hearing the facts. And, more importantly, it allows the storyteller to select the characters, facts and events necessary to build that theme through the case story.

For example, assume the defendant’s theme is “like the ancient Roman emperor Nero, Mr. Jones fiddled while Rome burned” in a breach of employment contract case brought by a discharged corporate president. The theme would encourage the trier to picture the plaintiff, Mr. Jones, as a thoughtless, heedless executive who carelessly allowed the company to be destroyed while indulging himself. The lawyer using that theme would select facts that highlighted Mr. Jones’ oblivious nature and callous disregard for his employees, and tell from them the story of Mr. Jones’ lighting the proverbial fire of corporate debt, employee discontent, and falling productivity that ultimately motivated the company board to discharge him. For instance, the defense attorney may elect to show the trier e-mails in which Mr. Jones announced arbitrary cuts to employee vacation benefits as “necessary austerity measures” and juxtapose them with testimony from the company’s CFO affirming that at the same time Mr. Jones was using the savings to buy himself a new corporate jet.

Recognizing just how powerful an organizing theme is, counsel developing an opening statement should get an early start selecting an appropriate theme around which their story can be organized. Keep the following in mind.

- Keep it concise – the theme is a concept, not an argument.
- Make sure it actually fits the evidence you have – don’t stretch or select a theme that fits some of the evidence but is contradicted by other evidence.
- Make sure the theme you select is relatable. Themes that depend on “insider” or specialized knowledge or vernacular will have little impact. The theme should play on concepts most people know to be true and have had personal dealings with.
- Anticipate how the weaknesses in each theme option might be exploited by your opponent. What is the counter-story that will be told and how directly does it undermine your preferred theme?

Keep in mind also that a theme need not be announced expressly to the trier. Though it may become an introductory statement to your opening, or may be expressed in a closing argument, a good theme that fits your evidence should become self-evident upon presentation of the story of your case.

B. Brevity.

As your goal is to tell a story that is immediately riveting, obviously relatable and that generates strong emotional reactions, you want to keep things short. Overly lengthy storytelling is likely to fall prey to distraction and boredom or confusion, all the things that prevent the story

from being easily digested. As painful as it often is for lawyers to jettison facts, conspicuously consider which facts are only marginally relevant or tied only loosely to the central story and be brave enough to accept that a highly streamlined story serves the objectives of eliciting attention, ensuring understanding, and generating powerful feelings far better than a bulky story with lots of tangentially related facts or events.

C. Relatability.

The story must, of course, be relatable to your audience. A trier of fact may relate to a story because it mirrors events in their own life, or it highlights or celebrates values they have, or it presents characters who resemble people they know and care for.

Consider, of course, that your client's story may contain elements that are difficult for your trier to relate to. The story of a racial or religious minority clandestinely kept from being promoted at work may not be easily empathized with by a jury made up of non-minority members.

This means you must know your audience and study what story lines they will most easily relate to. For instance, if they are unlikely to relate to the plight of minority groups facing invidious discrimination, perhaps they can easily relate to the unfairness of a hard worker denied promotions that instead given to less dedicated co-workers. Your story may then be structured to emphasize how your client gave their all to their employer and yet saw numerous other unqualified, barely dedicated employees advance ahead of her.

There are numerous devices the storyteller can use to make their story relatable. They include the following.

1. Use of Characters.

All good stories have clearly identifiable characters with whom the trier can easily relate or identify, and similarly identifiable characters that the trier can readily find fault in. It is your job to populate the story with such characters.

Imagine as a model for such a story the type of personal interest stories we often hear from national news outlets after a weather tragedy or other natural disaster. The victims are often presented in person, and their lives are portrayed in ways we can all relate to. They look and sound like us, and the routine of their personal lives is normally one to which we can all well relate. As we watch them sift through rain-soaked family photos strewn among the shell of a home, we see echoes of our own homes and possessions. Though we may have never suffered such a tragedy ourselves, we can certainly relate to their "before" condition, and can imagine readily what our own lives might be like if they were so violently upended. It thus becomes quickly apparent to us that they are innocent victims, that an unanticipated force has devastated their home or taken the lives of their loved ones, that they are emotionally unhinged, and that as innocent victims they are justifiably in immediate need of shelter, food, clothing or medical care, all of which our monetary donations might quickly help supply.

Likewise, you must consider the portrayal you will provide of the antagonists in your story. If they appear benign, likeable, or remorseful you may fail to engender the tension you need to stir your audience to action. Instead, you may need to highlight their irrational side, their uncaring or greedy side, or their selfishness or dishonesty to ensure your audience relates to your client's dilemma. Most people have been hurt by others. They have felt the sting of dishonesty, betrayal, or negligence of others. They have made personal, compelling value judgments about the character of persons who engage in such behavior and have felt themselves victimized. They can relate to someone else faced with similar adversaries.

2. Use of Common Events.

The events and dilemma faced by your client should also be easily relatable. If they are not, you must work to find parallels to common occurrences your audience would have shared and draw those parallels in your story. For instance, your audience may have never experienced what it's like to have a large bank terminate your company's line of credit at the time you need to invest tens of millions of dollars in inventory, but they may well have had their family income cut off by a job layoff. Or they may have been asked by someone else to complete a task without the right set of tools. There are direct parallels you can, and should, draw to events and dilemmas your audience can relate directly to.

3. Stimulation of the Senses.

Human senses are a powerful force. We all have experienced dramatic physical sensations, sights, smells, or noises. Those senses are normally accompanied by powerful emotional reactions or responses. Imagine the comforting smell of food cooking in your home as a child, or the fear and anxiety that may have been triggered for you by a howling sound breaking the silence of a deep forest night on a campout. You can bring an audience into the story much more effectively by triggering their sense memories and engaging the parts of their brain that activate in response to such sensory clues.

Your story, then, should include facts demonstrating relevant sensory stimulus. If the case involves a car accident the squealing of brakes, the crumpling of steel, the pounding of human bone against a car's interior, and the smell of smoke all can immerse the audience in a highly relatable position that may carry substantial emotional impact.

Even in cases with much fewer "action" scenes, you can set the stage for tension and drama with appeals to sensory experiences. Describe, for example, the long silence your client was met with as they tearfully begged their employer to explain why they were being fired. Or, describe how your client and her children shivered from the bone-chilling cold as they slept in their car the night their landlord wrongfully locked them out of their apartment. By stimulating common sense experiences, you make the story much more easily relatable.

D. Setting the Tension/Dilemma and Offering the Solution.

A compelling story bound to elicit emotional responses and an automatic call to action must contain a central tension or dilemma, the resolution of which is something the trier can

supply. And, it must also present the facts of the story in a way that creates a sense of urgency to the resolution. If your story supplies all these elements the trier can easily divide their loyalties in favor of the characters they identify with and against the others. They will clearly understand why the characters they identify with need help and what help, exactly, they need. And they will conclude that they can supply the help such characters need and should do so right away.

So, the story must demonstrate that your client has lost something important or is endangered in some way. But your client's loss or fear or endangerment is just one part of the dilemma. You must also employ facts that demonstrate that the cause of the loss or the danger is the opposing party. Imagine, instead, that you are able to portray for your audience that your client in an employment case was a hard-working, dedicated employee whose family of four depends on his limited wages and, especially, the health insurance benefits his disable child needs. It will be easy for your trier to understand that the loss of your client's job creates anxiety, loss, and dangerous financial consequences to him and his family. However, without more, the trier has no one to blame for the loss, and no way to cure the harms or banish the risk. Not only that, but we are all generally aware that bad things sometimes happen to good people in this world, and they are not all someone else's fault. Sometimes we just have to accept them as an inevitable part of life. Without someone to blame for the dilemma, the trier is allowed to imagine that your client's situation may be just one more such instance.

Thus, you must portray the opponent as *blameworthy*. If the former employer in the example above argues that they were just implementing a reduction in force out of economic necessity, you may demonstrate that the employer was coming off its most profitable quarter in a decade and that it actually hired four much younger (and less expensive) employees within two weeks of firing your client. You may explain that the owner of the employing company frequently complained to her human resources director that employees like your client with big medical needs were killing her profitability by driving insurance costs too high. These type of facts set your client and the opponent as true antagonists, and establish that the opponent is the actual cause of the dilemma facing your client. It also provides a target for action. In the hypothetical, of course, the action would be awarding damages against the employer for wrongful termination, or perhaps age or disability discrimination. A jury or other decision-maker who can easily see someone to place blame on and who they can force to rectify past or ongoing wrongs will be far more quickly motivated to act than one who recognizes your client faces harms but is left to try and figure out themselves whether there is someone else to blame or who can do something about those harms.

IV. Presentation Techniques.

In attorney advocacy, stories are told in both personal presentations (consider an opening statement) and writing. Both offer opportunities for effective storytelling. There are numerous techniques that will make your storytelling in either circumstance more punchy and effective.

A. Focus on Delivery.

The key to good storytelling is delivery. It is not enough to have facts that make up a compelling story and to present them, one by one, to the trier of fact. That can still result in a

boring, disjointed presentation that evokes distraction or confusion more than the emotional pull you need. Instead, the facts you select must flow together into a story.

1. Organizing the Facts for Story Flow.

To achieve that sort of flow, however, requires counsel to first plan effectively how their story will unfold in the most efficient, clear way possible. Effective storytelling does not require that you follow a chronological presentation of the facts, but that is perhaps the simplest way to organize the story. After all, it fits a common structure of stories – following a straight line from the beginning to the end. This may be a particularly effective approach if you are trying to show causal relationships between people or events. The fact that one event caused a second event is often easiest to grasp when the events are presented in their chronological/causal order rather than as detached from one another.

On the other hand, you may want to grab the audience by focusing first on the dilemma or the climactic portion of the story. For example: “Tyler Jones sits before you because he cannot stand. Three years ago he fell from a scenic overlook created and maintained by the Department of Transportation. The Department had run the asphalt apron of the overlook too close to the edge of a cliff and it collapsed when Mr. Jones walked onto it.”

You may choose also to structure your story around character development, which may in turn lead to jumping forward and backward in time for each new character. For instance, in presenting the pre-accident athletic nature of your client, you may want to follow her athletic career from beginning to end first, and only then present the key events that have led to the claim in the present case. Here is an example:

Stella Morton was a runner, but not just any runner. In grade school she set a state record in the 100 meters, the 400 meters and the 800 meters. As she continued to run through high school she was an all-state cross country athlete and was invited to the prestigious Foot Locker national cross country meet. Unlike many of her competitors, Stella always smiled as she ran, and she liked to tie her long red hair back in two pony tails that trailed like fluttering pendants as she ran.

Stella continued to improve as she moved through college and into a professional running career. Running Wired magazine voted her one of “Ten Americans Sure to Win an Olympic Medal” in 2014, and Allstars Apparel had signed her to an endorsement contract that assured her and her family more money than her parents had earned in their entire lives. Running was Stella’s life, her identity, her soul. It was on a run she felt confident, creative, and alive. And because Acme Transport’s driver, Stan Fields, was following company policy and faked his logbook so he could drive, physically exhausted, over 95 hours one week in May, 2015, Stella lost all that. At best Stella now can only watch the runners circle the track from her wheelchair, and no one knows if she is even able to understand what she is watching.

Character development can work both ways, and you may even consider developing the antagonist first, like in the following example.

Dirk Smyles bragged repeatedly to friends and family that, in business, he was “a serious cutthroat.” He even developed an anonymous blog entitled “The Business Blackbeard – a Pirate’s Tale” in which he touted the strategy of stealing technology and key employees from competitors. Just one quote from that blog sums it up. He wrote: “Why invest your hard-earned capital in R&D that may or may not generate marketable products? The business pirate looks for competitors who have already sunk their funds and proven a new technology, then uses his resources only for the raid – sneaking in and carrying off the best, most profitable plunder.”

Smyles and his company were sued six times in ten years starting in 2001 for corporate espionage – paying competitors’ employees hundreds of thousands of dollars to transfer cutting-edge technology innovations. In one of those cases, a secret recording of Smyles revealed him instructing an employee to “steal everything you possibly can – I got lawyers for that.” And when Smyles sent two executives on a “raid” of my client, Superforms United, LLC, he left a trail of e-mails demanding that they tell him “as soon as they have those idiots’ technology off-loaded to us”, and joking that, “if you do your jobs right, Superforms will be “Super-Dead” by year’s end.”

In sum, then, storytelling allows considerable flexibility in organization to maximize the characteristics of good storytelling. But, at the end of it all, it requires that you find a way to have the trier understand who your client is and recognize that they face a problem deserving of help, and also see just what they can do to solve that dilemma.

2. Placing the Trier in the Story.

A trier who feels themselves personally involved in the lives of the parties will have the greatest emotional reaction to the case story. Counsel should craft the story to draw the trier into it. You can achieve this by giving them facts they can relate to emotionally, allowing the listener to easily transfer themselves into how the characters in the story must feel. For example:

As a child Ben loved his mother. She seemed to have answers for all his questions, and a way to make all his fears go away. And, though she was a single Mom on a tight budget, Ben’s mother always made him her priority. They often read together, and she taught him to play piano and even how to lay down the perfect bunt in baseball. Ben wanted to return all those favors when he grew up. He wanted to make his mother proud, to give her the opportunity to take trips to the faraway places she had taught him about. Ben’s mother is only 52, but the only trips they make are 100 foot rolls of her wheelchair into the garden at her full-time care center. There, Ben retells her the stories he used to beg her to tell him over and over as a child. But she doesn’t understand, can’t answer, and will never know just how proud she should be of a caring and responsible son who became all she sacrificed for.

These are facts that anyone who has cared for a child, or been cared for as a child, might relate to on a very personal level. We have lived some of the positive experiences described in Ben's relationship with his mother, and can feel the tragedy and despair now that they are gone.

You can also use word choice and verb tense to put the trier into the story physically. Consider the following technique.

The air is cold as Sarah walks her two twin boys, Micah and Sam, to school. Their breath curls out in steam through their scarves, and Sarah stamps her feet as she waits at the crosswalk outside the preschool. The boys smile up at her, and each tries to squeeze her hand harder than the other. A small tear appears at the corner of Sarah's eye and freezes immediately. As the crossing guard steps off and raises his stop sign, Sarah moves confidently out pulling two tugging boys along. And then tires screech, followed by two loud thuds as the boys' hands rip from Sarah's rasp. She hears screams by other mothers waiting on the other side of the crosswalk. Then, after what seems like hours huddled over her still boys, sirens blare, and rushing paramedics pull Sarah into the back of an ambulance where machines beep and whir away her sons' vital signs. They still say nothing despite her tears, her pleas, and her prayers.

Putting the story in the present tense can have a dramatic ability to transport the listener to the scene and have them engage all their senses. You then engage those senses with sights, sounds and physical sensations to which the listener can relate from years of personal experience. In sum, you should select techniques that allow the trier to become part of the story by placing themselves into the characters' lives and mental state.

3. Organizing for Maximum Emotional Impact.

a. Introduce the Key Facts Early.

The foregoing examples demonstrate that emotional appeal is a paramount goal in storytelling, and that human interest is often best piqued by placing the facts generating emotional reactions right up front in the story. For instance: "Donna was only seven when her neighbor started a brush fire to clear weeds from the field that bordered her yard, and she had no idea the playhouse her father had built her would turn into an inferno in just a few minutes, leaving Donna scarred for life from the waist down, and requiring dozens of painful surgeries." This example demonstrates just how quickly one can develop drama and emotional appeal where the facts warrant it. It would be far less effective in this case to spend a great deal of time up front on how the neighbor started the fire, or what he knew or didn't know about the wind direction or about the playhouse being Donna's favorite place to hang out on a Saturday. If you have facts that allow the story to flare its emotional appeal right away, stack those prominently up front.

b. Consider the Impacts of Primacy and Recency.

Counsel should also consider the concepts of "primacy" and "recency" in organizing the story. Research confirms that often the facts addressed first or last can have the most lasting impression on the trier of fact. Facts that come out in the middle of a presentation often have less lasting impact. Counsel should consider, then, placing those facts they really want the trier to pay attention to either last or first in presenting their story.

c. Consider the Effectiveness of Repetition.

A good storyteller will also consider the effectiveness of repetition. Especially where you have a powerful, easily recognize theme to employ, repetition can cement that theme in a nearly indestructible foundation. Think about the role repetition plays in the following example:

Frank Smertz was a thirty-year veteran of the Anytown Police Department. In 1979 he attended the police academy, where he was taught how to deescalate an agitated, mentally ill citizen. Thirty years later, however, when he approached a half-naked, babbling Benny Martinez on a Phoenix street corner, he shouted at Benny, calling him things like “you f___ing idiot” and threatening “I’m gonna put you down for good if you don’t shut up and start cooperating with me!”

Frank Smertz had received training on dealing with the special problems of the mentally ill seven times in his career, but admits he sometimes slept through the classes, and when he saw Benny Martinez throwing rocks at cars that May Thursday he had no thoughts about what type of special interventions he had been taught might be appropriate.

Frank Smertz was 6 feet 4 inches tall and weighed 265 pounds. He was a use of force instructor for the Department, and he admits that Benny Martinez, who was 5 foot 5 and weighed only 115 pounds was no match for him physically. He knew that officers who outmatched suspects they engaged with were required to use minimal necessary force to subdue and restrain. Yet, when he approached Benny and lunged on top of him, Frank gave no thought to how much smaller Benny was or how he might physically harm him. And he laughed when he told the investigating officer afterwards – “I just wanted to beat the crud out of that guy for being such an a**hole!”

Frank Smertz was counseled three times in the five years before he took down Benny Martinez for excessive use of force and failure to employ departmental mandatory de-escalation techniques. But, when he drew Benny’s arms behind his back with so much force he dislocated both Benny’s shoulders, he wasn’t thinking about that discipline, he just wanted to get onto his lunch break as fast as he could.

The foregoing obviously fits one of many alternative coherent themes – i.e., “abuse of power”, “raging bull”, “intentional ignorance”, and many more. The repetition of what the officer knew about what he should have done and what he actually did when confronting a mentally ill suspect drives that theme home dramatically and cements it in place.

4. Drawing the Sting from Unfavorable Themes or Arguments.

Most cases will not get to trial without both sides having a viable story to tell. That means your opponent will try and counter or minimize every helpful fact and will offer themes of their

own that conflict with yours. Whenever possible, your story should take such countermoves into account and address them or provide defenses to them.

Addressing such issues may involve very subtle techniques. It may, for example, consist of just mentioning facts that will undermine the opponents' anticipated themes. For instance, imagine a case in which the opponent's theme is "this is just like the story of David and Goliath." You may have facts that show the opponent does not completely meet the definition of an underdog. Maybe it's their personal or corporate wealth, or perhaps it's the fact that they employ fifteen in-house attorneys who frequently sue to enforce corporate claims. You may drop those facts into the story even where they do not directly promote your own theme, but because they will sow seeds of doubt regarding your opponent's story.

On the other hand, some situations may justify challenging the credibility or cohesiveness of the opponent's story directly. For instance: "Plaintiff has testified that my client never even gave him a chance to buy his repossessed car back. This ignores the seven times my client sent him letters offering him the ability to pay off his debt and pick the car up." And, consider the following: "The Defendant claims he had no way of knowing his new employee was using protected trade secrets of my client, but the Defendant's files contained a copy of the employee's non-disclosure agreement with my client and the business prospects that employee was mining had never before been contacted by the Defendant or its employees."

You may also want to "draw the sting" or "inoculate the trier" on particular unfavorable facts. Counsel does so by introducing the fact and then explaining its minimal role, its lack of relevance, or the countervailing facts. By "inoculating" the trier with acknowledgement of the unhelpful evidence, you reduce (perhaps even significantly) the evidence's emotional impact. For instance, assume that in a sexual harassment case the defendant can introduce evidence of flirtatious text messages sent by your client to her manager on several occasions. You may elect to offer those facts up in your opening as plaintiff, and to deal with them through countervailing facts. For instance:

At first, Jane really enjoyed working for Mr. Smith. She thought he had a great sense of humor, and that he shared lots of outside interests with her, and she thought they were becoming friends as well as co-workers. She did at one point try to get him to join her and some friends for drinks, or to meet her for a run on the beach one day. But that happened just twice, in just two text messages. And her texting him ended abruptly on June 3rd when Mr. Smith told Jane he'd get her a new laptop if she'd give him a kiss in return. And her messages certainly never invited Mr. Smith to photoshop pictures of her face onto disturbing images and then tape those to the window of her car.

One can imagine the trier's reaction after hearing this when the defendant tries to force their attention back to the text messages. In fact, in this case, acknowledging such facts up front and dealing with them may even encourage the trier to become indignant or feel insulted when opposing counsel attempts to put heavy emphasis on the negative evidence when telling their story.

5. Dangers of Overselling the Story.

Even the strongest position can be undermined, perhaps completely, if counsel makes the mistake of overstating the evidence or trying to sell a story that exceeds what the facts really show. Jurors and judges will remember a well-crafted opening to a trial, or even a well-crafted story in the introduction to a written brief. They will expect evidence containing facts that fully support the story. When the trier senses that counsel's representations are really hyperbole, *all* that such counsel said may now be disregarded.

The foregoing means that everything you plan to say in your story should be vetted against the actual evidence to confirm it is solidly supported. When in doubt, promise less from your story, knowing that the facts will undeniably support you and may just encourage even greater reactions or conclusions than you need.

And, always remember to let the facts, not argument or lawyerly characterizations carry the story. Adjectives and adverbs are not your friend, and hyperbolic statements or characterizations actually undermine the impact of a story.

6. Use Exhibits to Bring the Facts to Life.

Today's triers are much more likely to expect to be shown, and not just told, the story. Key exhibits that bring your facts to life can both entertain and engage, but also demonstrate just how reliable and credible your story is. Video, audio, or even demonstrative evidence like maps or charts can be essential tools in your presentation.