

Effective Storytelling in the Courtroom: Or How to Keep Your Jurors Awake (Part Two)

By Dr. John F. Sase

“I enjoyed the courtroom as just another stage, but not so amusing as Broadway.”

--Mae West, American Actress, Singer, Playwright, Screenwriter, and Sex Symbol

“You have to provide your audience with a convincing central character--and then send that character on a clearly defined journey. That central character does not even have to be such a good person--only someone that the audience can somehow relate to. Developing such characters usually requires stepping into her or his shoes and then doing more than a bit of research into their early formative influences.”

--Joel Silvers, Detroit Filmmaker, Instructor on Film Production at Wayne State University, and Co-Founder of the Ann Arbor Blues Festival (the Ann Arbor Blues and Jazz Festival)

In this month's column, we continue our three-part series on the adaptation of storytelling philosophies and methods used in screenwriting to the practice of trial law. For almost four years, I (Dr. Sase) have been making videos on various Economic topics. In order to challenge myself further, I decided to raise the bar. This spring, I began my formal study of screenwriting with teaching colleague Joel Silvers, my film mentor at Wayne State University.

During an eight-week session of intense study, I discovered useful knowledge that I could share with the legal community. In the second part of this series, I will share some relevant concepts of the art form with our readership, such as the importance of structure, the use of software and objects of demonstrative evidence, and tools for developing empathy. We hope that this subject will help our readers in their practice of law.

In the first part of this series (available at www.saseassociates.com/legalnews.html), we introduced the use of dramatic-storytelling methods in order to help us to relate with jurors in the courtroom. Also, we explored the goal of a story and its characters. We considered why it is necessary to follow the developmental arcs for character and story from the beginning to the end of any work. In addition, we discussed the concept of Jury as Audience. As attorneys draw jury members from the sea of humanity, some behavioral theorists suggest that human are hard-wired in their response to prevalent story structures. We affirmed that the purpose of effective storytelling in the courtroom is to connect and to communicate with the judge and jury. Therefore, we present these tools and techniques in order to circumvent the hard-wiring and to connect effectively with those in the jury box.

Working with Structure

Most human beings absorb and digest information in some form of story. Many forms have descended to us as archetypes from the days that our ancestors sat around the fire telling stories in order to preserve the heritage and wisdom of the tribe. Reflecting upon the application of storytelling in the courtroom, I may be preaching to the choir when I say that organization, preparation, and thematic structure are important objectives in developing a story that communicates facts and other information to jurors in a time-effective manner. I believe that time-effectiveness is a quality that is appreciated by both judge and jury. Therefore, let us cut to the chase and discuss some useful tools.

Software

Straightforward descriptive prose, prepared in a word-processing program, conveys information well in most documents. However, the live drama of trial requires frequent shifts from dialogue to non-verbal expression, movement about the courtroom, and use of demonstrative-evidence objects in the room. The challenge in the creation of such a complex epic may be met best with the aid of screenwriting software. These are dedicated programs that allow the writer to handle frequent shifts and transitions with clarity and ease. Most professional screenwriters prefer Final Draft (www.finaldraft.com), an excellent though somewhat pricey program. As an alternative, many film/video instructors and students recommend Celtx (www.celtx.com) to beginners. With this program, the basic version is a freeware download.

Though I have done a lot of improvisational theatre, I have found that printed drafts of speaking points and related actions help me in making presentations to jurors in court and to my students in the classroom. When involving other participants as principles or support persons in an endeavor, I find that an easy-to-follow script greatly increases efficiency in preparation-time and in the quality of the final performance.

Over the years, script format has become standardized for some good practical reasons. These reasons include the following: the screenwriting programs allow the writer to shift smoothly between scene headings (aka slugs), narrative descriptions of planned actions (aka blocking), names of the persons speaking, dialogue or talking points, transitions (as necessary), and parenthetical directions to aid anyone involved in the production.

In writing for court, the scene-heading label may become the Testimony of Witness X. More expansively, these headings can include references to the direct-, cross-, or redirect-examination by an attorney as well as the presentation of objects of demonstrative evidence in the form of charts, videos, or practical effects. I use foam-core boards with blow-ups of spreadsheets and PowerPoint slideshows that are projected on a screen. Fatima Ismael, whom many area attorneys know through her Litigation Support Group, related a profound example of practical effects that she has used at trial. The case involved a woman who burned to death while trapped in an automobile. Ms. Ismail placed a large timer in front of the jurors, set it to three minutes, and stood quietly as the jurors lived through the duration of the woman's death experience. The jurors decided in favor of the estate of the deceased and came back with a large award.

Human Empathy

This example of fiery death underscores the importance of and the need for developing human empathy with a victim, be it plaintiff or defendant. The presenter of the practical effect left the jurors to rely on their own feelings, imaginations, and perceptions in order to develop a deep empathy with the victim that superseded sympathies. Empathy and sympathy are often confused. Though sympathy may be satisfactory in some instances, it can result in condescension. True empathy resonates, has depth, and fosters real connection.

Jurors are human beings and have a need to be treated as such in courtroom. In addition, they have a need to empathize with others in court at a common level that transcends age, gender, race, and culture. Let us assume that the Court has provided jurors with the physiological needs of food, water, sense of security, and adequate toilet facilities. With their basic needs met, jurors

are inclined to move upward in Abraham Maslow's Hierarchy of Needs in order to attain a sense of belonging and esteem that includes respect by others and respect for others (Maslow, A.H., "A Theory of Human Motivation," *Psychological Review*, 1943, 50 (4), 370–96).

One useful tool borrowed from screenwriting can help us to develop empathy with others. In completing the following written exercise, we will have created a four-minute presentation that tells jurors who we are. We may not use all that we write in actual practice. However, we will have established a subtext, the thoughts and feelings underneath the words that we speak and the gestures that we make.

One not accustomed to this form of writing may ask, "How do I know when four minutes are up?" This conundrum can be solved easily by either using one of the screenwriting products or by formatting the word-processor page to the industry standard. Basically, the pages should be single-spaced and must use 12-point, 10-pitch Courier font. Margins are one inch around except for a left gutter of 1.5 inches for binding. Sections of dialogue are indented on both sides to produce blocks that are 3.5 inches wide. For further details, visit www.simplyscripts.com/WR_format.html.

This method of page formatting results in a product in which the length of one typed page equals one minute. For example, if a studio wants a two-hour movie, a screenwriter gives them 120 pages. If you have budgeted seven minutes for a courtroom presentation, write seven pages.

Let us return to the exercise of building a four-minute oral presentation that will allow jurors to get to know us. By this constraint, we have four script-format pages in which to accomplish our goal of developing a bridge of human empathy with each member of the jury. Here is a format to follow.

1. Share one or two of your most formative life experiences and tell the jury about the main marks that they left on you. For example, you may have had a dog when you were a child. You cared for this dog to the best of your ability, but the dog died. How did you feel afterwards? Were you heartbroken? As a result of that experience, what have you felt and done since then in similar situations?
2. Write down two or three life themes that have emerged from the marks left by the experiences that you described in Step One. Did you develop greater respect for or wonderment about life? Perhaps the experience helped you to grow in an understanding that all creatures, great and small, must die one day.
3. List five or six different kinds of people with whom you share a strong empathy. These persons can be living, dead, or even fictional. For example, two of my (Dr. Sase's) lifetime favorites have been Thomas Edward Lawrence (Lawrence of Arabia) and Vlad Tsepes (aka Count Dracula), who both embody the concepts of Light and Dark.
4. From the people whom you chose for Step Three, pick two of them and elaborate more deeply about these favorites.
5. Present three or four life-story topics. For example, write about moving away from home and learning to live on your own for the first time. A related topic may detail your interior search to discover who you are, what you like to do, what you are good at doing, and whether or not you have had the determination to pursue that specific path through life.
6. Jot down a couple of peculiarities from your own life. These may be specific experiences or objects that have made you see life differently with "special eyes." Perhaps you saw a

phantasmagoric image for the first time as a child. How did you react? How did the image make you feel?

7. Iterate two major life conflicts that you have experienced. These conflicts may be an inner one, such as the struggle between your own ethics and values, or one that you experienced in respect to an institution or another person, such as an opposing political party or a bully at school.
8. Share two major life themes with which you would enjoy working. As a storyteller, what large ideas reach deep inside of you? What ideas touch the inner core of your *being*?
9. When telling a story to a family member, a friend, or even a stranger, what are a couple of strong topics or issues to which you are presently attracted? What do you enjoy talking about that s/he would enjoy hearing?
10. What are two changes that you would like to make in the consciousness of the members of the jury? Be as relevant and specific as possible. Bring everything that you have developed thus far into a fine focus toward your primary audience. However, remember that you might never have the opportunity, reason, or need to express these two changes to your audience in words.
11. Finally, list two important goals with which you want to impress upon your jurors as the storyteller. Very likely, these two will be supportive of the desired changes in consciousness just described. These goals may include jurors deciding in favor of your client and, if appropriate, returning a decision for a reasonable financial award.

As you move through this exercise, reflect on who you are in your own life as both the hero and the antihero. Maintain a conscious sense of balance throughout the writing of your exercise. Finally, as you work through these eleven points, write down everything that comes to mind. You always can edit down to four pages. It is important to do all of this for your own benefit even though you probably will not speak everything that you have written to another person. Nevertheless, you have developed and organized the subtext underneath what you will say in actual words and expressions. If done well, the “who you are” will come through to your audience in action and expression as well as in what you say.

What we have considered in this month’s column helps us to create communication and to form human empathy. As we have emphasized, much of this comes across in non-verbal ways. Passion and emotion do not need words. Sometimes, words get in the way. If at all possible, show without telling. However, if you must tell, well-written words are the most effective. In this respect, take a few minutes to view some superb courtroom dialogue from classic films. We recommend the following: The speech by Spencer Tracy as Henry Drummond defending science in the film *Inherit the Wind* (Stanley Kramer Productions, 1960) and the scene in which Gregory Peck as Atticus Finch cross-examines Mayella Ewell in the film *To Kill a Mockingbird* (Universal International, 1962). Video clips of these scenes are available on www.youtube.com/users/saseassociates in the Legal News Features playlist.

How do the techniques that we have discussed benefit attorneys? You will save time and money in preparation of your case, raise the standard of quality of your overall performance in court, and increase your probability of success at trial.

In our next column, we will address the development of empathy through shared human experience with the jurors, will consider some standard techniques borrowed from cinematic production for developing and organizing large amounts of preparatory material, and will

explore the principle of antagonism while searching for deep conflict. Furthermore, we will discuss values associated with degrees of opposition, uncover and develop the spine of the story of the case, develop the revealed qualities of the principal characters in the story, review the five major forms of conflict, and walk through the applicable story structure from exposition to closure.

For those interested in adapting storytelling principles to their practice in the courtroom, we would like to repeat some titles of books that were recommended by Joel Silvers. We have listed them in a suggested order of reading:

McKee, Robert, *Story: Style, Structure, Substance, and the Principles of Screenwriting* (ReganBooks, 1997)

Johnson, Claudia H., *Crafting Short Screenplays That Connect* (Focal Press, 2009)

Truby, John, *The Anatomy of Story: 22 Steps to Becoming a Master Storyteller* (Faber & Faber, 2008)

Nichols, Bill, *Introduction to Documentary* (Indiana University Press, 2nd Edition, 2010)

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A PDF copy of this article is posted at <http://www.saseassociates.com/legalnewscolumn.html>.

We continue to post videos related to our monthly column on www.YouTube.com/SaseAssociates in the Legal News Features playlist.

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