



ICLE in Georgia

Advanced Skills of Storytelling & Persuasion

David Mann



**The Professional
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Advanced Storytelling and Persuasion Skills for Lawyers

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David Mann specializes in persuasive presentation skills and storytelling. A theater artist for over three decades, David now trains attorneys and business professionals how to use performance and storytelling techniques to win. He has developed customized training seminars for several Fortune 500 companies, and his trial advocacy training strategies have earned him a national reputation for excellence in the legal community.

David has helped lawyers win millions for their clients by using precise wording, engaging storytelling, and confident delivery in the courtroom. He is dedicated to finding the most direct, persuasive story angle and guiding the attorney toward an invested, authentic delivery. Through his work with P.E.G., Loyola School of Law and the National Institute for Trial Advocacy (NITA), David has developed a unique trial advocacy approach that uses his years of experience as a playwright, actor, and director to provide the critical winning ingredient for litigation and oral arguments.

As a theater artist, David has performed or directed for the Guthrie Theater, The Children's Theater Company, Great River Shakespeare Festival, Park Square Theater and many other theaters in the thriving Twin Cities scene. He has written and performed five critically-acclaimed one-man shows, and he is the recipient of a Bush Artist Fellowship for Storytelling. David is a graduate of Northwestern University and the London Academy of Music and Dramatic Art.

As a teacher, performer, and speaker, David has been featured in *The New Yorker*, *Village Voice*, *The Business Journal*, and *Minnesota Business*. He lives in Minneapolis, Minnesota with his wife and two sons.

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Minneapolis, Minnesota

Curriculum

- Advanced Storytelling and Persuasion Skills for Lawyers (3-6 hours)

Advanced Storytelling & Persuasion Skills for Lawyers

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Section 1
FOUNDATION CONCEPTS

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Curtain Up

A trial is a highly prepared, precise operation. A good attorney must engage a jury of ordinary people with complex data and ideas. Like a great work of theatre, all the elements must come together to create a cohesive and vivid picture in the minds of the jurors. But unlike a play, a trial may put real lives, reputations, and fortunes at stake. It is critical that impressions are managed and stories are clear.

The act of presenting and the art of storytelling are skills professional theatre artists develop over a lifetime. There is always more to learn, and practice is essential. This course presents the key concepts of persuasive delivery and storytelling for lawyers, based on techniques drawn from the performing arts. We begin with a re-examination of the central idea of any trial lawyer's preparation: persuasion.

Persuasion

Persuasion is about **how they'll hear**, not **what you'll say**. Though this sounds incredibly simple, it's actually quite counter-intuitive. We tend to prepare what we say as though we'll be speaking to ourselves - or someone who thinks like us. But that is rarely the case. In order to be persuasive it is critical to orient your words and ideas to the listener, based on whatever knowledge about them you're able to gather or perceive.

LAWYER

- Logical
- Responds to data
- Problem-focused
- Collects pertinent information, analyzes the information, reaches a logical, sound conclusion based on the evidence

JURY

- Emotional
- Responds to images
- People-focused
- Uses general knowledge of how life works, constructs a story, uses data to justify their emotional conclusion

There is a gap between these two very different thinking styles, and bridging that gap should be the primary focus of a lawyer’s communication preparation for trial.

Connection through Story

Understanding and navigating the dynamic between the logical, data-driven lawyer and the emotional, image-driven jury is key to persuasion. With this in mind, it becomes clear that the story of the case and each individual story within it must be **clear, human, and engaging** in order to be persuasive. Stories must have these six elements in their content and delivery:

Contents:

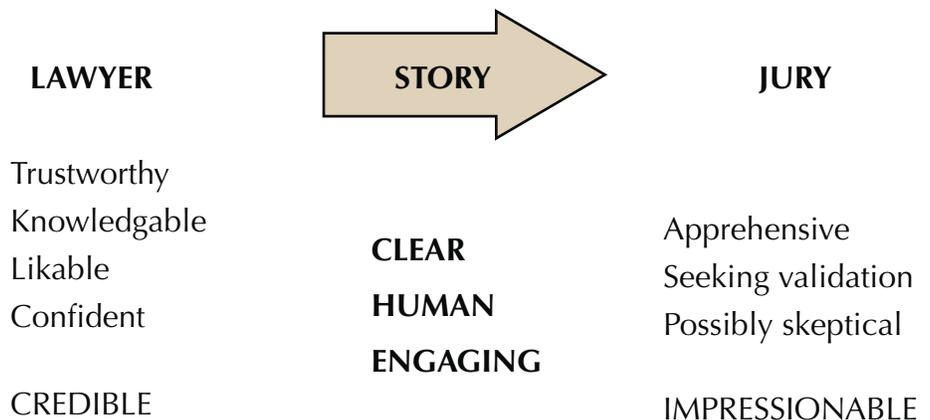
- WHO did WHAT to WHOM and WHY?
- Who is the good guy and who is the bad guy?
- Who is right and justified?

Delivery:

- Plain language
- Dynamic presentation
- Memorable detail

Therefore...

Trial lawyers must play the role of the HELPER or GUIDE to the jury rather than lecturer or presenter.



A jury sits in an unfamiliar environment (the courtroom), absorbing a tremendous amount of unfamiliar material (the case), and is asked to make a fair judgement of right or wrong. If a lawyer doesn't take this into consideration, it becomes easy to inadvertently talk over their heads and not engage them. It's critical that an attorney makes every effort to resonate with a jury as a credible authority whom they can trust to speak their language and guide them through this unfamiliar landscape.

Managing your presentation to communicate humanness (trust and likability) as well as authority (knowledge and confidence) will be perceived by the jury as credibility long before any facts emerge.

The Myth of Natural

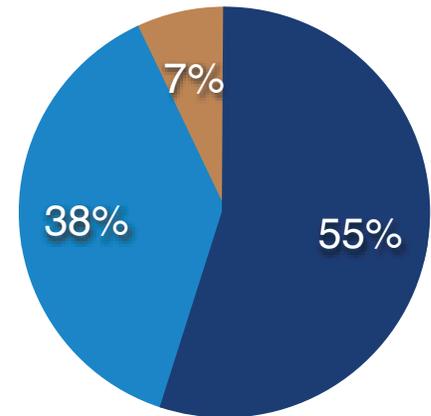
Though the importance of delivery is undisputed, it's common for lawyers to spend much less time practicing it than they do preparing the rest of the case. The prevailing idea - as it is for salespeople, teachers, politicians, etc. - is that all you need to do is simply "be yourself" at the moment of truth. But that's when things go wrong, because it becomes painfully clear that there is no such thing as a "natural" delivery under such artificial circumstances. Actors know very well how much work goes into appearing to be natural and relaxed, on cue, every time. The same truth is key to every lawyer's success. Learning how to manage your face, body, gestures, and vocal inflections is a skill unto itself. There's nothing natural about it at all. But with practice, a lawyer can develop a courtroom persona that "reads" as natural to juries, witnesses, and judges, and projects the authenticity they want to convey.

Perception of Meaning

Human beings perceive much more about a speaker's intention from non-verbal cues than from the words themselves. It's always important to consider this, especially when constructing openings and summations.

Perception of Meaning, cont.

- **BODY AND FACE** 55%
- **VOCAL INFLECTION** 38%
- **WORDS** 7%



As the graph indicates, 93% of what is being perceived as meaning is coming from the face, body, and voice of the speaker. The human face has tens of thousands of subtle combinations of eye, mouth, and brow movements that are all associated with certain intentions. Likewise, the human voice has a virtually limitless capacity for expression using combinations of tone, pace, and volume. And tiny shifts of the shoulders, arms, legs, and hands can communicate enormous amounts of meaning to a jury. Ideally this unspoken 93% is consistent with your spoken message. But pay attention. Sometimes it can dramatically undercut what you're saying and elicit an unwanted response.

Subtext

The word "subtext" is quite familiar to actors, but not a word that is often used outside the art of theatre. The concept, however, is present in every act of human communication. It's the idea that there is an entirely separate message being conveyed that exists "under" the words. For actors, the goal is to manage the subtext so that it matches - or intentionally does *not* match - the words. For instance, a character may deliver the line "Please leave" to another character, but the tone and body language will convey the subtext "Please stay with me." Managing the subtext is its own skill, and one that can greatly increase listener engagement through storytelling.

Subtext, cont.

For lawyers, there are specific subtext messages that are desirable and others that are not. A good lawyer acts as a conduit between the case and the jury, giving a human face to the otherwise complex and static trial data. Much of this is of course done with words, but always remember to navigate the subtext as its own communication layer, filled with persuasive possibility.

The Three Cs

The following pages contain several specific presentation techniques for use in the courtroom. Though it is unnecessary for a lawyer to have the vocal and physical dexterity of an actor, there are many areas where a lawyer's persuasive power will increase by managing the two tools of rhetorical delivery: voice and body.

To make the voice and body techniques easier to remember, simply think of three primary subtextual messages that need to always be present when speaking in the courtroom: **clarity**, **compassion**, and **confidence**.

CLARITY

"I want you to understand."

COMPASSION

"You can trust me."

CONFIDENCE

"I am a knowledgeable authority."

For persuasive power with ordinary people - the jury - **all three** of these principles must be present. This is also their order of importance; without clarity, nothing else can happen; without compassion (humanness), it's just a recitation of facts. Only once those two factors are established does it become important to project your knowledge and authority.

Section 2
VOICE

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VOICE

Voice is the actor's primary expressive tool. Study of vocal technique for actors can take many years, but the three essential ingredients are very simple:

TONE – the pitch and emotional quality of the voice

PACE – the rate of speech and the use of silence

VOLUME – the energy of the voice

Use natural phrasing. Juries listen to *ideas*, not individual words. So make sure to speak in clusters of thought and place your pauses naturally between the ideas. Pauses can be used for effect, but only very sparingly. People catch on to that technique quickly and can become numb to it. The jury needs to get the sense that you are communicating a series of concepts that add up to a story. Unnatural phrasing can have a negative impact, cause confusion, and cost you valuable relationship currency with the jury.

Vary your tone for emphasis. You can “show” a jury what to pay attention to by simply managing your tone. Avoid repetitive inflection – it will become monotonous and interfere with communicating clear ideas. Stay conscious of the fact that a jury is taking in an enormous amount of new information. They need that information to be delivered with emphasis that tells them what’s more important and what’s less important – otherwise they’ll dismiss all of it.

Shift tone for effect. It is very effective to intentionally shift tone if you need to explain a detail of the case. For example: "The company was negligent. (shift) Here's what I mean..." This subtle technique will help the jury refresh their listening ears and pay closer attention to what comes next.

Articulate. Pronounce your words clearly and slowly. Don't mumble or "swallow" the words. Clear articulation takes continual practice – it's not usually natural for anyone. But it's worth the effort. Articulating clearly means your ideas are clearer. The difference between bad and good articulation is like the difference between crumpled clothes and pressed clothes. They both serve the purpose, but one makes a substantially better impression. Practice by reciting familiar material in a large room and over-emphasizing every syllable. It will pay off when you're in the courtroom.

Question like you mean it. Very easy to forget, especially after rehearsing for a long time. Questions (especially questions you already know the answer to) can become rote and disengaged. But remembering to question in an interested tone can make an enormous difference in the answer. Witnesses need to be encouraged to elaborate (if that's what you want), so question like you truly care about the answer. It can create a conversation out of what would otherwise be an interrogation.

Sound confidential at times. Use a lower tone that communicates "this is just between us...usually I don't say this." You may have practiced a certain section many times and know exactly where you're going. But instead of striking an ordinary, neutral tone, try using a variety of tones. Creating a sense of confidentiality between yourself and the jury (or witness) can help build trust.

Don't read. It is critical that you make a human connection with the jury. That's not possible if your face is buried in a sheet of paper, reading prepared remarks. There will be times when you must refer to notes occasionally, but keep it to an absolute minimum. The jury will only trust you and be on your side if they believe you are talking to them directly – no filter, no artifice, no notes. This takes practice, but it pays off every time.

Slow down and let the words live. The human connection happens *between* the words, so respect that with your phrasing. When used sparingly, pauses can be a chance to build a sense of trust between you and the jury. Speaking slowly and confidently gives the jury a chance to process what you're saying as you say it. Of course there's a limit - speaking too slow isn't good either. So think of your rate of speech in walking terms as a *stroll* – not a jog and not a crawl.

Maintain energy to end of line. The last word of the sentence is just as important as the first. Keep driving toward the end of the sentence, otherwise information can get lost and you will appear unsure of yourself.

Relax your voice. Strive to keep your neck and shoulders relaxed in order to strike a natural, relaxed tone in your voice. Body tension can become vocal tension, which starts to sound pinched or gravelly. Juries can pick up on your vocal tension and instinctively perceive your nervousness. Tension breeds tension and you can end up in a downward spiral. So remember to relax your upper body muscles while someone else is speaking – when you speak again you'll appear refreshed and energized.

Emphasize antithesis. Facts, of course, become much clearer when contrasted with opposing facts. Simply stating that contrast isn't enough, however – it has to be emphasized with your voice. In order to make a lasting impression on the jury, it's important to paint the picture with your inflection: "right" and "wrong" must *sound* different. "Mrs. Smith" and "that corporation" must have two distinct inflections that communicate your subtext.

Speak louder than normal. Fill the space with your vocal presence. This is as much about projecting knowledge and confidence as it is about being heard. If a jury can't hear you, all the work you've done constructing a sound case will be lost.

Eliminate verbal filler. Cluttering your speech with “OK, and...” or “you know” or “like” or a lot of “um, ah, er” will only make it look like you don’t trust yourself, which makes it virtually impossible for the jury to trust you. This is why it’s vital that you know your words cold and practice your material. By the time you’re in the courtroom, it’s too late to tell yourself to stop adding filler.

Practice out loud. There is no substitute for this. You can *feel* confident and *think* confidently, but unless you practice it you’ll never appear confident to a jury. You can know what you’re going to say and have it written out very clearly, but speaking it in a large room under intense scrutiny is a very different matter. In preparing for a trial, your voice needs as much practice as your mind. Only making a cursory effort at practice (doing it quickly in a whisper, paraphrasing to save time, rehearsing “in your head” but not out loud) will result in you giving the impression that you’re not prepared or confident – even if you are.

Avoid the Clarity Killers. There are a few tonal habits speakers adopt accidentally, and they can have a negative impact on how you are perceived. **“The Chop”** is the habit of turning a normal sentence into a series of short statements. It’s usually intended to sound dramatic and important (think political stump speech) but it only serves to confuse the listener. **“The Nose Dive”** is the habit of beginning each sentence with energy and letting it dissipate to a whisper by the end. The next sentence has exactly the same downward-inflected sound, and eventually the listener gets put to sleep. **“Question Speak”** is the habit of upward-inflecting every few words as if to say “know what I mean?” It’s a pattern associated with teenagers, and if it accidentally creeps into a lawyer’s speech it will instantly diminish credibility.

QUICK GUIDE - VOICE

- Choose words to emphasize
- Vary your tone
- Question like you mean it
- Don't read
- Slow down
- Avoid the "clarity killers"
- Emphasize antithesis
- Relax and breathe into your natural voice
- Speak in phrases for clarity
- Eliminate verbal filler
- Speak louder than normal conversation
- Articulate
- Practice out loud

Section 3
BODY AND GESTURES

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BODY

The physical body can communicate messages that words alone cannot. First impressions are usually based on body language, and can be very difficult to change once they're established. Body language is as much about the face as the body, so think of it as being composed of two general areas:

FACE – facial expression, eye and head movement

BODY – gestures, posture, how clothing is worn

Maintain eye contact. There is simply no substitute for the power of eye contact. Make eye contact with each jury member. This will create the sense of a bond that goes beyond words, and tell the jury your primary concern is to guide them. Instead of addressing them generally by sweeping your gaze over the entire jury box, land on individuals for a sentence or two each. By the end of your opening statement you will have created a genuine bond with the entire group. Also, when using visual aids, make sure to spend more time making eye contact with the jury as opposed to looking at the photo, chart, or other supplemental item.

Relax and pay attention. Be present. If your body is always moving or ungrounded, you'll inadvertently communicate that you're really not there. Be ready to listen as well as talk, and be conscious of the fact that you're being watched all the time. Relaxing the tension in your body will immediately bring you back to the present if you find yourself mentally racing or getting nervous.

Listen with your face. When listening to an answer from a witness, remember to use more than your ears. Give something back to the witness through nods, raising eyebrows, eye expression, smiles, and other facial movements. Keep it appropriate and subtle, of course, but remember that the slightest response will encourage a better answer. You'll also be giving the jury valuable information about your opinion of the witness, the subject, and your ability to be more than a question machine.

Eliminate physical “static.” Fidgeting, shuffling of feet, and all other extraneous movement only serves to tell the jury that your primary focus is on yourself and not them. Keep in mind that your body movement is more visible to them than it is to you. You may not even be aware of the fact that you’re flicking your wrist nervously, messing with your pen, or gripping your pockets. But the jury is acutely aware of it and making continual judgments about your competence, credibility, and trustworthiness.

Relax and stay open. Too much body tension can unintentionally seem resistant, secretive, and unpredictable. Return to a relaxed, neutral position (either seated or standing), and remember keep your body as open as possible.

Use gestures to help explain details. It’s usually best to keep gestures subtle and fairly neutral but when you need to emphasize a point, specific gesturing can help paint the picture and create an image. Juries consist of ordinary people who respond best to visual communication. Over the course of a trial they hear a *lot* of words. A well-placed gesture of explanation can be a welcome shift in the routine and help you to create a more lasting impression with a particularly important point.

Smile when appropriate. Very easy to forget, especially late in the trial. Of course, trials are primarily serious affairs that often focus on grave matters. Leavening that gravity with smiles and lighter facial expressions can help a jury to relax, and ultimately to trust you.

Open your palms. This will communicate friendliness, nothing to hide, and receptiveness. Don’t grip a pen, notebooks, chair backs, podium sides, or anything else. It may feel vulnerable at first to let go, but trust yourself. The jury is watching every move you make and needs to receive constant messages that you are secure, compassionate, and *human*.

Open your body. Keeping your chest held proudly, your arms in a relaxed ready position, and your legs uncrossed will give the jury a visual indication of your honesty and confidence. Remember the neutral standing position, and refresh it often. It will help to ground you and allow your body to project a relaxed openness that *invites* a jury to listen to you.

Relax and move slowly. Keep your movements graceful and slow to project strength. Projecting an air of knowledge is as important as the knowledge itself. It's important to keep the energy up, but energy is often confused with speed. Think of certain animals in nature – lions, horses, bears – and how much power they convey by harnessing their physical energy and staying relaxed. The more you practice this, the more you actually begin to feel more confident and authoritative. The mind often follows the body's cues, even though we usually think of it the other way around.

Stand and sit up straight. As the jury's guide, you need to show that you're in control of yourself first. All the rock-solid logic in the world can't make up for sloppy presentation. Maintain your professional, confident posture even when seated. Your credibility may depend on it.

Keep your hands still between ideas. Too many hand-to-face gestures will seem distrustful and secretive. Likewise, nervous gestures like pulling at ear, biting the end of a pen or foot-tapping will seem hesitant and weak. This is the purpose of finding a natural "ready position." There will be long segments when you don't necessarily need to use your hands – don't give in to the temptation to let your energy come out in awkward ways.

Breathe. This keeps you calm, which means you'll project a sense of calm to the jury. A compassionate, trustworthy person is calm, not short of breath. Also, you'll give yourself strength by making a conscious effort to breathe deeply. Your voice needs breath to work properly – breathe in to your gut and out on the words. Your mind also needs oxygen to function at its highest capacity. This sounds easy enough, but with the pressure and scrutiny of a courtroom it's easy to forget to breathe fully. If your breathing is too shallow you'll not only appear weaker, you'll actually *be* weaker. Breathing is the first step in relaxation, which is the initial stage of confidence, authority, and victory.

Gestures and Ready Position

Although many coaches have tried to come up with a “standard” set of rules for gesturing, there really is no such thing. Every person has a different comfort level with physical expressivity. It is simply useless to try to make a blanket rule such as “always gesture from the waist up” or “never gesture in openings or summations.” If it’s not in the lawyer’s natural physical vocabulary, it won’t look natural. Some people speak with their hands, others don’t. Some people look very comfortable with their hands at rest, others look nervous.

Therefore the only measure of whether gestures are working for or against the speaker is whether the gestures are united with what is being said. Large, energetic gestures combined with a subdued vocal tone will read as aggressive, while an assertive voice and a still body will read as stiff and secretive. The key is to find a “ready position” that you can return to when you don’t know what to do with your hands. There are four basic positions, which are depicted on the next page: **open fingers**, **light contact**, **talking hands**, and **active/relaxed**.

Find your ready position by experimenting with all four while talking in a non-trial situation. One of the four will feel the most natural to you, and you can begin to use it while rehearsing for trial. Of course, you can use all four at various times during your courtroom addresses, but having one primary resting position will give you peace of mind when the stakes get high.

Ready Position Options

Choose your most comfortable position as a resting place between larger gestures.



Open Fingers



Light Contact



Talking Hands



Active/Relaxed

QUICK GUIDE - BODY

- Stand with your weight evenly distributed
- Maintain eye contact with jurors
- Listen with your face
- Check your body for tension
- Eliminate physical “static”
- Relax and stay open
- Move slowly but with energy
- Find your gestural READY position
- Match your gestures to your tone
- Stand and sit up straight
- Keep your breathing deep and even
- Practice on your feet

Section 4
STORYTELLING FOR THE COURTROOM

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David Mann

Opening Statements

Opening statements are a lawyer's only chance to make a first impression. From a storytelling point of view, this is the most important part of your time in front of the jury. Studies have repeatedly shown that a jury's first impressions of you, the case, and the story are retained throughout the entire trial. Once established, those impressions are very difficult to change even with the soundest arguments. Therefore, the storytelling aspects of opening statements deserve a great deal of attention.

There are many aspects to constructing an effective opening statement. For this course, emphasis will strictly be on the storytelling aspect. In this regard, consider the following to be a broad statement of purpose.

A lawyer's primary goal with an opening statement should be...

To establish **narrative, characters, motives, and conclusion**

By giving the story **humanity, structure, and drama**

Through the use of **clear language, clear images, and clear ideas.**

The Idea of Story

It is often said that a case is a story. The idea is if you can tell the story well, you stand a much better chance of winning. Within the case, there are several opportunities to tell stories: the opening statement, the summation, and at various points in the trial proceedings as witnesses articulate their points of view. But despite the fact that it's unquestionably part of a successful case, the skill of telling a story well is often underdeveloped. It is a true art which, when done well, appears effortless.

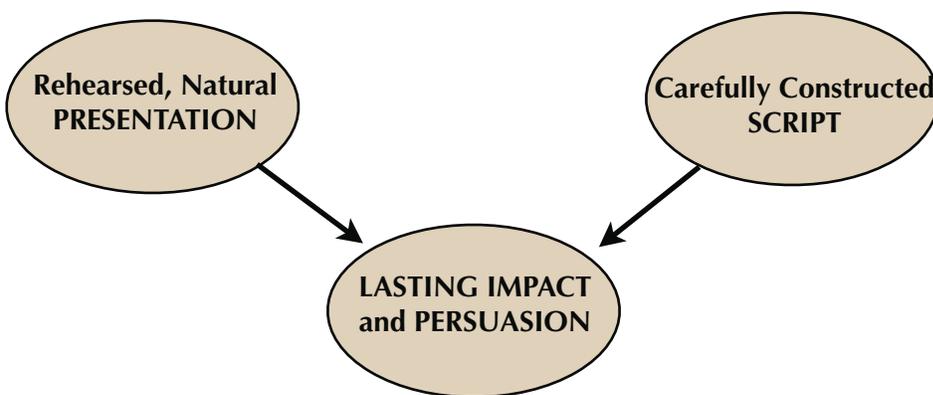
The Idea of Story, cont.

The first step is getting clear about what a story is, and what it is not. The word “story” is used liberally, but it’s not just a catch-all term for a list of facts or events. Likewise, a story isn’t complete if it only consists of a highly-charged event or interesting character. And of course, a clinical essay with a well-shaped argument doesn’t equal a story. It is important to think of it as a specific type of entity. An engaging story has these foundational elements:

1. **A good story engages the mind and emotions at the same time.** A story must be logical and coherent (mind) so that the drama and intrigue (emotions) function effectively. Clearly, these principles apply to stories told for entertainment and artistic purposes, but the same rules apply for persuasive stories used in the courtroom. Stories that tilt too far in either direction are ineffective. A narrative that covers the correct series of events may be logically sound, but it won’t capture the imagination. Likewise, a story that relies too heavily on mood and sentiment will seem spineless and soft. It’s the balance of both elements that grabs a listener and keeps them engaged.
2. **A good story allows us to see the events through the eyes of a human.** We engage in a story when we can identify with the protagonist - even if the protagonist is a person who doesn’t share our values. All great stories have an engaging central character or two, because without that it’s simply a setting and a plot. Humans like to hear about other humans, and painting those characters vividly is vital to the persuasiveness of a story.
3. **A good story has a before-during-after shape.** We need to know what happened, even if the events are told out of chronological order. By the time the listener hears the end of the story, they need to be able to think of it as having a logical order of events that is crystal clear. Too much “during” without enough “before and after” will reduce the sense that something important happened. The contrast makes the story come alive. A story with a clear narrative, engaging characters, and mind/emotion appeal stands the best chance of being highly persuasive.

Scripting and Spontaneity

An attorney's trial preparation time is spent largely on the construction of the case. As the trial nears, attention shifts to the act of presenting material to a jury and questioning of witnesses. Everyone knows a natural, engaging delivery is the goal, but the tools to achieve that are often limited to "act natural" or "be yourself." The act of presenting prepared material in a designed, premeditated way is a balancing act between scripted words and natural delivery. Impact and persuasiveness are achieved when preparation and spontaneity intersect.



The paradoxical idea of "scripted naturalness" is essential to successful engagement. It's impossible to stay on message without careful advance preparation, and it's impossible to engage an audience with stiff, prepared presentation. **So both need attention: the words *and* how they're spoken**

Memorization and Using Notes

There is no practical way for a lawyer to memorize every word of the opening statement, summation, and every direct and cross examination. Yet preparation and specificity are required. So where is the middle ground between the extremes of total memorization and spontaneous invention? The answer lies in a combination of bullet-point notes and key point memorization.

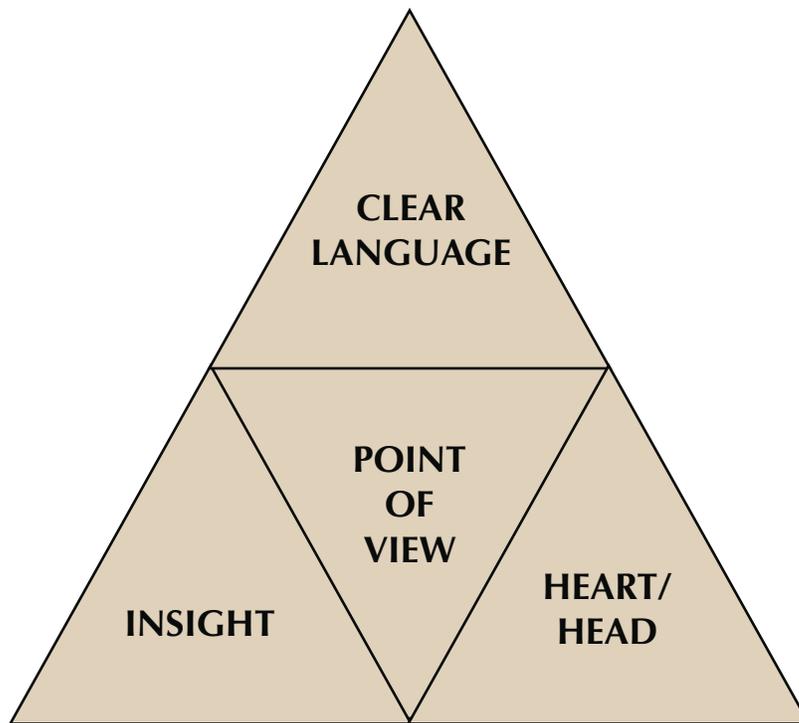
Memorization and Using Notes, cont.

1. **Memorize all first lines.** Whether it's the first line of opening statement, the first line of the summation, or the first in a series of questions, it's easy to memorize a single important sentence. The effect will be powerful; you'll seem to be prepared and focused, even if the next three or four sentences are crafted on the spot.
2. **Use bullet-point notes.** Make notes for your internal content that spark your memory, and then study the page in advance so you only need to glance at it to know what you're saying. Make the bullet-point phrases large enough to see while standing, and brief enough so that you can instantly grasp the essential meaning.
3. **Memorize all transitions.** This applies to longer statements. Memorize the sentences that connect your larger points. This allows you to talk freely about your point, then confidently wrap it up and move to the next idea without stumbling and hesitating, or worse, looking at a sheet of paper and reading. Your confidence will increase your ability to persuade.
4. **Memorize all last lines.** If you know how you're going to wrap up the speech, you'll eliminate a lot of hesitation along the way. Memorize the last line, or better, memorize the entire last paragraph. It's easier to do that it sounds, and it will give you enormous confidence on your feet.

Authenticity

The Authenticity Triangle (next page). Authenticity is a quality we perceive on an unconscious level, and we associate that perception with credibility. The qualities humans recognize as "authentic" are **point of view, insight, clear language**, and **heart/head** appeal. It's important to include all four elements when speaking for impact, as your persuasiveness will depend heavily on how well you balance them. Of course, it's important to begin by relaxing and actually accessing your authentic voice (mode of expression). The Authenticity Triangle gives you a touchstone for those moments when you can't seem to find that voice automatically.

Authenticity, cont.



Point of View. Engaging a listener in any situation depends on their being able to see the idea from a particular point of view. Without this, a listener can become disoriented and eventually disengaged. A lawyer's case always has a particular point of view; make sure it's always present.

Clear Language. The importance of language simplicity cannot be overstated. Authenticity is perceived when we identify with the speaker, and that is impossible to do through a smokescreen of technical language or legal jargon. Using plain language indicates empathy for the listener.

Insight. Shed light on something new, and you will be perceived as having more than just knowledge. Sharing insight is thoughtful, and that quality is associated with depth of character.

Heart and Head. It's been detailed elsewhere in this course, but it applies to authenticity as well. Organizing your comments around a logical as well as an emotional appeal with gain trust.

Great Speeches

In addition to learning from the great legal orators, there is much to be learned from great speeches in art, politics, and business. They share many common qualities that lawyers should adopt as they develop their storytelling and engagement skills. (See the “Rhetoric in Great Speeches” section of this manual for examples of these devices).

Mastery of Images. All the great speakers rely heavily on images to convey their ideas. Martin Luther King inspired generations of followers through his images of freedom, not his data on injustice. A picture truly is worth a thousand words, and remember that pictures can be painted with words too. Use images as often as facts to make a lasting impression through **metaphors, analogies, and images of the future.**

Mastery of Moment. Great speeches are memorable over time because of how well they exist in the present moment. When Marc Antony addresses the hostile romans in *Julius Caesar*, he cleverly uses a simple **repetitive device** to persuade them to his point of view. When President Reagan addressed the nation after the shuttle disaster, he made the moment his own through a very **personal appeal.**

Mastery of Style. Skilled orators know that the sound is every bit as important as the words. So they consciously use **parallelism, antithesis, anaphora,** and many other rhetorical devices to “package” their ideas in a way that makes far more impact than the raw idea alone ever could. President Kennedy didn’t deliver a long lecture on civil service; instead he uttered the far more potent phrase, “Ask not what your country can do for you - ask what you can do for your country.” When President Obama was campaigning, he often roused audiences with a series of questions that all ended with “Yes we can.” These devices work, and all lawyers should master them if they want to be persuasive with a jury.

Constructing a Story

Here is the quick guide for constructing an effective story for use in the courtroom. Details that apply to these steps are outlined on the following pages.

1. Use your case **themes** to anchor your story
2. Find the story moment you want to depict and decide on a **story structure**
3. Include and elaborate on important **details** - eliminate unimportant details
4. Develop the **story arc** for drama
5. Use **rhetorical devices** from the list
6. Choose **wording** for clarity and impact

1. Themes

Developing a case theme is, of course, a central part of your trial preparation. That theme or themes can also be a guiding force when constructing an illustrative story, especially for use in opening statements. The theme can help you choose what's important to leave in and what's important to leave out. Stating the theme can be an effective way to end your story, and the words of your theme can be used throughout. The greatest stories in our culture have these same themes, so they're a great foundation for storytelling.

IN WORDS

love, hate, revenge, fear, greed, power, accountability, cheating, betrayal, quality...

IN PHRASES

bad character, David vs. Goliath, profit over safety, lack of leadership, stacking the deck...

IN QUESTIONS

Why did the woman wait? Why did he ignore his responsibility? Can appearances be deceptive?

2. Story Structure

Although there are limitless possibilities for shaping a story, the skeletal structure works best in one of the four formats listed below. It's good to decide in advance how you'd like to organize the story, and then let the characters and events play out within that structure.

Regardless of which structure you choose, it is important that the "five Ws" are all articulated: Who, What, Where, When, and Why. Without these basic facts, no story structure will hold together for long and your persuasive power will be damaged.

The four best story structures:

STRAIGHT NARRATIVE **Before, during, after a single event**

FLASHBACK **Telling the end first**

PARALLEL ACTION **Two concurrent stories that intersect**

PAST, PRESENT, FUTURE **Life before the event, the event, life after the event**

Example of **Straight Narrative**:

On June 18, 2011, Mr. Harrison is sitting in his living room. He has just settled into his reading chair with a warm cup of tea on the table next to him. He begins to read his book. Suddenly he hears a pounding on his front door. It's the defendants - those two men - who have come looking to make easy money from an elderly man. Before he can get up to answer the door, those two men smash the lock and push the door open. Mr. Harrison watches helplessly as those two men pull open drawers and dump them out and break his valuable family heirlooms. They fill a gym bag with his silver, his electronics, and anything else they think they can sell. Ten minutes later, those two men leave Mr. Harrison's home. The terrified Mr. Harrison sits alone in his reading chair, knowing he will never feel safe in his home again. He has been robbed of his money, his possessions, and his peace of mind.

2. Story Structure, cont.

Example of **Flashback**:

On June 18, 2011, Mr. Harrison sits alone in his reading chair, knowing he will never feel safe in his home again. Only minutes before, he had just settled into his reading chair with a warm cup of tea on the table next to him. He began to read his book. Suddenly he heard a pounding on his front door. It was the defendants - those two men - who came looking to make easy money from an elderly man. Before he could get up to answer the door, those two men smashed the lock and pushed the door open. Mr. Harrison watched helplessly as those two men pulled open drawers and dumped them out and broke his valuable family heirlooms. They filled a gym bag with his silver, his electronics, and anything else they thought they could sell. Ten minutes later, those two men left Mr. Harrison's home. He sat alone, having been robbed of his money, his possessions, and his peace of mind.

Example of **Parallel Action**:

On June 18, 2011, Mr. Harrison has just settled into his reading chair with a warm cup of tea on the table next to him. He begins to read his book. Seven blocks away, those two men - the defendants - get in their shiny black Escalade and start the engine. Mr. Harrison sips his tea and turns a page. The defendants speed through the stoplight and pull up outside Mr. Harrison's house. They get out of their SUV and walk up to the front door. They know they'll be able to make some easy money off the things they'll find here - it's just an elderly man inside. Suddenly Mr. Harrison hears pounding, and before he can get up to answer the door, those two men smash the lock and push the door open. Mr. Harrison watches helplessly as those two men pull open drawers and dump them out and break his valuable family heirlooms. They fill a gym bag with his silver, his electronics, and anything else they think they can sell. Ten minutes later, those two men leave Mr. Harrison's home. They drive back to the 400 block of Bell Street, where they unload their take. Seven blocks away, the terrified Mr. Harrison sits alone in his reading chair, knowing he will never feel safe in his home again. He has been robbed of his money, his possessions, and his peace of mind.

2. Story Structure, cont.

Example of **Past, Present, Future:**

Mr. Harrison went to work when he was 16 years old and has barely missed a day since. He hasn't made a fortune - far from it. He's lived a humble life on modest wages, doing an honest job. But he has saved his money and had planned to retire. That is, until June 18, 2011. It's evening, and Mr. Harrison has just settled into his reading chair with a warm cup of tea. He begins to read his book. Suddenly he hears a pounding on his front door. It's the defendants - those two men - who have come looking to make easy money from an elderly man. Before he can get up to answer the door, those two men smash the lock and push the door open. Mr. Harrison watches helplessly as those two men pull open drawers and dump them out and fill a gym bag with anything they think they can sell. Ten minutes later, they leave. The terrified Mr. Harrison sits alone in his reading chair, having been robbed of his money, his possessions, and his peace of mind. Where will Mr. Harrison go now? He'll have to keep working, and he'll need to move to another part of town at age 68. In ten minutes, Mr. Harrison dreams of finally getting to rest and enjoy life were shattered.

3. Use of Detail

A story only comes to life through vivid detail. But too much unimportant detail can muddy the water and actually rob a story of life. Choose tactile details that anyone would recognize rather than legal details that will only complicate the story. When making the judgement about whether to include details or not, ask these questions: "Does it advance the story?" "Will these details help to humanize the protagonist?" "Does this detail about the setting contribute to the theme?" "Will this detail help to engage the jury's imagination?" "Would one detail serve the same purpose as three?"

Find places in your story to elaborate on these four sensory areas:

VISUAL IMAGES

"Bill drove a red car and Jim drove a black car"

AURAL SENSATIONS

"There was loud music in the restaurant that day"

PHYSICAL SENSATIONS

"It was really hot outside," or "Jim felt suspicious"

CONCEPTS

"This house was in the wealthiest area of the city"

4. Story Arc and Creating Drama

1. Introduce characters – who is good/bad?

“The president of Hatcher company contracted Mr. Dawson to do one thing – use his Bobcat and dump truck. He was contracted to remove debris from Hatcher’s lot and haul it away. He was contracted to do this by March 31. Mr. Dawson was prepared to do that, because that’s what he knows how to do.”

2. Define motives.

“The job turned out to be more involved than either man knew. Underground electrical wiring and plumbing was discovered, and Hatcher tried to get a cheap deal by insisting Mr. Dawson remove it.”

3. Create questions about how conflict will play out.

“What was Mr. Dawson to do? He didn’t have the equipment or expertise for that type of work. He wanted to honor his end of the agreement, but Hatcher was insistent.”

4. Depict conflict.

“So Mr. Dawson stopped work. He had no other choice. Hatcher thinks this constitutes a breach of contract. To make matters worse, Hatcher expects Mr. Dawson to reimburse him for the costs he has incurred because of his own mistake in judgment. Mr. Dawson doesn’t see those costs as having anything to do with him or his work.”

5. Create questions about the effect of the conflict.

“Is Mr. Dawson responsible to pay for Hatcher’s mistakes? Should a man be expected to do work he’s not qualified to do?”

6. Lead listener to a conclusion.

“If Hatcher wanted Mr. Dawson to be responsible for these cost overruns, he should have put that in the contract. But the signed contract doesn’t have a single word about this. That’s why Mr. Dawson shouldn’t have to pay.”

5. Rhetorical Devices

There are dozens of rhetorical devices, of course. This is a selection of several excellent choices for effective storytelling in the courtroom.

Rule of Three

“He has been robbed of his money, his possessions, and his peace of mind.” “I came, I saw, I conquered.” “Government of the people, by the people, and for the people.”

Alliteration

“That dark, deceptive, dishonest corporation.” “She is a virtuous, venerated, valuable employee.” “With cunning, callousness, and craft, the defendant repeatedly showed contempt.”

Antithesis

“This is not a story about money, it’s a story about honor.” “Mr. Jones has enjoyed a free ride while his victims have paid a heavy toll.” “When he hit rock bottom, he was high as a kite.”

Metaphor

“Before he committed this crime, his future was a vast blue ocean of possibility.” “Tectonic, Inc. has painted Mr. Williams into a corner.” “She knew her husband was a time bomb waiting to go off.” “They raked in a pile of money.”

Biblical References

“Let justice fall like rain and righteousness shall move like a rolling river.” “So there is no new thing under the sun.” “You shall know the truth, and the truth shall make you free.”

Rhetorical Questions

“Did this in Caesar seem ambitious?” “Is it fair that Mrs. Walters will live a diminished life?” “Can this be called fair?” “Will Jake now ever believe in the American Dream?”

5. Rhetorical Devices, cont.

Parallel Construction

“Never negotiate out of fear, but never fear to negotiate.” “I got my mind on my money, and my money on my mind.” “Ask not what your country can do for you - ask what you can do for your country.”

Rhyming

“If the glove doesn’t fit, you must acquit.” “Human need versus corporate greed.”

Quotation

“The important thing is not to stop questioning.” (Einstein), “There’s a snake hidden in the grass.” (Virgil)

“Something is rotten in the state of Denmark.” “The lady doth protest too much, methinks.” (Shakespeare)

Repetition

“Free at last! Free at last! Thank God Almighty we are free at last!” “Did he say this? Yes. Did she say that? Yes. Did the company agree? Yes.”

Maxims

“An ounce of prevention is worth a pound of cure.” “Haste makes waste.” “He swallowed it hook, line, and sinker.” “That story doesn’t hold water.” “It’s just putting lipstick on a pig.”

Embedded Commands

“If you find that the defendant destroyed evidence, then you must find that he has committed fraud.” “I can see that every member of this jury recognizes how Electroquip Corporation acted irresponsibly and must pay for its actions.”

Irony

“The lifeboat became a deathtrap.” “...for Brutus is an honorable man.” “That’s as clear as mud.”

6. Wording

Wording can make or break a story. Follow these five rules and your stories will maintain their impact.

1. USE PLAIN LANGUAGE

Don't do this:

"When the delivery vehicle made collision with her automobile, her left femur was severed in three places."

Do this:

"When the 18-wheeler smashed into her Ford Focus, her leg was shattered."

2. EXPRESS ONE THOUGHT PER SENTENCE

Don't do this:

"Two weeks after the crash, Bob was diagnosed with ruptured discs in his neck and back, which went undisputed by the radiologist, the physician, or the surgeons, who all put their opinions in writing that day."

Do this:

"Two weeks after the crash, Bob was diagnosed with ruptured discs in his neck and back. There was no dispute among the radiologist, the physician, or the surgeons. They all put their opinions in writing that day."

3. HUMANIZE US AND DEHUMANIZE THEM

Don't do this:

"My client, the defendant, has been wronged by American Utilities, Inc."

Do this:

"That corporation took full advantage of Mr. Jones."

6. Wording, cont.

4. SPEAK IN PRESENT TENSE (where applicable)

Don't do this:

“Before he could get up to answer the door, those two men smashed the lock and pushed the door open. Mr. Harrison watched helplessly as those two men pulled open drawers and dumped them out and broke his valuable family heirlooms.”

Do this:

“Before he can get up to answer the door, those two men smash the lock and push the door open. Mr. Harrison watches helplessly as those two men pull open drawers and dump them out and break his valuable family heirlooms.”

5. OPEN AND CLOSE WITH IMPACT

Don't do this:

“Members of the jury, I represent Mary Evans in this case, and I'd like to begin by outlining the ideas I'll present to you over the next few days. Opening statements are like the picture on a puzzle box – they show you how the pieces fit together. This is a case about corruption, greed, and how a big company can affect a single person negatively.”

Do this:

“Members of the jury, on June 8, 2011, Mary Evans arrives at work as she had for the past 28 years. But this time, something is different. People are hushed, and some are even crying. Mary is then called in to the HR Director and told to clear out her desk. She is given a half-baked reason why she's being terminated along with the rest of her department. A reason concocted by greedy executives only concerned with adding Mary's salary to their inflated bonuses. Over the next few days I will show you a history of corruption in that corporation, and how their greed has ruined the lives of many like Mary Evans.”

QUICK GUIDE - STORY CONSTRUCTION

- Use case themes to anchor your story
- Find the story moment you want to depict, and decide on a story structure
- Include and elaborate on important details - eliminate unimportant details
- Develop the story arc for drama
- Use at least two rhetorical devices
- Choose wording for clarity and impact

QUICK GUIDE - REHEARSAL

- Write out and memorize first lines, last lines, and transitions
- Make a clear, bold, bullet-point list for important ideas
- Practice out loud with full energy
- Repeat everything at least once per day for as many days as you can afford leading up to the trial
- Use your gestural READY position
- Use your vocal inflection tools
- Use your body language techniques

Section 5
THE HUMAN BRAIN AND STORIES

The Professional Education Group
David Mann

How Do We Think?

Studies have repeatedly shown that stories and effective delivery technique are a human being's preferred mode of receiving information. This recent study elaborates on that idea.

“Fully 95% of individuals chose to organize information into a story as opposed to other potential organizing schema. While a trial attorney can choose a variety of ways to organize the issues and facts in a case, the average person would attempt to organize case elements using a story.

“Why is storytelling an appealing way to persuade an audience? Storytelling appeals because it nurtures whole-brain learning. A story has elements that appeal to both sides of the brain. Cognitive psychologists have long known that the right brain, with its artistic and creative side, responds to the thematic and aesthetic story concepts that evoke emotions, while the left brain is satisfied by the temporal and organizational structure in a story. A good trial story should contain both thematic appeal and a narrative structure.

“Storytelling is an essential element of persuasion not only because of its explanatory power, but also because it allows jurors to transcend the case and place themselves in the case scenario. Therein lies the rub; the structure in a trial is inconsistent with how jurors listen. The traditional trial structure is one that calls for inductive information processing. That is, the lawyer presents fact one plus fact two plus fact three, perhaps through a series of witnesses. The presumption is that at the end of the day the jurors will assimilate the information and reach your desired conclusion. This is simply not how jurors listen. Jurors listen deductively, developing a story that explains the conflict early in the trial process and then filtering the evidence selectively to maintain a consistent picture. The trial lawyer must tell a complete story - which includes compelling themes, a specific narrative structure, and narrative elements - in the opening statement if he or she is to get jurors to form a favorable story of the case.”

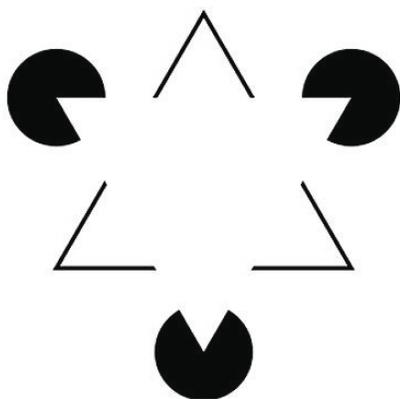
(Zeigarnik, master's thesis, Clark University, 1994)

Preference for Incomplete Information

Although it is counter-intuitive to a logical attorney, humans actually prefer to have *less* information. Our brains have developed over time to adapt to having incomplete information from which to make decisions. Our ancestors had to deal with potential adversaries like wild animals and neighboring tribes, and often there simply wasn't enough time in the heat of the moment to gather sufficient information to make a logical decision. Was the animal running toward you or away from something else? Was the gathering horde approaching to make war or ask for help? Our brains made as much sense as they could of the situation, filled in the missing information based on assumptions and prior experience, then promptly acted according to that pieced-together assessment. We still do it every day.

Consider these two sentences: *John felt hungry. He got into his car.*

There is nothing tying those two ideas together, yet a connection is made. John must be going to get food, right? But John could just as easily be looking for a book he left in his car. He could be late for an appointment. He could be doing hundreds of other things by getting into his car, only one of which would be going to get food. Consider how often that leap of logic happens when speaking to a jury, and consider how to use it to your advantage.



The figure at left is the Kanizsa Triangle. It actually contains no complete triangles, yet several seem to be visible. Most notably, there appears to be a white triangle positioned upside-down in the center of the picture though not a single line of that triangle exists.

This is a perfect example of how the brain fills in missing information to create sense and meaning. The same principle applies to stories; less detail can actually create *more meaning* by investing the listener with creative power.

Section 6
RHETORIC IN GREAT SPEECHES

The Professional Education Group
David Mann

John F. Kennedy, Inaugural Speech, 1961 (excerpts)

Let both sides explore what problems unite us instead of belaboring those problems which divide us.

Let both sides, for the first time, formulate serious and precise proposals for the inspection and control of arms, and bring the absolute power to destroy other nations under the absolute control of all nations.

Let both sides seek to invoke the wonders of science instead of its terrors. Together let us explore the stars, conquer the deserts, eradicate disease, tap the ocean depths, and encourage the arts and commerce.

Let both sides unite to heed, in all corners of the earth, the command of Isaiah -- to "undo the heavy burdens, and [to] let the oppressed go free."

And, if a beachhead of cooperation may push back the jungle of suspicion, let both sides join in creating a new endeavor -- not a new balance of power, but a new world of law -- where the strong are just, and the weak secure, and the peace preserved.

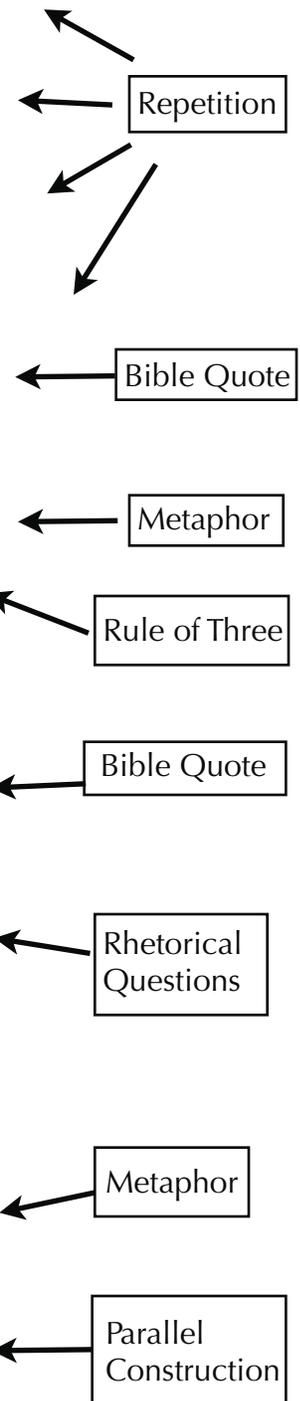
Now the trumpet summons us again -- not as a call to bear arms, though arms we need -- not as a call to battle, though embattled we are -- but a call to bear the burden of a long twilight struggle, year in and year out, "rejoicing in hope; patient in tribulation," a struggle against the common enemies of man: tyranny, poverty, disease, and war itself.

Can we forge against these enemies a grand and global alliance, North and South, East and West, that can assure a more fruitful life for all mankind? Will you join in that historic effort?

In the long history of the world, only a few generations have been granted the role of defending freedom in its hour of maximum danger. I do not shrink from this responsibility -- I welcome it. I do not believe that any of us would exchange places with any other people or any other generation. The energy, the faith, the devotion which we bring to this endeavor will light our country and all who serve it. And the glow from that fire can truly light the world.

And so, my fellow Americans, ask not what your country can do for you; ask what you can do for your country. My fellow citizens of the world, ask not what America will do for you, but what together we can do for the freedom of man.

Finally, whether you are citizens of America or citizens of the world, ask of us here the same high standards of strength and sacrifice which we ask of you. With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own.



William Jennings Bryan, "Cross of Gold," 1896 (excerpts)

There are two ideas of government. There are those who believe that if you just legislate to make the well-to-do prosperous, that their prosperity will leak through on those below. The Democratic idea has been that if you legislate to make the masses prosperous their prosperity will find its way up and through every class that rests upon it.

Antithesis

You come to us and tell us that the great cities are in favor of the gold standard. I tell you that the great cities rest upon these broad and fertile prairies. Burn down your cities and leave our farms, and your cities will spring up again as if by magic. But destroy our farms and the grass will grow in the streets of every city in the country.

Future Image

My friends, we shall declare that this nation is able to legislate for its own people on every question without waiting for the aid or consent of any other nation on earth, and upon that issue we expect to carry every single state in the Union.

I shall not slander the fair state of Massachusetts nor the state of New York by saying that when citizens are confronted with the proposition, "Is this nation able to attend to its own business?"—I will not slander either one by saying that the people of those states will declare our helpless impotency as a nation to attend to our own business. It is the issue of 1776 over again. Our ancestors, when but 3 million, had the courage to declare their political independence of every other nation upon earth. Shall we, their descendants, when we have grown to 70 million, declare that we are less independent than our forefathers? No, my friends, it will never be the judgment of this people. Therefore, we care not upon what lines the battle is fought. If they say bimetallism is good but we cannot have it till some nation helps us, we reply that, instead of having a gold standard because England has, we shall restore bimetallism, and then let England have bimetallism because the United States have.

Repetition

Rhetorical Question

If they dare to come out in the open field and defend the gold standard as a good thing, we shall fight them to the uttermost, having behind us the producing masses of the nation and the world. Having behind us the commercial interests and the laboring interests and all the toiling masses, we shall answer their demands for a gold standard by saying to them, you shall not press down upon the brow of labor this crown of thorns. You shall not crucify mankind upon a cross of gold.

Extended Metaphor

Metaphor

Ronald Reagan, Shuttle Disaster Speech, 1986 (excerpts)

Ladies and Gentlemen, I'd planned to speak to you tonight to report on the state of the Union, but the events of earlier today have led me to change those plans. Today is a day for mourning and remembering. Nancy and I are pained to the core by the tragedy of the shuttle Challenger. We know we share this pain with all of the people of our country. This is truly a national loss.

As eulogist and fellow mourner

For the families of the seven, we cannot bear, as you do, the full impact of this tragedy. But we feel the loss, and we're thinking about you so very much. Your loved ones were daring and brave, and they had that special grace, that special spirit that says, "Give me a challenge, and I'll meet it with joy." They had a hunger to explore the universe and discover its truths. They wished to serve, and they did. They served all of us.

As representative of America's feelings

And I want to say something to the schoolchildren of America who were watching the live coverage of the shuttle's take-off. I know it's hard to understand, but sometimes painful things like this happen. It's all part of the process of exploration and discovery. It's all part of taking a chance and expanding man's horizons. The future doesn't belong to the fainthearted; it belongs to the brave. The Challenger crew was pulling us into the future, and we'll continue to follow them.

As a wise, caring father

I've always had great faith in and respect for our space program. And what happened today does nothing to diminish it. We don't hide our space program. We don't keep secrets and cover things up. We do it all up front and in public. That's the way freedom is, and we wouldn't change it for a minute.

As Leader of the Free World

We'll continue our quest in space. There will be more shuttle flights and more shuttle crews and, yes, more volunteers, more civilians, more teachers in space. Nothing ends here; our hopes and our journeys continue.

Rule of Three

I want to add that I wish I could talk to every man and woman who works for NASA, or who worked on this mission and tell them: "Your dedication and professionalism have moved and impressed us for decades. And we know of your anguish. We share it."

There's a coincidence today. On this day three hundred and ninety years ago, the great explorer Sir Francis Drake died aboard ship off the coast of Panama. In his lifetime the great frontiers were the oceans, and a historian later said, "He lived by the sea, died on it, and was buried in it." Well, today, we can say of the Challenger crew: Their dedication was, like Drake's, complete.

Quote

The crew of the space shuttle Challenger honored us by the manner in which they lived their lives. We will never forget them, nor the last time we saw them, this morning, as they prepared for their journey and waved goodbye and "slipped the surly bonds of earth" to "touch the face of God."

Poetic Quote

Julius Caesar, William Shakespeare, Marc Antony's funeral oration

Friends, Romans, countrymen, lend me your ears;
 I come to bury Caesar, not to praise him.
 The evil that men do lives after them;
 The good is oft interred with their bones;
 So let it be with Caesar. The noble Brutus
 Hath told you Caesar was ambitious:
 If it were so, it was a grievous fault,
 And grievously hath Caesar answer'd it.
 Here, under leave of Brutus and the rest--
 For Brutus is an honourable man;
 So are they all, all honourable men--
 Come I to speak in Caesar's funeral.
 He was my friend, faithful and just to me:
 But Brutus says he was ambitious;
 And Brutus is an honourable man.
 He hath brought many captives home to Rome
 Whose ransoms did the general coffers fill:
 Did this in Caesar seem ambitious?
 When that the poor have cried, Caesar hath wept:
 Ambition should be made of sterner stuff:
 Yet Brutus says he was ambitious;
 And Brutus is an honourable man.
 You all did see that on the Lupercal
 I thrice presented him a kingly crown,
 Which he did thrice refuse: was this ambition?
 Yet Brutus says he was ambitious;
 And, sure, he is an honourable man.
 I speak not to disprove what Brutus spoke,
 But here I am to speak what I do know.
 You all did love him once, not without cause:
 What cause withholds you then, to mourn for him?
 O judgment! thou art fled to brutish beasts,
 And men have lost their reason. Bear with me;
 My heart is in the coffin there with Caesar,
 And I must pause till it come back to me.

Rule of Three/
Metaphor

Antithesis

Repetition

Irony

Rhetorical
Questions

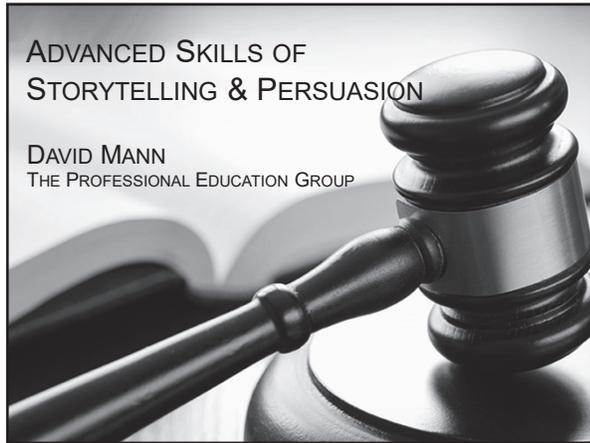
Irony/
Reversal

Rhetorical
Question

Metaphor

Section 7
POWERPOINT PRESENTATION

The Professional Education Group
David Mann







COURSE OVERVIEW

Part One: **PERSUASION AND DELIVERY**

- I. Principles of Persuasion
- II. Communication Concepts
- III. The Persuasive Voice
- IV. Physical Presence in the Courtroom
- V. Methods of Rehearsal

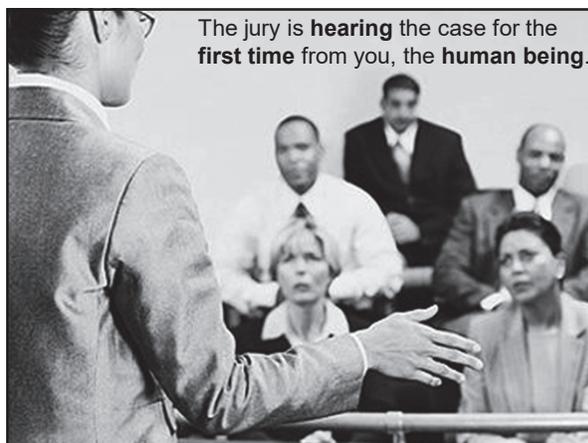


COURSE OVERVIEW

Part Two: **STORYTELLING**

- I. Goals of an Opening Statement
- II. Storytelling – Why Does it Work?
- III. Storytelling – How Does it Work?
- IV. Great Speeches and the Hollywood Lawyer
- V. Role Play: New Opening Statements





PERSUASION

LAWYER (familiar with case story)	JURY (unfamiliar with case story)
---	---

- Primarily logic-centered
- Focused on data
- Interested in the problem
- Analyzes pertinent information and reaches a logical, sound conclusion

- Primarily intuition-centered
- Focused on images
- Interested in the people
- May construct a story and use data to justify their intuitive conclusion

**How do you make this connection?
Play a PERSUASIVE ROLE.**

How persuasive are these roles?

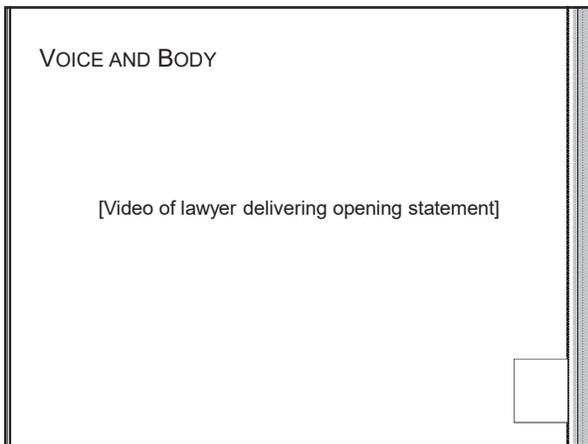
		
		
The Beggar	The Bully	The Brat

How persuasive is...

	
No role?	







That was 33 seconds long.

FIRST IMPRESSIONS LAST.



VOICE AND BODY

[Video of lawyer delivering opening statement]



What he actually said...

“You see, uh....I anticipate the evidence will demonstrate that Craig Miller, as Mr. Sillo pointed out, the safety service director for the city, the person responsible for over 14 departments, ultimately responsible for over 500 employees, multi-million dollar budget (*long pause*), a father...of four, a husband, an accountant, a son, a brother....(*long pause*), did the best he could, under circumstances, that he was faced with at the time.”



What he could have said...

“You see, I anticipate the evidence will demonstrate that **Craig Miller** (*as Mr. Sillo pointed out*) the safety service director for the city, the person responsible for over 14 departments, ultimately responsible for over 500 employees, multi-million dollar budget, a father of four, a husband, an accountant, a son, a brother.... **did the best he could** under circumstances that he was faced with at the time.”

...using the exact same words.



VOICE AND BODY

[Video of lawyer delivering opening statement]

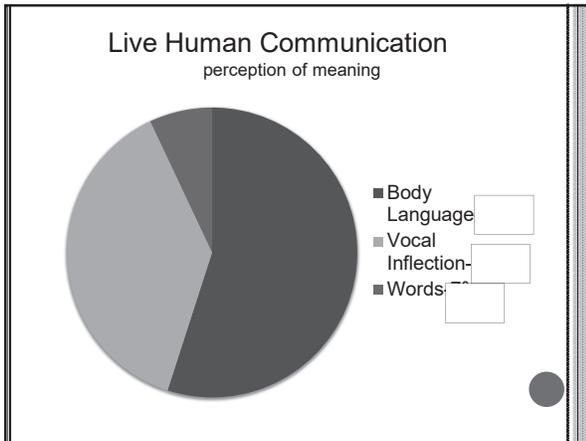


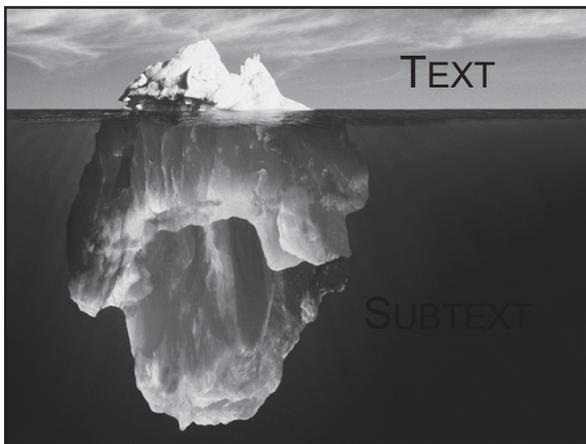
What he actually said...

“And I want to just pause, and just for clarification, there are certain things that are not in dispute. Obviously there’s no dispute here that this man, this very loving family man, was killed. There’s no dispute that he was shot. There’s no dispute that Mr. Evans’ fingerprints were on the car. There’s no dispute that a gun was there. There’s a lot of things that aren’t in dispute. The only thing that’s in dispute is whether Mr. Evans was involved. The evidence, and the testimony, will show you that he was not involved.”



What he could have said...using the exact same words.
“And I want to just pause, and just for clarification:
There are certain things that are not in dispute.
(pause)
Obviously there’s no dispute here that this man, this very loving family man, was killed. There’s no dispute that he was shot. There’s no dispute that Mr. Evans’ fingerprints were on the car. There’s no dispute that a gun was there. There’s a lot of things that aren’t in dispute.
(pause)
The only thing that’s in dispute is whether Mr. Evans was involved. The evidence, and the testimony, will show you that he was not involved.”





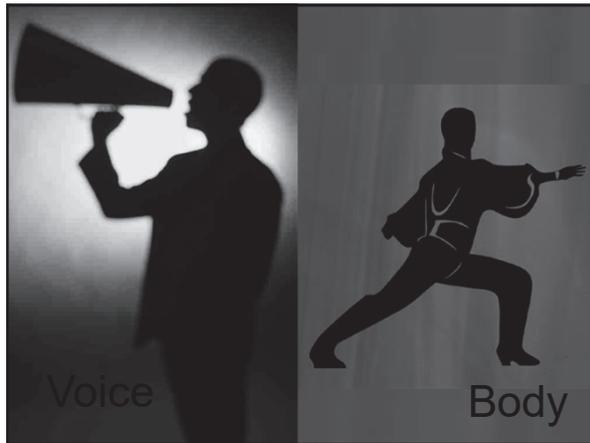
VOICE AND BODY

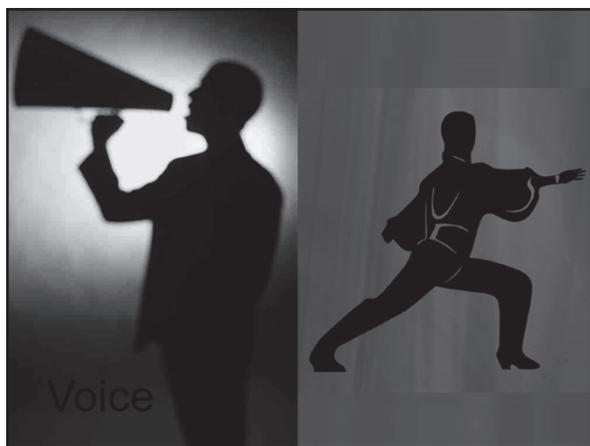
CLARITY
"I want you to understand."

COMPASSION
"You can trust me."

CONFIDENCE
"I know where we're going."













The Three Elements of Voice



Tone Pace Volume

●

VOICE

CLARITY • COMPASSION • CONFIDENCE

- Use natural phrasing
- Articulate
- Eliminate verbal filler
- Don't read
- Fill the room with your voice

●

Voice - examples

Avoid "Clarity Killers"

Tone and Pace can make or break clarity

"In this trial, you will hear that Mr. Mason's death could have been prevented if Lakewood General Hospital had followed their own procedures. Mr. Mason went in seeking care, but instead encountered a series of mistakes, ignored procedures, and incompetence."

The clarity-killers:

- o The Chop
- o The Nose-Dive ("Vocal Fry")
- o Question-Speak

●

VOICE - EXAMPLES

Make LISTS come alive:

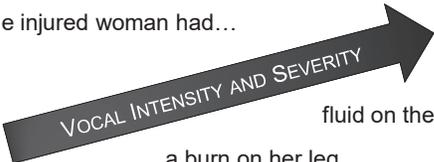
“The injured woman had fluid on the brain, a fractured clavicle, and a burn on her leg.”



VOICE - EXAMPLES

Make LISTS come alive:

The injured woman had...



fluid on the brain

a burn on her leg

a fractured clavicle



CREATING MENTAL IMAGES



Telling the Story through Witness Examination



TELLING THE STORY THROUGH WITNESS EXAMINATION

Q: Mr. Jones, you were carrying a gun that night, right?

Q: The gun was a .38 caliber revolver?

Q: You had that .38 in your pants pocket?

Q: Where no one could see it?

Q: It was concealed?

Q: You had that concealed .38 when you arrived at the store?

Q: You had that concealed .38 when you went into the store?

Q: And you had that concealed .38 when you walked up to the counter, right?

Text from Thomas Mauet's book, *Trials*

TELLING THE STORY THROUGH WITNESS EXAMINATION

Q: Mr. Jones, you were carrying a gun that night, right?

Q: The gun was a .38 caliber revolver?

Q: (*curious*) You had that .38 in your pants pocket?

Q: Where no one could see it?

Q: (*assuming*) It was concealed?

Q: You had that *concealed* .38 when you arrived at the store?

Q: You had that concealed .38 when you went into the store?

Q: (*drawing an incriminating conclusion*) And you had that concealed .38 when you walked up to the counter, right?

Text from Thomas Mauet's book, *Trials*

TELLING THE STORY THROUGH WITNESS EXAMINATION

Q: Did the man have any beard or mustache?

A: No.

Q: Any earrings or jewelry?

A: Not on his face.

Q: Any tattoos?

A: I didn't see any.

Q: Describe his clothing.

A: White T-shirt, nothing on the front, and dark pants.

Q: After the man says, "Give me your wallet," what do you do?

A: I stare at him and say, "What?"

Q: What's the man say or do next?

A: He reaches into his pants pocket and pulls out a knife.

Text from Thomas Mauet's book, *Trials*

TELLING THE STORY THROUGH WITNESS EXAMINATION

Q: *(asking)* Did the man have any beard or mustache?
A: No.

Q: *(asking)* Any earrings or jewelry?
A: Not on his face.

Q: *(asking)* Any tattoos?
A: I didn't see any.

Q: Describe his clothing.
A: White T-shirt, nothing on the front, and dark pants.

(pause, change gears)

Q: After the man says, "Give me your wallet," what do you do?
A: I stare at him and say, "What?"

Q: What's the man say or do next?
A: He reaches into his pants pocket and pulls out a knife.

Text from Thomas Mauet's book, *Trials*

The New York Times
NEW YORK, SATURDAY, JANUARY 3, 2015

Practice anywhere, anytime

Scandal at the BBC / UNa-night Rising in Greece

CUSTODY BATTLES GO GLOBAL - LAW FIRM HEALTH-CARE COSTS INSIDE THE MINDS OF CHILD FELONS - MELBARNY: KEEPING IT SIMPLE

THE WORLD'S GREATEST ACTOR

How Daniel Craig Lewis became Abraham Lincoln on screen

SPELBERG ON RE-CREATING

Tipping the Scales
How Southern women are remaking

Body

Standing up



Face: What message are you sending?



“Why don't you tell me what happened, OK?”



BODY

CLARITY • COMPASSION • CONFIDENCE

- Maintain eye contact
- Eliminate physical “static”
- Relax and stay grounded
- Stand and sit up straight
- Breathe



BODY

Breathe.



GESTURES



GESTURES



Open Fingers Light Contact Talking Hands Active/Relaxed

Choose your **READY POSITION**



CREATING MENTAL IMAGES



Telling the Story through Witness Examination

TELLING THE STORY THROUGH WITNESS EXAMINATION

Q: You were watching what was going on inside the liquor store from outside the store, right?

Q: In fact, you were watching the liquor store from across the street?

Q: That street, Main Street, is a busy street?

Q: Whenever a car or truck went by, it would block your view of the liquor store, right?

Q: There are plate glass windows on the street side of the liquor store, right?

Q: Those were the windows you were looking through?

Q: There were posters in the windows?

Q: There were decals in the windows?

Q: And there were flashing neon beer signs in the windows, isn't that right?

Text from Thomas Mauet's book, *Trials*

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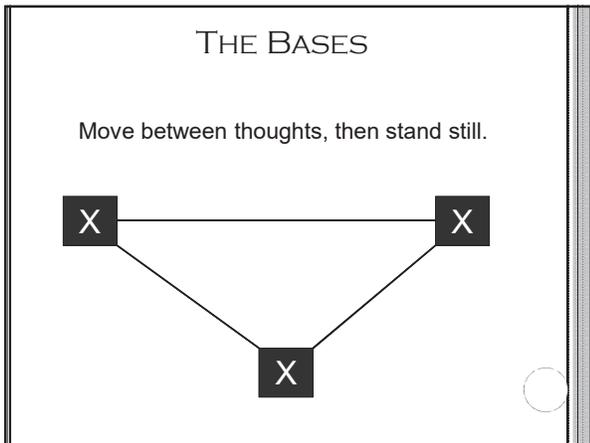
Q: Those were the windows you were looking through?

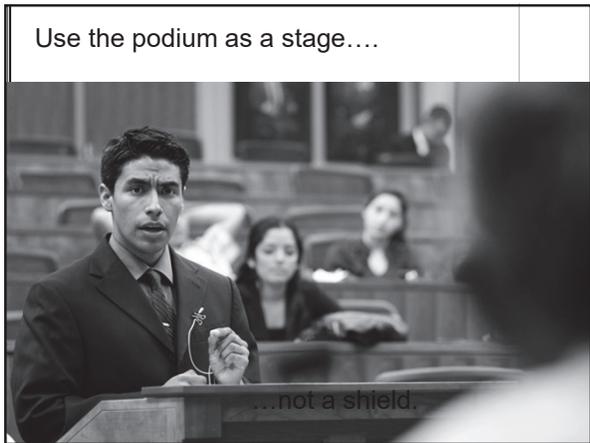
Q: There were posters in the windows?

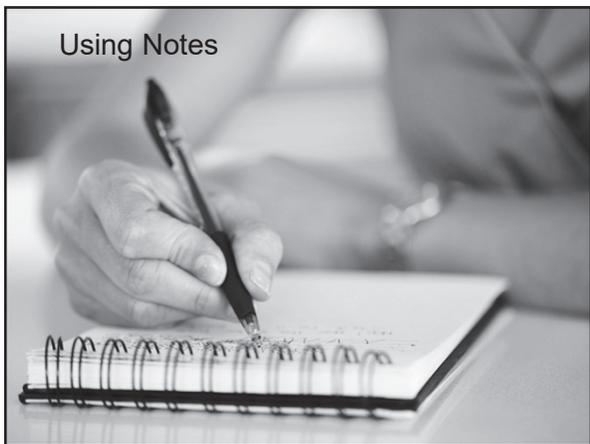
Q: There were decals in the windows?

Q: And there were flashing neon beer signs in the windows, isn't that right?

Text from Thomas Mauet's book, *Trials*











OPENING STATEMENTS

A good opening story...

1. States a common sense principle that the case is built on
2. Tells why the principle is fair and consistent with the jurors' beliefs
3. Shows how easy it would have been for the plaintiff/defendant to act consistently with the principle to avoid damages
4. Arranges facts to let jurors conclude their involvement is needed – they *can and should* act
5. Gives them a frame of reference to let them decide your request for relief is reasonable

From Michael Kelly, NITA

OPENING STATEMENTS

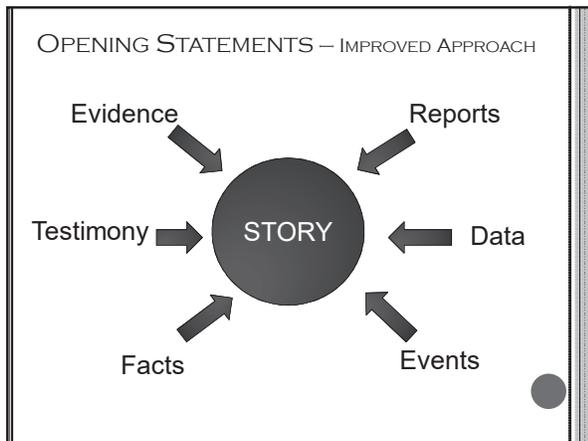
Story goals of a good opening statement:

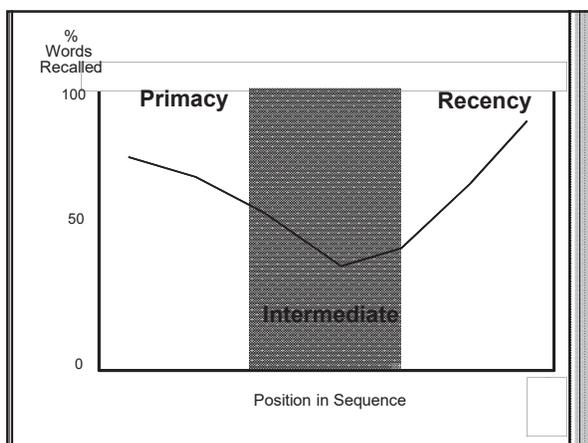
To establish **narrative, characters, and motives**

By giving the story **humanity, structure, and drama**

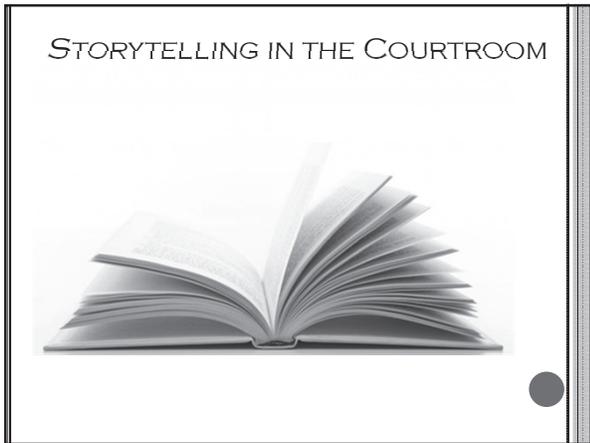
Through the use of **clear language, clear images, and clear ideas**

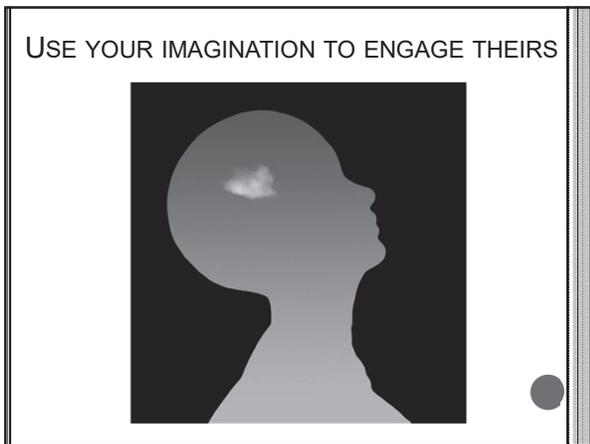




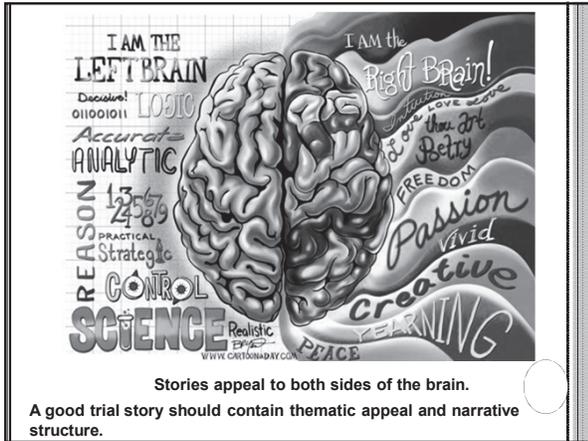


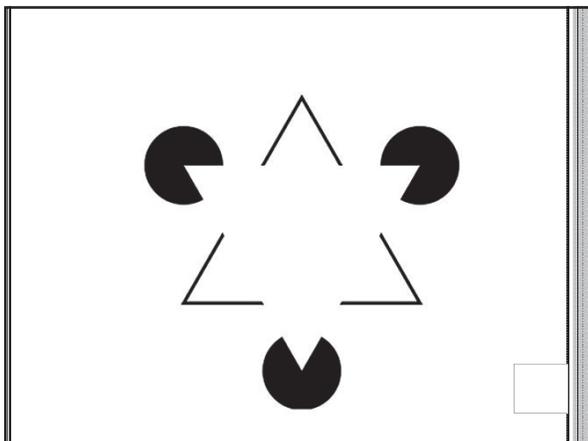


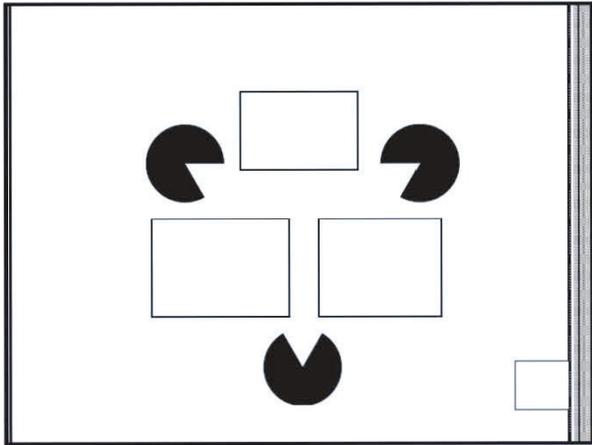


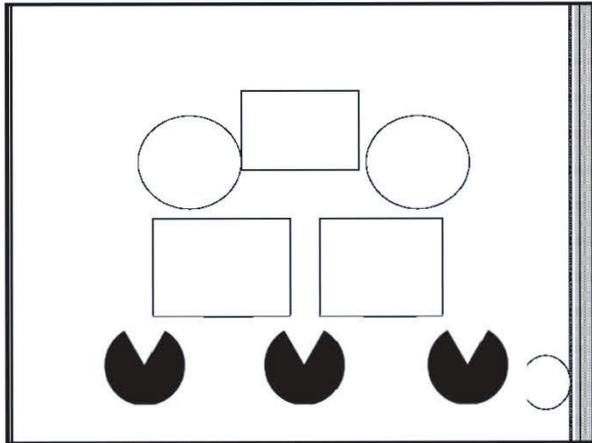


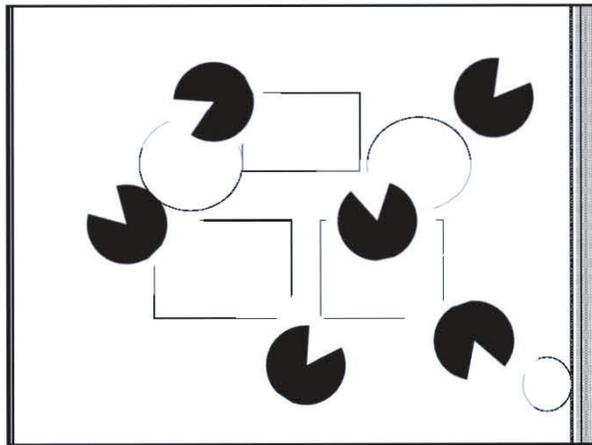




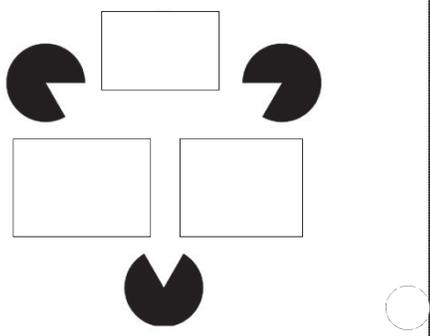








The right facts can **release the story**.





For sale: Baby shoes. Never worn.

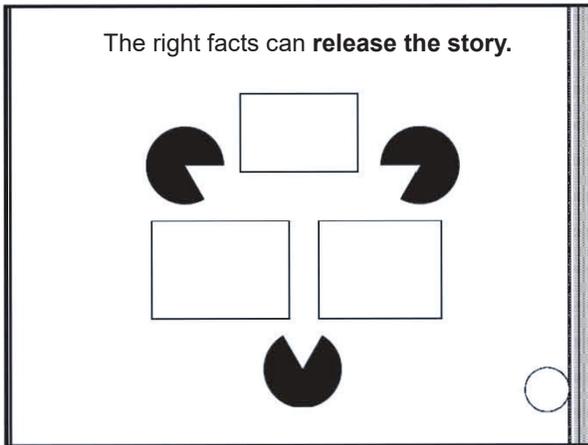
-Six-word story,
attributed to Ernest Hemmingway





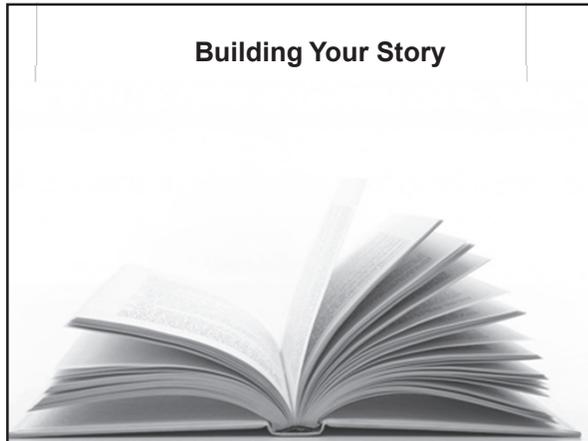
Andrew was having a great time at his party. He was playing games and opening presents. When it came time to blow out the candles on the cake, he blew and blew but they would not go out. As soon as he thought he had blown out the candles, they would light again.

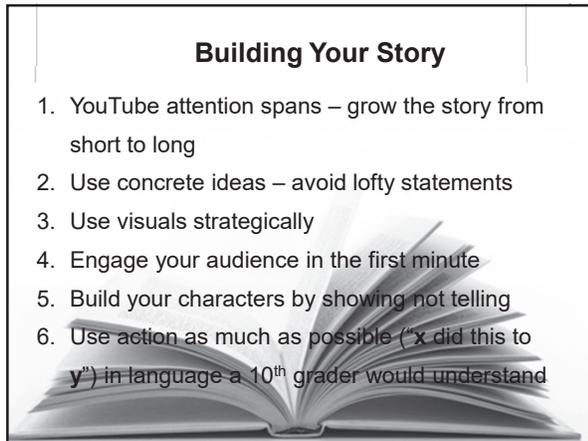














STORYTELLING TOPICS

1. Theme
2. Story Structure
3. Use of Detail
4. Character Development
5. Devices
6. Wording



1. THEME

A case theme is crucial. But let it emerge naturally.

IN WORDS
love, hate, revenge, fear, greed, power, accountability, cheating, betrayal, quality...

IN PHRASES
bad character, David vs. Goliath, profit over safety, lack of leadership, stacking the deck...

IN QUESTIONS
Why did the woman wait? Why did he ignore his responsibility? Can appearances be deceptive?



2. STORY STRUCTURE

All must include 5 Ws: Who, What, When, Where, Why

STRAIGHT NARRATIVE
The "before-during-after" of a single event

FLASHBACK
Telling the end first

PARALLEL ACTION
Two concurrent stories that intersect

PAST, PRESENT, FUTURE
Life before the event – event – life after the event



3. USE OF DETAIL

A) Choose only the details that will contribute to the persuasive power of the story. Ask these questions:

- Does this detail advance the story?
- Will these details help to humanize the protagonist?
- Does this detail contribute to the case theme?
- Will this detail help to engage the jury's imagination?
- Would one detail serve the same purpose as three?

4. CHARACTER DEVELOPMENT

Develop a sympathetic character (your client) or an unsympathetic character (the opposition) through:

Description

Details about the character's manner, psychology, or physical appearance. Keep this sparse and selective – too much description can begin to work against you.

Dialogue

Quotes from the character that illustrate how they deal with the world. There is plenty of material in depositions to draw from.

Action

Choices the character makes that result in action. These objective facts can reveal a great deal about the character.

5. RHETORICAL DEVICES

There are dozens of good rhetorical devices. Some examples:

- Rule of three
- Alliteration
- Antithesis
- Rhetorical questions
- Quotation
- Repetition
- Metaphor
- Embedded Commands
- Parallel construction

6. WORDING

Wording can make or break a story. Include these five:

1. Use plain language
2. One thought per sentence
3. Humanize and dehumanize
4. Speak in present tense often
5. Open and close with impact

PERSUASIVE RHETORIC



John F. Kennedy, 1961

Barack Obama, 2004

PERSUASIVE RHETORIC - PARALLELISM

Kennedy:

"Let every nation know, whether it wishes us well or ill, that we shall **pay any price, bear any burden, meet any hardship, support any friend, oppose any foe**, in order to assure the survival and the success of liberty.

Obama:

"That is the true genius of America, a faith -- a **faith in simple dreams, an insistence on small miracles**....We have real enemies in the world. These enemies **must be found**. They **must be pursued**. And they **must be defeated**...There are **patriots who opposed the war in Iraq** and there are **patriots who supported the war in Iraq**."

PERSUASIVE RHETORIC - ANTITHESIS

Obama:

"Well, I say to them tonight, there is not a liberal America and a conservative America -- there is the United States of America. There is not a Black America and a White America and Latino America and Asian America -- there's the United States of America."

Kennedy:

"...fellow citizens, we observe today not a victory of party, but a celebration of freedom—symbolizing an end, as well as a beginning—signifying renewal, as well as change."

"And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country."

PERSUASIVE RHETORIC - ANAPHORA

Kennedy:

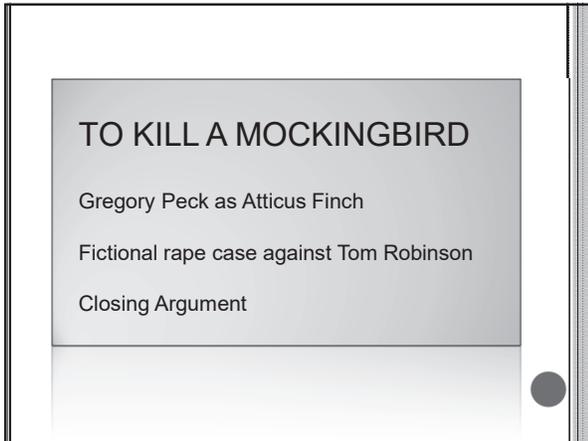
"**Let both sides** explore what problems unite us instead of belaboring those problems which divide us. **Let both sides**, for the first time, formulate serious and precise proposals for the inspection and control of arms.... **Let both sides** seek to invoke the wonders of science instead of its terrors. **Let both sides** unite to heed in all corners of the earth the command of Isaiah...."

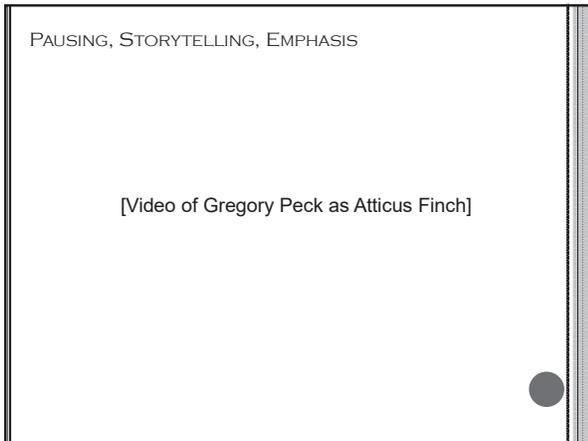
Obama:

"It's **the hope of** slaves sitting around a fire singing freedom songs; **the hope of** immigrants setting out for distant shores; **the hope of** a young naval lieutenant bravely patrolling the Mekong Delta; **the hope of** a millworker's son who dares to defy the odds; **the hope of** a skinny kid with a funny name who believes that America has a place for him, too."

THE
HOLLYWOOD
LAWYER









WHAT HE SAYS...

The witnesses for the State, with the exception of the Sheriff of Maycomb county, have presented themselves to you gentlemen, to this court, in the cynical confidence that their testimony would not be doubted. Confident that you gentlemen would go along with them, on the assumption, the evil assumption, that all Negroes lie, all Negroes are basically immoral beings, all Negro men are not to be trusted around our women. An assumption that one associates with minds of their caliber, and which is in itself, gentlemen, a lie. Which I do not need to point out to you.

PAUSING, STORYTELLING, EMPHASIS

[Video of Gregory Peck as Atticus Finch]

HOW IT SOUNDS...

The witnesses for the State, with the exception of the Sheriff of Maycomb county, have presented themselves to you gentlemen, to this court, in the cynical **confidence** that their testimony would not be doubted. **Confident** that you gentlemen would go along with them, on the assumption, the **evil** assumption, that all Negroes lie, all Negroes are basically immoral beings, all Negro men are not to be trusted around our women. An assumption that one associates with **minds of their caliber**, and which is in itself, gentlemen, **a lie**. Which I do not need to point out to you.

Breaker Morant

Jack Thompson as Major J.F. Thomas

Real-life 1901 murder trial of three Australian army officers

Closing Argument

WHAT HE COULD HAVE SAID...

Ladies and gentlemen, the demands of war can change a man's nature and make him apt to do things he wouldn't ordinarily do in everyday life. Terrible things happen in war because men are pushed to do them by the unusual, demanding, strange, and abnormal situations they often find themselves in while they're fighting as a soldier in a war. So judging them by the same standards by which we judge civilians is wrong, and that is what the prosecution is trying to do here – judge soldiers the same way we judge civilians, who are in very different circumstances and situations. If we did judge them the same way, we'd be trying cases for a very, very long time.

SIMPLICITY & CONFIDENCE

[Video of Jack Thompson as J.F. Thomas]

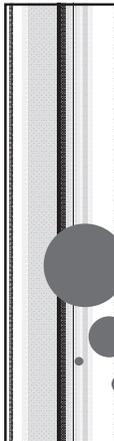
WHAT HE ACTUALLY SAID...

The fact of the matter is that war changes men's natures. The barbarities of war are seldom committed by abnormal men. The tragedy of war is that these horrors are committed by normal men in abnormal situations. Situations in which the ebb and flow of everyday life have departed...and have been replaced by a constant round of fear and anger, blood and death. Soldiers at war are not to be judged by civilian rules. As the prosecution is attempting to do. Even though they commit acts which, calmly viewed afterwards, could only be seen as un-Christian and brutal. And if, in every war, particularly guerilla war, all the men who committed reprisals were to be charged and tried as murders, court-martials like this one would be in permanent session. Would they not?



OPENING STATEMENTS





David Mann
teaches nationally for



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Section 8
REHEARSAL SCRIPTS

The Professional Education Group
David Mann

REHEARSAL SCRIPTS

The following pages contain several examples of opening statements, cross examination questions, and direct examination questions. Use these as scripts for working on vocal delivery and body movement, as outlined in the course and on the guides below.

All examples are taken from Thomas Mauet's book, *Trials: Strategy, Skills, and the New Powers of Persuasion*.

VOICE

- Choose words to emphasize
- Vary your tone
- Question like you mean it
- Don't read
- Slow down
- Avoid the "clarity killers"
- Emphasize antithesis
- Relax and breathe into natural voice
- Speak in phrases for clarity
- Eliminate verbal filler
- Speak louder than normal
- Articulate
- Practice out loud

BODY

- Stand with weight evenly distributed
- Maintain eye contact with jurors
- Listen with your face
- Check your body for tension
- Eliminate physical "static"
- Relax and stay open
- Move slowly but with energy
- Find your gestural READY position
- Match your gestures to your tone
- Stand and sit up straight
- Keep your breathing deep and even
- Practice on your feet

Opening Statement

Example 1

Ed Johnson lives in the neighborhood. His children, before they grew up, used to play in that same playground, and Mr. Johnson would sit in the playground watching them. He still lives on Maple, a few blocks up the street.

Whenever Mr. Johnson's business takes him downtown, he goes down Maple. Partly it's the convenience, since Maple goes directly from his house to downtown. Partly it's the memories, because when he goes down Maple, he sees where his own children grew up, the school they went to, the playground where they played.

That afternoon, Mr. Johnson had to go downtown for a 4:30 meeting. Just before 4:00 he left his house, got in his car, and began driving. He gave himself plenty of time to get there in case traffic was heavy. The speed limit on Maple is 25 miles per hour. He put his headlights on even though it was daytime. When he got to the 800 block of Maple, where the school playground is, he slowed down to 15, just like he always does, ever since his own children went there. He had received a call on his cell phone a minute or two before. It was his wife, calling to make sure everything was all right. Just a routine call.

At the playground, there's parking on both sides of the street, and the parking spots are usually full. That's the way it was that afternoon. As he travels down Maple, at 15 miles per hour, he sees the Good Humor truck,

looks around for children. There are children in the playground, but none on the sidewalk, in the crosswalk, or by the truck. So Mr. Johnson keeps going.

It was right at the crosswalk when it happened. Suddenly, without warning, when he was just a few feet away, a little girl ran out between two vehicles, one an SUV. Mr. Johnson couldn't possibly see her, because she was short, shorter than the SUV she'd been behind. She didn't stop, she didn't look. She just ran right across the street directly in front of Mr. Johnson's car. Before he could even react, before he could even slam on his brakes, it happened. It happened that fast. And there's nothing Mr. Johnson, or anyone else, could have done to prevent it from happening.

Opening Statement

Example 2

The Second Federal Savings Bank has a small branch office at the corner of Central and State. It looks like a typical bank building: one-story brick, glass picture windows on the side facing Central, two drive-up bays, and parking on all sides.

June 1, 2005 started like a typical day for Sarah Hughes, the manager, and three tellers and receptionist. They had all gone into the bank around 8:30 through the employee entrance on the side and were setting up for the 9:00 a.m. opening.

At 9:00 a.m., Ms. Hughes unlocked the front door and returned to her office next to the teller's counter. A few minutes passed. She was doing paperwork when she heard something that no bank manager ever wants to hear. She heard a man's voice yell: "Everybody down on the floor." Ms. Hughes immediately tripped the silent alarm, then left her office and entered the lobby.

She saw a man pointing a shotgun at her tellers. The tellers were already getting down on the floor. The man looked right at Ms. Hughes, not more than ten feet away. The man was a slender white male, about five feet ten inches tall, weighing perhaps 150 pounds. The man was dressed in blue jeans, a white tee shirt, and sneakers. He did not wear a mask. His face was not disguised in any way. He had no beard or mustache, and wore short brown hair, almost a crew cut. He had no visible scars or tattoos. That man, members of the jury, was the defendant, the man sitting right there [pointing] at the table. The defendant then pointed the shotgun at Ms. Hughes and said "You too. On the floor." Ms. Hughes got on the floor.

The defendant then climbed over the teller's counter, removed the cash from each of the teller's drawers, then jumped back over the counter. From where she was on the lobby floor, Ms. Hughes could see the defendant moving from station to station, scooping out the money, stuffing it into his bag. One of the tellers, Jane Smith, was on the floor behind the counter, and she could see everything the defendant did as well.

The defendant then said: "Stay on the floor," and ran out the front door to a car and took off. The car looked old, a blue four-door sedan.

Within two or three minutes, the police were there. Ms. Hughes and Jane Smith gave the police a description of the defendant and the getaway car, which was broadcast over the police radio.

Less than one hour later, a police officer, Officer Wilson, pulled over a speeding car a few miles away. It was a 1998 Ford sedan, blue color. Officer Wilson noticed the driver was acting nervous and that he was a slender white male, about five-ten tall, about 150 pounds, wearing blue jeans and a white tee shirt. He fit the description of the bank robber. Officer Wilson asked him "Where were you at 9:00 a.m.?", and the defendant didn't answer. Officer Wilson, believing that this might be the bank robber, handcuffed him and took him to the police station. Another officer came to the scene, drove the defendant's car to the police station, and searched it. No shotgun or money was found in the car.

That afternoon the police conducted a lineup. In the lineup was the defendant and five other young white males. You'll see the photograph of the lineup. Each person was told to say the words "Everybody down on the floor" and to turn around once. Ms. Hughes and the three tellers were present. After the lineup, each was interviewed separately. Two tellers, because they could not see the robber as they were lying on the floor, were unable to make an identification. Both Ms. Hughes, the manager, and Ms. Smith, the third teller, could see everything as it happened, and both positively identified that defendant as the man who robbed them at gunpoint that morning.

Opening Statement

Example 3

Members of the jury, 4:00 p.m. is a happy time in the summer for the children on the 800 block of Maple Street. That's the block where the school playground is. It's a busy place whenever the weather is good. And 4:00 is the best time of all, because that's when the Good Humor ice cream truck comes down the street, music playing, bells jingling. The minute the kids hear those sounds, they dig in their pockets or run to their parents for money to get a popsicle, chocolate bar, or ice cream cone. If you're quick, you get to be first in line when the truck stops.

June 1, 2005 was a happy time for little Jenny Smith. Six years old, she was the apple of her parents' eyes, a lively, cheerful kid, full of life. She was there at the playground, playing with her friends, while her mother sat on a bench near the swings, chatting with friends.

It was just after 4:00 when they first heard the familiar sound, the bells jangling. Jenny, like several of the other kids, ran to her mother and said: "Mommy, can I get an ice cream?" Jenny's mom reached into her purse, took out a dollar bill, gave it to her, and said: "Be careful." Jenny grabbed the dollar and ran toward the opening in the chain-link fence.

By this time, the Good Humor truck had stopped on the far side of Maple, across the street from the playground. Jenny ran to the opening in the fence and started across the crosswalk to get to the truck.

At that moment, that defendant, driving a big, new Cadillac, was zooming down Maple, going at least 25 miles per hour, at least 10 miles per hour over the posted speed. He drove right past the sign that said: "School Zone - 15 mph." He drove right past the sign that said: "Look Out for Children." He drove right past the sign that said: "School Crosswalk Ahead." Instead, he was busy talking on his cell phone. Too busy to go 15 miles per hour. Too busy to look out for children. Too busy to even see little Jenny crossing in the crosswalk.

The impact of the Cadillac against Jenny's little body was horrible. It crashed into her ribs, crushing her chest, lungs, and other organs, threw her up into the air, to the curb, where she landed with a thud. Jenny didn't even have time to scream.

But the others did. The other children reaching the crosswalk screamed. Their screams alerted the parents, who ran over to the crosswalk. Jenny's mom also ran over, and when she saw it was Jennifer lying crushed and motionless in the street, she started to scream too.

There was little they could do. The damage had been done. The police came, the ambulance came, but all they could do was take Jenny to the hospital. Even that was too late. Before they got her to the hospital, little Jenny Smith was dead.

Direct Examination

Example 1

Q: What's the area around Broadway and Main like?

A: It's a commercial area. There are strip malls on all four corners, with food stores, hardware stores, fast food restaurants, things like that.

Q: Describe Broadway, the north-south street.

A: It's a big street. It has three lanes of traffic in each direction. There's a big median strip, and it has a left turn lane for both directions.

Q: How about Main Street, the east-west street?

A: It's not quite as big. It has two lanes of traffic for each direction, a median strip, and a left turn lane in each direction.

Q: What about road markings?

A: All the lanes are marked with white dotted lines. The left turn lanes are also marked, and have turn arrows painted on the lanes. There are also crosswalks across both streets.

Q: What about traffic signals?

A: There are lots of traffic lights. There are probably two or three lights in every direction. And the turn lanes have separate arrow lights. At this corner, the left turn arrows turn green after the main lights in that direction turn red.

Q: What's traffic like at 8:30 in the morning?

A: It's busy. Both Broadway and Main are commuter routes to downtown and the business parks out by the airport. The traffic is heavy, and around 8:30 it often backs up at that corner.

Q: How did Broadway and Main look on June 1, 2005, the morning of the collision?

A: Very busy. A lot of traffic backed up.

Q: What was the weather like?

A: It was a bright sunny morning.

Q: What were the road conditions like?

A: The roads were completely dry. It hadn't rained for days.

Direct Examination

Example 2

- Q:** Mr. Williams, in what part of town is your tavern, the Lucky Strike?
- A:** It's on South State Street, near Porter Avenue.
- Q:** What kind of area is that?
- A:** It's an older neighborhood. Lots of small shops on the street, and lots of two- and three-story apartment buildings.
- Q:** If you're standing on State Street, across from the Lucky Strike, looking toward your tavern, what do you see?
- A:** My tavern is in a typical single-story brick building with a plate-glass front. There's a shoe repair store on the left, and a secondhand clothing store on the right. There's small stores on the entire block, and the tavern is about in the middle of the block.
- Q:** When you walk through the front door to the tavern, what do you see?
- A:** The door is in the middle of the front, so when you walk in there's the bar on the left wall, with about eight bar stools along the counter. On the right wall there are four tables, booths really.
- Q:** Is that the only room to the tavern?
- A:** No. If you walk between the bar area and the booths, there's an arched opening that leads to the back room. That has several more tables. Behind that there's a bathroom on the left, and a store room on the right.
- Q:** What's the lighting like in the front room of the tavern?
- A:** It's typical bar lighting. There are lights over each booth, lights over the bar counter, and lights on the bottles on the wall. There's a TV hanging from the ceiling against the wall at the front.
- Q:** Mr. Williams, if you're behind the counter in the front room, and one of your regulars walks in, can you recognize him when he walks in?
- A:** Sure. There's plenty of light. Enough to recognize people.
- Q:** Is that the way the lights were the night of the robbery?
- A:** Yes.

Direct Examination Example 3

Q: As you approach the intersection, what's your speed?

A: About 25 miles an hour.

Q: What's the first thing you notice?

A: The car coming toward me suddenly makes a left turn right in front of me.

Q: Do you expect that?

A: Absolutely not.

Q: What do you do?

A: I hit the brakes as fast and hard as possible.

Q: What happens?

A: My car lays down rubber and my brakes are squealing. Before I even realize it, my car crashes into the car that is turning right in front of me. Other than slamming on the brakes, I don't even have time to react before the cars crash.

Direct Examination

Example 4

- Q: When the man says "Give me your wallet," how far is he from you?
- A: No more than three or four feet away.
- Q: What do you notice about him?
- A: He's about my height and weight. He's white. He has short, straight, dark hair, either dark brown or black.
- Q: Any beard or mustache?
- A: No.
- Q: Any earrings or jewelry?
- A: Not on his face.
- Q: Any tattoos?
- A: I didn't see any on his face or neck.
- Q: Describe his clothing.
- A: White tee shirt, nothing on the front, and dark pants.
- Q: After the man says "Give me your wallet," what do you do?
- A: I stare at him and say "What?"
- Q: What's the man say or do next?
- A: He says, "I said, give me your wallet," and he reaches into his pants pocket and pulls out a knife.
- Q: Which pocket?
- A: The right front pocket.
- Q: What is his tone of voice like?
- A: It sounds low, very deliberate.
- Q: Anything unusual about his voice?
- A: No, no accent or anything unusual.
- Q: What's the next thing that happens?
- A: I take my wallet out of my back pocket.
- Q: What's the man doing during this time?
- A: He's just standing in front of me, watching me, holding the knife in his hand.

Cross Examination

Example 1

The victim has identified the defendant as the person who robbed him in an alley.

Q: Mr. Anderson, you say there was light in the alley where you were robbed, is that right?

A: Yes.

Q: The light came from street lights, right?

A: Yes.

Q: Those street lights were along Maple Street?

A: Yes.

Q: There weren't any street lights in the alley itself, were there?

A: No.

Q: During the robbery in that alley, you were facing toward Maple Street?

A: Yes.

Q: Toward the lights?

A: Yes.

Q: The robber was facing you?

A: Yes.

Q: He was facing away from the street lights?

A: Yes.

Cross Examination

Example 2

A witness has identified the defendant as the person who ran down the street after a gunshot went off.

Q: Ms. Jackson, you were sitting on the porch of your house when you heard the loud voices?

A: That's right.

Q: This was around 11:00 at night?

A: About that time.

Q: It was dark?

A: Yes, but I had the porch light on.

Q: That porch light was the light you were using to read?

A: Yes.

Q: The light was on the wall by the front door?

A: Yes.

Q: And you were sitting under that light?

A: Pretty much.

Q: And you were reading the afternoon newspaper?

A: Yes.

Q: When you heard the loud voices, you say it sounded like an argument?

A: That's right.

Q: But you couldn't make out the actual words?

A: No, they were too far away.

Q: A few seconds later, you heard a gunshot?

A: It sounded like a gunshot, but I wasn't sure until later.

Q: And then you saw a man running across the street?

A: That's right.

Q: And he was about three houses down from you?

A: Yes.

Cross Examination

Example 3

A police officer has testified that he saw a minor buy a bottle of liquor at a liquor store.

Q: Officer Jones, you were watching what was going on inside the liquor store from outside the store, right?

A: Right.

Q: In fact, you were watching the liquor store from across the street?

A: Right.

Q: That street, Main Street, is a busy street?

A: It can be.

Q: You were watching the liquor store around 5:30 in the afternoon, right?

A: Yes.

Q: That's during the afternoon rush hour, isn't it?

A: Sure.

Q: Whenever a car or truck went by, it would block your view of the liquor store, right?

A: Well, maybe for a second or two.

Q: Let's talk about the store itself. There are plate glass windows on the street side of the liquor store, right?

A: That's right.

Q: Those were the plate-glass windows you were looking through?

A: That's right.

Q: There were posters in the windows?

A: Some.

Q: There were decals in the windows?

A: Some.

Q: And there were flashing neon beer signs in the windows, isn't that right?

A: Yes.

Cross Examination

Example 4

Plaintiff has sued a real estate brokerage, claiming that he asked the real estate agent to have the residence he bought inspected for termites. The agent has testified that this conversation never occurred.

Q: You claim Mr. Ellison never talked to you about inspecting for termites in the building?

A: That's right.

Q: Ms. Johnson, how many real estate clients do you have right now?

A: Oh, it depends, but I'd estimate around 100.

Q: How many did you have in June 2005?

A: About the same.

Q: You talk to all of those clients?

A: Of course.

Q: And you talk to each of those clients many times?

A: Not all of them, but most of them.

Q: Those conversations cover several common topics, right?

A: That's true.

Q: Such as financing and appraisals?

A: Yes.

Q: The conversations often deal with home inspections, right?

A: Yes.

Q: And one of the things that is frequently done in homes is a termite inspection, right?

A: That's often done, yes.

Q: You've talked to buyers about termite inspections dozens of times during the past year, haven't you?

A: I suppose so.

Section 9
ADDITIONAL READING

The Professional Education Group
David Mann

Additional Reading

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