

The Power of the Story

IN THE COURTROOM



Lawrence Howard

By Lawrence Howard

The most powerful tool of persuasion any lawyer can use in the courtroom is a simple, heartfelt, well-told story.

Human beings are hard-wired to tell and listen to stories. Stories are how we make sense of the world. We organize the information that comes to us into a story format. We also carry a surprising number of stories around in our conscious and subconscious memories.

If I tell you that a billy goat went tripping over a bridge, you know, instantly and automatically, that there's a mean old troll underneath. If I tell you that there are three brothers out to seek their fortune in the world, you already know that the two older brothers think an awful lot of themselves, but the youngest one, who seems simple, is the one who will win the day. And if I tell you that the greedy baker tried to make

the poor man pay for enjoying the aroma of his freshly-baked bread, you just might know that the clever judge agreed with the baker and ordered the poor man to pay up—with the sound of the coins jingling together. My point is that stories and story-telling are deeply rooted in our psyches and our souls. Human beings are creatures of language and for most of our existence, oral storytelling is the way we have communicated. The written word is a very recent development in the big picture of human history; radio, movies and TV, even more so. For millennia, people told each other stories. Our ability to process the information that comes to us in this way is both very primal and very highly developed.

Storytelling popularity soars

There is a huge resurgence of interest in storytelling going on around the country—and perhaps in the rest of the world, as well—but it is so under the radar that most of us are completely unaware of it. There are storytelling guilds in nearly every major city, workshops for beginners and college classes in storytelling. You can even earn a master's degree in storytelling these days!

In addition, there are performances and festivals happening all the time. But how many of us know that there is a storytelling festival called *Tapestry of Tales* each November that brings local, regional and nationally-known storytellers

to the Portland area? Each February there is the *Tcha Tee Man Wi Storytelling Festival* in Corvallis. Each September there is *Stories by the Sea* in Newport. The National Storytelling Festival brings dozens of talented tellers and thousands of eager listeners to Jonesborough, Tennessee each fall.

A growing number of men and women currently make their full-time livings as storytellers. There are even storytellers who make a sizeable portion of their livings consulting with lawyers, helping them to understand and tell their clients' stories.

Yet, all too often, when I tell people I am a storyteller, they immediately say, "Oh, you read stories to children?" No, storytellers don't read stories, they tell them, and stories are definitely not just for kids. The truth is that adults are hungry—even starving—for stories in this modern era.

Early in our storytelling career, when my wife and I would tell stories at the branch libraries, I was struck by the fact that while the kids would pay attention and listen, their parents, at the back of the room, would be transfixed, open-mouthed and wide-eyed. The stories were speaking to them on a very deep level.

The lawyer as storyteller

There is a growing awareness that lawyers are storytellers. For better or worse, and with more skill or less, that's

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what trial lawyers do: They tell their clients' stories. Study after study shows that jurors take the information that is presented to them at trial and they fit it into a narrative format. If the information fits into the existing framework of a story that the juror holds within him or her self, then the juror will find that the story makes sense and is believable. If not, the juror will find that the story doesn't add up.

Studies also show that when jurors hear information that forms a believable story, they tend to ignore or disbelieve subsequent information that doesn't fit into the framework of that story.

That lesson was confirmed for me last year when I participated in the preparation of a 15-passenger van rollover case. We conducted a two-day focus group, with a different panel of jurors each day. On the first day, we began by telling the jurors that the driver of the van had a momentary lapse of attention, her left front tire had drifted onto the shoulder, and when she tried to correct her error and get back on the road, the top-heavy van oversteered, fishtailed and rolled.

During the first few minutes of our presentation, the jurors heard and bought into the story of an inattentive driver who caused an accident, and although we spent the rest of the day explaining how the van was defective, the jurors ignored it all—they already had a story that worked for them. That day, they reached a verdict that favored the defense.

The second day, with a completely new panel, we started off by telling how the automaker, in a blind rush to capture market share, had cobbled up this dangerous vehicle by adding a few feet and

four more seats to the rear of its existing 11-passenger van design, instead of designing a new vehicle that was specifically made to carry 15 passengers safely.

By the time we told them about the driver's momentary lapse of attention, the jurors had already bought into the story of the greedy corporation that valued profits above safety, and saw the driver's error in a different light: They understood that the design of the vehicle was supposed to incorporate a margin of safety to allow the driver to correct a minor error without causing the vehicle to roll.

That day, one of the jurors wanted to award \$100 million in damages to each of the eight plaintiffs injured or killed in the crash. We gave each panel the same information, but in a different order and with a different focus. Same facts, different stories.

Why are stories so persuasive? A story that is told well touches our emotions. Unlike theater, there is no fourth wall in storytelling. The teller looks directly at the audience and offers the story to each and every listener. The story happens, not just in the mouth of the teller or in the mind of the listener, but somewhere in between. The story being told awakens and resonates with each listener's own story within. A storyteller friend of mine from Canada likes to say that the story is told face to face, eye to eye and heart to heart.

Many trial lawyers are already adept at identifying or creating themes for their trials. Themes are broad concepts. The theme of a trial might be justice or betrayal of trust or taking responsibility.

But a theme is not a story. A story has a narrative arc, a story has characters. A story has a beginning, middle and an end. At the very minimum, a story has to have a conflict or a problem and a resolution.

It is the end of the story, the resolution of the conflict, that is the hardest part to get right. Especially when crafting and telling a true, personal tale, the ending either makes or breaks the story, because a satisfying ending has to make the story universal. The ending has to make the story resonate within the listener; the ending has to somehow illuminate our collective human experience.

Ultimately, the story has to be about more than the teller, it has to be about the listener. It has to draw the listener inside the story.

Fortunately for trial lawyers, the story we tell in court always ends the same way: justice is done. The biggest billy goat butts the mean old troll off the bridge. The youngest brother wins the hand of the beautiful princess. And the wise jurors right the wrong that was done to the plaintiff, and restore the individual—as much as possible—to his rightful place in the kingdom.

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