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"Getting" the Story: Why Narratives Make a Difference
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"He Who Tells the Stories, Rules the World."
--Hopi Indian Proverb

Humans think in stories. From the earliest cave folk who related how they killed a fierce beast to the water-cooler stories of today, humans understand facts in context; it helps us make sense of information and aids in memory. People remember the story; they don't remember a recitation of facts.

The Psychological Underpinnings

Research in the cognitive sciences, psychology and communication, illustrates how central narratives are to human understanding. Because humans think in stories, stories guide the heuristics, or "mental short-cuts" we use. But our previous experiences and attitudes affect how we perceive the "story." We "fill in the gaps" of the story according to our existing attitudes, "hear" information that fits with what we already believe and ignore information that conflicts with those pre-existing beliefs and attitudes. The narratives we create act like filters, so that information consistent with what we believe [or our understanding] gets assimilated and information that is inconsistent is partially or completely ignored.

Any place in the narrative that is unclear or inconsistent creates an ambiguity. And it is in those areas of ambiguity that our minds "fill in the blanks" according to what we already think and believe. Ambiguities are particularly ripe areas for cognitive biases to take hold. For example, hindsight bias, or "Monday-morning quarterbacking," allows us to apply the information available today to past events so that outcomes are thus viewed as being predictable.

This reality has powerful implications for the courtroom and particularly for communicating with jurors. One may have all the facts and evidence on one's side, but if jurors do not "get it," they will reject it and support the other side. If jurors do not understand or believe what you are saying, your case is lost.

The Role of Narrative in the Minds of Jurors

At its heart, a trial is an exercise in competing narratives. Both sides are looking at the same set of facts, the same sequence of events. But each has a very different story to tell, based upon those facts. Certain ones are highlighted by the respective sides, and the meaning assigned to

facts often differs dramatically. Each side is trying to convince jurors that its version of the facts – its version of the story – is the one jurors should accept. “Defense” jurors will have a dramatically different story than “plaintiff” jurors based on how they filter the case stories through their sensibilities.

Understanding the narratives that jurors create is critical because it gives us the opportunity to fill in those gaps in our story and, to the extent necessary, reframe the case facts and themes to best connect with jurors. It also helps us to identify the characteristics of those potential jurors who, because of their pre-existing attitudes and beliefs, would simply be unable to “hear” our story and thus, would be candidates for jury deselection.

Aligning Your Case Story with Jurors’ Mental Narratives

Pre-trial jury research provides us with a view of competing narratives that are created by jurors in response to the case facts. Now it is time to frame the facts in a story that will carry the day. Where to start? Any good story has certain elements:

- Starting Point
- Place
- Characters
- Themes
- Exposition
- Conflict
- Crisis
- Aftermath

Let’s start at the very beginning. Which may not be the beginning at all. When it comes to the starting point of your story (and the defense has a story to tell too – the plaintiffs don’t get all the fun), consider this: if this case were a movie, what would be Act I, Scene I? Sometimes a good story starts at the beginning, with exposition, followed by conflict, followed by crisis, followed by aftermath. That is traditional story telling. But sometimes, a story is best told out of order. The movie *Memento* starts at the crisis point and the story is told backwards; a more recent film, *Hangover*, began with the aftermath and the characters were forced to discover the conflict that led to crisis. A case story can start at the beginning, or it may be better to have it start at the point when the plaintiff made a foolish decision that led to the consequences he is now trying to blame on your client.

Deciding where your story starts makes it easy to create a compelling witness order. Witness order is often an afterthought, subjugated to time constraints and witness availability. The fine courtroom storyteller plots out his story and carefully plans the witness order to support the story in the sequence in which it is being told.

Place and character development helps jurors place themselves in the story – especially place. Jurors need to understand the time the story took place – if technology and know-how were less developed when the case’s key events happened, they need to be taken back to the time when

there were no push-button telephones, let alone cell phones, so they can remember that technology in your client's industry was less sophisticated as well.

Finally, how do we help jurors remember the story? Through the use of themes – according to Noah Webster, “a topic of discourse or discussion, often expressible as a phrase, proposition or question.” Themes are easily-remembered, repeatable ideas that bind the story together and give your strong jurors the foundation for arguing on your behalf once they arrive in the jury room.

Our next Insights newsletter will continue this discussion of the importance of using themes to reinforce the courtroom story. More to come!