

Storytelling in closings

By: F. Dennis Saylor IV and Daniel I. Small ◉ April 26, 2018

For our final column on closing arguments, once more we'll turn things over to Dan for some thoughts on storytelling ...

Trials are all about persuading people, ideally by telling a powerful story. Trial counsel should introduce the story in opening, create the pieces during the presentation of evidence, and then pull it together in closing. To be as persuasive as possible, the story has to be built right, told right, and shown right.

1. Build the story

The jurors are there because they're supposed to be. Obviously, that's not enough to hold their attention. From the day the case comes in the door, you need to be anticipating the jurors' key questions: "Why am I here?" and "Why should I care?" The answers to those questions are what many call the "core themes" of the case.

Core themes are a small number — at most, three to five — of short, clear statements that give the jury members an understanding of why they're there, and a reason to feel good about it.

Develop your themes when reviewing the evidence, talking to non-lawyers about the case and listening to their questions, and working with your witnesses. Then once you've found them, apply those themes at every stage. Build to your conclusion so that by closing argument, those themes are already familiar and well founded.

2. Tell the story

Don't just summarize the evidence; tell the story, start to finish, in a clear, meaningful way. And remember several of the keys to a good story.

First and foremost, remember that good stories are almost always about people. There may be a document or a device, or some other "thing," at the center of your case, but think about it: When was the last time you heard a really good story about a piece of paper or a gadget?

Humanize the case. Make your story about real people. Humanize your client. Nobody wants to rule in favor of a legal fiction. Then dehumanize the other side. If you can, for example, make it about big, anonymous bureaucracies hurting real people.



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Second, make it about motive. People usually do things for a reason, and we all want to know what that is. Motive brings action to life and gives it passion and purpose. We also are more inclined to believe that someone did something if that action is consistent with a clear motive. Don't tell the story in a vacuum; tell the "why."

Third, try to make it about right and wrong. Your client did the right thing: Here's how and why it's right. The other side did the wrong thing: Here's how and why it's wrong.

Fourth, make it about justice. The story can have a good ending, or at least a better ending, only if the jury makes sure that justice is served. Show that in order to do justice, here's what needs to happen and why.

3. Show the story

We all learn through all our senses, not just our ears. The more senses we get to use, the more likely we are to be inspired or moved. Giving a closing argument with just spoken words is giving yourself a huge handicap — don't do it. Be creative in finding ways to show your story. The choices can vary widely depending on the available courtroom technology, and case budget, but may include:

- Transcript excerpts — Key excerpts from testimony — either deposition or trial, if transcripts are available — can be blown up, highlighted, even summarized. If there is video, a video clip can have a much greater impact than a written transcript.
- Timeline — Events happen in a particular order. It is usually important for the jury to understand that order and place things in sequence. A visual timeline can be very effective in helping jurors do that.
- Summaries — Voluminous facts and numbers, and even events, can be shown visually through a wide variety of charts and graphics. Think about what point you're trying to make, and what visual image would make that point most effectively.
- Exhibits — Bring a document, a photo, a map, a diagram — whatever it is — to life. Blow it up. Highlight it. "Pull" a quote or section out of it, and expand that into a blowup. Don't let a key exhibit just sit there, lifeless, in a pile of other exhibits.

There is a Native American proverb, perhaps apocryphal, that every trial lawyer should remember: "*Tell me the facts and I'll learn. Tell me the truth and I'll believe. But tell me a story and it will live in my heart forever.*"

That is the key to giving a powerful closing argument. Build the story, show the story, and tell the story.

Previous installments of Tried & True can be found here. Judge F. Dennis Saylor IV sits on the U.S. District Court in Boston. Prior to his appointment to the bench, he was a federal prosecutor and an attorney in private practice. Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. He is a former federal prosecutor and teaches CLE programs across the country.

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