

The Art of Story

By Ingrid Becker

When plaintiffs lawyer Bill Kuziara took on a big insurance company in an accident case, he knew he couldn't risk boring jurors with long hours of expert testimony. Borrowing from novelists' techniques, the Santa Rosa sole practitioner organized his case around a theme—the good mother being treated unfairly—and created memorable characters to drive home the points he wanted jurors to remember.

The elements of storytelling can bring dull courtroom proceedings to life. Developing characters, painting vivid scenes, and selecting appropriate metaphors are all part of a good narrative presentation and a winning legal strategy. "A storyteller's special gift is reaching an audience," says consultant Ruth Halpern, a professional storyteller and cofounder of Berkeley-based Anecdotal Evidence. "Too often trial lawyers don't give jurors any reason to care."

Finding the story and telling it right, however, takes some time and practice. Veteran trial lawyers and consultants offer the following advice to novice lawyers/storytellers.

1. Speak simply. "Attorneys go to law school and learn to speak a foreign language," says Alan Blumenfeld, an actor who, along with Katherine James, runs a trial consulting practice in Culver City called Act of Communication. "Attorneys need to speak like human beings."

2. Pick a theme. A theme helps organize a case by eliminating irrelevant details. To flush out the theme, Halpern and her partner, Joel ben Izzy, recommend jotting down in a single sentence what the case is about. This sentence should make the judge or jury want to hear more. It should also name the main characters in the story and state the key issue that needs to be decided. An example, says Halpern, was the opener one environmental attorney used in an EPA case: "This is a case about whether the government has to obey the same rules as the rest of us." James and Blumenfeld call the theme statement the "ten-word telegram." Veteran litigator Peter J. Mort of Akin, Gump, Strauss, Hauer & Feld in Riverside boiled down one complex banking case to: "They lied,

they stole, we want our money back." Jurors told Mort after the trial that they repeated the phrase in deliberations.

In Kuziara's insurance case, he developed a plot line in which Lisa, a single mother en route to her son's doctor appointment, is struck in her minivan by a man driving a Mercedes and talking on his cell phone. Now the defendant's big insurance company won't give Lisa enough money for long-term therapy.

"The story was, 'Who was Lisa then, and who is Lisa now,'" says Kuziara, recalling how testimony from Lisa's friends and family advanced the story of her erratic behavior and memory loss after the accident and helped illustrate why she needed more financial help to recover from her injuries. The insurance company offered \$75,000; Kuziara won a \$450,000 verdict.

3. Build characters. Figure out who is the hero or heroine, who is the villain, and what actions in the case reveal those characters. When Fresno litigator Philip D. Kopp of Dowling, Aaron & Keeler defended a man caught in the cross fire of a war between business partners, he organized the case around the classic theme of trust and betrayal, casting his client as the good soldier with nothing to hide.

Even large multinational companies portrayed as corporate villains by plaintiffs lawyers can develop stories with interesting characters to tell jurors. Possibly, it's a Horatio Alger-like tale of the company founder. "When you're the defense, you're trying to level the playing field," says litigator Mort. "Companies have histories, and you need to talk about them."

4. Create scenes that break down the case and tie the facts together. Lawyers should write down the key events that figure in the legal dispute and fashion them into a series of related scenes. Think of it as opening doors in a house. Every scene is the room behind the door—you need to make the room memorable, with vivid detail, but you also need to make sure that it's a room in the house. That is, the scene must be relevant to the overall story.

5. Lay out the story. Opening and closing statements are key opportunities to lay out the entire story. Some trial

lawyers keep a file of articles, poems, speeches, and other inspiring words to draw on. Mort says he reaches for a book of Abraham Lincoln's quotations when preparing closings.

6. Use anecdotes. Just as a novelist will often draw the reader in by opening a tale in midstory, trial lawyers can capture a jury's imagination by starting with a description of a dramatic scene or pivotal event in the case instead of boring them with a traditional chronology. "Look for the sexiest aspect of the case, then highlight that moment," suggests consultant and actress James.

Sometimes it works better to back into the story in the opening statement or to unfold the case as a mystery, opening with a question and leading the jury to its solution. "The closing argument," says James, "is about taking the story and pushing it into the hands of the jury, setting it up for them."

7. Use every segment of a trial to build the story. Direct and cross-examinations are often missed opportunities to create characters or further build the story line. Adopting a more conversational style with friendly witnesses—for example, asking questions about where they grew up, where they went to school—is a way of creating a dialogue with jurors, says James. Even in picking apart a witness on cross-examination, questions should be structured to follow a story line, she says.

8. Use the right metaphor. Well-chosen metaphors can create a familiar lifeline to help jurors grasp arcane concepts. But they can also backfire. Prosecutors trying O. J. Simpson may have inadvertently suggested to jurors that the murder trial would be an uphill climb with frequent references to a "mountain of evidence," says ben Izzy. In a less-famous case, an attorney innocently popped off a metaphor about the good witch Glinda from *The Wonderful Wizard of Oz*. Before he knew it, his opponent had thrown in winged monkeys and fireballs to cloud the jurors' minds. Ben Izzy recommends that attorneys spend an equal amount of time both thinking of metaphors and analogies and thinking of ways the other side might exploit or destroy the ones they choose. □

Storytelling techniques can turn a dry, boring case into a compelling narrative.