

Plaintiff Trial Lawyer Tips

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ONCE UPON A TIME – STORYTELLING BY TRIAL LAWYERS

Posted on [December 15, 2014](#) by [Paul Luvera](#)

I've written several times about storytelling and its essential involvement in every trial lawyer's advocacy. My most recent post was: <http://plaintifftriallawyertips.com/trial-lawyers-and-storytelling> A recent article reminded me again about the importance of storytelling to trial lawyers.

We have all heard about how we should present our cases as stories. We know the emphasis Gerry Spence has put upon telling our case as a client's story. He has rightfully observed that humans are "hard wired" for stories. Yet, it has been my experience that when the subject is storytelling the great majority of trial lawyers only see it as simply one of many tools available. They think that it is probably helpful but not that it is required as the best possible way to present their case. They echo the significance of storytelling, but rarely make an effort to do so. The necessity of storytelling, however, isn't lost on the scientific and business community.

The December 13th New York Times featured an article by Alina Urgent: *Storytelling Your Way to a Better Job or a Stronger Startup*. The article advocated storytelling as best way to present your case for something you want. It described how advertisers incorporate storytelling into their commercials. The idea is important enough that there are people who are story coaches for business leaders and others. One coach works with companies including American Express, PBS and Random House charging \$1800-\$3500 for workshops and \$500-\$5000 for one on one training. Another charges \$6000-\$25,000 for speeches and training for corporations about storytelling. Clearly the business world and others are convinced about the value of storytelling.

Human beings have communicated by stories since they first could communicate. Storytelling has been called "a strategic tool with irresistible power" by the Harvard business review. The power of storytelling to attract and even manipulate is well-known and well established. However the reason for its appeal has not always been clear. Research now suggests the answer is that storytelling promotes a hormone in the brain that unconsciously creates empathy.

Studies indicate a connection with storytelling and the production in the brain of a hormone "oxytocin." The hormone is produced by the hypothalamus in the brain. It plays an important role in the neuroanatomy of intimacy, specifically in sexual reproduction of both sexes. It is often referred to as the "trust hormone" that is involved in social relationships. New research suggests that oxytocin plays a crucial part in promoting trust and empathy towards others and has also been called the "bonding hormone."

Research shows that storytelling promotes the release of oxytocin in the brain. One study involved Paul Zak, professor of economics, psychology and management at Claremont graduate University. He studies oxytocin. To see the impact of storytelling on oxytocin, Professor. Zak conducted an often cited experiment. Participants had blood drawn measuring the level of oxytocin first and then watched videos of stories about things like giving to charities. After watching the videos they had their blood drawn again and another measurement made of oxytocin levels. All of the participants had a significant increase in oxytocin after watching the video stories.

In another study the question of what makes a good story was conducted by a professor at John's Hopkins University. It involved his graduate students in reviewing two years of Super Bowl commercials. The team coded each of the Super Bowl commercials with a well-known outline for successful stories, Freytag's Pyramid. In 1863 Gustav Freytag analyzed stories and novels for a common pattern and created a pyramid of steps or acts. Act one, scene setting; Act two rising action; Act three, the climax and turning point; Act four, the reversal and falling action; and Act five the conclusion or moment of last suspense. When the analysis of the Super Bowl commercials was finished it was found that there was a direction correlation of liking or not liking the commercials by TV watchers and the pyramid outline. The most popular followed the outline and the least popular only some of it. They reviewed how consumers had rated the commercials on social media. Using this study they were able to accurately predict the most popular commercial for the next Super bowl.

The story has to be told right to be compelling. A well told story has a structure with a defined beginning, middle and end. Experts say the reason many stories we tell don't work is that as adults, we tend to judge, analyze and explain and experience, rather than simply tell what happened. Good stories are detailed, honest and personal. Stories we particularly like usually involve some sort of vulnerability without too much emotion. The article points out that: "You can have a multimillion dollar movie that bombs and a brilliant five acts story in 30 seconds"

We need to learn how to tell compelling stories that will invoke a trust or bonding response. There are defined ways of doing this. We all should be familiar with Joseph Campbell's "The Hero with a Thousand Faces" because it is the proven outline for successful movies, screenplays and novels. In fact, producers evaluate novels and screenplays for probable success using the outline.

A quick example of his recommended story would consist of an ordinary person who is called upon to save the village with a magic elixir that is in a cave in a faraway country guarded by a dragon. At first refusing, the hero meets a mentor who provides guidance convincing the reluctant hero to accept and start out on the journey. The hero is tested on the way, arrives at the cave, has another crisis of faith, but enters and kills the dragon. Carrying the magic elixir back to the village, the hero is again tested on the journey home resulting in a better stronger person. The hero returns to the village with the elixir, saving the village and is given a hero's welcome. Campbell's actual outline can be summarized by a story following these steps in this order:

1. The hero in his or her ordinary world
2. The call for a hero to save the situation e.g. find the magic elixir
3. The refusal by the hero to accept
4. The hero meets the mentor who advises the hero
5. The hero decides to leave the ordinary world for the unknown
6. The hero is tested on the journey and survives
7. The approach before the challenge
8. The ordeal of confronting death or greatest fear by continuing
9. The reward where the hero takes possession of the treasure or elixir
10. The road back to the ordinary world
11. The resurrection after another severe test with the hero achieving a higher level
12. The return with the treasure as a hero

In the above outline the hero of this story would likely be the jury rather than your client. Think about your jurors who arrive at court as ordinary people who asked to do something extraordinary from their ordinary lives for the

good of the community. They become convinced by lawyer “mentors” and start on the journey to do the right thing in justice. They face the challenge of the jury room in deliberations. Their verdict is the treasure they bring back for the community. Your story can be framed so that it is presented to them with them in the role of a hero asked to do something extraordinary and outside their daily lives. The most important thing they will ever do and will be proud of for the rest of their lives.

It can be applied in other ways as well including, of course to the client who was suddenly and unwillingly thrust into a crisis situation in their life. They are tested and overcome great obstacles deserving of hero’s reward through a just verdict. Story telling applies at every stage of case, jury selection, opening statement, direct examination cross examination and summation. The opening statement should be in a story form and not a chronological narrative of events. It must be told in the present tense as if happening before the jury now. It can be told in the 1st person as a participant or observer of the events. It can be told from alternative viewpoints including that of the defective product that caused the injury. It should always begin with the defendant and not the plaintiff’s actions for reasons previously outlined in this blog. Whatever the choices, make it a compelling, personal story well told.

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