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**STORYTELLING:
PERSUADING THE COURT TO
ACCEPT YOUR THEORY OF DEFENSE**

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What Does Telling a Story Have to Do With Our Theory of Defense?

Stories and storytelling are among the most common and popular features of all cultures. Humans have an innate ability to tell stories, and an innate desire to be told stories. For thousands of years, religions have attracted adherents and passed down principles not by academic or theological analysis, but through stories, parables and tales. The fables of Aesop, the epics of Homer, and the plays of Shakespeare have survived for centuries and become part of popular culture because they tell extraordinarily good stories. The modern disciplines of anthropology, sociology, and Jungian psychology have all demonstrated that storytelling is one of the most fundamental traits of human beings.

Unfortunately, courts and law schools are among the few places where storytelling is rarely practiced or honored. For three (often excruciating) years, fledgling lawyers are trained to believe that legal analysis is the key to becoming a good attorney. Upon graduation, law students often continue to believe that they can win cases simply by citing the appropriate legal principles, and talking about reasonable doubt and the elements of crimes. Prisons are filled with victims of legal analysis and reasonable doubt arguments.

For public defenders, this approach is disastrous, because it assumes that judges and jurors are persuaded by the same principles as law students. Unfortunately, this is not true. When they deal with criminal trials, lawyers spend a lot of time thinking about “reasonable doubt,” “presumption of innocence,” and “burden of proof.” While these are certainly relevant considerations in an academic sense, the verdict handed down by a jury is usually based on more down-to-earth concerns:

1. “Did he do it?”

and

2. “Will he do it again if he gets out?”

A good story that addresses these questions will go much further towards persuading a jury than will the best-intentioned presentation about the burden of proof or presumption of innocence.

ETHICS NOTE: When we talk about storytelling, we are not talking about fiction. We are also not talking about hiding things, omitting bad facts, or making things up. Storytelling simply means taking the facts of your case, and presenting them to the jury in the most persuasive possible way.

What Should the Story Be About?

A big mistake that many defenders make is to assume that the story of their case must be the story of the crime. While the events of the crime must be a part of your story, they do not have to be the main focus.

In order to persuade the jury to accept your theory of defense, your story must focus on one or more of the following:

Why your client is factually innocent of the charges against him.

Your client's lower culpability in this case.

The injustice of the prosecution.

How to Tell a Persuasive Story

I. Be aware that you are crafting a story with every action you take.

Any time you speak to someone about your case, you are telling a story. You may be telling it to your family at the kitchen table, to a friend at a party, or to a jury at trial, but it is always a story. Our task is to figure out how to make the story of our client's innocence persuasive to the jury. The best way to do this is to be aware that you are telling a story, and make a conscious effort to make each element of your story as persuasive as possible. This requires you to approach the trial as if you were an author writing a book, or a screenwriter creating a movie script. You should therefore begin to prepare your story by asking the following questions:

1. Who are the characters in this story of innocence, and what roles do they play?
2. Setting the scene -- Where does the most important part of the story take place?
3. In what sequence will I tell the events of this story?
4. From whose perspective will I tell the story?
5. What scenes must I include in order to make my story persuasive?
6. What emotions do I want the jury to feel when they are hearing my story? What character portrayals, scene settings, sequence and perspective will help the jurors feel that emotion?

If you go through the exercise of answering all of these questions, your story will automatically become far more persuasive than if you just began to recite the events of the crime.

II. “But I Don’t Have Enough Time to Write a Novel For Every Case”

We all have caseloads that are too heavy. A short way of making sure that you tell a persuasive story to the jurors is to make sure that you focus on at least three of the above elements:

1. Characters – before every trial, ask yourself, “Who are the characters in the story I am telling to the jury, and how do I want to portray them to the jurors?”
 - a. Who is the hero and who is the villain?
 - b. What role does my client play?
 - c. What role does the complainant/victim play?
 - d. What role do the police play?
2. Setting – Where does the story take place?
3. Sequence – In what order am I going to tell the story
 - a. Decide what it is most important for the jury to know
 - b. Follow principals of primacy and recency:
 - i. Front-load the strong stuff
 - ii. Start on a high note and end on a high note

III. Once you have crafted a persuasive story, look for ways to tell it persuasively.

You will be telling your story to the jury through your witnesses, cross-examination of the State’s witnesses, demonstrative evidence, and exhibits. When you design these parts of the trial, make sure that your tactics are tailored to the needs of your story.

A. The Language You Use to Communicate Your Story is Crucial

1. Do not use pretentious “legalese,” or “social worker-talk” You don’t want to sound like a television social worker, lawyer or cop.
2. Use graphic, colorful language.
3. Make sure your witnesses use clear, easy-to-follow and lively language.
4. If your witnesses are experts, make sure they testify in language that laypeople can understand.

B. Don't Just Tell the Jury What You Mean – Show Them

1. Don't just state conclusions, such as “the officer was biased,” or “my client is an honest man.” Instead, show the factual jury vignettes that will make the jurors reach those conclusions on their own.

2. Use demonstrative evidence to make your point.

3. Create and use charts, pictures, photographs, maps, diagrams, and other graphic evidence to help make things understandable to the jurors.

4. Visit the crime scene and any other places crucial to your theory of defense. That way when you are describing them to the jury, you will know exactly what you are talking about.