FUNDAMENTALS OF
TRIAL ADVOCACY COURSE

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Phoenix, Arizona

OPENING STATEMENTS

Presented by:

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The Opening Statement

Amy Diederich
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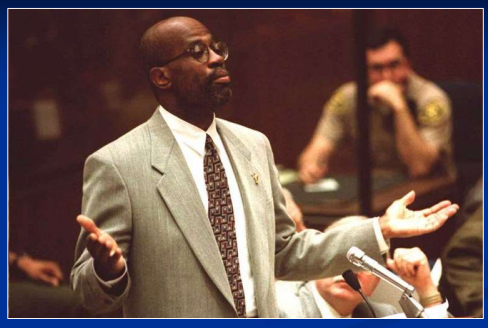

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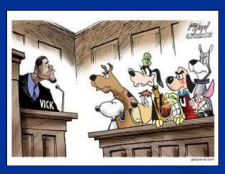
Opening Statements

- Purposes of opening:
  - Get their attention
  - Tell the story in a cohesive way
  - Develop rapport and confidence with the jury
  - Get them thinking (processing information) like you
  - Present your theme and theory in a memorable way



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Opening Statement

Powerful Openings:

- Advance theme and theory
- Tell a story
- Create word pictures using descriptive language
- Personalize the victim/witnesses
- Draw the sting on weaknesses
- Use visuals where appropriate

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Opening Statements

- What to Avoid:

-Excessive introductions

- The witness will testify that….

-What I say is not evidence…

-The evidence will show…

-The purpose of the opening statement…

- Inform about the law

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Opening statements

- Opening Outline
  - Theme
    - Communicate your theme and get the jury's attention
  - Narrative (Theory)
    - Preview the case with compelling storytelling
    - Deal with weaknesses up front and on your terms
  - Charges
    - Relate facts to charges
  - End with a call to action/Theme

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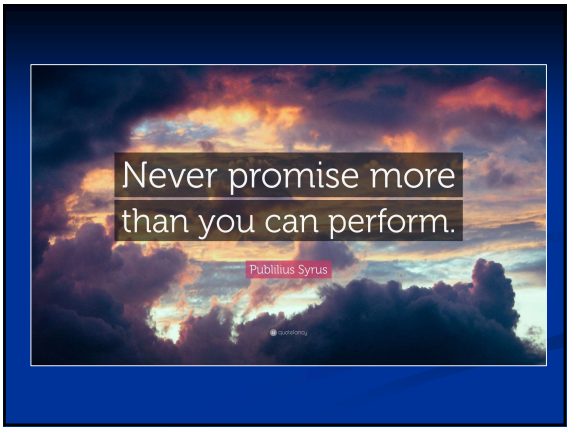

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Theme and Theory

- Theory
- "Why the LAW says you win"
  - Simple factual statement that incorporates all facts into a cohesive account.
  - Legal=elements (who, what, when, where)
  - Factual=why and how
- Theme
- "Why the jury WANTS you to win"
  - Moral Persuasion
  - "This is a case about…"
  - What did D do that deserves punishment?
  - What *values* do we share as a community that makes this illegal?

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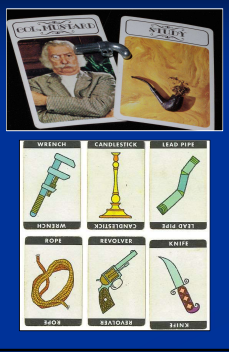
Theory



- How was the crime committed???
- Accomplice Liability or actual defendant acts?
- Actual or Constructive Possession?
- APC or Driving? Both?

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You can live without a theme; you will die without a theory.

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Theme

- A phrase or idea that explains the case and what the Defendant did that deserves punishment
  - What does this case boil down to?
  - Why should the jurors care?
- Often, the theme should address your case's WEAKNESS (*i.e.*, the defense)
  - How is he going to try to beat you?

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Don't Think Themes are Effective?

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State v. Adam Chavez

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Narrative

- The Best Story Wins:
- If you do not offer them the truth of the case through your narrative, they will create a story of their own
- The FACTS of the case are not the STORY of the case

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Jeff Bezos Banned PowerPoint in Meetings. His Replacement Is Brilliant

Narrative memos have replaced PowerPoint presentations at Amazon. Here are 3 reasons why.

By Carmine Gallo *Keynote speaker and author, Five Stars: The Communication Secrets to Get from Good to Great* @carminegallo

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1. Our brains are hardwired for narrative.

Narrative storytelling might not have been as critical for our survival as a species as food, but it comes close.

Anthropologists say when humans gained control of fire, it marked a major milestone in human development. Our ancestors were able to cook food, which was a big plus. But it also had a second benefit. People sat around campfires swapping stories. Stories served as instruction, warning, and inspiration.

Recently, I've talked to prominent neuroscientists whose experiments confirm what we've known for centuries: The human brain is wired for story. We process our world in narrative, we talk in narrative and--most important for leadership--people recall and retain information more effectively when it's presented in the form of a story, not bullet points.

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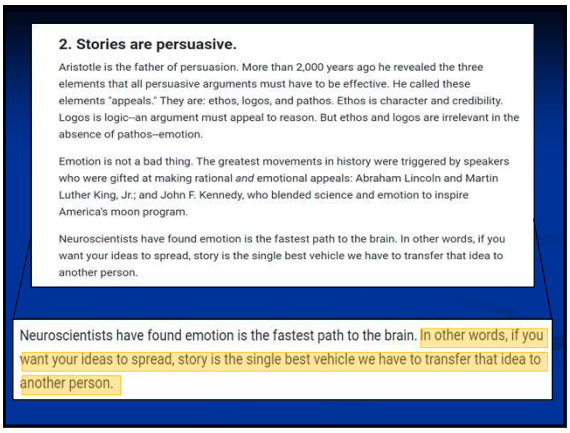
2. Stories are persuasive.
Aristotle is the father of persuasion. More than 2,000 years ago he revealed the three elements that all persuasive arguments must have to be effective. He called these elements "appeals." They are: ethos, logos, and pathos. Ethos is character and credibility. Logos is logic--an argument must appeal to reason. But ethos and logos are irrelevant in the absence of pathos--emotion.
Emotion is not a bad thing. The greatest movements in history were triggered by speakers who were gifted at making rational and emotional appeals: Abraham Lincoln and Martin Luther King, Jr.; and John F. Kennedy, who blended science and emotion to inspire America's moon program.
Neuroscientists have found emotion is the fastest path to the brain. In other words, if you want your ideas to spread, story is the single best vehicle we have to transfer that idea to another person.
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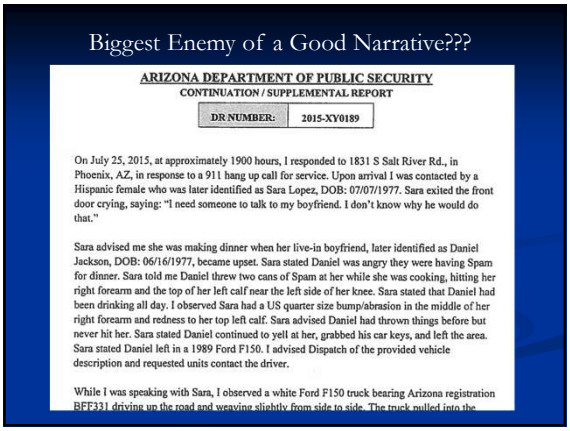
Biggest Enemy of a Good Narrative???
ARIZONA DEPARTMENT OF PUBLIC SECURITY
CONTINUATION / SUPPLEMENTAL REPORT
DR NUMBER: 2015-XY0189
On July 25, 2015, at approximately 1900 hours, I responded to 1831 S Salt River Rd., in Phoenix, AZ, in response to a 911 hang up call for service. Upon arrival I was contacted by a Hispanic female who was later identified as Sara Lopez, DOB: 07/07/1977. Sara exited the front door crying, saying: "I need someone to talk to my boyfriend. I don't know why he would do that."
Sara advised me she was making dinner when her live-in boyfriend, later identified as Daniel Jackson, DOB: 06/16/1977, became upset. Sara stated Daniel was angry they were having Spam for dinner. Sara told me Daniel threw two cans of Spam at her while she was cooking, hitting her right forearm and the top of her left calf near the left side of her knee. Sara stated that Daniel had been drinking all day. I observed Sara had a US quarter size bump/abrasion in the middle of her right forearm and redness to her top left calf. Sara advised Daniel had thrown things before but never hit her. Sara stated Daniel continued to yell at her, grabbed his car keys, and left the area. Sara stated Daniel left in a 1989 Ford F150. I advised Dispatch of the provided vehicle description and requested units contact the driver.
While I was speaking with Sara, I observed a white Ford F150 truck bearing Arizona registration

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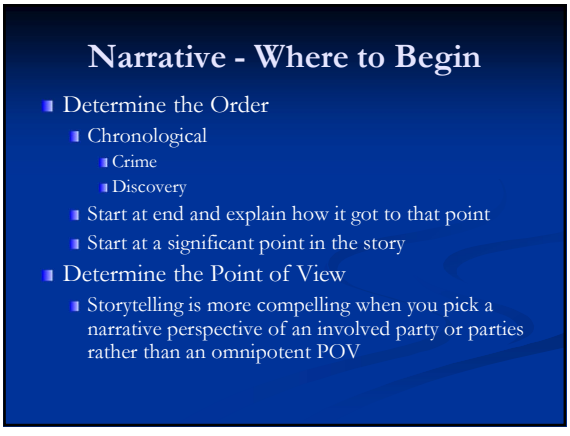
Narrative - Where to Begin
Determine the Order
Chronological
Crime
Discovery
Start at end and explain how it got to that point
Start at a significant point in the story
Determine the Point of View
Storytelling is more compelling when you pick a narrative perspective of an involved party or parties rather than an omnipotent POV

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Goal of Clarity and Simplicity:

- Possible Points of View
  1. The Victim
  2. The Defendant
  3. An important witness

The police officer who wrote the DR

Choosing an interesting narrative perspective will make your story much more engaging, compelling, and easy to follow

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Descriptive Language

- Contrast :
- "The Defendant pulled out a gun and pointed it at the victim" with…
- "The Defendant stabbed the victim 14 times causing horrible injuries" with…

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Descriptive Language

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Anticipate Defenses

Subtly address these

Do not make promises about the Defense's case

Think about how the Defendant plans to beat you

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"Bad" Facts

- Address problems head-on
  - Reluctant victim
  - Victim/Witness with criminal history
  - Mishandled investigation or lack of evidence

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Dealing with Weakness

- Attribute "bad facts" to the Defendant
  - Who chooses who the witnesses and victims are in a criminal case?
  - No fingerprints? No videotape? No DNA? – that's exactly the way the Defendant wanted it
  - Then incorporate into theme/theory: Defendant preys upon the weak; never the powerful, or those with a voice, only the defenseless, the kind he thinks no one cares about

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Dealing with Weakness

- Show to the jury you gave them the truth, and the whole truth
  - The weakness is not the big deal the defense will make it out to be
  - The weakness is actually a strength
  - Ultimately, the Defendant is still guilty: put the weakness in context

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State the Charges

- At the conclusion of your narrative, relate the facts to your charges in this case
- "For these reasons, Defendant is charged with…"

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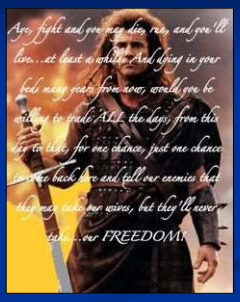
Finish Strong

- Theme
- Call to Action



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Opening Statements

- A word about delivery
  - Use of notes
  - Word choice
  - Movement for impact vs. pacing
  - Use of podium
  - Use of exhibits

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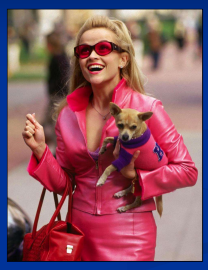
First Impressions Last



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Opening Example

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Questions???

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(480) 399-2439

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