



Alaska Bar Association Annual Convention 2018

Wednesday, May 9, 2018
Dena'ina Civic & Convention Center
Anchorage, AK

CLE # 2018-700

4.5 General CLE Credits

ALASKA BAR ASSOCIATION Annual Convention

MAY 9-11, 2018 • ANCHORAGE, AK

CLES HELD IN TIKAHNTU A & B

LUNCHEONS HELD IN TIKAHNTU C

WEDNESDAY, MAY 9

- 7:30 a.m. Breakfast, Registration, Exhibits Open**
- 8:20 a.m. Welcome Address**
- 8:30 a.m. U.S. Supreme Court Opinions Update**
(1.5 General CLE Credits)
Dean Erwin Chemerinsky and Professor Laurie Levenson
- 10:00 a.m. BREAK**
- 10:30 a.m. U.S. Supreme Court Opinions Update**
(1.5 General CLE Credits)
Dean Erwin Chemerinsky and Professor Laurie Levenson
- 12:15 p.m. Law Day Luncheon - Ticketed Event**
Separation of Powers: Framework for Freedom
Dr. Mara Kimmel
- 1:30 p.m. Alaska Supreme Court Opinions Update**
(1.5 General CLE Credits)
Dean Erwin Chemerinsky
- 3:00 p.m. BREAK**
- 3:30 p.m. Winning With Words: Building the Story with Persuasive Power**
(1.5 General CLE Credits)
David Mann, Storytelling and Persuasive Presentation Specialist
- 5:00 p.m. CLEs end**
- 6:00 p.m. Welcome Reception at the Anchorage Museum at Rasmuson Center, 625 C Street - Ticketed Event**
- 8:00 p.m. Hospitality Suite Opens at the Marriott Downtown**
Sponsored by the Anchorage Bar Association



Chemerinsky



Levenson



Mann



THURSDAY, MAY 10

- 7:30 a.m. Breakfast, Registration, Exhibits Open**
Section Chairs Breakfast (by invitation only)
-Tikahtnu D
- 8:20 a.m. Welcome Address**
- 8:30 a.m. Rules Versus Principles**
(2.0 Ethics CLE Credits)
Andrew Fastow, Director Advisory LLC
- 10:30 a.m. BREAK**
- 11:00 a.m. AI Application for Corporate Governance/Ethics**
(1.0 Ethics CLE Credits)
Andrew Fastow, Director Advisory LLC
- 12:15 p.m. Lunch - Ticketed Event**
Update on State and Federal Courts of Alaska



Fastow

THURSDAY, MAY 10 (CONTINUED)

- 1:30 p.m. CONCURRENT SESSIONS**
(1.5 General CLE Credits each)
- **Bridging the Gap: Connecting Generations in the Practice of Law**
-Tikahtnu A
Dan Negroni, launchbox365
 - **Exit Strategies for Retiring Lawyers**
-Tikahtnu B
Roy Ginsburg, Strategic Advisor to Lawyers and Law Firms
- 3:00 p.m. BREAK**
- 3:30 p.m. CONCURRENT SESSIONS**
(1.5 General CLE Credits each)
- **Practical Tips & Tools for Developing Business in Today's World**
-Tikahtnu A
Dan Negroni, launchbox365
 - **Law Practice for Sale: Strategies for Sellers and Buyers**
-Tikahtnu B
Roy Ginsburg, Strategic Advisor to Lawyers and Law Firms
- 5:00 p.m. CLEs end**
- 6:00 p.m. Reception and Dinner - Ticketed Event**
How to be a Man with Two Heads -
Scott Turow, Author and Attorney
- 8:30 p.m. Hospitality Suite Opens at the Marriott Downtown,**
Sponsored by the Anchorage Bar Association



Negroni



Ginsburg



Turow



FRIDAY, MAY 11

- 7:30 a.m. Breakfast, Registration, Exhibits Open**
Local Bar Presidents Breakfast (by invitation only)
-Tikahtnu D
- 8:20 a.m. Welcome Address**
- 8:30 a.m. Nix v. Whiteside: What to do when you believe your client wants to lie on the stand**
(1.5 Ethics CLE Credits)
- Moderated by: Jeff Feldman, University of Washington School of Law*
Panel Members: Scott Turow, Nelson Page, Bar Counsel, Cynthia Strout, Attorney at Law, Richard Curtner, Federal Public Defender
- 10:00 a.m. BREAK**
- 10:30 a.m. Orange is the New Black**
(1.5 General CLE Credits)
Piper Kerman, Author
- 12:15 p.m. Annual Meeting Luncheon - Ticketed Event**
Meeting is open to all members
- 1:30 p.m. Convention ends**



Kerman

Optional Add-On Friday, 1:30 p.m. and 3:00 p.m. Tikahtnu D
Individual Coaching by David Mann



Optional book purchase for signing available for \$14 each or bring in your own copy.
Testimony by Scott Turow • Orange is the New Black by Piper Kerman

ALASKA BAR ASSOCIATION

Annual Convention

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LUNCHES HELD IN TIKAHNU C

LUNCH PROGRAMS MAY BE ATTENDED WITHOUT PURCHASE OF A MEAL

TICKETED EVENTS

Wednesday, May 9

12:15 p.m. \$36

Law Day Luncheon

Separation of Powers: Framework for Freedom

Dr. Mara Kimmel

Robert Hickerson Partners in Justice Campaign

Rabinowitz Public Service Award

6:00 p.m. \$40

**Welcome Reception at the Anchorage Museum at
Rasmuson Center - 625 C Street**

Thursday, May 10

12:15 p.m. \$36

Thursday Luncheon

Update on State and Federal Courts of Alaska

Chief Justice of the Alaska Supreme Court Craig Stowers and the Chief United States District Judge Tim Burgess of the U.S.D.C for the District of Alaska

Justice Not Politics Alaska Campaign

6th Annual Human Rights Award

2018 Benjamin Walters Distinguished Service Award

25, 50, 60 year Membership Recognition

6:30 p.m. \$75

Banquet Dinner

Keynote speaker: Scott Turow, Writer and Attorney

Pro Bono Awards

Distinguished Service Award

Friday, May 11

12:15 p.m. \$36

Annual Meeting Luncheon

Meeting is open to all members with optional lunch purchase. Outgoing Board Members; passing the gavel; Awards

Alaska Bar Professionalism Award

Judge Nora Guinn Award

Layperson Public Service Award



Wednesday, May 9 | 8:30 a.m.

1.5 General CLE Credits

U.S. Supreme Court Opinions Update

Dean Erwin Chemerinsky

Erwin Chemerinsky became the 13th Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law.

Prior to assuming this position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law, with a joint appointment in Political Science. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science. He also has taught at DePaul College of Law and UCLA Law School. He teaches Constitutional Law, First Amendment Law, Federal Courts, Criminal Procedure, and Appellate Litigation.

He is the author of ten books, including *The Case Against the Supreme Court*, published by Viking in 2014, and two books published by Yale University Press in 2017, *Closing the Courthouse Doors: How Your Constitutional Rights Became Unenforceable* and *Free Speech on Campus* (with Howard Gillman). He also is the author of more than 200 law review articles. He writes a weekly column for the Sacramento Bee, monthly columns for the ABA Journal and the Daily Journal, and frequent op-eds in newspapers across the country. He frequently argues appellate cases, including in the United States Supreme Court.

In 2016, he was named a fellow of the American Academy of Arts and Sciences. In January 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States.

Education

B.S., Northwestern University (1975)

J.D., Harvard Law School (1978)

Laurie L. Levenson

Professor of Law

David W. Burcham Chair in Ethical Advocacy

While in law school, Laurie Levenson was chief articles editor of the *UCLA Law Review*. After graduation, she served as law clerk to the Honorable James Hunter III of the United States Court of Appeals for the Third Circuit. In 1981, she was appointed assistant United States Attorney, Criminal Section, in Los Angeles, where she was a trial and appellate lawyer for eight years and attained the position of senior trial attorney and assistant division chief. Levenson was a member of the adjunct faculty of Southwestern University Law School from 1982-89. She joined the Loyola faculty in 1989 and served as Loyola's associate dean for academic affairs from 1996-99. She has been a visiting professor at UCLA School of Law and a D&L Straus distinguished visiting professor at Pepperdine University School of Law. Professor Levenson currently leads the following programs at Loyola Law School: Capital Habeas Litigation Clinic, The Fidler Institute annual symposium, and the Project for the Innocent.

Education

AB, Stanford University

JD, University of California Los Angeles

***Additional materials for U.S. Supreme Court
Opinions Update will be included in a handout
that may be picked up at the registration desk
during the convention.***

ALASKA BAR CONVENTION

May 9, 2018

Laurie L. Levenson
David W. Burcham Chair in Ethical Advocacy
Loyola Law School, Los Angeles

I. Criminal law and procedure

A. Fourth Amendment

Byrd v. United States, 679 Fed.Appx. 146 (3d Cir. 2017), *cert. granted*, 138 S.Ct. 54 (2017). Whether a driver has a reasonable expectation of privacy in a rental car when he has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement.

United States v. Carpenter, 819 F.3d 880 (6th Cir. 2016), *cert. granted*, 137 S.Ct. 2211 (2017). Whether the warrantless seizure and search of historical cellphone records revealing the location and movements of a cellphone user over the course of 127 days is permitted by the Fourth Amendment.

Collins v. Virginia, 292 Va. 486, 790 S.E.2d 611 (Va. 2017), *cert. granted*, 138 S.Ct. 53 (2017). Whether the Fourth Amendment's automobile exception permits a police officer, uninvited and without a warrant, to enter private property, approach a house and search a vehicle parked a few feet from the house.

District of Columbia v. Wesby, 138 S.Ct. 577 (2018). Police officers had probable cause to arrest partygoers for trespass and the officers were entitled to qualified immunity.

B. Fifth Amendment

City of Hays, Kansas v. Vogt, 844 F.3d 1255 (10th Cir. 2016), *cert. granted*, 138 S.Ct. 55 (2017). Whether the Fifth Amendment is violated when statements are used at a probable cause hearing but not at a criminal trial.

C. Sixth Amendment

Weaver v. Massachusetts, 137 S.Ct. 1899 (2017). While exclusion of defendant's family from the courtroom during voir dire was a structural error, the defendant's claim of ineffective assistance of counsel failed because defendant did not demonstrate prejudice.

McWilliams v. Dunn, 137 S.Ct. 1790 (2017). An indigent defendant's right under *Ake v. Oklahoma* to meaningful expert assistance for the "evaluation, preparation, and presentation of the defense," requires that the defense expert be independent of the prosecution.

McCoy v. Louisiana, 218 So.3d 535 (La. 2016), *cert. granted*, 138 S.Ct. 53 (2017). Whether it is unconstitutional for defense counsel to concede an accused's guilt over the accused's express objection.

D. Guilty Pleas

Class v. United States, 138 S.Ct. 798 (2018). A guilty plea, by itself, does not bar a federal criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal.

E. Criminal trials

United States v. Sanchez-Gomez, 859 F.3d 649 (9th Cir. 2017), *cert. granted*, 138 S.Ct. 543 (2017). Whether the U.S. Court of Appeals for the 9th Circuit erred in asserting authority to review respondents' interlocutory challenge to pretrial physical restraints and in ruling on that challenge notwithstanding its recognition that respondents' individual claims were moot.

F. Forfeiture

Honeycutt v. United States, 137 S.Ct. 1626 (2017). Under 21 U.S.C. § 853(a)(1), a co-conspirator is only responsible for forfeiture of the property that he or she acquires; joint and several liability of coconspirators does not apply.

G. Double Jeopardy

Currier v. Virginia, 798 S.E.2d 164 (Va., Dec. 8, 2016), *cert. granted*, 138 S.Ct. 355 (2017). Whether a defendant who consents to severance of multiple charges into sequential trials loses his right under the double jeopardy clause to the issue-preclusive effect of an acquittal.



Wednesday, May 9 | 1:30 p.m.

1.5 General CLE Credits

Alaska Supreme Court Opinions Update

Dean Erwin Chemerinsky

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Wednesday, May 9 | 3:30 p.m.

1.5 General CLE Credits

Winning With Words: Building the Story with Persuasive Power

This keynote presentation will show you how to build your story to win. Everyone knows storytelling is important – but how is it done? How can a list of facts be transformed into an engaging narrative? David will outline the key ingredients that make jurors and prospective clients take action. David’s case story guidance has been a key factor in verdicts delivering several million dollars in damages, and he has also shown business leaders nationwide how to grow sales through engaging storytelling. With his own dynamic storytelling style, David will provide practical, effective techniques for building narrative power into openings, witness examinations, public speaking events, and CLE lectures.

David Mann

David Mann specializes in persuasive presentation skills and storytelling. A theater artist for over three decades, David now trains attorneys and business professionals how to use performance and storytelling techniques to win. He has spoken at Fortune 500 events nationwide, inspiring groups to use the power of storytelling and effective delivery to get results every time.

As a persuasive presentation specialist for lawyers, David has taught with NITA, Professional Education Group, Loyola School of Law in Chicago, and Louisiana State University Law School. He works with private firms in Minneapolis, Pennsylvania, and Chicago to develop opening statements, motions, and demand letters that combine careful wording, engaging storytelling, and dynamic delivery. With David’s storytelling guidance, lawyers are armed with powerfully persuasive arguments that win.

David’s approach is based on his background in the art of theater. He has performed or directed for the Guthrie Theater, The Children’s Theater Company, Great River Shakespeare Festival, and many other theaters in the thriving Twin Cities scene. He has written and performed five critically-acclaimed one-man shows, and he is the recipient of a Bush Artist Fellowship for Storytelling. David is a graduate of Northwestern University and the London Academy of Music and Dramatic Art.

David lives in Minneapolis, Minnesota.

WINNING WITH WORDS:

BUILDING THE STORY WITH PERSUASIVE POWER

Handout Packet



Curtain Up

A trial is a highly prepared, precise operation. A good attorney must engage a jury of ordinary people with complex data and ideas. Like a great work of theatre, all the elements must come together to create a cohesive and vivid picture in the minds of the jurors. But unlike a play, a trial may put real lives, reputations, and fortunes at stake. It is critical that impressions are managed and stories are clear.

The act of presenting and the art of storytelling are skills professional theatre artists develop over a lifetime. There is always more to learn, and practice is essential. This course presents the key concepts of persuasive delivery and storytelling for lawyers, based on techniques drawn from the performing arts. We begin with a re-examination of the central idea of any trial lawyer's preparation: persuasion.

Persuasion

Persuasion is about **how they'll hear**, not **what you'll say**. Though this sounds incredibly simple, it's actually quite counter-intuitive. We tend to prepare what we say as though we'll be speaking to ourselves - or someone who thinks like us. But that is rarely the case. In order to be persuasive it is critical to orient your words and ideas to the listener, based on whatever knowledge about them you're able to gather or perceive.

The Myth of Natural

Though its importance is undisputed, it's common for lawyers to spend much less time practicing their delivery than they do preparing the rest of the case. The prevailing idea - as it is for salespeople, teachers, politicians, etc. - is that all you need to do is simply "be yourself" at the moment of truth. That's when things go wrong, because it becomes painfully clear that there is no such thing as a "natural" delivery under such artificial circumstances. Actors know very well how much work goes into appearing to be natural and relaxed, on cue, every time. The same truth is key to every lawyer's success. Learning how to manage your face, body, gestures, and vocal inflections is a skill unto itself. There's nothing natural about it at all. But with practice, a lawyer can develop a courtroom persona that "reads" as natural to juries, witnesses, and judges, and projects the authenticity they want to convey.

Subtext

The word “subtext” is quite familiar to actors, but not a word that is common in everyday use. The concept, however, is present in every act of human communication. It’s the idea that there is an entirely separate message being conveyed that exists “under” the words. For actors, the goal is to manage the subtext so that it matches - or intentionally does *not* match - the words. For instance, a character may deliver the line “Please leave” to another character, but the tone and body language will convey the subtext “Please stay with me.” Managing the subtext is its own skill, and one that can greatly increase listener engagement through storytelling.

For lawyers, there are specific subtext messages that are desirable and others that are not. A good lawyer acts as a conduit between the case and the jury, giving a human face to the otherwise complex and static trial data. Much of this is of course done with words, but always remember to navigate the subtext as its own communication layer, filled with persuasive possibility.

The Three C’s

The following pages contain several specific presentation techniques for use in the courtroom. Though it is unnecessary for a lawyer to have the vocal and physical dexterity of an actor, there are many areas where a lawyer’s persuasive power will increase by managing the two tools of rhetorical delivery: voice and body. To make the voice and body techniques easier to remember, simply think of three primary subtextual messages that need to always be present when speaking in the courtroom: **clarity, compassion, and confidence.**

CLARITY

“I want you to understand.”

COMPASSION

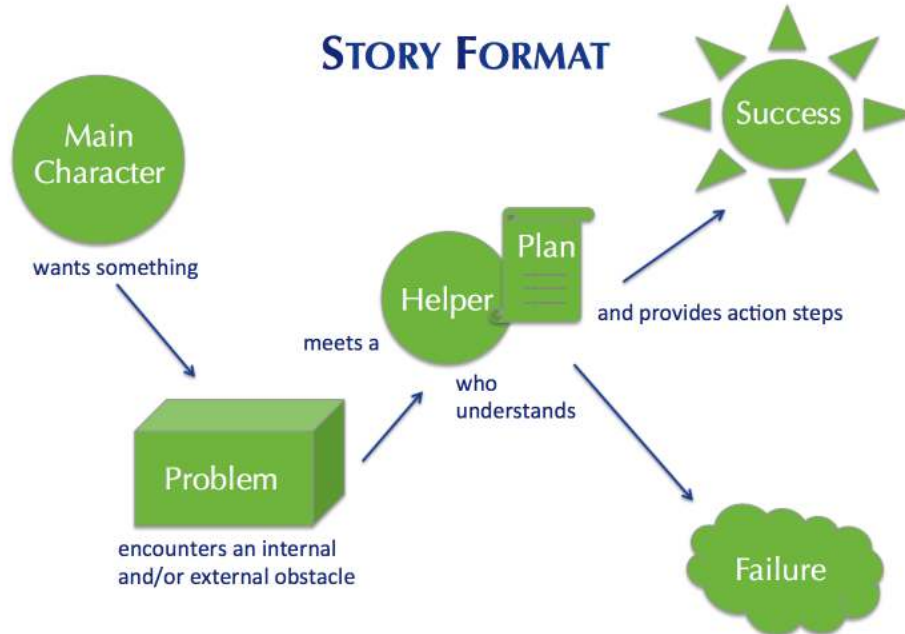
“You can trust me.”

CONFIDENCE

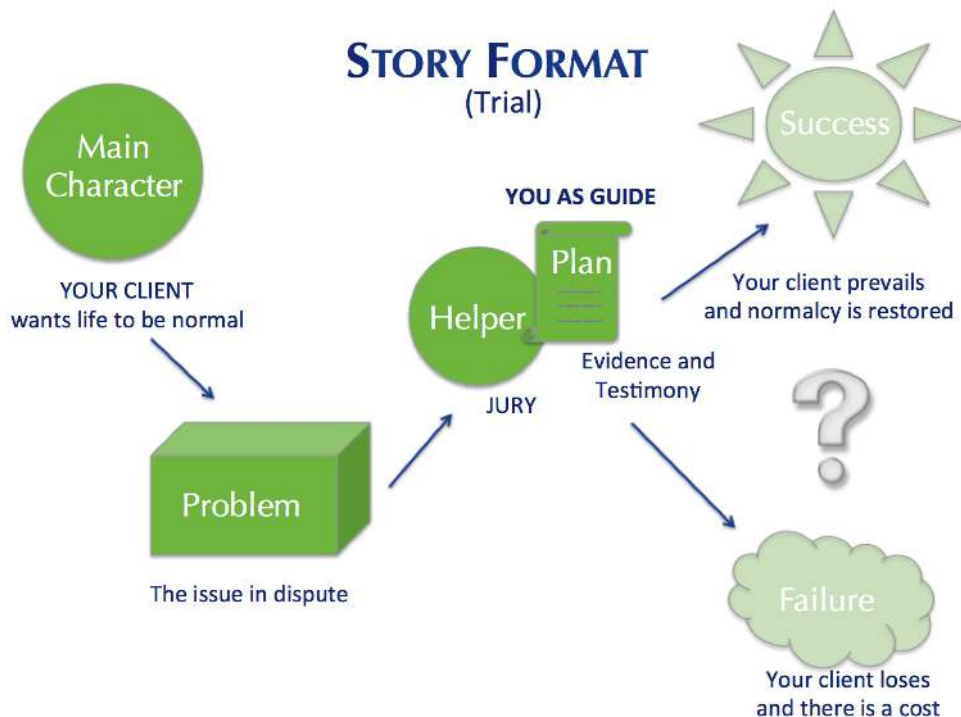
“I know where we’re going.”

For persuasive power with ordinary people - the jury - **all three** of these principles must be present. This is also their order of importance; without clarity, nothing else can happen; without compassion (humanness), it’s just a recitation of facts. Only once those two factors are established does anyone want to follow you.

In film, plays, and literature, stories tend to have a classic shape (below). There are hundreds of variations on *how* the story is told, but essentially they boil down to this format. Think *Star Wars* and *The Hunger Games*, as well as *Hamlet* and TV ads.



In trial, the story of your client is the story you'll tell many times. Below is a case story shape, modeled on the above classic artistic shape. Note that the primary difference is that where classic stories are finished, this story could go either way.



Opening Statements

Opening statements are a lawyer's only chance to make a first impression. From a storytelling point of view, this is the most important part of your time in front of the jury. Studies have repeatedly shown that a jury's first impressions of you, the case, and the story are retained throughout the entire trial. Once established, those impressions are very difficult to change even with the soundest arguments. Therefore, the storytelling aspects of opening statements deserve a great deal of attention.

A lawyer's primary goal with an opening statement should be...

To establish **narrative, characters, motives, and conclusion**
by giving the story **humanity, structure, and drama**
through the use of **clear language, clear images, and clear ideas.**

The Idea of Story

It is often said that a case is a story. The idea is if you can tell the story well, you stand a much better chance of winning. Within the case, there are several opportunities to tell stories: the opening statement, the summation, and at various points in the trial proceedings as witnesses articulate their points of view. But despite the fact that it's unquestionably part of a successful case, the skill of telling a story well is often underdeveloped. It is a true art which, when done well, appears effortless.

The first step is getting clear about what a story is, and what it is not. The word "story" is used liberally, but it's not just a catch-all term for a list of facts or events. Likewise, a story isn't complete if it only consists of a highly-charged event or interesting character. And of course, a clinical essay with a well-shaped argument doesn't equal a story. It is important to think of it as a specific type of entity. An engaging story has these foundational elements:

1. **A good story engages the mind and emotions at the same time.** A story must be logical and coherent (mind) so that the drama and intrigue (emotions) function effectively. Clearly, these principles apply to stories told for entertainment and artistic purposes, but the same rules apply for persuasive stories used in the courtroom. Stories that tilt too far in either direction are ineffective. A narrative that covers the correct series of events may be logically sound, but it won't capture the imagination. Likewise, a story that relies too heavily on mood and sentiment will seem spineless and soft. It's the balance of both elements that grabs a listener and keeps them engaged.

The Idea of Story, cont.

1. **A good story allows us to see the events through the eyes of a human.** We engage in a story when we can identify with the protagonist - even if the protagonist is a person who doesn't share our values. All great stories have an engaging central character or two, because without that it's simply a setting and a plot. Humans like to hear about other humans, and painting those characters vividly is vital to the persuasiveness of a story.
2. **A good story has a before-during-after shape.** We need to know what happened, even if the events are told out of chronological order. By the time the listener hears the end of the story, they need to be able to think of it as having a logical order of events that is crystal clear. Too much "during" without enough "before and after" will reduce the sense that something important happened. The contrast makes the story come alive. A story with a clear narrative, engaging characters, and mind/emotion appeal stands the best chance of being highly persuasive.

Memorization and Using Notes

There is no practical way for a lawyer to memorize every word of the opening statement, summation, and every direct and cross examination. Yet preparation and specificity are required. So where is the middle ground between the extremes of total memorization and spontaneous invention? The answer lies in a combination of bullet-point notes and key point memorization.

1. **Memorize all first lines.** Whether it's the first line of opening statement, the first line of the summation, or the first in a series of questions, it's easy to memorize a single important sentence. The effect will be powerful; you'll seem to be prepared and focused, even if the next three or four sentences are crafted on the spot.
2. **Use bullet-point notes.** Make notes for your internal content that spark your memory, and then study the page in advance so you only need to glance at it to know what you're saying. Make the bullet-point phrases large enough to see while standing, and brief enough so that you can instantly grasp the essential meaning.
3. **Memorize all transitions.** This applies to longer statements. Memorize the sentences that connect your larger points. This allows you to talk freely about your point, then confidently wrap it up and move to the next idea without stumbling and hesitating, or worse, looking at a sheet of paper and reading. Your confidence will increase your ability to persuade.
4. **Memorize all last lines.** If you know how you're going to wrap up the speech, you'll eliminate a lot of hesitation along the way. Memorize the last line, or better, memorize the entire last paragraph. It's easier to do that it sounds, and it will give you enormous confidence on your feet.

Building Your Story

1. **Grow the story from short to long.** It may be counterintuitive, but it's much more effective to give the jury several increasingly detailed accounts of the story rather than beginning at the beginning and simply trudging through the whole thing. Start with a one- or two-sentence version that captures the essence of the conflict. Then give them a short paragraph or so that gives the overall arc of the story, focusing on the main dispute. *Then* begin with the detailed account. The reason to do this is that we're in the YouTube culture; if they don't get the essence immediately, they might "click you off" mentally. Don't make them wait for the guts of the story - give it to them right away and add detail.
2. **Use concrete ideas rather than lofty statements.** It's always tempting to speak in huge ideas right away; it makes you feel like you're talking about something of great importance. But people can't engage with that if they don't know what you're talking about. So it's not very effective to say "This is a case about inattention and lack of responsibility etc." It's far better to start with the real world: "Dr. Dawes woke up after a late night in a home that was not his own, drove across town, and prepared to conduct a triple bypass surgery on the plaintiff."
3. **Use visuals strategically.** If you choose to use powerpoint or any visual aid, remember to keep it in the background. *You* are the live human being in the room and you should always remain the focus. Also, it's sometimes more effective to use low-tech options like a flip chart rather than slick visuals with lots of production value. It adds to the sense of authenticity.
4. **Engage your audience in the first minute.** As in #1 above, it's critical that the "audience," the jury, is engaged immediately. So start with something interesting. Action is interesting, not ideas (at first). Make sure the first minute of your opening is approached something like a movie preview: give them something powerful, active, and immediately recognizable as important. *Show* them it's important by the action you depict. Don't settle for *telling* them.
5. **Build your characters by showing, not telling.** The same principle applies to characters. For instance, this is *telling*: "He was a hardworking man who followed the law." This is *showing*: "He went to work every day for 27 years and in that time he never had one safety violation."
6. **Use action as much as possible.** Here's an example of passive language that's easily forgettable: "The company's firing of Ms. Turner was in violation of the policy that states employees must be given three warnings." That's language from a legal brief. It sounds distant and cerebral, and therefore not very engaging. Here's active language that communicates the same basic idea: "The company fired Ms. Turner before they gave her the three warnings required in their own policies." Again, action makes people instinctively sit up and take notice. It's like watching the scene unfold in front of them. Passive language allows them to comfortably sit back and observe from a distance, which isn't to your advantage.

Here is the quick guide for constructing an effective story for use in the courtroom. Details that apply to these steps are outlined on the following pages.

1. Use your case **themes** to anchor your story
2. Find the story moment you want to depict and decide on a **story structure**
3. Include and elaborate on important **details** - eliminate unimportant details
4. Develop the **characters** through dialogue, description, and action
5. Use **rhetorical devices** from the list
6. Choose **wording** for clarity and impact

1. Themes

Developing a case theme is, of course, a central part of your trial preparation. That theme or themes can also be a guiding force when constructing an illustrative story, especially for use in opening statements. The theme can help you choose what's important to leave in and what's important to leave out. Stating the theme can be an effective way to end your story, and the words of your theme can be used throughout. The greatest stories in our culture have these same themes, so they're a great foundation for storytelling.

IN WORDS

love, hate, revenge, fear, greed, power, accountability, cheating, betrayal, quality...

IN PHRASES

bad character, David vs. Goliath, profit over safety, lack of leadership, stacking the deck...

IN QUESTIONS

Why did the woman wait? Why did he ignore his responsibility? Can appearances be deceptive?

2. Story Structure

This is the skeleton of your story. All options must provide the "five Ws": Who, What, When, Where, Why

STRAIGHT NARRATIVE

Before, during, after a single event

"Mr. Harrison is reading...criminals rob him...he is left alone and scared."

FLASHBACK

Telling the end first

"Mr. Harrison is alone and scared...10 minutes earlier he was reading...criminals rob him..., etc."

PARALLEL ACTION

Two concurrent stories that intersect

"Mr. Harrison is reading...across town, the defendants get in their car...Mr. Harrison pours his tea..., etc,"

PAST, PRESENT, FUTURE

Life before the event – the event itself– life after the event

"Mr. Harrison worked his whole life for low pay...now he's looking forward to retirement...this night, he's reading....criminals rob him...he's left alone, penniless, scared...now he'll have to move, keep working...,etc."

3. Use of Detail

A story only comes to life through vivid detail. But too much unimportant detail can muddy the water and actually rob a story of life. Choose tactile details that anyone would recognize rather than legal details that will only complicate the story. The four sensory areas to look at are as follows:

VISUAL IMAGES

"Bill drove a red car and Jim drove a black car"

AURAL SENSATIONS

"There was loud music in the restaurant that day"

PHYSICAL SENSATIONS OR FEELINGS

"It was really hot outside," or "Jim felt suspicious"

CONCEPTS

"This house was in the wealthiest area of the city"

4. Character Development

DESCRIPTION

Details about the character's manner, psychology, or physical appearance. Keep this sparse and selective – too much description can begin to work against you.

DIALOGUE

Quotes from the character that illustrate how they deal with the world. There is plenty of material in depositions to draw from.

ACTION

Choices the character makes that result in action. These objective facts can reveal a great deal about the character.

5. Rhetorical Devices

RULE OF THREE

"He has been robbed of his money, his possessions, and his peace of mind." "I came, I saw, I conquered." "Government of the people, by the people, and for the people."

ALLITERATION

"That dark, deceptive, dishonest corporation." "She is a virtuous, venerated, valuable employee." "With cunning, callousness, and craft, the defendant repeatedly showed contempt."

ANTITHESIS

"This is not a story about money, it's a story about honor." "Mr. Jones has enjoyed a free ride while his victims have paid a heavy toll."

5. Rhetorical Devices, cont.

RHETORICAL QUESTIONS

"Did this in Caesar seem ambitious?" "Is it fair that Mrs. Walters will live a diminished life?" "Can this be called fair?" "Will Jake now ever believe in the American Dream?"

PARALLEL CONSTRUCTION

"Never negotiate out of fear, but never fear to negotiate." "I got my mind on my money, and my money on my mind." "Ask not what your country can do for you - ask what you can do for your country."

REPETITION

"Free at last! Free at last! Thank God Almighty we are free at last!" "Did he say this? Yes. Did she say that? Yes. Did the company agree? Yes."

6. Wording

USE PLAIN LANGUAGE

Don't do this:

"When the delivery vehicle made collision with her automobile, her left femur was severed in three places."

Do this:

"When the 18-wheeler smashed into her Ford Focus, her leg was shattered."

EXPRESS ONE THOUGHT PER SENTENCE

Don't do this:

"Two weeks after the crash, Bob was diagnosed with ruptured discs in his neck and back, which went undisputed by the radiologist, the physician, or the surgeons, who all put their opinions in writing that day."

Do this:

"Two weeks after the crash, Bob was diagnosed with ruptured discs in his neck and back. There was no dispute among the radiologist, the physician, or the surgeons. They all put their opinions in writing that day."

HUMANIZE US AND DEHUMANIZE THEM

Don't do this:

"My client, the defendant, has been wronged by American Utilities, Inc." Do this: "That corporation took advantage of Mr. Jones."

SPEAK IN PRESENT TENSE (where applicable)

Don't do this:

"Before he could get up to answer the door, those two men smashed the lock and pushed the door open."

Do this:

"Before he can get up to answer the door, those two men smash the lock and push the door open."

OPEN WITH IMPACT

Don't do this:

"Members of the jury, I'd like to begin by outlining the ideas I'll present to you over the next few days..."

Do this:

"On June 8, 2011, Mary Evans arrives at work and is called in to the HR Director and told to clear out her desk..."

VOICE

Voice is the actor's primary expressive tool. Study of vocal technique for actors can take many years, but the three essential ingredients are very simple:

TONE – the pitch and emotional quality of the voice

PACE – the rate of speech and the use of silence

VOLUME – the energy of the voice

Use natural phrasing. Juries listen to ideas, not individual words. So make sure to speak in clusters of thought and place your pauses naturally between the ideas. Pauses can be used for effect, but only very sparingly. People catch on to that technique quickly and can become numb to it. The jury needs to get the sense that you are communicating a series of concepts that add up to a story. Unnatural phrasing can have a negative impact, cause confusion, and cost you valuable relationship currency with the jury.

Vary your tone for emphasis. You can “show” a jury what to pay attention to by simply managing your tone. Avoid repetitive inflection – it will become monotonous and interfere with communicating clear ideas. Stay conscious of the fact that a jury is taking in an enormous amount of new information. They need that information to be delivered with emphasis that tells them what’s more important and what’s less important – otherwise they’ll dismiss all of it.

Shift tone for effect. It is very effective to intentionally shift tone if you need to explain a detail of the case. For example: “The company was negligent. (shift) Here’s what I mean...” This subtle technique will help the jury refresh their listening ears and pay closer attention to what comes next.

Articulate. Pronounce your words clearly and slowly. Don’t mumble or “swallow” the words. Clear articulation takes continual practice – it’s not usually natural for anyone. But it’s worth the effort. Articulating clearly means your ideas are clearer. The difference between bad and good articulation is like the difference between crumpled clothes and pressed clothes. They both serve the purpose, but one makes a substantially better impression. Practice by reciting familiar material in a large room and over-emphasizing every syllable. It will pay off when you’re in the courtroom.

Question like you mean it. Very easy to forget, especially after rehearsing for a long time. Questions (especially questions you already know the answer to) can become rote and disengaged. But remembering to question in an interested tone can make an enormous difference in the answer. Witnesses need to be encouraged to elaborate (if that’s what you want), so question like you truly care about the answer. It can create a conversation out of what would otherwise be an interrogation.

Eliminate verbal filler. Cluttering your speech with “OK, and...” or “you know” or “like” or a lot of “um, ah, er” will only make it look like you don’t trust yourself, which makes it virtually impossible for the jury to trust you. This is why it’s vital that you know your words cold and practice your material. By the time you’re in the courtroom, it’s too late to tell yourself to stop adding filler.

VOICE

(continued)

Sound confidential at times. Use a lower tone that communicates "this is just between us...usually I don't say this." You may have practiced a certain section many times and know exactly where you're going. But instead of striking an ordinary, neutral tone, try using a variety of tones. Creating a sense of confidentiality between yourself and the jury (or witness) can help build trust.

Don't read. It is critical that you make a human connection with the jury. That's not possible if your face is buried in a sheet of paper, reading prepared remarks. There will be times when you must refer to notes occasionally, but keep it to an absolute minimum. The jury will only trust you and be on your side if they believe you are talking to them directly – no filter, no artifice, no notes. This takes practice, but it pays off every time.

Slow down and let the words live. The human connection happens between the words, so respect that with your phrasing. When used sparingly, pauses can be a chance to build a sense of trust between you and the jury. Speaking slowly and confidently gives the jury a chance to process what you're saying as you say it. Of course there's a limit - speaking too slow isn't good either. So think of your rate of speech in walking terms as a stroll – not a jog and not a crawl.

Maintain energy to end of line. The last word of the sentence is just as important as the first. Keep driving toward the end of the sentence, otherwise information can get lost and you will appear unsure of yourself.

Relax your voice. Strive to keep your neck and shoulders relaxed in order to strike a natural, relaxed tone in your voice. Body tension can become vocal tension, which starts to sound pinched or gravelly. Juries can pick up on your vocal tension and instinctively perceive your nervousness. Tension breeds tension and you can end up in a downward spiral. So remember to relax your upper body muscles while someone else is speaking – when you speak again you'll appear refreshed and energized.

Speak louder than normal. Fill the space with your vocal presence. This is as much about projecting knowledge and confidence as it is about being heard. If a jury can't hear you, all the work you've done constructing a sound case will be lost.

Emphasize antithesis. Facts, of course, become much clearer when contrasted with opposing facts. Simply stating that contrast isn't enough, however – it has to be emphasized with your voice. In order to make a lasting impression on the jury, it's important to paint the picture with your inflection: "right" and "wrong" must sound different. "Mrs. Smith" and "that corporation" must have two distinct inflections that communicate your subtext.

Practice out loud. There is no substitute for this. You can feel confident and think confidently, but unless you practice it you'll never appear confident to a jury. You can know what you're going to say and have it written out very clearly, but speaking it in a large room under intense scrutiny is a very different matter. In preparing for a trial, your voice needs as much practice as your mind. Only making a cursory effort at practice (doing it quickly in a whisper, paraphrasing to save time, rehearsing "in your head" but not out loud) will result in you giving the impression that you're not prepared or confident – even if you are.

BODY

The physical body can communicate messages that words alone cannot. First impressions are usually based on body language, and can be very difficult to change once they're established. Body language is as much about the face as the body, so think of it as being composed of two general areas:

FACE – eye movement, facial expression, and head movement

BODY – gestures, posture, how clothing is worn

Eye contact. There is simply no substitute for the power of eye contact. Make eye contact with each jury member. This will create the sense of a bond that goes beyond words, and tell the jury your primary concern is to guide them. Instead of addressing them generally by sweeping your gaze over the entire jury box, land on individuals for a sentence or two each. By the end of your opening statement you will have created a genuine bond with the entire group. Also, when using visual aids, make sure to spend more time making eye contact with the jury as opposed to looking at the photo, chart, or other supplemental item.

Relax and pay attention. Be present. If your body is always moving or ungrounded, you'll inadvertently communicate that you're really not there. Be ready to listen as well as talk, and be conscious of the fact that you're being watched all the time. Relaxing the tension in your body will immediately bring you back to the present if you find yourself mentally racing or getting nervous.

Listen with your face. When listening to an answer from a witness, remember to use more than your ears. Give something back to the witness through nods, raising eyebrows, eye expression, smiles, and other facial movements. Keep it appropriate and subtle, of course, but remember that the slightest response will encourage a better answer. You'll also be giving the jury valuable information about your opinion of the witness, the subject, and your ability to be more than a question machine.

Eliminate physical "static." Fidgeting, shuffling of feet, and all other extraneous movement only serves to tell the jury that your primary focus is on yourself and not them. Keep in mind that your body movement is more visible to them than it is to you. You may not even be aware of the fact that you're flicking your wrist nervously, messing with your pen, or gripping your pockets. But the jury is acutely aware of it and making continual judgments about your competence, credibility, and trustworthiness.

Use gestures to help explain details. It's usually best to keep gestures subtle and fairly neutral but when you need to emphasize a point, specific gesturing can help paint the picture and create an image. Juries consist of ordinary people who respond best to visual communication. Over the course of a trial they hear a lot of words. A well-placed gesture of explanation can be a welcome shift in the routine and help you to create a more lasting impression with a particularly important point.

Relax and stay open. Too much body tension can unintentionally seem resistant, secretive, and unpredictable. Return to a relaxed, neutral position (either seated or standing), and remember keep your body as open as possible.

BODY

(continued)

Smile when appropriate. Very easy to forget, especially late in the trial. Of course, trials are primarily serious affairs that often focus on grave matters. Leavening that gravity with smiles and lighter facial expressions can help a jury to relax, and ultimately to trust you.

Open your palms. This will communicate friendliness, nothing to hide, and receptiveness. Don't grip a pen, notebooks, chair backs, podium sides, or anything else. It may feel vulnerable at first to let go, but trust yourself. The jury is watching every move you make and needs to receive constant messages that you are secure, compassionate, and human.

Open your body. Keeping your chest held proudly, your arms in a relaxed ready position, and your legs uncrossed will give the jury a visual indication of your honesty and confidence. Remember the neutral standing position, and refresh it often. It will help to ground you and allow your body to project a relaxed openness that invites a jury to listen to you.

Relax and move slowly. Keep your movements graceful and slow to project strength. Projecting an air of knowledge is as important as the knowledge itself. It's important to keep the energy up, but energy is often confused with speed. Think of certain animals in nature – lions, horses, bears – and how much power they convey by harnessing their physical energy and staying relaxed. The more you practice this, the more you actually begin to feel more confident and authoritative. The mind often follows the body's cues, even though we usually think of it the other way around.

Stand and sit up straight. As the jury's guide, you need to show that you're in control of yourself first. All the rock-solid logic in the world can't make up for sloppy presentation. Maintain your professional, confident posture even when seated. Your credibility may depend on it.

Keep your hands still between ideas. Too many hand-to-face gestures will seem distrustful and secretive. Likewise, nervous gestures like pulling at ear, biting the end of a pen or foot-tapping will seem hesitant and weak. This is the purpose of finding a natural "ready position." There will be long segments when you don't necessarily need to use your hands – don't give in to the temptation to let your energy come out in awkward ways.

Breathe. This keeps you calm, which means you'll project a sense of calm to the jury. A compassionate, trustworthy person is calm, not short of breath. Also, you'll give yourself strength by making a conscious effort to breathe deeply. Your voice needs breath to work properly – breathe in to your gut and out on the words. Your mind also needs oxygen to function at its highest capacity. This sounds easy enough, but with the pressure and scrutiny of a courtroom it's easy to forget to breathe fully. If your breathing is too shallow you'll not only appear weaker, you'll actually be weaker. Breathing is the first step in relaxation, which is the initial stage of confidence, authority, and victory.

Ready Position Options

Choose your most comfortable position as a resting place between larger gestures.



Open Fingers



Light Touch



Talking Hands



Active/Relaxed

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