

Effective Storytelling in the Courtroom: Or How to Keep Your Jurors Awake (Part Three)

By Dr. John F. Sase

“Why, may not that be the skull of a lawyer? Where be his quiddities now, his quillities, his cases, his tenures, and his tricks? Why does he suffer this mad knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Hum! This fellow might be in’s time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries: is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his purchases, and double ones, too, than the length and breadth of a pair of indentures? The very conveyances of his lands will scarcely lie in this box; and must the inheritor himself have no more, ha?”

– William Shakespeare, English playwright, *Hamlet* (5.1.97), Hamlet to Horatio

In this month’s column, we conclude our three-part series on the philosophy and methods of storytelling used in screenwriting as adapted to the practice of trial law. I (Dr. Sase) write and produce videos about various topics in Economics. In order to raise the bar and to challenge myself, I participated in a screenwriting workshop this past spring with Joel Silvers, who is my teaching colleague and film mentor at Wayne State University. During my studies, I garnered knowledge that I realized would be useful to the legal community at large.

In the first two installments of this series (available at www.saseassociates.com/legalnews.html), I introduced the use of dramatic-storytelling methods, explored the goals of a story and its characters and considered the developmental arcs for each, and discussed the concept of Jury as Audience. In addition, we presented tools and techniques with which to circumvent the hardwiring of human-cultural archetypes and affirmed that the purpose of effective storytelling in the courtroom is to connect and communicate with both judge and jury. In the conclusion of this series, we will share some final concepts and methods of the art form with our readership. These include an overview of the Principle of Antagonism, finding and clearly identifying the conflict in the case-story, and defining the spines of both the characters and the courtroom stories. We hope that our presentation of these topics will help attorneys to grow as directors of their teams at trial.

Animal Spirits in Law and Economics

The Principle of Antagonism lurks in the courts of law. Without the existence of a dispute between plaintiff and defendant that could not or would not settle before trial, the case would not have proceeded to court and to the attendant jury. As with any good story, a struggle occurs between a protagonist and antagonist in the courtroom. However, each side may envision itself as the protagonist and may act as such in confronting an antagonist on the opposing side. Most parties enter court with the belief that they stand in the right, even if they do not take the extreme stance of “We are good and they are evil.” Nevertheless, each side must present the image of basking in the light of truth when they confront the jurors. If one party presents their side of the case as the protagonist and the opposing side does not, the opposing side places itself at a great disadvantage in a realm where truth can unfold as a form of fuzzy logic.

In his book *Story: Style, Structure, Substance, and the Principles of Screenwriting* (ReganBooks, 1997, 2010 Kindle Edition), screenwriting guru John McKee explains the Principle of

Antagonism; “A protagonist and [his/her] story can only be as intellectually fascinating and emotionally compelling as the forces of antagonism make them.... The more powerful and complex the forces of antagonism opposing the character, the more completely realized character and story *must* become. ‘Forces of antagonism’ doesn’t necessarily refer to a specific antagonist or villain.... [B]y ‘forces of antagonism’ we mean the sum total of all forces that oppose the character’s will and desire.”

What does this mean to us? It means that both plaintiff and defense pour energy onto the negative side of the scale. Whether or not they intend this outcome or even understand what transpires, this action serves to bring the respective protagonists toward a complete realization of their individual roles while fueling the case to reach a satisfying climax for one of the parties.

**“Never Forget That Everything Hitler Did in Germany Was Legal.”
--Dr. Martin Luther King**

Antagonism enters in the courtroom of its own accord. It is up to attorneys to understand it, to work with it, and to use it effectively—that is, to the advantage of the client. In order to accomplish this objective and to carry the result toward the ultimate goal in a case, it is crucial to identify the primary value and the accompanying positive and negative charges. It is these dualities that serve to drive along a case to its conclusion. McKee and other screenwriters have categorized these dualities as three principal types. The first type contains contradictory values. In this simple duality, one value exists in direct opposition to another. For example, Injustice stands as the contradictory value to Justice. Injustice is the void that contrasts the fullness of Justice, the referential quality needed and provided.

Positive and negative charges that appear Contrary are more prevalent in societies with advanced legal systems. In this duality, the opposing charge is only somewhat negative, not fully opposite. If we accept the common definition of Justice as the practice of giving others their due in a fair and equitable manner, then the quality of Unfairness reflects a weakness in the total fulfillment of Justice. However, the prior provides a point of argument without total denial of the existence of Justice. The positive and negative charges of Justice and Unfairness appear most often in U.S. courts of law because cases are evaluated for their merit before proceeding through the legal system.

The third duality exists within the Force of Antagonism as a double negative—the Negation of a Negation. Though persons in the realm of Mathematics may claim that such a duality must cancel to positive, matters grow increasingly worse in real life. Following our current thread, this Negation of a Negation appears evident when Justice conflicts with Tyranny, a quality that skulks at the darkest limits of human nature. Human history tells us that tyranny can arise anywhere at any time. Sometimes Tyranny defeats Justice; at other times, Justice conquers Tyranny, though never eradicates it. McKee expresses the duality of Justice/Tyranny as a form of societal self-hate by saying, “The absolute depth of injustice is not criminality, but ‘legal’ crimes committed by governments against their own citizens.”

Uncovering Spines

In our opening quote, Hamlet discourses to Horatio while the gravedigger uncovers skulls. Let us now turn our attention to uncovering the spines (the schematic of action building to the climax)

of the overarching story and the characters at court. These characters may take the form of plaintiff or defendant as well as judge, jurors, witnesses, or attorneys. To begin the process of discovery, the writer might consider developing supplemental sheets that include a character list, the major outer goal and fundamental inner need of the protagonist, and the premise (aka character arc) and adapt them to a trial situation. These sheets can help in the preparation of the case strategy. They serve as aids for both memory and communication as everyone on the legal team considers the big picture. If an attorney goes to court with the assistance of colleagues and support persons, this technique provides a valuable tool to keep everyone on the same page.

The character list identifies persons appearing in court, whether or not they speak. Part of the purpose of developing this list is to identify who will interact, how they will interact, and in what preferred sequence. As discussed in Part One of this series, the protagonist may be the plaintiff or defendant. Nevertheless, one should express the major-outer goal in one concise sentence that clearly states the conscious desire of the protagonist. This will provide jurors with a simple image upon which to focus. In addition, the expression of the fundamental inner need of the protagonist should be the same length as the outer-goal statement. However, the inner need, which may or may not be expressed verbally in court, should reflect both the unconscious desire and the underlying emotional need of the protagonist. Understanding this statement about inner need helps one to build connection with and empathy from the jurors. Finally, the premise sheet outlines the character arc of the protagonist. As all humans do throughout their lives, jurors have learned to follow a simple and clear premise in a story. Therefore, this statement helps one to connect and communicate with jury members.

The storyline of a case has a spine that is determined through the initial setup and exposition, a couple of key turning points that may be constructed around a specific witness and testimony. In addition, the storyline includes a climax that brings the entire argument to a head for the jury. This understructure is necessary in order to maintain momentum and to hold the attention of the jurors through the unfolding of the case-storyline.

The spine of the principal character helps to identify the motivation--the inner needs and emotional motives--that takes the action of the case to its final goal. The relationship of motivation determines the spine of the character. The spines of principal characters are essential to define clearly who they are, what they want, and why they want it as well as what actions they have taken or are willing to take in order to achieve their goals. If any of these elements go missing, the character lines appear confused and unfocused to the jurors.

In her book *Making a Good Script Great* (Samuel French, Inc., 1994), script consultant Linda Seger suggests a process to uncover spines that we will adapt to our current application. First, freely write the presentation that forms the story that will be told to the jury. Then, rewrite it a few times until you are comfortable with it. Next, read it aloud to your colleagues, pets, or stuffed animals.

After reading your presentation aloud, remove certain information in order to determine the elements that slow down the story. The objective of this step is to reduce the presentation to its essentials in order to give it movement and clarity. Usually, the first things to pull are lengthy backstories, jarring flashback material, and long speeches. At this juncture, it is time to ask the following questions:

1. Is the progress of the character motivated by action or by talk? If appropriate, you may find it more effective to communicate with the jury by showing rather than telling. This approach will help to move along the case.
2. In your presentation, can you identify a clear moment when the character enters the story? This point of solid identification is important to jurors as it will help them to maintain rapt attention.
3. Why has a character begun to act? Not answering this question clearly by either words or actions leads to confusion. In turn, this will cause a breakdown in communication with and empathy from the jury.
4. What important goal does the character have? Present this answer compellingly in order to move the case forward.
5. Does the character strive actively or passively to reach his/her goal? An active character tends to develop greater empathy with the jurors. Presenting action dramatically and feasibly helps to move along a presentation. Relational elements that lead the character to the achievement of his/her goal may provide subtle ways to drive the action as well.

Edit the presentation to the elements that remain absolutely essential. To reiterate, brutally edit backstories, flashbacks, and expository speeches whenever possible. Condense, cut, and edit again. At this point, state the inner emotional needs of the character in a few words. Finally, rehearse your presentation in front of a mock jury of colleagues and staff until you know it by heart and can deliver it with feeling. As with any audience, approach the jury knowing what you will say without the aid of note cards. In this way, you can devote your time and energy to connecting with and communicating with your audience as human beings.

The techniques that we have discussed throughout this series definitely will benefit attorneys. How? You will save time and money in the preparation of your case, will improve your performance in court, and will increase the probability of your success at trial. In presenting this material to our readership in the legal community, I (Dr. Sase) am curious as to whether one faction of attorneys will develop and practice this art and craft while the other faction does not. Would such an outcome place many attorneys and their firms at a distinct disadvantage? Contrastingly, will the development and practice of these skills spare judges and jurors from the (occasional) gobbledygook that imposes an expensive burden on our legal system? I would like to ask for feedback from you, the audience for this column, as to how the techniques in this series work for you in the courtroom. Please send your comments to drjohn@saseassociates.com. Thank you.

For those interested in adapting storytelling principles to their practice in the courtroom, we would like to repeat some titles of books that were recommended by Joel Silvers. We have listed them in a suggested order of reading:

McKee, Robert, *Story: Style, Structure, Substance, and the Principles of Screenwriting* (ReganBooks, 1997)

Johnson, Claudia H., *Crafting Short Screenplays That Connect* (Focal Press, 2009)

Truby, John, *The Anatomy of Story: 22 Steps to Becoming a Master Storyteller* (Faber & Faber, 2008)

Nichols, Bill, *Introduction to Documentary* (Indiana University Press, 2nd Edition, 2010)

Seeger, Linda, *Making a Good Script Great* (Samuel French, Inc., 1994)

A PDF copy of this article is posted at <http://www.saseassociates.com/legalnewscolumn.html>.

We continue to post videos related to our monthly column on www.YouTube.com/SaseAssociates in the Legal News Features playlist.

KindleBooks and paperbacks adapted from selected past series are available through amazon.com – Search All – John Sase

Dr. John F. Sase has taught Economics for more than three decades and has practiced Forensic and Investigative Economics since the early 1990s. He earned an M.A. in Economics and an MBA at the University of Detroit and a Ph.D. in Economics at Wayne State University. He is a graduate of the University of Detroit Jesuit High School. Dr. Sase can be reached at 248.569.5228 and at drjohn@saseassociates.com. You can find his educational videos of interest to attorneys at www.youtube.com/saseassociates.

Joel Silvers is a Detroit filmmaker, instructor on Film Production at Wayne State University, and co-founder of the Ann Arbor Blues Festival (the Ann Arbor Blues and Jazz Festival). Joel can be contacted at joelsilvers-detroit@msn.com.