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

By Dr. John F. Sase

"An effective screenplay or work of dramatic fiction is a complex organic system, much like the human body. All of the components of a screenplay or work of dramatic fiction must be properly calibrated for maximum effect: A strong and convincing central character to whom the audience can relate; a clear outer goal for the central character, one that drives the plot and provides the spine of the story from beginning to end; a convincing repressed inner motive for the central character, one that breathes life into the story and provides the story with its heart; an intellectually engaging theme, one that offers insightful answers to big questions and functions as the brain behind the story; and, last but not least, lots of visual stimuli--visible body language, resonant visual objects, visible human action, and iconic locations that keep the eyes awake. These serve as the neuromuscular system of the story and make the viewer's heart beat even faster."

--Joel Silvers, 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)

In this month's column, we begin a three-part series on adapting storytelling philosophies and methods used in screenwriting for the practice of trial law.

How I Spent My Summer Vacation

On 15 March 2013, I (Dr. Sase) finished making my feature-length instructional video *Wall Street Greed: Financial Crises since 3500 BCE* (now available through Amazon Instant Video). In May 2013, I began formal studies of the art of screenwriting with Joel Silvers, my teaching colleague and film mentor at Wayne State University. Though satisfied with my previous video projects, which include a multi-part video on Detroit Economic History and a video on the Ancient Global Economy, I felt the need to raise the bar another notch.

Initially, my objective for learning about screenwriting was to maintain the momentum of continuous improvement in my production of Economics videos as well as to lift my expert-witness work and my teaching to a higher level. However, within a week of working with Joel, I realized that I had much more to learn than I had anticipated about the practice of screenwriting. In short, screenwriting is 95% preparation and only 5% actual scriptwriting. During two months of intensive study, I found that I was on a path that not only would improve my work as an Economist but also would provide useful knowledge for sharing within the legal community. In this three-part series, I (Dr. Sase) will share some of the philosophy and methodology of this art with our readership with the hope that this subject will help our audience with their trial preparation.

No Dull Bits

My favorite definition of drama, which may serve well for trial practice, comes from filmmaker Alfred Hitchcock. Hitch used to say, "Drama is life with the dull bits cut out." Be they matters of fact or fiction, drama is storytelling, using people, objects, and action in specific locations. The arts of addressing a jury or of lecturing to students comprise many elements of storytelling.

However, I have noticed that many storytellers who practice trial law or who teach students may lack a thorough understanding of the story process. I have been such a person. Though I am active in theatre and have dabbled in film, video, and songwriting over the past five decades, I find that I still have much to learn as a storyteller. Therefore, it is with humility and my respect for those who have shared their knowledge and experiences with me that I offer the following lessons to you, our readers.

The Arc

The goal of a story and its characters is for them to follow the arcs of development from beginning to end. This process of transformation is tantamount for any story told. Changes need to occur, both in the story and with the main characters. If no such action occurs, the story lies flat as a lizard asleep on a rock, devoid of any interest. Contrastingly, if both the story and characters build upon a strong spine, as does a human skeleton or a bound book, they progress well along the arc. In the courtroom, this means that the backstory of the clients and witnesses need to be internalized in clarified detail by the lead storytellers, the attorneys. Joel Silvers states, "You have to provide your audience with a convincing central character and then send that character on a clearly defined journey. The central character does not have to be a good person, only someone to whom the audience can somehow relate. Developing such characters usually requires stepping into his or her shoes and then doing more than a bit of research into their early formative influences." Only a minor portion of this preparatory work is heard by the jurors in the narratives of the attorneys and through the testimony of witnesses. Nevertheless, this preparation surfaces from a subtext that leaves jurors with a clear, solid image of the speaker. Likewise, building the presentation of the case upon a strong spine provides jurors with a solid and consistent line to follow. This enables them to synthesize details. The spine will support their cognitive processes throughout the trial.

Jury as Audience

Attorneys draw jurors from the sea of humanity. Some theorists, such as Joel Silvers, suggest that humans are hard-wired in their response to prevalent story structures. In contrast, others argue that humans have learned these responses from immersion in the common media culture since primitive times. Either way, anyone who has read a novel (prose or graphic) or has watched a feature-length film or a television drama has hidden expectations about effective development of plot and character. Furthermore, the same basic story elements are found in the children's book *The Little Engine That Could* by Watty Piper (Platt & Munk, 1930) as well as in the films *Citizen Kane* by Orson Welles (Mercury Productions, 1941) and *Django Unchained* by Quentin Tarantino (Columbia, 2012). These elements include exposition, inciting incident, first turning point, mid-point confrontation, second turning-point, climax, resolution, and closure, all of which will be explained in the subsequent parts of this series. Importantly, a writer cannot develop any of these elements without doing sound preparatory work.

"The Way to Get Started Is to Quit Talking and Begin Doing" -- Walt Disney

In essence, the purpose of effective storytelling for the courtroom is to connect and to communicate with the judge and jury. The story itself contains a truth and tracks the pattern of human change through short segments (aka scenes). Even small and subtle changes constitute important elements as long as they matter deeply to the principal characters (plaintiff and

defendant). The judge and jurors perceive these patterns of change, which are both external and internal to the person speaking. An inherent interweaving of surface action with deep action connects these external and internal patterns. However, if an emotionally distraught witness takes the stand, this fine fabric can unravel. In moments like these, the attorney needs to assume the role of "spirit guide." S/he needs to clarify the dual layers of action in order to ensure that his/her witness connects and communicates effectively to others in the courtroom.

A number of attorneys use mock courtrooms to practice with witnesses. Some law firms videotape their sessions for the purposes of analysis and coaching. At times, the deep action is the most difficult element to find and to identify correctly. However, this action resonates with the utmost importance for carrying the pattern of change along the character arc of the witness. Individually, deep actions form stepping stones for specific moments of change. These short and subtle moments create momentum in the argument of an attorney or in the testimony of a witness.

DDDA

We can decompose these momentum-defining moments into a series of shorter elements: Discovery, Deliberation, Decision, and Action. Rather than present a treatise on the subject, let it suffice to say that these elements are easier to show than to explain. Joel pointed me to a scene in the Charlie Chaplin film *City Lights* (Charles Chaplin Productions, 1931) in which Charlie becomes smitten with a blind flower girl played by Virginia Cherrill. It is not until a specific Action that Chaplin "Discovers" that she cannot see. In addition to studying film, one can obtain an experiential understanding of these four elements through listening and observation. Using this method, one sits quietly in a restaurant, bar, or sports venue and focuses upon natural dialogue between two or three persons seated nearby. The listener experiences normal everyday human conversation in such overheard dialogue. Within this simple chatter, one can find recurring patterns of Discovery, Deliberation, Decision, and Action. For example, at a restaurant, we might hear Person A say, "Oh, they have a special on filet mignon today (Discovery)." Person B responds, "Yum, that sounds good (Deliberation). I think I'll get that (Decision)." Person A turns to the waiter and says, "We'll have two of the steak specials (Action)."

Decisions

Of these four elements, the moments of Discovery prove to be the most elusive because they remain beyond our control. The second, Deliberation, often takes only a split second to culminate before leading into the Decision. Many screenwriters and psychologists believe that the moment of Decision stands as more apparent because it emanates from our "central control" of the sum total of experiences, values, and worldviews. Due to the overpowering magnitude and depth of this central control, we make Decisions emotionally. Then, we justify them rationally. The higher the intelligence and education of a person, the more sophisticated his/her justification. However, all of this is rationalization after the fact. In this theory, the actual Decision comes from a preceding emotional impulse.

It follows that Decisions are made by a character and that the nature of a character is made by his/her Decisions. However, a Decision remains an unfulfilled intent until a person takes action. For Economists, this matter is simple. For example, if you decide to purchase a Gibson Les Paul guitar, the Decision means little until the observable event of transaction occurs. You take Action

by receiving the guitar from the seller in exchange for either money or a product of equitable value. In the context of the moment, we define who we are by what we do—the Action.

Momentum

Therefore, the building blocks for the attorney's opening remarks to the jurors; the setup created by recounting the high points of the case; the direct, cross, and re-direct questioning of witnesses; and the final summation to the jury are constructed out of brief moments of change. Moments of change create momentum in each of these longer segments. In using momentum-creating moments, we strive to expedite delivery while remaining ethical. In a courtroom, any Decision introduced to the judge and jury should make a significant difference to either of the two principal characters, the plaintiff and the defendant. Sometimes, the opposing attorneys take the roles of protagonist and antagonist; in other cases, principal clients fill these roles. In seemingly clear-cut cases, the plaintiff might assume the mantle of protagonist while the defendant is cast as the antagonist. In other cases, the plaintiff and the defendant alternate roles, depending on which version of the truth is being told. Each of them plays the antagonist to the protagonist of the other. On occasion, each role is shared by the attorneys and their respective clients. In matters of estates, the attorney may stand in for the deceased. However, the prime criteria are that the protagonist and antagonist are visible to the jury and that each appears in human persona.

Whatever the situation, the Decision that makes a significant difference to a character occurs at a precise moment of change. The attorney needs to underscore that precise moment with clarity for the jury. The jurors need to understand why the plaintiff or defendant has made a certain Decision. Furthermore, the jurors need to understand the difference that this Decision has made to the character when the Action took place. Proficient screenwriters advise us that the best way to accomplish this objective is to limit the revelation to "Five Pages," which translates to five minutes for most of us pedestrians. In effect, an attorney may want to use a short segment that includes a revealed Discovery that precipitates a Decision.

Often, the Decision is presented to the jury after the revelation of the Discovery. Following the laws governing the discovery of evidence, this information should be in the minds and hearts (as well as in the notes) of the two main storytellers, the attorneys. As one presents information to jurors, they may hear the Discovery, Decision, and Action in sequence. This depends upon the way that the two versions of the truth unfold in court; it is relatively simple to manage. However, the primary Decisions and Actions may have been revealed publically before commencement of the trial. In such a case, the Discovery unfolds during testimony in a way that supports one side or the other.

The Rainmaker

We can find a good five-minute example of the above twist in the climactic scene (1:54:20/2:15:28) of Francis Ford Coppola's film adaptation of John Grisham's novel *The Rainmaker* (American Zoetrope, 1997). In the backstory, the Great Benefits Insurance Company has been sued for repeated denial of a claim filed for a young man who recently has died after developing leukemia. Before his death, medical experts stated that there was a 95% probability that a bone-marrow transplant would have saved the young man's life. The insurance company argues that bone-marrow transplants still are considered experimental and that its coverage

excludes experimental procedures. The climactic scene begins with the CEO of Great Benefits taking the witness stand. As he waits to testify, an important development takes place: The plaintiff attorney finally succeeds in getting the Great Benefits Claim Manual admitted into evidence. The critical section of this document had been missing (withheld) from the set of documents subpoenaed during discovery. The plaintiff attorney knows the details of this missing section because a copy, which had been stolen by a previous witness, came into his possession.

In the first of a one-two-three punch, the jury learns that the insurance company not only has a policy of denying all claims within three days of submission but that the manual outlines an intricate system of routing, shuffling, and re-routing. This system keeps claims in denial until most policyholders finally give up. In the second punch, the jurors learn that, out of 98,000 policyholders, 11,462 had filed claims. Of these claims, 9,141 (80%) were denied to conclusion. In the knock-out blow, members of the jury Discover important information from the CEO, who is reading from an internal report issued by an advisory committee that he heads. His committee stated that bone-marrow transplants are standard procedure. Also, the insurance company would be "financially justified" (as stated in the report) to invest in bone-marrow clinics. At this point, the case for the defense unravels and the jury finds in favor of the plaintiff.

In this scene, we hear subsequent Discoveries that build neatly upon the previous one. From earlier testimony, the jurors know that the claim for the estate of the plaintiff had been denied as a matter of policy (i.e. an Action by the defendant). The second Discovery confirms the first one with the introduction of now-admissible evidence. This further supports the accusation of routine claim-denial. However, through the reading of the committee report, the jurors Discover that the claim-denial Decision and Action had been predicated upon erroneous information known only to the defendant at the time of denial.

This scene provides us with a resounding example of a courtroom-based drama. John Grisham was a practicing attorney as he was becoming a successful novelist. Therefore, he drew on his own cases as well as the experiences of his contemporaries in the Memphis legal community. This led to his creation of realistic, well-constructed scenes such as the one above, which successfully presents a complex structure of Discovery, Decision, and Action in an accessible, entertaining five-minute scene. This example is a good standard for attorneys to aspire and surpass in their own trial practices.

In the next two columns, we will address the development of empathy through shared human experience with the jurors, consider some standard techniques from cinematic production for developing and organizing large volumes of preparatory material, and explore the principle of antagonism while searching for deep conflict. Furthermore, we will discuss values associated with degrees of opposition, uncover and develop the spine of the story of the case, develop the revealed qualities of the principal characters in the story, review the five major forms of conflict, and walk through the applicable story structure from exposition to closure.

For those with an interest in adapting the principles of storytelling to their practice in the courtroom and elsewhere, I would like to pass along some readily available titles of books that were recommended to me by Joel Silvers. I have listed them in a suggested order of progression:

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)

Joel Silvers can be contacted at joelsilvers-detroit@msn.com.

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Dr. John F. Sase has taught Economics for 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.