

Thursday, April 3, 2008

**Come and listen to a story about a man named Jed .**

Â Do jurors want to be tortured for hours by droning lawyers, witnesses and judges, interspersed with waiting for bench conferences with silence that might be even more excruciating? Or, do they want to be transported into the middle of an interesting story, experiencing the action with their five senses, being part of the action from the actors' different points of view, as riveting as being on the set of Rashomon? Which would you prefer? Â Storytelling is a common way of communicating throughout the day (does one read a news story in the newspaper, or a news drone?), whether it be a story as short as describing an argument between two siblings, or as long as a full-length movie. Storytelling is a way to relate to jurors in a way that makes them feel more at home in an otherwise bone-chilling inhuman-seeming courthouse, filled with portraits of unsmiling judges who previously graced the courthouses' cavernous halls and lonely chambers. Storytelling enables a lawyer to speak like a human, rather than as an automaton-sounding, legalese-speaking lawyer. Skilled storytelling can open the jurors' ears to the storyteller rather than closing their minds to what they may presume to be a shyster lawyer. When done right, a persuasive trial lawyer will tell the case's story throughout the trial, not only through jury selection and opening statement, but through direct and cross examination right through closing. A well-told story will stick in the jurors' memories and vision much better and longer than a droning presentation of various snippets of information and arguments. Telling a story provides an avenue for jurors to put together the pieces of the evidentiary puzzle in a manner favorable to a lawyer's client. Tell your story in the beginning of the trial, and keep telling it in an interesting, interactive, and engaging way. Rare if ever should be the circumstances where a criminal defense lawyer waits until the prosecutor rests to give the defense's opening argument/statement. By then, the jury is seeing the story not through the defense lawyer's eyes; moreover, the opening argument gives the jury the introduction to the defense lawyer's story that needs to follow into examination of witnesses and everything else the lawyer does in the courtroom. Â Good storytelling gives direction to one's oral presentation, rather than having the speaker wander around in wilderness and fog. It reminds me of the ah-ha I experienced one day over thirty years ago playing improvisational trumpet with a music group. Instead of my focusing merely on sounds and the meaning of the words to the songs, with the trumpet I took my listeners on a storytelling journey, with the trumpet conveying some of the sounds I heard and feelings I felt and sights I saw during that journey -- while conversing back and forth and in tandem through my trumpet along with the other musicians and singers -- the first such journey being like a huge bird in a jungle with rushing skyscraper-height waterfalls, the wind rushing all over the lush greenery, and birds singing all along. Instead, each note more smoothly flowed into the next note, taking me away from focusing so hard on making up music that would work, and having it work more effortlessly. That is how a good story works. It flows, it gives direction to the talk, and it removes the speaker from any fears of talking in front of an audience, and removes the speaker from the temptation to use language with lockstep thesaurus-spitting precision. Such storytelling comes from the heart, rather than having the head filter everything out in an overly-intellectualized or pseudo-intellectualized filter. Â Storytelling is at the heart of the National Criminal Defense College and the Trial Lawyers College, which I briefly discussed last week. Productive storytelling can help not only lawyers for trial, but all people in working out their lives. For instance, one day I told my friend -- who is an amazing local psychological counselor and psychodramatist -- about the dysfunctions at a previous law firm where I worked. He suggested that one way to get towards harmony was to have a retreat day with a psychodramatist and a storyteller to get everyone communicating towards working beyond the dysfunctions. I may have raised the idea, but left a little over a year later to start our current law firm without the idea going further. It probably is an idea long overdue to offer and pursue at our law firm. If such a retreat/workshop is held, clearly attendance and participation would need to be purely voluntary. Â Storytelling can be very important for trial lawyers to help themselves, their clients and witnesses become ready to testify and to prepare for the rest of the trial, and to move the case investigation forward (e.g., to get otherwise recalcitrant witnesses to talk, which might start as simply as talking about something entirely unrelated to the case, and drawing out the story (e.g.: "I am riveted by your calm demeanor," (if you dare be anything but honest and real in talking, watch out for the fallout), and see if that draws out the person's story (e.g., "My grandmother was as calm as gently flowing waters. That always stayed with me"). Â Many other things beyond storytelling can be done to obtain such movement with lawyers and non-lawyers, including eliminating the physical and non-physical divides between the lawyer and the client and other non-lawyers with whom the lawyer speaks (e.g., try sitting next to your client in a visitors' chair in your office, to eliminate the divide created by your desk; tell self-effacing jokes (engaging ones, that is); and be as relaxed and smiling as Gandhi and Mel Brooks all rolled into one). When you let your clients, children, friends, employees, employers, judges (on and off the bench) and everyone else important in your life tell a story -- and when you listen actively to the story -- you empower the storyteller, and the storyteller is relaxed and more expressive knowing that you are in the role of the listener, rather than in the role of the controller and interrupter of the conversation. Ultimately, the speaker will listen back to you. Â Sometimes a person will feel more encouraged to tell a story by putting it into song or by accompanying the story with the beating of a drum, the strumming of a guitar, or the playing of any other hand instrument, seeing how powerful music is in our lives (and if you

disagree, think of the many times that just one song has filled you with emotion when you least expected it).

Storytelling must not be limited to being a spectator sport. Before going to bed tonight, see what happens when you try riveting storytelling to work out a problem or to get a point across, and when you empower another person to tell a story. Here are some good storytelling links: Art of Advocacy page. Includes some good links. Sunwolf (see her biography here): An amazing woman, storyteller, trial lawyer and teacher, and communications teacher all rolled into one. James Elkins's links on lawyers and storytelling, and everybody and storytelling. "The Art of Storytelling" - By trial lawyer Paul Luvera - National Storytelling Network. California Indian Songs and Stories. A lengthy video giving a view of Indian storytelling. Ira Glass on Storytelling - See all the Ira Glass YouTube videos in the series. This video conveys how no matter how boring the material otherwise might be, the listener can feel s/he's on a train with a destination. The audience can be kept interested by interspersing the story with direct questions (e.g., "Why did it happen?") and indirect questions ("The house was very quiet," which makes the listener ask "Why was the house quiet?"). Storytelling in the classroom - A YouTube video. Every student needs a story that s/he wants to tell. YouTube links to storytelling and children. Tell me a story. Jon Katz. ADDENDUM: To complete the title of this blog entry: Come and listen to a story about a man named Jed A poor mountaineer, barely kept his family fed, Then one day he was shootin at some food, And up through the ground came a bubblin crude. Oil that is, black gold, Texas tea. Well the first thing you know ol Jed's a millionaire, Kinfolk said "Jed move away from there" Said "Californy is the place you ought to be" So they loaded up the truck and moved to Beverly. Hills, that is. Swimmin pools, movie stars. Well now its time to say good by to Jed and all his kin. And they would like to thank you folks fer kindly droppin in. You're all invited back a gain to this locality To have a heapin helpin of their hospitality Hillybilly that is. Set a spell, Take your shoes off.

Posted by Jon Katz in Persuasion at 00:00