

Context: Your Emotional Edge in Court

Later this week I'll be speaking on a panel in Los Angeles at the annual conference of the American Society of Trial Consultants. The topic is "Persuasion and the Use of Story," and for those of us who go to trial many times a year, it is clear that facts alone do not speak to jurors. Emotions do.

Emotions are a result of creating a context for your facts. Context starts by assembling all the facts into a linear storyline. But keep in mind that storylines are nothing more than a *string* of intellectual details — mere rhetoric. "That's not good enough," says master storyteller Robert McKee, "because people are not inspired to *act* by reason alone." That was underscored a couple of years ago when CBS Evening News reported that in Baltimore jurors acquitted a man of murder, even though there were two eyewitnesses.

"Researchers have found that the human brain has a natural affinity for narrative construction. People tend to remember facts more accurately if they encounter them in a story rather than in a list, studies find; and they rate legal arguments as more convincing when built into narrative tales rather than on legal precedent."

-- Benedict Carey,

"This Is Your Life (and How You Tell It),"
New York Times (May 22, 2007)

Whether plaintiff or defense, civil or criminal, your story is about the jurors being able to restore balance with their verdict. That's why they have been impaneled. And that's why you need to stir their emotions.

To get your emotional edge in court, you need to create a *context* that touches and harnesses the juror's own experience; that visualizes for them esoteric numbers, dry documents and arcane regulations; that makes the story emotionally relevant to each of them; and appeals to the community's shared sense of values.

Visuals provide the common context. Last month, citing new studies, Benedict Carey, in a *New York Times* Mental Health & Behavior article wrote, "... we are continually updating a treatment of our own life — and the way in which we visualize each scene not only shapes how we think about ourselves, but how we behave."

Every successful trial attorney is a teacher. Stephen Leib, in *The Principles of Adult Learning*, pinpoints "four critical elements of learning": motivation, reinforcement, retention and transference. Creating context is a tool for successfully implementing each of those four elements and for getting a jury to find in favor of your client.