

Hello, this is Adrienne Brungess. I'm a Professor of Lawyering Skills at University of the Pacific, McGeorge School of Law.

The topic of this "In Practice" is "Telling a good story and using Imagery, and Metaphor, and Simile to enhance the persuasive value of an advocate's presentation."

Telling a compelling story is a powerful way to persuade people. The story would include not only a list of objective facts in chronological order that may have occurred in a particular case. A compelling story weaves in information that will arouse the audiences' emotions, and make the listener or the reader interested in the plight of the characters involved.

Anybody can put together a list of objective facts that have taken place in a particular case but it's a bit more of an art to make that into a story that is compelling and that makes the listener or the reader want to find in your favor.

Advocates should consider what kinds of things make a story more interesting and compelling. Legal advocates should consider integrating fiction techniques when creating a persuasive argument.

Consider what makes a story interesting. Things like character development, creating a hero and a villain, creating a conflict that has to be overcome, having a climactic point to your story, and a resolution. These types of techniques can be integrated into the story that you tell the court, either in a written form or through an oral presentation.

One technique to enhance the value of the story and make it more compelling is to integrate vivid imagery. This means using visually descriptive or figurative language when presenting your argument or your story. Vivid imagery is always more memorable for the audience, and therefore can be very important to the persuasive value of the story you're telling.

It's one thing to indicate that the defendant walked out the door, got into his car, and had an accident. It's something different to indicate that the defendant weaved and staggered as he made his way out to the car, fumbled with his keys, eventually was able to open the door, etc.

Advocates should consider ways to add this kind of imagery in detail to tell a more compelling story.

When an advocate can present facts and evidence in a way that conjures visual images or personal experiences in the audience, this will help reinforce memories and understanding on the part of the listener or audience. That audience can more effectively associate ideas and concepts with the arguments being made.

One example might be from New York City Mayor Michael Bloomberg, when describing an effort in New York City to clear snow. He stated that it was 6,000 miles of city streets. It's like plowing from here to Los Angeles and back. Note that that description gives the

listener a much better image of how much distance Mayor Bloomberg was talking about in the statement.

Another example demonstrates how to make a more complicated concept, more relatable by use of vivid imagery. Let's say that the advocate is discussing biology or some scientific component. For example, there are millions of alveoli in the lungs, and these are necessary for proper breathing.

The allegation was, the defendants release the toxic substance that destroyed tens of millions of them in the plaintiff, making it very difficult for the plaintiff to breathe on her own.

That gives me information about the story, but I'm not sure I totally understand what millions of alveoli really means and how much impact that really has, so consider another way to describe that.

There are millions of alveoli in the lungs. These alveoli are necessary for proper breathing. Imagine that all of the alveoli in the plaintiff's lungs cover a grass football field, 100 yards. Now, imagine that you're standing on the 30-yard line, facing the far end of the field.

Further imagine that all of this grass from the 30-yard line, where you are standing, to the far end zone is dead. It's brown, 70 percent of the football field. That illustrates what the plaintiff is grappling with, and demonstrates why she is unable to breathe on her own.

Defendant's toxic gas caused all of this unnecessary and permanent damage to the lungs. Note that I got this example from the New York Law School Law Review.

Another technique that a creative advocate might want to try infusing into his or her written or oral presentation is use of metaphor or simile. In law, it's common to compare your case with precedent cases. This analogical reasoning is typical to legal argument and methods of persuasion. This is really what metaphors and similes are doing. It seems to be a good fit for legal argument.

Of course, simile makes comparisons using like or as, and metaphor is an implicit comparison between two things that are generally unlike but have something in common.

An example of a simile might be, my love is like a red, red rose, or an example of a metaphor might be something like the fruit of the poisonous tree. Obviously, the latter being more related to legal argument.

Let's talk about how this can be effectively integrated into an advocate's presentation without sounding too lyrical or too much like you're trying to be Edgar Allan Poe.

I'll give an example from the case, *Glossip v Gross* from the introduction of the petitioner's brief. This case talked about drugs used in death penalty sentencing.

The petitioner's brief argued that it is constitutionally intolerable to use certain drugs to execute any prisoner who's still capable of sensing pain, and that the drugs cause, not merely death, but also pain and suffering, which violates the Eight Amendment's prohibition against Cruel and Unusual Punishment.

The brief states further that the framers placed off-limits such means of execution as burning a prisoner, from the perspective of causing intolerable pain and suffering. Injecting a prisoner with liquid fire is just as unconstitutional as lighting him a fire. Note, the persuasive impact of this use of metaphor.

I'll give you another example from a case called EDIAS Software International. The Internet resembles a highway consisting of many streets leading to places where a user can find information. The metaphor of the Internet as a shopping mall or supermarket, on the other hand aptly describes the Internet as a place where the user can shop for goods, information, and services.

Note how the use of the comparison of the Internet to the shopping mall or a highway consisting of many streets assist the listener to conceptualize what the advocate is trying to present. When the audience can conceptualize the argument, it has greater persuasive impact.

More sophisticated use of this technique can be demonstrated by some of the writings of former Supreme Court Justice Jackson. In one example, Justice Jackson wrote of an inadequate court record showing us something of the strings as well as the marionettes, and the invalidation of an ordinance regulating speech may convert the constitutional Bill of Rights into a suicide pact.

Certainly, a Supreme Court Judge might be able to get away with use of prose and techniques that perhaps a less seasoned advocate might not yet be confident using. However, there are certainly simpler ways that metaphor and simile can be integrated into an advocate's written and oral presentation to maximize its persuasive impact.

That concludes this In Practice on the topic of Telling a Good Story and Using Imagery, Metaphor and Simile. This is Adrienne Brungess of McGeorge School of Law in Sacramento. Thank you for listening.