

BUILDING A BETTER BOMBSHELL: CONSIDERATIONS FOR MIXING THE INGREDIENTS OF YOUR STORY CORRECTLY

Missourians take pride in being from the “Show Me State.” Stalwart, conservative, non-credulous Missourians, unimpressed by simple platitudes and fancy language, they want to be shown that what is being spoken of can actually be done and, more importantly, really works. "Show us, don't tell us," in its own way, warns of the difference between narrative talk (showing us) and notional talk (telling us).

The slogan reminds us, as trial lawyers and criminal defense advocates, to fight the temptation to "talk about" what is happening, or what has already happened. Rather, the Missouri example reminds us that we should rely on the action itself to carry our message. But, in storytelling, the truth is always slightly more complicated. To tell your client's story of innocence or reduced culpability effectively, a story needs to contain both narrative and notion, presented in the right combination. Still, before a bartender can create the perfect martini, she must first understand not only the essence of the gin and vermouth, but the appeal of the olive.

NOTIONS vs. NARRATIVES

At the very center of every *Narrative* is a unique action, or set of actions, taken by one or more actors in the story. The action or set of actions taken need not necessarily be taken by the accused. Depending upon the viewpoint of the story, the actor, or actors, at the heart of the tale can be, and can interact with, virtually, anyone. However, in the center of the narrative, the unique action taken happens in a particular moment in time; either being the culmination of a set of facts leading up to the action, or being the spark that sets off a chain of events which follow. And in that singular moment, the character whose actions are driving the telling of the narrative takes this unique action.

In contrast, *Notions* are about the panoptic. A simple concept like "orangeness," for instance, is not only the set of qualities that are found in the citrus fruit, but within all objects which reflect light in such a way that people who see the objects would say that the object's color is **orange**. It's not about any one of them; it's about their commonality as a group. Notions are all-embracing, across-the-board, generalizations.

Notions and Narratives are different in half a dozen other ways, some of which will be discussed below. The interesting news, however, is that both concepts can be blended together, as much like gin and vermouth, or, when the particular case calls for it, they can be kept separate—like oil and water. More simply stated, they are merely the end points on a long continuum. And in between these end points lie an infinite number of points all of which share qualities with, and combinations of, both Notion and Narrative.

THE NOTION-NARRATIVE CONTINUUM



FIVE DIVISIONS ON THE INSIDE OF THE CONTINUUM

As is shown above, there are seven subdominant divisions of the Notion-Narrative Continuum, ranging from the most crystallized and pure forms of both Notion—on the left—and Narrative—on the right. At the epicenter of the Continuum is a combination of Notion and Narrative called the Narrative Synopsis. To both the left (Notion) and right (Narrative) sides of the center, there are two key divisions, all of which will be discussed below. The questions for the storyteller to answer before beginning the telling of the client’s story are, “*How might each of these devices be utilized by the storyteller to advance the client’s story or innocence or reduced culpability, and where in the story should the storyteller use each of the devices chosen?*”

Step 1: The Conclusory Thematic Notion

Moving one step away from the end of the Continuum dealing with *Pure Notions*, toward the end of the Continuum dealing with *Pure Narratives*, is the first stepping stone in the Continuum: The Conclusory Thematic Notion.

Suppose I want to convey a concept about my moral upbringing at the direction of my father. A Conclusory Thematic Notion might well be: “*Honesty is the best policy.*” No other explanation is necessary. The statement itself is crystalline and, regardless of whether the hearer agrees with it, the statement is uncluttered and immediately understandable. Unfortunately, like all purely notional statements, (e.g., *honesty is a virtue*), found one step to the left on the Continuum, Conclusory Thematic Notions are devoid of everything which would bring them to life in the mind of the hearer.

One of the dangers of using Conclusory Thematic Notions is in their overuse. Generally, Conclusory Thematic Notions are in the nature of moral platitudes, maxims and cliches. They can be commonplace expressions or stereotyped sayings, but without something more, they are what older southerners might call “warmed-over cabbage.”

“*Honesty is the best policy*” is a “cool” statement. “Cool” not referring, of course, to its “hipness” but, instead, to the statement’s emotional appeal; or, as in the case of most Conclusory Thematic Notions, the lack thereof. Conclusory Thematic Notions do not evoke any emotional response in the hearers. Such a statement may, however, unlike the *Pure Notion*, evoke some memory in the mind or the imagination of the hearer. But the chance that a Conclusory Thematic

Notion will elicit in the hearer something which relates to the personal experiences of the speaker, is virtually nonexistent. Certainly such statements evoke nothing with regard to the client and do little, in and of themselves to further the listeners' understanding and acceptance of the client's story. Nor can the hearer understand in the broad generalization of the Conclusory Thematic Notion any implied referent to the personal experiences of any third party being talked about by the speaker. This would include the actor or actors in the center of the story being told on behalf of the client. The Conclusory Thematic Notion may cause the hearer's head to nod in affirmation, but it does not make the hearer stand up and applaud and it certainly does not drive her to pick up a sign and march in the street.

However, the Conclusory Thematic Notion has three virtues that commend it to the storyteller's repertoire of magical storytelling devices. First, it mixes easily and completely with every other device on the Continuum. So, it can readily be used in conjunction with other devices chosen by the storyteller. Second, a Conclusory Thematic Notion conveys information quickly. Third, and most important, its shortness allows for it to be memorable and, thereby, makes it capable of being repeated. When the Conclusory Thematic Notion is repeated throughout the trial, it can be picked up on by the listeners who recognize a broader meaning within the context of the entire story being told each time they hear it. It can serve as a "tag" line, a mantra, or the moral of the story being told.

Step 2: The Narrative Conclusion

If our goal in the telling of our client's story, or any part of that story, is to bring our client's story more fully to life, and to make the story resonate as "the truth" for the listeners, we can improve our chances for success by taking another step along the Continuum toward Pure Narrative. This next step allows the speaker to revise the Conclusory Thematic Notion in such a way as to make the thematic concept more personal by painting a narrative for the hearer with a very broad brush. This is the point on the Continuum where we first begin to see a true blending of both Notion and Narrative. An example of this would be a Narrative Conclusion such as: *"My father taught me to be honest by explaining to me the importance of honesty."*

There are those who might say such a statement has nothing to do with, and is in fact not, a narrative. Those naysayers would be wrong. When compared to the Conclusory Thematic Notion above, the statement is most assuredly a narrative. However, and this what confuses people, it is an abstract form of narrative. It is an underdeveloped narrative which does not contain the weight or substance of a fully developed narrative. Though, the phrase "narrative-light" does not describe this concept as well as the phrase "narrative-transparent." In modern terms, it is akin to the difference between Cameron Diaz and Mary Kate Olson.

The Narrative Conclusion has no specifics about time or place. If we look to the statement again—*my father taught me to be honest by explaining to me the importance of honesty*—we do not know when my father taught me these things, nor where these lessons took place. We do not have any idea of exactly how these life's lessons were conveyed. The statement may well be "most assuredly a narrative," but it is a narrative that is almost totally conceptual and, being nearly devoid

of detail, is also “most assuredly” conclusory in nature. Therefore, its place near the Notion end of the Continuum should be easily understood.

However, unlike the Conclusory Thematic Notion, the Narrative Conclusion begins to bring out emotion in the listener. By invoking my father in the statement above, I have touched on that most sacred of relationships, the one between a parent and their child. By casting my father in the light of teacher, and moral teacher at that, I have conveyed to the listener a universally accepted, and acceptable, archetype. The hearers are drawn to their own, more deeply personal experiences either as parent, as child, or both. Like the Conclusory Thematic Notions, I have only touched on some of those experiences but, because I have not developed any facts which are likely to move the listener to accept my position in the case, I have only stroked the surface of the listeners’ psyches.

Step 3: The Narrative Synopsis

If we walk along the Continuum a short distance, the next signpost, and the mid-point, on the way toward a Pure Narrative is that of the Narrative Synopsis. The next step toward narrative dispenses with the abstract concepts (“*taught me*” and “*explaining to me*”) and replaces them with actions. But, the specific actions described are only described in a very general way. For example: *“My father taught me about honesty by being honest himself and showing me how his honesty was, consistently, the right course to take.”*

By this time in our journey, we are a considerable way from the endnote of a Pure Notion. But we are not nearly as close as we might be toward the endnote, on the other end of the Continuum, of a Pure Narrative. A Narrative Synopsis is not entirely frothy like a Conclusory Thematic Notion and, does contain significantly more in the way of substance than the Narrative Conclusion. But, lacking details and only talking about the specifics of the story in a broad-brush way, it does not allow the hearer to bring the narrative to life in his or her imagination or to see the story unfolding or developing in his or her mind’s eye. The hearer has some idea that my father was honest and took time with me to encourage and explain honesty, but cannot know in what form this honesty manifested itself nor how the rightness of these manifestations was demonstrated to me.

The Narrative Synopsis still allows the hearer to picture whatever might come to the hearer’s mind based upon the experiences of the hearer. This phenomenon is caused by the lack of specifics and facts. Using a broad brush to paint this part of the client’s story precludes a commonality of picture in the collective mind’s eye of the jury, or other hearer of the story. However, if used after a more substantial narrative recitation of the facts, the Narrative Synopsis can serve as a wonderful summary of the point made by the more involved and detailed narrative and allows the common vision of the jury to be brought back to their collective mind’s eye without having to repeat the entirety of the story.

An interesting characteristic of the Narrative Synopsis is that it does not mesh seamlessly with the other points on the Continuum. Why this incongruence should exist is not exactly clear. Though, it may just be that the Narrative Synopsis has too much narrative for the notion side of the Continuum and too much notion for the narrative side. However, that explanation is not very helpful for those seeking to understand and use this system to enhance their storytelling abilities.

To illustrate the problem, if I were use the Narrative Synopsis above, *“My father taught me about honesty by being honest himself and showing me how his honesty was, consistently, the right course to take”* after having already used the Conclusory Thematic Notion I started this discussion with, *“Honesty is the best policy,”* the Narrative Synopsis seems like too much information without making a point; as if I have gone from a focused message to one that is pointlessly general. If, on the other hand, I flip the statements around and state the Conclusory Thematic Notion following the statement of the Narrative Synopsis, the Conclusory Thematic Notion now seems too broad and pointless in light of my whetting of the jurors’ appetites for more details of a narrative only just begun.

Other examples of the problems with using Narrative Synopses in conjunction with the other devices found on the Continuum could be given but, it may be better for the reader to work through some of these situations himself or herself and to get a feel for how the various devices work, and do not work, together. There is some benefit in sitting down and playing around with the various combinations of devices and any good storyteller will do that as part and parcel of his or her pretrial routine.

Step 4: The Compressed Narrative

The next stone on which we land as we work our way across the Continuum toward its narrative side, calls upon us to create a “compressed” scene which fleshes out specific actions in support of our narrative, but which are still somewhat general and nonspecific in nature; though far less general and much more specific than in the case of a Narrative Synopsis, the Narrative Conclusion and the Conclusory Thematic Notion. The Compressed Narrative might summarize one long event, or many separate, though factually similar, events.

In staying with our discussion of honesty, a Compressed Narrative might describe the event(s) in the following form: *“There were many times when I would accompany my father to the store, and my father, after paying for the items he purchased, would receive too much change from the cashier. He would return the excess change to her, saying she’d given him too much change. When I asked why he didn’t just keep the extra money, he told me how it was important for the cashier to have the correct amount of money in her register drawer at all times and important for the store to not lose money through the mistakes of its employees.”*

The Compressed Narrative, as shown above, though still general in the telling and disclosure of facts, is far more specific than the Narrative Synopsis, discussed in Step 3. In addition, when the Compressed Narrative is compared to the Narrative Conclusion, it erroneously leads to an assessment of Narrative Conclusions as being utterly devoid of any value whatsoever as a narrative. The Compressed Narrative also highlights the starkly different nature of a Conclusory Thematic Notion by drawing the listener into the narrative as a witness to the event. The listener can, in his or her own mind’s eye, actually see some event happening and can begin to appreciate the factual and foundational underpinnings of the speaker’s positions and views.

The Compressed Narrative has more detail, to be sure. This is its overriding weakness when compared to the next step on the Continuum, the device known as the Elongated Narrative, which will be discussed in a few moments. For instance, the Compressed Narrative statement, above, lacks specificity with regard to time and place, the age of the cashier, the reasons underlying the importance of the cashier's drawer being "correct" and the store's "not losing money," and words like "important" and "told me." Collectively, the listeners begin to see a story unfolding and do so as a group seeing the same events unfolding. But the Compressed Narrative persists in describing portions of the events in generalities and does not answer many, if any, "why questions" which the listeners would certainly have. Motivations, as well as cause and effect, are left to the imagination of the hearers.

Yet, even having said that, one can see that with a Compressed Narrative the actions and words of the figure central to the telling of the story begin to carry the message of the story. In the example used for discussion of the Compressed Narrative, we have found Demosthenes' "honest man." And, when we have found him, we also see that he is a good father who is concerned with the moral upbringing and growth of his son. The storyteller has done more than just raise the specter of an archetype. The storyteller has begun to blend the archetype (father/son relationship) with the notion to be conveyed (honesty is always the best course) into the colors with which to paint the word pictures which his listeners will all begin to see in their minds' eyes. And, within the courtroom a transformation takes place with the storyteller becoming a modern day alchemist.

Step 5: The Elongated Narrative

As our journey from one end of the Notion/Narrative Continuum to the other is nearly complete, we are finally able to leave all abstractions behind, and begin a blow-by-blow account of my father's honesty and my lessons in honesty by looking at an Elongated Narrative.

"After lunch on Saturday mornings, when I was 10 years old, my father would take me to the B and B Grocery which was located just two short blocks from our home, on the corner of Baker Street and Broadway. He would buy a pack of Viceroy cigarettes and we would each get an ice cream cone. His would be maple walnut and mine would be chocolate almond. He would pay for the cigarettes and ice cream by giving the cashier, Diane, the owner's daughter, a five-dollar bill. For her part, Diane would almost always make a mistake in giving change to my father, who would count back the change and return any overage to her with a smile. When we would leave, I would ask why he didn't just keep the extra quarter or fifty cents, he would explain that if he did that, Diane might lose her job or that the store might have to start charging all of us in the neighborhood more for ice cream in order to make up for the money it lost due to an honest mistake by one of our neighbors. . . ."

In this example, the storyteller has not only brought the hearers to understand the universal truth of the Pure Notion: "**Honesty is a virtue,**" but he or she has also led the listeners to understand that dishonesty is not a virtue. Therein lies the truth about narratives: If told correctly they not only accomplish what they can be expected to achieve (convincing the jurors that honesty is a virtue) but spill over to accomplish that which could not be achieved any other way (proving a negative). Moreover, once the storyteller has the listeners at this point is that the storyteller can move the jurors

to accept the truth of his or her client's position with regard to the facts of the controversy which is being tried, debated, or simply discussed.

Naturally, the exact parameters of Elongated Narratives depend upon the context in which they are utilized and the point(s) to be made. Elongated Narratives can be momentary, wide-ranging, or very lengthy indeed. What distinguishes them is that they are composed of marked and concrete actions by particular characters in precise places and times. Very little is required from the imagination of the listener as the events are described in such a way that all listeners can see the events described in the same way in each of their individual mind's eyes.

The down side of the Elongated Narrative is that it takes a while to tell. Depending upon the point in the client's story where the storyteller decides to use the Elongated Narrative, attention spans may have waned, or minds may have wandered. There is also the possibility that in a factually intense scenario, the insertion of a number of new facts may serve to confuse the jurors. Additionally, the Elongated Narrative does not lend itself to quick "sound bites" which can be remembered easily and taken back to the jury room with the individual jurors.

IS THERE ONE WAY THAT WORKS BEST?

Despite the above discussion, which might seem to favor either Elongated Narratives, or Pure Narratives, the simple answer is "no." There is no silver bullet, no panacea here. The nature of the Continuum is that many options exist, and an infinite number of points or, in this case, methods, are able to be accessed and utilized. No step, or point, along the Continuum is better than any other step - except in the context of a particular event and purpose.

By way of example, if the storyteller wants to include a little story as part of a brief presentation on a minor point, any Elongated Narrative description would almost certainly seem inappropriate. It would tend to bog the jury down in the detail of events not central to their deciding the case. After all, the advocate would not want the jury to become confused about which are the facts of the case and which are the facts of the short narrative. So, the advocate might use a Compressed Narrative or perhaps a Narrative Synopsis, but that would be as much "story-ness" as the context of the moment—otherwise defined as the point to be made, in conjunction with the time of the making—would endure. If the storyteller needs the jurors to hear a slogan or theme line which then will be carried back to the jury room with them, any sort of narrative may be far too much. In that eventuality, the answer lies in devising a memorable Conclusory Thematic Notion and passing that on within the context of the story being told.

CHOOSING THE CORRECT POINT ON THE CONTINUUM

It should be obvious, but it bears repeating, each point along the Continuum has strengths and weaknesses which must be evaluated by the storyteller before the storyteller embarks on his or

her telling of the client's story. Important to the advocate's choice of which point along the Continuum at which to stop in the telling of the client's story of innocence or reduced culpability, is the teller's cognizance of a dynamic which is at work in the area between speaker and listener.

The dynamic is best remembered by the line from *Mary Poppins*, where the nanny is talking to Michael after he and his sister, Jane, have just finished a rather spirited "tidying up [of] the nursery. When told that it was now time for an outing in the park, Michael states that he does not want to go to the park, but wants to tidy up the nursery again. Mary Poppins tells him, "*Enough is as good as a feast.*" The lesson has equal application to our discussion about where on the Continuum the advocate should plant his or her feet in the telling of the client's story. In order to benefit from the full range of choices along the Continuum, the storyteller must be continually cognizant of the dynamic of "enough being as good as a feast" because this dynamic can—and should, in the appropriate circumstances—limit the availability of some choices on the Continuum to the advocate.

To explain: There can be little argument that the most potent parts of a story, in terms of emotional impact and mental imagery, at least in the mind of the listener, are those that are presented as Elongated Narratives. However, if the advocate tells the jury everything as Elongated Narratives, it is difficult, if not impossible for a jury to tell what is most important in the story from what is of marginal importance or, in some cases, of no importance. For example, after I've told the Elongated Narrative concerning my father and I going to the store and him returning excess change to Diane, it would be reasonable to say, "*This happened every few Saturdays for a number of months.*" Naturally, within the courtroom and trial setting there is just no room in one story for all the concrete scenes about all the different times Diane messed-up in counting change and the honesty of my father in returning the overpayment to her. So, those could be shortened and moved quickly over through the use of a Narrative Synopsis. And, toward the end of the advocate's storytelling time, switching to the Conclusory Thematic Notion device of "*Honesty is the best policy*" may be the tag line for the jurors to take back to the jury room to use in their deliberations. Ultimately, for the storyteller which device(s) to make use of is a matter of timing, purpose and importance.

MOMENTS OF SIGNIFICANCE

Along these same lines, if the advocate has a "moment of significance" in the client's story—where an event of some importance, consequence or salience—either occurs or fails to occur, an Elongated Narrative will most likely be necessary in order to enhance the listening and visualizing experience of the listeners. By a "moment of significance" I am referring to an event so central to:

- (A) The telling of the story by the advocate;
- (B) The understanding of the story by the listener; or,
- (C) The acceptance of the story by the listener,

that without the full explanation afforded by choice of an Elongated Narrative, the advocate will either fail to convey his or her client's story fully or persuasively; or, the listeners will fail to comprehend the story to such a degree that they either misunderstand the facts or reject the story

entirely.

Using an Elongated Narrative in “moments of significance” is critically important because a factually strong and emotionally heavy scene sets an internal story-boat in motion for the listeners. For example, once I have explained in an Elongated Narrative my father’s honesty and how that virtue was transmitted to me in a way that made practical sense and moral rightness, I can keep those images afloat all through the story by simply making passing references to the events already described. I can use Narrative Conclusions and Narrative Synopses to push that ship along the water throughout the trial.

However, if that first story is contrasted with trying to explain why my father is now charged with theft the first story will not resonate with the jury unless they have also experienced my father’s metamorphosis through the vehicle of another Elongated Narrative. And, what’s more, in order to shift away from the second Elongated Narrative, I will most likely need a third Elongated Narrative to bring the jury back to the conclusion that my father is an honest man and, hence, would not do the sorts of things he is accused of having done. That is because the changes in the story from honest man to accused thief to honest man again are moments of significance which require the strong force of a concrete scene to cause the vessel to change course inside my listeners’ minds and hearts.

FINDING THE PROPER MIX

As a rule of thumb, if the listeners need uncomplicated or basic information, or if the teller wants the listeners to remember a slogan, tag line, label, motto, moral or any other sort of theme, the Notion end of the Continuum is abundantly more useful. The advocate can make use of any number of rhetorical devices in order to speak in broad generalizations. In contrast, when the advocate reaches a moment of significance, or when a decision is made that the jury needs to feel, smell, touch, taste, see, or otherwise experience something, the Narrative end of the Continuum, with its heavy reliance of specific facts to move the client’s story, is invaluable and must be accessed.

Outside of the moments of significance in a story, how can the advocate know when the listeners will need the specificity of the Narrative as opposed to the generality of the Notion? The answer depends upon a number of factors:

- (1) Who the listeners are and what they bring to the decision-making process;
- (2) Where the jurors, individually and collectively, are starting from on this journey you want them to take with you;
- (3) In what context you will be advancing your client’s theory of defense through the storytelling experience;
- (4) From what, or who’s, perspective you will be advancing the theory and telling the story;

(5) What the listeners' expectations of you as a guide are; and,

(6) Your purposes in telling your client's story as those purposes reveal where you hope the journey will lead the jury.

Brainstorm what your listeners will both want and need to experience, in order to follow and accept the factual and emotional logic of your story. In addition, given the context in which you will tell the client's story, how concrete can you make the moments of significance? Given the relevant characteristics of your jurors, how direct do your conceptual conclusions need to be? Answer those questions and you are well on your way to conjuring the sort of alchemical story, one that blends both the abstractions of Notion with the concreteness of Narrative, that will weigh heavily in favor of a response from the jury which supports your ultimate request to them.

Nowhere is the cooperation between concept and story more important than in the context of speaking to a jury, where stories are generally told to make points, and points need to come alive in order to move the listeners to decisions which favor the client. As it turns out, most lawyers who speak to juries have been trained in conceptual thinking and have missed out on the benefits of story thinking. It is the confluence of the two that can save lives and the confluence comes to life on the Notion-Narrative Continuum.

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Persuasion Consultants is here to assist the criminal defense advocate in telling the story of their client's innocence or reduced culpability to the jury. We use the storytelling/persuasion method of trial advocacy and can help you utilize this powerful tool in any, or all, aspects of your case. For more information, call (218) 522-0235 or contact us through our web site at <http://www.persuasionthroughmagic.com>.