International Municipal Lawyers Association
2022 Annual Conference
Portland, Oregon
Friday, October 21, 2022

Employment Law Section Meeting

Pharoahs, Fruitcake, and *Faragher*: Trying an Employment Dispute using Storytelling

Marjorie L. Cohen
Senior Assistant City Attorney III
City of Houston Legal Department
Marjorie.Cohen@houstontx.gov

1

Storytelling is an essential part of the human experience.



2

The story has a beginning, a middle, and an end.

It has characters, a setting, and dramatic tension.







3

The story is framed by a theme.



4

The story has an audience-centered perspective.

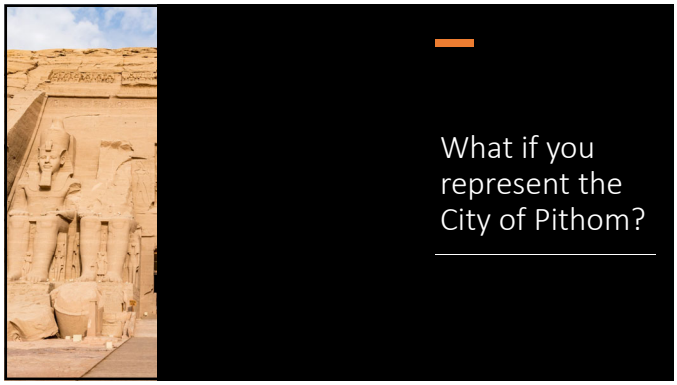


5

What if you represent Pharoah?



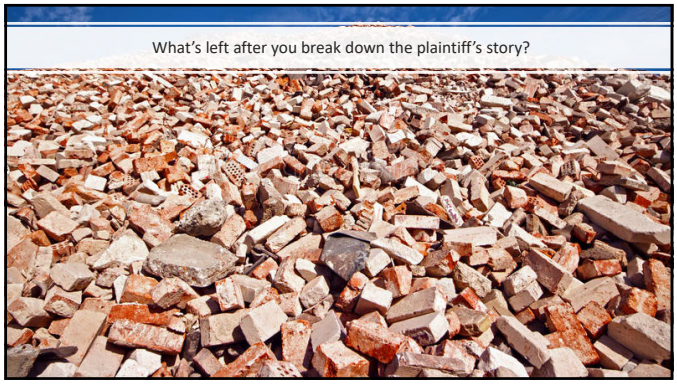
6


What if you represent the City of Pithom?

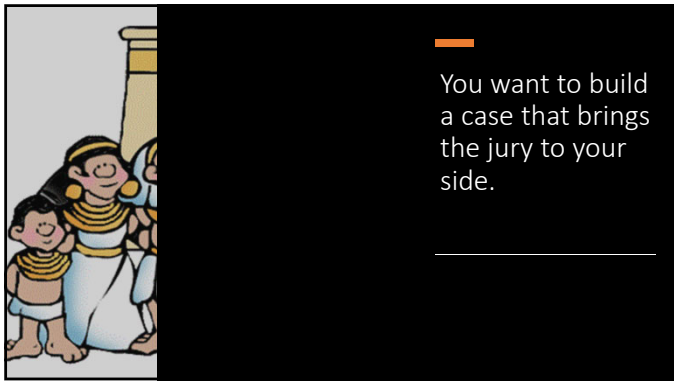
7


You won't win the jury over by just negating the elements of the Plaintiff's case.

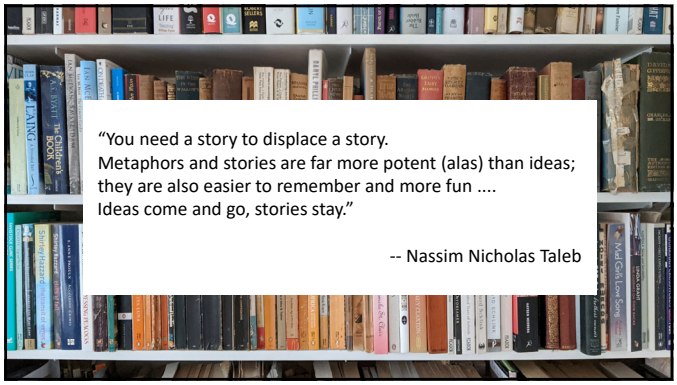
8


What's left after you break down the plaintiff's story?

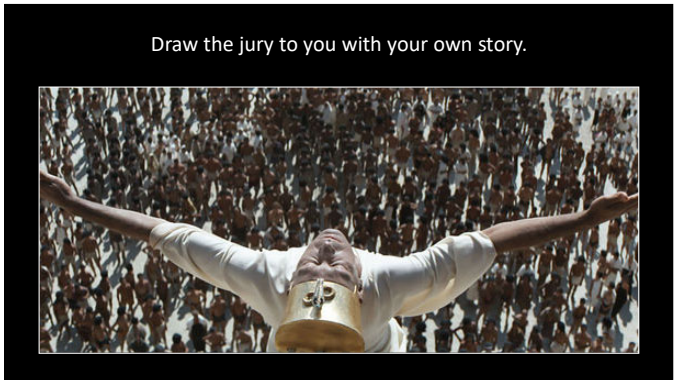
9


You want to build a case that brings the jury to your side.

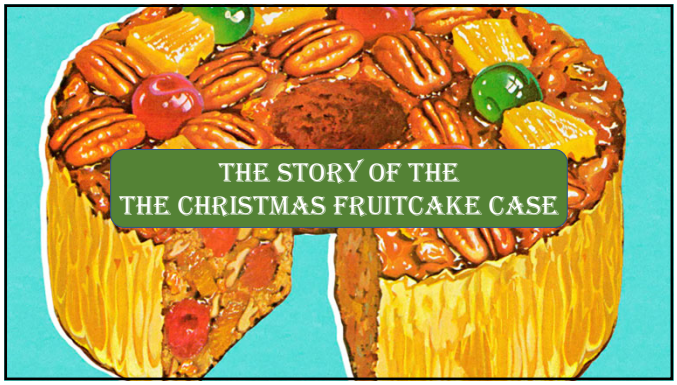
10


"You need a story to displace a story.
Metaphors and stories are far more potent (alas) than ideas; they are also easier to remember and more fun ....
Ideas come and go, stories stay."
-- Nassim Nicholas Taleb

11


Draw the jury to you with your own story.

12



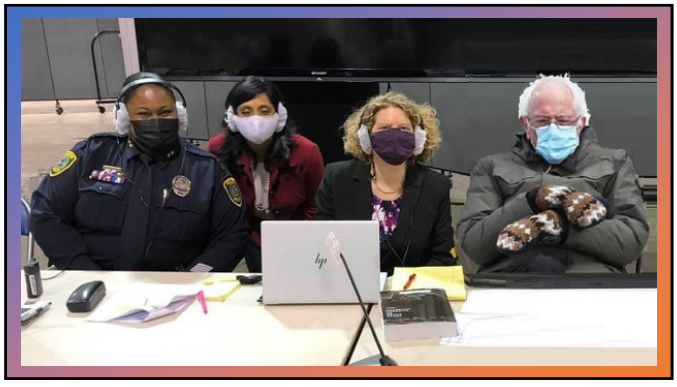
13



RECIPE
FOR A FRUITCAKE CASE

- Marinate for 10 years
- Bad record
- Bad ruling
- Bad facts
- Bad precedent
- Bad timing

14



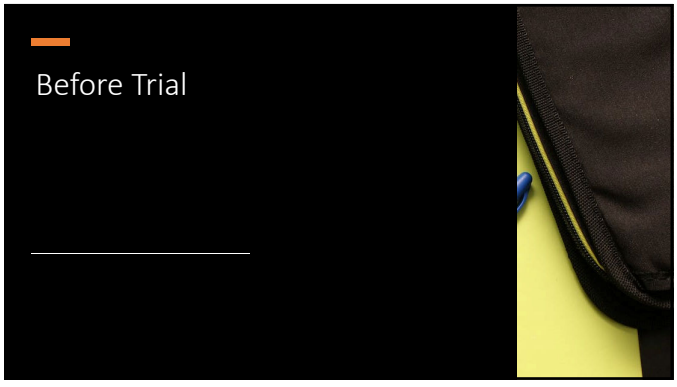
15



16

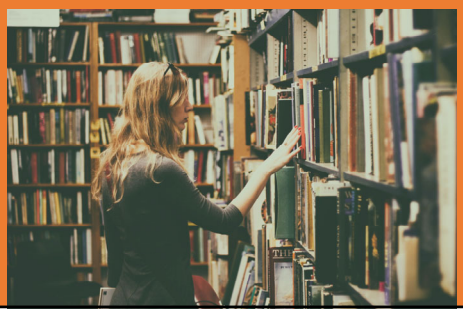


17



18

Choose the story of your case.



19



"The trial offers jurors a stark choice

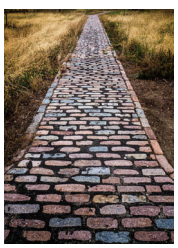
between accepting Lanier's invitation to believe simple, alluring and emotionally cathartic stories

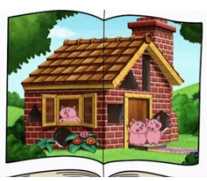
and the defense's appeals to colorless, heavy-going sopoforic Reason."

20

FACTS **REASONING** **STORY**

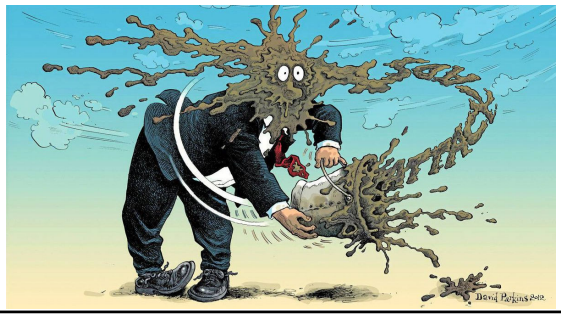




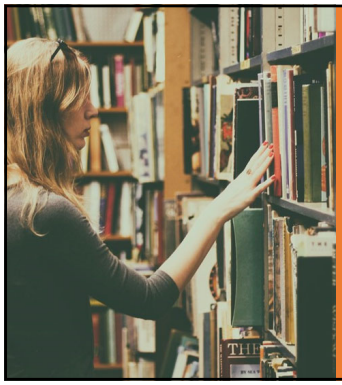


21

Our Story



22



ELEMENTS OF STORYTELLING

- Characters
- Setting
- Plot
  - Beginning/Middle/End
  - Dramatic Tension
- Point of View
- Theme

23

Characters = Who?



24

Who is the audience?



This Photo by Unknown Author is licensed under CC BY-NC

25

Who is the hero?



26

Who is the villain?



This Photo by Unknown Author is licensed under CC BY-NC

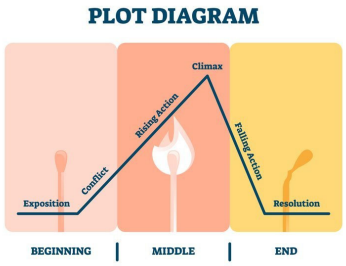
27

Setting = Where & When?



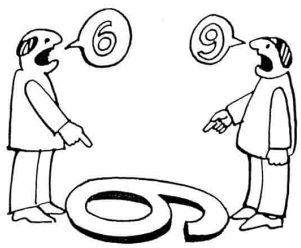
28

Plot = What & How?



29

Point of View = A reason why you should win



30

A reason to care = A reason to win



31

Example: The Houston Police Department stands for (1) growth, (2) truth, and (3) accountability.



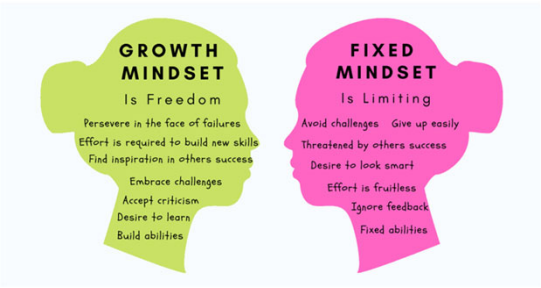
32

Theme – Why it happened that way



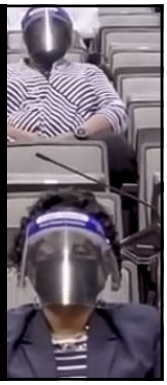
33

Example:



34

Voir Dire



35



GOALS OF VOIR DIRE

1. Information gathering
2. Indoctrination
3. Connection

36

Q: What are your thoughts about truth with respect to the police?

A: "The words police officers use have power. Its critical that they tell the truth."



37

Q: Who has dealt with growth mindset and fixed mindset at work?

Q: How does it cause problems when someone has a fixed mindset?



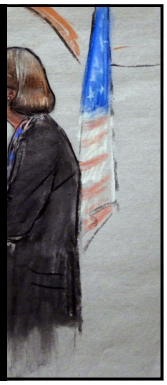
38

What if the panel doesn't buy your story?



39

Act I: Opening Statement



40

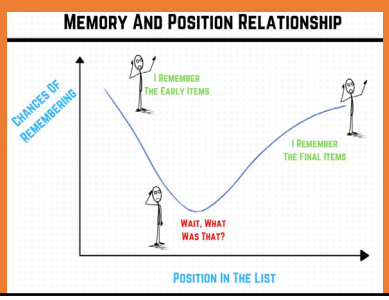


HOOK THEM FROM THE START

1. Open strong.
2. Introductions
3. Tell them what you are going to tell them.
4. Tell them.
5. Tell them what you have told them.

41

Rule of Primacy and Recency:
Information at the *beginning* and *end* of a presentation is retained better than information presented in the middle.



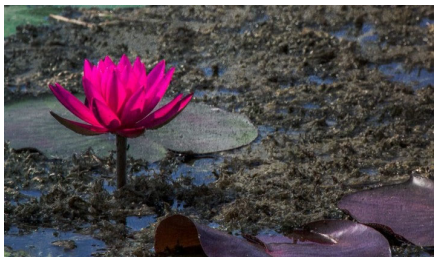
42

The Hook



43

Example:



44

Introductions

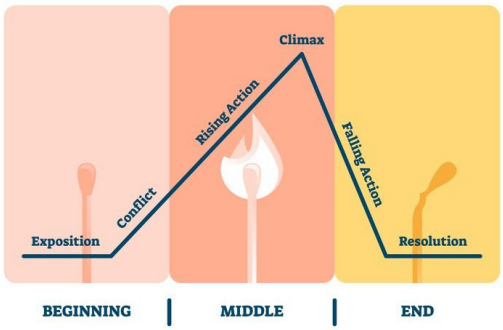


45

Tell them what you're going to tell them.



46



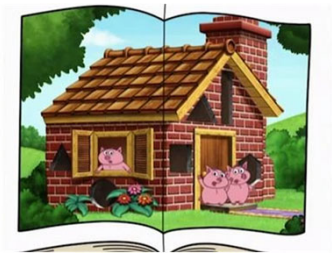
47

Tell them.



48

Tell them what you've told them.



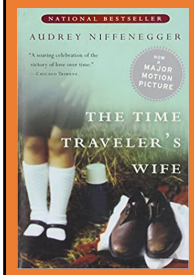
49

Act II: Witnesses

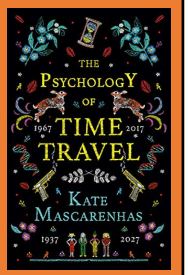


50

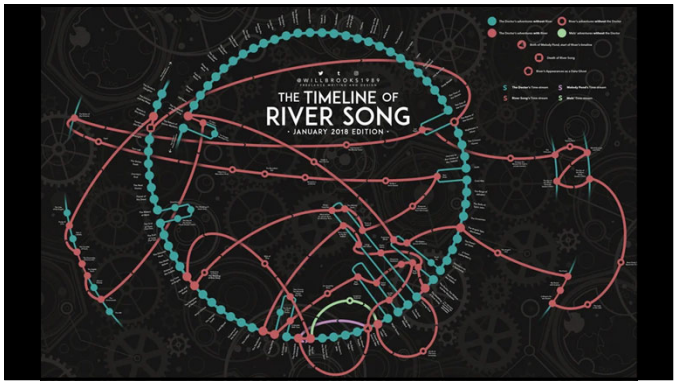
You will tell your story out of order.





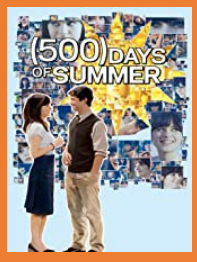


51



52

Non-linear storytelling highlights a narrative theme.

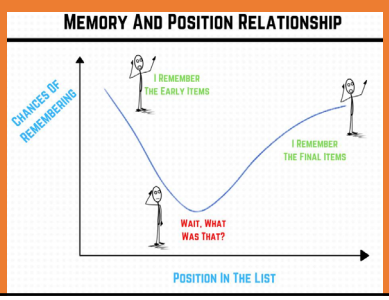






53

Remember Primacy and Recency



54

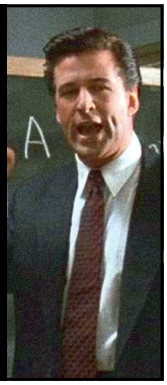
Every witness you present must serve your story by:

(1) providing unique facts,
(2) driving the plot, and
(3) establishing the theme / reason to win.

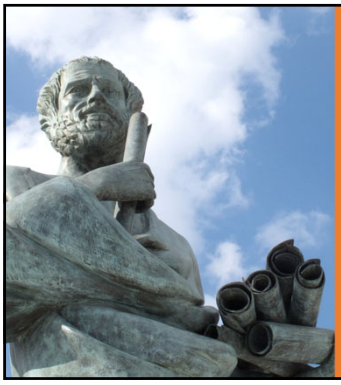


55

Act III: Closing Argument



56



PURPOSE OF CLOSING

1. Provide coherence to your story.
2. Tell the jury how you want them to decide.
3. Give your advocates talking points.

57



58

Provide coherence to your story



59

What is the moral of the story?



60

Tell the Jury how you want them to decide

3. Do you find that the City would not have cited Ms. Trimmer-Davis for untruthfulness but-for Ms. Trimmer-Davis having engaged in protected activity?

NO

61

Give your advocates talking points



62

THE HOUSTON POLICE DEPARTMENT

Encourages Employee Complaints

Discourages Employee Untruthfulness

63

MS. TRIMMER-DAVIS OWES SGT. BARFIELD AN APOLOGY



64

Opening with a thematic approach signals judge and jury to anticipate dramatic building blocks; closing in that vein gives them the satisfaction of knowing what they anticipated. This not only creates interest but reassures your audience that, regardless of sequence, there is a reason for every piece of evidence and testimony presented. Aiming for emotional coherence rather than a rote recitation of the elements of your case invites jurors to make your story their own.

"Aha!" thinks the juror, "I knew it!"

-- Stephanie Kane

65



66


International Municipal Lawyers Association
2022 Annual Conference
Portland, Oregon
Friday, October 21, 2022
Employment Law Section Meeting
Pharoahs, Fruitcake, and *Faragher*:
Trying an Employment Dispute using Storytelling
Marjorie L. Cohen
Senior Assistant City Attorney III
City of Houston Legal Department
Marjorie.Cohen@houstontx.gov

67