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

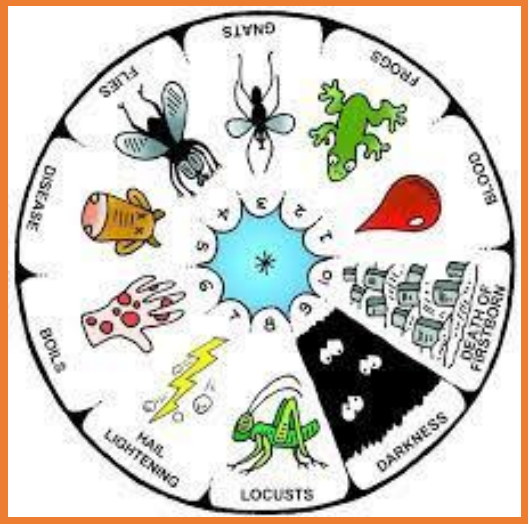
Storytelling is an essential part of the human experience.



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

It has characters, a setting, and dramatic tension.







The story is framed by a theme.



The story has an audience-centered perspective.



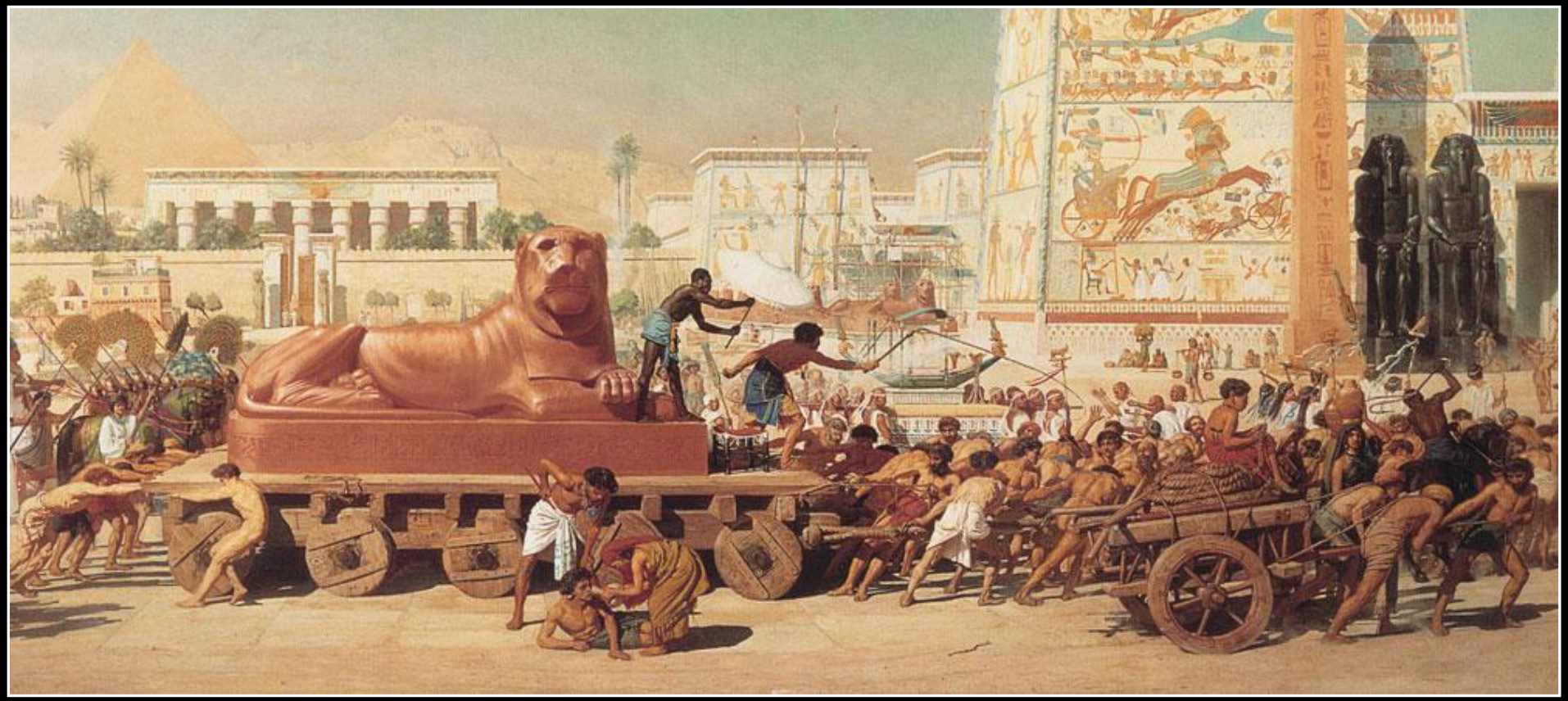
What if you represent Pharoah?





What if you represent the City of Pithom?

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

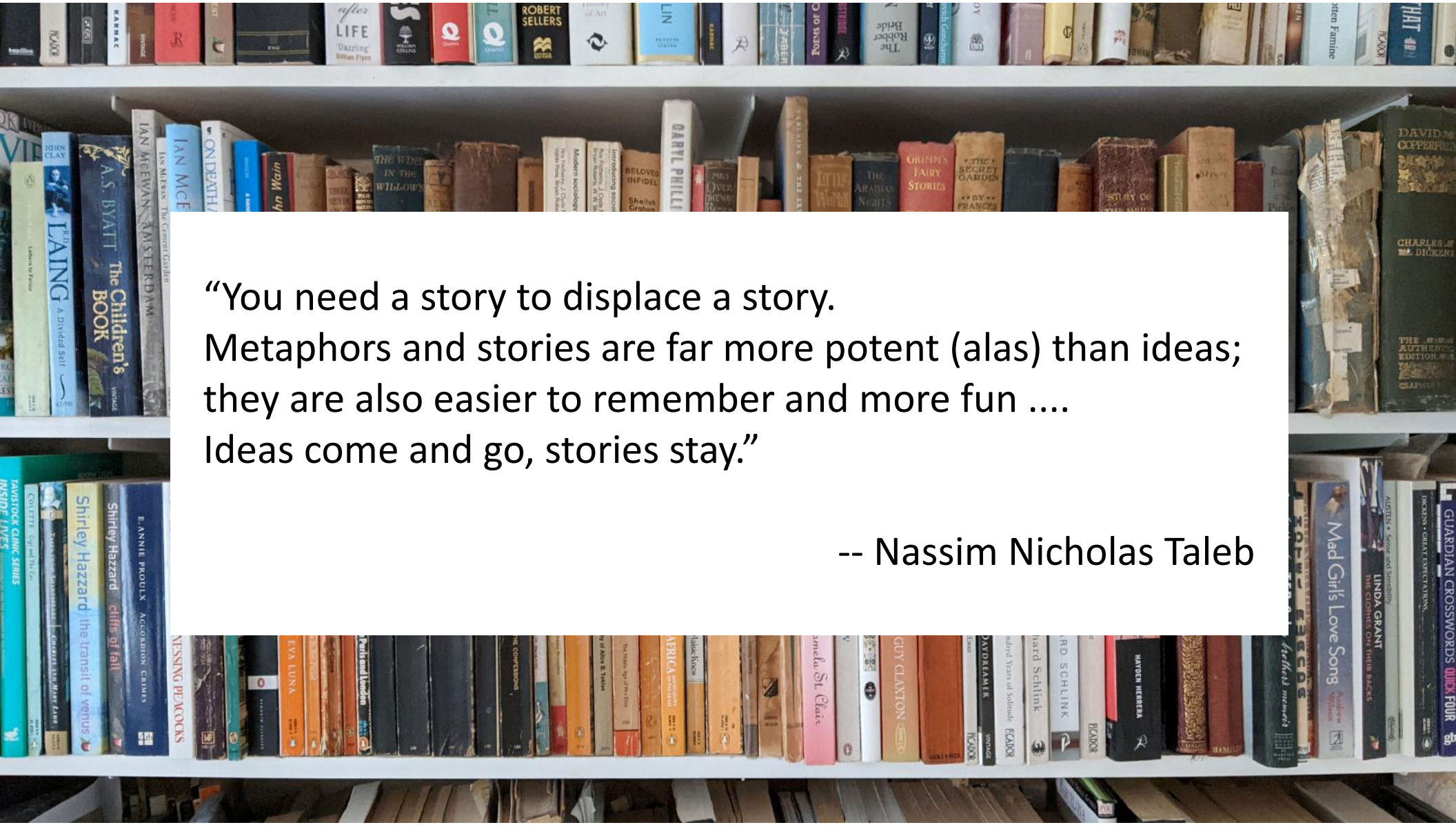


What’s left after you break down the plaintiff’s story?



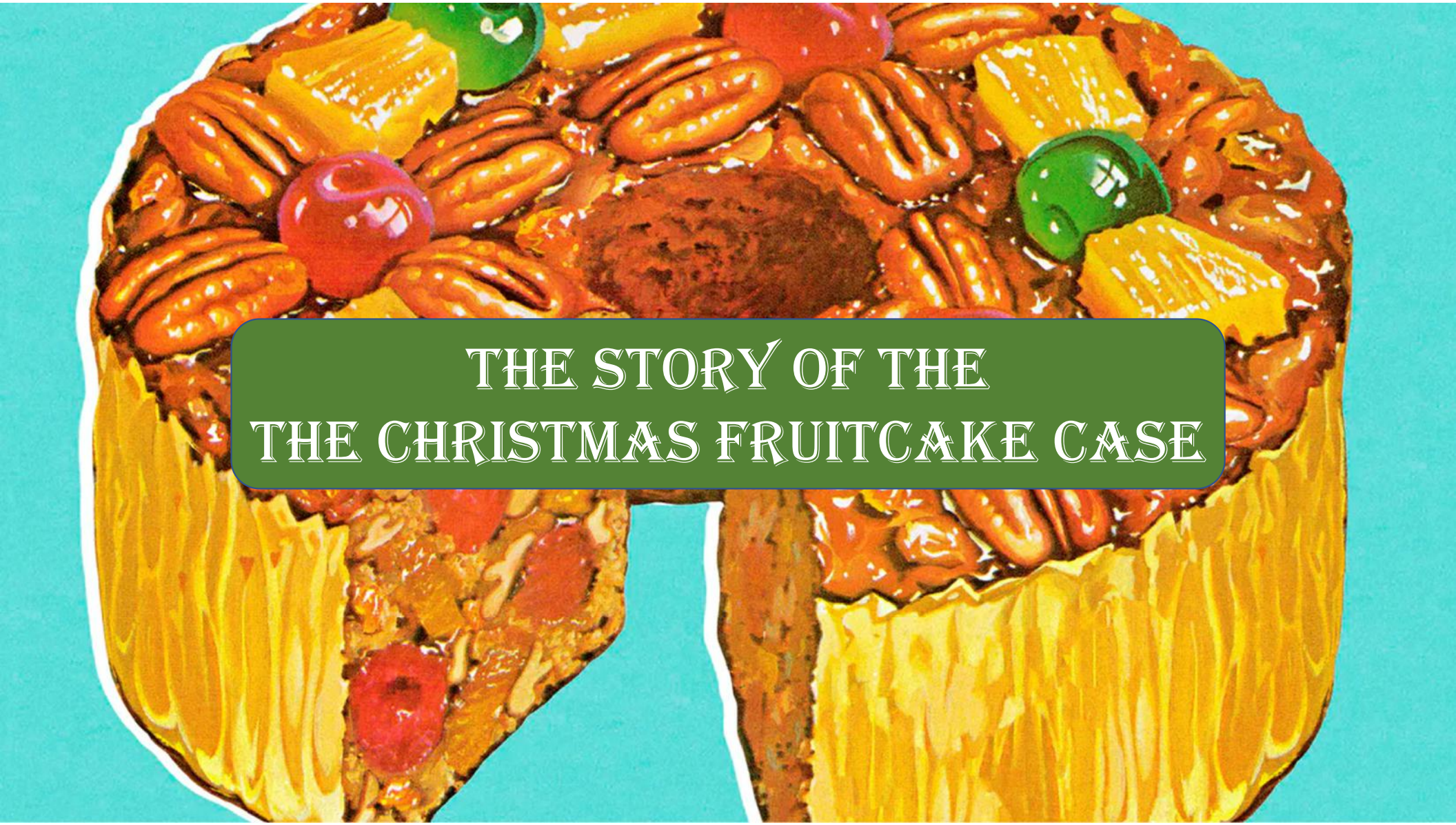


You want to build a case that brings the jury to your side.


"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

Draw the jury to you with your own story.




THE STORY OF THE
THE CHRISTMAS FRUITCAKE CASE



RECIPE
FOR A FRUITCAKE CASE

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




WE
WON!


You Can
Do It Too

Before Trial



Choose the story of your case.





"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."

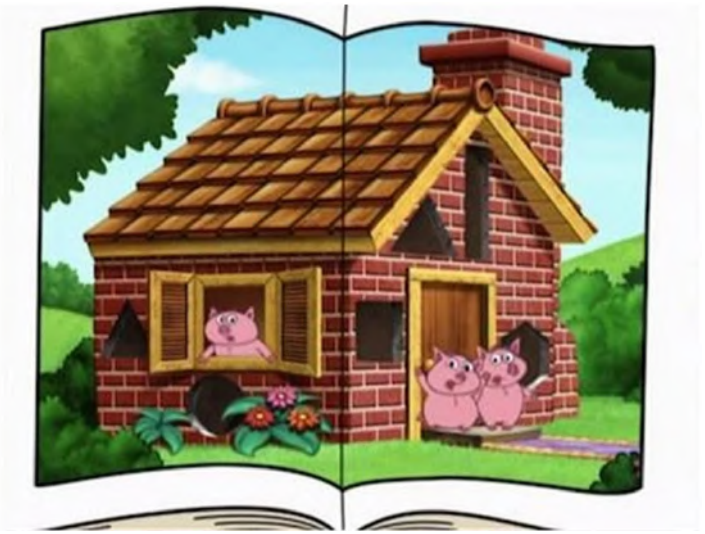
FACTS



REASONING



STORY



Our Story





Elements of Storytelling

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

Characters =
Who?



Who is the audience?







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





Who is the hero?



Who is the villain?

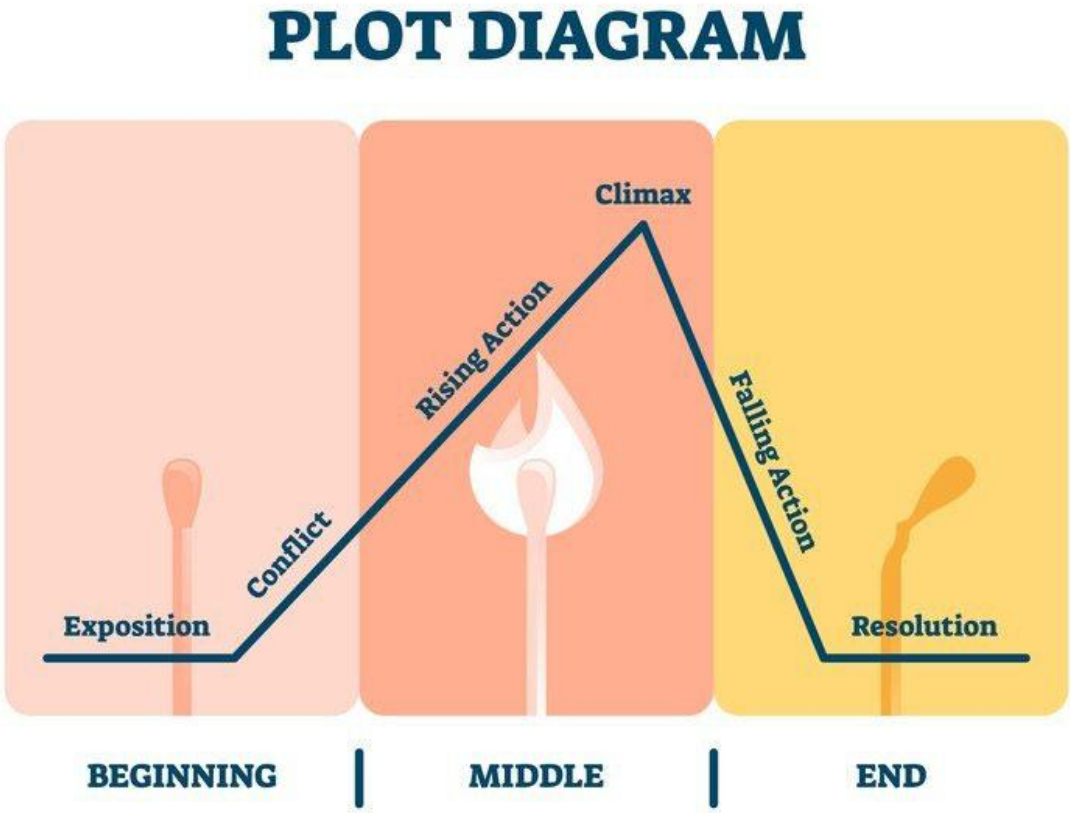


This Photo by Unknown Author is licensed under CC BY-NC

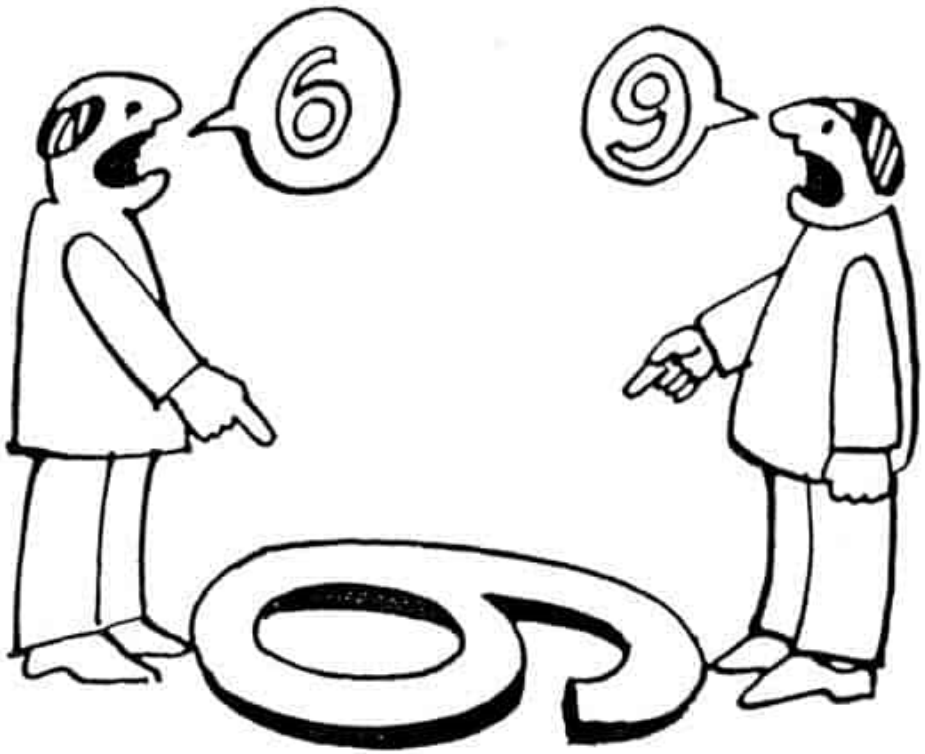
Setting = Where & When?



Plot = What & How?



Point of View
= A reason why you should win



A reason to care = A reason to win



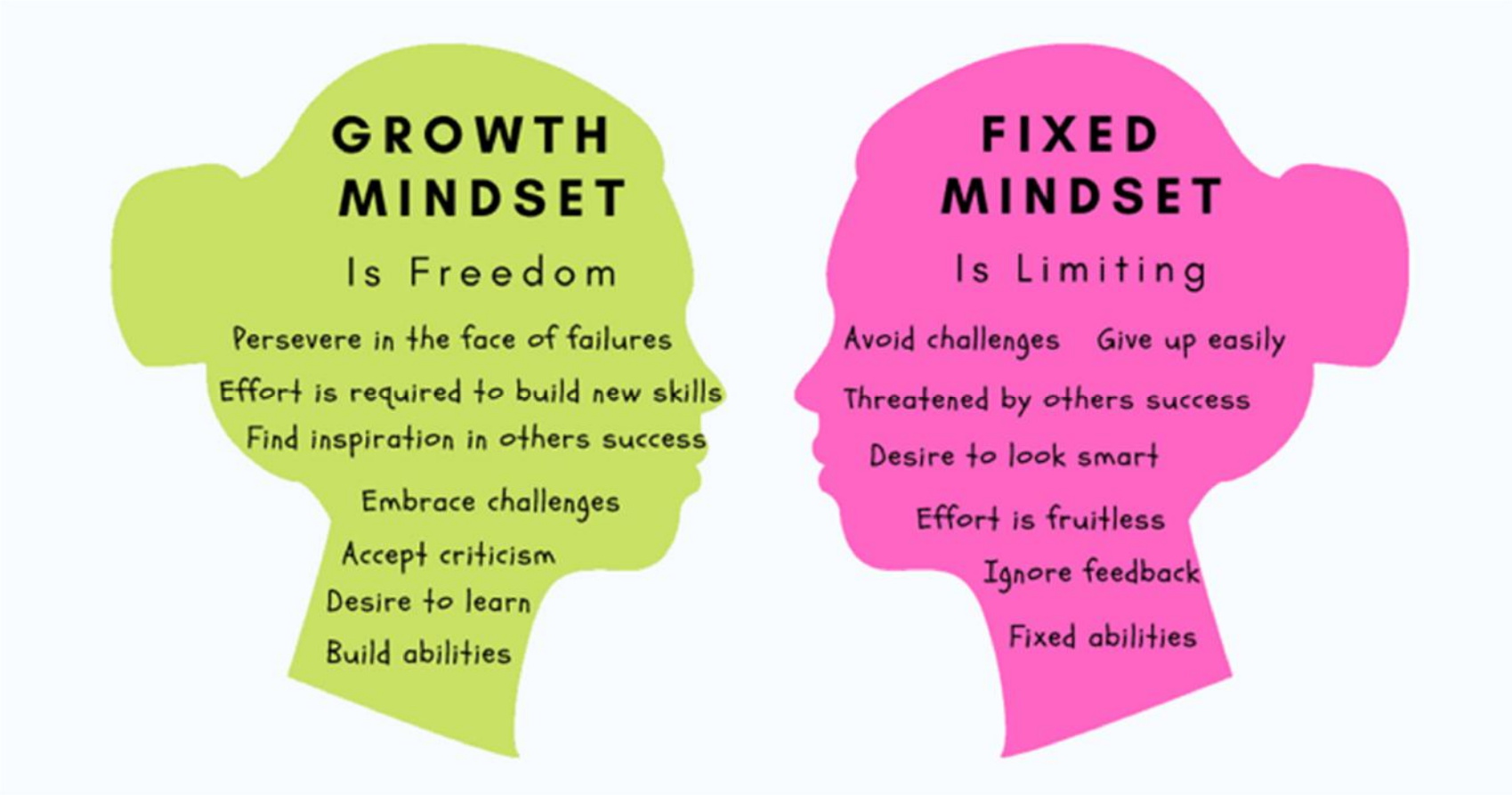
Example: The Houston Police Department
stands for (1) growth, (2) truth, and (3) accountability.



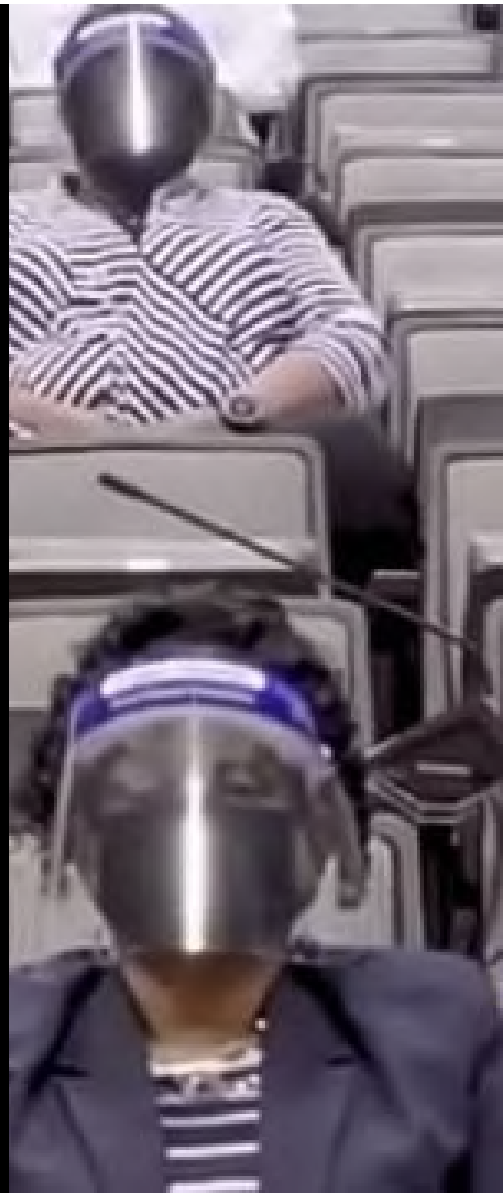
Theme – Why it happened that way



Example:


GROWTH MINDSET
Is Freedom
Persevere in the face of failures
Effort is required to build new skills
Find inspiration in others success
Embrace challenges
Accept criticism
Desire to learn
Build abilities
FIXED MINDSET
Is Limiting
Avoid challenges
Give up easily
Threatened by others success
Desire to look smart
Effort is fruitless
Ignore feedback
Fixed abilities

Voir Dire





Goals of Voir Dire

1. Information gathering
2. Indoctrination
3. Connection

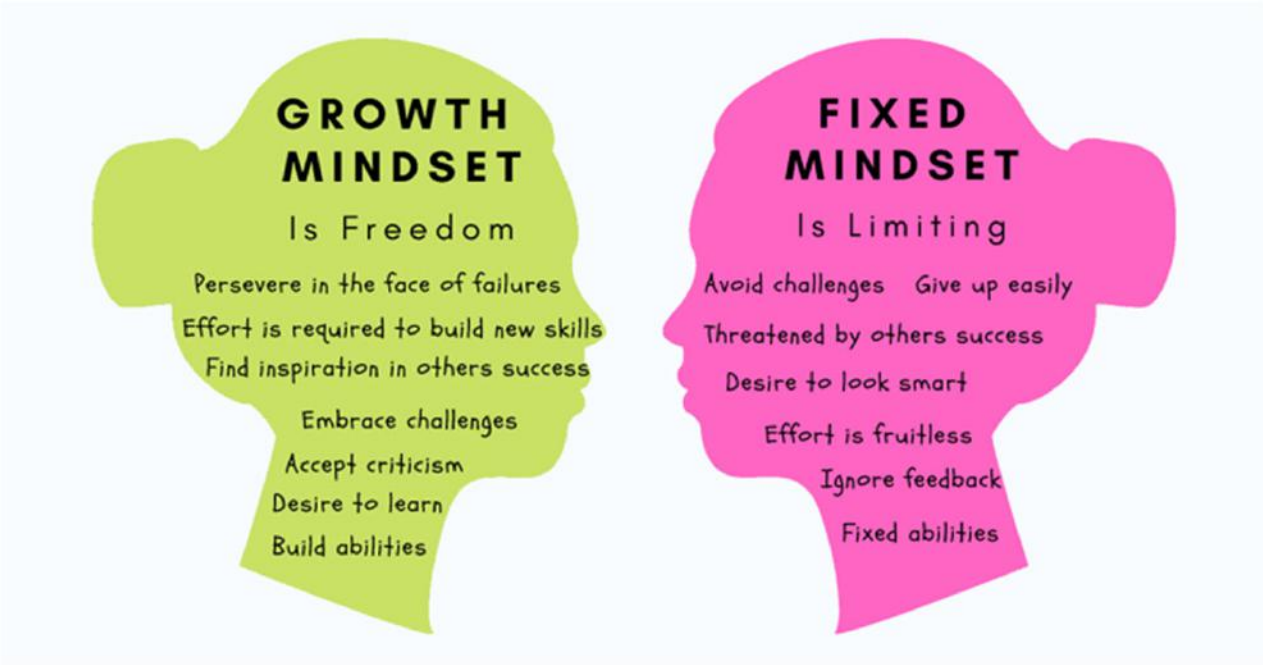
Q: What are your thoughts about truth with respect to the police?

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



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

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



What if the panel doesn’t buy your story?



Act I: Opening Statement



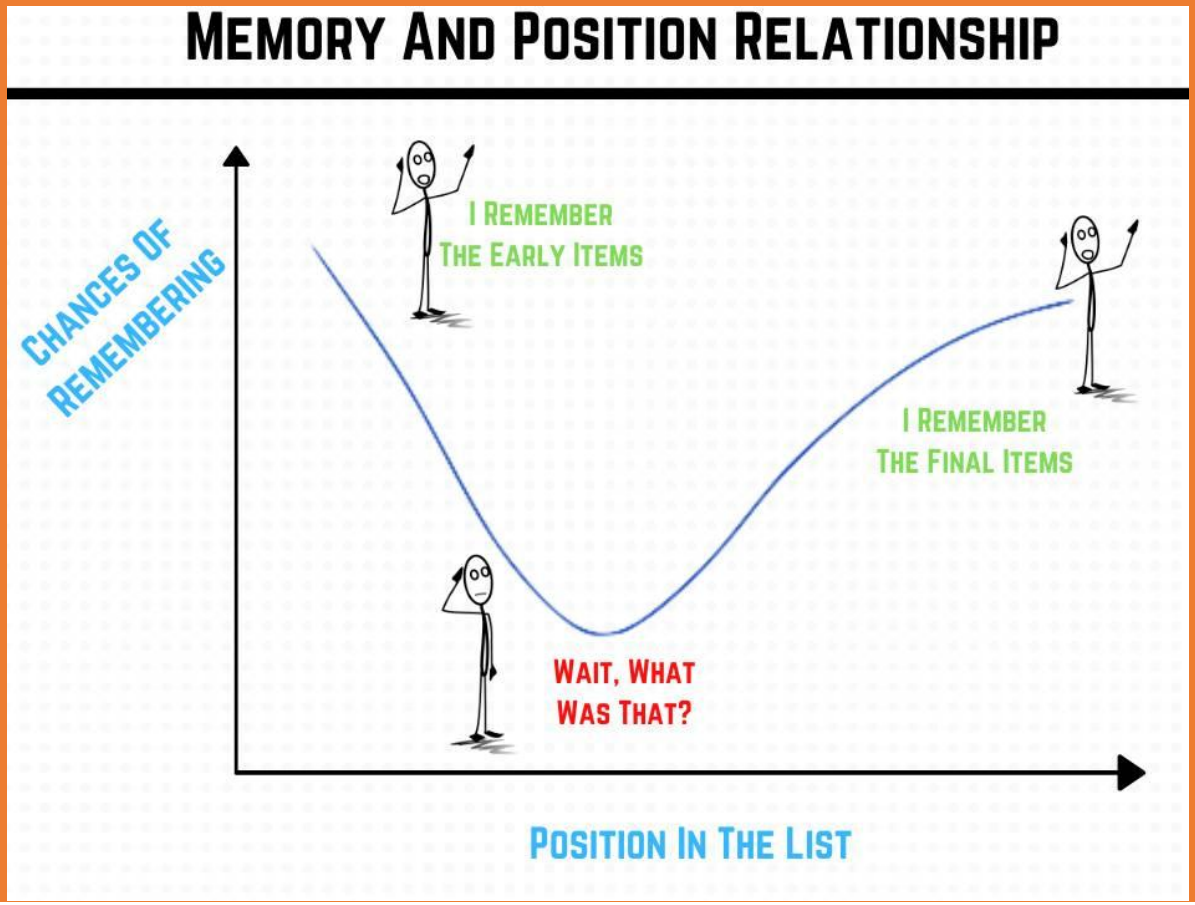


Hook them from the start

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.

Rule of Primacy and Recency:

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



The Hook



Example:

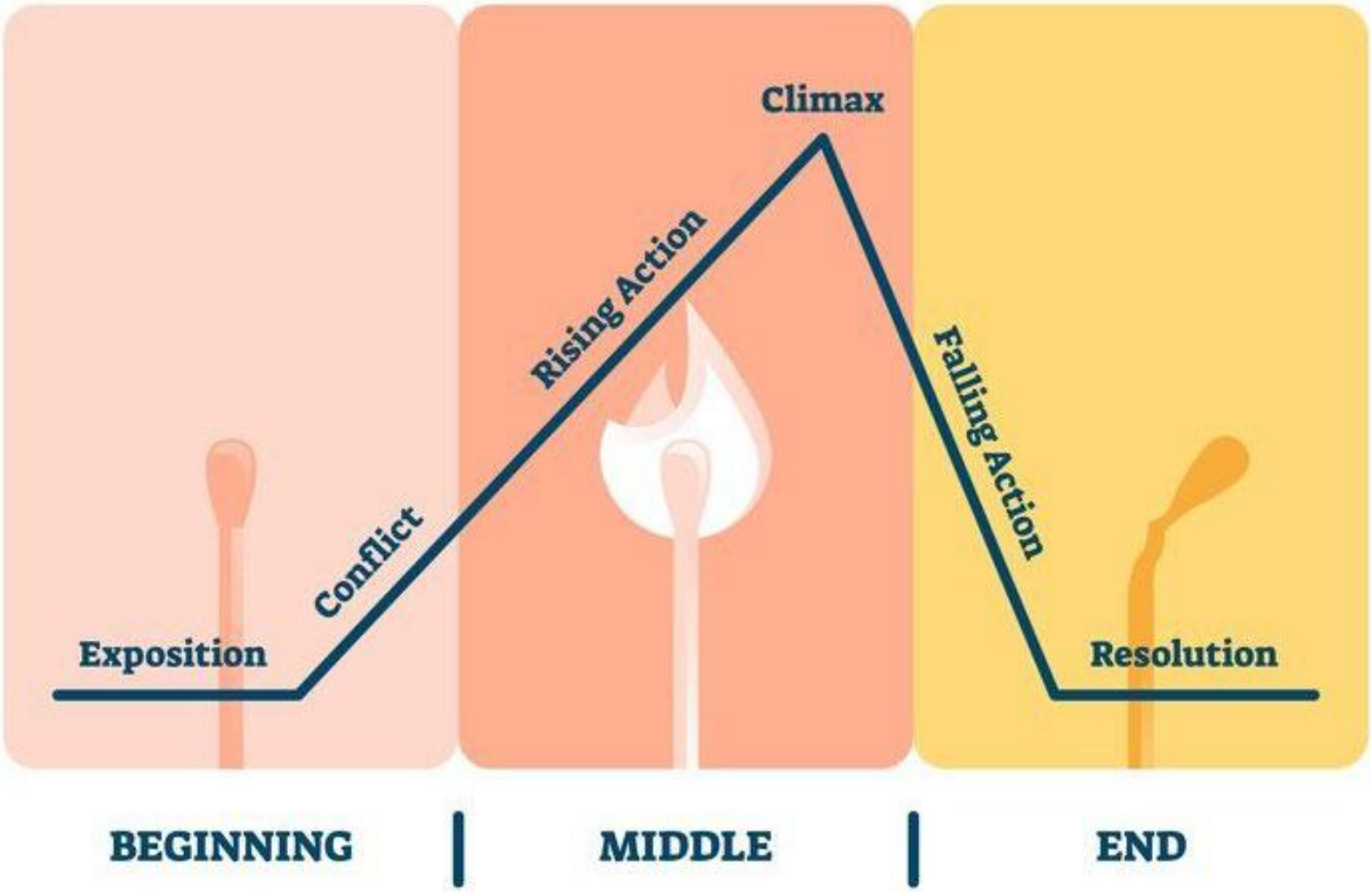


Introductions



Tell them what you're going to tell them.




Climax
Rising Action
Falling Action
Conflict
Exposition
Resolution
BEGINNING
MIDDLE
END

Tell them.



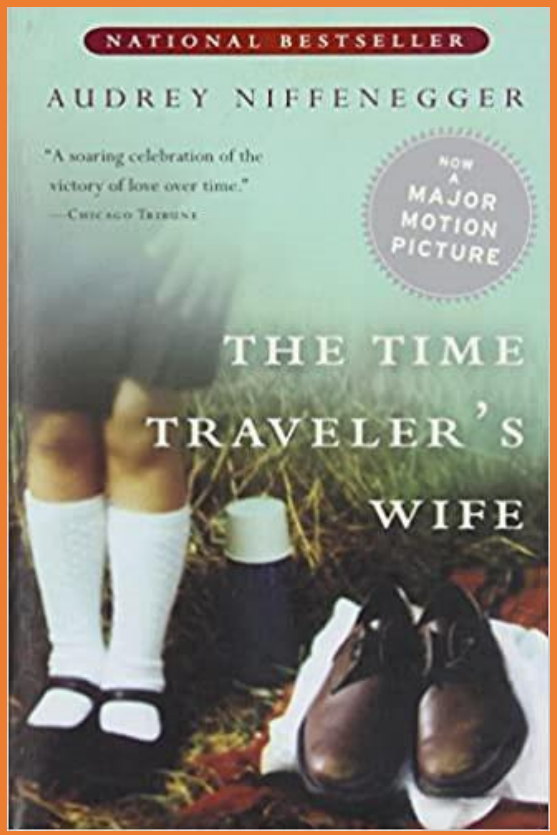
Tell them what you've told them.



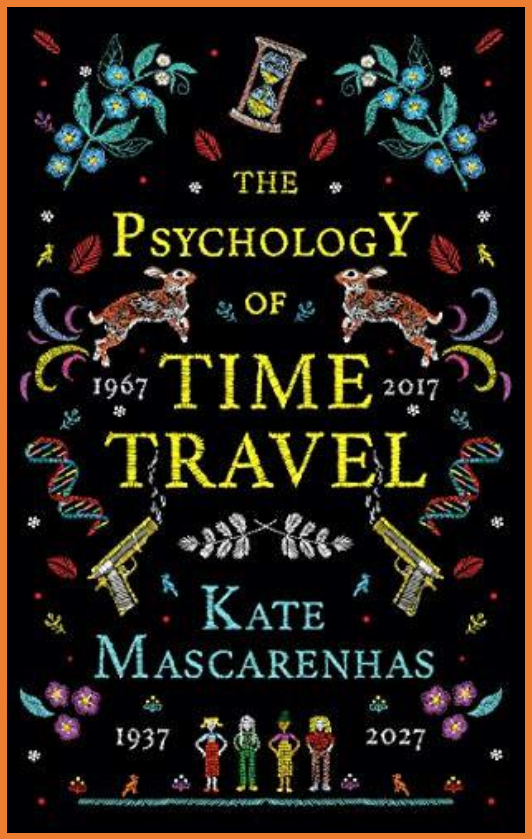
Act II: Witnesses

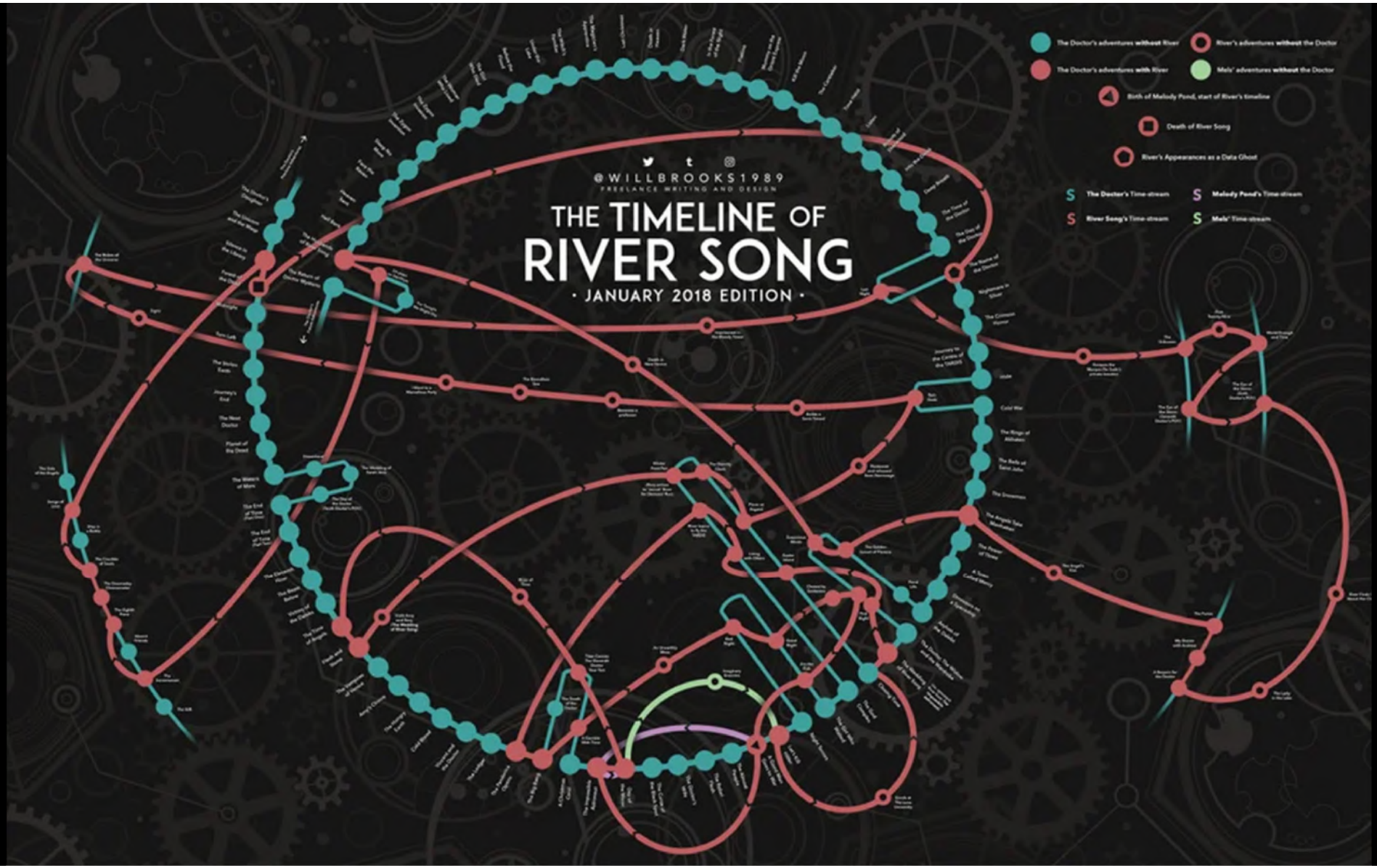


You will tell your story out of order.

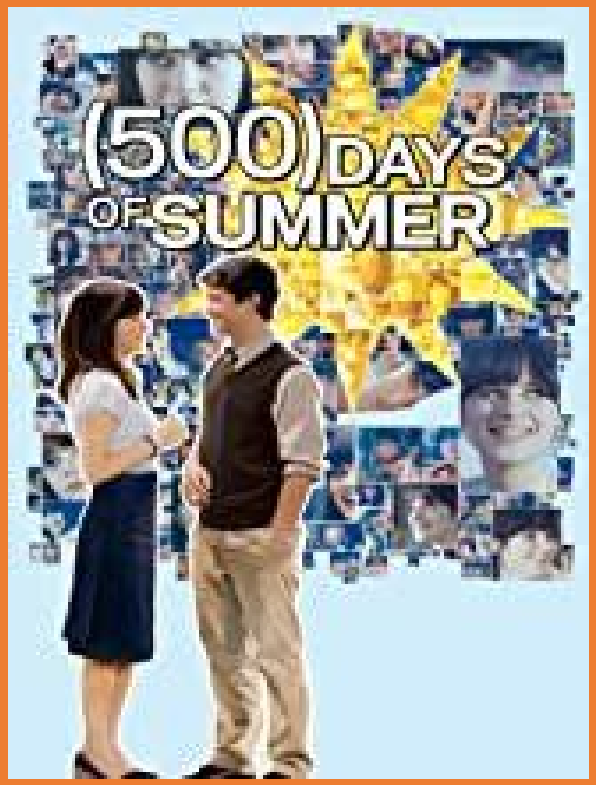


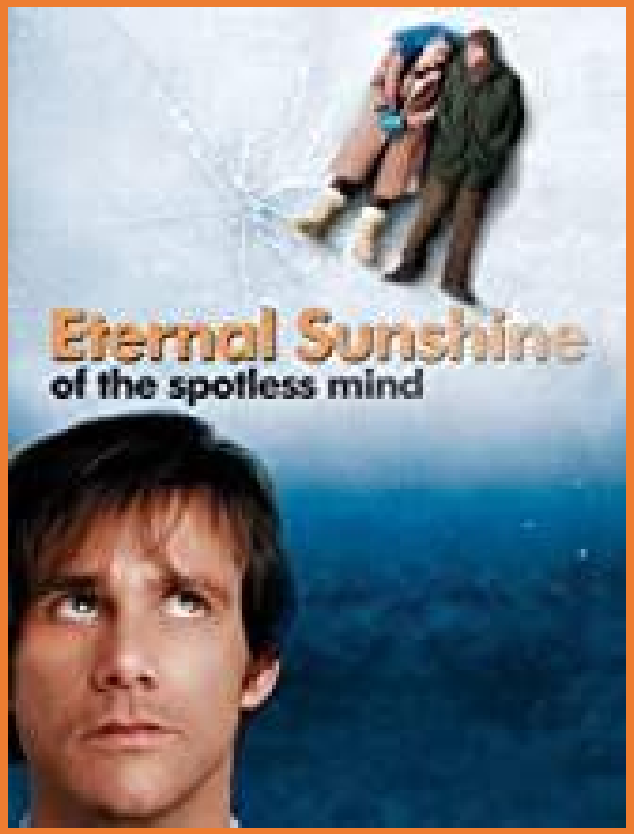





@WILLBROOKS1989
FREELANCE WRITING AND DESIGN
THE TIMELINE OF
RIVER SONG
• JANUARY 2018 EDITION •
The Doctor's adventures without River
The Doctor's adventures with River
River's adventures without the Doctor
Mels' adventures without the Doctor
Birth of Melody Pond, start of River's timeline
Death of River Song
River's Appearances as a Data Ghost
The Doctor's Time-stream
River Song's Time-stream
Melody Pond's Time-stream
Mels' Time-stream

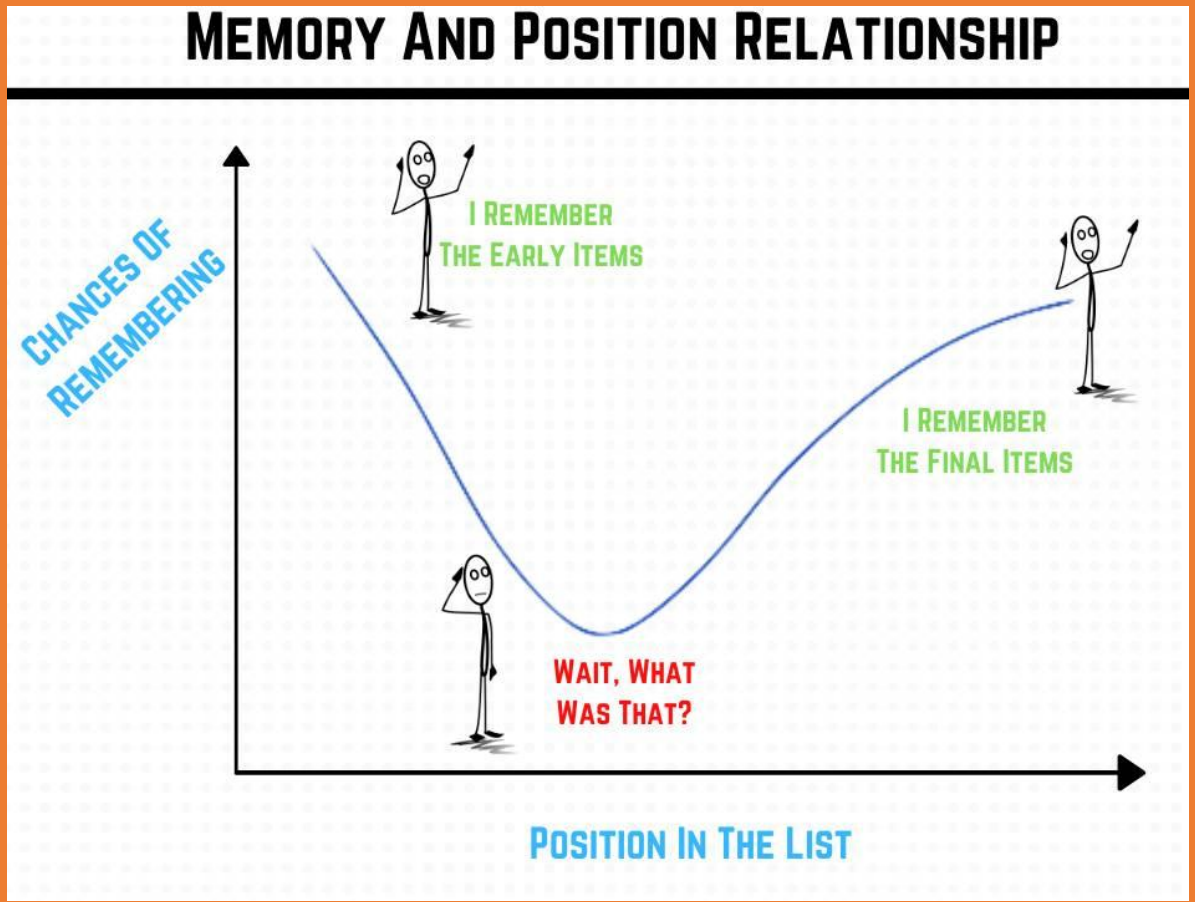
Non-linear storytelling highlights a narrative theme.







Remember Primacy and Recency



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.



Act III: Closing Argument





Purpose of Closing

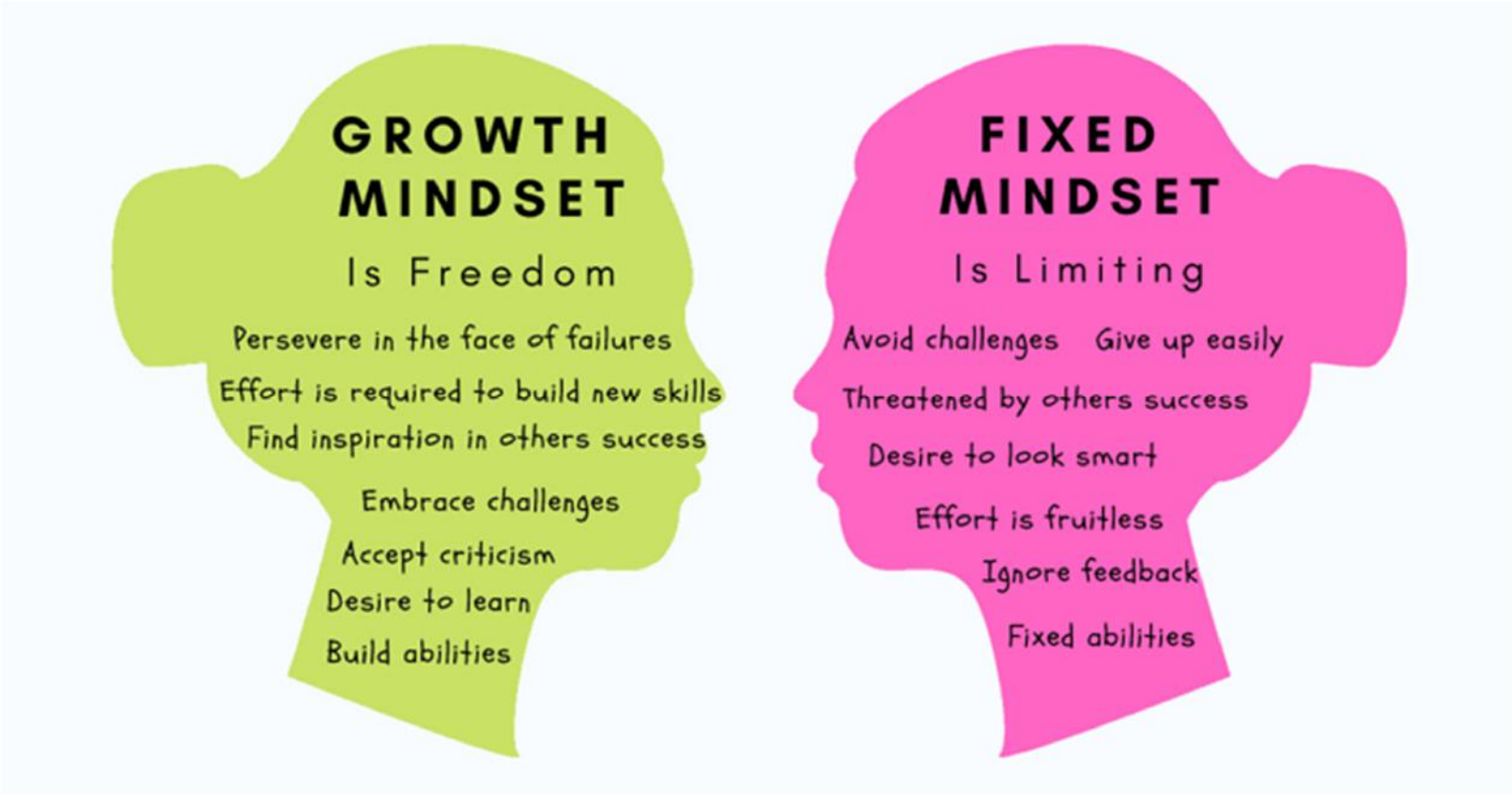
1. Provide coherence to your story.
2. Tell the jury how you want them to decide.
3. Give your advocates talking points.


HOUSTON
CITY OF HOUSTON POLICE
SPACE CITY U.S.A.
POLICE
HOUSTON
POLICE
APPLY TODAY
HPDCAREER.COM

Provide coherence to your story



What is the moral of the story?



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

Give your advocates talking points



THE HOUSTON POLICE DEPARTMENT

Encourages Employee Complaints



Discourages Employee Untruthfulness

MS. TRIMMER-DAVIS OWES SGT. BARFIELD AN APOLOGY



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


The End



International Municipal Lawyers Association
2022 Annual Conference
Portland, Oregon

Friday, October 21, 2022

D

Employment Law Section Meeting

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

E

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