

# Kenya School of Law

**ADVOCATES TRAINING PROGRAM**

**2015-16 ACADEMIC YEAR**

Trial Advocacy

**STORY TELLING**

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# OUTLINE

**Idea of a Persuasive story**  
**Ethics of Persuasive story telling**  
**Preparing a persuasive trial story**

# **Steve Lubet, “Modern Trial Advocacy”**

## **TRIALS AS STORIES**

**Trials exists to settle factual disputes.**

**Questions being asked:**

**What happened?**

**What happened first?**

**Why did it happen?**

**Who made it happen?**

**Did it happen on purpose?**

**Was it justified and fair?**

# Theory-Steve Lubet, contd.

Trials seek to persuade the trier of fact by recounting their version of historical facts.

This is the story telling.

Whole process from opening address , through examination and evidence is story telling.

Rules of procedure and evidence provide the framework.

Conclusion is directed by substantive law.

# What a persuasive story does

1. Tells of people who have reasons for the way they acted
2. Accounts for/explains known/undeniable facts.
3. Is told by credible witnesses.
4. Is supported by details.
5. Accords with common sense.
6. Is organised

# Planning a story

- ❖ Get the basic facts
- ❖ Reason for client's conduct
- ❖ What story would be unpersuasive?
- ❖ Is there a supportive credible witness?
- ❖ Organisation-what should come first?

# Ethics of Persuasive story telling

**If you know the truth:** Not free to coach witness to alter the story, but can emphasize important information and minimise the damaging information.

**If don't know the truth:** Can get information from client within rules of confidentiality. But must not accept is as gospel truth.

**Key to ethical value:** Is it supported by facts?

# Preparing a persuasive trial story

Have a theory, theme and frame(see separate lecture).

**Frame:** No case happens in a vacuum. A frame provides setting in which facts are received, accepted, rejected, emphasised or discounted.

Examples of frames: Right to privacy; clear rules; discipline.



# Planning Final Argument

Details in lecture on submissions.

Good trial preparation begins at the end. In final submissions that is when you will **argue**, supported by evidence on record.

# Planning case in chief

Tools for story telling here are:

1. Opening statement.
2. Examination in chief and cross examination.
3. Exhibits-real and documentary evidence.
4. Other soft skills-body language, communication skills.

# Story telling Exercise

In groups of two, tell the other about your first day in primary school, or your first trip to Nairobi.

Let the one to whom the story was told, tell the story to the others.

# Q and A

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