

Discovering the Story

Everything in life is a story:

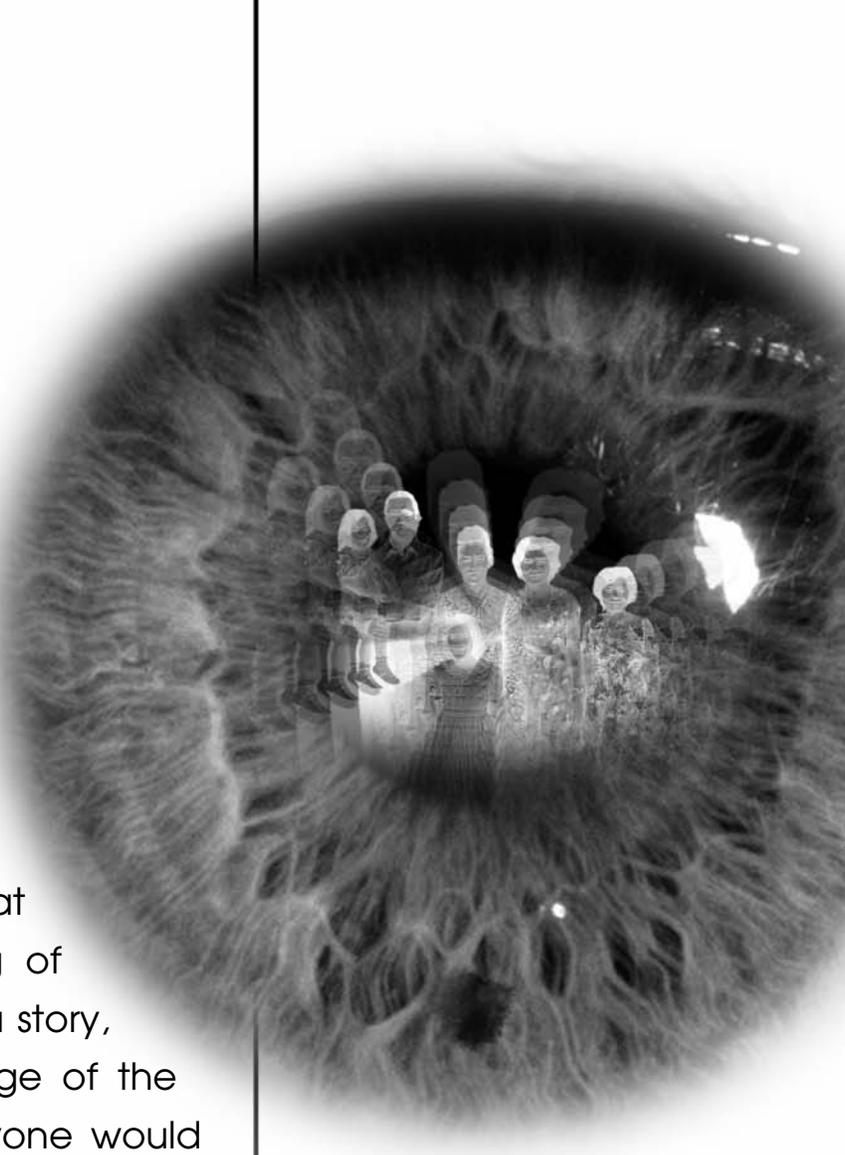
Everything. We are born—which is a story—and we die, the end of that story and perhaps the beginning of another. Our life in between was a story, a book, in fact, every day a page of the story. The question is whether anyone would want to read that book. More to the point, would we want anyone to read it?

Is it a boring, empty story, one we've lived devoted to distractions that lead nowhere like the bear in the cage at the zoo who walks endlessly back and forth across the full length of his small pen and at the conclusion of his life has traveled thousands of miles leading no where? At the end of our book of life what is written on the last page? What if, after having filled the book with the pages of our story, there is written but two words: "So what?"

The other night at a party I was sitting across the table from an older man who was accompanied by his breathlessly beautiful young wife, the raven hair, the peachy skin, the Barbie doll body wearing the scanty stuff to show it, and as the evening wore on I asked the woman seated next to me who the man was. She replied, "Oh, you don't know? That is Mr. So-and-So. He's a billionaire." She didn't know what businesses he owned or what he did to gain his fortune. She only knew he had a billion dollars. I said, "What must it be like to be smothered in billions of dollars and no one knows what you have done with your life except to become a billionaire?"

She said, "I think that would be quite wonderful." She and her husband had many millions of their own. "Is it more important to have notoriety?" she asked with faint sarcasm.

"No," I said. "I was just wondering if it is more important that one's life's story, famous or not, tells something beyond the amount of money one has made." The book of life.



Gerry L. Spence

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I think of the single mother I met the other day who raised seven children by herself. Her husband had abandoned her many years before. All of her children were educated and contributing members of society. The last page of her story would not read, "So what." But I have strayed from *my* story.

We view most of our lives in terms of story. We are fascinated by movies because of their stories in which we inhabit the life of those on the screen. Most advertisements we suffer on television are in story form. Even the nightly news is conveyed as story. *The Wall Street Journal* and the *New York Times* most often begin a feature with the story of an individual caught up in it.

"What's the story?" is the universal question. Our kids come home from school with a note from the teacher and we want to know the story. In short, almost every human action is experienced in the context of a broader story. The father going to work is engaged in the story of the office, the conflicts, the power struggles—and when he comes home at night he tells the story to his wife. The mother may be working too. Hers is likely a different story—one of sacrifice and frustration, one in which she needs to fulfill her nurturing role of mother and yet maintain her independence as an equally respected member of society.

That we see our lives and all of their chapters as stories is genetic. If we were to retreat in time to that moment when man became a member of a language-speaking species we would discover that all of his history, all of his religion, his belief system, his culture is told and handed down in story. Consequently man became a great storyteller. The wise old members of the tribe maintained their positions of respect based on stories they passed on and the learning their stories engendered. The story of great hunts and terrible battles were passed from generation to generation and became the history of the tribe. History, itself, is the connection of the present to the past by story.

How we perceive history depends on who is telling the story. Do we know our his-

tory from the story of the wealthy who founded this country—Washington, the richest man in the colonies, and Jefferson and all of the other slave owners who were men of wealth and position, or do we know the revolution from the standpoint of the small farmer who joined Washington's militia in order to earn a promised day's pay when pay was short? These are different stories and the history of our country depends on which story is being told.

The Bible is based on the stories that were handed down over the generations, sometimes not too accurately. But because they were the stories of our biblical ancestors they become revered, indeed, holy so that those stories are not only connected to the living, but to the dead, not only to the here and now, but, as it were, to eternity.

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We all have our own stories. Sometimes we can understand ourselves better if we can hear ourselves tell those stories to others. One of the stories of my childhood I remember best was waiting with my mother in our hunting tent for my father to come back from the day's hunt. Early in the morning when it was still dark my father took off alone with his rifle and a peanut butter sandwich stuck in the back of his hunting vest. Shortly he was lost to us in those vast, frightening mountains. He was after an elk. He hunted for the meat. In those depression days we lived on what my father put on the table from his hunting and what my mother harvested and canned from our garden.

My mother and I worried about my father all day. Neither of us dared say much because we were too afraid to con-

sider what our lives would be in this wilderness without this powerful, protective man. To me it was the horror of all horrors. The day dragged on. To fill the time and to keep our minds off the worry we took a long walk into the woods. Always we were listening for the report of a rifle. Then we heard shots off in the distance.

We held our breaths. Were we hearing three shots, one quickly after the other, which my father said was his signal that he needed help? No, thank God, the shots were far apart. Perhaps it was another hunter who came on to a herd of elk. Perhaps my father was having luck this day. He was a great hunter and a man of the mountains. If anyone was safe out there it would surely be he. Still we worried.

Then it began to grow dark. But we remembered what he had told us many times: The best hunting was at dawn and dusk. We shouldn't be concerned. But telling us not to worry did not chase away the worries.

"Well, maybe he didn't get a shot all day and had to wait at a clearing hoping to get a shot," I said. "That would make him late."

"Yes, but maybe he got something earlier," my mother said, "and he's having to pack it down.

You know how he does it—cuts it up into quarters and hauls a quarter down on his back for a ways until he's tired and then he goes back and gets the next quarter, and by the time he gets home it could be midnight."

But maybe he was lost, or maybe he fell and broke a leg and no one would ever find him. That was a maybe we didn't talk about. What would we do if he didn't come back? Now, every sound outside the tent was grabbed by our grasping ears. Was it the sound of his feet through the dry grass? Every noise in the night, the far off muffled night sounds, were heard. Could it be my father?

I remember walking with my mother in the near dark to the edge of the bluff overlooking the meandering willow bordered creek below so that we might have a better chance to hear his coming. The

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night had grown darker and clouds had covered the stars. At last we could not see much beyond the rock ledge where we stood. How could my father see where he was going in such darkness? Surely he would fall into a crevasse or slip as he waded the creek. Surely he would be lost by now because there were no stars to guide him and he had no compass except the compass of his mind which he said had never failed him.

Then far across the way we heard what sounded like a tiny bell. What could that be? Hear it? There it is again! My father had no bells. We listened. The sound of the tinkling gradually grew louder. The ringing bell was coming toward us. Suddenly we were frightened. Some bell-ringer, some ghost, some monster ringing its way through the darkness was approaching. I grabbed my mother's hand and she squeezed mine.

Then out of the darkness burst my father, a wide smile on his face. And I ran to him and grabbed him and held on to him as if I would never let loose and I was weeping with joy. My mother just stood there holding back her tears and I heard her say, "I'm so glad you got home all right."

"Don't get the blood on you," my father said to me. His hands were covered with dried blood, and I knew what that meant: He'd made his kill and the blood was from his having dressed the elk. His hunting vest bulged in the back where he'd stuffed the elk's liver and its heart, and the blood had soaked through. The blood made me happy because as we all knew, he was a great hunter, better than all of the other hunters in the world. Now my father would make a fire and my mother would cook the liver for supper and we would be happy again, and live happily ever after.

I grabbed his bloody hand and held it as we walked back to the camp together, and the first thing I said to my father when we all got back to camp was, "Tell us the story, Daddy."

"As soon as we get this liver frying, I'll tell you all about it."

I couldn't wait, and I said, "No, Daddy, tell us now."

"What were the bells?" my mother asked.

"They were the bells on a string of pack horses that came along. They were going back to camp empty and the cowboy offered to haul down my kill. Good man."

"Tell us the story, Daddy," I insisted

And so he began. It was his story of stalking, of the excitement of the flush, the herd bolting though the timber, and how my father picked out a young bull and aimed through his old peep sight and led the bull just right—he illustrated how he moved his rifle in front of the running elk—and just at the moment the bull was about to disappear into the dense woods my father fired. He told how the bull fell to his knees and skidded across the forest floor, and how when he got to the bull, he was already dead—a clean shot through the heart. "You always aim just behind and a little above the elbow for a

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good heart shot," he said. "The bull never knew what hit him. Ought to be real tasty meat. No stress on the animal at all."

My father's story became a part of my history—and his. It was a story that elevated my father even higher onto my hero's platform—this great hunter, this sure shot, this brave provider of the meat for our table. This man, my father, who respected the animal that he killed and was happy that he'd made a clean shot and hadn't wounded the bull so there'd been no suffering. And I knew that he so respected the animals that he brought home that nothing was wasted, not the heart, not the liver—not even the tongue which my mother made into delicious sandwiches with mustard and lettuce. And he sent off the hide for tanning from which my mother made our leather winter jackets.

This is but one of many stories of my childhood. Perhaps you know me better

from having read this story. At last, all of us are a compendium of stories which, when told, tell us more about the person than all of the pedantics of psychoanalysis. Indeed, that discipline itself is founded on the interpretation of the patient's story. Without the patient's story there can be no psychiatrist. And too often, I suspect, the psychiatrist's analysis tells us more about the psychiatrist's story than about the patient.

If we are to be successful in presenting our case we must not only discover its story, we must become good story tellers as well. Every trial, every presentation, every plea for change, every argument for justice is a story. If the argument is reduced to the abstract language with which we are so often assaulted, nothing usually happens.

The other day a woman told me the story of how she and her younger brother were caught out in a hurricane. If we are told that hurricanes consist of high-velocity winds blowing circularly around a low-pressure center known as the eye of the storm which develops when warm and saturated air prevalent in the doldrums is underrun and forced upward by denser, cooler air we may know something of the mechanics of a hurricane, but we know little about it.

But when the woman told me her story, I immediately knew something of a hurricane that only her story could tell. She began, "When I was a little girl about seven, one day my five-year-old brother and I had been playing down by the beach when the wind suddenly came up without warning and the waves began pounding the shore. We were so taken in our play that we paid no attention to the growing storm. Finally the breakers grew higher and higher and the wind became so strong that Jimmy had to hold on to me so that he wouldn't be blown along the ground like a piece of paper in a windstorm. The waves started pounding after us, chasing us, and we were screaming. But the noise of the wind and the sound of the beating waves was so loud that no one could hear us.

"Some of the waves were as high as telephone poles, and across the way we saw

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the roof of the our neighbor's house go flying down the street. We began running as fast as we could but we couldn't run fast enough to stay ahead of the wind. I almost lost Jimmy and grabbed him by a foot as he blew past me. I could hear the waves beating on the shore behind us, chasing us like some monster. I knew we were going to die. We started to crawl on our hands and knees toward our house.

"Then I saw our mother come rushing out the door, but the wind caught her and blew her back into the house. The door flew off. I saw her come out again holding on to the door sill. She was screaming, but we couldn't hear her words. I don't know how we did it, but at last we got to the house and my mother ran out and pulled us inside. We stumbled down to the cellar and sat there crying. Then we saw we were safe and began to laugh. It was only the wind, my mother said."

How to discover the story. What is the story of our case? It's not just a trial about "the plaintiff" who was injured in a car accident and suffered damages. It's not just a story about a complaining employee who has been discharged because he's too old. Nor is it a diatribe about the evils of polluting the environment. Such issues may be of interest to a select audience but nothing happens to the blood when we read the above sentences.

A prospective client, Danny Patterson, comes in. I ask him to take a chair and I pull one up. Nothing between us—no desk which sets up a psychological Berlin Wall that says that on my side of the desk resides all power and wisdom and that on his side of the desk is a frightened man who feels self conscious and afraid.

Danny is a slight, serious appearing man of about forty-five. If we ask simply what his case is about, here's what we will likely hear:

"Well, the cops came to our house—two big burly guys and they searched our house, tore things up and then arrested me and my wife, Judy, and took us in cuffs to jail. We were charged with possession of an illegal substance—marijuana—and with resisting arrest and assault on an officer with a deadly weapon. Our

bail was set at \$100,000 cash which we couldn't make. While we were waiting for our preliminary hearing the D.A. dismissed the cases against us because the stuff they took out of our house wasn't marijuana but some alfalfa leaves we kept in a plastic envelope to feed our guinea pig. We want to sue the police and the city for false arrest."

Obviously that's not the whole story. Most people can't explain the horror they've experienced, and most interviewers can't hear or feel what that experience must have been like. As Danny tells us his story let's *become* Danny. Let's try to *feel* what he and his wife felt and experienced.

LAWYER: Danny, take me to that morning when they arrested you. Let's actually be there, right now. What are you doing?

DANNY: Well, I'd just let the dog out.

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LAWYER: No, you are *letting* the dog out."

DANNY: Right. (He picks up on the idea that we want to be in the present.) It's cold and fresh snow is on the ground and the dog starts raising hell, barking at something around the side of the house. I see some tracks in the snow and I step off the porch and follow the tracks and then I see 'em—a couple of toughs looking into our bedroom window.

(As the story proceeds we continue absorbing the experience still attempting to *become* Danny Patterson. I often rely on a magic phrase that lets the protagonist know I understand him and that helps me experience his feelings. The phrase is, "It must have been..." or "You must be...")

Example:

LAWYER: So you must be startled and suddenly afraid. So what are you doing?"

(Note: The present tense brings the event to the here and now instead of a memory.)

DANNY: I holler at 'em. "What the hell you doin' there?" And they come charging at me, the big one in the front. He's a real mean looking guy in a rumpled suit. About six-two. The other one, a shorter one, sorta fat, is in a suit and tie, right behind them. If they hadn't been in suits they'd a looked like a couple of bums.

LAWYER: If I were you I'd be running back into the house, slamming the door and locking it. (We project ourselves into Danny's experience, trying to think and feel as he did at that moment.)

DANNY: That's just what I'm doing.

LAWYER: What happens next?

DANNY: I call the police.

LAWYER: What are you saying to them?

DANNY: I say, "This is Danny Patterson at 24 Melrose Lane and there's a couple of thugs trying to break into my house. And before I can get their answer the thugs are beating at my front door.

LAWYER: What are you doing now?

DANNY: I'm so scared I drop the phone. I'm not about to open that door. I run to the closet and get my shotgun. I hunt birds. I pump in a shell and holler, "The cops are coming. You get the hell out of there." And this guy hollers back, "We are the cops."

LAWYER: (I feel how it must be: I have a gun in my hands. It's loaded. A couple of toughs are beating down my front door. They claim they're the cops. The cops have no business here. I haven't done anything wrong. If I let them in they may rob us and kill us.) What are you saying back to these guys, Danny?

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DANNY: I say, "You got a warrant?" And the cop says, "You let us in peaceful like and it'll go a lot easier on you."

LAWYER: You must be shaking all over. Probably can't hold the gun steady. You must be thinking, I never shot a person in my life.

DANNY: Yes.

LAWYER: What happens next?

DANNY: I decide to let 'em in. About that time my wife, Judy, comes out of the bedroom. She's been in bed with the flu. She suffers from asthma too. She's coughing and asking me what's going on. She's scared to death when she sees me standing in front of the door with a shotgun and she hollers at me, "Danny, what are you doing?"

LAWYER: You must be thinking, What else can I do? Maybe they are the cops. But what if they aren't and they try to harm Judy or me, and I have to shoot one of them? Maybe both of them? You must really be scared.

(The thugs turn out to be cops, show their badges. Then they ask him if they can search his house. He asks why and they say, "For whatever the fuck we're looking for.")

LAWYER: What are you doing now, Danny?

DANNY: I'm just standing here not saying anything. I never gave them permission. They just start tearing things apart. I'm horrified. They're pulling out everything in the closets and dumping our clothes all over the floor. They're taking the shoes out of their racks and scattering them wherever they drop. They're pulling out all the pans and dishes, and they break a couple of plates and one cup—my favorite that my grandfather gave me. They're dumping the cupboards bare and scattering sugar and flour and cereal all over the kitchen. They're emptying the garbage can in the middle of the floor on top of the flour. Judy and I are stunned. We're afraid to say any-

thing for fear we'll be beaten or killed. One of cops, the fat one, already took my shot gun, "for evidence," he says.

LAWYER: Are either of the cops saying anything to you?

DANNY: The tall cop says, "You are hiding the meth, you meth-head." I'm trying to tell him I don't even know what the stuff is, and they just keep on threatening to wreck our house if I don't tell them where it is.

LAWYER: Danny, what am I seeing when I look at this tall cop?

DANNY: He gets up close to me and lights a cigarette and throws the match on the floor. We don't allow smoking in our house. He's hollering in my face.

LAWYER: But what does the cop look like up close, Danny?

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DANNY: He's got bad teeth in front and he needs a shave.

LAWYER: What else are you observing about this guy?

DANNY: I can smell the tobacco on his breath and his mouth is turned down when he talks. Kinda of a high pitched voice like Mike Tyson's. Funny voice for a big man and when he walks his arms swing around like they're hanging loose at his shoulders.

LAWYER: What is this guy saying now?

DANNY: He's saying, "Maybe we should tear up the fucking floor boards. Probably got it hidden down there. You better come clean or we'll tear up this fucking house. Dave, go get the crowbar." Judy is crying and

coughing. I say, "Please, officer. I don't do drugs. I'm a boy scout leader."

Then the other cop says, "Hey, Dave, this meth-head is a fucking Boy Scout leader." They are both laughing and they dump over a chest of drawers to see what's behind it. All of the kids' pictures fall to the floor and the glass in a couple of the frames break.

LAWYER: What happens next?

DANNY: The cop named Dave hollers, "Bingo!" He jerks up a plastic bag from one of the drawers with some green leaves in it. He sticks the bag in his pocket, and he snaps the cuffs on me and tells the fat cop to cuff Judy and they haul us off to jail. Judy is still in her nightgown and robe. They let her get her slippers.

(We continue taking Danny's story, *but always in the present tense*. When Danny slips into the past tense we bring him back to the present. We want him to relive the experience, and we want to live it with him.)

DANNY: When we get to the jail they dump us into the drunk tank. We aren't drunk. We don't drink. It's cold in there. Judy is sick and coughing and barely able to talk. She lies down on one of the benches.

She's shivering and I'm afraid she might die or something. I take off my jacket and lay it over her. She could die in here. Then a jailer comes by and looks in. I'm asking him for a blanket but he says, "We don't give drunks blankets. You sober up in the cold better." I'm trying to tell him we weren't drunk but he says they all say that.

LAWYER: What is it like in there? What do you see and smell? (Nothing creates a more vivid story than the smells and sights and sounds that are encountered.)

DANNY: The place stinks.

LAWYER: Of what?

(Danny is looking off into the distance as if he can see and smell and hear it all at this moment.)

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DANNY: Smells like vomit. And a couple of drunks are throwing up over in the corner making a lot of noise, and a couple are lying on the floor—look dead—and one is screaming like he’s seeing horrible sights—screaming and screaming, “They are two-headed dogs and they are coming!” We are both petrified with fear.

I beg the jailer to send someone for my wife’s medicine. But he doesn’t even answer me. I sit down beside Judy on the bench and put her head on my lap and try to cover her with my upper body as best I can and I kept checking to see that she’s still breathing.

(I see the momentary approach of tears in his eyes that are quickly pushed back. Five days later the cops concluded that the substance was not marijuana and the D.A. dismisses the case, except the assault with a deadly weapons charge which they agreed to reduce to simple assault if Danny would plead guilty.)

Danny’s story was made vivid and memorable because the lawyer put himself into the hide of Danny, tried to feel it as Danny felt it, and encouraged him to relive the experience by having him speak in the present tense. Most stories we hear from lawyers are poorly constructed previews of the story to come, previews that would not compel us to rush to the movie house.

We can tell our story to our secretary, or at home we can tell our story to our spouse who will add to it from Judy’s standpoint. How is it to be the helpless woman, sick and embarrassed, in a drunk tank? We can tell the story to one of our friends over a cup of coffee and this time we can become Judy ourselves. As I become Judy and try to understand what she must have experienced I can almost hear her say, “I thought I was going to die I was so embarrassed being hauled off like that. I’ve never been in a jail. I’ve never even been in a police car. It was cold outside and the police car was cold and I was sick. All I could think of was, what will my mom and dad say? What will the neighbors think? What will I tell the

boss? Maybe we will both lose our jobs. I was too scared and sick to know what to say or do.”

After we tell a woman colleague or friend the story, let’s ask her to become Judy before we interview Judy. We will likely garner better insights by this method that will aid us in the interview. Judy can tell us what it was like to be in jail with a bunch of drunken roughs. We can hear our friend, as Judy, say, “I was afraid I would be gang raped. I was too sick to scream. I thought, My God, what if I get a disease in here? I was having trouble breathing, and some drunk asked me, ‘What’s wrong with ya, sister?’ and I couldn’t even answer him.”

On the second day, Judy was transferred to a woman’s holding cell populated with prostitutes and drug addicts. One was

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banging her head on the concrete wall, and screaming. Another woman claimed Judy was a snitch and grabbed her by the hair and drug her to the floor and kicked her and cursed her. Judy was too sick to resist. When we talk with Judy we will be fully aware of the experiences she no doubt endured. If we state facts that are not accurate, she will correct us. But having experienced Judy beforehand, we will have acquired a knowledge of her experience that will help us with our questions to her and which will help her tell her story with more clarity and power.

This is only the beginning of the story for Danny and Judy. We can discover, by becoming Danny and Judy, what it’s like to face false charges, the nightmarish prospect of being confined in such an inescapable hell. We will feel what it’s like to be dragged into court as a common criminal in those orange pajamas where people gawk at us, probably snickering behind our backs, and where we must

look up to see a strange face peering down at us, a bored, unfriendly face on a man in black who is only too ready to pass judgment on us.

We’ll discover the anger that wells up, that wants to burst free and strike back. But we’re helpless to strike back, helpless to even curse our jailers. Our home—we saw it torn apart, the disrespect for our small castle. (The guinea pig died for lack of food and water.) The whole experience was like a rape.

Already we’ve seen the jail, its gray, miserable, cold walls of concrete and steel. We’ve felt the tension of people in cages like caged beasts and we’ve known fear, and smelled the evil smells of decaying men and lost women. We’ve heard the screams and the slamming of steel doors and the hateful orders of the jailers. It has been as if we were trapped in the darkest pits of human existence.

We can expand our understanding of the story by asking a friend, “What would you fear most in such a situation?” The friend might say, “I’d be afraid they might dummy up the evidence against me.”

Let’s tell the story to older people. Ask them “What would you feel if you were Danny? What would this experience mean to you?” The older person might talk about how the experience would smear a filthy smudge across an otherwise exemplary life.

Tell the story to children and ask them what would they feel if they were Danny or Judy and what would make them feel the worst. Perhaps the child will cry over the death of the guinea pig.

Tell the story to a tough neighbor and ask, “What would you have done?” He might say he would have shot the cop when he came bursting through the door. Eventually the full spectrum of emotions will come into view. It’s not that the story gets longer. It’s that it gets more pungent, deeper and more complete than the first view we were given.

The wonder of the method is that rarely will we discover from these diverse sources a fact or feeling that Danny and Judy didn’t experience. Like most of us,

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they are limited in their ability to bring to the surface those myriad fears and feelings that we have difficulty in remembering and expressing. By hearing the responses to this story from many we've come closer to experiencing what Danny and Judy went through. At last, it is an exercise in exploring the self—in discovering that part of us that seems small, powerless and frightened, that part that cries for justice. And only when we've discovered it in ourselves will we be ready to tell it in the courtroom when we ask a jury to assess damages for Danny and Judy's false arrest.

The focus group approach. Focus groups have nearly become standard in the last decade—a random gathering of persons in the locale where the trial will be held, people who represent a cross section of the jury one is likely to draw. Professionals who sometimes call themselves “trial consultants” go to some pains to gather several such representative groups to whom both sides of the various issues in the case are presented by the lawyers—usually from the same firm, and the deliberations of this “mock jury” are televised for later study after which the professionals share their insights with the lawyers on how best to present their case. Focus groups are used by the government, by politicians, by ad agencies, indeed, by any who want to know how best to discover the story and thereafter to tell it.

I use focus groups somewhat differently than many. Some see the process as a means to discover the most effective way to deal with some troublesome issue, how to form the lawyer's approach so that he'll have the best chance of winning. Too often it is an intellectual exercise that asks which set of facts and which arguments will best convince these inscrutable rascals we call jurors?

I believe the value of a focus group is to learn how to better tell the story and the best way to tell the story is always from the inside out. It's hard to tell our story until we know it, that is, until we've felt it—heard it with our third ear, seen it with the eyes of our client, until we have been gripped by it in deep places and have finally lived it. Only then are we

ready to tell our story to the focus group—our objective, to learn even more: Have we told the whole story? What part did we omit? Were we blind to areas in the story that others readily saw? Sometimes we're oblivious to the obvious. I have never tried a case to a jury which, after the case was submitted and decided, a juror didn't tell me something about the case that I overlooked. We all have blind spots in our inner eyes.

Is it necessary to present our case to a focus group? I went for most of my career without knowing much about that tool. Instinctively I created my own focus group—my wife, family, friends, the cab driver, the local waitress at the coffee shop. The scope of this book does not extend to a detailed discussion of focus groups, but suffice to say, we can create our own without the expense of professional services simply by randomly gath-

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ering together any group of folks, the friends of the people in our office or a group we gather from an ad in the paper that might read: “Want to hear an interesting story? We'd like to get your reaction to it. If you have a free day next Thursday, call us. Our phone number.” Numerous ways abound to bring people together. The last focus group I did in a death penalty case a few months before this writing cost a total of \$100 for the juror's lunch, from which I gleaned untold riches in new insights.

Telling a summary of the story: Often people will ask what your case is about. Can you answer the question in a short paragraph? If you can't you haven't discovered the story yet. What, for example, is Danny and Judy's story about?

Perhaps it's a story about rape since rape occurs when something is taken from us against our will. Here Danny and Judy were first raped when their privacy was

taken from them by police who were more like thugs than police officers and who used threats to enter their home. Then they maliciously ripped apart their home and ravaged it looking for illegal drugs. Danny and Judy were thrown into jail with drunks where they were humiliated and frightened, their rights as innocent citizens raped. They were raped because they'd committed no crime and were guilty of no wrong. It's a story about rape by the justice system that, when its rape was exposed, raped Danny and Judy one last time by demanding that they plead guilty to a crime they didn't commit. That in a nutshell is what this case is about—rape.

Discovering the theme: Every case, has a theme—like a title to a song. If we want raises for our school teachers, the theme may be, “Teachers need love too.” If we want the boss to give us a raise, the theme may be, “An employee you needed needs you now.” In Danny and Judy's case the theme might be, “The rape of Danny and Judy.” As we tell the story the theme will find its way to the surface. When I write a book, the title never comes first. It grows out of the story.

In a recent pipeline explosion case that killed twelve people, all members of the same family, my theme was, “Their profit before people.” In a suit against a company that negligently applied metal working fluids to increase the life of their tools to the permanent injury of its workers the theme was, “Save the tools, not the workers.”

Why do we need a theme for our case? It usually contains the essence of our story—the quintessential statement that continues to emerge from out of the chaos of words, that redirects us to the cause when the arguments lead to other places and fuzz our focus. The theme speaks of the underlying morality of the case—what is right or what is wrong. It is the final argument in a single phrase.

Political candidates shroud themselves with themes and usually smother themselves in the flag. “He's tough on criminals.” “The man you can trust.” Nearly every advertised product has a theme: “Things go better with Coke;” “Less fill-

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ing, tastes better,” for Miller’s. Budweiser focuses on our sense of slavery—the working person having toiled all day comes home for his reward—“This Bud’s for you.” Nike says, “Just do it.” Towns have themes: “The Big Apple,” for New York, “The World’s largest Hot Springs,” Thermopolis, Wyoming. The anti-abortionist’s theme is “The right to life.” Their opposite is, “Woman’s choice.”

Years ago when tobacco companies were permitted to lie to the public more openly than they now do we heard from Old Gold Cigarettes, “Not a cough in a carload.” They failed to tell us how many cancers there were in a carload. And years later, targeting the women whom the tobacco companies wanted to addict, they told her, “You’ve come a long way baby,” her pride to be represented by a cigarette in her mouth.

The theme is the means by which we focus the justice of our case. Every cause has a theme. “Give me Liberty or Give me Death,” was a battle cry of the American Revolution. “Save the Union” was the theme of the Civil War. One of World War II’s themes was “Making the World Safe for Democracy.” Perhaps one of the many failures of the Vietnam War was that there was no convincing theme. In short, without a powerful theme we will win no wars, win no cases, sell no products, and advance no causes. A theme becomes the heart of our presentation.

Brainstorming: The setting of the theme will often become the product of brainstorming, a process by which the team sits down in a room without a phone, with lunch served in the room if necessary, and with people uncommitted to anything except the program ahead of them—brainstorming. It’s fun because it’s creative and ideas are bounced around the room like playing children. I like to assign one person the job of writing on the blackboard or a flip chart in large letters so we can all see and remember what has been suggested.

The brainstorming team is composed of anyone who is likely to have an original thought. Membership is not directed toward measurable intellect, or awesome

degrees. It seeks people with creative minds. I enjoy the fresh minds of the young, the assistants in the office, the lawyers who have had experience in the area but are not drooping from the weariness of the ages. I like women as well as men. Children can offer suggestions that we will likely overlook.

The process is without structure. No one is in control. We experience the free association of the members’ thoughts, ideas and emotions as they occur. One person’s idea will tickle the creative process of others and again from others, and the storm of ideas and images and sayings will grow as the members play off of each other. The most frequent phrase heard is, “Yes, and...” as an emerging idea is born from one just offered by another. Someone writes the ideas down on a flip chart.

The group, in effect, becomes a single organism and the individuals composing

I have never tried a case to a jury which, after the case was submitted and decided, a juror didn't tell me something about the case that I overlooked. We all have blind spots in our inner eyes.

the group are the cells. Someone familiar with the story, say, Danny and Judy’s, will begin. Questions are asked. “How does this story make you feel?”

“I’m pissed off at the police. I had a similar situation three years ago with a client and the police tried to cover it up.”

“Yes, and we should make this sort of conduct public and get it stopped.”

“Ask for punitive damages. Big time.”

“What about the people of the town worrying about a big verdict increasing their taxes?”

“We have to deal with that in *voir dire*.” (Jury selection)

“Can punitive damages be given against the city in this case?”

“Better assign that issue to Halley. She can give us an answer.”

“This is a civil rights violation and we can

go into Federal Court.”

“Maybe. Let’s get Halley to look at that too.”

“Let’s build a model of the holding cell and let the jury go into it. How big is it?”

“12 by 20. Too big to haul into the courtroom but we can get video shots of the real thing. We can get a court order.”

“Yes. And the sounds in there, the drunks hollering and the doors slamming—scare you half to death. We can tape the sounds.”

“Maybe we should find out the names of the prisoners who were in there at the time and talk to them.”

“And the jail keepers. Subpoena them. Make them talk with depositions.”

“We need to look at the police reports. What did those cops report?”

“Yes, and the booking process. We need to show how it feels to be booked, to have mug shots taken of you like you are a common criminal. We need the mug shots to show the jury. Then they fingerprint you and you’re afraid to say anything because some cop might attack you.”

“It’s hard to believe that cops like that have nice families and kids at home and that they go to church on Sunday.”

“Yeah, who are these cops? What have they done in the past? Where did they get the idea that there was meth in that house? We’ve got to take some depositions.”

The questions go on and the ideas develop. Several hours can be constructively spent brainstorming the case and as the case emerges, more brainstorming sessions can be held. We will discover the kinds of documents that will be helpful, the investigation that needs completing, and we may even begin to inquire into the law of the case and which lawyer should lead the case. We may consider the court where the case ought to be filed, a choice of the judge, and even how the parties should dress when they go into court—the ideas are as endless and as free as the fertile minds that create them.

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Free association brainstorming: Brainstorming can take on yet a different form. Our case may be about a farmer whose crop was insured against hail damage. The insurance company, let us call it the Honest Crop Insurance Company, refused to pay after the hail storm ruined Farmer Smith's crop of oats. The company claimed that the crop had already been destroyed by drought.

Setting the scene: Let's gather up four or five people in a room who know the fundamental facts of the case. First we want to set the scene. We have pictures of the farm and the oat fields that have been destroyed. The group has seen the pictures. But what do they really show? When these same pictures are shown to the jury they give a one dimensional view of the place. Isn't there more? If we took the jury to the farm after the hail storm, say a week later, what would they experience? The picture fails to touch most of what can be experienced at the scene with the five senses. Let's discover what has been left out:

Let's chose a single word that brings us to the case. Let's say, the word, oats. We might ask the question of the group, "What comes to mind when you hear the word, oats?"

"I see the field," Joyce, our legal assistant says.

"What does it *look* like?"

"It's yellow, the oat straw is lying on the ground all bent over. Looks like some giant animal has lain down on it. Oats are supposed to stand up and waive in the breeze."

"Can you walk through it?"

"Yes," Joyce says, already setting the scene in her mind. "But it's like walking on wet straw covered ground."

"Take a handful of the oats. How does it *feel* in your hand?"

"The straw is wet, and limp and the oat pods are empty. Sort of like holding wet noodles in your hand."

"Is there a *smell* to it?"

"Yes, the smell is musty. The oats have started to rot on the ground. The hail

melted and the wet straw and the oats are molding."

"You're standing out there in the field in your shoes. What about them?"

"They're muddy."

"And as you stand there, what do you *hear*?"

"It is very eerie and quiet. Usually you would hear the sound of the farm equipment harvesting the grain. But things are strangely silent."

We may turn to another member of our brainstorming team: We ask Jack, the janitor, what he sees. He sees the distant farm house.

"How far away is it," we ask.

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"Bout a quarter mile."

"What does the house look like?"

"It's a tall two-story plain looking house, white siding, Porch."

"Anything on the porch?"

"Yes, a couple of rocking chairs."

"Anyone on the porch or in the chairs?"

"No, but there's an old dog lying next to the rocker."

"Is he friendly?"

"Yes, he's one of those collie dogs. Wags his tail a lot and jumps up on you."

Next we might turn to Cindy, another lawyer in the firm. "What do you see inside the house, Cindy?"

"I see the farmer, Mr. John P. Smith, and his wife, Mary, sitting at the kitchen table."

"What are they doing?"

"They are going through a stack of bills."

"What are they saying to each other."

"Nothing. They are just looking at the bills and then looking at each other."

"What do you see on their faces?"

"Dismay. Fear. Confusion. Their crop is ruined and they can't make their payments."

We can go on from here introducing the other factors in the case, the worthless insurance policy they paid good money for, the promises that were made to them by the insurance agent before he took their money to pay the premium. How they had saved from their crop the year before to pay the insurance, the money that they would have otherwise used to buy Mary a new set of drapes for the living room and for John, a badly needed repair to the barn roof. We will take the couple though the whole year, the planting of the crop in the spring, the rising hope for a good crop and their sense of security that if the crop was ruined by hail, they were covered. There was a drought, all right. But the crop was made early in the season. Not as many bushels per acre that they had hoped for, but enough to get by, to pay the bills and to keep the bankers away from the door. But now this.

Sharing: Each member of the group has had his or her own experience—with failure and disappointment, with false promises and fraud. Each has had a set of experiences that when told will likely add another facet to the story. A part of every person is a part of us. And we have experienced a part of every experience of every other person. If we are told of a ship wreck in a hurricane we have experienced our own near collision with a truck in a blizzard. The galvanic experiences are the same. We are flooded with adrenaline. We gasp and load our lungs with air against the danger. Our heart beats faster. Our blood pressure elevates. We sweat.

Hank, the guy who rents the space across the hall and does computer programming, may say, "Yeah, and the fear of the bank coming to take away my equipment and maybe take away my place is some-

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thing I have nightmares about sometimes. I dream about my arguments against them repossessing my house and car and how I end up even begging, and they don't listen. Just like talking to people without ears." The stories that each of us have experienced, although with differing details, are the same in their substance. For every story we hear we inhabit part of that story as our own. Each of us has lived a different version of farmer Smith's story in one form or another and each of us can share our own experience that involves false promises and the injuries that result. By relating personally to farmer Smith's story with our own we are able to access the feelings that the Smiths have experienced.

And lest we forget, the jurors, too, as experienced members of the human race, have lived their own stories which they will vividly relive as they hear the Smith story told by one who, himself, has vividly felt those same feelings. Because the story-teller has, so to speak, been there he can, with credibility and power, pass on those feelings to the jurors.

But how is all this fantasy relevant to the real facts in the Smith case? When we sit down and begin to talk to farmer Smith we'll find out that he can't tell us very much about what has happened to him. He can't bring it to the forefront of his mind when we ask him simply what happened. He's not good at story telling. He can't set the scene. About all he can say is that his oats were down from the hail storm and the insurance company won't pay.

On the other hand, absent our brainstorming session, we ourselves may not know the questions to ask to bring out the facts that will give the story the texture and power that is born of the senses, that will turn the case from a flat, two dimensional presentation to a vivid many dimensional, moving story. Brainstorming has given us a better view of the case than the client can import to us. It has provided us with a rich source of visuals—all of us think in pictures. We

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now know the questions to ask farmer Smith, and although his answers may vary slightly from the pictures created by our team, nevertheless, the amended story, as set straight by farmer Smith, will now be many fold more complete and compelling than the one we would have retrieved from Smith alone.

As the input of our brainstormers escapes spontaneously into the room, we will eventually take on the case of the insurance company as well. We'll hear things like, "If we pay Smith we'll end up paying

a whole county of farmers trying to gouge us. Got to make a stand with Smith. Call in the experts. Get the weather people ready to lay out the facts on the drought. Offer him fifty percent on a confidential settlement. He'll take it. He's in debt up to his ass. Move the case out of the county. Too many farmers and farm businesses there. Get old George Hoffman to defend. He talks farmer talk and jurors will think he's one of 'em. Go out and measure his fields exactly. Dollars to a dime he has overstated his acreage and we can show the jury that he's the one who is guilty of fraud." On and on.

We will discover the feelings of the team members toward the case, both negative and positive when, at the conclusion of our session, we hear the feedback of the members in response to a single question: "You have been both the Smiths and the insurance company. How do you feel about this case?" Each member of the team will have varying thoughts

about it. Jake, the janitor may think the Smiths are asking for too much money, that they are taking advantage of the situation while Joyce our legal assistant says no, it's the insurance company that's taking advantage of the drought as an excuse for paying nothing. Some may think the case should be settled and others will talk about the possibility of punitive damages to keep insurance companies from doing this sort of thing to other farmers. In the end, we have learned what our case is about and know it even better than our client who experienced it. ☞

