



### E10 The Force of Narrative and Jury Perception

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After attending this presentation, attendees will understand how human cognitive processing impacts courtroom narratives and will understand how to construct sophisticated presentations that recognize the way the story-telling heuristic affects listening and logic.

This presentation will impact the forensic science community by using narratology and cognitive science to show attorneys how jurors perceive information and make judgments about evidence.

In every trial, there is a distinction to be made between the content of the testimony and the means whereby that content is delivered to the jury or the judge. Ordinarily, analysis focuses on the content itself. Like readers of British murder mysteries, we want to know “Whodunnit?” As we move from the realm of fiction to real life crime, judges and trial attorneys need to attend to not only the plot but also the way the story is told. We need to know “who said it?,” an inquiry that invites a hermeneutic of suspicion – “Why did he say what he did?” Because the construction of nonfiction narratives is a complex, multi-layered, and nuanced process that undermines any claim that the past can be apprehended unproblematically, it is worth attending not only to the content of testimony but also to the various interactions among speakers and listeners that can color, and possibly corrupt, testimony presented to the jury.

The trial of *State of Wisconsin v. Jeffrey Dahmer* provides a marvelous vehicle for exploring the intricacies of narrative in the trial arena. Although his confession and extensive statements to mental health professionals provide almost all of the evidence in the case, the jury never heard Dahmer speak. Because the insanity trial focused not on Dahmer's actions per se but on his mental state, his evidence was wholly mediated through the testimony of other witnesses. In some ways, the experts in the case may have missed what the jury recognized: that Dahmer continued to manipulate his interlocutors even after his arrest in hopes of acquittal.

Trial attorneys use story-like narratives to direct their audience to certain conclusions, sometimes with words, other times by leaving things out. The subject matter is inextricably linked with *how* it is told, and those who fail to understand human information processing (and thus leave holes for listeners to mentally fill) gamble with success. Anyone charged with devising a courtroom narrative should learn what research demonstrates about the influence on perception of such factors as the illusions of confidence, the nature of attention, and issues with memory.

What we think should be the result of a presentation in the minds of jury members can conflict with what does happen, because the human mind doesn't always work the way we think it does. The truth is that we mediate knowledge as we apprehend it, and the limits of our mental processing force us into cognitive efficiencies. Among these are internalized plots from cultural arenas such as film, news reports, and novels that can reshape facts and logic.

The centerpiece of courtroom presentation is a story, and recounting information in a credible narrative will bias impressions in the direction of the story line. A satisfying narrative confers an encoding advantage that makes the evidence easier for jurors to recall. If a credible story gets rolling, its psychological momentum can shut out all else. If it's not satisfying; however, it can undermine itself.

Attorneys and experts cannot assume that their logic will be sufficient to persuade; they must include the right elements for credibility, clarity, and closure. Research shows that if information is missing, ambiguous, or unpersuasive, listeners will “hear” the narrative according to what feels right to them. They may fill in holes with what they expected to hear or transform facts to suit their beliefs. Thus, if a narrative does not hold their attention and persistently satisfy, their personal frame of reference may override accurate recall.

#### **Narrative, Jury Perception, Cognitive Illusions**