

**October 22, 2018**  
**Day 1 lecture notes**  
**BAU – Istanbul, Turkey**

**“Cognitive Science and The Practice of Law.”**  
**October 22-26, 2018**

**Bahcesehir University, Istanbul, Turkey**

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**What Does it Take to  
Be a Good Lawyer?**



**Practice of Law =**

**Persuasion =**

**Influencing Decision Making**



**My Training:**

**Law**

**and**

**Cognitive Science**



**We need to be sponges for  
learning more than LAW!**







**More about Me:  
I Live in the Middle of the U.S.A.**





St. Louis is famous for the “Gateway Arch”  
and the “Old Courthouse”

The Arch is almost 200 Meters Tall. It is made of Steel

The famous **Dred Scott** trial occurred at the Old Courthouse  
in 1857: Mr. Scott was declared to be “personal property.”



# My Experience

**1981-1986 and 1990-2004): Litigation and appellate lawyer at St. Louis insurance defense firms (Evans and Dixon and Holtkamp, Liese, Childress and Schultz).**

**1986 - 1990: Missouri Attorney General - Prosecuted Consumer Fraud for the State of Missouri**

**2004 to 2013: Consumer Law/Class Action Department of the Simon Law Firm in St. Louis.**

**2013 to 2017: Law Partner with the Missouri law firm of Campbell Law LLC**

**2018 - ? : Solo Practice: Erich Vieth - Attorney at Law**



# The type of work I do

**See my website “About” Page**

**<http://www.erichviethattorney.com/about/>**

I am in Private Practice

I am a Trial Lawyer

I work in Federal and State Courts

I try cases to Judges and Juries.

I write Appellate Briefs

I present cases to Appellate Courts.



# My Law Firm Keeps getting smaller!

- I don't need a big law firm any more.
- This allows me to keep my expenses Low.





**I can work almost anywhere**  
Sometimes I work in my pajamas!

Important equipment:

Laptop computer

Extra Computer monitors

Cell Phone

Scanner to turn ALL paper into pdfs

Shredder



# Software I Use

**Adobe Acrobat**

**MS Word**

**Gmail for Email and Calendar**

**Cloud sync (Google Drive, Dropbox)**

**Time and Billing Software**

**Backup Software (VERY IMPORTANT)**

**Desktop Search Software (Boolean)**

**Web Fax service**

**Legal Research Software (Westlaw or Lexis)**

**(Almost no paper books!)**

**Photoshop, Lightroom and Final Cut**

**Keynote or Powerpoint (to make presentations like this)**





# My office is a shared space

- It is called "CIC."
- I pay \$200/month.
- They accept my mail.
- They provide meeting space.
- Sometimes I share one workspace room with others.



Two days each week

I work for a charity: “Arch City Defenders.”

- **It is a charity with 10 lawyers.**
- **Donations pay for the lawyers.**
- **We help poor people.**
  
- **Some Cities and Businesses treat poor people unfairly**
- **Sometimes, police unfairly arrest poor people**
- **and put them in jail.**
- **Sometimes, police beat poor people and even shoot them.**
- **Most poor people cannot afford to pay a lawyer.**
- **We can sometimes help them.**





# Courthouse in St. Louis

**This is a courthouse where I often work**





Look at the top of the Courthouse

The design was inspired by  
replica of the tomb of King Mausolus built in 352 B.C. at Halicarnassus  
(Bodrum, Turkey) for Mausolus, a satrap.





**Replica of the tomb is at Miniaturk, a miniatures park on the north-eastern shore of Golden Horn in Istanbul.**



# Some Differences between US and Turkey

- **We use “discovery” (encourages settlements).**
- **Our trials are often decided by a jury.**
- **Our jury trials can have drama/theatrics.**
- **Some judges allow emotional presentations.**
- **Trials occur over consecutive days**
- **We allow more attorney Advertising**



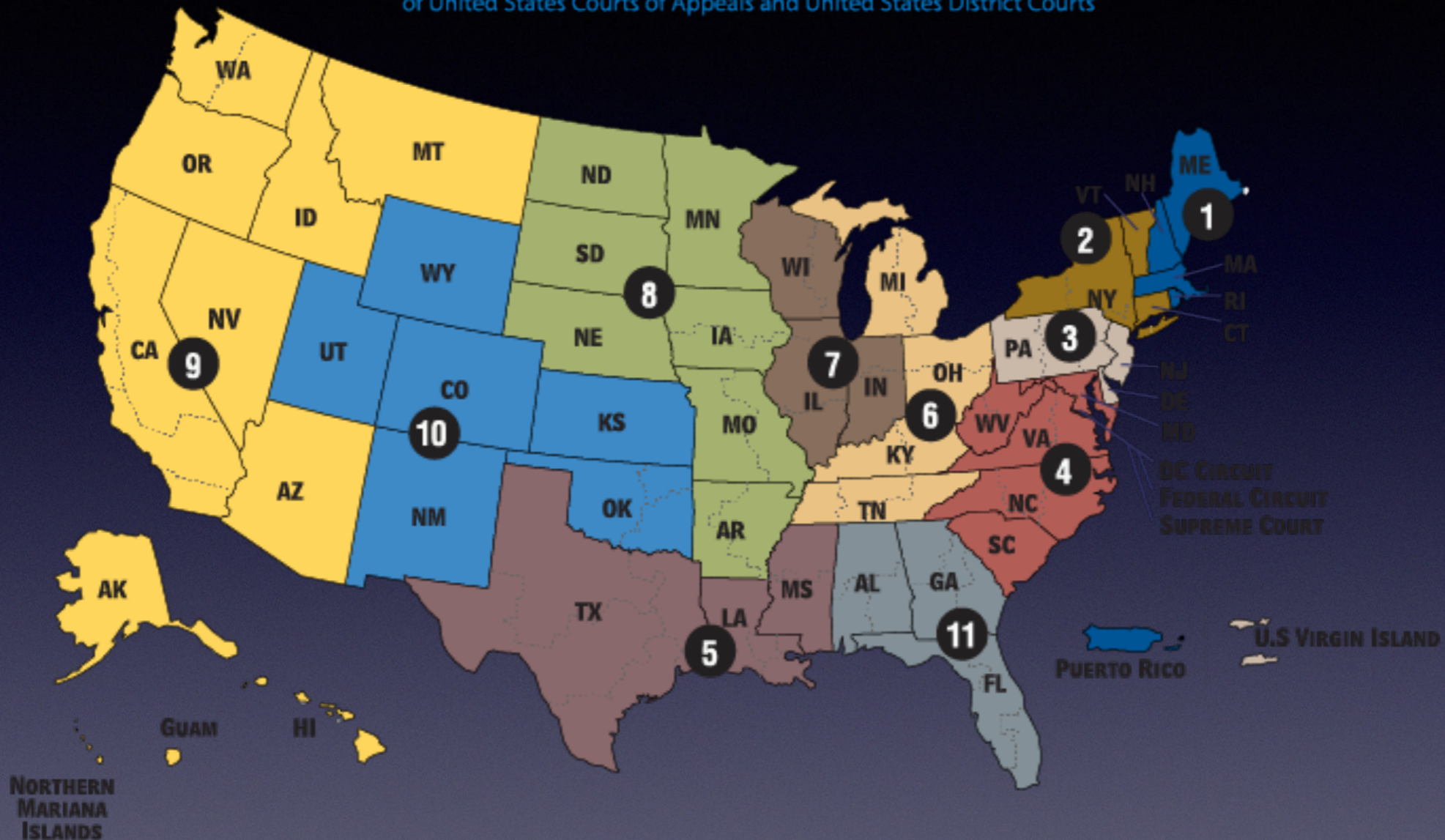


Each State has its own sets of laws and types of courts.



## Geographic Boundaries

of United States Courts of Appeals and United States District Courts



There are many federal courts too.





What is the correct court?

Federal versus state “jurisdiction”?

Sometimes it's easy and sometimes complicated.

The place to start is the United States Constitution

The Federal Government has specified powers and the states have others.



**The State Courts**

**The Federal Courts**

The Missouri Supreme Court

- Reviews the decisions of the state trial and appellate courts

The U.S. Supreme Court

- Reviews the decisions of the federal and state trial and appellate courts

Missouri Courts of Appeals

- 3 Appellate Districts
- Review the decisions of the state trial courts

U.S. Courts of Appeals

- 13 Appellate Circuits
- Review the decisions of the federal district courts

Missouri Circuit Courts

- 45 Judicial Circuits
- Trial courts that hear civil and criminal cases
- Specialized courts include family and juvenile

U.S. District Courts

- 94 Judicial Districts
- Trial courts that hear civil and criminal cases
- Specialized courts include bankruptcy, international trade, and federal claims

Court Hierarchies:  
State (Missouri) and Federal



**Cognitive Science =**

**The Study of Cognition**



**Cognitive Science is the  
Study of Cognition**



**Human Animals - We are apes.**

**Frans de Waal explains:**

**Darwin wasn't just provocative in saying that we descend from the apes—he didn't go far enough . . . We are apes in every way, from our long arms and tailless bodies to our habits and temperament.**

**Science Applied to Law**



SCIENTISTS HAVE  
SEQUENCED the genome  
of the chimpanzee and  
found that humans are 96  
percent similar to the great  
ape species.

[https://news.nationalgeographic.com/news/  
2005/08/chimps-humans-96-percent-the-  
same-gene-study-finds/](https://news.nationalgeographic.com/news/2005/08/chimps-humans-96-percent-the-same-gene-study-finds/)



**Many scientific insights tell us a lot about how people (judges, arbitrators, clients and jurors) make decisions.**

**These insights can also help us to understand and motivate people.**



**Many Scientific Findings**

**Are**

**Counter-Intuitive**



# **Armchair Psychology**

**Still common and often  
The only option.**



**Cognitive science has  
challenged the way  
I work as a lawyer.**



**I Will Provide**

**These Slides Online**



**This is a Survey  
Course.**

**We're going to Discuss  
Many Things**



**What Does it Take to  
Be a Good Lawyer?**



Sam Harris: “Your mind is the basis for everything you experience in life, and every contribution you can make to the lives of others. Given this fact, it makes sense to train it.”

Same thing for language:  
It is a tool you use for almost everything you do. How does language work?



Example:  
Empirical Jury

**Empirical Jury helps attorneys win more by providing them information that is impossible to obtain with traditional focus groups. ... massive jury samples that are analyzed using scientific rigor and cutting edge technology, and things change. The result is rock solid information that your opponent doesn't have and can't get.**



- ♣ **If my client accepts some blame, how much does it change comparative fault? Liability? Damages?**
- ♣ **Should I settle for a specific amount or go to trial?**
- ♣ **In closing arguments, should I ask for an extremely high amount of damages, and if I do, how much will it impact my win rate?**
- ♣ **What will jurors think of the other side's key witness?**
- ♣ **Can the jurors understand my demonstratives?**



# **People are Not Blank Slates**

**Steven Pinker**



**Human behavior is  
shaped by  
evolutionary psychological  
adaptations**



Pinker:

Identical twins separated at birth have astonishing similarities.

Parent Advice studies deficient w/o controls



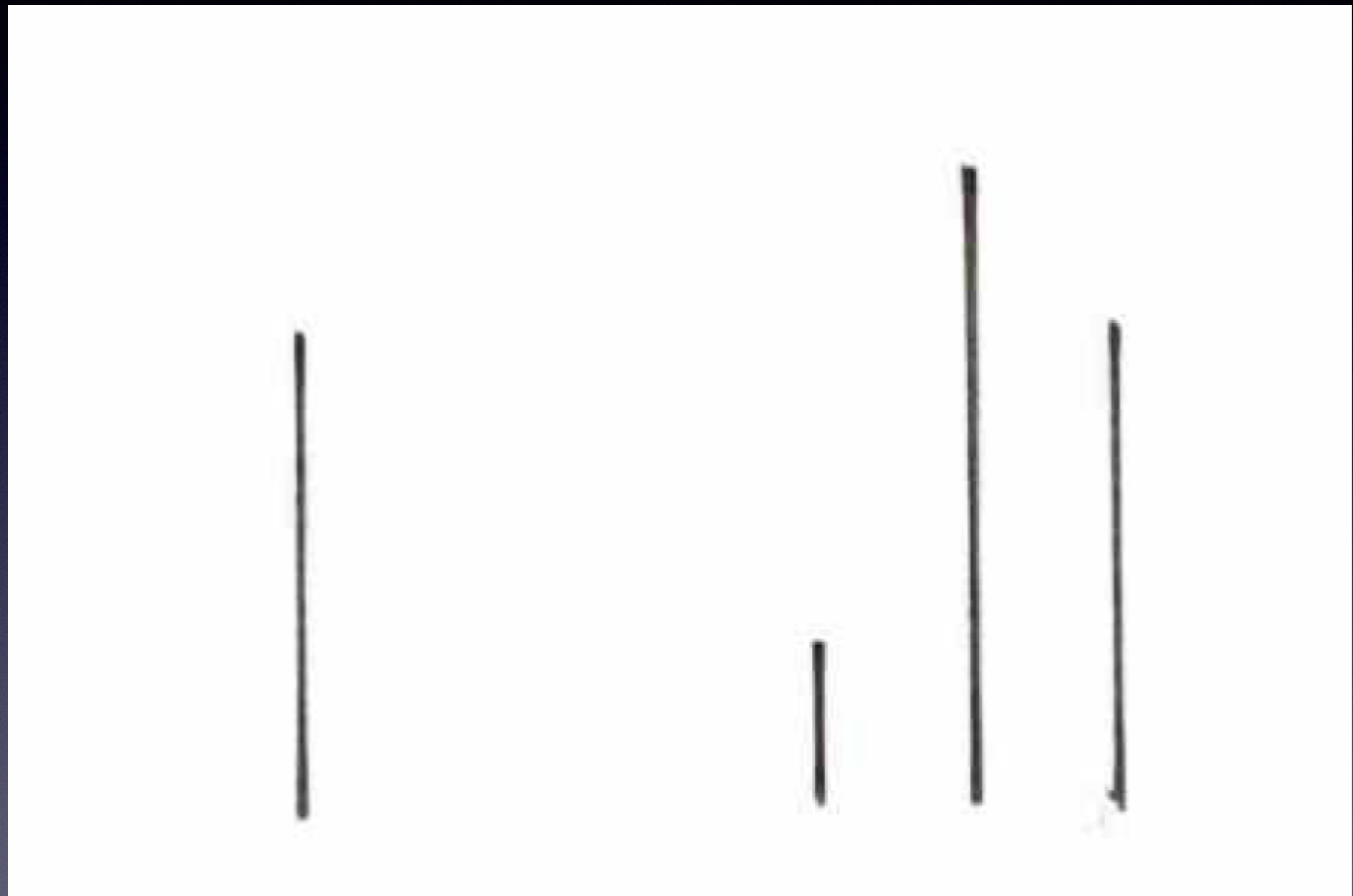
# Group Think

This happens where a group of people desire harmony or conformity.

Group members try to minimize conflict and reach a consensus decision without critical evaluation of alternative viewpoints by actively suppressing dissenting viewpoints, and by isolating themselves from outside influences.



# Social Pressure





## **Solomon Asch experiments:**

**Group pressure causes some people to see differently. Other's consciously felt the pressure and conformed.**

**This was a simple and concrete perceptual judgment task.**

**People felt conflict and discomfort.**

**People often conformed to the group. 50% to 80% of the people conformed at least once.**

**Very different when ONE person speaks up with the truth.**



**Understanding the truth  
is sometimes  
about **Courage****



# Tribalism

**The human mind is prepared for tribalism.**

**Human evolution is the story of individuals competing with other individuals within a group.**

**It's also the story of groups competing with other groups— sometimes violently.**

**We are all descended from people who belonged to groups**

**Tribalism is our evolutionary endowment for banding together to prepare for intergroup conflict.**

**When the “tribe switch” is activated, we bind ourselves more tightly to the group, we embrace and defend the group’s moral matrix, and we stop thinking for ourselves.**

*Coddling of American Mind*, by Greg Lukianoff and Jonathan Haidt (2018)



**A basic principle of moral psychology is that “morality binds and blinds,” which is a useful trick for a group gearing up for a battle between “us” and “them.”**

**In tribal mode, we seem to go blind to arguments and information that challenge our team’s narrative.**

**Merging with the group in this way is deeply pleasurable— as you can see from the pseudotribal antics that accompany college football games.**

**Any kind of intergroup conflict (real or perceived) immediately turns tribalism up, making people highly attentive to signs that reveal which team another person is on.**



**We join tribes that make it look like we are extremely different even though we are 99.9% the same.**

**Donald Brown's list of human universals:**

**Sense of self versus other, responsibility, voluntary versus involuntary behavior, intention, private inner life, normal versus abnormal mental states. Empathy. Sexual attraction. Powerful sexual jealousy. Childhood fears, especially of loud noises, and, at the end of the first year, strangers. Fear of snakes. "Oedipal" feelings (possessiveness of mother, coldness towards her consort). Face recognition. Adornment of bodies and arrangement of hair. Sexual attractiveness, based in signs of health, and in women, youth. Hygiene. Dance. Music. Play, including play fighting.**

**Manufacture of, and dependence upon, many kinds of tools, many of them permanent, made according to culturally transmitted motifs, including cutters, pounders, containers, string, leavers, spears. Use of fire to cook food and for other purposes. Drugs, both medical and recreational. Shelter. Decoration of artifacts.**



# How to Study Law

**Read and re-read and re-read . . . ?**



# How do you study as a law student?

“Smarter Law Learning: Using Cognitive Science to Maximize Law Learning”

By Jennifer Cooper (2016). Seattle University School of Law Digital Commons.

<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1761&context=faculty>



How many schools teach students how to learn?

**The most common study strategies used by students are reading, rereading, rote memorization, and cramming.'**

**Research shows that these techniques create the false sense that material is learned, resulting in premature termination of study**



Rereading is not a good way to learn.

It creates an **illusion of fluency** and an **illusion of mastery of the underlying ideas.**



**Law students, are mostly unaware of empirically-proven study strategies: retrieval practice, self-testing, and periodic review.**



**Expert readers do not read a case from the first word to the last, known as "reading linearly."**

**Expert readers skim items at the beginning of the case, such as facts, until reaching a relevant portion, then read closely.**



## **These learning strategies are effective:**

- Retrieve information from memory without cues, recalling information without having it in front of you.**
- Self-testing and self-quizzing: take practice quizzes or tests to learn the material. Use study questions at the end of the material or generate your own questions**
- Periodic review, also known as "spacing study," is the opposite of cramming or "massing study." Review material more than once, but with time--days or weeks-between practice sessions to allow for forgetting**



**Narrative**

**Lawyers are Story Tellers**



**Example from Today . . .**

**We are wired to hear stories  
and tell stories**



# Competing Stories

**John Simon Example**



## **Andy Goodman - The Importance of Narrative**

**“The truth isn’t just what happened, but how we feel about it when it happened and how we feel about it now.”**

**Avoid dry presentations of facts like this jargon-laden blurb offered by the American Cancer Society:**

**The American Cancer Society’s international mission concentrates on capacity building in developing cancer societies and on collaboration with other cancer-related organizations throughout the world in carrying out shared strategic directions.**

**Narrative is so incredibly powerful because it sets forth our history, our identity, how we remember, why we give, and to whom we give. These emotionally charged ideas don’t readily sink in without the use of stories.**



As we grow up to become adults,  
many of us stop telling stories.

We are taught to communicate with  
technical jargon in order to be  
“serious.” This is sad because our  
stories tell others (and ourselves)  
who we [and our clients] actually are.  
Three warnings:

- **Numbers numb.**
- **Jargon jars.**
- **Stories stick.**



**“Burn the Library Books!”**



**Goodman: “Stories are the software of the brain. They tell us what facts to accept and what facts to reject.”**

**If you are in the changing the business, then you are in the changing the story business.”**

Andy Goodman “Master Narratives” video:  
<https://www.youtube.com/watch?v=2N6PihC5HLc>



**(Bill McKibben book: *The Age of Missing Information*). What are the messages that Americans are over-exposed to:**

**1. The world is a scary place.**

**2. You are the most important person in the world. It's all about YOU.**

**3. You can solve any problem by buying something.**

**Goodman:**

**“If this were true, we’d be huddled over our computers buying stuff all day.”**



*The Golden Theme*, by Brian McDonald:

**There is one uplifting master theme: Stories all remind us that we are all the same. The hero reaffirms this narrative, and the villain is the person who denies it.**

**Goodman: Are you harnessing the master narratives? If you try to change it, “good luck with that.”**





"When I **use a word**," **Humpty Dumpty** said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less." "The question is," said Alice, "whether you can make **words** mean so many different things."



*Think about this Legal  
Rule for next class:*

***“No Vehicles Allowed in  
the Park”***