

## Chapter 2

# The Importance of an Effective Trial Theme

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There are few childhood memories as vivid to me as those of sitting around a campfire with friends and family listening to stories about ghosts, wild animals, and villains on the loose. Perhaps it was the crackling fire, the flickering orange flames, or the deep rusty smell of the smoke, but something seared the stories into my psyche. For years I believed it was the setting that made the experience so compelling. After graduating from law school and beginning a career as a litigator, however, I started to look at storytelling in a different light. Now, after more than a decade of practice, I have a different perspective on what made those stories so real. Sitting in the woods, wrapped in sleeping bags, with our backs to the unknown, we felt vulnerable. As a result, we could relate to the unsuspecting victims in the campfire stories. It was that personal association with the characters in the story, at an emotional level, that caused us to hang on every word.

Trial lawyers are storytellers. It is a trial lawyer's job to capture the jury's attention, captivate them with the case narrative, and, in the end, persuade them to rule in her favor. A trial lawyer makes this happen by creating a connection between the jurors and the story, so that each juror can relate to the characters on a basic, personal level. Trial lawyers must set the tone at trial, decide who tells each element of the story, and bring the details of the case to life. Trial lawyers are ultimately responsible for the message

that the jury hears. If a trial lawyer fails to connect with the jury, the jury will not appreciate her message. The key to making that connection with jurors is to establish a powerful theme for trial.

## What Is a Trial Theme?

Many possible definitions of trial theme exist. Merriam-Webster defines “theme” as “a subject or topic of discourse or of artistic representation.”<sup>1</sup> Noted author on trial practice Stephen Lubet writes that theme is the “moral force” of your message “best presented in a single sentence” that “justifies the morality of your theory and appeals to the justice of the case.”<sup>2</sup> Author of *Trial Techniques*, Thomas Mauet, writes that themes are the “anchors that summarize your case.”<sup>3</sup> Barbara Hillmer and Bob Gerchen of Litigation Insights write, “themes are intentionally oversimplified concepts that connect complex evidence with jurors’ experiences, beliefs and predispositions.”<sup>4</sup> There are many definitions of theme, each making a different point about this difficult-to-define but important concept. To borrow from former Associate Justice Potter Stewart, the concept of trial theme is difficult to define, but you know a good trial theme when you see it.<sup>5</sup> It is therefore instructive to define trial theme by examining the attributes of a good one.

## What Makes a Good Trial Theme?

### The Human Element

First, a good trial theme must be about people. The best stories—the ones that stick with us—give attention to both plot development and character development. A plot-driven story will not connect with a jury unless it

1. MERRIAM-WEBSTER COLLEGIATE DICTIONARY 1222 (10th ed. 1996).

2. STEVEN LUBET, MODERN TRIAL ADVOCACY 8 (4th ed. 2009).

3. THOMAS A. MAUET, TRIAL TECHNIQUES 25(8th ed. 2010).

4. Barbara Hillmer & Bob Gerchen, *Using the Story: The Importance of Developing Memorable Themes*, 19 LITIGATION INSIGHTS NEWSLETTER (2010), <http://www.litigationinsights.com/case-strategies/using-the-story-the-importance-of-developing-memorable-themes/>.

5. See *Jacobellis v. State of Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

focuses on the characters in the story. This is true no matter how compelling the case may be. In other words, if the trial theme only pertains to the documents and words on a page—without involving the persons or thought processes that went into choosing those inanimate words—it will not connect with the jury. Jurors want to understand not only *what* happened and *when* it happened, but *why* it happened. These are questions that can only be answered by focusing on the human aspects of the trial. If jurors do not understand the motivation behind the players' actions, the story will become dull and they will most likely stop paying attention.

Consider a case about a breach of a contract between a manufacturer and his supplier of goods. A dispute arises after the manufacturer discovers that the material delivered by the supplier is substandard and dangerous. Such cases can devolve into tedium, focusing on myriad details buried within pages of legalese. Many lawyers would spend their time at trial introducing the companies, describing the nature of the business, and explaining the mechanical function of the contract. If the trial lawyers stop there, they miss an opportunity to connect with the jury.

To entice the jury to follow the story, a trial lawyer should focus on the individuals involved in the dispute. By focusing on the human elements of the case, such as the dreams of the owner of the company and the countless hours she invested in developing the product, jurors can begin to connect with the people involved in the conflict. Instead of viewing the breach of contract as a technical term, they will feel the disappointment and frustration that followed the unforeseen interruption of business and the lost relationships that resulted from the interruption. It is the emotions—sympathy, anger, disappointment—that will drive a jury to rule for your client. Those emotions arise out of the human elements of the story.

### **Universal Truths**

Second, a good trial theme should focus on universal truths likely to connect with all members of the jury. If a trial lawyer selects a theme that only appeals to persons of a certain political or religious persuasion, he or she risks ostracizing jurors. In the high-stakes game of jury trials, trial lawyers can ill afford to lose a juror because of a flawed message. For an effective trial theme, a trial lawyer must identify a concept that all jurors can

understand and appreciate—or would like to be perceived to understand and appreciate. Examples include truth, justice, hard work, and protecting the vulnerable.

This principle is highlighted in the case in which the plaintiff was rendered a paraplegic because equipment designed by the defendants malfunctioned. The plaintiff had a compelling case and presented capable, qualified expert witnesses to support her story. Counsel for the plaintiff, however, employed a strategy from the first day of trial of berating the defendants for how much money they made. Instead of focusing on the tragedy that had occurred and how it could have been prevented, counsel constantly attacked the defendants for being “rich” and accused the wealthy defendants of caring more about money than safety. After weeks of such tactics, the most memorable aspect of trial was counsel’s attacks on the “rich” defendants. After a lengthy deliberation, the jury returned a verdict for the defendants. When interviewed after the case, one juror, who himself was a successful businessman, reported that he resented the message that the “rich” defendants did not care about the safety of their customers. He was vocal during deliberations, defending against what he thought was an unfair stereotype of successful people. In the end, this juror persuaded the rest of the panel that the defendants were successful as a result of hard work and that the accident was the result of an unforeseen mistake. By ostracizing one juror, the plaintiff’s counsel lost the case.

### **Solid Foundation**

Third, a good trial theme must be supported by sound evidence. A powerful trial theme should be “based on a foundation of undisputed or otherwise provable facts, all of which lead in a single direction.”<sup>6</sup> A trial theme is effective if the jury connects the power of the theme to the evidence at hand. Therefore, a trial theme works only when the jury believed the factual basis for that theme. Trial themes built on speculative or unproven facts will cause the jury to discount or disregard the message altogether. There are few moments sweeter for a trial lawyer than when opposing counsel over-promises to the jury, and he or she cannot deliver. Where possible, a

6. LUBET, *supra* note 2, at 7.

trial lawyer should take pains to prevent this from occurring at his expense by building the trial theme with only those facts that are uncontested or supported by strong evidence. In short, a trial lawyer should build the trial theme on a solid foundation.

Take, for instance, a trial that I defended in rural South Carolina. We filed numerous motions seeking to strike certain evidence and testimony. Opposing counsel argued vehemently that the court could not properly rule at the pre-trial stage and that he should be given the opportunity to present his evidence in the proper context before the court ruled. The judge was persuaded and instructed the lawyers to make their opening statements.

Much to my surprise and ire, opposing counsel's opening statement focused on the very documents and testimony that we challenged in our motions. Opposing counsel promised the jury that it would see these documents and hear the testimony on critical issues—evidence that counsel claimed would carry the day at trial. It was upon this evidence that opposing counsel built his theme. I was furious. But once I recovered my composure, and we started to present the evidence, I realized that we had been given a gift. One by one, each of the promised documents offered by opposing counsel was ruled inadmissible. The critical testimony was not allowed. During closing, all of my frustration turned to elation as I walked the jury through my opponent's broken promises. When I had finished, my opponent's trial theme had crumbled before his very eyes.<sup>7</sup>

### Viscerals

Fourth, a good trial theme should focus on a concept that will connect with jurors at a visceral—or gut—level. Visceral communications trigger “strong emotional and sometime near-physical reactions.”<sup>8</sup> Lawyers use

7. Of course, the selection and employment of trial theme will depend upon the facts of the case and the hand you are dealt. Sometimes, the only useful theme you have will be based on evidence of dubious admissibility. In that instance, you may want to file a motion in limine to get a preliminary ruling on whether that evidence will be admitted. See Chapter 3. If that does not resolve the issue (and you cannot settle the case), you may have to take a risk, swing for the fences, and hope for the best. If it unfolds that you cannot get your evidence in on the first try, think about alternative ways to do so. Be on the lookout for arguments that the opposition has “opened the door” in some manner. In general, however, it is better to avoid these desperate straits if you can. Build your theme on a solid foundation.

8. DAVID BALL, *THEATER TIPS AND STRATEGIES FOR JURY TRIALS* 132 (3rd ed. 2003).

“viscerals”—as David Ball calls them—in all aspects of a trial to send a more powerful message with the evidence they present. A trial lawyer will create a more lasting impression if he or she employs a trial theme that reaches the jury on that visceral level.

Consider a case where a trusted employee breaches a covenant not to compete and leaves his company to work for a competitor. An appropriate trial theme for the case might be *accountability* or *broken promises*. Both of these trial themes incorporate human activity and set a proper tone for the trial. But employing a visceral theme such as *betrayal* will elicit a stronger, more emotional response from the jury.

## Identifying Your Trial Theme

### Know Your Audience

In identifying a powerful trial theme, a trial lawyer must step outside of the role of advocate and into the shoes of his audience. Only by viewing the trial from the jury's vantage point can a trial lawyer truly understand the nuances of a trial theme. The key to viewing the case through the eyes of the jury is learning about the jurors. Who are they? Where are they from? Do they have strong beliefs or preconceived notions about the subject of the trial?

The process of picking jurors makes this a difficult task to be performed in advance; however, a trial lawyer should not wait until a jury is picked before identifying a trial theme. A trial lawyer can test certain themes before trial through surveys, mock trials, or focus groups. For smaller cases, a trial lawyer can test trial themes on co-workers, staff, and family members. A trial lawyer can also learn about his audience by reviewing the list of potential jurors published before trial. With the help of the Internet and jury consultants, trial lawyers can learn additional information about jurors' criminal backgrounds, prior lawsuits, and other publicly available information. A careful analysis of the available information will help a trial lawyer form a reasonable expectation of the makeup of the jury.

Applying psychodrama techniques is an effective method for trial lawyers to identify the predispositions and potential reactions of jurors. In 1921, noted psychiatrist and psychodramatist Dr. J. L. Moreno developed

a form of group psychotherapy known as psychodrama.<sup>9</sup> In psychodrama, the patient assumes the role of a different person and acts out an episode employing the other person's perspective. The purpose of psychodrama is to promote personality growth and development through an understanding of one's condition *through someone else's eyes*.<sup>10</sup> The concept of psychodrama has been applied to jury trials for many years.

While a full-blown psychodrama group session is not feasible for the average case, a trial lawyer should consider the concept when trying to understand the jury for purposes of selecting a trial theme. To develop a trial theme, trial lawyers should stop thinking about cases like lawyers and, instead, analyze their cases from the vantage point of their audience:

It is not just what happens to us that is important and that makes us who we are, it is how we experience what has happened to us. The facts are only a small part of anything that happens. Our experiences are stories, our stories. Together they comprise the story of our lives.<sup>11</sup>

By understanding the story of the jurors' lives, a trial lawyer can select a trial theme that is tailored for a particular audience.

### **Trial Theory Versus Trial Theme**

There exists a common misunderstanding among trial lawyers about the distinction between trial theory and trial theme. A trial lawyer will need both a sound trial theory and a well-crafted trial theme, but the two should not be confused. A trial theory sets out a logical series of events that matches up with the relevant legal issues to be proved or disproved by the parties at trial. "A theory of the case should be expressed in a single paragraph that combines an account of the facts and law in such a way as to lead the trier of fact to conclude that your client must win."<sup>12</sup>

9. See J. L. MORENO & ZERKA T. MORENO, *PSYCHODRAMA: ACTION THERAPY & PRINCIPLES OF PRACTICE* (1969).

10. *Id.*

11. John Nolte, *Brochure for the "Psychodrama and Telling the Story" Workshop*, Oct. 23-25, 1998 (Midwest Ctr. for Psychodrama & Society, Omaha, Neb.).

12. LUBET, *supra* note 2, at 7.

While the trial theme should identify a single fundamental truth that connects viscerally with jurors, the trial theory should be the logical, analytical vehicle that carries the jurors from the start of trial to the finish. Another way to think of the trial theory is as a roadmap for the case. Thus, the creation of a powerful trial theory can be helpful for developing an appropriate trial theme. While a trial lawyer should never wait until the last minute to create a trial theme, as discussed below, it can be very helpful to refine the trial theme after developing the theory of the case.

### **When to Prepare the Trial Theme?**

There is no perfect time to prepare a trial theme. Lawsuits are dynamic, often lasting for years before evidence is presented at trial. The discovery process, which accounts for the vast majority of activity in any given case, is the investigation phase of a case. It is this investigation that enables trial lawyers to frame the facts and disputed issues for trial. As a result, a trial lawyer should not assign a trial theme too early—before the key facts are known—or stubbornly refuse to modify the trial theme as they discover new facts that undermine or contradict the trial theme. Conversely, a trial lawyer should not wait until the last minute to identify the trial theme. The key is to understand the role of the trial theme at each stage of the process.

#### **With Case Intake**

A trial lawyer should start thinking about the trial theme as soon as he or she receives a new file. However, trial themes developed early in a case are subject to revision and changes in direction. For each case, a trial lawyer should begin keeping notes about proposed trial themes in one location and revisit these notes at regular intervals. Trial lawyers should think critically about the proposed trial themes and have no loss of pride associated with drastic shifts in the message. A good practice is to consider multiple trial themes and test them against the facts and law as the case progresses.

A benefit of this exercise is to get a trial lawyer thinking about trial *from day one*. If a trial lawyer starts thinking about trial at the beginning of the



case and continues to think about trial during each step of the process, he or she will be prepared when the time comes to deliver the theme at trial.

### **In Discovery**

A trial lawyer should also carefully consider the trial theme as he or she conducts discovery. There are two sides to discovery in every case: propounding discovery requests and responding to discovery requests. A trial lawyer should craft discovery that will be useful at trial by seeking to elicit facts that support the trial theme. Blind reliance on form discovery or delegating discovery to an attorney with no knowledge of the case constitutes a waste of time and a missed opportunity. Similarly, a trial lawyer should contemplate trial themes when drafting discovery responses and preparing witnesses for deposition. Cases are often damaged by a discovery response or deposition testimony offered years before trial, because the response or testimony conflicts with the ultimate story at trial. While trial themes are ever-changing, a trial lawyer needs to consider how a discovery response is written and how it will interact with potential trial themes down the road.

### **For Mediation and Pre-Trial**

A trial lawyer should focus on the trial theme at mediation and in the months preceding a scheduled trial date. Mediation represents a rare chance for a trial lawyer to directly address the opposing party. A good trial lawyer should never miss an opportunity to look into the eyes of the party sitting across the table and deliver the key messages of the case. It is not always constructive to hash out every detail of the case, but a trial lawyer should not dismiss the importance of a well-crafted trial theme at mediation.

Rule 408 of the Federal Rules of Evidence prohibits most communications made during settlement negotiations from being admitted as evidence at trial. Nevertheless, the opposing party will remember your position and strategies long after mediation. It is for this very reason that trial lawyers should consider their trial theme and how to use it at mediation.

Trial lawyers are divided on the subject of presenting trial themes and trial evidence at mediation. On the one hand, some trial lawyers play their cards close to the vest, saying little and revealing even less about their trial strategies. This works well when you are in a strong position to defend a

case at trial. On the other hand, trial lawyers seeking to resolve the case short of trial may elect to make a more comprehensive mediation presentation. The comprehensive strategy works well for the plaintiff and in cases where the outcome is less than certain. Trial lawyers in the latter category should treat preparation for mediation similar to preparation for trial. A convincing message at mediation supported by a resonant trial theme places a trial lawyer in a better position to negotiate a favorable settlement.

### **Trial Preparation**

A trial lawyer should concentrate on the trial theme as he or she prepares for trial. Many trials involve a team of partners, associates, paralegals, and legal assistants. For a trial team to operate efficiently, team members must divide trial preparation tasks. This division of labor frustrates many trial lawyers because there is a risk that the case presentation will become disjointed.

To avoid this result, the team leader should work diligently to create an effective trial theme at the outset of trial preparations and communicate the trial theme to all team members. Clearly communicating the trial theme during trial preparation will minimize the risk of an inconsistent presentation and ensure that a common message is being delivered to the jury throughout the trial.

### **Using Your Theme at Trial**

#### ***Voir Dire***

The use of trial themes during *voir dire* can be difficult. Different states, and different courts within each state, have unique rules for jury selection. In some states, a trial lawyer submits questions to be asked by the trial judge. Judges will rarely ask any but the most innocuous *voir dire* questions, leaving little room for introduction of a trial theme. However, a purposeful *voir dire* question can help a trial lawyer test the jurors' prejudices and how they may react to certain trial themes. In other states, trial lawyers conduct *voir dire* by asking questions and interacting directly with the jury venire. The system in these states provides an excellent chance to develop rapport

with the jury. A trial lawyer should not miss this opportunity to introduce and cultivate the trial theme.

A trial lawyer should be careful, however, in introducing the trial theme during *voir dire*. At this point in the process, jurors have seen no evidence and heard from no witnesses. Juror opinions are based only on their observation of the judge and counsel. This fact can be positive, but it can also be a liability. If a trial lawyer chooses to emphasize honesty as the trial theme, he or she must be prepared to be scrupulous with the truth, never giving the adversary an opportunity to accuse her of violating the trial theme. A trial lawyer is on stage from the moment he or she walks into the courtroom. A prudent trial lawyer must personify the trial theme at all times.

### Opening Statement

A trial lawyer has many decisions to make about using the trial theme during opening. Foremost is whether to (1) state explicitly one's theme at opening; or (2) allow the jury to arrive at the theme through the use of carefully orchestrated suggestions. The most popular method is to *tell* the jury the theme and then return to the theme repeatedly during the trial. This method reduces the risk that the jury could misunderstand the trial theme. As Mauet explains, trial themes "are the psychological anchors that jurors instinctively create to distill and summarize what the case is about."<sup>13</sup> Thus, a trial lawyer may want to establish the psychological anchors early on, to help the jury understand the "whys" of the case.

The downside to *telling* the jury the trial theme is that many jurors do not want to be *told* how to think. Jury research confirms that jurors are more inclined to defend conclusions that they have reached on their own. For these reasons, a trial lawyer may want to be subtle about introducing the trial theme.

There are methods for presenting trial themes in order to allow jurors to reach their own conclusions that are consistent with a selected trial theme. For instance, a skillful trial lawyer may deliver an opening by setting the stage, introducing the characters, and telling the story—all in a way that supports the trial theme. In this scenario, a trial lawyer can end the opening

13. MAUET, *supra* note 3, at 62.

statement with the trial theme as the logical conclusion that most jurors have already reached on their own.

One effective way of employing this strategy is to ask questions such as "Where is the eyewitness?"; "What happened to the deleted e-mail?"; or "What motivation did this woman have to harm her employer?" When you pose questions, jurors will begin to focus on the evidence or lack of evidence that drives your trial theme. I once had the opportunity to observe a criminal case in which the defendant was accused of breaking and entering into a medical office building. The prosecutor's case was built solely upon circumstantial evidence. Counsel for the defendant gave a three-sentence opening statement. All three sentences were questions, each pertaining to the lack of evidence to be produced at trial by the prosecutor. By the time he sat down, in the brief span of his short opening, everyone in the courtroom had formed the answers to his questions and arrived at his intended trial theme on their own.

### **During Trial**

After introducing the theme at the start of trial, the trial lawyer can use many persuasive techniques to increase the effectiveness of the message. The first is using a tagline or catchphrase. Some themes are expressed in one simple word, while others are comprised of a phrase or sentence. A trial lawyer should always use the same terminology to express the trial theme. There may be many ways to articulate the trial theme, but a trial lawyer should choose one and stick with it. The power of disclosing the trial theme early comes from repetition.

There are often one or two pieces of evidence that come to symbolize the trial theme. A trial lawyer should consistently return to these symbols to reinforce the message of the trial theme. At the end of trial, the jury will associate the key pieces of evidence with the trial theme. During deliberations, supportive jurors can refer to the symbols to advocate for your side of the case.

Consider the use of the famous glove in the O. J. Simpson murder trial. At trial, defense attorney Johnnie Cochran baited the prosecutor into requesting that Simpson try on the glove. As we all know, the glove did not fit. The glove and Cochran's famous quip ("If it doesn't fit, you must acquit.") were

referred to multiple times during the presentation of other evidence and at closing. While we may never know what ultimately propelled the verdict in Simpson's favor, there is no question that the repeated use of the phrase and references to the glove made a lasting impression.

### **Closing Argument**

By this final stage of trial, jurors should be intimately familiar with the trial theme and the pieces of evidence that symbolize the trial theme. However, this does not mean you can ignore the theme at closing. It is imperative to end with a strong message that emphasizes the trial theme. During the opening statement, a trial lawyer forecasts the evidence that will support the trial theme. At closing, the jurors have seen the evidence. A savvy trial lawyer should remind the jury of what was promised in opening and walk through the evidence that supports the trial theme. It is good practice to refer to documents and audiovisuals to reinforce associations with the trial theme at closing. Reiterating the trial theme at closing is another way to prepare the jury for deliberations and lead them to the logical, moral outcome that is supported by the trial theme.

Closing argument is a trial lawyer's last chance to connect with the jury. Although most jurors have made up their minds by the time of closing arguments, some may be undecided. Delivering a strong closing will help your supporters on the jury to defend your position and champion your case to the other jurors during deliberations. For this reason, a trial lawyer's closing should be memorable.

Consider the case of a young girl who died because her family physician failed to diagnose her with a deadly disease. From the beginning, counsel for the girl's family employed a theme about lost opportunities and "what might have been." Counsel elicited the story about the promising young girl's life. He touched on the things she had done and the joy that she brought to her family. He also focused on those milestones the girl would miss. Counsel questioned the girl's mother and asked her to go through a memory box that the mother had created for keeping special items from the girl's life. After concluding the questioning, the box was empty. For the rest of the trial, that empty box sat at counsel's table, a grim reminder of the loss.

At closing, counsel spoke to the jury about those things that the girl had done and, more importantly, those things that she had not done—things that she would never do because her life had been cut short. When counsel finished the closing argument, the empty box was left in the middle of the floor. There was not an eye in the courtroom that was not staring at the box and thinking about “what might have been.”

## Risks and Pitfalls

Active use of a trial theme is not without risks, and I have alluded to some of them already. A trial lawyer should be aware of these risks and take steps to minimize them. First, a trial lawyer should consider whether a potential trial theme could be turned around by one's adversary and used against her case. It is damaging at trial when opposing counsel twists the trial theme and uses it for a contrary purpose. The effect of such a reversal of fortune can be catastrophic in front of a jury. A prudent trial lawyer should therefore choose her words carefully, to avoid falling prey to this technique. It is good practice to test trial themes on co-workers and family members, asking them if they perceive a downside. A trial lawyer may be pleasantly surprised at the valuable insights non-lawyers can provide on proposed trial themes.

Consider the case in which an appraiser was sued for making an appraisal that did not accurately reflect the market value of the property in question. Defense counsel employed a trial theme about judgment. In essence, defense counsel sought to prove that the alleged mistake was the result of a judgment call and that the defendant had impeccable judgment. During opening and throughout much of the trial, the theme was effective. This all changed when plaintiff's counsel presented a document on cross-examination that had been forged by the defendant. While the forgery was innocent and only made out of convenience, suddenly the defendant's judgment was called into question. With the introduction of one document, the balance of the trial turned on its head. From that moment forward, it was plaintiff's counsel, and not defense counsel, who was the champion of judgment.

A second risk is whether opposing counsel can break down or neutralize the trial theme. This risk relates to basing the trial theme on undisputed evidence. If the evidence supporting a trial theme is solid, the chances of having the trial theme neutralized are small. But a trial lawyer should think through the risk. If there are critical factual or legal points that are necessary for a trial theme to work, a trial lawyer must emphasize those points at trial.

A final risk is that the trial theme will upset a juror. Jurors are everyday people with opinions about politics, religion, and everything in between. It would be shortsighted to employ a contentious concept as a trial theme. While a trial lawyer cannot always choose which side of the battle he or she is fighting on, he or she should be realistic about common juror perceptions. At a jury trial, a prudent trial lawyer should be conservative with the trial theme and the language used to communicate it.

## Summary

The effectiveness of your trial theme can make or break your case. As demonstrated in this chapter, trial theme plays a role in every aspect of a trial, including the months and years leading up to trial. By thinking about trial themes from the start of a new case, a trial lawyer will be prepared to identify a trial theme that connects with the jury. Creating a real connection with the jury is the cornerstone to effective storytelling and obtaining a favorable outcome for the client.