

# The Appellate Strategist

INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

## Appellate Brief-Writing 101: "Every Lawsuit is a Story" (The Bryan Garner Interviews II)

June 15, 2011 by [Kirk Jenkins](#)

"God created man because he loved to hear stories," goes an Ethiopian proverb.

You might think that narrative has little or nothing to do with writing a good brief. But as Professor James Boyd White reminds us, "The law always begins in a story . . . It ends in a story, too." [Chief Justice Roberts](#) tells Bryan Garner in the LawProse interviews that story-telling is central to writing a compelling statement of facts:

It's got to be a good story. Every lawsuit is a story . . . I don't care if it's about a dry contract interpretation; you've got two people who want to accomplish something, and they're coming together -- that's a story. And you've got to tell a good story . . . you want it to be a little bit of a page-turner, to have some sense of drama, some building up to the legal arguments.

People are natural story-tellers; stories are an innate way for us to order and interpret all of human experience. As Barbara Tuchman wrote, "narrative is the life-blood of history." Telling a story in your brief that fits an established paradigm gives the result you want an internal consistency -- any necessary inferences you're asking the judge to make will seem reasonable. If you frame your story well, your desired result will have the virtues of fidelity -- stories the decision maker knows to be true -- and ideals -- consistency with what the decision maker *wants* to be true. Tapping into stock stories and myths, like Joseph Campbell's archetypal stories, is a powerful tool of persuasion.

The elements of story-telling are directly applicable to our craft, as several commentators have shown in recent years, see [here](#) [pdf] and [here](#) [pdf] and [here](#). [pdf]. Every lawsuit occurs in a setting, of course -- the factual background and the governing law. As in every good story, conflict takes center stage, and here, the lawyer must make a decision -- is the story one of person against person? Against self? Against nature? Against society? The theme of a persuasive brief should define the central conflict in terms of the characterization, casting the story in a light the decision maker can identify with. And finally, all cases have a plot: set-up, complication, and finally, resolution, showing that the law must arrive at the result you're seeking.

Point of view is central to all legal writing. Consider how different several famous cases of recent years sound, depending on which side's version you read:

The Rod Blagojevich Case:

- "[A] political corruption crime spree."
- [Impeachment was a secret deal with the legislature to raise taxes.](#)

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The Prop 8 Case:

- A radical departure from long-settled tradition.
- Vindication for equal treatment under the law.

The Bill Clinton Case:

- The President is degrading his office.
- Impeachment is a political power-play.

"It is something to show that the consistency of a system requires a particular result," Justice Oliver Wendell Holmes wrote in *The Common Law*, "but it is not all. The life of the law has not been logic: it has been experience." From Justice Holmes to Chief Justice Roberts, great advocates have always known that every brief -- indeed, every case -- must begin with a strong narrative.

Join us back here tomorrow for Part III of our four-part series on Bryan Garner's SCOTUS interviews in LawProse.