

COUNSEL COMMENTARY



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Litigation: The Art of Storytelling

WHY TRIAL LAWYERS SHOULD STEP BACK FROM THE MINUTIAE AND CONVEY THE BIG PICTURE.

BY DAVID J. BRADFORD AND CRAIG C. MARTIN

To state the obvious, “storytelling” is the art of telling a story, and all effective trial lawyers are great storytellers. What that means, however, is less than obvious. Images of the great storyteller and the great trial lawyer are ingrained in our common consciousness. Clarence Darrow’s famous cross-examination of his opposing counsel, William Jennings Bryan, in what is known as the “Scopes Monkey Trial” that tested the Butler Act, which had forbade the teaching of evolution in public schools; or Vinny Gambini’s (played by Joe Pesci) aggressive, but inexperienced, quest for the truth in order to vindicate his cousin in “My Cousin Vinny”; or, the folklore of the “gift of gab” one achieves by kissing the Blarney Stone, all evoke the image of the great lawyer storyteller.

When you walk the halls of the great legal institutions of our time – whether it be the famous courtrooms, the iconic law firms or the offices of experienced public prosecutors or defenders, you don’t frequently see Clarence Darrow, Cousin Vinny or an Irish storyteller. So,

you may need to adjust your expectations of who the great lawyer storytellers are and what makes a lawyer a great storyteller.

Most lawyers were good students, and take pride in their ability to master masses of information. Many lawyers confuse mastery of the facts, the documents and the admissions, however, with mastery of the art of storytelling. Perhaps this is also a function of the fact that most trial lawyers spend most of their time enmeshed in discovery, document production, the search for electronically stored information and even often impolite correspondence about all of the above. They master each and every detail of their case, and demonstrate greater knowledge of the documents than anyone. If tested on the details, they would get an “A plus.”

Trials, however, are focused on the story of the case, and only to a limited extent – sometimes dramatic, sometimes not – on a few key details. Mastery of and presentation of all of the details, a story does not make. The trial lawyer as

storyteller has a far more comprehensive task. The storyteller must tell a story that reflects the true circumstances of the case, resonates with common sense for judges and juries and allows the story and the key facts to persuade the decision maker in the case.

The challenge for the trial lawyer as storyteller is to discern the story from the mountain of facts mastered during discovery. The storyteller must decide not only which facts are important, but also which facts are unimportant. Too often, lawyers default to the easiest and least effective course of reciting each and every fact learned during the lengthy discovery process, which demonstrates that the lawyer has mastered the minutiae, but does not present the facts that lead a decision maker to a conclusion. Simply put, in describing a forest, you do not need to talk about every tree; you have to talk about the forest and a few trees.

Of equal importance to the lawyer as storyteller is the simple truth that the facts speak for themselves. Cliché it

sounds and cliché it is, but it is true. The witnesses testify and contribute to the overall story of the trial; the documents are reviewed by the judge or jury and highlighted by the lawyer as storyteller; and now, more often than not, the judge or jury will view a powerpoint presentation, see documents, watch video depositions and observe other evidence on the screen. So, then, the storyteller is not only the trial lawyer, but the evidence itself.

Viewed this way, the lawyer as storyteller becomes more akin to the conductor of an orchestra. Just as there are many instruments to hear, there are many pieces of evidence to be assimilated into the story. The role of the lawyer as storyteller is to decide how the trial unfolds.

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