Your Jurors, Your Heroes:

Winning Your Case through the Power of Storytelling

By Carl Bettinger

If You Have a Case, You Have a Problem

All too often, the question “What is your case about?” is met with responses filled with jargon, medical terms, and professional indifference:

“It’s a med-mal case for failure to diagnose breast cancer.”

“It’s a birth-injury case with CP.”

“My client is charged with being a felon in possession.”

We choose this language because it contains familiar shorthand that other attorneys will understand. But our courtroom audience is not a sophisticated legal audience; it’s a mishmash of teachers and tech writers, grandparents and grad students: people for whom common courtroom terms like plaintiff and defendant are often intimidating and ambiguous. Our choice of words and presentation often interferes with our ability to connect with our jurors—and, thus, their ability to render the verdict your client deserves. A case, when presented only as set of facts, is as good as lost.

Before you utter another word in a courtroom, ask yourself the simple question: Why should the jurors care about your client? For that matter, why should jurors care about your case at all? You—and your client—are strangers to them; your jurors have their own problems. Why should they leave the comfort of their lives to come into this

Adapted from Carl Bettinger’s Twelve Heroes, One Voice: Guiding Jurors to Courageous Verdicts (Portland: Trial Guides, 2011).
new world: a trial in a courtroom filled with strangers, many speaking in a way that may as well be a foreign language?

This fundamental question—Why should jurors care?—lies at the heart of every trial treatise or theory offered up to practitioners’ jaded palates. Every tale told is designed with one thing in mind: to find an answer to that question. Jurors will only care about your case when it is presented in a way that involves them directly. The best way to do this is through the strategic interlaying of a fact-based story frame in which the jurors are the story’s heroes.

Be prepared for some initial resistance. The ordinary man or woman both wants, and does not want, to be a hero. As Joseph Campbell puts it, “the usual person is more than content, he is even proud, to remain within the indicated bounds, and popular belief gives him every reason to fear so much as the first step into the unexplored.”¹ The easiest course of action is inaction, and the defense is counting on your jurors’ indifference and inertia.

Of course, who can blame them? Our jurors come to the courtroom, a new world, as ordinary men and women with the hopes, fears, and desires common to all mankind. Although much has been written about motivating jurors through an understanding of their biases or fears,² or by trying to enrage them by having them identify with the betrayal in a given story,³ I suggest that great verdicts result not from anger, hatred, fear, or vindictiveness, but from love and self-sacrifice. These qualities are the defining characteristics of the archetypical hero.

² See David Ball and Don Keenan, Reptile (New York: Balloon Press, 2009).

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The only way to harness these compelling cultural undercurrents is to forget about your case and start telling a story. Threading a storyline into the entire courtroom drama, and empowering your jurors to become your heroes, will awaken each juror’s desire to be the hero, and motivate them to action. Through this change in perspective, you will find yourself becoming the mentor, your client assuming the role of the story’s victim, and your jurors, inspired to action, with the most powerful role of all.

**Transforming a Case into a Story**

Think of the stories you used to read and reread (or watch and rewatch) when you were a child: *The Hobbit, The Wizard of Oz, Star Wars.* Whether it was Frodo, Dorothy, or Luke Skywalker, the story’s hero was the role we all wanted. Watching heroic people—whether Superman or Atticus Finch—makes us stop in our tracks, stand up, and cheer. We dream that we, too, will have the opportunity to do something that amazes others.

We have a hardwired understanding of the hero’s role, of other characters commonly found in such stories, and of the importance of universal truths realized by the story. Hero stories, or epics, show that the hero’s role is reachable by any human being. Incorporating the hero mythos into your trial and empowering your jury to become the story’s heroes, is one of the most powerful ways to present your case. However, an understanding of how to incorporate these archetypes into a trial is something many attorneys are missing.

So, what makes a case a story?

*Stories have a distinctive point of view.* You can tell a story from multiple points of view. As the jury’s mentor, you need to decide whose viewpoint

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you will show to the jury. It could be that of a frightened mother, laboring with a baby who is not getting enough oxygen; her husband, as he stands helplessly by in the delivery room; a nurse’s aide, who is as helpless as the father; or the distressed baby. It could even be from the point of view of an inanimate object.\(^4\)

*Stories have a precise location (scene).* Stories must have a place. They don’t occur in the abstract. What place brings your story alive? How are you going to show these places to the jury? Instead of telling them about the place, wouldn’t it be so much more powerful were you to re-create the scene in the courtroom? Does that sound crazy? It’s not. It works.\(^5\)

*Stories have a logical sequence.* How do you want to sequence your story? Any given portion must move forward in time sequence, but that does not mean you have to start at the earliest event and move inexorably forward. You can start at the beginning, but you can also begin your story at the end, or in the middle, or with a flashback. In particular, stories almost always follow the following sequence of events:

\[
\text{Once upon a time . . .} \\
\text{And every day . . .} \\
\text{Until one day . . .} \\
\text{And as a result of that . . .} \\
\text{And as a result of that . . .}
\]


\(^5\) See also, Garcia-Colson, Sison, and Peckham, *Trial in Action: The Persuasive Power of Psychodrama*.

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And as a result of that . . .

Until, finally . . .

And ever since then . . .

This format—evident in all kinds of stories, from Homer to Harry Potter—sets the tone of your case. It also creates the critical subtext from which your jurors’ heroic instincts will develop.

The Story Format in Action

A typical case description might go like this: “My guy, Justin, is charged with felon in possession. He had a tough background and was just trying to get by. He’s not a bad guy.” Again, those in the field know that this is shorthand. We know that the defendant (1) already has a felony on his record, (2) got caught in actual or constructive possession of a firearm, (3) did not have a legal excuse to possess the firearm, and (4) has some redeemable traits.

Now let’s anchor our client’s story to the story format:

1. Once upon a time, there was a young man named Justin, whose chaotic home life—a drunken mother, a missing father—put him on the streets, largely alone, to fend for himself. A young man alone on the streets can die, so he threw in with others who had been on the streets and were already committing crimes. After a time, though, Justin turned away from that life. But before he turned away, he was convicted of a felony. He carries it like a badge of shame.

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6 My thanks to Fredilyn Sison, longtime federal public defender, currently with the Federal Defenders of Western North Carolina, for this story spine.
2. *And every day* since leaving that life, Justin has committed himself to a law-abiding life. He has a part-time job and is going to school.

3. *Until one day,* one of his former “homies” shows up at Justin’s apartment and asks him to do a “stab and grab.” Justin refuses, telling the man that he left that life behind.

4. *As a result of that,* his homie threatens to kill Justin and tells him he’ll be back.

5. *As a result of that,* Justin is frightened and goes to the police. But after looking up Justin’s record, they turn their back on him, offering no protection or assistance.

6. *As a result of that,* Justin gets a .22 and carries it when he’s at home or out in public.

7. *As a result of that,* Justin feels safer. He can go to school and his job without being afraid.

8. *Until finally,* he gets pulled over—for having a broken taillight. When the trooper asked him if he had any weapons, he truthfully acknowledged carrying the .22 for protection.

9. *And ever since then,* Justin wonders what it will be like to live in jail for years. A conviction will force him into the very life he has tried to avoid, and he knows he’ll serve time with the very people he left behind.

Which one captures your attention? Which is easier to remember? Which one makes you feel something? If you are like most humans, if your brain has not suffered

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too much damage from law school, you will be drawn to the story format. Why? *Because we are wired that way.* Your jurors are, too.

Why should jurors care? Because you have anchored your case to a fact-based storyline. Not only does it compel your jurors to care about your case, it gives them an active role in the story’s resolution.

**Your Role in the Story**

We already know that your jurors will find themselves in the role of hero. So, what role does that leave for you? *The mentor.* However, in order to gain the type of credibility necessary to be accepted as mentor, we must first address our own demons. You’ve got to give yourself to your jurors, before they will give themselves to you. You can’t do this unless you’ve spent some serious time doing the personal work to find out who you are.

Our role as the mentor and guide begins in voir dire when we take the time to support our jurors as they take the first step into the new world. We do so not by pretending to be a know-it-all, lording it over them, being disingenuous, arguing with them, or trying to persuade them to abandon their beliefs. Rather, we show respect for our jurors’ perspectives through acceptance and understanding of those beliefs; we truly listen to the jurors out of a genuine desire to see from their perspective. By behaving in this way, we acknowledge, both by our conduct and our words, that the jurors are the ones with the power.

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7 It is critical, however, not to assume the “mentor” role without first establishing all other courtroom roles. *Twelve, Heroes, One Voice* explores each of these roles in greater detail, and explains how to avoid some common mistakes.

8 Once again, see *Trial in Action: The Persuasive Power of Psychodrama*, by Garcia-Colson, Sison, and Peckham. However, the best way to learn the discipline is by attending an actual psychodrama workshop. See www.nationalpsychodramatrainingcenter.com for more information on this method.

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Having introduced the transformation in voir dire, we flesh it out in our opening. This is the time to really deliver a story, built upon the hero-centric story structure of ordinary world, new world, and return. We do this in a way that identifies the defendant as a villain, one who always puts his self-interest first. At the same time, we emphasize the heroic characteristics of our client. More importantly, we introduce our jurors to the idea that, while our client may be heroic, our client cannot write the ending to his own story. The power lies with them, and them alone.

Direct and cross-examination provide an opportunity to instill in your courtroom characters those traits that define their archetype, as well as disclose the powers lurking above them and pulling their strings. We ask ourselves, “What role does this character play?” and “How can I best show that role?” Direct and cross force us to make choices about what point of view we want to present. How will we show—as opposed to just tell—our story? What is the location of our scenes? And, finally, how should we sequence them so that in cutting from one scene to the next we drive home the role of the villain, the need to solve the problem presented by the villain’s conduct, and the scary truth that only the jurors can do so?

By the time we are ready to close, the jurors should see the thesis of our story and the antithesis (or lie) of the defendant’s. At the same time, the jurors are likely to have some sense of unease. They will sense that a synthesis will require that they behave in a way that is different from their former lives in the ordinary world. But, if you’ve remained true to your storyline, the jurors will also feel the immense power they hold as

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9 Remember, however: your client is not the hero. Twelve Heroes, One Voice, the book from which this article stems, outlines ways to make this critical distinction.


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the story’s heroes—as well as a call to action. Your final job as mentor is to acknowledge that the jurors are indeed at a crossroads. They can back away from the lie and return to the anesthetizing conformity of their ordinary lives. Or they can rise to the challenge before them—a challenge that the villain is hoping they will run from—and fully inhabit the hero’s role.

**Conclusion**

*Why should jurors care?* The answer to this critical question lies in recognizing that, in a trial, jurors are presented with the opportunity—albeit a terrifying one—to transcend their ordinary lives and to enter a new world. We, as courtroom advocates, are given the high honor to assist in rendering jurors our courtroom heroes. All too often, however, we allow the jurors’ redemptive natures to remain dormant. It is our job to prod and push, to cajole. We must call out to all parts of the jurors’ natures to show them that they, and only they, can save the day. We do this by using the persuasive power of storytelling: a familiar form of communication that is hardwired into all of us.

Let the simple hero-centric story be the locus of everything you do in trial. Jurors will care about your case, and your client, if the story is about them. They will care if you can show them that, by deciding for our clients, they will be transformed into something more than what they were. They will care when they see that in rising above their ordinary worlds, they get to become the heroes.

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