



**TRUE STORIES – THE APPELLANT’S
STATEMENT OF FACTS IN A
CRIMINAL APPEAL—TELLING THE
STORY THAT SHOULD HAVE BEEN
TOLD**

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Prof. Diane Courselle, University of Wyoming



What issues matter to the Court?

- 1. Did the Appellant “do it”?
- 2. Was the trial basically fair?

Addressing these issues may require two different, but related stories





IMMUTABLE, UNIVERSAL, TIMELESS AND ETERNAL RULES OF APPELLATE ADVOCACY

- 1. Facts and emotions move people, law does not move people.**
 - 2. Judges always deny that Rule 1 is true.**
 - 3. See Rule 1.**
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What the story should be about

- (1) The injustice of the trial
 - The unfair rulings of the trial judge
 - The improper, unfair conduct of the prosecutor
 - Anything else that happened that made the trial or conviction unfair
- (2) Your client's innocence or reduced culpability

“injustice of trial” categories

- The judge made a bad ruling and defendant was prejudiced
- The prosecutor did something bad, the judge didn't/couldn't stop him, and defendant was prejudiced
- The prosecutor did something bad, the judge helped, and defendant was prejudiced
- The police or some other witness did something improper, and defendant was prejudiced
- A juror or jurors did something improper, and defendant was prejudiced
- Some external event prejudiced the trial
- The defense lawyer at trial did something improper, and defendant was prejudiced. (IAC should almost always be raised in post-conviction, not on direct appeal)
- The evidence was insufficient to support the verdict

Why a story of innocence/reduced culpability is so important

Even if your claim isn't (and it usually shouldn't be) that the evidence is insufficient, you still need to tell a plausible story of innocence or lesser culpability

- (1) Your arguments will carry greater emotional weight
- (2) In virtually every case, you will need to overcome the court's inclination to find harmless error
- (3) The government's story is going to focus, almost exclusively on your client's supposed guilt

Figuring out what story to tell:

- 1. Who are the characters; what roles do they play?
- 2. Set the scene(s); where do the most important parts of the story take place?
- 3. What scenes must be included to make the story persuasive? What are the critical episodes in your story?
- 4. In what sequence will I tell the events of this story?
- 5. From whose perspective will I tell the story?
- 6. What emotions do I want the judges to feel when they are hearing my story? What character portrayals, scene settings, sequence and perspective will help the jurors feel that emotion?

Characters

- Who are the important actors?
- Who are the good guys, the bad guys, the neutrals? What emotional response do you want the court to have to each actor?
- What characteristics do these actors possess? What facts help you show this?



Setting

- Where do the important events happen?
- What picture do you want the court to have of each place?
- What facts can help you provide a picture of each place?
- What emotional response do you want to be associated with each place?





Events/Episodes

- What are the important things that happened in this case?
 - Which events/scenes must be included to make the story persuasive?
 - In what sequence should I present the events in order go make the story persuasive?
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Perspective

- From whose perspective can I most effectively tell this story?
- 



Emotions

- What emotions do I want the judges to feel when they are hearing my story?
 - What character portrayals, scene settings, episodes, sequence and perspective will help the jurors feel that emotion?
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