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

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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.
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 to make the story persuasive?
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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