

What True-Crime Stories Can Teach Us About Trial Narratives

By **Richard Gabriel** (January 9, 2023)

New documentaries recently arrived on the streaming platforms of Peacock and Showtime about the Casey Anthony and Phil Spector murder cases. Having worked as a consultant on both trials, I have seen the public's fascination with these cases continue over the years with numerous documentaries and dramatizations.



Richard Gabriel

In fact, American consumption of true-crime shows is substantial, with half of the U.S. population saying they enjoy this type of reality content, according to a 2022 YouGov poll.[1]

The courtroom provides the public with mysteries, emotional conflict, theatricality and resolution in the form of a verdict.

The drama inherent in this setting can be seen in different types of media, including podcasts, such as "Serial"; documentaries, such as "The Staircase," "The Jinx," or "Making a Murderer"; television shows, such as "The Lincoln Lawyer"; or classic movies, such as "12 Angry Men" or "My Cousin Vinny."

In short, the trial setting offers the opportunity for some excellent stories — and the principles of good storytelling can be used to great effect in jury trials.

In 1981, Lance Bennett and Martha Feldman conducted research examining the organization of cases by trial attorneys. In "Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture," they found that trial attorneys tend to organize their cases in a storytelling model — which had the benefit of facilitating juror judgment.[2]

In 1991, Nancy Pennington and Reid Hastie came to the same conclusion in the *Cardozo Law Review*: Storytelling helped jurors arrive at their verdicts by organizing complex or competing evidence into a more easily understood format.[3]

Yet, we are often poor storytellers at trial. In fact, much of pretrial discovery and trial preparation is antithetical to telling a good trial story. We take too long to present evidence, repeat too much, focus on minutiae that is irrelevant to the trial story, overcomplicate simple issues, take things out of sequence, fail to provide context, flatten out the dramatic or interesting parts of our cases, and generally bore and confuse the jury.

While some of these challenges are due to procedural or legal limitations of the rules of evidence, there is much we can learn about good storytelling from documentary and theatrical narrative structure.

There are four fundamental juror questions that all attorneys must answer to craft their case narrative:

1. Who are the characters in this story?
2. What happened?
3. Why did it happen?

4. Who or what is to blame?

In most trials, we tend to jump straight to question number two: What happened? But in most stories, the way that audiences interpret the rising action — the what happened — is by fully understanding the background and motivations of the characters in the story.

And jurors, like most audiences, can appreciate character psychology — that people are neither entirely good or bad, but may have, like all of us, both positive and negative traits. This is challenging at trial, because clients, whether they be plaintiffs or defendants, always want to be portrayed in the most charitable light.

At trial, we tend to present the case characters as stereotypes; we might say that a plaintiff or defendant is greedy, that a plaintiff is a victim, and that companies are good by virtue of their accomplishments or malicious because of their profit motive. But these broad-brush characterizations ring false for juries who are expecting fully drawn characters, not two-dimensional stereotypes.

Robert McKee, who wrote one of the quintessential textbooks for television and movie writers, said, "Story is about archetypes, not stereotypes. The archetypal story unearths a universally human experience. ... A stereotypical story ... dresses in stale, nonspecific generalities." [4] These stale, nonspecific generalities reduce the credibility of the clients and the case.

As revealed in the Showtime documentary, Phil Spector was a famous but troubled music producer who was accused of murdering a struggling actress, Lana Clarkson, at his house.

The attorneys in the case alternately tried to characterize Spector as either evil or a great man, and Clarkson as either happy-go-lucky or suicidal. In truth, both Spector and Clarkson, like all of us, had a multitude of traits, both positive and negative. Human beings are complicated, and juries can appreciate their complexity.

To avoid creating flat, uninteresting or unbelievable stereotypes, it is important to consider the arc of the character in the discovery phase of the case. In other words, where does the client or witness start — i.e., the origin story — and what brought them to this point?

Describing their journey, their successes and failures, the challenges they have overcome or are still struggling with will help you communicate to the jury a more authentic portrait of the client or witness.

Additionally, describing some idiosyncratic or unique interests, background or character traits will make your client or witness more memorable for the jury. Obviously, care must be taken to ensure these elements are compatible with your case story and characterization of the specific witness or party.

This type of character development can also be done for companies, organizations, opposing witnesses or parties. It can help position the case for settlement, and aids attorneys and witnesses in preparing for depositions and cross-examination at trial.

These authentic portraits are key to witness, party and case credibility.

When you have done this, it will be much easier to answer the second, third and fourth questions: What happened? Why did it happen? Whom or what is to blame? This is because

jurors will better understand the motivations of the players in the case. This will also help jurors become more invested in your characters.

For instance, if you are a plaintiff in an employment case, this exercise will help you better describe a company's culture or hostile work environment. And if you are defendant doctor in a medical negligence case, it will help jurors better understand your clinical judgment that defines the standard of care.

True crime is also successful because it invites the viewers to solve the mystery. How did Phil Spector kill Lana Clarkson if, according to the defense, she was holding the gun when it went off? Why didn't Casey Anthony report her daughter missing if she didn't kill her child? Jurors become investigators, and the prosecutors or the defense team are tasked with trying to answer the jurors' questions.

Yet at trial, we often tell juries about all the evidence upfront, and what they should do with their verdict. There is no mystery. As a result, jurors are usually not engaged with actively trying to answer the key questions in the case.

The use of rhetorical questions, and having your experts discuss their questions as they were looking at the case, helps to engage jurors to answer critical case questions and solve the mystery.

The story sequence will also help you to answer the what and why questions. Sequencing in Hollywood terms is called plotting. It is the selection of the right series of events to feature and reveal the story. While the chronological timeline tends to dominate most opening statements, it is not always the best sequence for the story of the case.

For example, if you are a plaintiff in a product liability case, you may want to start your story with the design or warning label decisions of the company, while if you are the defendant in the same case, you may want to start with the plaintiff's prior experience with the product.

In both instances, this is often more effective than starting with the product accident itself. Where you start the story lets the jury know where to focus their attention. Different starting points tell different stories.

Different perspectives also tell different stories. While it is traditional to only tell our own client's story and to reinforce that with witness testimony, there is also great value in reframing the opposing side's story by discussing their perspective. In the above example, the plaintiff would discuss what the company was thinking in their research and design phase, or the defense would discuss how this plaintiff had typically used the product in question.

Once you have determined the sequence of the story you want to tell, it is important to map out a trial presentation plan to make sure you are creating the desired impact on the jury. The table below is a tool that can be used to help organize and sequence your evidence in a case to achieve the intended effect on your jury panel.

For each segment of the trial, you can identify the three main issues or points that you want the jury to remember from the opening statement, witness testimony or closing argument, along with the key documents or exhibits that will help substantiate those points.

Trial Segment	3 Main Points	Key Docs Exhibits	Message/ Themes	Tone	Jury Reaction
Voir Dire	1. 2. 3.				
Opening Statement	1. 2. 3.				
P Witness #1	1. 2. 3.				
P Witness #2	1. 2. 3.				
P Witness #3	1. 2. 3.				
D Witness #1	1. 2. 3.				
D Witness #2	1. 2. 3.				
D Witness #3	1. 2. 3.				
Closing Argument	1. 2. 3.				

Jurors can only retain so much information, especially verbal testimony or documents. Identifying the key points will help them cognitively organize and prioritize the evidence. These main points will then help to clarify the essential message or theme you would like the jury to remember.

Trial attorneys live with cases for months, if not years. As a result, the strength of a case narrative can get lost in the maze of discovery, deposition and document details, making it harder to create a clearer path for a judge and jury.

Creating a map early in the case allows trial counsel to create a discovery plan to gather evidence to support the essential story that will lead the jury to the desired verdict.

In short, whether you are writing for an audience of true-crime fans or crafting your case narrative for a jury, the principles of good storytelling always apply.

Richard Gabriel is president at Decision Analysis Inc. He is the author of "Acquittal: An Insider Reveals Stories and Strategies Behind Today's Most Infamous Verdicts."

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[1] <https://today.yougov.com/topics/entertainment/articles-reports/2022/09/14/half-of-americans-enjoy-true-crime-yougov-poll>.

[2] Bennet, L. & Feldman, S. (1981) *Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture*. New Brunswick, NJ: Rutgers University Press.

[3] Pennington, N. & Hastie, R.A *Cognitive Theory of Juror Decision Making: The Story Model*, 13 *Cardozo Law Review*, 519-520 (1991).

[4] McKee, Robert. *Story: Style, Structure, Substance, and the Principles of Screenwriting*.