

**CRAFTING CAPTIVATING CASES:
TEACHING LAW STUDENTS TO USE EVIDENCE
NARRATIVELY**

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ABSTRACT

Lawyers are storytellers. At trial, lawyers do not merely recite facts or cite statutes. Instead, they craft narratives that persuade, humanize, and motivate jurors to act. Yet in most law schools, the Federal Rules of Evidence are taught as if the rules are sterile formulas, divorced from the drama and humanity of trial practice. This pedagogical disconnect has profound consequences. Students may graduate having memorized the rules but not knowing how to wield them. They may understand admissibility, but not persuasion. They may be technicians but not advocates.

This Article proposes a radical reimagining of how Evidence is taught, suggesting that Evidence is best taught through the lens of storytelling. It argues that each evidentiary rule is a narrative device. The rules are an opportunity to introduce character, build tension, and guide jurors through a case's emotional and factual narrative. Drawing

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on interdisciplinary scholarship from cognitive psychology, literary theory, and trial advocacy, the Article demonstrates that storytelling is not a flourish. Instead, it is an essential tool for any litigator. Storytelling is how lawyers connect with jurors, how students retain doctrine, and how justice is ultimately rendered at trial.

The Article proceeds in five parts. Part I explores the cognitive and cultural foundations of storytelling as a universal mode of human communication. Part II examines storytelling as a trial advocacy tool, analyzing how jurors construct narratives and how lawyers shape those narratives. Part III reinterprets selected Federal Rules of Evidence as storytelling devices, offering examples and analysis that reveal their narrative function. Part IV argues for teaching law school Evidence courses through a narrative lens, critiquing traditional pedagogy and proposing a more engaging and effective alternative. Part V offers practical strategies and exercises for integrating storytelling into the Evidence classroom, equipping professors to produce lawyers who not only cite the rules but also know how to use those rules to tell compelling stories.

INTRODUCTION

*“After nourishment, shelter and companionship, stories are the thing we need most in the world.”*¹

Acclaimed British novelist Philip Pullman has long been an outspoken advocate for the importance of stories.² Pullman, the author behind bestselling fantasy novels like the “His Dark Materials”

1. This quotation is regularly attributed to Pullman. Penguin Random House Children’s books, the publisher of many of his books, has posted this quotation on Pullman’s official social media accounts. *See, e.g.*, Image posted by Philip Pullman (@philippullmanofficial), INSTAGRAM, “*After nourishment, shelter and companionship, stories are the thing we need most in the world.*” // *Why not tag and share this quote with a friend or family member who loves reading today.* (Apr. 11, 2020), <https://www.instagram.com/p/B-1xKxOg3y5/> (on file with Syracuse Law Review). Although the origin of the quotation is unclear, it appears to have first been referenced in a more formal publication in a 2013 article by The Guardian. Ed Gillespie, *Sustainable Storytelling is a Powerful Tool That Communicates Vision*, GUARDIAN (Jan. 28, 2013, 10:28 ET), <https://www.theguardian.com/sustainable-business/blog/sustainable-stories-powerful-tool-communicates-vision> (on file with Syracuse Law Review).

2. *See* Pamela A. Wilkins, *The Soul of Storytelling*, 17 J. ALWD 195, 196 (2020) (reviewing PHILIP PULLMAN, *DAEMON VOICES: ON STORIES AND STORYTELLING* (2017)).

trilogy,³ emphasizes that stories are more than just the scaffolding of literature, they fulfill a fundamental human need.⁴ For Pullman, stories are not merely a form of entertainment; they sustain the imagination, help readers process complex emotions, and foster empathy between disparate people.⁵ In Pullman's view, the ability to process the world through storytelling is an essential part of what it means to be human.⁶

Pullman's view is supported by neuroscience.⁷ Indeed, human brains are wired for narrative.⁸ As human beings, we use stories to

3. The "His Dark Materials" trilogy is comprised of *The Subtle Knife*, published in 1997, *The Golden Compass*, published in 1995, and *The Amber Spyglass*, published in 2000.

4. Indeed, Pullman has authored an entire book on the craft of storytelling. See generally PULLMAN, *supra* note 2.

5. See Rowan Hooper, *Science, Daemons and Dust*, NEW SCIENTIST, May 16, 2020, at 27 ("I don't believe in a god. But the questions that religion poses and tries to answer are the important questions about human life. Where do we come from? Is there a purpose in our living? How can we be good? Do we have to be good? What happens if we're evil? Those are big, important questions. And the Christian religion did give answers, which worked for most of 2000 years and still do work for people. But then other religions have answers which aren't so different. All that demonstrates is that people need stories. A story will help us make sense of anything. But a story is a story. You don't have to believe everything in the story to find it satisfying.").

6. See *id.*

7. See Richard Bales, *Writing Effective Labor Arbitration Briefs*, 102 U. DET. MERCY L. REV. 445, 447 (2025); see also Jonathan H. Westover, *The Power of Storytelling: How Our Brains Are Wired for Narratives*, HUM. CAP. LEADERSHIP REV. (Jan. 11, 2024), <https://www.innovativehumancapital.com/article/the-power-of-storytelling-how-our-brains-are-wired-for-narratives> (on file with Syracuse Law Review).

8. See KENDALL HAVEN, STORY PROOF: THE SCIENCE BEHIND THE STARTLING POWER OF STORY 3–4 (2007) (asserting, based on anthropological and cognitive findings, that humans organized their experiences in story form from the outset of civilization); see also Jo A. Tyler & Faith Mullen, *Telling Tales in School: Storytelling for Self-reflection and Pedagogical Improvement in Clinical Legal Education*, 18 CLINICAL L. REV. 283, 283 (2011) ("Stories are a critical means by which people navigate the tangled web of human experience. The point is not just a superficial one. Stories are instinctual."); Marshall Grossman, *The Subject of Narrative and the Rhetoric of the Self*, 18 PAPERS ON LANGUAGE & LITERATURE 398, 398 (1982) ("The construction of narrative is an essential activity of the human mind.").

remember, to teach, to persuade, and to connect with each other.⁹ Stories are the basic way we organize information.¹⁰

Lawyers are well aware of the value of storytelling.¹¹ They tell stories in legal writing.¹² They tell stories when trying cases.¹³ In the

9. See generally Nick Brown, *Expert Storytelling & Storytelling Experts: Why You Should Use Scientific Stories in the Courtroom*, 5 HOU. L. REV. 157 (2015). See also Francisco Duarte, *Practice Points: Cross-Examination—It Is All About the Story!*, CHAMPION 49, 49–50 (2015); Karen J. Sneddon, *The Will as Personal Narrative*, 20 ELDER L.J. 355, 365 (2013); Scott DeVito, *The Power of Stories and Images in Law School Teaching*, 53 WASHBURN L.J. 51, 51–53 (2013); Lenora Ledwon, *Guilt, Greed, and Furniture: Using Mel Brooks's The Twelve Chairs to Teach Dying Declarations*, 3 CALIF. L. REV. CIRCUIT 72, 74 (2012); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 822–24 (1993).

10. See William D. Casebeer, *Identity, Culture and Stories: Empathy and the War on Terrorism*, 9 MINN. J.L. SCI. & TECH. 653, 657 (2008); Richard Delgado, *Shadowboxing: An Essay on Power*, 77 CORNELL L. REV. 813, 818 (1992); Steven L. Winter, *The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2228 (1989); see also JAMES BOYD WHITE, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW 169 (1985) (describing the story as the most basic way in which humans organize their experience).

11. See Paula Schaefer & Joy Radice, *Collaborating to Create a 1L Professional Identity Curriculum*, 20 U. ST. THOMAS L.J. 722, 735–37 (2024); Michael P. Maslanka, *The War Story as Essential Pedagogy: Construction, Telling, and Use*, 10 LINCOLN MEM'L U.L. REV. 1, 4–5 (2023); see also Jonathan K. Van Patten, *Storytelling for Lawyers*, 57 S.D. L. REV. 239, 239 (2012).

12. See Cathren Page, *Stranger than Fiction: How Lawyers Can Accurately and Realistically Tell a True Story by Using Fiction Writers' Techniques that Make Fiction Seem More Realistic than Reality*, 78 LA. L. REV. 907, 911–12 (2018); Candace Hays, *What's Your Story? Every Famous Mark Has One: Persuasion in Trademark Opposition Briefs*, 21 MARQ. INTELL. PROP. L. REV. 231, 231–32 (2017); Jeffrey D. Jackson, *For Effective Persuasion, Don't Neglect the Narrative*, 84 J. KAN. B. ASS'N 12, 12 (2015); STEVEN D. STARK, WRITING TO WIN: THE LEGAL WRITER 95–96 (2012); Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 J. LEGAL WRITING INST. 127, 130–32 (2008); J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 J. LEGAL WRITING INST. 53, 55 (2008); see generally Tami D. Cowden, *Telling the Client's Story: Using Fiction-Writing Techniques to Craft Persuasive Briefs*, NEV. LAW., Sep. 2006, at 32; see Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Fact Sections*, 32 RUTGERS L. J. 459, 462 (2001); Van Patten, *supra* note 11, at 239; see also ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 110–42 (2000).

13. See Christopher W. Arledge, *Effective Storytelling on Cross Examination*, 66 ORANGE CNTY. LAW. 41, 41 (2024); Brian Chen, *Prosecutorial Storytelling Through Intrinsic Evidence*, 2023 PEPP. L. REV. 115, 143 (2023); Anne E. Ralph, *The Story of a Class: Uses of Narrative in Public Interest Class Actions Before Certification*, 95 WASH. L. REV. 259, 259 (2020); Tracey McCants Lewis, *Legal Storytelling: The Murder of Voter ID*, 30 BYU J. PUB. L. 41, 71 (2015); James R. Olchowy, *Battling for the Judge's or Jury's Imagination: Evidence, Storytelling, and Effective Trial Advocacy*, 16 WINDSOR REV. LEGAL & SOC. ISSUES 1, 14 (2003).

courtroom, the power of a well-told story is readily apparent, and storytelling is recognized as a valuable tool.¹⁴

This is because, at their core, trials are storytelling forums.¹⁵ Indeed, trials are structured perfectly to use storytelling to convey information to the jury.¹⁶ Opening statements are an opportunity for each attorney to tease a narrative arc, inviting jurors into the plot.¹⁷ Direct and cross-examinations introduce characters, reveal conflict, and build tension.¹⁸ Exhibits set the scene.¹⁹ Impeachment delivers dramatic

14. See Zvi S. Rosen, *Who Framed Mickey Mouse?*, 73 U. KAN. L. REV. 41, 45 (2024) (“Storytelling is to the lawyer as surgical tools are to surgeons.”); Todd A. Berger, *A Trial Attorney’s Dilemma: How Storytelling as a Trial Strategy Can Impact a Criminal Defendant’s Successful Appellate Review*, 4 DREXEL L. REV. 297, 300 (2012) (“Storytelling is so widely accepted as part of the practice of law that it is the subject of entire law school courses.”); Tyrone C. Moncriffe, *Storytelling and the Art of Persuasion*, CHAMPION 26, 29 (2011) (“Storytelling is a critical tool for trial lawyers and it is the use of this tool that is essential.”).

15. See Paul Butler, *The Case for Trials: Considering the Intangibles*, 1 J. EMPIRICAL LEGAL STUD. 627, 634 (2004) (describing trials as “[o]ne of the few official forums for story telling.”); Phillip H. Miller, *Storytelling: A Technique for Juror Persuasion*, 26 AM. J. TRIAL ADVOC. 489, 489 (2003) (“A story is simply a tale with a beginning, a middle, and an end. Juror research indicates that the presentation of evidence in story form is more persuasive than merely reciting facts or than organizing a presentation by witness order.”); WEYMAN I. LUNDQUIST, THE ART OF SHAPING THE CASE 129 (1999) (“A trial needs a storyline.”); STEVEN LUBET, MODERN TRIAL ADVOCACY: ANALYSIS AND PRACTICE 1 (1993) (“Trials . . . are held in order to allow the parties to persuade the judge or jury by recounting their versions of the historical facts. Another name for this process is storytelling. Each party to a trial has the opportunity to tell a story . . .”); MICHAEL E. TIGAR, EXAMINING WITNESSES 5 (1993) (“A lawsuit is a contest between two different stories.”).

16. See Olchoway, *supra* note 13, at 14–15 (highlighting the importance of trial speeches in conveying the story at trial); JAMES W. JEANS, TRIAL ADVOCACY 202 (1975) (commenting that the opening statement is basically a story and therefore the techniques that should be used are those of the traditional story teller); THOMAS A. MAUET, TRIAL TECHNIQUES 43 (4th ed. 1996) (teaching that effective opening statements are usually based on good storytelling).

17. See Gerald Reading Powell, *Opening Statements: The Art of Storytelling*, 31 STETSON L. REV. 89, 90–99 (2001); Harry Mitchell Caldwell & Deanne S. Elliot, *Hit the Ground Running: The Complete Opening Statement Supported by Empirical Research and Illustrations*, 24 SUFFOLK J. TRIAL & APP. ADVOC. 171, 187–93 (2019); JIM M. PERDUE, WINNING WITH STORIES: USING THE NARRATIVE TO PERSUADE IN TRIALS, SPEECHES & LECTURES 26–28 (2006).

18. See Arledge, *supra* note 13, at 41; Keith Belzer, *Preparing Your Client for Direct Examination in Sexual Assault and Child Abuse Cases*, NAT’L ASS’N OF CRIM. DEF. LAW. (Apr. 17, 2019), <https://www.nacdl.org/Document/PreparingyourClientforDirectExaminationinSexualAss> (on file with Syracuse Law Review); Benjamin Reid, *The Trial Lawyer as Storyteller: Reviving an Ancient Art*, 24 LITIG. 8, 12–13 (1998).

19. See Elmira Yousufi, *How to Conduct a Trial Successfully*, 41 GPSOLO 51, 53 (2024); Donald Q. Cochran, *Malcolm Gladwell and the Art of Trial Advocacy: Getting the Jury to the Tipping Point*, 38 AM. J. TRIAL ADVOC. 335, 365–66 (2014);

reveals.²⁰ At the conclusion of trial, closing arguments weave the evidence into a satisfying resolution with a stirring call to action.²¹

The Federal Rules of Evidence support the use of storytelling as the means of conveying information at trial.²² The rules governing relevance, character evidence, impeachment, and demonstratives give lawyers tools to shape vivid, coherent stories.²³ Yet in law school classrooms, evidence rules are rarely taught in the context of storytelling.²⁴ Instead, they are presented as technical hurdles: doctrinal puzzles to be memorized and applied in isolation.²⁵

This Article contends that law professors should embrace storytelling as both a pedagogical method and a substantive focus in teaching Evidence. Students who understand the architecture of the rules and the art of narrative will retain doctrine more effectively and will enter practice with greater strategic sophistication. Once these students graduate, they will not only understand the evidence rules, but they will also know how to use them as part of an effective litigation strategy.

This Article is organized into five parts. Part I explores storytelling as a universal mode of human communication. Part II examines storytelling as a trial advocacy tool. Part III analyzes selected Federal

Mitchell J. Frank & Osvaldo F. Morera, *Trial Jurors and Variables Influencing Why They Return the Verdicts They Do—A Guide For Practicing and Future Trial Attorneys*, 65 BAYLOR L. REV. 74, 106–07 (2013).

20. See Ben Barnes, *The Trial Lawyer's Tension*, 51 LITIG. 34, 36 (2024); James Carey, *Charles Laughton, Marlene Dietrich and the Prior Inconsistent Statement*, 36 LOY. U. CHI. L.J. 433, 435–36 (2005); Paul W. Grimm, *Impeachment and Rehabilitation Under the Maryland Rules of Evidence: An Attorney's Guide*, 24 U. BALT. L. REV. 95, 138–40 (1994).

21. See Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury*, 37 N.Y.L. SCH. L. REV. 55, 110–17 (1992).

22. See Vallerie Propper, (In) *Decent Exposure? Law in Film, Media, and Literature*, 2 BERKELEY J. ENT. & SPORTS L. 230, 232 (2013); Peter Brooks, *The Law as Narrative and Rhetoric*, in *LAW'S STORIES* 19–20 (Peter Brooks & Paul Gewirtz eds., 1996); Paul Gewirtz, *Victims and Voyeurs at the Criminal Trial*, 90 NW. U.L. REV. 863, 863–64 (1996).

23. See Brooks, *supra* note 22 at 14–17.

24. See Beryl Blaustone, *Teaching Evidence: Storytelling in the Classroom*, 41 AM. U. L. REV. 453, 453–56 (1992) (explaining the multifaceted benefits of using storytelling to teach law students); see also Nancy B. Rapoport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?*, 1 J. ASS'N LEGAL WRITING DIRS. 91, 94–95 (2002) (observing the general underemphasis on teaching practical lawyering skills to law students).

25. See Paul Radvany, *Preparing Law Students to Become Litigators in the New Legal Landscape*, 33 REV. OF LITIG. 881, 891–99 (2014) (advocating for the use of clinical experiences as an opportunity for students to learn how to apply the evidence rules in practice).

Rules of Evidence as narrative devices. Part IV critiques traditional Evidence pedagogy and proposes a storytelling-centered alternative. Part V offers practical strategies for integrating storytelling into the Evidence classroom. This approach better equips the next generation of lawyers to bring to the courtroom what Pullman so ably brought to fiction: stories that illuminate, persuade, and endure.

I. STORYTELLING AS A UNIVERSAL AND POWERFUL FORM OF HUMAN COMMUNICATION

Storytelling is not simply a communication method.²⁶ To the contrary, storytelling has developed over the span of human development as an evolutionary necessity.²⁷ Scholars in cognitive science and anthropology have long argued that narrative emerged as a survival mechanism.²⁸

In the earliest human societies, storytelling was far more than a form of entertainment.²⁹ Storytelling was a vital mechanism for survival, social organization, and the transmission of cultural information.³⁰ It is a powerful tool.³¹ Before the advent of writing systems or formal institutions, oral narratives served as repositories of essential knowledge, encoding lessons about environmental dangers, strategies for cooperation, and evolving norms of morality.³² These stories often

26. See Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 262 (1994).

27. See Lance McMillian, *Story is Scholarship*, 18 CHARLESTON L. REV. 575, 601 (2024); James R. Elkins, *Story Basics*, 35 LEGAL STUD. F. 243, 266 (2011) (quoting AMSTERDAM & BRUNER, *supra* note 12, at 114–15).

28. See Michelle Scalise Sugiyama, *Reverse-Engineering Narrative: Evidence of Special Design*, in THE LITERARY ANIMAL: EVOLUTION AND THE NATURE OF NARRATIVE 177–78 (Jonathan Gottschall & David Sloan Wilson eds., 2005) (postulating the possibility that “[s]torytelling is a sufficiently ancient phenomenon to have evolved through the process of natural selection and that storytelling might serve an adaptive function . . .”); see also Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) are as Important as IRAC*, 25 THOMAS M. COOLEY L. REV. 267, 279 (2008).

29. See Laurie C. Kadoch, *So Help Me God: Reflections on Language, Thought, and the Rules of Evidence Remembered*, 9 RUTGERS J.L. & RELIGION 2, 16 (2007).

30. See Laurie C. Kadoch, *Seduced by Narrative: Persuasion in the Courtroom*, 49 DRAKE L. REV. 71, 79 (2000).

31. See Susan M. Chesler & Karen J. Sneddon, *The Power of a Good Story: How Narrative Techniques Can Make Transactional Documents More Persuasive*, 22 NEV. L.J. 649, 661–65 (2022).

32. See Caroline L. Osborne, *Freedom of Expression, Collection Management, and Ethical Decision-Making: Censorship of the Good, the Bad, the Ugly, and Our Obligations to Preserve a Culture’s Story*, 117 LAW LIBR. J. 191, 193–96 (2025); Steven G. Mehta, *War Stories, Fairytales, and Lawsuits: The Power of Storytelling*,

took the form of myths, parables, and cautionary tales, which were passed down through generations to help individuals navigate both the physical and social landscapes of their communities.³³ Through narrative, elders could warn of predators, teach the importance of sharing resources, and instill values such as loyalty, courage, and fairness.³⁴

Peter Gärdenfors, a cognitive scientist at Lund University, has argued that storytelling is not merely a tool for communication but a deeply adaptive feature of human cognition that emerged to address the complexities of group living.³⁵ In his interdisciplinary work on the evolution of human thought and social behavior, Gärdenfors emphasizes that narrative functions as a form of social glue which binds individuals together through shared understanding and emotional resonance.³⁶ He posits that storytelling evolved as a mechanism for conflict resolution and the maintenance of group harmony, particularly in situations where direct confrontation might threaten the stability of the community.³⁷

As Gärdenfors eloquently writes, “one of the principal forms of peacekeeping is the human gift for presenting, dramatizing, and explicating the mitigating circumstances surrounding conflict-threatening breaches in the ordinariness of life.”³⁸ In other words, when interpersonal tensions arise, whether due to perceived slights, violations of norms, or competing interests, storytelling allows individuals to reframe events, contextualize behavior, and appeal to empathy. By dramatizing the circumstances of a conflict, narrators can transform potentially divisive incidents into opportunities for understanding and reconciliation. This narrative reframing not only diffuses immediate tensions but also reinforces broader cultural norms about forgiveness, justice, and communal responsibility.

39 GPSOLO 50, 50 (2022); *see also* MARSH CASSADY, THE ART OF STORYTELLING 13 (Theodore O. Zapel ed., 1994) (“In all probability storytelling is nearly as old as spoken language. Most certainly it existed for years before the written language came into being, and it continued on up through the centuries when only a small percentage of the population knew how to read.”).

33. *See* Heather J.E. Simmons, *Practical Magic: How the Ancient Art of Storytelling Can Make Us Better Lawyers*, 94 MICH. B. J. 52, 52–53 (2015); J.M. Balkin & Sanford Levinson, *The Canons of Constitutional Law*, 111 HARV. L. REV. 963, 987 (1998).

34. *See* Kadoch, *supra* note 30, at 79.

35. *See generally* Peter Gärdenfors, *Why We Tell Stories*, PSYCH. TODAY (Nov. 17, 2024), <https://www.psychologytoday.com/us/blog/what-is-a-human/202411/why-we-tell-stories> (on file with Syracuse Law Review).

36. *See id.*

37. *See id.*

38. *Id.*

Thus, storytelling in early human communities was not a peripheral activity but a central institution.³⁹ Storytelling shaped collective memory, regulated behavior, and fostered the emotional intelligence necessary for complex social life.⁴⁰ Its enduring power lies in its ability to make sense of disruption, to humanize transgression, and to restore equilibrium through shared meaning.⁴¹ Humans have evolved into storytelling creatures.⁴²

Neuroscience offers compelling support for the idea that storytelling is a uniquely powerful mode of human communication, deeply embedded in our cognitive architecture.⁴³ When individuals engage with stories, whether through listening, reading, or watching, an

39. See Kadoch, *supra* note 29, at 16.

40. See JOHN WINSLADE & GERALD MONK, *NARRATIVE MEDIATION: A NEW APPROACH TO CONFLICT RESOLUTION* 3 (2000) (“[P]eople tend to organize their experiences in story form. . . . [W]e use stories to make sense of our lives and relationships.”); Delgado, *supra* note 10, at 818 (explaining that humans shape our social reality through the use of stories, symbols, and cultural narratives); Winter, *supra* note 10, at 2228 (noting that narrative enables humans to structure experience in ways that are culturally familiar and cognitively accessible); WHITE, *supra* note 10, at 169 (describing narrative as a fundamental human tool for organizing experience and assigning it significance).

41. See generally Jennifer Sheppard, *What if the Big Bad Wolf in All Those Fairy Tales Was Just Misunderstood?: Techniques for Maintaining Narrative Rationality While Altering Stock Stories That Are Harmful to Your Client’s Case*, 34 HASTINGS COMM’N. & ENT. L.J. 187, 188 (2012); Jennifer Sheppard, *Once Upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 WILLAMETTE L. REV. 255, 257 (2009); see generally Robert L. Palmer, *When Law Fails: Ethics, Commerce, and Tales of Value*, 2 S. CAL. INTERDISC. L.J. 245, 267–71 (1993) (discussing the social value of storytelling).

42. See Telia Mary U. Williams, *Sola Scriptura and the Magisterium: Reconciling Two Biblical Analogues of Constitutional Interpretation Through a Judicial Hermeneutic of Storytelling*, 17 U. ST. THOMAS J.L. & PUB. POL’Y 431, 508 (2023); Walter R. Fisher, *Narration as a Human Communication Paradigm: The Case of Public Moral Argument*, 51 COMM. MONOGRAPHS 1, 1–22 (2009); John H. Blum, Sheri L. Johnson, & Emily C. Paavola, *Every Juror Wants a Story: Narrative Relevance, Third Party Guilt and the Right to Present a Defense*, 44 AM. CRIM. L. REV. 1069, 1090–91 (2007); Steven Hartwell, *Classes and Collections: How Clinicians Feel Differently*, 9 CLINICAL L. REV. 463, 473 (2002); David Ray Papke & Kathleen H. McManus, *Narrative and the Appellate Opinion*, 23 LEGAL STUD. F. 449, 449–50 (1999).

43. See Davis G. Yee, *Teaching Written Advocacy in the Digital Age*, 11 STETSON J. ADVOC. & L. 1, 6 (2024); Michelle LeBaron & Maged Senbel, *Conflicts with Religious or Worldview Dimensions: Why they Matter and How to Engage Them*, 23 CARDOZO J. CONFLICT RESOL. 301, 313 (2022); Zachary D. Williams, *Race and the War on Drugs: It’s Story Time*, 7 L.J. SOC. JUST. 83, 96–98 (2017).

intricate network of brain regions activates in concert.⁴⁴ This includes the language centers such as Broca's and Wernicke's areas, which process syntax and semantics; the sensory cortices, which simulate the sights, sounds, and tactile experiences described in the narrative; and the limbic system, particularly the amygdala and hippocampus, which govern emotional responses and memory formation.⁴⁵ This simultaneous activation across diverse neural domains creates a rich, immersive experience that mirrors real-life perception and emotional engagement.⁴⁶

Unlike abstract or expository information, which tends to activate isolated cognitive pathways, narrative information stimulates the brain in a way that is both integrative and embodied.⁴⁷ For example, when a storyteller describes the scent of fresh pine or the warmth of sunlight, the corresponding sensory regions in the listener's brain light up as if they were actually experiencing those stimuli. This phenomenon, sometimes referred to as "neural coupling," allows the listener to mentally simulate the events of the story, fostering deeper comprehension and retention.⁴⁸ As a result, stories are not only more engaging but also more memorable than data presented in purely analytical formats.⁴⁹

Moreover, storytelling triggers neurochemical responses that reinforce its social and emotional impact.⁵⁰ One of the most significant is the release of oxytocin, a hormone associated with bonding,

44. See generally Kathleen Dillon Narko, *Everyone Has a Story: Using Storytelling to Engage Your Reader*, CBA RECORD 42, 42 (2025); LeBaron & Senbel, *supra* note 43, at 313.

45. See NLI STAFF, *The Neuroscience of Storytelling*, NEUROLEADERSHIP INST. (Sep. 30, 2021) <https://neuroleadership.com/your-brain-at-work/the-neuroscience-of-storytelling> (on file with Syracuse Law Review); Paul J. Zak, *Why your Brain Loves Good Storytelling*, HARV. BUS. REV. (Oct. 28, 2014) <https://hbr.org/2014/10/why-your-brain-loves-good-storytelling> (on file with Syracuse Law Review); Williams, *supra* note 42, at 99–101; Nancy Levit, *Reshaping The Narrative Debate*, 34 SEATTLE U. L. REV. 751, 759 (2011); Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ASS'N LEGAL WRITING DIRS. 63, 82 (2010); John Batt, *Law, Science, and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning*, 40 J. LEGAL EDUC. 19, 25 (1990).

46. See Zak, *supra* note 45.

47. See *id.*

48. See Jennie Bricker, *Northwest Nice?: Maintaining Civility in Our Modern World*, OR. STATE BAR BULL. 17, 20 (2018).

49. See Christos D. Strubakos, *Legal Persuasion: Insights from Cognitive Psychology and Neuroscience*, 102 U. DET. MERCY L. REV. 345, 353–55 (2025).

50. See *id.*; see also Samara D. Anderson, *The Wellbeing Benefits of Storytelling*, VT. BAR J. 18, 21 (2025); Jarome E. Gautreaux, *Persuasion Principles for Lawyers*, 74 MERCER L. REV. 599, 604–05 (2023).

empathy, and trust.⁵¹ Studies have shown that when individuals hear emotionally resonant stories, particularly those involving vulnerability, cooperation, or moral dilemmas, oxytocin levels increase, enhancing the listener's capacity to empathize with the characters and, by extension, with the storyteller or fellow audience members.⁵² This biochemical response strengthens interpersonal connections and promotes prosocial behavior, making storytelling a potent tool for cultivating group cohesion and mutual understanding.⁵³

In this way, neuroscience not only validates the cognitive richness of storytelling but also illuminates its evolutionary utility. By engaging multiple brain systems and fostering emotional resonance, stories become vehicles for transmitting values, resolving conflict, and reinforcing the social fabric. They do not merely inform; they transform, shaping how we think, feel, and relate to one another.

Jerome Bruner, a foundational figure in cognitive psychology, argued that narrative is one of the two primary modes of human thought, the other being paradigmatic or logical-scientific reasoning.⁵⁴ Although paradigmatic thought seeks to categorize and explain, narrative thought interprets and understands.⁵⁵ Stories allow individuals to make sense of their experiences by organizing events into coherent sequences with causality, intention, and resolution.⁵⁶

Bruner's theory of cognitive development posits that even young children can grasp complex ideas when presented in narrative form.⁵⁷ He emphasized that narrative thought is temporally and causally

51. See Zak, *supra* note 45.

52. See *id.*; see also Johansen, *supra* note 45, at 63–64 (“Literally hundreds of studies have found that stories are effective narrative tools. No study has found otherwise.”); Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ASS'N LEGAL WRITING DIRS. 1, 3–11 (2010) (describing one such study on the efficacy of storytelling in appellate brief writing).

53. See Zak, *supra* note 45.

54. See ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 30–31 (2000) (“So predisposed is the human mind to narrative that we even experience the events of everyday life in narrative form and assign them to categories derived from some particular kind of story.”); see also Papke & McManus, *supra* note 42, at 450; Graham B. Strong, *The Lawyer's Left Hand: Nonanalytical Thought in the Practice of Law*, 69 U. COLO. L. REV. 759, 782 (1998).

55. See Hugh M. Mundy, *A Story is the Truth Well Told: Integrating Narrative Thinking Skills Into the First-Year Curriculum Using Live Client Pro Bono Cases*, 17 SEATTLE J. SOC. JUST. 25, 25–26 (2019).

56. See Stefan H. Krieger & Jonathan D. Krieger, *Storytelling and Relevancy*, 99 OR. L. REV. 163, 182–85 (2020).

57. See Saul McLeod, *Jerome Bruner, Theory of Cognitive Development*, SIMPLY PSYCH. (Feb. 1, 2024) <https://www.simplypsychology.org/bruner.html> (on file with Syracuse Law Review).

sequential, focused on human action and intention.⁵⁸ This mode of thinking is not merely pedagogical—it is foundational to how humans construct reality.⁵⁹

One of the most profound functions of storytelling is its capacity to generate empathy.⁶⁰ When we hear a story, we momentarily inhabit another person’s perspective.⁶¹ This imaginative leap allows us to experience emotions, dilemmas, and triumphs that are not our own.⁶²

This empathetic function has real-world implications. In legal contexts, storytelling can humanize defendants, contextualize behavior, and challenge stereotypes.⁶³ In medicine, narrative competence helps doctors understand a patient’s lived experiences beyond clinical symptoms.⁶⁴ Stories have led to law reform, amplifying the voices of marginalized members of society and providing an opportunity to reframe narratives.⁶⁵

58. *See id.*

59. *See id.*

60. *See* Christopher M. Bellas, *Black and Blue: The Intractable Presence of Race in American Policing: Factors that Influence Jury Verdicts in Police Use of Force Cases*, 73 CASE W. RES. 895, 910–17 (2023); Binny Miller, *George Floyd and Empathy Stories*, 28 CLINICAL L. REV. 281, 282 (2021) (“While the idea of case theory as a story is no longer new, a renewed focus on empathy and proximity can more securely ground lawyers in the lived experience of their clients.”).

61. *See* Bellas, *supra* note 60 at 910; Williams *supra* note 42, at 509–10.

62. *See* Joshua Gowin, *Why Sharing Stories Brings People Together*, PSYCH. TODAY (June 6, 2011), <http://www.psychologytoday.com/blog/you-illuminated/201106/why-sharing-stories-brings-people-together> (<http://perma.cc/369E-C2SR>) (on file with Syracuse Law Review) (explaining how storytelling generates empathy in listeners).

63. *See* Amy Vorenberg, *The Moral of the Story—The Power of Narrative to Inspire and Sustain Scholarship*, 8 LEGAL COMM. & RHETORIC 257, 259 (2011) (discussing how the use of “case studies and the stories they provide adds value to scholarship”); Anne M. Coughlin, *Interrogation Stories*, 95 VA. L. REV. 1599, 1599–6000 (2009) (discussing the power of story in the context of criminal or deviant behavior); Nancy Levit & Allen Rostron, *Calling for Stories*, 75 UMKC L. REV. 1127, 1128 (2007) (noting “the extraordinary power of stories”); Binny Miller, *Telling Stories about Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 22 (2000) (comparing the power of contemporary legal writing including stories with those in which stories are absent).

64. *See* Rita Charon, *Narrative Medicine: A Model for Empathy, Reflection, Profession, and Trust*, 286 JAMA 1897, 1897 (Oct. 17, 2001).

65. *See* Melody Dickson, Comment, *Dismantling the Free Will Fairytale: The Importance of Demonstrating the Inability to Overcome in Death Penalty Narratives*, 77 UMKC L. REV. 1123, 1126–27 (2009); Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 81–82 (2008); Timothy V. Kaufman-Osborn, *Regulating Death: Capital Punishment and the Late Liberal State*, 111 YALE L.J. 681, 683–84 (2001) (reviewing AUSTIN SARAT, *WHEN THE STATE KILLS: CAPITAL PUNISHMENT AND THE AMERICAN CONDITION* (2001)); Paul Gewirtz, *Victims and Voyeurs: Two Narrative*

Stories do more than entertain—they bind communities together.⁶⁶ Myths, legends, and folktales serve as cultural carriers, transmitting shared values and collective memory.⁶⁷ Karen Blixen, the Danish author best known for *Out of Africa*, once wrote, “Stories have been told as long as language has existed, and without stories the human race would have perished, just as it would have perished without water.”⁶⁸

In modern contexts, this function persists. Not only do we tell and hear stories all day long, we even see them in our sleep.⁶⁹ Social media thrives on narrative; users share personal stories to connect, persuade, and mobilize.⁷⁰ Political campaigns craft compelling narratives to galvanize support.⁷¹ Even brands use storytelling to build loyalty and trust.⁷² In a world saturated with data, stories cut through the noise and leave a lasting impact.⁷³

Problems at the Criminal Trial, in LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW 136 (Peter Brooks & Paul Gewirtz eds., 1996); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 2–3 (1991).

66. See Scott Slovic, *Language Matters: Environmental Controversy and the Quest for Common Ground*, 39 PUB. LAND & RES. L. REV. 1, 13 (2018); Julie Stone Peters, “Literature,” the “Rights of Man,” and Narratives of Atrocity: Historical Backgrounds to the Culture of Testimony, 17 YALE J.L. & HUMANITIES 253, 254 (2005).

67. See Lois E. Horton, *Lifestyle Changes: Keys to Reducing Health Disparities Among People of Color: Article: Lessons From African American History*, 10 DEPAUL J. HEALTH CARE L. 89, 92 (2006); see generally Stephen Paskey, *The Law is Made of Stories: Erasing the False Dichotomy Between Stories and Legal Rules*, 11 J. ASS’N LEGAL WRITING DIRS. 51, 57 (2014); see also Steven H. Hobbs, *Ralph Ellison as Oral Storyteller Ralph Ellison and the Law: Invisible Man and other Ellison Texts*, 26 OKLA. CITY U.L. REV. 927, 934–36 (2001).

68. Gärdenfors, *supra* note 35. Karen Blixen is also known by her pen name Isak Dinesen.

69. See DAN P. MCADAMS, *THE STORIES WE LIVE BY: PERSONAL MYTHS AND THE MAKING OF THE SELF* 27 (1993); J. Hillis Miller, *Narrative*, in *CRITICAL TERMS FOR LITERARY STUDY* 70 (Frank Lentricchia & Thomas McLaughlin eds., 1990).

70. See JoAnne Sweeny, *#MeToo as Legal Storytelling*, 21 J. ASS’N LEGAL WRITING DIRS. 65, 65–67 (2024).

71. See George J. Annas, *(Re)criminalizing Abortion: Returning to the Political with Stories*, 51 J.L. MED. & ETHICS 480, 480–81 (2023).

72. See Anthony B. Ponikvar, *Ever-Blurred Lines: Why Native Advertising Should Not be Subject to Federal Regulation*, 93 N.C.L. REV. 1187, 1187–88 (2015).

73. See Jenny Coppola, *The Science Behind Storytelling: Why Narrative Cuts Through the Noise*, WISTIA (Sep. 14, 2020), <https://wistia.com/learn/marketing/the-science-behind-storytelling-why-narrative-cuts-through-the-noise> (on file with Syracuse Law Review).

Perhaps most importantly, stories help us make sense of chaos.⁷⁴ Life is unpredictable, fragmented, and often overwhelming.⁷⁵ Stories impose structure, namely a beginning, middle, and end, on our experiences.⁷⁶ They allow us to process grief, celebrate joy, and navigate uncertainty.⁷⁷ We find meaning from the stories we tell, hear, and read.⁷⁸

This meaning-making function is especially vital in times of crisis. During the COVID-19 pandemic, for example, people turned to stories.⁷⁹ They shared personal narratives, journalistic accounts, and fictional escapism.⁸⁰ These were methods of using storytelling to cope with isolation and fear.⁸¹ Stories became a lifeline, offering perspective, hope, and solidarity.⁸²

As Blixen observed, “every sorrow can be borne . . . if you put it into a story or tell a story about it.”⁸³ This insight captures the therapeutic power of narrative. Stories do not merely reflect reality—they can transform it.⁸⁴

74. See Olwyn Conway, *Are There Stories Prosecutors Shouldn't Tell?: The Duty to Avoid Racialized Trial Narratives*, 98 DENV. L. REV. 457, 469–70 (2021).

75. See John Borrows, *Making Meaning: Indigenous Legal Education and Student Action*, 67 MCGILL L.J. 493, 497 (2022).

76. See Michael P. Maslanka, *The War Story as Essential Pedagogy: Construction, Telling, and Use*, 10 LINCOLN MEM'L U.L. REV. 1, 4–5 (2023); DAVID CARR, TIME, NARRATIVE, AND HISTORY 62 (James M. Edie ed. 1986); DAVID TRACY, THE ANALOGICAL IMAGINATION: CHRISTIAN THEOLOGY AND THE CULTURE OF PLURALISM 275 (1981).

77. See Nicole Concordia, *Preserving Liberty in the American Justice System Through Circle Processes*, 5 U. ST. THOMAS J.L. & PUB. POL'Y 67, 81–82 (2011).

78. See JEROME BRUNER, ACTS OF MEANING 97 (1993); see also Louis J. Goldberg, *Expanding the Narrative: The Grand Compulsion of a Storytelling Species*, 6 J. CONTEMP. LEGAL ISSUES 281, 282 (1995).

79. See *One Year Into The COVID-19 Pandemic, Six Stories That Inspire Hope*, WORLD BANK GRP. (Mar. 10, 2021) <https://www.worldbank.org/en/news/feature/2021/03/10/one-year-into-the-covid-19-pandemic-six-stories-that-inspire-hope> (on file with Syracuse Law Review) [hereinafter *Six Stories*]; *Stories from the Global COVID-19 Pandemic*, STORYCENTER, <https://www.storycenter.org/covid-stories> (last visited Oct. 25, 2025) (on file with Syracuse Law Review) [hereinafter *Pandemic*].

80. See *Six Stories*, *supra* note 79; *Pandemic*, *supra* note 79.

81. See Daan Braveman, *A Cubist Vision of Legal Education*, 43 SYRACUSE L. REV. 997, 1024 (1992) (“Narrative is a way of organizing, coping with, even acting on the world.”).

82. See *Pandemic*, *supra* note 79.

83. Anthony T. Kronman, *What Grant Gilmore Taught*, 92 YALE L.J. 6, 7 (1982) (attributing the quotation to Isak Dinesen).

84. See Lisa J. Disch, *More Truth Than Fact: Storytelling as Critical Understanding in the Writings of Hannah Arendt*, 21 POL. THEORY 665, 665 (1993).

Given the dominance of storytelling as a means of communication generally, it should come as no surprise that storytelling also plays a key role in the law.⁸⁵ It is a primary method of communication at trial.⁸⁶ Indeed, most experienced litigators would agree that storytelling is a fundamental trial advocacy tool.⁸⁷

II. STORYTELLING AS A FUNDAMENTAL TRIAL ADVOCACY TOOL

Storytelling is a necessary tool for effective trial advocacy.⁸⁸ In many ways, lawyers are as much professional storytellers as novelists or screenwriters.⁸⁹ Lawyers present facts and evidence in a way that forms a compelling narrative, one that leads each juror toward the desired verdict.⁹⁰ Stories, in turn, impact jurors.⁹¹ Although most trial lawyers understand the value of storytelling at trial, many may be unaware of the psychology that explains why this method of communication is so effective.

The jury system is often heralded as a cornerstone of democratic justice,⁹² yet the cognitive processes underlying juror decision-making remain complex and contested.⁹³ This should come as no surprise. Understanding how jurors reach a verdict is inherently difficult because jury deliberations are designed to be confidential, unstructured, and

85. See Anne E. Ralph, *Narrative-Erasing Procedure*, 18 NEV. L.J. 573, 584 (2018); Andrew Benjamin Bricker, *Is Narrative Essential to the Law?: Precedent, Case Law and Judicial Emplotment*, 15 L., CULTURE & HUMAN. 319, 319, 327 (2019); M. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 5 (1983).

86. See Lisa Kern Griffin, *Narrative, Truth and Trial*, 101 GEO. L.J. 281, 285 (2013) (“As a matter of both cognitive psychology and advocacy within the adversarial system, stories are unavoidable.”).

87. See Kadoch, *supra* note 30, at 79.

88. See Annabelle Wilmott, *Protecting the Right to a Meaningful Defense: Criminal Trial Storytelling*, 111 CALIF. L. REV. 927, 929 (2023); Judith D. Moran, *Families, Law, and Literature: The Story of a Course on Storytelling*, 49 U.S.F.L. REV. 1, 2–4 (2015); see also *Old Chief v. United States*, 519 U.S. 172, 183 (1997) (reminding trial courts to apply the rules of evidence in a manner that did not wholly impede storytelling).

89. See Ty Alper et al., *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 CLINICAL L. REV. 1, 1–20 (2005).

90. See Wilmott, *supra* note 88 at 929.

91. See Antonia Stabile, *The Elasticity of DNA Evidence? When Prosecutorial Storytelling Goes Too Far*, 28 S. CAL. REV. L. & SOC. JUST. 137, 141–43 (2019); see also Shari Seidman Diamond, Beth Murphy & Mary R. Rose, *The “Kettleful of Law” in Real Jury Deliberations: Successes, Failures, and Next Steps*, 106 NW. U.L. REV. 1537, 1597 (2012) (studying jury deliberations).

92. See *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 210 (2017).

93. See Zahr K. Said, *Jury-Related Errors in Copyright*, 98 IND. L.J. 749, 810–11 (2023) (advocating for increased jury accountability).

insulated from external scrutiny.⁹⁴ Deliberations take place in private, with no judge, attorneys, or observers present.⁹⁵ Jurors are generally barred from discussing the case outside the jury room.⁹⁶ This secrecy protects the integrity of the process but also obscures the reasoning behind verdicts.⁹⁷ The result is limited transparency into the process.⁹⁸

Federal Rule of Evidence 606(b) creates a significant barrier to uncovering what transpired during jury deliberations.⁹⁹ It prohibits jurors from testifying about statements made, incidents that occurred, or mental processes involved in reaching a verdict.¹⁰⁰ This rule is designed to protect the sanctity and finality of jury decisions, shielding jurors from post-trial scrutiny and preserving the integrity of the deliberative process.¹⁰¹ Although there are narrow exceptions, such as for outside influence or clerical errors, the rule generally prevents courts from probing into that deliberative process.¹⁰²

That process remains largely inscrutable.¹⁰³ Jurors are given legal instructions but not a standardized method for evaluating evidence or conducting deliberations.¹⁰⁴ Each jury is free to deliberate in its own

94. See John Austin Morales, *Pena-Rodriguez v. Colorado: Carving Out a Racial-Bias Exception to the No-Impeachment Rule*, 50 ST. MARY'S L.J. 767, 786 (2019); Dan Simon, *A Third View of the Black Box: Cognitive Coherence in Legal Decision Making*, 71 U. CHI. L. REV. 511, 550–51 (2004); Nancy S. Marder, *Deliberations and Disclosures: A Study of Post-Verdict Interviews of Jurors*, 82 IOWA L. REV. 465, 527–37 (1997).

95. See Morales, *supra* note 94, at 783, 786.

96. See *id.*; Torrence Lewis, *Toward a Limited Right of Access to Jury Deliberations*, 58 FED. COMM'NS. L.J. 195, 203–07 (2006).

97. See Jonathan M. Golding et al., *Beyond the Stranger in the Woods: Investigating the Complexity of Adult Rape Cases in the Courtroom*, in ADVANCES PSYCH. & L. 1, 5–8 (Brian Bornstein, Monica K. Miller, & David DeMatteo eds., 2022) (noting that relatively few studies examine how jurors reach their decisions in sexual assault and rape cases); Avani Mehta Sood, *Attempted Justice: Misunderstanding and Bias in Psychological Constructions of Criminal Attempt*, 71 STAN. L. REV. 593, 605–06 (2019); Vicki L. Smith, *Prototypes in the Courtroom: Lay Representations of Legal Concepts*, 61 J. PERSONALITY & SOC. PSYCH. 857, 858 (1991).

98. Tomer Kenneth, *A Political Approach to Legal Evidence*, 35 YALE J.L. & HUMAN. 82, 120–22 (2023/2024); Note, *Public Disclosures of Jury Deliberations*, 96 HARV. L. REV. 886, 890–91 (1983).

99. See FED. R. EVID. 606(b).

100. See *id.*

101. See FED. R. EVID. 606 Notes of Committee on the Judiciary, Senate Report No. 93–1277

102. See FED. R. EVID. 606(b)(2).

103. See G. Alexander Nunn, *The Incoherence of Evidence Law*, 99 NOTRE DAME L. REV. 1255, 1274–1275 (2024).

104. See Jessica L. Parillo, *Breaking the Black Box: When Jury Experimentation Becomes Jury Misconduct*, 65 B.C.L. REV. 2863, 2878 (2024); Kevin M. Clermont, *A Theory of Factfinding: The Logic for Processing Evidence*, 104 MARQ. L.

way.¹⁰⁵ They receive no training in how to discuss evidence, vote, or reach unanimity.¹⁰⁶ Some jurors may follow the law adherently while others may disregard it entirely.¹⁰⁷

After the trial, insight into the deliberative process remains limited.¹⁰⁸ Jurors are not required to explain their decisions, and legal rules, including Federal Rule of Evidence 606(b) prohibit most inquiries into deliberations unless misconduct is alleged.¹⁰⁹ Jurors do not issue written opinions and they rarely speak publicly.¹¹⁰ Even when jurors choose to speak, their accounts are anecdotal and may not be representative.¹¹¹

Psychologists have long sought to understand how juries reach verdicts, recognizing that jury decision-making is a rich domain for

REV. 351, 355–56 (2020); Sarah Pennington, “Do You Think Sexual Assault and Harassment are a Big Problem in Society?”: How #MeToo May Impact Juror Decision-Making in Sexual Assault and Harassment Cases, 59 U. LOUISVILLE L. REV. 89, 101 (2020); Christopher N. May, “What Do We Do Now?”: Helping Juries Apply the Instructions, 28 LOY. L.A.L. REV. 869, 877–88 (1995); VALERIE P. HANS & NEIL VIDMAR, JUDGING THE JURY 102 (1986).

105. See Deanna Kuhn, Michael Weinstock & Robin Flaton, *How Well Do Jurors Reason?*, 5 PSYCH. SCI. 289, 293 (1994) (conducting studies on juror reasoning and finding that “[t]he present results are consistent with Pennington and Hastie’s (1993) claim that story construction is a central component of juror decision making. At the same time, the results indicate significant individual variation in the manner in which people approach the juror task . . . In addition, the variation has implications for task outcome.”).

106. See Scott E. Sundby, *War and Peace in the Jury Room: How Capital Juries Reach Unanimity*, 62 HASTINGS L.J. 103, 104–05 (2010).

107. See Jack H.L. Whiteley, *How Jurors’ Beliefs Count*, 90 MISS. L.J. 383, 415–16 (2021); Pennington, *supra* note 104, at 101; Lars Noah, *Civil Jury Nullification*, 86 IOWA L. REV. 1601, 1605 (2001); Joseph P. Liu, *Federal Jury Instructions and the Consequences of a Successful Insanity Defense*, 93 COLUM. L. REV. 1223, 1223 (1993).

108. See Morales, *supra* note 94, at 786; Lewis, *supra* note 96, at 203–05.

109. See Matthew Abbott, *Double Jeopardy And Hung Juries: No Manifest Necessity For Manifest Necessity*, 37 REGENT U.L. REV. 361, 379 (2025); Haley Loquercio, *How Free Is Free Speech: Media Bias, Pretrial Publicity, and Defendants’ Need for a Universal Appellate Rule to Combat Prejudiced Juries*, 126 PENN ST. L. REV. 875, 884–85 (2022).

110. See Michael A. Wolff, *Tinkering with the Machinery of Death—Mental Capacity, Ability, and Eligibility for the Death Penalty*, 25 ST. LOUIS U. PUB. L. REV. 279, 279 (2006).

111. See Daniel S. Harawa, *Sacrificing Secrecy*, 55 GA. L. REV. 593, 626–27 (2021) (noting that limited anecdotal data is available about the jury deliberation process); Taariq Lewis, *Peña-Rodriguez v. Colorado and the Racial Animus Exception to the No-Impeachment Rule: Extending an Exception to Suspect Classes that Experience Pervasive Bias in the Jury System*, 72 FLA. L. REV. 1353, 1376–77 (2020).

exploring cognitive, emotional, and social processes.¹¹² Because deliberations are private and verdicts often lack explicit reasoning, researchers have turned to experimental simulations, mock trials, and post-verdict interviews to uncover the psychological mechanisms at play.¹¹³ Using this information, psychologists have developed a variety of models to explain jury behavior.¹¹⁴

Among the most influential theories in legal psychology is the “story model,”¹¹⁵ popularized by Nancy Pennington and Reid Hastie.¹¹⁶ Pennington and Hastie are cognitive psychologists whose work

112. See, e.g., Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, 1 POL’Y. INSIGHTS FROM BEHAV. & BRAIN SCI. 112, 117 (2014) (summarizing existing studies addressing the way jurors evaluate confession evidence); Steven D. Penrod & Brian L. Cutler, *Eyewitness Expert Testimony and Jury Decisionmaking*, 52 L. AND CONTEMP. PROBS. 43, 43–45 (1989) (studying juror evaluation of eyewitness testimony); Elizabeth F. Loftus, *Reconstructing Memory: The Incredible Eyewitness*, 15 JURIMETRICS J. 188, 189–90 (1975).

113. See Shari Seidman Diamond & Neil Vidmar, *Jury Room Ruminations on Forbidden Topics*, 87 VA. L. REV. 1857, 1866–67 (2001); see, e.g., Marc W. Patry, *Attractive But Guilty: Deliberation and the Physical Attractiveness Bias*, 102 PSYCH. REPS. 727, 727–30 (2008) (using mock jurors to test the impact of the defendant’s attractiveness on jury verdicts); Dennis J. Devine et al., *Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups*, 7 PSYCH., PUB. POL’Y, & L. 622, 669 (2001) (examining eleven empirical studies of jury behavior); Sheri Seidman Diamond, *Illuminations and Shadows from Jury Simulations*, 21 L. & HUM. BEHAV. 561, 562 (1997) (discussing the use of mock jurors and trial simulations to evaluate juror behavior); Lawrence T. White, *Juror Decision Making in the Capital Penalty Trial*, 11 L. & HUM. BEHAV. 113, 116 (1987) (using mock jurors to test the impact of various factors the willingness of jurors to impose the death penalty).

114. See Jason M. Solomon, *Causing Constitutional Harm: How Tort Law Can Help Determine Harmless Error in Criminal Trials*, 99 NW. U.L. REV. 1053, 1087 (2005); Paula L. Hannaford et al., *The Timing of Opinion Formation by Jurors in Civil Cases: An Empirical Examination*, 67 TENN. L. REV. 627, 629–33 (2000) (discussing three predominant models of jury decision making).

115. The story model draws heavily from research on discourse comprehension, with the fundamental principle of the story model being that jurors are engaged in a constructive process in which incoming information is organized into mental representations. See, e.g., Tom Trabasso & Paul van den Broek, *Causal Thinking and the Representation of Narrative Events*, 24 J. MEMORY & LANGUAGE 612, 612 (1985). The discourse comprehension model was first proposed by W. Lance Bennett and Martha S. Feldman. See W. LANCE BENNETT & MARTHA S. FELDMAN, *RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE* 117 (1981) (pointing out that facts or evidence occupy an inherently ambiguous position in trials, and that “what makes a fact or piece of evidence meaningful in a particular case is its contextual role in the stories that make up the case”).

116. See Nancy Pennington & Reid Hastie, *The Story Model for Juror Decision Making*, in *INSIDE THE JUROR: THE PSYCHOLOGY OF JUROR DECISION MAKING* 192–96 (Reid Hastie ed., 1993) [hereinafter “The Story Model”]; Nancy Pennington & Reid Hastie, *Explaining the Evidence: Tests of the Story Model for Juror Decision*

sought to explain how individual jurors process trial information and arrive at verdicts.¹¹⁷ Rather than viewing jurors as passive recipients of evidence, Pennington and Hastie proposed that jurors actively construct coherent narratives to make sense of the facts presented during trial.¹¹⁸

Pennington and Hastie supported their theory with ten years of empirical research, including verbal protocol studies in which mock jurors were asked to think aloud while making decisions.¹¹⁹ These studies revealed that jurors often reasoned through trial evidence by constructing mental simulations of what they believed happened, rather than by weighing isolated facts or probabilities.¹²⁰ The story model has reshaped how scholars, trial consultants, and legal educators understand the psychology of persuasion in the courtroom.¹²¹

The story model emerged in response to limitations in earlier decision-making theories, such as the Bayesian Model, which assumed jurors update beliefs about guilt or innocence based on probabilistic reasoning.¹²² The Bayesian Model of juror decision-making is a mathematical and cognitive framework that applies principles of probability to explain how jurors might evaluate evidence.¹²³ Rooted in Bayes'

Making, 62 J. PERSONALITY & SOC. PSYCH. 189, 189–91 (1992) [hereinafter “Explaining the Evidence”]; Nancy Pennington & Reid Hastie, *A Cognitive Theory of Juror Decision Making: The Story Model*, 13 CARDOZO L. REV. 519, 520–28 (1991) [hereinafter “A Cognitive Theory”].

117. See Ryan J. Winter & Edith Greene, *Juror Decision-Making*, in HANDBOOK OF APPLIED COGNITION 742–43 (Francis T. Durso et al. eds., 2d ed. 2008); Solomon, *supra* note 114, at 1089.

118. See Kelly C. Burke, Jonathan M. Golding & Jeffrey S. Neuschatz, *Sexual Victimization and Legal-Decision Making*, 21 OHIO ST. J. CRIM. L. 41, 44 (2025); Strubakos, *supra* note 49, at 346–47.

119. See Michael S. Pardo, *Juridical Proof, Evidence, and Pragmatic Meaning: Toward Evidentiary Holism*, 95 NW. U.L. REV. 399, 402 n. 21 (2000); Reid Hastie, *The Role of “Stories” in Civil Jury Judgments*, 32 U. MICH. J.L. REFORM 227, 231–38 (1999).

120. See, e.g., W. LANCE BENNETT & MARTHA S. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE 117 (1981); The Story Model, *supra* note 116, at 193–94; Explaining the Evidence, *supra* note 116, at 190; A Cognitive Theory, *supra* note 116, at 520–21.

121. See DENNIS J. DEVINE, JURY DECISION MAKING: THE STATE OF THE SCIENCE 28–29 (Brian Bornstein & Monica Miller eds., 2012).

122. See generally Ronald J. Allen, *Factual Ambiguity and a Theory of Evidence*, 88 NW. U.L. REV. 604, 605–06 (1994); Stephen E. Fienberg & Mark J. Schervish, *Symposium: Probability and Inference in the Law of Evidence: II. Bayesian Theory and its Critics*, 66 B.U.L. REV. 771, 771–75 (1986).

123. See, e.g., Boaz Sangero & Mordechai Halpert, *Why a Conviction Should Not Be Based on a Single Piece of Evidence: A Proposal for Reform*, 48

Theorem, the model posits that jurors begin with a prior belief and then revise that belief empirically as new evidence is introduced during trial.¹²⁴

Pennington and Hastie argued that the Bayesian Model failed to account for the fundamentally narrative nature of human cognition.¹²⁵ Drawing on insights from cognitive psychology, they proposed that jurors do not engage in mathematical reasoning when evaluating trial evidence but instead rely on a three-stage psychological process.¹²⁶

First, jurors construct a story by organizing the evidence into a coherent narrative structure, integrating facts, testimony, and their own background knowledge to simulate what they believe actually happened.¹²⁷ Evidence that does not fit into this story may be deemphasized or ignored.¹²⁸ This stage results in a universe of facts that the jurors will use for subsequent stages of the process.¹²⁹

Second, jurors learn the legal definitions and elements of the possible verdict categories, typically through jury instructions provided by the judge.¹³⁰ This step involves understanding the criteria that must be met for a conviction or acquittal under the relevant law.¹³¹ This

JURIMETRICS J. 43, 44, 48–51 (2007) (drawing partially on Bayesian principles to inform decisions about whether forensic evidence should be admitted at trial).

124. See Ronald J. Allen & Michael S. Pardo, *Relative Plausibility and Its Critics*, 23 INT'L J. EVIDENCE & PROOF 5, 58 (2019) (criticizing probabilistic explanations for “fail[ing] to accommodate actual human cognitive practices” and failing “to explain numerous aspects of juridical proof”).

125. See *The Story Model*, *supra* note 116, at 196.

126. See *id.* at 195–96; see also Valerie P. Hans, *Juries Judging Science*, 26 COLUM. SCI. & TECH. L. REV. 156, 159 (2025) (describing how the story model aligns with cognitive science); Steven D. Jamar, *This Article Has no Footnotes: An Essay on RFRA and the Limits of Logic in the Law*, 27 STETSON L. REV. 559, 560 (1997) (suggesting that inductive and deductive reasoning cannot be used in law with “mathematical rigor”); JEFFREY T. FREDERICK, *THE PSYCHOLOGY OF THE AMERICAN JURY 295–99* (1987) (providing a brief overview of the story model of evidence processing).

127. See Hastie, *supra* note 119, at 231, 235; see also Erin L. Sheley, *Tort Answers to The Problem of Corporate Criminal Mens Rea*, 97 N.C.L. REV. 773, 793 (2019); Mary Nicol Bowman, *Mitigating Foul Blows*, 49 GA. L. REV. 309, 338–39 (2015).

128. See Christine L. Ruva & Anthony E. Coy, *Your Bias is Rubbing Off on Me: The Impact of Pretrial Publicity and Jury Type on Guilt Decisions, Trial Evidence Interpretation, and Impression Formation*, 26 PSYCH., PUB. POL., & L. 22, 23 (2020).

129. See *id.* at 23.

130. See *The Story Model*, *supra* note 116, at 199–200.

131. See *id.* at 200.

stage helps them understand what elements must be proven and sets the framework for evaluating which story best fits the law.¹³²

Finally, jurors classify their constructed story by matching it to the verdict category that best fits the narrative they have built.¹³³ After constructing a coherent story from the evidence and learning the possible verdict categories, jurors match their story to the verdict that best fits it.¹³⁴ This stage involves evaluating how well the narrative aligns with the legal definitions and requirements of each verdict option, ultimately guiding the juror's decision.¹³⁵

This process reflects a form of pattern recognition rather than probabilistic calculation, emphasizing coherence, completeness, and causal plausibility over statistical inference.¹³⁶ This three-stage process reflects the broader psychological insight that humans are “story-telling animals,” predisposed to interpret events through narrative logic rather than statistical analysis.¹³⁷

At the heart of the story model is the idea that jurors construct stories using both the evidence presented at trial and their own background knowledge.¹³⁸ This process involves selecting relevant facts, inferring causal relationships, and filling in gaps with plausible assumptions.¹³⁹ Jurors do not passively receive information; they

132. *See id.*

133. *See* A Cognitive Theory, *supra* note 116, at 530–33; *see also* Riquel Hafdahl, Charles P. Edwards & Monica K. Miller, *Social Cognitive Processes of Jurors*, 61 WASHBURN L.J. 305, 310 (2022).

134. *See* A Cognitive Theory, *supra* note 116, at 530.

135. *See id.*

136. *See* Susan N. Herman & Lawrence M. Solan, *The Jury in the Twenty-First Century: An Interdisciplinary Conference*, 66 BROOK. L. REV. 971, 975 (2001) (clarifying that jurors do not engage in a numerical assessment of evidence but instead interpret and apply legal principles to the cohesive storylines they construct).

137. *See* JONATHAN GOTTSCHALL, *THE STORYTELLING ANIMAL: HOW STORIES MAKE US HUMAN* 3–5 (2012); *see also* Linda L. Berger, *The Color-Blind Constitution: Choosing a Story to Live By*, 2015 MICH. ST. L. REV. 1397, 1404 (2015).

138. *See* The Story Model, *supra* note 116, at 198; *see also* Guy Alon, Azmi Haider & Hagit Hel-Or, *Judicial Errors: Fake Imaging And the Modern Law of Evidence*, 21 UIC REV. INTELL. PROP. L. 82, 102–05 (2022) (suggesting that judges use a similar model in deciding cases); Christoph Engel, *Preponderance of the Evidence versus Intime Conviction: A Behavioral Perspective on a Conflict between American and Continental European Law*, 33 VT. L. REV. 435, 452, 460–61 (2009) (noting that jurors apply “real world knowledge” as they evaluate the trial evidence).

139. *See* Heidi Liu, *From Information Restrictions to Employer Accountability: Reframing Employment Discrimination*, 57 U.C. DAVIS L. REV. 1797, 1819 (2024); Richard L. Jolly, Valerie P. Hans & Robert S. Peck, *Democratic Renewal and the Civil Jury*, 57 GA. L. REV. 79, 102 (2022).

actively interpret it, often influenced by schemas (mental frameworks shaped by prior experiences and cultural norms).¹⁴⁰

For example, in a criminal trial involving self-defense, jurors may draw on cultural narratives about heroism, aggression, or victimhood to interpret the defendant's actions.¹⁴¹ The resulting story is not a verbatim replay of the trial but a personalized, coherent account that "makes sense" to the juror.¹⁴² Because jurors utilize their own experiences and norms during this stage, conscious and unconscious biases can influence the development of the story.¹⁴³

Once jurors have constructed a story from the trial evidence, they evaluate its plausibility using two key criteria: coherence and coverage.¹⁴⁴ Coherence refers to the story's internal consistency, causal plausibility, and completeness.¹⁴⁵ A coherent narrative flows logically, accounts for motivations, and avoids contradictions or gaps.¹⁴⁶ Coverage, on the other hand, assesses how thoroughly the story explains the evidence presented at trial.¹⁴⁷ If a story overlooks significant facts or fails to account for critical events, jurors are less likely to accept it as

140. See Sara Hildebrand, *Racialized Implications of Officer Gang Expert Testimony*, 92 MISS. L.J. 155, 179–80 (2022); Christine L. Ruva, Stephanie E. Diaz Ortega & Kathleen A. O'Grady, *What Drives a Jury's Deliberation? The Influence of Pretrial Publicity and Jury Composition on Deliberation Slant and Content*, 28 PSYCH., PUB. POL., & L. 32, 33 (2022); Marina Garcia Marmolejo, *Jack of All Trades, Masters of None: Giving Jurors the Tools They Need to Reach the Right Verdict*, 28 GEO. MASON L. REV. 149, 166 (2020).

141. Cf. Simon, *supra* note 94, at 516–18.

142. See Wilmott, *supra* note 88, at 933–34; Jessica L. West, *Is Injustice Relevant? Narrative and Blameworthiness in Protester Trials*, 86 TEMP. L. REV. 107, 136 (2013).

143. See Justin D. Levinson, Robert J. Smith & Danielle M. Young, *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States*, 89 N.Y.U. L. REV. 513, 548–49 (2014); Justin D. Levinson & Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 W. VA. L. REV. 307, 340–45 (2010).

144. See The Story Model, *supra* note 116, at 200–01; see also West, *supra* note 142, at 136.

145. See Kara MacKillop & Neil Vidmar, *Decision-Making in the Dark: How Pre-Trial Errors Change the Narrative in Criminal Jury Trials*, 90 CHI.-KENT L. REV. 957, 961 (2015); John H. Blume, Sheri L. Johnson & Emily C. Paavola, *Every Juror Wants a Story: Narrative Relevance, Third Party Guilt and the Right to Present a Defense*, 44 AM. CRIM. L. REV. 1069, 1090 (2007); Pardo, *supra* note 119, at 404 n.33.

146. See JESSICA D. FINDLEY & BRUCE D. SALES, *THE SCIENCE OF ATTORNEY ADVOCACY: HOW COURTROOM BEHAVIOR AFFECTS JURY DECISION MAKING* 163–64 (2012).

147. See MacKillop & Vidmar, *supra* note 145, at 961; Blume, Johnson & Paavola, *supra* note 145, at 1090; Pardo, *supra* note 119, at 404 n. 33.

a valid representation of what occurred.¹⁴⁸ When presented with evidence at trial, jurors prefer stories that are both believable and comprehensive.¹⁴⁹ Importantly, jurors may reject a technically accurate story if it lacks emotional or causal coherence.¹⁵⁰

For instance, in a homicide case, jurors must decide whether the story they've constructed aligns with murder, manslaughter, or justifiable homicide.¹⁵¹ This step involves both legal reasoning and narrative judgment.¹⁵² If the story includes intent, premeditation, and malice, it may be classified as murder.¹⁵³ If it emphasizes provocation and emotional disturbance, it may fit manslaughter.¹⁵⁴

In a foundational series of experiments, Pennington and Hastie demonstrated that jurors who were encouraged to construct narrative accounts of trial evidence exhibited greater consistency in their verdicts and expressed higher levels of confidence in their decisions.¹⁵⁵ Their findings suggested that story construction serves as a cognitive framework, allowing jurors to integrate disparate pieces of evidence into a coherent whole.¹⁵⁶ A growing body of empirical research has validated the story model as a robust framework for understanding juror decision-making.¹⁵⁷

148. See Hafdahl, Edwards & Miller, *supra* note 133, at 310; Engel, *supra* note 138, at 448.

149. See Wilmott, *supra* note 88, at 933–34; Engel, *supra* note 138, at 448.

150. See FINDLEY & SALES, *supra* note 146; Engel, *supra* note 138, at 448.

151. See David Alan Sklansky, *Evidentiary Instructions and the Jury as Other*, 65 STAN. L. REV. 407, 420 (2013).

152. See *id.*

153. See *id.*

154. See *id.*

155. See *Explaining the Evidence*, *supra* note 116, at 189.

156. See *id.*

157. See generally Lee Curley, *What's the Story? An Exploration into the Decision-Making of Jurors*, PSYCH., (2024) (describing a study that utilized a courtroom reenactment to validate the story model); see Lora M. Levett & Dennis Devine, *Integrating Individual and Group Models of Juror Decision Making*, in THE PSYCHOLOGY OF JURIES 11, 13 (Margaret Bull Kovera ed., 2017) (“[T]he story model of juror decision making has been lauded as the most descriptively accurate way to explain how jurors make decisions”); NEIL VIDMAR & VALERIE P. HANS, AMERICAN JURIES: THE VERDICT 135 (2007) (“Many subsequent studies . . . have lent support to the basic assumptions of the story model”); Jill E. Huntley & Mark Costanzo, *Sexual Harassment Stories: Testing a Story-Mediated Model of Juror Decision-Making in Civil Litigation*, 27 L. & HUM. BEHAV. 29 (2003) (describing their study which extended the story model to a civil litigation context); Kurt A. Carlson & J. Edward Russo, *Biased Interpretation of Evidence by Mock Jurors*, 7 J. EXPERIMENTAL PSYCH. APPLIED 91 (2001) (describing two studies which validated the concept that jurors bring their prior beliefs to bear when constructing stories from trial evidence); Dan M. Kahan, *Lay Perceptions of Justice vs. Criminal Law*

Building on Pennington and Hastie's research, Dominic Willmott, Daniel Boduszek, Agata Debowska and Russell Woodfield developed and validated the Juror Decision Scale ("JDS"). The JDS is an instrument designed to measure individual juror reasoning in accordance with the story model.¹⁵⁸

As part of the validation process, Willmott and his team used the JDS on jurors deliberating in a mock rape trial.¹⁵⁹ Their study found that story-based reasoning predicted not only verdict confidence but also the believability assessments of both complainants and defendants.¹⁶⁰ The multidimensional structure of the JDS provided empirical support for the story model's core claim: that jurors rely on narrative coherence and causal plausibility rather than probabilistic calculations.¹⁶¹

Together, these and other studies¹⁶² underscore the explanatory power of the story model and its practical relevance to trial advocacy and legal pedagogy.¹⁶³ Rather than treating juror reasoning as a

Doctrine: A False Dichotomy?, 28 HOFSTRA L. REV. 793, 795 (2000) ("Experimental studies suggest that jurors identify crimes prototypically rather than algorithmically."); Smith, *supra* note 97, at 868 (finding that jurors form "naive concepts of crime categories" and that these "prototypes . . . play a role in decision making . . .").

158. See Dominic Willmott et al., *Introduction and Validation of the Juror Decision Scale (JDS): An Empirical Investigation of the Story Model*, 57 J. OF CRIM. JUST. 26, 27–28 (2018).

159. See *id.* at 28.

160. See *id.* at 31–33.

161. See *id.* at 33.

162. See *The Story Model*, *supra* note 116 (summarizing empirical studies testing the story model); see, e.g., Bianca Klettke, Arthur C. Graesser & Martine B. Powell, *Expert Testimony in Child Sexual Abuse Cases: The Effects of Evidence, Coherence and Credentials on Juror Decision Making*, 24 APPLIED COGNITIVE PSYCH. 481, 490 (2010) (validating the story model in juror evaluation of expert testimony); Huntley & Costanzo, *supra* note 157, at 29 (presenting research that "extends the story model to civil litigation and tests a story-mediated model against an unmediated model of jury decision-making"); James F. Voss, Jennifer Wiley & Rebecca Sandak, *On the Use of Narrative as Argument*, in NARRATIVE COMPREHENSION, CAUSALITY, AND COHERENCE 246 (Susan R. Goldman, Arthur C. Graesser, Paul van den Broek eds., 1999).

163. See Gary S. Gildin, *An Updated Practical Guide to Taking and Defending Depositions*, 129 DICK. L. REV. 1, 8–9 (2024) (noting the benefit of considering the story model as part of pretrial practice); Susan A. Bandes, *The Sense of an Ending*, 73 DEPAUL L. REV. 751, 761–62 (2024) (noting that the efficacy of the story model has become well accepted in the legal context); John Hamel & Brenda Russell, *Litigating Domestic Violence Cases: Accurate, Reliable Research Can Make a Difference*, 47 CHAMPION 52, 58–61 (2023) (citing the story model as the primary method by which juries make decisions); Edward K. Cheng, G. Alexander Nunn & Julia Simon-Kerr, *Bending the Rules of Evidence*, 118 NW. U.L. REV. 295, 306 (2023) ("Much of the modern evidence scholarship concludes that the proof process is a

statistical exercise, they affirm that narrative construction is central to how jurors interpret evidence, assess credibility, and reach verdicts.¹⁶⁴ Lawyers can use story to persuade.¹⁶⁵ But they must tell stories that ring true.¹⁶⁶

The story model has practical implications for trial strategy. Attorneys who present evidence in a narrative format, introducing characters, setting scenes, and building tension, are more likely to persuade jurors.¹⁶⁷ The story model has been meaningfully adopted by legal advocacy experts, including the National Institute for Trial Advocacy (“NITA”). NITA is a leading American not-for-profit organization dedicated to training lawyers in trial advocacy skills.¹⁶⁸ Founded in 1971 by a coalition of law professors and practitioners under the American Bar Association’s Committee on Advocacy, NITA was created to address a critical shortage of competent trial attorneys.¹⁶⁹

NITA offers a specialized program titled “Turning Facts into a Story,” which is explicitly designed to help litigators transform

comparative one between competing stories, explanations, or hypotheses”); Sklansky, *supra* note 151, at 413 (“The story model has become the orthodox understanding of jury decision making among psychologists and, increasingly, among legal academics”).

164. See Heidi H. Liu, *Provisional Assumptions*, 95 S. CAL. L. REV. 543, 558 (2022).

165. See Williams, *supra* note 42, at 508; J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 J. LEGAL WRITING INST. 53, 54 (2008).

166. See Berger, *supra* note 137, at 1404.

167. See STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION AND PERSUASIVE FACT ANALYSIS* 170–81 (5th ed. 2003) (advising lawyers to be mindful of storytelling “sequencing, perspective, and tone” and to consider “chronological approach,” “flashback approach,” or “episodic structure”); LUNDQUIST, *supra* note 15, at 129 (“A trial needs a storyline.”); RICHARD H. LUCAS & K. BYRON MCCOY, *THE WINNING EDGE: EFFECTIVE COMMUNICATION AND PERSUASION TECHNIQUES FOR LAWYERS* 118–22 (1993) (arguing that lawyers should examine the techniques used by master storytellers like the Brothers Grimm and Hans Christian Andersen).

168. See *About NITA*, NAT’L INST. FOR TRIAL ADVOC., <https://www.nita.org/s/category/about-nita/0ZGUm00000003U9OAI> (last visited Aug. 27, 2025) (on file with Syracuse Law Review).

169. See Will Rhee & L. Richard Walker, *The Trial Preparation Procedures—Civil*, 73 RUTGERS U.L. REV. 351, 359 n. 11 (2021); see also John Sonsteng, Samuel Heacox, Hannah Holloran & Cara Moulton, *Teaching the Art of Effective Advocacy in the 21st Century: A Paradigm Shift*, 44 MITCHELL HAMLINE L. REV. 163, 177–78 (2018); Terence F. MacCarthy, *The History of the Teaching of Trial Advocacy*, 38 STETSON L. REV. 115, 118–22 (2008); Clark D. Cunningham, *Legal Education After Law School: Lessons from Scotland and England*, 33 FORDHAM URB. L.J. 101, 101 (2005).

complex case facts into compelling narratives.¹⁷⁰ The course teaches attorneys how to clarify facts, simplify language, and build persuasive case themes through storytelling techniques—directly aligning with the principles of the story model.¹⁷¹ It emphasizes coherence, character-driven narratives, and rhetorical strategies to enhance juror comprehension and retention, and is led by David Mann, a specialist in persuasive presentation skills.¹⁷²

Despite its influence, the story model is not without critics.¹⁷³ Some scholars argue that it oversimplifies juror cognition and underestimates the role of group dynamics in deliberation.¹⁷⁴ Others caution that narrative reasoning can lead to bias, as jurors may favor stories that align with stereotypes or personal beliefs.¹⁷⁵ Moreover, the model assumes that jurors construct a single dominant story, whereas in reality, jurors may entertain multiple competing narratives.¹⁷⁶ Deliberation may involve reconciling or choosing among these stories, a process not fully captured by the original framework.¹⁷⁷ No model, including the story model, is without limitations. Nonetheless, the story model's cognitive realism, pedagogical utility, and empirical support make it an enduring and influential academic theory today.

170. See *Turning Facts into a Story*, NAT'L INST. FOR TRIAL ADVOC., <https://www.nita.org/s/product/turning-facts-into-a-story/01tUm00000CUWZpIAP> (last visited Aug. 27, 2025) (on file with Syracuse Law Review).

171. See *id.*

172. See *id.*

173. See Dan Simon, *Thin Empirics*, 23 INT'L J. EVID. & PROOF 82, 83–87 (2019); see also Nathan Ryan & Nina Westera, *The Effect of Expert Witness Testimony and Complainant Cognitive Statements on Mock Jurors' Perceptions of Rape Trial Testimony*, 25 PSYCHIATRY, PSYCH. & L. 693, 700–01 (2018) (finding data that both supported and undermined the story theory).

174. See Griffin, *supra* note 86, at 294 (noting that jurors import their own experiences, values, and expectations to the evidence at trial, suggesting a more complex analysis than the story model might initially suggest); see also Bowman, *supra* note 127 (noting that the story model initially lacked empirical research to connect the model with data about group dynamics).

175. See Griffin, *supra* note 86, at 335; Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 102 MICH. L. REV. 71, 76–78 (2003).

176. See Burke, Golding & Neuschatz, *supra* note 118, at 44; Cochran, *supra* note 19, at 348–49; Jessica L. Bregant, *Let's Give Them Something to Talk About: An Empirical Evaluation of Predeliberation Discussions*, 2009 U. ILL. L. REV. 1213, 1227–28.

177. See Reid Hastie, *What's the Story? Explanations and Narratives in Civil Jury Decisions*, in CIVIL JURIES AND CIVIL JUSTICE 23, 31–32 (Brian H. Bornstein, Richard L. Wiener, Robert F. Schopp & Steven L. Willborn eds., 2008) (expanding the story model to allow for a party's multiple alternative stories).

The story model of jury decision-making has not remained confined to academic theory.¹⁷⁸ The model has profoundly influenced the practice of trial advocacy.¹⁷⁹ Lawyers increasingly recognize that jurors are not passive recipients of evidence but active constructors of narrative. As a result, trial strategy has evolved to prioritize storytelling as a central mode of persuasion.¹⁸⁰ From opening statements to closing arguments, attorneys now craft case presentations that mirror the structure of compelling stories, engaging jurors emotionally and cognitively.

Historically, trial advocacy emphasized the logical presentation of facts and legal arguments.¹⁸¹ The prevailing assumption was that jurors would weigh evidence rationally, applying legal standards to reach a verdict.¹⁸² The story model disrupted this paradigm by demonstrating that jurors interpret evidence through narrative frameworks.¹⁸³

This shift has led lawyers to reconceptualize their role; not merely as legal technicians but as storytellers.¹⁸⁴ Trial preparation now involves constructing a coherent, emotionally resonant narrative that aligns with jurors' intuitive sense of justice.¹⁸⁵ As legendary trial lawyer Gerry Spence explained, the universal question in any trial is

178. See Louis J. Sirico, Jr., *Opening an Oral Argument before the Supreme Court: The Decline of Narrative's Role*, 36 REV. LITIG. 1, 15–16 (2016); Lea B. Vaughn, *Feeling at Home: Law, Cognitive Science, and Narrative*, 43 MCGEORGE L. REV. 999, 1003 (2012); Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237, 291 (2010).

179. See Blaustone, *supra* note 24, at 470–82 (exploring the use of storytelling techniques for witness examination).

180. See Stephen A. Hnat, *The Distinguishing Characteristics of Great Trial Lawyers*, 102 U. DET. MERCY L. REV. 429, 437–39 (2025); Megan E. Boyd, *A New Phenomenon in Legal Writing: Storytelling Complaint Introductions Part I*, 28 GA. BAR J. 48, 48 (2023); GERRY SPENCE, WIN YOUR CASE: HOW TO PRESENT, PERSUADE, AND PREVAIL EVERY PLACE, EVERY TIME 86 (2005).

181. See Krieger & Krieger, *supra* note 56, at 204–05; see also Gautreaux, *supra* note 50, at 600 (2023) (noting that law schools also tend to emphasize logic over persuasion).

182. See Krieger & Krieger, *supra* note 56, at 204–05.

183. See The Story Model, *supra* note 116, at 192–221; see also Elizabeth Thornburg, *(Un)Conscious Judging*, 76 WASH. & LEE L. REV. 1567, 1573–74 (2019).

184. See THOMAS A. MAUET, TRIAL TECHNIQUES AND TRIALS (10th ed. 2017) (“If lawyers do not organize the evidence into a clear, simple story, jurors will do so on their own.”); Rideout, *supra* note 165, at 54 n.10; see also BENNETT & FELDMAN, *supra* note 115, at 3–5.

185. See Charles I. Joseph, Gillian Drake & Kailey Silverstein, *The Testament of My Wanderings in the Weary Land: A Trial Attorney and the Search for a Story*, 51 UNIV. BALT. L.F. 19, 20–21 (2020).

“What’s the story?”¹⁸⁶ The best and most successful lawyers learn to tell that story in all their cases.¹⁸⁷

Narrative techniques have found their way into virtually every aspect of trial practice. This includes opening statements, the examination of witnesses, the introduction of exhibits, and closing arguments.¹⁸⁸ Lawyers are encouraged to develop a “theme” and “theory” for trial and to weave that story throughout the presentation of evidence.¹⁸⁹

Opening statements are no longer dry previews of evidence. Today, good opening statements are narrative overtures. Attorneys use this moment to introduce characters (the parties and expected trial witnesses), establish setting (describing the context and stakes of the parties’ dispute), and foreshadow conflict. The goal is to invite jurors into a story they will want to see resolved.

Direct examination offers an opportunity to develop the story’s protagonists. Rather than eliciting rote testimony, skilled advocates guide witnesses to share experiences in a way that reveals motivation, vulnerability, and credibility. This humanizes the client and builds empathy. Cross-examination serves as the story’s turning point, where tension escalates and contradictions emerge. Effective cross-examiners use narrative disruption to challenge the opposing side’s story. They expose inconsistencies, highlight omissions, and reframe testimony to support their own narrative. This technique requires strategic preparation. Lawyers must anticipate the opposing story and craft questions that subtly redirect jurors’ interpretations. Visual aids are increasingly used to reinforce narrative structure. Timelines, diagrams, and animations help jurors visualize events and relationships. These tools enhance memory and comprehension, especially in complex cases.

186. See SPENCE, *supra* note 180, at 86.

187. See Joseph, Drake & Silverstein, *supra* note 185, at 20.

188. See Chesler & Sneddon, *supra* note 31, at 668–69; Michael N. Burt, *The Importance of Storytelling at All Stages of a Capital Case*, 77 UMKC L. REV. 877, 877–80 (2009); Philip N. Meyer, *Making the Narrative Move: Observations Based Upon Reading Gerry Spence’s Closing Argument in The Estate of Karen Silkwood v. Kerr-McGee, Inc.*, 9 CLINICAL L. REV. 229, 237–46 (2002); Philip N. Meyer, “Desperate for Love III”: *Rethinking Closing Arguments as Stories*, 50 S.C.L. REV. 715, 716–17 (1999); Alper et al., *supra* note 89, at 9–20; Amsterdam & Hertz, *supra* note 21, at 58.

189. See JoAnne Sweeny & Dan Canon, *The Language of Love v. Beshear: Telling a Client’s Story While Creating a Civil Rights Case Narrative*, 17 LEGAL COMM’N & RHETORIC 129, 131 (2020).

Closing arguments are the story's climax and denouement. Lawyers synthesize evidence, resolve narrative tension, and issue a moral appeal. The goal is to leave jurors with a clear, emotionally satisfying rationale for the desired verdict.

Trial attorneys have noted benefits from using these storytelling techniques.¹⁹⁰ Stories captivate attention.¹⁹¹ Jurors are more likely to remain focused and retain information when it is embedded in narrative.¹⁹² This is especially critical in long trials, where cognitive fatigue can undermine comprehension.¹⁹³

Narrative structure aids memory.¹⁹⁴ Jurors can more easily recall events, testimony, and exhibits when they are part of a coherent story.¹⁹⁵ This improves deliberation quality and reduces reliance on notes or fragmented impressions.¹⁹⁶

Stories evoke emotion, which influences judgment.¹⁹⁷ Jurors who empathize with a party are more likely to interpret ambiguous evidence favorably.¹⁹⁸ Emotional engagement also increases motivation to reach a verdict that feels morally justified.¹⁹⁹

190. For this reason, many trial manuals and textbooks emphasize the use of storytelling. *See, e.g.*, THOMAS A. MAUET, TRIAL TECHNIQUES AND TRIALS (10th ed., 2017); STEVEN LUBET & J.C. LORE, MODERN TRIAL ADVOCACY: ANALYSIS AND PRACTICE (2020); Sunwolf, *Talking Story in Trial: The Power of Narrative Persuasion*, THE CHAMPION 26, 26–31 (2000); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 487–90 (1994).

191. *See* Mark Lanier & Rachel Lanier, *Trial Technology and Story Telling*, 99 THE ADVOC. 1, 2 (2022); Bennet & Feldman, *supra* note 115, at 5.

192. *See* Tad Thomas, *The Power of Storytelling in Trial: Showing vs. Telling*, LAW. MINDS (Sept. 8, 2020), <https://www.lawyer minds.com/the-power-of-storytelling-in-trial-showing-vs-telling/> (on file with Syracuse Law Review); Daniel J. T. Sciano, *Effective Trial Advocacy: Opening Statements and Closing Arguments*, 90 THE ADVOC. 50, 51–52 (2020); Ronald D. Richards Jr., *An Attorney Serving as a Juror: 10 Lessons From Jury Duty*, 89 MICH. BAR J. 24, 26 (2010).

193. *See* Philip N. Meyer, “Desperate for Love”: *Cinematic Influences Upon a Defendant’s Closing Argument to a Jury*, 18 VT. L. REV. 721, 722 (1994) (explaining that attorneys can use storytelling elements to recapture the jury’s attention after long periods of tedious testimony).

194. *See* Chris Patton & John Adams, *Give the Jury What It Wants: Decision-Making in Trial Practice*, 47 LITIG. 41, 45–46 (2021).

195. *See id.*

196. *See id.*

197. *See* Sciano, *supra* note 192, at 51–52.

198. *See* Andrea McArdle, *Using a Narrative Lens to Understand Empathy and How it Matters in Judging*, 9 LEGAL COMM’N. & RHETORIC 173, 175–76 (2012); Ian Gallacher, *Thinking Like Non-Lawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 LEGAL COMM’N & RHETORIC 1, 15–17 (2011).

199. *See* Gallacher, *supra* note 198, at 15–17.

Complex legal concepts can be abstract and intimidating.²⁰⁰ Storytelling translates doctrine into relatable human experiences.²⁰¹ For example, negligence becomes a story of carelessness and harm; breach of contract becomes a story of broken promises.²⁰²

Trial is not the only aspect of legal practice that has been influenced by the story model.²⁰³ The story model's influence has given rise to "Applied Legal Storytelling," an interdisciplinary field that integrates narrative theory into legal practice and education.²⁰⁴ Scholars like Ken Chestek, Brian J. Foley, and Ruth Anne Robbins advocate for teaching law students to craft persuasive stories grounded in fact and law.²⁰⁵

The Applied Legal Storytelling movement formally emerged in 2007 with the inaugural Applied Legal Storytelling Conference held at City Law School in London.²⁰⁶ The conference marked a turning

200. See Lanier & Lanier, *supra* note 191, at 160.

201. See *id.*

202. See Brandy Renee Manning, *Storytelling for Advocates and Judges*, AM. BAR ASS'N (Feb. 4, 2022), <https://www.americanbar.org/groups/judicial/resources/appellate-issues/archive/storytelling-advocates-judges/> (on file with Syracuse Law Review).

203. See, e.g., Sneddon, *supra* note 9, at 368–409 (describing ways to use storytelling in drafting wills); Chestek, *supra* note 52, at 10–26 (describing a study testing the efficacy of storytelling in appellate briefs); Elizabeth Fajans & Mary R. Falk, *Untold Stories: Restoring Narrative to Pleading Practice*, 15 J. LEGAL WRITING INST. 3, 15–23 (2009) (describing ways to use storytelling in drafting pleadings); STEFAN H. KRIEGER & RICHARD K. NEUMANN, *ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS* 151 (5th ed., 2015) (presenting the story model as a useful method for organizing facts).

204. See Derek H. Kiernan-Johnson, *A Shift to Narrativity*, 9 LEGAL COMM'C'N & RHETORIC 81, 81–82 (2012); Ruth Anne Robbins, *An Introduction to Applied Legal Storytelling*, 14 J. LEGAL WRITING INST. 1, 3 (2008); Brian J. Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 J. LEGAL WRITING INST. 17, 17 (2008).

205. See Ruth Anne Robbins, *Fiction 102: Create a Portal for Story Immersion*, 18 LEGAL COMM'C'N & RHETORIC 27, 27 (2021); Genevieve B. Tung & Ruth Anne Robbins, *Beyond #TheNew10—The Case for a Citizens Currency Advisory Committee*, 69 RUTGERS L. REV. 195, 198 (2016); Ruth Anne Robbins, *Three 3Ls, Kairos, and the Civil Right to Counsel in Domestic Violence Cases*, 2015 MICH. ST. L. REV. 1359, 1374 (2015); Kenneth D. Chestek, *Competing Stories: A Case Study of the Role of Narrative Reasoning in Judicial Decisions*, 9 LEGAL COMM. & RHETORIC 99 (2012); Chestek, *supra* note 52; Foley, *supra* note 204, at 17–20; Robbins, *supra* note 204, at 3; Chestek, *supra* note 12, at 130–32; Ruth Anne Robbins, *Harry Potter, Ruby Slippers, and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 SEATTLE U. L. REV. 767, 768–71 (2006); Foley & Robbins, *supra* note 12, at 462.

206. See J. Christopher Rideout, *Applied Legal Storytelling: An Updated Bibliography*, 18 LEGAL COMM'C'N & RHETORIC 221, 221 (2021).

point in recognizing storytelling as a legitimate and essential component of legal pedagogy.²⁰⁷ The movement traces its intellectual roots to earlier intersections of law and literature.²⁰⁸ However, Applied Legal Storytelling distinguishes itself by focusing on the practical application of narrative in lawyering rather than purely theoretical critique.²⁰⁹

The law school curriculum has evolved in recent decades.²¹⁰ Once almost exclusively limited to the study of doctrinal theory and case law analysis, legal education now embraces a wider pedagogical scope.²¹¹ Skills-based training, once marginalized, has become a central component of the law school curriculum.²¹² Applied Legal Storytelling has played a role in how law schools teach advocacy and writing.²¹³ Legal writing courses increasingly incorporate narrative

207. See Robbins, *supra* note 204, at 2–3.

208. See *id.* at 3.

209. See Foley, *supra* note 204, at 26, 45.

210. See Leslie Bender, *Hidden Messages in the Required First-Year Law School Curriculum*, 40 CLEV. ST. L. REV. 387, 387 (1992).

211. See Sandra L. Simpson, *Law Students Left Behind: Law Schools' Role in Remediating the Devastating Effects of Federal Education Policy*, 107 MINN. L. REV. 2561, 2567 (2023) (discussing the incorporation of skills-based training into the law school curriculum); Klint W. Alexander, *The Changing Nature of Legal Education*, 41 WYO. L. 48, 48 (2018); Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 DICK. L. REV. 245, 249–50 (1996).

212. See Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the "Practice-Ready" Law School Curriculum*, 65 MERCER L. REV. 467, 498–99 (2014) (discussing the incorporation of legal writing training in the law school curriculum); Catherine Greene Burnett & Eden Harrington, *Law Schools Working Together to Increase Access to Justice*, 51 S. TEX. L. REV. 689, 695 n. 20 (2010) (discussing the history of clinical training in the law school curriculum); Christine Pedigo Bartholomew & Johanna Oreskovic, *Normalizing Trepidation and Anxiety*, 48 DUQ. L. REV. 349, 358 (2010) (discussing the introduction of practical, skills-based courses in the law school curriculum); Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 660 (2009) (discussing the incorporation of lawyering skills in the law school curriculum); Patricia Grande Montana, *Lessons From the Carnegie and Best Practices Reports: A Look at St. John's University School of Law's Street Law Program as a Model for Teaching Professional Skills*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 97, 97 (2009) ("Many law schools are experimenting with teaching methods other than the traditional case style of teaching.").

213. See Stefan H. Krieger & Serge A. Martinez, *A Tale of Election Day 2008: Teaching Storytelling Through Repeated Experiences*, 16 J. LEGAL WRITING INST. 117, 117 (2010); see generally Nancy Levit, *Legal Storytelling: The Theory and the Practice—Reflective Writing Across the Curriculum*, 15 J. LEGAL WRITING INST. 259, 260–61 (2009) (advocating more teaching of storytelling across the law school curriculum); Robert McPeake, *Fitting Stories into Professional Legal Education—The Missing Ingredient*, 41 LAW TCHR. 303 (2010).

techniques, encouraging students to frame legal issues within compelling factual contexts.²¹⁴ Trial advocacy programs now emphasize the “theory of the case” as a narrative arc, teaching students to craft stories that resonate with jurors and judges.²¹⁵

At Rutgers Camden, for example, Robbins has developed courses such as “Advanced Legal Writing: Constructing Narratives” and “Persuasion in Legal Writing,” which explicitly teach storytelling as a lawyering skill.²¹⁶ The University of Houston Law Center offers a course

214. See Michael Blissenden, *Using Storytelling as a Teaching Model in a Law School: The Experience in an Australian Context*, 41 LAW TCHR. 260, 260 (2007). Many legal writing textbooks address the need for storytelling. See, e.g., MARY BETH BEAZLEY, A PRACTICAL GUIDE TO APPELLATE ADVOCACY 20–20 (2022) (discussing narrative theory in connection with drafting the statement of the case); RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, YOUR CLIENT’S STORY: PERSUASIVE LEGAL WRITING 37–44 (2d ed., 2013); ELIZABETH FAJANS, MARY R. FALK & HELENE S. SHAPO, WRITING FOR LAW PRACTICE 199–205 (2d ed., 2010) (discussing narrative as a tool for writing facts persuasively); RICHARD K. NEUMANN JR., LEGAL REASONING AND LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE 251–63 (3d ed., 2008) (discussing stories in the context of developing a persuasive theory); MICHAEL R. SMITH, ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING 32–34 (2008) (advocating that legal writers should combine “illustrative narratives” with rules when explaining rule-based analysis).

215. See Edward D. Ohlbaum, *Basic Instinct: Case Theory and Courtroom Performance*, 66 TEMP. L. REV. 1, 6–7, 23 (1993) (“The advocate must recognize and respect the law of professional responsibility, ethical considerations, and rules of professional conduct in the development and presentation of the case theory. It is often appropriately said, good ethics are good tactics.”). The literature on storytelling in the context of trial practice is more extensive than the other storytelling movements. For a few of the many examples, see generally Berger, *supra* note 14; Van Patten, *supra* note 11; Burt, *supra* note 188; Christine Alice Corcos, *Legal Fictions: Irony, Storytelling, Truth, and Justice in the Modern Courtroom Drama*, 25 U. ARK. LITTLE ROCK L. REV. 503 (2003); Dana K. Cole, *Psychodrama and the Training of Trial Lawyers: Finding the Story*, 21 N. ILL. U.L. REV. 1 (2001); John B. Mitchell, *Narrative and Client-Centered Representation: What Is a True Believer To Do When His Two Favorite Theories Collide?*, 6 CLINICAL L. REV. 85 (1999); DAVID BALL, THEATER TIPS AND STRATEGIES FOR JURY TRIALS (1997); Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994); Amsterdam & Hertz, *supra* note 21; James W. McElhaney, *The Story Method*, 18 LITIG. 49 (1991); Laura Gardner Webster, *Telling Stories: The Spoken Narrative Tradition in Criminal Defense Discourse*, 42 MERCER L. REV. 553 (1991); Steven Lubet, *The Trial as a Persuasive Story*, 14 AM. J. TRIAL ADVOC. 77 (1990).

216. See *Legal Storytelling is an Innovative Approach to Law Education at Rutgers-Camden*, RUTGERS (Aug. 18, 2011) <https://www.rutgers.edu/news/legal-storytelling-innovative-approach-law-education-rutgers-camden> (on file with Syracuse Law Review).

called “Storytelling” within its Blakely Advocacy Institute.²¹⁷ Similarly, the University of Virginia School of Law offers a “Legal Storytelling” course that brings in novelists, journalists, and screenwriters to teach students how to craft compelling narratives in briefs and motions.²¹⁸ These courses are designed to help students understand the fundamental benefits and skills necessary to tell a client’s story.

If storytelling is embraced anywhere in the law school curriculum outside of Legal Writing courses, it is in trial advocacy courses.²¹⁹ Trial Advocacy courses are ubiquitous at American law schools.²²⁰ Most of these courses follow NITA’s “learning by doing” model and include robust instruction on storytelling techniques.²²¹

The Applied Legal Storytelling movement has also influenced clinical education, where client-centered storytelling is essential.²²² Clinics often require students to present their clients’ stories in ways that humanize legal issues and foster empathy.²²³ Storytelling allows

217. See *Blakely Advocacy Institute*, UNIV. OF HOUS. L. CTR., (2018) <https://www.law.uh.edu/blakely/2018%20Blakely%20Advocacy%20Institute%20Brochure.pdf> (on file with Syracuse Law Review).

218. See *Legal Storytelling*, UNIV. OF VA. SCH. OF L., <https://www.law.virginia.edu/courses/legal-storytelling-124220186> (on file with Syracuse Law Review) (last visited Dec. 23, 2025).

219. See Peter Toll Hoffman, *Law Schools and the Changing Face of Practice*, 56 N.Y.L. SCH. L. REV. 203, 210–11 (2012) (tracing NITA’s influence on the law school curriculum); Malachy E. Mannion, *Objections Overruled: The Trial Advocacy Course Should Be Mandatory*, 30 PACE L. REV. 1195, 1195–97 (2010); Terence F. MacCarthy, *The History of Teaching Trial Advocacy*, 38 STETSON L. REV. 115, 118–22 (2008).

220. See Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 32 (2013) (describing the content of trial advocacy courses); C.J. Williams, *Advocating Altering Advocacy Academics: A Proposal to Change the Pedagogical Approach to Legal Advocacy*, 25 J. TRIAL & APP. ADVOC. 203, 233 (2020); Scott E. Thompson, *Developing a Comprehensive Approach to Teaching Lawyering Skills: A Response to the MacCrate Report, Fifteen Years Later*, 3 LIBERTY U.L. REV. 47, 64–65 (2009); see also Ohlbaum, *supra* note 215, at 6–23 (tracing the historical move towards teaching trial advocacy as a law school course).

221. See Sonsteng, Heacox, Holloran & Moulton, *supra* note 169, at 179–80 (discussing the content of trial advocacy courses); Mannion, *supra* note 219 at 1206; Miguel A. Méndez, *Teaching Evidence: Using Casebooks, Problems, Transcripts, Simulations, Video Clips and Interactive DVDs*, 50 ST. LOUIS L.J. 1133, 1145 n.29 (2006).

222. See Mundy, *supra* note 55, at 38–39; Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to the Classroom*, 7 J. ASS’N LEGAL WRITING DIRS. 37, 39 (2010); Laurie Shanks, *Whose Story Is It, Anyway?—Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 509–11 (2008).

223. See Grose, *supra* note 222, at 53–58.

law students in clinical environments to shape their clients' experiences into clear, emotionally resonant legal narratives that persuade and inform.²²⁴ It helps them present complex legal issues in a way that highlights the human stakes and moral dimensions of each case.²²⁵ These skills also build trust and empathy, strengthening connections with clients, witnesses, and decision-makers while refining the student's advocacy voice.²²⁶

Despite its success in Legal Writing, Trial Advocacy, and clinical law school courses incorporating storytelling has faced resistance in doctrinal courses.²²⁷ Some faculty view storytelling as "soft" or ethically ambiguous, fearing that it may compromise the objectivity and rigor of legal analysis.²²⁸ Its incorporation remains uneven, hindered by lingering skepticism and disciplinary boundaries.²²⁹ The technique is often shunned in Evidence courses. The oft-criticized casebook

224. *See id.*

225. *See id.*

226. *See id.*; *see also* Jacki J. Langum, *Cultivating Thoughtful Dialogue, Shared Humanity, and Emotional Intelligence in Client Counseling Courses*, 69 ST. LOUIS L.J. 605, 608 (2025) (noting the need for empathy in a clinical setting).

227. *See* Grose, *supra* note 222, at 53–60 (noting concern by a law school professor who initially resisted incorporating storytelling into first-year doctrinal courses).

228. *See* Farber & Sherry, *supra* note 9, at 807–14 (summarizing multiple scholarly critiques of the legal storytelling movement, including arguments that narrative risks subjectivity, lack of rigor, and ethical ambiguity, and may not "count" as serious legal analysis); *see also* Jean C. Love, *The Value of Narrative in Legal Scholarship and Teaching*, 2 J. Gender Race & Just. 87, 88–89 (1998) (summarizing the debate over narrative scholarship and faculty resistance to recognizing it as rigorous legal analysis) (on file with Syracuse Law Review).

229. Alternative teaching methods have been more accepted in non-doctrinal courses. *See generally* Phillip N. Meyer, *Convicts, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 J. LEGAL EDUC. 129 (1992) (discussing an experimental course, entitled Law and Popular Storytelling, taught at the University of Connecticut School of Law).

method²³⁰ remains a dominant feature in many law school Evidence courses.²³¹

This makes little sense. The subject of Evidence is deeply intertwined with Trial Advocacy, forming both the foundation and the strategic framework for courtroom persuasion. The evidence rules govern the admissibility of the very facts necessary to form a narrative. Every evidentiary rule, from relevance to hearsay to character evidence, is a gatekeeper for what parts of a story can be told and how.

Moreover, the admissibility of evidence is intertwined with storytelling.²³² This reality has not escaped the notice of the courts. In fact, in *Old Chief v. United States*, the Supreme Court acknowledged that trials are not merely fact-finding missions; they require some balance between application of the evidentiary rules and the need of lawyers to tell their client's story.²³³ Justice Souter, writing for the majority, concluded that when admission of evidence risks unfair prejudice,

230. See, e.g., Rachel Gurvich et al., *Reimagining Langdell's Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C.L. REV. F. 118, 132–38 (2023) (reviewing the challenges in using “Socratic/case method as the default method for teaching law,” including the fact that this method “was developed for a different set of students and at a time when we knew far less than we know today about how people learn.”); Robert Minarcin, *OK Boomer—The Approaching DiZruption of Legal Education by Generation Z*, 39 QUINNIPIAC L. REV. 29, 31–32 (2020) (discussing the “shared perspective among new lawyers that they were taught to think like a lawyer, but did not learn how to be a lawyer” due to overreliance on the case method); Maureen F. Fitzgerald, *Rite of Passage: The Impact of Teaching Methods of First Year Law Students*, 42 LAW TCHR. 60, 77–84 (2008) (summarizing research results that teaching practices in the first year of legal education have a negative impact on students, including psychological distress, demoralization, emotional detachment or alienation, and disengagement); Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 81 (2002) (discussing criticism of the case method and Socratic questioning on the basis that “it hinders student learning by causing psychological distress, focusing on a narrow range of skills, and disadvantaging women and people of color.”).

231. See Eileen A. Scallen, *In a World of Vanishing Trials: Why the Evidence Course Matters More than Ever—and Could Matter Even More*, 36 REV. LITIG. 513, 520 (2016); Méndez, *supra* note 221, at 1146; Roger C. Park, *Posner on Teaching Evidence*, 21 QUINNIPIAC L. REV. 741 (2003); *but see* RICHARD OWEN LEMPET ET AL., *A MODERN APPROACH TO EVIDENCE: TEXT, PROBLEMS, TRANSCRIPTS AND CASES* (West Academic Publishing 5th ed., 2013) (an early Evidence textbook embracing the use of problems to teach).

232. See Michael S. Pardo, *On Proving Mabrus and Zorgs*, 76 VAND. L. REV. 1653, 1671–72 (2023) (arguing that the same reasoning used to evaluate overall proof, namely how evidence supports competing narratives, should also guide decisions about whether specific evidence is admissible).

233. See *Old Chief*, 519 U.S. at 188–89.

Rule 403 requires courts to consider whether the prosecution's legitimate interest in telling a story can outweigh this prejudice.²³⁴

Trying to learn the rules of evidence without understanding storytelling is like learning grammar without ever writing a sentence. For example, the Rule 403 balancing test of probative value versus prejudicial effect is not just a legal standard.²³⁵ The test is, at least in part, a judgment about how a story will emotionally and cognitively impact a jury.²³⁶ The Federal Rules of Evidence are not neutral filters; they shape the contours of narrative, determining which facts are foregrounded, which are excluded, and which are left ambiguous.

Teaching Evidence through the lens of storytelling helps students grasp not just the mechanics of admissibility, but the strategic and rhetorical choices lawyers make to construct persuasive narratives. This is because the evidence rules themselves can be used to tell a story at trial.

III. USING THE FEDERAL RULES OF EVIDENCE TO TELL A STORY AT TRIAL

The rules undeniably impact what stories can be told at trial.²³⁷ Yet despite this fact, the Federal Rules of Evidence are often viewed as a series of technical procedures.²³⁸ But beneath the procedural surface lies a deeper function for the rules.²³⁹

The Federal Rules of Evidence were enacted several years before the story model was developed and widely accepted.²⁴⁰ Notwithstanding this fact, the Federal Rules of Evidence can be used as instruments of storytelling. Each rule, when used skillfully, allows a trial lawyer to shape narrative, develop character, build tension, and guide jurors through the emotional and factual terrain of a case. Numerous Federal

234. *See id.* at 182, 191.

235. *See* FED. R. EVID. 403.

236. *See* Cathren Koehlert-Page, *Tell Us a Story but Don't Make It a Good One: Embracing the Tension Regarding Emotional Stories and the Federal Rule of Evidence 403*, 84 MISS. L.J. 351, 356–70 (2015).

237. *See* Wilmott, *supra* note 88, at 930–32; Chen, *supra* note 13, at 118.

238. *See* Krieger & Krieger, *supra* note 56, at 167–68 (noting that although relevancy rules are typically viewed as purely rational, there is a more narrative view of the functioning of these rules at trial).

239. *See* Lenora Ledwon, *The Poetics of Evidence: Some Applications from Law & Literature*, 21 QUINNIPIAC L. REV. 1145, 1163–72 (2003) (noting The Federal Rules of Evidence are a “story,” presenting “tone, theme, voice, style, character, heroes, plot structure, and genre.”).

240. *See* Brian J. Foley, *Until We Fix the Labs and Fund Criminal Defendants: Fighting Bad Science with Storytelling*, 43 TULSA L. REV. 397, 414 (2007).

Rules of Evidence, evaluated together or in combination, permit and encourage storytelling at trial.

For example, Rule 103 of the Federal Rules of Evidence not only permits but structurally encourages storytelling at trial. Although the rule is primarily concerned with preserving claims of evidentiary error for appeal, its procedural mechanisms implicitly support the construction and presentation of narrative. Rule 103 states as follows:

Rule 103. Rulings on Evidence

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

...

(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.²⁴¹

Rule 103 is often viewed as a procedural safeguard for appellate review. Indeed, this is one function of the rule. But it is not the only function. The rule also encourages the use of narrative to educate the judge and guide evidentiary rulings. When a lawyer makes an offer of proof, the lawyer is, in essence, telling the judge a story. The offer of proof becomes a moment where the lawyer steps outside the rigid confines of evidentiary admissibility and paints a broader picture of why a piece of evidence matters. This is storytelling in its purest legal form: contextualizing a single item within the overall arc of the case. Even though the judge is not the factfinder in a jury trial, judges are human. Judges respond to narrative coherence, emotional resonance, and persuasive framing.²⁴² A well-crafted offer of proof can subtly influence

241. FED. R. EVID. 103.

242. See Dan Simon, *A Psychological Model of Judicial Decision Making*, 30 Rutgers L.J. 1, 14–15, 19–20 (1998); see also Itay Ravid, *Judging By The Cover: On The Relationship Between Media Coverage On Crime And Harshness In*

the judge's view of the case, potentially affecting future rulings on admissibility, objections, and even the tone of jury instructions. An offer of proof under Rule 103 is a strategic opportunity to shape the trial's narrative architecture.

For example, in a civil employment discrimination case initiated by a plaintiff employee against her former employer, plaintiff's counsel might seek to introduce an email from a supervisor. Defense counsel might object on the basis of hearsay. In making the offer of proof, plaintiff's counsel might explain that the email is part of a broader pattern of retaliatory behavior, that began after the plaintiff's complaint to human resources and culminating in the plaintiff's termination. During the offer of proof, plaintiff's counsel can briefly explain the workplace dynamics, the power imbalance, and the chilling effect on other employees. The offer of proof has planted a narrative seed; the judge now sees the plaintiff's story as one of courage and systemic resistance, which may color future rulings on relevance and credibility. Rule 105 of the Federal Rules of Evidence not only permits but structurally encourages storytelling at trial. Rule 105 of the Federal Rules of Evidence is generally viewed as a mechanism for managing the limited admissibility of evidence, ensuring that juries consider evidence only for its proper purpose and against the appropriate party. Rule 105 states as follows:

Rule 105. Limiting Evidence That Is Not Admissible

Against Other Parties or for Other Purposes

If the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.²⁴³

Sentencing, 93 S. CAL. L. REV. 1121, 1139–40 (2020) (noting that judges are in fact vulnerable to emotional decision making); Alope Chakravarty, *Evolution of the Trial Advocate: From Quintilian to Quanta in the Contemporary Courtroom*, 50 SUFFOLK U.L. REV. 45, 64 (2017); Holger Spamann & Lars Klöhn, *Justice Is Less Blind, and Less Legalistic, than We Thought: Evidence from an Experiment with Real Judges*, 45 J. LEGAL STUD. 1, 16 (2016) (showing that judges may be swayed by not only precedent but also emotion); Andrew J. Wistrich, Jeffery J. Rachlinski & Chris Guthrie, *Heart Versus Head: Do Judges Follow the Law or Follow Their Feelings?*, 93 TEX. L. REV. 855 (2015) (“Unlike jurors, judges are expected to put their emotional reactions to litigants aside. Can they do it? The first reported experiments on the topic . . . suggest that they cannot.”); Terry A. Maroney, *Angry Judges*, 65 VAND. L. REV. 1207, 1250–64 (2012) (suggesting that judges can be swayed by emotion).

243. FED. R. EVID. 105.

Rule 105 is a narrative device disguised as a procedural safeguard. When a lawyer requests a limiting instruction, that lawyer is acknowledging that evidence can be used to tell two different stories. In requesting the instruction, the lawyer is asking the judge to frame the evidence in a particular way; to tell the jury which story to believe. The instruction doesn't merely restrict the scope of admissibility; it actively shapes the jury's interpretive lens.

This rule acknowledges that evidence is inherently multivalent; it can support multiple narratives depending on context. By urging the judge to give a limiting instruction, the lawyer is hoping to guide the jury toward one narrative and away from another. The instruction, if given, creates a moment of storytelling curation, where the jury is told expressly to eliminate one possible story from consideration.

For example, in a criminal trial for drug trafficking, the prosecution might offer the defendant's prior conviction for possession. If defense counsel could not exclude the conviction, defense counsel might request a limiting instruction, that the conviction is admissible only for impeachment not to prove propensity. If the judge agrees and so instructs the jury, this removes a propensity-based story from the possible explanations the jury might adopt. This then allows defense counsel to spend the remainder of trial building another story to explain the evidence. The limiting instruction clears the path for this counter-narrative to flourish. Rule 106 of the Federal Rules of Evidence not only permits but structurally encourages storytelling at trial. Rule 106 of the Federal Rules of Evidence is generally viewed as a stopgap to prevent misleading impressions that can arise from the presentation of incomplete evidence. Rule 106 states as follows:

Rule 106. Remainder of or Related Writings or
Recorded Statements
If a party introduces all or part of a statement, an
adverse party may require the introduction, at that time,
of any other part—or any other writing or recorded
statement—that in fairness ought to be considered at
the same time.²⁴⁴

Rule 106 is the quintessential storytelling rule. It recognizes that evidence cannot be understood in isolation. This is because that narrative coherence requires context. When one party introduces part of a statement, the other party can demand that the rest of the statement or any other statement be introduced immediately, ensuring that the jury hears the full story rather than a misleading fragment.

244. FED. R. EVID. 106.

This rule is a safeguard against narrative distortion. It empowers lawyers to restore balance, to fill in the missing pieces, and to present a more complete picture. The rule is not simply about fairness. The rule is also concerned with storytelling integrity. Rule 106 allows lawyers to weave disparate threads into a coherent tapestry, ensuring that the jury sees the full narrative arc rather than isolated plot points. For example, in a civil breach of contract case brought by a plaintiff property owner against a defendant contractor, defense counsel might introduce an excerpt from an email in which the plaintiff appears to entertain the notion that delay in completion of the construction might have been the plaintiff's fault. Plaintiff's counsel might invoke Rule 106 and introduces the remainder of the email, which goes on to state that the plaintiff investigated further and discovered that the delay was actually caused by the defendant's failure to deliver materials on time. The introduction of this additional context shifts the narrative dramatically: what seemed like an admission becomes a justification. The jury now sees the plaintiff not as negligent, but as a victim of the defendant's breach. Rule 106 has transformed a fragment into a story. The introduction to Rule 107 of the Federal Rules of Evidence not only permits but structurally encourages storytelling at trial. Rule 107 of the Federal Rules of Evidence is designed to clarify and regulate the use of visual and demonstrative materials that help the jury understand evidence or argument. Rule 107 states as follows:

Rule 107. Illustrative Aids

(a) Permitted Uses. The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time . . .²⁴⁵

Rule 107 is a companion to Rule 106, but it goes further by allowing the court to admit otherwise inadmissible evidence if fairness demands it. This rule opens the door to visual storytelling, recorded statements, video depositions, audio clips, that bring the narrative to life in a way that written transcripts cannot. It allows lawyers to "show" rather than "tell," engaging the jury's senses and emotions.

An illustrative aid at trial is a visual or auditory presentation, such as a chart, diagram, video, animation, or simulation, used to help the jury understand evidence or argument but not admitted as evidence

245. FED R. EVID. 107.

itself. Under the newly adopted Rule 107 of the Federal Rules of Evidence, illustrative aids are formally recognized and regulated as pedagogical tools designed to enhance juror comprehension without being part of the evidentiary record.

In a trial setting, visual and auditory evidence can be transformative. This evidence humanizes witnesses, dramatizes events, and immerses jurors in the story. Rule 107 recognizes that storytelling involves not only telling the story but showing it as well. For example, in a criminal robbery trial, defense counsel might show the jury a side-by-side visual timeline to tell a story of mistaken identity. Populated with information elicited from witness examinations, one timeline might show the defendant's actions while the other shows the robber's actions. The visual juxtaposition might allow the jury to see the impossibility of the defendant being in both places at once. This illustrative aid supports the defense story of misidentification. The illustrative aid transforms abstract alibi evidence into a vivid, coherent narrative of innocence. Rules 401 and 402 of the Federal Rules of Evidence not only permit but structurally encourage storytelling at trial. Rules 401 and 402 of the Federal Rules of Evidence form the gateway to admissibility in any trial—they define what counts as relevant evidence and whether it may be presented to the jury. Rule 401 states as follows:

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.²⁴⁶

Rule 402 states as follows:

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court. . .²⁴⁷

Relevance is the backbone of evidentiary admissibility, but it is also the skeleton of storytelling. To argue that a piece of evidence is

246. FED. R. EVID. 401.

247. FED. R. EVID. 402.

relevant, a lawyer must explain how it fits into the broader narrative of the case. This is not a mechanical exercise; it's a creative one. The lawyer must construct a story in which the evidence plays a meaningful role, advancing the plot or deepening character development.

Every relevance argument is a mini story. This story requires the lawyer to describe the stakes, the relationships, the timeline, and the causal connections. It's an invitation to the judge to see the case through the lawyer's lens, to understand the narrative logic that makes the evidence consequential. In this way, Rules 401 and 402 encourage the development and expression of story. For example, in a civil defamation suit, the plaintiff might seek to introduce a social media post made by the defendant months before the alleged defamatory statement. Defense counsel might object on relevance grounds. Plaintiff's counsel could argue that the post reveals the defendant's animosity and intent to harm the plaintiff's reputation. The lawyer has used relevance to tell a story of escalating hostility, culminating in public defamation. Rule 404 of the Federal Rules of Evidence not only permits but structurally encourages storytelling at trial. Rule 404 of the Federal Rules of Evidence governs the admissibility of character evidence, placing firm limits on its use while carving out targeted exceptions that allow advocates to shape narrative arcs around identity, credibility, and moral framing. Rule 404 states as follows:

Rule 404. Character Evidence; Other Crimes, Wrongs, or Acts

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609. . .²⁴⁸

By its very nature, Rule 404 envisions a battleground of competing narratives. In certain circumstances, Rule 404(a) allows the defendant to introduce character evidence, effectively telling a story about who the defendant is. But once that door is opened, the prosecution is allowed to respond with a counter-narrative. This dynamic creates a rich storytelling interplay, where each side constructs a different narrative, inviting the jury to interpret actions through the lens of personality and history.

For example, in a criminal trial for embezzlement, defense counsel might introduce testimony that the defendant is a trustworthy and fiscally responsible person. In response, the door has now been offered for the prosecution to offer evidence of a prior incident in which the defendant was disciplined for falsifying expense reports at a previous job. The jury is now presented with two competing character narratives: one of a conscientious employee unjustly accused, and one of a person with a pattern of financial dishonesty. Rule 404(a) has transformed the trial into a character-driven drama, where moral credibility becomes a central battleground. Rule 406 of the Federal Rules of Evidence not only permits but structurally encourages storytelling at trial. Rule 406 of the Federal Rules of Evidence governs the admissibility of habit and routine practice as evidence to prove conduct on a particular occasion. It allows a party to introduce evidence that a person or organization has a regular, specific, and semi-automatic pattern of behavior, and to argue that they likely acted in accordance with that pattern during the event in question. Rule 406 states as follows:

Rule 406. Habit; Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.²⁴⁹

248. FED. R. EVID. 404.

249. FED. R. EVID. 406.

Rule 406 allows a lawyer to tell a story of behavior over time. Habit evidence is not about isolated incidents. Habit evidence is about patterns, routines, and predictability. This rule enables lawyers to build a chronology, showing how a person or organization consistently acts in certain situations. The rule permits a form of narrative that emphasizes reliability and repetition.

By introducing habit evidence, lawyers can create a sense of rhythm and expectation. The jury begins to see the subject not as a mystery, but as a known quantity. This storytelling technique is especially powerful in cases where direct evidence is lacking. In such a case, habit fills in the gaps, offering a plausible narrative based on past behavior. For example, in a civil personal injury case, the plaintiff shopper might claim that a grocery store failed to timely mop up a spill in the produce section that caused her fall. Plaintiff's counsel might introduce evidence that the store routinely ignored spills in the produce section, based on employee testimony and maintenance logs. This habit evidence creates a narrative of negligence, suggesting that the store's failure was not an anomaly but part of a broader pattern. Rule 406 allows the plaintiff to tell a story of systemic disregard for safety. Rules 413, 414, and 415 of the Federal Rules of Evidence not only permit but structurally encourages storytelling at trial. Rules 413, 414, and 415 of the Federal Rules of Evidence form a trilogy of exceptions to the general prohibition against propensity evidence in criminal and civil cases involving sexual misconduct. These rules allow prior bad acts to be admitted to show a defendant's propensity to commit similar offenses—something normally barred under Rule 404. Rule 413 states as follows:

Rule 413. Similar Crimes in Sexual-Assault Cases

(a) Permitted Uses. In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant. . . .²⁵⁰

Rule 414 states as follows:

Rule 414. Similar Crimes in Child-Molestation Cases

(a) Permitted Uses. In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other

250. FED. R. EVID. 413.

child molestation. The evidence may be considered on any matter to which it is relevant. . .²⁵¹

Rule 415 states as follows:

Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation

(a) Permitted Uses. In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules 413 and 414. . .²⁵²

These three rules explicitly authorize the use of prior acts to tell a story of repeated misconduct. They break from the general prohibition on propensity evidence, recognizing that in cases of sexual assault and child molestation, patterns matter. Rules 413, 414, and 415 allow lawyers to construct a chronology—a narrative of behavior that spans time and reveals character. The rules invite the jury to see the defendant not as a one-time offender, but as someone whose past actions illuminate the present charges. The rules offer a lawyer seeking to offer such a pattern a powerful narrative tool, especially in cases where the current allegations are difficult to prove in isolation. The prior acts provide context, motive, and credibility.

For example, in a criminal trial for sexual assault, the prosecution might offer evidence under Rule 413 that the defendant was previously accused of a similar assault five years earlier. Although the prior case did not result in a conviction, the testimony of the prior victim might still be admissible under Rule 413. The prosecutor could then use this evidence to build a narrative of predatory behavior. The prosecutor could show pattern of targeting vulnerable individuals in similar circumstances. The jury would no longer be evaluating the current charge in isolation. The jury would instead see a story unfold across time, with recurring themes and escalating danger. Rule 413 could be used to transform the trial into a character study of repeated misconduct.

Rules 702 and 703 of the Federal Rules of Evidence not only permit but structurally encourages storytelling at trial. Rules 702 and 703 of the Federal Rules of Evidence govern the admissibility, basis, and presentation of expert testimony. Together, they form the backbone of

251. FED. R. EVID. 414.

252. FED. R. EVID. 415.

how courts handle specialized knowledge in litigation. Rule 702 states as follows:

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.²⁵³

Rule 703 states as follows:

Rule 703. Bases of an Expert

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.²⁵⁴

Taken in tandem, these rules allow expert witnesses to become full-fledged characters in the trial's narrative. The process of qualifying an expert, detailing the expert's education, experience, and methodology, is itself a form of storytelling. It introduces the expert as a protagonist in the evidentiary drama; someone whose journey and expertise lend credibility to their insights.

Once qualified, the expert's testimony becomes a narrative bridge between raw data and human understanding. The expert interprets facts, draws conclusions, and explains complex phenomena in relatable terms. This is storytelling at its most intellectual—translating

253. FED. R. EVID. 702.

254. FED. R. EVID. 703.

technical knowledge into persuasive narrative. The rules also allow flexibility in how the expert presents the opinion, enabling a more fluid and engaging delivery.

For example, in a civil medical malpractice case, the plaintiff patient might call a surgeon as an expert witness. The lawyer would not launch directly into the surgeon's opinion. Instead, plaintiff's counsel would likely begin by walking the jury through the expert's career. The jury would learn who the surgeon is, as a character in the story of the case. The jury would learn about the surgeon's decades of surgical experience, academic publications, and leadership in professional organizations. Later during the direct examination, the expert would tell the story of the opinion. The surgeon would explain how the defendant physician deviated from standard procedure, using diagrams and analogies to make the technical details accessible. The jury would learn to see the expert not just as a technician, but as a guide—someone who has walked the path and now illuminates it for others. The expert's testimony would become a narrative of professional standards and ethical failure. Rules 803 and 804 of the Federal Rules of Evidence not only permit but structurally encourages storytelling at trial. Rules 803 and 804 of the Federal Rules of Evidence define the primary exceptions to the hearsay rule, which ordinarily excludes out-of-court statements offered for the truth of the matter asserted. These two rules carve out circumstances where hearsay is admissible. Rule 803 lists 23 exceptions that apply regardless of declarant availability.²⁵⁵ Rule 804 lists five additional exceptions that apply in the case of declarant unavailability.²⁵⁶

Among the many exceptions is Rule 803(2) which sets forth an exception for an excited utterance. In relevant part, Rule 803 states as follows:

“[t]he following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness . . . [a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.”²⁵⁷

This exception allows an emotionally charged, spontaneous statement to be admitted even if that statement is hearsay. The rationale behind the rule is that people under the stress of a startling event are unlikely to fabricate; their statements are presumed to be raw,

255. See FED. R. EVID. 803.

256. See FED. R. EVID. 804.

257. FED. R. EVID. 803(2).

authentic, and trustworthy. This exception enables lawyers to present vivid, emotionally resonant moments that immerse the jury in the immediacy of the event. Excited utterances also help anchor the timeline of events, creating a clear before-and-after structure that reinforces causation and credibility. Importantly, these statements can be admitted even if the declarant later recants or refuses to testify, allowing attorneys to preserve the initial, unfiltered reaction. In cases like domestic violence, where victims may be unwilling to speak in court, the excited utterance exception allows the story to be told through their spontaneous words. Rule 803(2) thus transforms fleeting moments of crisis into enduring narrative evidence, giving jurors access to the emotional truth of the cases. The other exceptions function similarly. Each exception encourages a lawyer to tell the story surrounding a statement—a story that favors admissibility and contextualizes the statement.

Hearsay exceptions are often taught as technical carve-outs, but they are deeply narrative in nature. Each exception is rooted the story of the statement itself; how the statement came to be, why it was made, and what circumstances surrounded it. To invoke an exception, the lawyer must tell this story.

For example, in a homicide trial, the prosecution might introduce the victim's dying declaration under Rule 804. If the victim's last words to the paramedics were, "my neighbor stabbed me," the introduction of the statement encourages witness testimony from the paramedic to explain why this was a dying declaration. The paramedic would be questioned about the scene: the blood, the panic, the victim's fading voice. The jury would be vividly transported to that moment, feeling the urgency and finality of the statement. The hearsay exception can be used not just to admit a statement but to tell the story behind it.

Rule 901 of the Federal Rules of Evidence not only permits but structurally encourages storytelling at trial. Rule 901 establishes that before evidence can be admitted, the proponent must produce sufficient proof to support a finding that the item is what the proponent claims it to be. This rule ensures that documents, recordings, physical objects, and other forms of evidence are not just relevant but also genuine. Rule 901 provides a non-exhaustive list of ten common methods of authenticating evidence.²⁵⁸

258. See FED. R. EVID. 901.

Among the many exceptions is Rule 901(6) which sets forth a method for authenticating a telephone conversation. In relevant part, Rule 901 states as follows:

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

...

(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.²⁵⁹

Rule 901(6) of the Federal Rules of Evidence allows for the authentication of telephone conversations by showing that a call was made to a number assigned to a particular person or business, and that the circumstances, including self-identification, support the conclusion that the person answering was indeed the intended recipient. This rule opens up rich narrative possibilities in trial advocacy. It enables lawyers to introduce moments of dialogue that feel immediate and personal, often capturing the tone, urgency, or emotional texture of a situation in ways that written records cannot. For example, a witness might testify that they called a known associate and heard them say, “I told you not to call me about this again,” which not only authenticates the call but also conveys tension, secrecy, and motive. Rule 901(6) thus allows attorneys to build scenes; complete with voice, timing, and context—that deepen the jury’s understanding of relationships and events. These authenticated phone calls can serve as turning points in the narrative arc of a case, revealing intent, deception, or corroboration. By validating the identity of the speaker and the relevance of the conversation, Rule 901(6) transforms ephemeral exchanges into

259. *Id.*

admissible, story-rich evidence that can anchor a compelling theory of the case.

Authentication is often seen as a dry procedural hurdle, but it is actually a form of biography. To authenticate a piece of evidence, the lawyer must tell its life story; where it came from, how it was created, who handled it, and how it arrived in court. This narrative builds credibility and invites the jury to see the evidence not as an object, but as a character with a past.

For example, in a civil fraud case, the defendant might seek to authenticate a handwritten letter allegedly written by the plaintiff. Defense counsel could call a witness to describe receiving the letter, recognizing the handwriting, and storing that letter in a safe place. Defense counsel might add to this lay witness testimony expert testimony comparing the handwriting in the letter to known samples from the plaintiff. As the letter is authenticated, the jury hears the story of the letter; its origin, its journey, and its significance. Rule 901 transforms the letter from a static exhibit into a narrative artifact.

These examples demonstrate how the Federal Rules of Evidence do more than regulate admissibility; they actively invite narrative construction in the courtroom. Each rule, in its own way, legitimizes moments of emotional truth, contextual detail, and character revelation, allowing litigators to craft persuasive, story-driven presentations of fact.

These are only a few among many evidentiary rules that support storytelling as a core trial skill. This narrative potential should not be reserved for the courtroom alone. It belongs in the Evidence classroom, where students should learn not only how the rules enable storytelling, but also how to wield storytelling techniques themselves as part of their doctrinal and advocacy training.

IV. WHY EVIDENCE SHOULD BE TAUGHT THROUGH THE STORYTELLING LENS

Law schools have long taught Evidence as a doctrinal subject rooted in precision, logic, and procedural mastery.²⁶⁰ For many law students, their Evidence course is structured around casebooks, outlines, and the Federal Rules themselves, with students expected to memorize rule numbers, spot issues on exams, and apply rules to

260. See Calvin William Sharpe, *Evidence Teaching Wisdom: A Survey*, 26 SEATTLE U. L. REV. 569, 571 (2003).

hypothetical scenarios.²⁶¹ Some professors now incorporate problems, but they typically continue to utilize other, more traditional methods in tandem.²⁶² This approach emphasizes technical proficiency, but it often overlooks the deeper narrative function that the rules serve in actual trial practice.²⁶³

Like other doctrinal courses, many Evidence courses rely heavily on appellate cases to illustrate how rules are applied.²⁶⁴ These cases are dissected for holdings, rule applications, and judicial reasoning.²⁶⁵ Although this method is useful for understanding how courts interpret and enforce evidentiary standards, it rarely captures the dynamic storytelling that unfolds in the trial courtroom.²⁶⁶ Appellate opinions are retrospective and analytical; they strip away the drama, emotion, and persuasion that characterize live testimony and evidentiary argument.²⁶⁷

261. See Sharpe, *supra* note 260, at 571; see also Sarah McConnell & Leah Lunetta, *Paradoxical Pedagogy: Teaching Trauma-Informed Principles Within a System Built on Emotional Detachment*, 30 ROGER WILLIAMS U.L. REV. 311, 320–30 (2025) (tracing the historical development of the traditional law school teaching model); David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 106–07 (2003) (observing the prevalence of the case method throughout the law school curriculum).

262. See, e.g., Richard A. Posner, *Legal Research and Practical Experience*, 84 U. CHI. L. REV. 239, 243–44 (2017) (noting his use of the problem method for teaching evidence at The University of Chicago Law School); Ric Simmons, *The Audience for an Evidence Class: Teaching to Litigators, Scholars, or Bar-Examinees?*, 50 ST. LOUIS U.L.J. 1063, 1065–66 (2006); see also Gregory J. Marsden & Soledad Atienza, *Doing Law School Wrong: Case Teaching and an Integrated Legal Practice Method*, 66 ST. LOUIS U.L.J. 543, 546 (2022) (noting that classes taught using the problem method can be marginalized and viewed as less rigorous than classes taught using the case method).

263. See generally Lisa A. Silver, *The Unclear Picture of Social Media Evidence*, 43 MANITOBA L.J. 111, 118–20 (2020) (arguing against this method of teaching evidence); Michael S. Pardo, *Some Remarks on the Importance of Evidence Outside of Trials*, 36 REV. LITIG. 443, 453 (2016) (emphasizing the analytical nature of learning the evidence rules); Blaustone, *supra* note 24, at 454–55 (challenging the traditional view of how Evidence should be taught in law schools).

264. See Paul Rothstein, *Teaching Evidence*, 50 ST. LOUIS U.L.J. 999 (2006).

265. See Foley, *supra* note 204, at 40–41 (arguing that there is more to persuasion than logic alone, despite the overreliance in law school on teaching logical reasoning); Tom Galbraith, *Storytelling: The Anecdotal Antidote*, 28 LITIG. 17, 17 (2002) (characterizing storytelling as a lost art, in part due to overemphasis on analytical reasoning in the law school curriculum); Sandra Craig McKenzie, *Storytelling: A Different Voice for Legal Education*, 41 U. KAN. L. REV. 251, 251–52 (1992) (criticizing the overreliance on the case method of legal education).

266. See A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2037–38 (2012).

267. See Spencer, *supra* note 266, at 2037–38; see also McConnell & Lunetta, *supra* note 261, at 314 (noting that in the first year curriculum, students are taught

Students reading these cases may learn what hearsay is, or how Rule 403 balances probative value against prejudice, but they don't see how a lawyer uses those rules to build a compelling narrative. The story may not find its way into the appellate decision. The human element is often missing. As a result, students may graduate knowing the rules but not knowing how to wield them as narrative tools.

Evidence exams frequently rely on multiple choice questions that test rule recall and issue spotting.²⁶⁸ This mimics the bar exam, which also tests the subject using multiple choice questions.²⁶⁹ These questions are designed to assess whether students can identify admissibility problems and apply the correct rule.²⁷⁰ Although this format rewards precision, it discourages creativity and contextual thinking.²⁷¹ It also fails to mimic the realities of practice.²⁷² A student taking an Evidence exam may know that a dying declaration is admissible under Rule 804(b)(2), but the student may never be asked to explain how that declaration fits into the emotional arc of a trial or how it might influence a jury.

This style of assessment reinforces a view of Evidence as a checklist; a series of hurdles to clear rather than a set of tools to craft a

abstract concepts detached from emotion); Robin Wellford Slocum, *An Inconvenient Truth: The Need to Educate Emotionally Competent Lawyers*, 45 CREIGHTON L. REV. 827, 841 (2012) (noting that “[i]n the first year of law school students learn to view the world through a one-dimensional lens of what is ‘legally significant’” and that “[i]t is not the people in the legal dramas who matter; what matters are the case facts, holdings, and rationale that are legally significant to their evaluation of the law.”).

268. See Joan M. Rocklin, *Exam-Writing Instruction in a Classroom Near You: Why it Should be Done and How to Do It*, 22 J. LEGAL WRITING INST. 189, 194 (2018) (noting that issue spotting exams test rule-based reasoning); Fred Galves, *Objection! Irrelevant And Unrealistic: It's Time for Evidence Exams to Evolve*, 50 ST. LOUIS L. J. 1223, 1226–27 (2006).

269. See Marsha Griggs, *Bar Examination: A Verb, Not a Noun*, 77 WASH. U.J.L. & POL'Y 6, 20 n.68 (2025); Carolyn V. Williams, *Bracing For Impact: Revising Legal Writing Assessments Ahead of the Collision of Generative AI and the Nextgen Bar Exam*, 28 J. LEGAL WRITING INST. 1, 28 (2024); Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 77–85 (2007) (identifying common criticisms of bar exam style questioning).

270. See Galves, *supra* note 268, at 1226–32.

271. See generally Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLINICAL L. REV. 247, 247–50 (2001) (noting, generally, the limitations to law school exams).

272. See Erwin Chemerinsky, *Keynote Speech: Reimagining Law Schools?*, 96 IOWA L. REV. 1461, 1464 (2011) (noting the disconnect between multiple choice questions and the actual practice of law).

persuasive story.²⁷³ It trains students to think like technicians rather than advocates, focusing on compliance rather than communication. The result is a generation of lawyers who may be rule-savvy but narratively underdeveloped.

Even when Evidence is tested through essay exams, the format tends to fragment the trial narrative. Students are given a fact pattern and asked to identify evidentiary issues.²⁷⁴ They analyze each issue in isolation, applying the rule and predicting admissibility. They are rarely asked to construct a cohesive trial story or to explain how the evidence fits into a broader narrative strategy.

This approach mirrors the structure of appellate briefs, not trial advocacy. It teaches students to think like judges, parsing rules and weighing admissibility, rather than like trial lawyers, who must persuade through storytelling. The essay format rewards analytical rigor but often fails to cultivate narrative intuition. The essay simply does not test whether students have developed an ability to see how evidence builds character, advances plot and evokes emotion. By contrast, viewing the Federal Rules of Evidence through the lens of storytelling transforms the subject into a study of human persuasion. Each rule becomes a narrative device. Each rule is transformed into a method to introduce characters, set scenes, build tension, and resolve conflict. Offers of proof become moments of exposition. Limiting instructions become narrative forks. Hearsay exceptions become flashbacks. Expert testimony becomes guided narration. This approach doesn't abandon doctrinal rigor—it enhances it.²⁷⁵ Lawyers who understand the storytelling potential of the rules can still argue

273. Even those who teach evidence in the context of trial skills can still construe the rules this way. *See, e.g.*, George Bach, *Don't Be Afraid of Trial: Making the Teaching of Trial Practice Accessible and Yes, Less Aspirational*, 22 CONN. PUB. INT. L.J. 29, 36 (2022) (characterizing the rules as “clunky beyond belief”).

274. *See* Jacline R. Evered, *Arming the Graduate for Professional Battle*, 43 BRANDEIS L.J. 325, 355 (2005) (contrasting the weaknesses in a traditional “issue spotting” essay exam with the strengths of more realistic assessments grounded in the practice of lawyering); *see also* Elizabeth Sherowski, *Gen Z Meets NextGen: Using Generation Z Pedagogy to Prepare Students for the NextGen Bar Exam*, 101 U. DET. MERCY L. REV. 333, 347–48 (2024) (describing a traditional law school “issue spotting” essay exam).

275. Some law professors have successfully integrated storytelling into their Evidence courses. They report positive effects. *See, e.g.*, Koehlert-Page, *supra* note 236, at 385–90 (arguing judicial opinions reflect nuanced understanding of emotional reasoning which requires storytelling at trial); Blaustone, *supra* note 24, at 454–56 (describing her process of using fictional stories to review evidentiary rules). The author also incorporates storytelling into her Evidence classes, which she teaches primarily using the problem method.

admissibility with precision, but they do so in service of a larger narrative. They see the trial not as a sequence of objections and rulings, but as a story unfolding in real time, with the rules as the structure for persuasion.

Law schools that embrace this perspective can better prepare students for the realities of trial practice.²⁷⁶ They can teach Evidence not just as a set of rules, but as a language of storytelling; a way to connect with judges and juries, to humanize clients, and to shape the truth in compelling ways. In doing so, they honor the deeper purpose of trial and the rules which govern.

Moreover, incorporating storytelling into Evidence class increases student learning. As noted in Part I of this Article, the human brain is wired for story. Neuroscience and cognitive psychology have shown that people remember information better when it is embedded in narrative. Stories activate more regions of the brain than isolated facts. They create emotional resonance, pattern recognition, and long-term retention. When law students learn Evidence through storytelling, they are not just learning how to persuade—they are learning how to remember.²⁷⁷

Consider the traditional method: a student reads Rule 803(2), learns that an “excited utterance” is a hearsay exception, and memorizes the elements. But what if that student instead hears the story of a woman who, moments after surviving a car crash, screams “He ran the red light!” and that statement becomes the centerpiece of a trial? The student now understands the rule not just as a definition, but as a moment of human urgency. That student remembers the adrenaline, the chaos, the immediacy. The rule is no longer abstract, instead it is alive.

This method doesn’t just make students better storytellers, instead it makes them better learners. It transforms Evidence from a memorization exercise into a lived experience. It turns rules into tools, and tools into instincts.

276. See K. Jane Childs, *(Re)counting Facts and Building Equity: Five Arguments For an Increased Emphasis on Storytelling in the Legal Curriculum*, 29 B.U. PUB. INT. L.J. 315, 336 (2020) (noting that judges and jurors criticize new law graduates for failure to effectively utilize storytelling at trial); Sarah E. Thiemann, *Beyond Guinier: A Critique of Legal Pedagogy*, 24 N.Y.U. REV. L. & SOC. CHANGE 17, 38 (1998) (“it is important for law students to learn storytelling techniques so that they can use them in their representation of clients”); Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2080 (1989) (describing the relevance of narrative to the resolution of disputes).

277. See DeVito, *supra* note 9, at 54–57 (arguing that stories should be used to teach the law).

A common lament about law schools is that their new graduates are unprepared for real-world practice.²⁷⁸ These students know the law, but they don't know how to use it.²⁷⁹ They can spot issues on paper, but they freeze in the courtroom. Teaching Evidence through storytelling closes this gap. It trains students not just to know the rules, but to deploy them. It teaches them how to build a case, how to shape a narrative, how to respond to objections not with panic but with poise.

Trial advocacy is not just about knowing what Rule 403 says; it's about knowing when to invoke it, how to frame it, and how to use it to protect your story. It's about knowing that Rule 702 isn't just about qualifying an expert; it's about introducing a character who will guide the jury through complexity. It's about knowing that Rule 803(6) isn't just about business records—it's about showing the jury that the defendant's conduct was part of a routine, a system, a pattern.

When students learn Evidence this way, they don't just pass exams—they win trials. They don't just recite rules—they tell stories. They become lawyers who can walk into a courtroom and make the rules sing.

Imagine an Evidence class where students don't just read appellate cases—they reenact trial scenes. Where they don't just memorize hearsay exceptions—they write the backstory of each statement. Where they don't just learn Rule 105—they draft limiting instructions and argue them in mock court. Where every rule is taught not as a barrier to admission, but as a gateway to narrative. In this classroom, students learn that Rule 103 is not just about preserving error—it's about telling the judge the story behind the evidence. They learn that Rule 406 is not just about habit—it's about building a chronology that

278. See Derrick Howard, *Phantom Thread: Restoring Live-Client Interactions to the First-Year Educational Continuum in This Age of Information and Beyond*, 81 U. PITT. L. REV. 597, 600–01 (2020) (noting the inherent challenges associated with representing clients and arguing that students graduate law school ill equipped to handle these challenges); Ann Juergens & Angela McCaffrey, *Roleplays as Rehearsals for "Doing the Right Thing"—Adding Practice in Professional Values to Moldovan and United States Legal Education*, 28 WASH. U.J.L. & POL'Y 141, 150–54 (2008) (noting the needs for students to have a more client-centric view of litigation).

279. See Kendall Kerew, *The Rule of Law, The Lawyer's Role as a Public Citizen, and Professional Identity: How Fostering the Development of Professional Identity Can Help Law Schools Address the Crisis Facing American Democracy*, 75 MERCER L. REV. 1449, 1449–50, 1453 (2024) (noting that recent pressures from the American Bar Association suggest now is the time to revisit the law school curriculum); Dara E. Purvis, *Law School as Masculine Competition*, 85 U. PITT. L. REV. 359, 387–89 (2024) (noting weaknesses in the law school curriculum generally which should be addressed).

reveals character. They learn that Rule 901 is not just about authentication—it's about biography.

This is not fantasy—it is pedagogy. It is a method that aligns with how humans learn, how lawyers practice, and how trials unfold. It is a method that respects the rules while revealing their power. The Federal Rules of Evidence were not written to be memorized; they were written to be used. They were crafted by lawyers and judges who understood that trials are human dramas, not logical puzzles. They were designed to balance fairness with persuasion, truth with strategy. To teach them without teaching storytelling is to teach them incompletely.

Law schools should embrace this reality. To do so meaningfully, they must move beyond treating storytelling as a byproduct of trial practice and instead recognize it as a pedagogical imperative within doctrinal instruction.²⁸⁰ This movement can begin with a series of new strategies for teaching the evidence rules.

V. STRATEGIES FOR INTEGRATING STORYTELLING INTO THE LAW SCHOOL EVIDENCE CLASSROOM

There are numerous pedagogically sound and practically feasible ways to integrate storytelling into the Evidence classroom. Doing so does not require a wholesale revision of the curriculum. This Article proposes three specific strategies that can be seamlessly incorporated into existing course structures, each designed to deepen students' understanding of the Federal Rules of Evidence by framing them as narrative tools rather than mere technical constraints.

First, professors should consider incorporating structured simulations into the course. Simulations are among the most effective methods for teaching Evidence as a narrative discipline because they allow students to inhabit the roles of attorneys, witnesses, and judges in mock evidentiary hearings. These exercises should go beyond rote admissibility arguments and encourage students to advocate for the narrative relevance of each piece of evidence. For instance, students might be asked not only whether a statement qualifies as an excited utterance under Rule 803(2), but also how that utterance advances the emotional arc of the case or reinforces a theory of liability. By engaging with the rules in the context of a live, unfolding story, students

280. See Ashley Jones Hall, *The Art of Advocacy Revealed Through Law School Curriculum*, 54 J.L. & EDUC. 1, 22–26 (2025) (cataloging the various course where storytelling might be incorporated in the law school curriculum); Childs, *supra* note 276, at 352 (describing the degree to which storytelling is siloed and limited in the law school curriculum); Grose, *supra* note 222, at 37–39 (suggesting a broader use of storytelling across the law school curriculum).

begin to see how evidentiary decisions shape the contours of a case and influence juror perception. Simulations also foster strategic thinking, as students must decide which facts to foreground, which objections to raise, and how to respond to evidentiary rulings; all within the framework of a coherent narrative.

Second, professors should reframe the presentation of each rule by telling the story of the rule itself. This can begin with a deceptively simple but generative question: “What kind of story does this rule allow a lawyer to tell?” Such a question invites students to explore the narrative function of the rule, transforming it from a doctrinal hurdle into a storytelling device. For example, Rule 404(a) on character evidence can be taught not merely as a prohibition, but as a gateway to counter-narratives; stories that challenge the prosecution’s portrayal of a defendant. Rule 803, often viewed as a dense list of hearsay exceptions, becomes a catalog of narrative opportunities: each exception reflects a different kind of statement with its own origin, emotional context, and evidentiary weight. This approach encourages students to think critically about how rules operate in practice, and how they can be leveraged to construct persuasive, emotionally resonant arguments.

Third, professors should incorporate real-world trial excerpts—whether video clips, audio recordings, or transcripts—into classroom discussion. These materials provide concrete illustrations of how evidentiary choices shape the narrative arc of a case. For example, students might watch an opening statement followed by the introduction of key pieces of evidence, and then analyze how those evidentiary moments fulfil, or fail to fulfill, the promises made in the opening. Professors can guide students in examining how objections, rulings, and evidentiary strategies affect the jury’s understanding and emotional engagement. This method not only demystifies the rules but also reinforces the idea that every evidentiary decision is a narrative decision. By grounding abstract doctrine in tangible trial moments, students learn to see Evidence not as a static set of rules, but as a dynamic storytelling framework that governs how facts become persuasive stories in the courtroom. It’s important to acknowledge that this approach represents a significant shift for many professors. Evidence has long been taught as a doctrinal subject, with a focus on rule mastery, appellate precedent, and exam performance. Reframing the course around storytelling may feel unfamiliar, even uncomfortable. It requires new materials, new methods, and a new mindset.

Professors need not overhaul their entire curriculum overnight. Even small changes, adding one narrative exercise per unit, framing rules as story devices, incorporating trial clips, can make a meaningful

difference. The goal is not perfection, but progress. Each step toward narrative teaching brings students closer to the reality of trial practice and the heart of legal persuasion.²⁸¹

The Federal Rules of Evidence were designed to regulate truth; but they also reveal it. They are not just tools of exclusion and admission; they are instruments of storytelling. By teaching them narratively, professors honor both the letter and the spirit of the law. They prepare students not just to pass exams, but to tell stories that win trials and shape justice.

CONCLUSION

The Federal Rules of Evidence were designed to regulate truth—but, as Philip Pullman reminds us, storytelling is the best way of conveying that truth. By teaching Evidence narratively, professors honor both the letter and the spirit of the Federal Rules of Evidence. They equip students not merely to master doctrine, but to understand how each rule enables a story to unfold: a story that persuades, that reveals, and that ultimately seeks justice. In embracing storytelling as a core pedagogical method, law schools prepare future advocates not just to pass exams, but to tell the stories that win trials and illuminate truth.

281. See Grose, *supra* note 222, at 46 (suggesting storytelling be more incorporated, generally, across the law school curriculum).