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The Kalon Law Firm, LLC
140 Huyshope Ave.
Hartford, CT 06106
kalonlawfirm.com

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CICERO

A Three-Part Seminar on Advocacy
Ethos, Logos, Pathos

By Christopher P. Kriesen

ckriesen@kalonlawfirm.com

PATHOS

Story is how we understand the world and create meaning. If you tell someone, “I’m going to argue with you,” they pull back. But if you say “I have a story to share with you,” they lean forward, open their minds, and listen.

If you want to persuade, tell a story.

DISCOVER THE STORY MODEL

When presented with a series of random facts, people immediately look for, find, and create patterns. From these patterns we create narratives, and from these narratives, stories. Through these stories, we understand the world, create meaning, and decide how to live our lives.

You of course are familiar with the question, “What is the moral of the story?”

Most stories hold a moral for the audience. The moral is usually a universal truth, one that we already accept as true, and the story is a striking example of that universal truth applied to a specific fact pattern.

Can you see where I'm headed?

Every dispute is built upon a series of facts. The decision-maker listens to those facts and naturally begins to form a pattern. From that pattern, he builds a narrative, a story, and a meaning for the dispute. He will rely upon that meaning to decide the case.

Every dispute has the same moral - a universal truth that the decision-maker already accepts as true. It is, "Justice shall be done." The dispute is a specific fact pattern to which that universal truth is applied.

An advocate who understands this story model realizes she must present the dispute to the decision-maker as a story. The story she tells must hold the universal truth that "justice shall be done." And the story must be told in a way that compels the decision-maker to decide that justice is done in favor of her client, not her opponent's client.

If the advocate does not tell a story, the jury will find one to tell themselves, and the advocate may not like the way it ends.

DISCOVER THE UNIVERSAL STRUCTURE

The structure of a story told according to the story model is the universal structure of the Hero's Journey (identified by Joseph Campbell). Arguably, it is the structure of every popular story ever told.

For the needs of the story model, I have simplified the structure. The essential elements of the Hero's Journey are: 1. The Hero's Ordinary World; 2. The Inciting Incident; 3. The Hero's Quest, with her allies, mentor, and antagonist; 4. Crisis; 5. Success.

The journey of the hero begins in the ordinary world, where everything seems fine, until there is an inciting incident, which damages her world. The hero sets off on a quest to repair the damage. She has allies and a mentor to help her on her quest and an antagonist to block her. She reaches a crisis stage, where it is uncertain whether she will be able to repair the damage, but she succeeds, and returns home for a happy ending.

This structure inherently compels the audience to identify with the hero, cheer for her success, and root against the antagonist. The structure also has an inherent, universal moral: justice shall be done.

The advocate is the teller of this story. I have seen vanity overcome some lawyers who turn the closing argument into a story about themselves and wear outfits to draw attention to themselves. Remember, it's not about you. You are just the storyteller.

HOW YOU CAN USE THE STORY MODEL

How does an advocate use this structure to persuade? She lines the facts of her case into a pattern that forms the narrative of the Hero's Journey.

I will use the example of a personal injury claim arising from a motor vehicle accident.

1. The plaintiff (the hero) is safe in her ordinary world; 2. The plaintiff is in a car accident with the defendant (the antagonist) and is injured; 3. The plaintiff begins a quest to hold the defendant accountable and return to health, with family, friends, and doctors (as allies and mentors) to help her recover. Opposing counsel (also an antagonist) is trying to block her.

In the context of a trial, the decision-maker (judge or jury) enters the story at the Crisis step. Will the defendant be held accountable and will the plaintiff repair her damage? It is out of her hands. The decision-maker decides. If the decision-maker decides in her favor, holds the defendant accountable, and makes her whole, she succeeds. Justice is done.

What of the advocate for the defendant?

A trial is a presentation by the advocates to the decision-maker of competing narratives drawn from the same set of claimed facts. The decision-maker will adopt the narrative supported by the facts and form a story that is consistent with the universal truth of "justice shall be done."

The advocate for the defendant must first dismantle the facts relied upon by the plaintiff to form her narrative. Without facts to support her narrative, her story crumbles.

But that is not enough. The defendant must also tell a more compelling story. As the advocate for the plaintiff is telling the story of the Hero's Journey, the advocate for the defendant is telling what is, from the plaintiff's perspective, the antagonist's story.

But from the defendant's perspective, he is telling the story of a protagonist, with his own Hero's Journey. Who is the real hero of a story depends on perspective: one man's hero is another man's villain.

The defendant's story is as follows:

1. The defendant (the hero) is safe in his ordinary world; 2. The defendant is sued by the plaintiff (the antagonist); 3. The defendant begins a quest to defend himself, through cross examination of the plaintiff's allies and experts, and by testimony of his own experts (allies and mentors). Opposing counsel (also an antagonist) is trying to block him.

The decision-maker enters the story at the Crisis step. Will the defendant be protected? It is out of his hands. The decision-maker decides. If the decision-maker decides in his favor, he succeeds. Justice is done.

Many lawyers try their cases approximating the story model, unaware they are following the steps of a fundamental narrative, and without the master's touch because they are unaware of the elements of the structure. Once you understand the structure, you will develop a master's touch for presenting your case, no matter what the issues. The story model applies equally to any case seeking damages, whether it be a personal injury claim, a professional liability claim, or a even breach of contract case.



Attorney Kriesen is the founder and principal of The Kalon Law Firm, LLC. He has been practicing law as a trial lawyer for over twenty years. He has attended the Yale Writers Conference, has told true stories on stage, and has a Master's in English (Writing, Rhetoric, and Media Arts) with honors from Trinity College. He holds a Juris Doctor from The University of Connecticut School of Law.

He is writing a book, "Legal Storytelling," expected to be published in 2019.

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