

Legal Communication & Rhetoric: JALWD

Fall 2016 / Volume 13

.....

BOOK REVIEWS

Jonathan Shapiro

***Lawyers, Liars, and the Art of Storytelling:
Using Stories to Advocate, Influence, and Persuade***

Janet Siegel Brown, reviewer

Lights, Camera, Action

Legal Writing Tips from a Trial Lawyer Turned Screenwriter

Lawyers, Liars, and the Art of Storytelling: Using Stories to Advocate, Influence, and Persuade

Jonathan Shapiro (American Bar Association; Hardcover 2014, Paperback 2016), 281 pages

Janet Siegel Brown, reviewer*

With *Lawyers, Liars, and the Art of Storytelling*, former prosecutor turning Hollywood scriptwriter Jonathan Shapiro melds his two worlds to provide nuggets of guidance for lawyers on how to shape and convey a persuasive story. It is a quick and entertaining read, driven by humorous anecdotes ranging from story treatments the author wrote for television shows such as *Boston Legal* and *The Practice*, to series pitches he made to network executives with mogul Harvey Weinstein. He also shares real courtroom drama from his days as a trial attorney in private practice and in the U.S. Attorney's Office. The lessons that lawyers can extract from the book are broad—this is not a traditional text on legal writing and advocacy. But there are valuable nuggets to be found beneath the humor, and the book's lighthearted, anecdote-based approach makes it engaging and accessible for all readers, from law students to experienced practitioners.

The premise of the book is that effective and persuasive storytelling hinges on three elements: credibility, logic, and emotion. Referencing "Aristotle's rhetorical triangle," the book contains chapters on each of the three, entitled Ethos, Logos, and Pathos. As the author explains it, "Such stories establish the lawyer's expertise as someone worth listening to. They

.....
* Lecturer and Director of Judicial Clerkships, Northwestern University Pritzker School of Law.

utilize the facts and events in a reasoned way to support the lawyer's arguments. And they move the audience to feel connected to the lawyer's point of view."¹

The author asserts that ethos "is about getting the reader's attention, grabbing the audience, [and] convincing them that you are a credible storyteller."² In the space of a single page, the author seamlessly moves from a personal anecdote about actor Dylan McDermott to one about O.J. Simpson attorney Johnnie Cochran.³ Indeed, he takes his own advice to grab the readers' attention. But the name-dropping serves a purpose as he segues into a story about a case he prosecuted involving two abusive police officers "out of a David Lynch movie."⁴ He shares smart insights about the challenges inherent in "convinc[ing] jurors that the police could or would act like thugs," particularly when the purported victim is the stereotypical "town drunk" and the crime—the rape of an infant—is so monstrous.⁵

Logos, or logic, "is the bread and butter of good storytelling" because it shows the listener that your arguments make sense and that you are right.⁶ Among other examples, the author tells a story from his time as an Assistant U.S. Attorney when he prosecuted a sexually abusive doctor for mail fraud, the only option given the lack of a federal rape statute. The judge excluded all evidence of the doctor's sadistic sexual abuse as too prejudicial, limiting the case to a small group of victims who had been billed for painful and unnecessary medical procedures. Although it "was only a portion of the overall story," the author notes, "at least it was a narrative with a beginning, middle, and end."⁷ The government was able to present highly credible experts and other witnesses to create a well-paced and easy-to-follow, flowing narrative. This ability to bring logic and reason to an incomplete story allowed the government to get a conviction.⁸

Lastly, the author addresses pathos, or the emotional response that makes the story resonate. "It requires subjective abilities, an understanding of human nature, a sense of proportion," and has the potential to "replace[] rational thought with irrational feeling."⁹ As the author so bluntly puts it, "Humans love a story, especially if it's shocking, weird or emotionally arresting."¹⁰ By way of illustration, he shares a story from his

1 JONATHAN SHAPIRO, *LAWYERS, LIARS, AND THE ART OF STORYTELLING: USING STORIES TO ADVOCATE, INFLUENCE, AND PERSUADE* 53 (2014).

2 *Id.* at 59.

3 *Id.* at 71.

4 *Id.* at 74.

5 *Id.* at 75.

6 *Id.* at 81.

7 *Id.* at 93.

8 The conviction came after an initial mistrial due to a juror who simply refused to accept that a doctor would lie to a patient. *Id.* at 94.

9 *Id.* at 101.

10 *Id.*

stint as a journalist when he profiled the opposing lawyers in the appeal of Robert Alton Harris, a convicted double-murderer, on the eve of his execution. The defense lawyer spoke of Harris's abusive childhood and suspected fetal alcohol syndrome, while the prosecutor shared just one fact: that after murdering two young boys, Harris "reached into the fast-food bag next to" the dead bodies and ate the boys' lunch.¹¹ "Heartless, inhuman, and unforgettable, it was the detail that elicited the most emotion. It sealed Harris's fate."¹²

The subsequent chapters—extending the Hollywood theme with titles such as "The Script," "The Edit," and "The Performance"—present a process for crafting a case that achieves the troika of ethos, logos, and pathos to maximum effect. He covers the basics: write your story, edit it, and tell it effectively and strategically. Much of the advice is nothing revolutionary. For example, in the script chapter, he advises to give your story a "good beginning, an interesting middle, and a clear, cogent ending," or "try to tell the story visually . . . in a way that shows what happened rather than just asserting it."¹³ But the anecdotes he shares to illustrate his otherwise standard guidance is what makes the book unique and memorable. There is the Teddy Roosevelt-esque citrus grower whose passion, charisma, and knowledge made his testimony at an otherwise mundane hearing credible and unforgettable.¹⁴ Or the defense lawyer who calmly poked holes in each of the key facts the author had presented in his opening statement in a bank robbery trial, "eliciting [the jury's] outrage rather than mimicking it."¹⁵ In his chapter on the performance, he discusses being well-prepared, but does so in the context of *The Practice* actor Michael Badalucco's habit of marking up scripts. He then recounts a powerful closing argument Badalucco's character delivered on the show, identifying where in each instance he established ethos, logos, and pathos (although acknowledging that real lawyers don't have David E. Kelley as their ghost writer).¹⁶

The final three chapters of the book address a handful of potential opportunities or pitfalls, depending on how skillfully the lawyer manages them. First is the recognition that no story is "the whole, unvarnished, unadulterated truth."¹⁷ For example, he shares an anecdote about witnessing a judge who, after being warned by the defense attorney that the defendant in a murder case was about to perjure himself, nonetheless allowed the defendant to take the stand and tell a series of lies (a storyline

11 *Id.* at 110.

12 *Id.*

13 *Id.* at 131.

14 *Id.* at 137–139.

15 *Id.* at 139–142.

16 *Id.* at 178–180.

17 *Id.* at 195.

that the author later used in an episode of *The Practice*).¹⁸ There are also lies of omission, he contends (ranging from presentence reports that are protected from public view to the ruse that guilty pleas are entered into voluntarily and freely),¹⁹ and the biggest lie of all—that the legal system is fair and just.²⁰

Second, he tackles the role of technology and culture in storytelling, including jurors’ expectations that lawyers who do not use fancy visuals are not as good. One of the more-interesting issues he highlights is the challenge of “audience fragmentation,” meaning that storytellers must understand “how stories are being told to various demographics.”²¹ In other words, in order to communicate effectively—including to judges, juries, witnesses, and clients—a lawyer must recognize that these audiences are accustomed to receiving “tailor-made content” from television networks and advertisers who know, or believe they know, what “moves” various demographic groups they hope to reach.²² This reinforces the overarching message that lawyers must recognize the constantly changing nature of societal values and cultural sensibilities in order to deliver a story that resonates with their particular audience.²³

In his final chapter, the author suggests that “[a]nother way to learn storytelling is to consider the lives and experiences of great storytellers in order to understand their motives and methods.”²⁴ His colorful examples range from a furniture salesman²⁵ to Abraham Lincoln.²⁶ The lessons these storytellers impart emphasize not only the importance of story content, but also the impact of setting, timing, and presentation.

The book as a whole requires some effort on the part of the reader to extract valuable nuggets to apply in practice. It does not give junior attorneys or law students tangible guidance or checklists. The key stories illustrating the author’s points are mixed in with short, unrelated stories or musings, liberally interspersed with amusing non sequiturs—for example, a cantankerous judge who sends the author his aspiring actress–girl-friend’s audition tape.²⁷ These diversions make the book an easy and fun read, but can also distract at times from the pedagogical lessons about storytelling to be found in the longer narratives. Again, however, this book does not aspire to be a trial practice guide, and the story-based approach is, for obvious reasons, a smart and effective way to educate about story-

18 *Id.* at 202–03.

19 *Id.* at 203–07.

20 *Id.* at 208.

21 *Id.* at 219.

22 *Id.*

23 *Id.* at 223.

24 *Id.* at 227.

25 *Id.* at 227–31.

26 *Id.* at 231–39.

27 *Id.* at 147.

telling. The value in the book is the author's first-hand spinning of tales, which allows the reader to identify by example how and why storytellers are successful, as well as the ways in which they miss opportunities to persuade.