

# 7

**E**<sup>5</sup>  
28.43

**L**<sup>12</sup>  
54.89

**E**<sup>5</sup>  
28.43

**M**<sup>13</sup>  
67.34

# FOR BUILDING A JUROR-CENTRIC STORY

By || **JEFFREY D. BOYD**

The principles of storytelling offer a framework that can be applied to engage jurors, driving them to act for your client.

In the best-selling book *Building A StoryBrand*, author Donald Miller explains how to use seven basic elements of storytelling to create unforgettable brands for businesses.<sup>1</sup> His goal with these seven elements is: “Clarify your message so customers will listen.”<sup>2</sup> Viewed in the light of trial advocacy, the same elements and principles can be used to create trial narratives that will stick with jurors.

For years, top jury and neuroscience researchers and cognitive psychologists have recognized the following: what jurors will accept and won’t accept is driven by both the genetic hardwiring of our brains and the experiential software we have loaded into them since we took our first breaths. Facts and evidence that don’t fit into the preexisting pathways of our minds simply bounce off into space.<sup>3</sup> The *StoryBrand* method shows you how to create a narrative that jurors will understand and adopt.<sup>4</sup>

The book defines the elements of good stories as follows:

- 1. A character/hero**
- 2. has a problem**
- 3. and meets a guide**
- 4. who gives them a plan**
- 5. and calls them to action**
- 6. that helps them avoid failure**
- 7. and ends in a success.<sup>5</sup>**

**The Character/Hero**

Here’s the most important *StoryBrand* principle as applied to trial advocacy: Neither you nor your client is the character/hero—only the jury can be the character/hero.<sup>6</sup> Plaintiff lawyers have long been taught that a case can’t just be about your client, because the violation of the moral principles that are the foundation of the case must be important to *everyone*.<sup>7</sup> Jurors are not there to help *you*. Your client’s injury is only her problem; however, the need to increase safety by holding bad drivers

Reprinted with permission of *Trial*<sup>®</sup> (November 2020)  
Copyright © 2020 American Association for Justice<sup>®</sup>,  
Formerly Association of Trial Lawyers of America (ATLA<sup>®</sup>)

accountable is everyone’s problem.

Make the jurors the heroes. How is someone judging a case about getting run over by a car in a crosswalk or about dying due to a medication error a hero? Because they are fighting back, not only for their rights but also for everyone’s rights: the right to cross the street without being hit, or the right to rely on medical providers to do the right thing.

**The Problem**

Miller posits that the “problem” is the hook of the story, “and if we don’t identify [the jurors’] problems, the story we are telling will fall flat.”<sup>8</sup> The problem that jurors face is crafting a result that will make them feel that they have done the right thing. The problem is the reason they care.<sup>9</sup> You, as the trial lawyer, need to accept that an important question in jurors’ minds is: “Will I be better off if the plaintiff wins or if the defendant wins?”

This conundrum is most readily seen in medical negligence cases which, in my experience, are an internal battle between two concerns. The first is: “If I find for the plaintiff, will my access to medical care get harder? Will my medical bills go up?” The other is: “If I



find for the plaintiff, will the quality of my medical care get better by holding bad providers accountable?”

It is your job to tell the story so jurors feel they will be better off if they side with your client. “Better” means different things to different people. We all create a world that is comfortable and safe to us based on beliefs that shore up that world. We largely reject anything that challenges those beliefs, and we largely incorporate anything that supports those beliefs, a process called “confirmation bias.”<sup>10</sup> Facts are nice, but facts are a candle in the wind next to beliefs. For example, jurors who don’t believe in vaccinating their children will never be persuaded by accredited scientific studies that demonstrate vaccines’ safety but will happily adopt an anonymous internet source that expresses what they believe.

Unique to jurors, however, is that they are involuntary customers. They didn’t ask for this, and they can’t go home until they make a decision. If jurors see no direct benefit to them from the decision they will make, they will find the indirect benefit of making a decision that supports their beliefs about their world and themselves.

**The three levels of problems.** Miller instructs that heroes face “three levels of problems”: external problems, internal problems, and philosophical problems.<sup>11</sup> Each has to be identified and addressed for a successful result.

If we think about these three problems in the context of a typical personal

injury case, the external problem might be the juror’s perception that she has been plopped down in the middle of a battle she had nothing to do with, along with the accompanying stress. The internal problem is the doubt a juror might feel as she questions whether she has what it takes to end this fight fairly and according to what she is told is the law (in unfamiliar language). The philosophical problem might be whether the behavior she is supposed to judge makes the defendant a bad company when “everyone makes mistakes.”

**Identify the villain.** The best frame for the story is that the problem is caused by a villain. As trial lawyers, we are geared to the idea of a villain. The *StoryBrand* logic would ask us to look closer at this equation. Remember, we are asking jurors to undo the status quo—the events and harm that have already occurred. Trials ask a juror to burn up a lot of mental energy; not everyone is willing to do that until they see a villain to be dispatched.

Be aware that an individual rarely makes a great villain. Instead, it is better to frame cases in the context of systemic failure—blame the system (the corporation, the insurer) rather than an individual. Individual failures can be forgiven; systemic failures threaten everyone.

Also, you can frame the defendant as the villain for forcing a trial as a means to resolve your dispute. Good trial lawyers incorporate this as a way to polarize the jury.<sup>12</sup> At your first opportunity, after the

defendant stubbornly refuses to accept any responsibility for their bad choices or grossly undervalues your damages, you can say, “As you can see, the reason we are here is . . .”

Let’s use a truck crash personal injury case as an example of where we are in the story so far. In such a case we have:

- **The hero:** Your jurors, pulled from everyday life into a system they don’t understand, with strange language and rules, and forced to make a decision with far-reaching consequences.
- **The villain:** The corporation whose “system failures” resulted in the bad choices that allowed an untrained driver to be behind the wheel of a 78,000-pound truck in a snowstorm, and who now refuses to accept responsibility for those acts.
- **Jurors’ external problems:** I have a family to feed, so I can’t be here for weeks. I don’t understand what I’m supposed to do.
- **Jurors’ internal problems:** I want to do the right thing, but how am I supposed to decide who’s right and who’s wrong if these lawyers and a judge can’t decide? I don’t want to give the plaintiff too much, but how much is too much? I think people need to take personal responsibility for what happens to them. Accidents happen; is this just an accident? What will people think about me if they hear about a big verdict, or about a corporation getting off when someone has been killed?

- **Jurors’ philosophical problems:** Trials can’t undo what’s happened; the past is in the past. How does awarding money for pain and suffering equal justice? Will finding for the plaintiff fix this system? How and why will I be better off if the plaintiff wins?

**The Story Gap**

Now that we’ve identified the main starting points, we turn to the “story gap.” This is the motivation that engages the jurors. It’s why they care about your story. It’s a combination of curiosity and self-protection; the want and the need, once you are on the journey, to know what’s around the next bend and what obstacles need to be overcome. For example, in a movie, the appearance of the alien spaceship engages the viewer, who now must keep watching to find out “Who are these beings?”; “Where are they from?”; “Why are they here?”; and, most important, “What do I have to gain or lose by them being here?”

A trial is no different: the unknown experience of being a juror, the obstacle that there is no way out except a verdict, the worry about where this is going to go. The tension of the need to go home is why you shouldn’t answer every question in your opening. You want to create a sense that the jurors need to stay engaged to get to the part that will satisfy the curiosity that you have created and enable them to feel they have done the right thing by siding with your client.

For example, jurors will always want to know *why* something happened, even though that may not be legally relevant to your case. Asking “Why was that truck out there in the snowstorm?” as a rhetorical question early in the case (and withholding the answer until later) will keep the jurors with you until they get the answer they need.

**The Guide**

Obviously, you want the jurors to accept you as the guide. What jurors want, as we hear over and over in focus groups, is to do the right thing. It is your job to give the jurors the plan that will lead them, and your client, to success. We all have an innate desire to help, to problem-solve, to make things better, to see that life plays out in a way that comfortably fits into our way of believing how the world should be.

Appreciate and respect where jurors start in this process, knowing little about the procedures of civil law or the issues of a case. The first day, the questions foremost on their minds likely include: “What am I supposed to do? “How am I supposed to do it? “How long will it take?”<sup>13</sup> They are more likely to wonder “Where is the bathroom?” than “Is the expert from Harvard or Yale more qualified to opine on the standard of care?” As the guide, you must acknowledge what you know to be their concerns (“How do I put a price on pain and suffering?”) and tell them, with confidence, “I will give you the tools to do that.”


**The Call to Action**

Be specific about the action you need the jurors to take. Many jurors sit through weeks of trial and hours of closing argument and jury instructions and do not know what, specifically, they are supposed to do. Spend time on the jury instructions and the verdict forms. Be their guide. Empower them.

For example, in the truck crash case from above, say: “The purpose of the civil justice system is to hold companies accountable when they expose the public to needless dangers. By answering the first question, ‘Was the defendant negligent?’ by writing in ‘Yes,’ you will balance the scales of justice that were unbalanced

when the trucking company ignored those red flags that night.”

**Avoid Failure and End in Success**

If you follow these steps, then your trial presentation should make the jurors feel that voting for your client avoids the failure of doing the wrong thing. Rather, it will give them the feeling of success that you have cultivated since you walked in the courthouse door. Jurors will engage with you when you present a compelling story that leads to their success. 

**Jeffrey D. Boyd** is a founder of Nelson Boyd and Boyd Trial Consulting in Seattle and can be reached at [boyd@nelsonboydlaw.com](mailto:boyd@nelsonboydlaw.com).

- NOTES**
1. Donald Miller, *Building a StoryBrand: Clarify Your Message So Customers Will Listen* (2017).
  2. *Id.*
  3. *Id.* at 54. “Customers want to know where you can take them. Unless you identify something they want, it is doubtful they will listen.”
  4. This analysis also fits when your “character” is a claims adjuster or defense lawyer, if the problem is defined as the need to settle the case.
  5. Miller, *supra* note 1, at ch. 10.
  6. This concept is also discussed in Carl Bettinger, *Twelve Heroes, One Voice: Guiding Jurors to Courageous Verdicts* (2011).
  7. David Ball, *David Ball on Damages* 3, ch. 1 (NITA 3d ed. 2011); David Bossart, Gregory Cusimano, Edward Lazarus & David Wenner, *Winning Case Preparation: Understanding Jury Bias* (AAJ Press/Trial Guides 2018); Mark Mandell, *Case Framing* (AAJ Press 2015).
  8. Miller, *supra* note 1, at 57.
  9. *Id.* at ch. 5.
  10. Bossart et al., *supra* note 7; Phillip H. Miller & Paul J. Sceptur, *Focus Groups: Hitting the Bull’s-Eye* (AAJ Press 2016).
  11. Miller, *supra* note 1, at 61.
  12. See Rick Friedman, *Polarizing the Case: Exposing and Defeating the Malingering Myth* (2007).
  13. I give full credit to Lisa Blue for identifying these as the key questions.