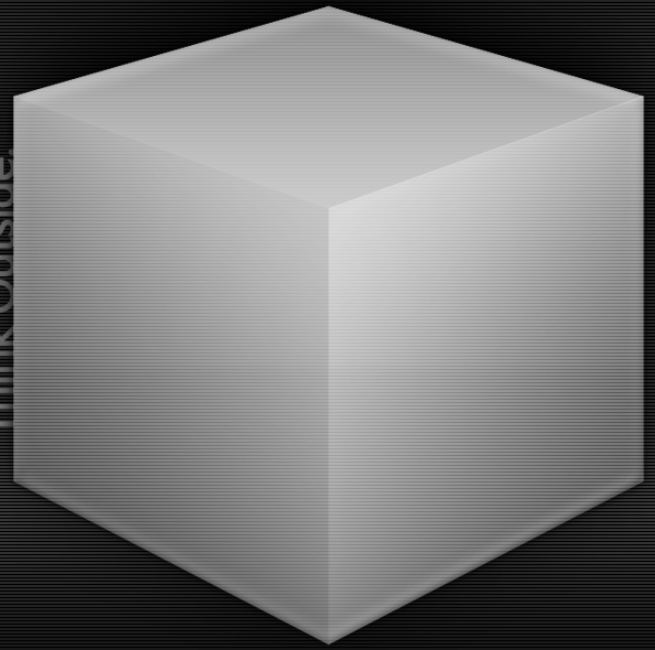


Storytelling at  
Sentencing

Think Outside.



**Sentencing Advocacy Workshop  
Administrative Office of the U.S. Courts  
Office of Defender Services Training Branch**

**STORYTELLING:  
PERSUADING THE COURT  
TO ACCEPT YOUR  
SENTENCING THEORY**

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## **What Does Telling a Story Have to Do With Our Sentencing Theory?**

Stories and storytelling are among the most common and popular features of all cultures. Humans have an innate ability to tell stories, and an innate desire to be told stories. For thousands of years, religions have attracted adherents and passed down principles not by academic analysis, but through stories, parables and tales. The fables of Aesop, the epics of Homer, and the plays of Shakespeare have survived for centuries and become part of popular culture because they tell extraordinarily good stories. The modern disciplines of anthropology, sociology, and Jungian psychology have all revealed that storytelling is one of the most fundamental traits of human beings.

Unfortunately, courts and law schools are among the few places where storytelling is rarely practiced or honored. For three (often excruciating) years, fledgling lawyers are trained to believe that legal analysis is the only key to becoming a good attorney. Upon graduation, law students often continue to believe that they can win cases simply by citing the appropriate legal principles, and talking about reasonable doubt and the elements of crimes. They often inflict this belief on the social workers and sentencing advocates they work with.

For public defenders, this approach is disastrous, because it assumes that judges and jurors are persuaded by the same principles as law students. Unfortunately, this is not true. When they deal with sentencing issues, lawyers spend a lot of time thinking about “deterrence,” “rehabilitation,” “retribution,” and “guidelines ranges.” While these are certainly relevant considerations, the sentence a judge imposes is usually based on more down-to-earth concerns:

1. “How bad was the crime?”
  2. “Will he do it again if and when he gets out?”
- and
3. “How much political heat will I take if I give the defendant a break?”

A good story that addresses these questions will go much further towards persuading a jury than will the best-intentioned presentation about the legalisms of sentencing.

## **What Should the Story Be About?**

A big mistake that many defenders make is to assume that the story of their sentencing must be the story of the crime. While the events of the crime must be a part of your story, they do not have to be the main focus.

In order to persuade the judge to accept your sentencing theory, your story must focus on one or more of the following:

Your client's life, and the things about it that make him worth of lesser punishment.

Your client's lower culpability in this case.

The injustice of the conviction, or any residual doubts about his guilt.

## **How to Tell a Persuasive Story**

### **I. Be aware that you are crafting a story with every action you take.**

Any time you speak to someone about your case, you are telling a story. You may be telling it to your family at the kitchen table, to a friend at a party, or to a jury at trial, but it is always a story. Our task is to figure out how to make the story of our client's life persuasive to the sentencing judge. The best way to do this is to be aware that you are telling a story, and make a conscious effort to make each element of your story as persuasive as possible. This requires you to approach the sentencing hearing as if you were an author writing a book, or a screenwriter creating a movie script. You should therefore begin to prepare your story by asking the following questions:

1. Who are the characters in this story, and what roles do they play?
2. Setting the scene -- Where does the most important part of the story take place?
3. In what sequence will I tell the events of this story?
4. From whose perspective will I tell the story?
5. What scenes must I include in order to make my story persuasive?
6. What emotions do I want the judge to feel when they are hearing my client's life story? What character portrayals, scene settings, sequence and perspective will help the judge feel that emotion?

If you go through the exercise of answering all of these questions, your client's story will automatically become far more persuasive than if you just began to tell the events of the crime.

### **II. Once you have crafted a persuasive story, look for ways to tell it persuasively.**

You will be telling your story to the judge through your pre-sentence report, and perhaps through witnesses, or even your own testimony. When you design these parts of the sentencing hearing, make sure that your tactics are tailored to the needs of your story.

A. The language you use to communicate your story is crucial to convincing the judge to accept the sentencing theory.

1. Do not use pretentious “legalese,” or “social worker-talk” You don’t want to sound like a television social worker, lawyer or cop.

2. Use graphic, colorful language.

3. Make sure your witnesses use clear, easy-to-follow and lively language.

4. If your witnesses are experts, make sure they testify in language that lay people can understand.

4. Use demonstrative evidence to make your point.

5. Include in your report, charts, pictures, maps, and other graphic evidence to help make things understandable.

B. Remember the old vaudeville joke: A tourist is lost on his way to a concert in New York City. He approaches a police officer and asks, “How do I get to Carnegie Hall?” The officer replies . .

“Practice, Practice, Practice”

Don’t just write your report and give it to the court. Before you file your report, have someone, preferably a non-social worker and non-lawyer read it. Pay attention to their feedback, and adjust your presentation until your story is communicated effectively.