Should You Argue *or Tell a Story?*

How We Find Meaning in the Law: Law & Literature Series, Part 5

BY MARK KITRICK AND MARK LEWIS

In our last Law-Lit article, we warned against the dangers of storytelling in the law. We reminded ourselves that, for all its efficacy and rhetorical benefits, storytelling is so cognitively facile and automatic that it often leads us away from truth. We can become easily bewitched by our narratives. We uncritically accept the truth or reality of well-told stories.

This can spur distrust and uncertainty in our legal system if we don't stay ethically attuned to our storytelling natures. We are, after all, storytelling animals who create narratives in our minds and for each other as automatically as we breathe air.

Being aware of our storytelling nature allows us to make important choices about how we use language. For example, we are many times torn between making an argument and telling a story. Which path should we choose? If we argue, we focus on logic, truth and coherence. We seek factual and rational precision above all else. We believe in the persuasive force of evidence-based reasoning. Objectivity and consistency are hallmarks of this lawyerly mindset.

If we tell a story, on the other hand, we aim at emotional connection, imagination and verisimilitude. The emotional valence of story engenders empathy and understanding. In story, we feel the conflict facing the characters and, in turn, we recognize their pain, joy and ambitions. We want the character to overcome their conflict, to change in a fundamental way that will improve them and the story world they inhabit. Recall that last good movie you viewed or story you read. Did you think through the rational implications of the character's actions and various plot points, or did your heart jump, your stomach churn, your eyes well up as you vicariously experienced the main character's passage through the story's arc?

Great stories inevitably create powerful cognitive effects. But we resist them as lawyers. We just want the facts and arguments, so we can examine them against the rules of reason and empiricism. Arguments are right or wrong, logical or illogical. But stories don't work that way. We don't test them in the same way. Instead, we connect emotionally to narrative, to the unfolding feelings of the characters, conflicts and themes. This is not to say that stories can't convey potent, revelatory truths. The best ones do reveal emotional truths. Yet that's not the only reason stories appeal to us. Stories, unlike arguments, also appeal to us because they create *meaning*. And meaning renders us human.

So, how do stories create this meaning? Where does meaning come from? In very large part, through language. We use *words* to tell a story. But this only pushes the question further back: how then do words make meaning? Here, again, we must further refine our question, the end of the regress: how do our *minds* make meaning?

Recent cognitive and linguistic research suggests that our minds make meaning through *embodied simulations*.

When we hear or read the words, those words trigger the part of our brains usually reserved for action and perception. Words create simulations in our minds using the same parts of the brain employed for directly interacting with the world, such as eating, grabbing, running, hugging and a multitude of other daily activities.

Meaning, then, is not simply a matter of definitions, as many of us word-loving lawyers want to believe. Rather, according to the embodiment theory, our brains construct meanings through the same mental networks that allow us to see, hear, feel and act in the world. We come to understand language by automatically and subconsciously *simulating in our minds what it would be like to experience* the things described.

This insight may not seem all that revelatory until we consider the implications. George Lakoff says it best in his introduction to *Louder Than Words—The New Science of How The Mind Makes Meaning*:

"Every thought we have or can have, every goal we set, every decision or judgment we make, every idea we communicate makes use of the same embodied system we use to perceive, act, and feel. None of it is abstract in any way. Not moral systems. Not political ideologies. Not mathematics or scientific theories. And not language."[i]

In other words, meaning is not about abstract definitions. It is about our real-world *experience*. And because meaning is about our experience – our specific actions and perceptions – it is intrinsically *personal* to each of us. Moreover, those personal meanings are changeable and constructed, and not stable and fixed.
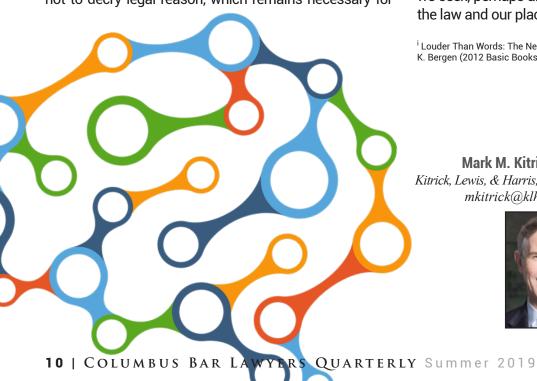
Which brings us full circle: should we argue or tell a story? What previously seemed a difficult choice between two alternatives has become less so. We should do both. We argue and tell stories, as we must, all the time. They

> " **Great stories inevitably create powerful cognitive effects. But we resist them as lawyers. We just want the facts and arguments, so we can examine them against the rules of reason and empiricism.**

are two sides to the same coin of making meaning. Even when we devote our language to definitions, logic-chopping and rationality, our brains will necessarily seek meaning by recreating mental simulations of lived experience in the world. We don't have to jettison the truth-value of logic and the persuasive force of evidence-based reasoning in favor of storytelling, or vice versa. Our minds will convert language into meaning the same way whether we tell a story or make an argument.

But the distinction between story and logic remains important for choosing how best to persuade our readers. If our brains convert language into simulated experience, as cognitive science now teaches, then storytelling seems more in tune with how we experience and understand life. In short, stories are more likely to capture the experience of living. Stories depend on characters acting in a story world to achieve their goals, overcome their obstacles and resolve their conflicts. Legal logic, on the other hand, more often depends on our attempt to apply abstract definitions to facts chosen for that purpose. Legal reason is about consistency and coherence, not experience.

This brings to mind Justice Holmes' famous dictum about law's dependence on experience, not logic. Holmes was making a different point, that law serves pragmatically useful ends as much, if not more, than logical ones. We can extend Holmes' point in light of modern cognitive and linguistic science. We now see how legal reasoning suffers from an inherent limitation tied to the very way in which our brains attempt to understand and make meaning in the world. This is not to decry legal reason, which remains necessary for

consistency and clarity in the law. But we should take note of its limitations for both persuasion and meaning. When combined with storytelling, legal reasoning becomes not only a vehicle for formal consistency but also a more recognizable source of *meaning* in law. And it is meaning we seek, perhaps above all else, as we try to understand the law and our place in the legal system.

[i] Louder Than Words: The New Science of How The Mind Makes Meaning, Benjamin K. Bergen (2012 Basic Books)

Mark M. Kitrick, Esq.
Kitrick, Lewis, & Harris, Co., LPA
mkitrick@klhlaw.com

Mark D. Lewis, Esq.
Kitrick, Lewis, & Harris, Co., LPA
mlewis@klhlaw.com