"Desperate for Love III": Rethinking Closing Arguments as Stories

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"DESPERATE FOR LOVE III": RETHINKING CLOSING ARGUMENTS AS STORIES

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There are two modes of cognitive functioning, two modes of thought, each providing distinctive ways of ordering experience, of constructing reality. The two [the analytical and the narrative] (though complementary) are irreducible to one another. Efforts to reduce one mode to the other or to ignore one at the expense of the other inevitably fail to capture the rich diversity of thought.

Each of the ways of knowing, moreover, has operating principles of its own and its own criteria of well-formedness. They differ radically in their procedures for verification. A good story and a well-formed argument are different natural kinds. . . . It has been claimed that the one is a refinement of or an abstraction from the other. But this must be either false or true only in the most unenlightening way.

They function differently, as already noted, and the structure of a well-formed logical argument differs radically from that of a well-wrought story.*

I. INTRODUCTION

In reviewing transcripts of closing arguments, I have found that many closing arguments adhere to a paradigm (a rule-element structure) somewhat akin to the pattern or paradigm of legal formalism as taught in traditional law classes. (That is, the elements of rules control and provide the structural framework for factual argumentation.) Yet the analysis of other closing arguments reveals other discrete structural patterns: "rhetorical" structures, mythic stories, historical annals or chronicles, and, especially, the complex patterns and story-structures of classical narratives.

This Article focuses primarily upon narrative story-structure and how students might better begin to rethink closing arguments as stories.1 Part I

** JEROME BRUNER, ACTUAL MINDS, POSSIBLE WORLDS 11 (1986).
1. The story model proposed by Nancy Pennington and Reid Hastie provides the leading theory about how jurors think through their decisions. See Nancy Pennington & Reid Hastie, A COGNITIVE THEORY OF JUROR DECISION MAKING: THE STORY MODEL, 13 CARDOZO L. REV. 

https://scholarcommons.sc.edu/sclr/vol50/iss3/13
shows how one experienced trial attorney artfully configured his legal argument into a powerful and persuasive story, connecting defenses through character, image, theme, and narrative. It provides a structural analysis of portions of this closing argument that suggests components of one possible narrative “paradigm” that might be helpful to law students attempting to construct effective narrative arguments in other cases. Part II describes the analytical infrastructure that undergirds one portion of the argument. It then presents a sequence of narrative steps that might be helpful to convert the inferential structure of the argument into narrative. Part II also illustrates this conversion with portions of the sample argument. The student can develop a persuasive narrative in other cases when this crucial and difficult relationship between an analytical (rule-element) structure and the narrative process is better understood.

Reexamination of this argument might better enable students to perceive the creative and imaginative possibilities inherent in trial advocacy and, specifically, in the formulation of closing arguments. Perhaps this exploration may assist clinicians teaching students about formulating narrative-based closing arguments in different cases. For, although it requires crossing some difficult terrain to move effectively and systematically from rule-element patterns of argumentation to story, this Article does not, as Jerome Bruner suggests, ultimately assert that the form of argumentation and the form of narrative are fundamentally “irreducible.” Indeed, there are deep interpenetrations between these modalities.

II. EXCERPTS FROM A NARRATIVE ARGUMENT

A. Background

Louie Failla, reputed soldier in the Connecticut faction of a New England crime family, was one of eight defendants charged with racketeering. One of the thirteen counts, illustrative of the lesser charges in the thirteen-count indictment against Failla, was that Failla had engaged in illegal gambling.

519, 520-21 (1991). Jurors create stories based upon the evidence presented at trial. *Id.* at 521. Jurors then match story components to verdict categories and base their verdict accordingly. *Id.* at 530. In addition to formulating a basic model for rethinking inferential arguments as stories, this Article attempts to provide one vivid illustration of how an experienced trial attorney anticipates Pennington and Hastie’s model in the presentation of his closing argument. That is, the attorney attempts to get jurors thinking his way by (a) constructing an effective story and (b) constructing an effective story that facilitates the crucial process of matching story components to verdict categories.

2. See Bruner, supra note **, at 11.


4. *Racketeering Act C-3*

From in and before April 1989 and continuing until on or about July 12, 1989, the exact
However, the most serious alleged racketeering act was that Failla conspired with two mob informants to murder Tito Morales, his grandson’s father. The dates unknown to the Grand Jury, in the District of Connecticut and elsewhere,

LOUIS R. FAILLA
FRANK A. PUGLIANO and
JOHN E. FARRELL,
defendants herein, together with John Castagna and Jack Johns, who are not charged as defendants herein, and others known and unknown to the Grand Jury, did unlawfully, willfully and knowingly conduct, finance, manage, supervise, direct and own all or part of an illegal gambling business, that is, a casino-style gambling operation being conducted from premises located at or near 153 West 36th Street, New York, New York, in violation of the laws of the State of New York, including New York Penal Code, Sections 225.10 and 225.20 which illegal gambling business involved five or more persons who conducted, financed, managed, supervised, directed and owned all or part of said business and which remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of $2,000 in a single day.

All in violation of Sections 1955 and 2 of Title 18, United States Code.


5.

Racketeering Act A-2

From in or about September 1989 through sometime in or after October 1989, in the District of Connecticut and elsewhere,

LOUIS R. FAILLA
defendant herein, together with John Castagna and Jack Johns, who are not charged as defendants herein, and others known and unknown to the Grand Jury, acting with intent that conduct constituting a crime be performed, namely, murder, in violation of Section 53a-54a of the Connecticut General Statutes, did agree together and with each other to engage in and cause the performance of such conduct to murder Luis “Tito” Morales.

Overt Act

In furtherance of the murder conspiracy and to effect the objects thereof, LOUIS R. FAILLA and his co-conspirators committed the following overt act, among others, in the District of Connecticut and elsewhere:

On a date between late September 1989 and October 1989, the exact date unknown to the Grand Jury, LOUIS R. FAILLA sought to meet with
Evidence against Failla seemed insurmountable. The two mob informants who testified against Failla had been granted immunity and had reasons for lying—to avoid prosecution for other charges and to receive lenient sentences. However, Failla’s words had been captured on tape. Failla’s Cadillac had been bugged and his self-incriminating conversations recorded. These tapes, in which Failla chronicled mob activities, formed the centerpiece of the Government’s case against Failla and his codefendants. In these tapes, Failla implicated himself in the murder conspiracy and bragged about his multiple roles in the other illegal racketeering enterprises.

Failla did not testify at trial. While Jeremiah Donovan, Failla’s attorney, had successfully impeached the credibility of the two mob informants on cross-examination, there was no evidence to rebut the incriminating testimony on the tapes. The prosecutor, in his closing argument, characterized the charges and then recited portions of the transcriptions of these tapes in a moralistic and deadpan harangue to support the elements of each of the offenses in the indictment.

Donovan’s closing argument on behalf of Failla took a different direction. The tapes and transcriptions introduced at trial became storytelling material. Donovan adjusted the sequences in the presentation of facts; no longer were facts disciplined by the structures provided by the elements of the charges. The charges against Failla became mere references, as if marking places in the narrative, to be filled in by the judge’s charge—merely pauses or marking places in the building momentum of narrative necessity. Likewise, the chronology and linearity of the events themselves were altered by narrative

Luis “Tito” Morales.
All in violation of Section 53a-48 of the Connecticut General Statutes.

Id. at 10.

7. Id.

“It’s the Mafia. It’s the mob. It’s La Cosa Nostra . . .”

For about five hours, [federal prosecutor Robert] Devlin led the jury back over the complicated racketeering case the government has built since the trial of eight reputed Patriarca family members and associates began in late April . . .

Devlin’s presentation Monday was much like the government’s case in general. He eschewed drama and let the mob implicate itself either through the testimony of informers or on the secret recordings.

Id.
necessity. Soon, a different “story” emerged, providing a defense to the murder conspiracy charge and the other racketeering charges in the indictment. The same incriminating tapes that had been played at trial and served as the centerpiece of the Government’s case against Failla and the other codefendants primarily provided the material for Donovan’s closing argument. Donovan’s closing argument was, as characterized by the terminology of Moore, Bergman, and Binder, an “argument[] based on undisputed evidence.” That is, Donovan drew primarily upon the same material as the prosecutor—recorded surveillance tapes introduced as evidence at trial. However, he needed to use this storytelling material in an alternative “plot” to the murder conspiracy detailed by the prosecution. Donovan imaginatively respliced these tapes and retrofitted the pieces into a newly redefined version of the story.  

The most serious charge against Failla alleged that he conspired and plotted the murder of Tito Morales, his daughter’s ex-boyfriend and the father of his grandson. Government surveillance recordings played at trial detailed Failla’s involvement and participation in this murder conspiracy. Failla spoke repeatedly of promising the Capo of the Connecticut faction of the Patriarca crime family (William Grasso) to carry out the execution. Further, Failla conspired with the two mob-informants (Jackie Johns and Sonny Castagna). This evidence was undisputed and the obvious inference from this evidence seemed compelling: Failla intended to kill Morales. Failla was a man condemned by his own words. The prosecutor’s closing argument identified the charges against Failla and recited or referred to crucial portions of the surveillance transcripts detailing Failla’s involvement in the conspiracy. Failla was exactly who he appeared to be in the tapes. His words revealed his intent to murder Morales. He was a sinister character who plotted


11. Louis Failla, clown and exaggerator, engaged in minor criminal activity. Although he was a “made” Mafia soldier, he was an outsider, not really a part of the mob, operating beyond the control and authority of the evil capo of the Connecticut branch of the Patriarca crime family, Billy “The Wild Guy” Grasso. Failla was shunned by the Patriarca crime family, and he struggled to make a living. His activities, although illegal under state law, were technically not violations of the federal RICO conspiracy statute, 18 U.S.C. §§ 1961-1968 (1988 & Supp. IV 1992), because they were not Patriarca family mob activities.

Donovan depicted Failla as a comic character. Failla’s taped conversations were stories-within-stories, not a literal version of the story. Like the stories Failla told, his self-image was exaggerated and distorted; filled with self-deception, lies, and false bravado. The story-within-the-story was a sad tale that demanded compassion. Meyer, Desperate for Love, supra note *, at 724.

12. Mahony, supra note 6, at D1.

13. Id.


15. Id. at 56.

with other members of the Patriarca crime family to execute Morales. Failla was a man who intended to do exactly what he said.

B. “The Hook”

A reporter described Donovan as he approached the jury to begin his closing argument. The persona or “character” of the defendant is embodied in the defeated persona of his attorney:

Louis Failla, a bewildered-looking Mafia soldier from East Hartford, has been at the heart of the federal racketeering trial of eight reputed members and associates of the Patriarca crime family.

Prosecutors hammered him while presenting their case, playing dozens of secretly made tape recordings on which Failla, in a voice evocative of Ed Norton on “The Honeymooners” television series, implicated nearly all his co-defendants in a variety of offenses.

Tuesday, it was the defense’s turn in U.S. District Court in Hartford. They took aim at him during closing arguments to the jury.

Failla, they said, rambles, is given to flights of fantasy, is prone to hyperbole and is disconnected from reality. He cannot be believed, they said, particularly . . . while ferrying . . . around in his Cadillac.

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Finally, it was time for Jeremiah Donovan, Failla’s attorney, to present his summation to the jury. Donovan wore a look of defeat as he approached the jury box, his head bowed, his voice exhausted. He allowed that he is not sure who has beaten up his client worse, the government or the defense. Then, he began the most spellbinding harangue delivered since the trial began in late April.17

Donovan does not begin his closing argument with the customary “Proem” or introduction characteristic of closing arguments.18 He does not thank the jurors, identify the legal elements of the charge,19 or otherwise signal to the jury

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17. Id.
19. Although Moore, Bergman, and Binder noted that an advocate has “considerable flexibility when deciding what to say in an introduction” to a closing argument, these are the suggested starting points to provide the frame for an argument. See MOORE ET AL., supra note 10, at 214-15.
that he has assumed a formal stance in relation to his material. He simply tells a story. He begins:

I have sat here this morning and listened to Louie Failla accused of being an exaggerator. If you recall, someone who indulges in wild speculation, in fantasy. I haven’t said a word yet, but now I want to come forward and plead guilty to those charges. Louie Failla, with all due respect to you, Louie, is an exaggerator. You heard it throughout the course of the trial in tape after tape after tape.20

Throughout his opening and in his argument, Donovan draws his analogies from popular gangster mythology and refers to exaggerated visualizations of cartoons. These analogies situate the story in a familiar, imagistic landscape, and also foreshadow storytelling techniques that Donovan will employ in the crucial third-act dramatic transformation of Louie Failla within a clearly marked three-act dramatic narrative structure:

[T]his is a case that lends itself to superlatives.
    . . . [T]his is the first case in which an induction ceremony has been played for a jury. This is a case involving the murder of what may be the nastiest man ever to walk the shores of Connecticut, and it is a case in which the charge in which the legal principals are probably as complicated as in any case that’s ever been brought in America.21

Donovan only briefly refers to the elements of the charges and the judge’s instructions to the jury. These references are intentionally playful and ironic.22 Donovan then admits that “Failla has committed some crimes.”23 But these crimes do not include the federal offenses under RICO. Donovan concludes: “[I]t’s in the charge and elements of the offense that our defense lies. I’ll get to that in a little while.”24

Donovan then tells a story within a story. This is a technique that Donovan will use at crucial places in his narrative to mark a shift in direction and to signal the beginning of a new section or “Act” in a carefully configured three-act dramatic narrative structure. Initially, the storytelling (use of anecdote and analogy) appears spontaneous. Donovan seems tired of the beating his client

21. Id. at 7-8.
22. See id. at 8. “The Judge’s charge will probably last for a whole day, and the Judge will be as hoarse by the time he’s finished than I was when I finished questioning Jack Johns [the mob informant who testified against Failla], who was happy that my voice had disappeared.” Id.
23. Id.
24. Id. at 9.
has been taking at trial, as exhausted as the jury is after the months of testimony. Both need the relief of a story. This story affirms the “theme” of his opening in a familiar pub story: “As I make this defense... I feel a little bit like the legendary O’Toole...”

Donovan assumes an Irish brogue. The voice breaks the tension, the audience relaxes:

[Y]ou all know, who—well, in a bar in Dublin in walked a fellow who was about as tall as Ted, the Judge’s clerk, broad as Jackie Johns [the mob informant who testified against Failla]. He had that glimmer in his eyes of craziness that I think you may have seen in Phil Leonetti. He walked into the bar and said, “Alright, where’s O’Toole?”

All the patrons from the bar kind of looked in their drinks. They didn’t want to be mistaken as O’Toole, except one little guy, seventy years old, five foot two, in the back, “I’m O’Toole. What is it to you?”

Well, the big guy picked up O’Toole, ran him down the length of the bar knocking off the glasses all the way and threw him through the plate glass window, walked outside, picked him up, threw him through another plate glass window and left him for dead. All the patrons looked at the poor old boy in the bloody mess on the floor. Guy looked up and said, “I sure pulled a fast one on that big fellow. I’m not O’Toole at all.”

Now I feel like O’Toole, because in tape after tape after tape Louie Failla says, “I am O’Toole. I’m the guy you’re looking for. I’m the new capo for Connecticut...” And I’m getting up and saying he’s not O’Toole at all. He’s not. He’s not guilty of the RICO offenses with which he’s charged.

Donovan’s opening provides the narrative “hook” to capture the imagination of the jury. It is the beginning of a shrewd and calculating, lawyer-like performance. Nevertheless, the “hook” differs from the “Proem” identified by Amsterdam and Hertz and from the more formalistic beginnings to closing arguments suggested by Moore, Bergman, and Binder in several important ways.

First, the narrative “hook” does not state the legal issues explicitly or focus on the legal elements of the offense. The beginning intimates, but does not reveal, the dramatic theme. Donovan’s “hook” establishes the sympathetic character and point of view—Failla’s—and identifies the dramatic situation:

25. Id.
26. Id. at 9-10.
27. See Amsterdam & Hertz, supra note 18, at 60.
28. See Moore et al., supra note 10, at 215.
the bumbling everyman, a low-level Mafioso struggling to make a living, trapped by the orders and commands from above.

Second, the hook raises the narrative expectation of the jury as to what is next and also signals a shift into the dramatic material of the first act. This is a technique that Donovan incorporates throughout his closing argument; he uses analogies in the form of anecdotes, stories within stories, and "stock" barroom stories of increasing complexity to reveal shifts in the character arc of Louie Failla and to pause briefly between the three acts or movements that are characteristic of narrative structures of drama and fiction. These are characteristic of effective lawyer storytelling in narrative closing arguments as well.

III. EXCERPTS FROM ACT I—THE SET-UP

After the opening hook, Donovan moves into the first act, or "set-up." At

29. John Gardner provides the following model of classical three-act narrative structure that anticipates the form of Donovan’s character-driven storytelling in the closing argument:

Let line \( a \) represent the "normal" course of action; that is, the course the character would take if he cared only for safety and stability and so did not assert his independent will, trying the difficult or impossible in the hope of effecting change. Let line \( b \) represent the course of action our character does take, struggling against odds and braving conflict. The descending arrows (1) represent forces (enemies, custom, or natural law) that work against the character’s will, and the ascending arrows (1) represent forces that support him in his enterprise. The peak of the ascending line \( b \) represents the novel’s climactic moment; and line \( c \) represents all that follows—that is, the denouement: \([i]t he conflict is now resolved, or in the process of resolving, either because the will of the central character has been overwhelmed or because he has won and his situation is once more stabilizing. A chart of the novel’s emotional development (our feeling of suspense, fascination, or anxiety as we read) is, then, Fichte’s curve.

this stage Donovan creates the dramatic situation and establishes the fundamental external conflict between Louie Failla and Billy “The Wild Guy” Grasso and the leadership of the Patriarca crime family. The set-up establishes the internal conflict within Louie Failla, the protagonist, as well. Louie Failla, Mafia outsider and small-time operator, struggles, often ineptly, to make a living. A tender-hearted man, filled with pretense and false bravado, his actions usually fall short of his words. He is deathly afraid of Billy Grasso, the capo of Connecticut. Shunned by the hierarchy of the mob, he engages in unauthorized criminal activities, specifically those included in the RICO indictment, fearul that his schemes (always exaggerated in the conversations of the surveillance tapes afterwards) would be discovered by Billy Grasso and the leadership of the Patriarca crime family.

Through the conflict between Failla and Grasso, Donovan contextualizes the dramatic tension as he establishes Failla’s defenses to the lesser RICO charges. Each of these racketeering acts is an inciting incident building the conflict towards the denoument of the third act. For example, the indictment includes the allegation that Failla ran an illegal gambling operation in New York for the Patriarca crime family. Donovan’s defense is simple: although Failla operated a gambling game in New York that was criminal under New York state law, Failla is not charged under New York law. Technically, the game is not a violation of RICO because it is not part of the Patriarca mob-controlled criminal enterprises alleged in the indictment. Failla is scamming the mob, and his activities are unrelated to the crime organization’s activities.

Donovan begins this part of the story:

First of all, let’s talk about chronology here. With respect to Louie Failla, this case begins in about February of 1989. What do we know about Louie Failla at that point? Well, he’s living in a . . . rented duplex out in East Hartford. Hasn’t been painted for eighteen years. . . . He is living essentially in poverty. . . .

Why is he living in poverty? A made member of the Patriarca crime family, how could he be living in poverty? Because something has happened, and William Grasso has essentially shunned Louie Failla. . . . They keep him out of all the activities. Grasso has done that. . . . [He] wouldn’t let Louie be involved in anything.

Donovan also speaks anecdotally, characterizing the antagonist, Billy Grasso, while selecting images and details from the surveillance tapes that he incorporates into his story. For example, Grasso, who is “one of the nastiest
men . . . who’s ever walked the shores of Connecticut,”\textsuperscript{33} orders one of his henchmen to assassinate an enemy and bury him with his hand up out of the ground “so [he could] kick it every day as [he] walk[ed] by.”\textsuperscript{34} It is through selective incident (action) and crucial detail that Donovan constructs character—without comment or intrusion to detract from the narrative momentum of the plot.

Louie Failla is petrified of Grasso. Donovan literally assumes the identity and voice of the protagonist:

\begin{quote}
I used to go home at nights worried that [Grasso would] say the next day, . . . “I got a fucking hole dug for you already. Go get my fucking money.” I was living in fucking fear. . . . I was afraid to take my wife in the car, the baby in the car. Couldn’t take my grandson anywhere. I looked in [Grasso’s] face, and I saw a fucking totally insane man. I saw a totally insane man.\textsuperscript{35}
\end{quote}

Next, Donovan admits the alleged fact that Failla operated a gambling operation in New York. Donovan slows down chronological time and reintroduces peripheral characters, again emphasizing characteristic details that bring them to life:

\begin{quote}
And he had his friend Jack Farrell. Jack Farrell is a master mechanic . . . in the sense that this guy had all the natural moves to be a card shark and a dice shark. Jack Farrell and this pretty girlfriend, Patty Auletta, defraud you just by being so quiet that you would never think that he had a shoe there where she could feel the next card coming up was a high one or low one.\textsuperscript{36}
\end{quote}

Donovan not only admits the existence of the criminal card game but revisits and embraces the details of the activities.

\begin{quote}
[I]t was a sting. . . . [T]hey tried to get these extremely rich, high rolling gamblers . . . real high rollers, guys with a lot of money to burn, to come up and play blackjack and to play dice, craps, and they would try to play. . . . The problem was that when Louie Failla got involved, it didn’t work very well.\textsuperscript{37}
\end{quote}

\begin{flushright}
\textsuperscript{33} Id. at 11. \\
\textsuperscript{34} Id. \\
\textsuperscript{35} Id. at 12. \\
\textsuperscript{36} Id. at 13. \\
\textsuperscript{37} Id. at 14.
\end{flushright}
Every time Failla shows up, scenes are transformed by his bumbling character into slapstick. Only at the end of completed sequences does Donovan briefly tie his story back into legal defenses. For example, at the end of the New York gaming sequence, Donovan depicts "a real cartoon-like picture of the statute" and admits that the game was "in violation of New York laws." However, Donovan argues that it is not in violation of RICO, the racketeering-influenced and corrupt organization statute:

Here's what I mean. You not only have to have a participant in a RICO organization commit a crime. It has to be a crime that furthers the enterprise.

... The crimes have to be related to the organization. They have to further the policies of the organization. They have to bring money into the organization. They have to be done with respect to the person's role in the organization.

The New York gambling game was outside of organization activities. "This New York gambling game put money in Louie Failla's pocket, put money in Jackie Farrell's pocket... money in various people's pockets, but it didn't put any money in Billy Grasso's pocket and didn't put any money in the pockets of the alleged Patriarca crime family."

In contrast to the comedic scenes is the counterpoint of Failla's fearfulness should Grasso discover the game: "'We're all fucking done as far as I'm concerned.'... [A]s far as Louie Failla went, boy, that would be an offense that would be a harsh one, harsh."

IV. EXCERPTS FROM ACT III—THE CLIMAX AND RESOLUTION

The second act provides the dramatic unfolding of the increasing conflict and confrontation between Grasso and the Patriarca family. This act also establishes Failla's defense to the other racketeering charges that are carried out beyond the scope of the Patriarca family activities.

In the third act, the story shifts to the plot to murder Tito Morales, the father of Failla's grandson. In this act, Failla is given his long-awaited opportunity to ingratiate himself with his mob family. The conflict peaks. This act provides the narrative resolution, or denouement, to the story. Dramatically, Louie Failla's character is transformed in this moment of crisis, and the plot is resolved at the climax. Legally, the third and final act provides Failla's defense
to the murder conspiracy charge, the most serious allegation against him.

Donovan marks the beginning of the third act with another anecdotal story (analogy)\(^{43}\) that signals the transition into the final episode of the story:

And this brings us finally to the murder of Tito Morales, and this, ladies and gentlemen, is the most serious crime that faces Mr. Failla. Before I start, I’ll get my breath back.

I’ll tell a story about Frankie Roosevelt, who was apparently an absolutely brilliant fellow at making different sides believe that he was leaning toward their position. There was a coal strike during the depression in West Virginia, and it had turned violent. The President decided that he would attempt to mediate the dispute in order to end the violence, and he got the workers back into compliance. It was a cause that Mrs. Roosevelt, Eleanor Roosevelt, was very much interested in, so what she decided she would do would be to hide behind a curtain and listen to the meetings that the President had.

So first the owners of the mine come in and they explain that, “Look, it’s the depression. We’re not getting much money for our coal. We admit the conditions are bad. We’re doing the best we can to improve them. The wages are low, but we can’t possibly pay more. We’ll go out of business. The violence in the strike is over.”

President Roosevelt listened and said, “You know, you’re absolutely right. You’re absolutely right.” They left.

John L. Lewis, the head of United Mine Workers, came in, and he said, “These workers are not making a living wage. Children are being used in the mines. The conditions are absolutely horrible. They’ve brought in strike breakers. The strike breakers are causing the violence.”

The President said, “You know, John, you’re absolutely right. You’re absolutely right.” He left.

Eleanor Roosevelt was enraged. She came out from behind the curtain. She said, “Franklin, you told the [mine owners] that they were absolutely right, and you told John L. Lewis that he was absolutely right. What are [you] doing?”

Roosevelt looked at her and said, “Eleanor, you’re absolutely right. You’re absolutely right.”

Louie Failla does this all the time. He doesn’t just exaggerate. He is a verbal chameleon. He adopts the coloration of whoever is with him. We see it all over.

\(^{43}\) See id. at 21.
When I said that, you were supposed to say "You’re absolutely right, Jeremiah. You’re absolutely right." In telling this story, Donovan acts the parts of the different characters. Several reporters described how Donovan appeared physically immersed in the performance and interacted with the jury and the multiple audiences in the courtroom (judge, defendants, gallery) throughout the closing argument. Edmund Mahony observed, “Donovan sometimes strode and other times tiptoed in front of the jurors. He shouted, then whispered and waved wildly with his arms. U.S. District Court Judge Alan H. Nevas hid his face to cover a smile and the audience guffawed out loud.”

After the story, Donovan continues to accuse Failla of being a “verbal chameleon.”

The most significant example of Louie’s being a verbal [chameleon] has to do with Tito Morales. With respect to Tito Morales I’m going to argue to you that except for Louie Failla, Tito Morales would be dead. I feel really odd trying to argue to you that he didn’t conspire to murder somebody when, in fact, in our view it’s Louie’s action, I should say, more precisely, his inaction, that has permitted Tito Morales to be alive and happy in prison, however happy he might be.

Then, Donovan briefly folds in the legal basis for his defense theory that Failla did not participate in the conspiracy to murder Morales. As with his abridged reference to RICO earlier in the argument, Donovan chooses not to lecture the jury about the law. Instead, he moves quickly from his anecdote to the law and merely invites their understanding to provide a legal frame for his storytelling in anticipation of the judge’s charge:

In order to determine whether Louie is guilty of a conspiracy to murder Tito Morales, you’re going to have to make a decision about whether the conspiracy existed and what Louie’s intent was. Now in a conspiracy it’s seldom true that one act taken by itself can be detected as tending to prove the unlawful agreement. What I mean by this, I mean there was an agreement. There was an agreement between Sonny Castagna and Jackie Johns. Sure, they wanted Tito Morales dead, but Louie did not.

44. Id. at 41-43.
45. Mahony, supra note 8, at A1.
46. Transcript, supra note 14, at 43.
47. Id. at 47.
48. Id. at 47-48.
Donovan then cuts back into the action, building the dramatic conflict of the third act towards the denouement: many months earlier the two mob enforcers, Sonny Castagna and his son Jackie Johns, are talking about killing Morales. “Why was it going on?” Donovan asks the jury. “What was the motive to kill Tito Morales?”

Donovan employs sequences of scenes to answer his rhetorical questions. First, a sequence of scenes displays the bad blood between Morales and the mob henchmen. In one scene Morales, a partner of Jackie Johns in the Hartford crime, is arrested. In another scene, conversation between Castagna and Johns shows their belief that Morales thinks they have turned him into the police. In another scene (again a reenactment of tape-recorded conversation), Johns and Castagna tell Failla that Morales can implicate them in another murder. Donovan does not present these action sequences in a strict linear chronology. Rather, he orders in a narrative sequence, a visualist montage, that builds momentum as well as develops the motivation of the mob enforcers to murder Morales. Donovan concludes this sequence of scenes with characteristic understatement before the cinematic jump cut to the final scene that caps off the sequence: “Tito Morales, who knows about what happened with the other kid, can get Sonny and Jackie into some pretty serious trouble.”

Donovan then depicts, from Castagna’s and Johns’s points of view, Tito Morales, “seen going into the federal building.” Immediately thereafter Donovan moves to the first scene in the next sequence. Here, “Johns and Castagna go to Billy Grasso with this problem that they have with Tito Morales, and Grasso gives the order to Failla that Morales

49. Id. at 49.
50. Id.
51. Billy Grasso ordered the murder of a young man who had the misfortune to get into a fight with him in the parking lot of a Hartford restaurant without realizing that he was the Capo of Connecticut.
52. Transcript, supra note 14, at 55.
53. Id. at 56. The listener understands from this image that Johns and Castagna interpret this action as meaning that Morales is going to “roll over” on them. Donovan underscores the image: “Tito [Morales] was seen going into the federal building, and very shortly thereafter, ... there’s a real rough call to Jackie Johns [from Sonny Castagna] ... to get over here fast.” Id.

Donovan then narrates to the jury, with the bitterly ironic tone that characterizes the shift from the comedic tonality of the first two acts to the serpentine quality of the final act, descriptions of the activities of the antagonists:

What are [Johns and Castagna] worried about? They’re worried Tito Morales is going to go in and spill the beans that these were the guys who murdered [the young man]. They’re scared that he’s going to go in and tell them all about Jackie Johns and Jackie Johns’s counterfeiting and drug activity. ... And besides, Jackie Johns doesn’t like [Morales] too much, anyway, because [Morales] put the moves on [Johns’s] girlfriend.

Id.
has to die.”54 Again, there is the characteristic irony in Donovan’s dark and understated comment upon this scene: “This is not an order that can be ignored lightly.”55

Donovan then cuts to the next scene. Failla and Jack Farrell in Failla’s Cadillac: “They’re reminiscing back to the days when Billy Grasso controlled everything.”56 Donovan reenacts the scene captured on tape when Failla tells Farrell about how he once made an excuse to Grasso, presumably stalling off Grasso’s demand that Failla execute Morales:

Failla says, “I didn’t do what he said. That’s why I walked away from the table once . . . [Grasso] came flying right back, ’You motherfucker.’”

“I said, ‘Look, you don’t see the eyes around. I’ve got people watching me. I know when to fucking move and [when] not to. You’re not supposed to tell me when to move.’”

“’You do what I tell you, you yellow motherfucker.’”

. . . . Grasso’s furious at him that he’s a yellow motherfucker. What he’s doing is he’s saying, “Eyes all around me. I can’t do it.” He is making an excuse.57

“But why did Louie Failla not carry out this order of Grasso?”58 Donovan asks the jury. “Because he and Morales were close.”59 Donovan’s answer to the jury is a sequence of car scenes between Failla and Morales that starkly contrast with the action sequences and scenes depicting interactions between Failla and Castagna and Johns. In another structured sequence of scenes, Donovan reenacts excerpts from the surveillance tapes as scripted dialogue to develop the father-son camaraderie between Failla and Morales. For example, while driving in Failla’s Cadillac, Failla tells Morales, “‘All right, you take care of yourself, kiddo. I love you. You know that, don’t you?’”60 And then

54. Id.
55. Id. Donovan illustrates:
   Remember when [Phil] Leonetti testified
   . . . . Do you remember why Spiritto died? Spiritto was a guy who declined—I think he just failed to follow an order to kill someone. He failed to follow that order. He had to die.
   Louie Failla is placed in that same position
   with what he thinks is a totally insane man.

   Id. at 57.
56. Id.
57. Id. at 57-58.
58. Id. at 59.
59. Id.
60. Id.
Donovan steps outside of the scene and observes, "I don’t know. It’s not often, I think, that grown men tell each other they love each other . . ."61 Quickly, Donovan reenters the next scene in the sequence:

The great one is, I think, on August 28th, and they’re talking about Jason [Morales’s son, Louie’s grandson]. [Donovan assumes Failla’s Ed Norton-like speech pattern] “You should see their fucking tape. They took him to Lake Compounce yesterday, and they made a videotape of him, and he gets up and he starts playing fucking good times, singing and dancing. That was [the] whole fucking thing. You should see this fucking tape. He should send it to Hollywood. That was, this kid did everything. He looked at the audience and people and give him a fucking scowl like this [Donovan imitates Failla’s scowl to the jury] with his face.” Morales laughed. “I got to show you.”62

Donovan frames the scenes and marks the end of this sequence:

There’s a tenderness between them. I said tenderness is too strong. There’s a mutual respect and affection between them. Louie has been placed in a terribly, terribly difficult position. His life is in danger if he does not carry out the order, and [Morales is] the father of his grandchild.63

This sequence leads towards the turning point and the climax:


. . . Tito Morales is alive and happy in prison because of Louie Failla . . . [who] disobeyed an order from Grasso at peril to his own life. “You yellow motherfucker.” Because of the affection that he had for Tito Morales.64

Finally, Donovan ties the story back into the legal issue of intent—what did Louie Failla intend to do; what did he mean to do? Donovan always works from the facts back to the law, rather than from the law to the facts. His advice

61. Id.
62. Id. at 60-61.
63. Id. at 61.
64. Id. at 61-62.
is always playful and ironic. Donovan instructs the jury that “to figure out [Failla’s] intent, you got to think what he was thinking . . . you got to see this.”

Donovan pulls down a larger-than-life cartoon line drawing of the face of Louie Failla. “There’s Louie,” Donovan speaks to the jury, with the “real” Louie Failla superimposed in the background behind the easel which is carefully positioned in relation to the jury. Donovan looks at the “real” Louie, and then the cartoon, and confides to the jury, “I tell you, [if] you got to convict a guy on look, Louie would spend the rest of his life in jail.” The jury and spectators chortle. Donovan continues: “Two things you got to do. What did Louie say, or what was Louie thinking when he said it.”

Donovan proceeds through each seemingly incriminating taped conversation. He speaks Failla’s words and then articulates the subtext of what he imagines Failla to be thinking in that same exaggerated voice. As he speaks the words on the tapes, he brings down a cartoon illustration of Louie Failla’s right-facing profile with a solid line bubble of Failla’s speech. He then brings down a left-facing cartoon profile with a disconnected cartoon bubble of thoughts emerging from Failla’s head. Donovan speaks the counter story of thoughts that emerge in the thought bubbles as Failla heroically stalls off the mobsters and saves Morales’s life. This story eclipses the prosecution’s “literal” story. The very words that suggest Failla’s complicity in the murder conspiracy now seemingly vindicate him of this charge.

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65. Id. at 64.
66. Id.
67. Id.
68. Id. at 64-65.
The cartoon bubbles, together with Donovan’s reenactments of Failla’s performance stalling off the mobsters, provide the dramatic climax to the carefully scripted, two-hour theatrical performance. At the end, Donovan displays a final cartoon of the two profiles of Louie Failla facing one another:

What did Louie do? Nothing. No evidence of going out and buying a gun. No evidence of a real plan that would bring Tito out at this time to this place. . . . No evidence of any of the kind of actions that one would expect that Louie should have been engaging in if he had really conspired to kill Tito Morales. He talked, and by talking he saved Tito Morales’s life. By making Johns and Castagna think that he was going along with the plan, he got Tito Morales that one more month he needed to get into prison. 69

Donovan refers only briefly to the legal implications of his story, leaving it largely to the judge’s charge. 70 Likewise, Donovan only briefly emphasizes the standard of reasonable doubt. 71 It is up to the jury to determine the ending to “Desperate for Love.”

V. CONVERTING INFERENTIAL STRUCTURE INTO A NARRATIVE

The goal for the aspiring advocate is to learn from Donovan’s narrative

69. Id. at 75-76.
70. Id. at 74-75.

You have a tougher job. In trying to determine intention, the person’s intention is necessarily very largely a matter of inference. No witness, you know, can be expected to come here and testify that he looked into another person’s mind and saw therein a certain purpose or intention. I tried to do it with cartoons. I can’t do it. No FBI agent or expert can come in and testify what Louie’s intention was.

Now how do we do it? One way in which a jury can determine what a person’s purpose and intention was at any given time is by determining what that person’s conduct was and what the circumstances were surrounding that conduct, and from these, from the conduct, to infer what his purpose or intention was. To draw such inferences is not only the privilege, but it’s the duty of the jury, provided, of course, the inference you draw is a reasonable one.

Id.

71. Id. at 76. “[W]e don’t send people to jail, we don’t take people away from their wives, their children, their grandchildren, unless we are persuaded that he has done what the Government said and persuaded beyond a reasonable doubt.” Id.
argument how to construct a persuasive narrative in a subsequent case. The first section of this Part suggests that it is helpful to the aspiring advocate to look first at the inferential structure of argumentation underlying the closing argument. Employing Moore, Bergman, and Binder’s terminology for argumentation, Part V.A presents the inferential structure of Donovan’s argument. That is, Moore, Bergman, and Binder’s text\(^\text{72}\) provides a model for understanding the inferential structure of Donovan’s closing argument in response to the prosecution’s case against Failla. Furthermore, Moore, Bergman, and Binder’s “paradigm” accurately anticipates and is consistent with Donovan’s choices and observations about the structure of his argument.

Part V.B identifies a sequence of steps\(^\text{73}\) that might suggest a methodology for moving from one modality, the logical structure of inferential argumentation, to the modality of telling a unified and coherent story in closing argument. This section illustrates these steps with portions of Donovan’s closing argument. This analysis may provide some guidance and direction for aspiring advocates creatively revising closing arguments, or portions of closing arguments, as narratives.

\[\text{A. The Inferential Structure Underlying the Sample Argument}\]

The progressive steps in Moore, Bergman, and Binder’s model for constructing argumentation provide an excellent tool for deconstructing the analytical infra-structure beneath Donovan’s storytelling. That is, this model provides a mechanism for understanding how Donovan might have anticipated and responded to the prosecutor’s case in a structure-bound way.

In Failla’s case the Crucial Factual Proposition\(^\text{74}\) that the prosecution needs...
to prove is simple: Failla intended to murder Morales. The other elements of the charge are not problematic, and are easily established. And so this is the crucial element.

The most probative item of undisputed evidence tending to prove the factual proposition is Failla’s promise to Grasso to kill Morales. The prosecution’s inferential argument connects this most probative item of evidence to the crucial factual proposition. This argument can be set out as follows:

Evidence: Failla promised Grasso that he would kill Morales.
Generalization: When a defendant promises another person that he will kill a third person, the defendant usually intends to kill the third person.

Especially when:
1. The defendant is a member of a “crime family.”
2. The defendant is “deathly afraid” of the person to whom he has made the promise.
3. The defendant knows that the person to whom he has made the promise has a compelling motive for wanting the third person dead.
4. The defendant conspires with other members of the “crime family” about how to accomplish the killing.

This argument, of course, relies upon the generalization about how people usually behave (those who promise to kill often do), and the additional

during a pretrial conference. In addition, you can often determine what propositions an adversary will vigorously contest by the thrust of pretrial discovery as well as by statements made by counsel during settlement or plea bargaining negotiations.

MOORE et al., supra note 10, at 15.

75. Another related step in this “paradigm” for argumentation is the preparation of an evidence list after identifying the crucial factual proposition:

[W]ith a crucial proposition and Evidence List in hand, select an item or two that you consider to be the most highly probative of the proposition. That is, choose the one or two items that you think a factfinder will see as most clearly establishing the proposition. These are the items with which you will begin to construct explicit arguments.

Id. at 20.

76. In Chapter 3 entitled Arguments Based on Undisputed Evidence, the authors describe the developmental process of constructing persuasive arguments. Id. at 23. First, a “linkage” between the evidence and the crucial factual proposition is established. Id. The argument is initially “embryonic” until the “basis for the inference connecting the evidence to the proposition” is established. Id. The argument is brought to “full term” by first “identifying the generalization connecting the evidence to the factual proposition.” Id. at 24. Second, one should “identify additional evidence suggesting that the generalization is especially likely to be true given the unique circumstances of a particular case.” Id. at 25.
propositions that make the generalization more likely to be true in this particular case. These additional propositions are the "especially whens." The "especially whens" must, of course, be supported by the evidence introduced at trial. Having seen the prosecution's strongest argument, the aspiring advocate can identify the defendant's responses by looking for "except whens" to refute the generalization underlying the argument. These "except whens" are additional propositions that make the generalization relied on by the prosecution less likely to be true. Of course, these "except whens" must also be supported by evidence admitted at trial. The "except whens" to the prosecution's argument would be something like the following:

**Except when:**

1. The defendant is not receiving much benefit from being a member of the crime family and does not actively participate in many of the family's day-to-day activities.
2. The defendant has a close personal relationship with the third person.
3. The defendant does not really mean what he says and is lying about his true intentions to buy time for the third person.
4. The defendant is prone to hyperbole and exaggeration about his criminal intentions.
5. The defendant has failed to carry out the execution even when he has been alone with the third person and has had an opportunity to do so.

In structuring his closing argument for Failla's defense, Donovan could have proceeded by simply identifying the "except whens" listed above, which provide the reasons why Failla did not intend to kill Morales. Donovan could have then marshaled the evidence from the trial tending to prove each of these "except whens." Instead, Donovan chose a different approach: he innovatively converted the "except whens" into compelling narrative.

77. In a thoughtful study and analysis of closing arguments in negligence cases, Neal Feigenson has used prototype theory and specifically identifies the judgmental heuristics that inform how these "generalizations" may be shaped and manipulated by skillful advocates. See Neal R. Feigenson, *The Rhetoric of Torts: How Advocates Help Jurors Think About Causation, Reasonableness, and Responsibility*, 47 Hastings L.J. 61, 92-126 (1995).


Think of the unique circumstances of a particular case as "especially whens." "Especially whens" are items of evidence and reasons indicating why a generalization is especially likely to be accurate in the case at hand. Thus, to strengthen an argument add "especially when" to a generalization and examine a file to identify additional evidence suggesting that your generalization is especially likely to be accurate in the case at hand.

79. *Id.* at 40-41.
B. The Steps to Convert Inferential Argument into Narrative

The following steps may assist aspiring advocates to think systematically about converting inferential argument into narrative. Using portions of Donovan's closing argument responsive to the murder conspiracy charge as an illustration, this section elaborates on the meaning of these steps which transformed an inferential argument on behalf of Louie Failla into a story. Although this section presents these steps in a sequential order that seems to fit the development of Donovan's argument, in practice the translation of inferential argument into a defendant's counter-story is marked by a non-linear, creative process that is not so rigidly ordered or explicit.

1. Step 1—Select and Develop the Theme

One of the important points I was trying to make with respect to the character of Louis Failla was he was a bragger who exaggerates. I had to make that point strongly enough to persuade the jury, because if they believed everything Louis Failla said on tape, they had to convict him on all counts. If he had been bragging, if he's desperate for love, then you can take a look at what was really happening rather than what Louis said was happening. To illustrate that point, I relied upon the classic Irish story of O'Toole. . . .

... That hook [at the beginning of the argument] is not meant for the jury, it is meant for me. In order to talk with the jury in the way I want, I have to sense that they like me and are listening to me. The hook is meant to get a nod or at least give me the sense that the jury is sitting back and saying this is going to be kind of fun. This is why I work so hard on the hook to the argument.80

a. Choosing the Theme (Based upon the Inferential Structure)

A crucial step in the process of revising closing arguments as narrative is developing the theme of the story. The theme is at the core of what the story is about and serves as the frame of reference that the jury should have in mind when listening to the closing argument. The theme then provides the narrative spine or through-line of the story, determines structure, and compels the translation of evidence into images and scenes. As John Gardner emphasizes about storytelling, however, the theme "is not imposed on the story but evoked from within it—initially an intuitive but finally an intellectual act on the part

of the [storyteller].” The aspiring advocate should be able to reduce the core concept or narrative theme of his argument to a single, clear statement that embodies and precisely explains what his story is about.

In Donovan’s defense of Failla, Donovan developed his story theme from the inferential structure of the argument. The theme translates the “except whens” that refute the prosecution’s argument into a unified concept. Crucial aspects of the story theme resonate strongly with the fourth “except-when”—that Failla is a bragger who exaggerates. Thus, to trigger his theme before his opening “hook” of the O’Toole story and to signal his theme to the jury, Donovan begins his closing argument dramatically with this admission:

I have sat here this morning and listened to Louie Failla accused of being an exaggerator. If you recall, someone who indulges in wild speculation, in fantasy. I haven’t said a word yet, but now I want to come forward and plead guilty to those charges. Louie Failla, with all due respect to you, Louie, is an exaggerator. You heard it throughout the course of the trial in tape after tape after tape.82

The second character trait that Donovan must emphasize and develop thematically is that Failla is a tender-hearted man and fond of other people, especially Morales. Failla desires and needs his families’ (his real family and his mob family) acceptance, recognition, and affection. He exaggerates and tells his stories out of this need because he is “Desperate for Love.”

In service of this theme, Donovan must create the “convincing and illuminating sequence of events,”83 with the “verisimilitude” characteristic of literary narrative. Simultaneously, he must “[mine deeper]” and “dig out the fundamental meaning of events by organizing the imitation of reality around some primary question or theme suggested by the character’s concern.”84

b. The Relationship Between Theme and Character

Because the legal issue is psychological and internal (whether Failla intended to murder Morales), the defendant’s theme turns on the character of the defendant. Consequently, the story theme is closely related to the attorney’s depiction of the defendant’s character, who becomes the protagonist85 of the

81. GARDNER, supra note 29, at 177.
82. Transcript, supra note 14, at 6.
83. GARDNER, supra note 29, at 176.
84. Id.
85. It may seem apparent that the defendant should always be portrayed as the protagonist in a defendant’s closing argument, the point-of-view should be that of the protagonist, and the genre of storytelling should be realism. Yet this may not always be so. For example, in the analysis of a transcript of a closing argument in another case turning on a similar crucial factual proposition (defendant’s intent to murder another person), Anthony Amsterdam
story. The story structure of Donovan’s argument on behalf of Failla, including the selection and placement of scenes developed from the evidence, emanates from the story theme.86

Choice of theme affects other aspects of storytelling in closing argument including the narrative structure87 and the selection of genre or type of storytelling. For example, Donovan tells Failla’s story from his point of view and employs psychological realism and a three-part, character-driven plot structure.

The prosecution’s closing argument against Failla illustrates a different theme, structure, and genre. The prosecutor does not define Failla’s character explicitly or subtly explain Failla’s psychology or intent. Instead, the prosecutor tells a morality tale about good and evil and about a single entity—a crime family of evil mobsters.88 The evidence, testimony from transcripts of

and Randy Hertz have argued persuasively about how an attorney chooses a different genre of storytelling—myth. In this argument, the defendant’s attorney chooses not to define the character of the defendant explicitly. Instead, the jury is transformed into the mythic heroic protagonist and sent out on a present-tense quest for justice in their deliberations. See Amsterdam & Hertz, supra note 18, at 66-70.

86. Albert J. Moore offered this advice for developing theme from character in appropriate cases:

Select the character trait or traits of the defendant (or protagonist, if other than the defendant), which will humanize your client and underlie the dramatic theme. The dramatic theme should serve as a schema or frame of reference you want the jury to have in mind as they listen to the scene descriptions and analogies. Therefore the theme will almost always be presented early in the closing argument, although it will typically be developed last because it is derived from and in light of your argument.

Letter from Albert J. Moore, supra note 73, at 2.

87. David Lodge observed, “THE STRUCTURE of a narrative is like the framework of girders that holds up a modern high-rise building: you can’t see it, but it determines the edifice’s shape and character.” DAVID LODGE, THE ART OF FICTION 216 (1992).

88. Appropriate to the genre, the prosecutor’s tonality is one of moral outrage; he deemphasizes the character of the individual defendants and characterizes the evil nature of their criminal activities instead:

And all of these activities, all of them, are laced one way or another with their undercurrent of violence that affects everything these guys do, and it spills out from time to time, and we saw that here, too. It spills out when they’re burying bodies in a garage. It spills out when people put guns to the back of people’s heads like they did with William Grasso. It spills out when people plot in cars to kill human beings like they did with respect to Tito Morales.

surveillance tapes, was presented in the form of an annals or chronicle\(^\text{89}\) in which the defendants are seldom portrayed as individuals but, rather, merely disembodied voices, carrying forth the demonic and purposeful energy of the mob. Strategically this is a purposeful decision: the prosecution’s goal is to convict the capos of the crime family under RICO, and not to focus upon the criminality of the individual soldiers, such as Failla. Consequently, Louie Failla must be perceived as an agent for or an actor carrying out the will and orders of the capos of the crime family (such as Failla carrying out the order that Tito Morales must die). As such, he is not a protagonist but a tool, and his psychological make-up is of only marginal interest.

In response to the prosecution’s argument, Donovan’s closing argument chooses a theme that emphasizes Louie Failla’s individuality (an outsider shunned by the mob) and character (a comedic storyteller, exaggerator, and fabulist—an essentially tender-hearted man misplaced in a cruel world). These serve as the basis for a counter-story, both stylistically and substantively, to the historical annals of the crime family presented by the prosecution. Donovan’s version of the story takes place on a more complex internal and psychological landscape than the prosecutor’s story. Thus, the selection of theme frames the narrative, compels the transformation of evidence into scenes, and structures the ordering of those scenes into story.

c. Initial Presentation and Development of Theme

Donovan sets forth the theme of his argument implicitly in the opening. The hook is a strategically placed analogy, a humorous and familiar Irish pub story. In this story, Donovan establishes Louie Failla’s character: like O’Toole in Donovan’s familiar pub story, Failla is prone to exaggeration, regardless of the consequences. This is the central trait of Failla’s character that he wants the jury to focus on throughout the argument because, as Donovan observes, if they do not, and they believe everything that Louie says on the tapes, they will have to convict him on all counts. The hook also establishes the playful and ironic tonality of the argument.

Louie’s character is not static, however. He has a scripted character arc or developmental through-line. Furthermore, Louie’s actions, rather than Donovan’s descriptions, allow the jury to determine who Louie is, and whether he intended Morales to die. At the end of the portion of the closing argument pertaining to the murder conspiracy charge, Failla’s character undergoes a subtle transformation or “reversal”: his storytelling and exaggeration become

\(^{89}\) See generally Hayden White, The Value of Narrativity in the Representation of Reality, in ON NARRATIVE 1, 6-7 (W. J. T. Mitchell ed. 1981) (discussing the annals or chronicle as a form of historical representation); Anthony G. Amsterdam, Excerpts from the Files of a Never-Published Article on Prigg v. Pennsylvania and Freeman v. Pitts as Narratives with an Invitation to a Campfire (Feb. 4, 1995) (unpublished manuscript, on file with author) (discussing the use of an annals or chronicle as a form of legal argumentation).
a heroic trait. The same conduct that the prosecution relies upon to convict Louie of criminality is now used by Donovan to illustrate how Failla risked his own life to save Morales. Donovan saves the turnaround for the end of the story. Louie’s transformation, done via visual cartoon bubbles, as Donovan walks the jury through a structured revisitation of the most damaging surveillance tapes, provides, as Moore has suggested, “the big upbeat finish” to “Desperate for Love.” Strategically, had Donovan asserted this aspect of Louie’s character rather than presenting the scenes and allowing them literally to “see for themselves,” he could have lost credibility with the jury.

This carefully structured reenactment allows the jury to perceive, from Louie’s point of view, his reasons for going along with the murder plot. And, as Louie’s thoughts are revealed, his complicity buys time for Morales and saves Morales’s life. Louie’s thoughts are inferences derived from speech, a visual and explicit subtext as Donovan literally reads Louie’s mind. In doing so, Donovan effectively testifies for Louie without having to ever put Louie on the stand subject to cross-examination.

d. Attorney as Character

Another aspect of character and theme pertains to the persona or character of the attorney within the present-tense story of the trial itself. Donovan’s

90. “Interestingly,” Albert Moore observed, [Donovan] could have foreshadowed that aspect of Failla’s character early on in the closing, but he chose to wait. Perhaps he thought that trait of character should be saved for the ‘big, up beat finish’ or because developing that character aspect at the outset, before describing the scenes that illustrate it, would have damaged his credibility with the jury.

Letter from Albert J. Moore, supra note 73, at 4.

91. Moore, Bergman, and Binder observed, in a chapter entitled Arguing Inferences (OK) vs. Arguing “Facts Outside the Record” (Not OK):

Perhaps the most sensible and widely agreed-upon rule of closing argument is that you must “confine your argument to the record.” . . .

However, the application of the “confine argument to the record” rule is not always obvious, because another rule states that you may “argue reasonable inferences from evidence in the record.” . . . And as is obvious from the earlier discussion of explicit arguments, you may refer to the generalizations upon which you ask a trier to make inferences, even though those generalizations are not a proper subject of testimony. Unfortunately, sometimes it’s difficult to distinguish between a proper inference and an improper reference to a fact not in evidence.

MOORE ET AL., supra note 10, at 240-41 (footnote omitted).
storytelling on behalf of Faillais a performance that mimics for the jury Faillais’s strategic storytelling on behalf of Morales. Donovan, like Louie, adopts the character of a comedic storyteller. It is as if Faillais’s story is also Donovan’s. Donovan is telling yet another story-within-a-story in his performance and depicting the implicit theme of the story: Donovan too, like Louie Faillais, is “Desperate for Love,” trying to win the jury through strategic storytelling and persuasion and redeem himself as he saves a life along the way.

2. Step 2—Developing Scenes and Plot from the Inferential Argument

I don’t necessarily tell the story chronologically, rather I tell portions of the story or simply a dramatic segment of the story in order to illustrate a point. What happens once I begin telling the story is that I can relax since I know it. I’ve just watched the movie, and spent the last two months trying this case. The little details that I need to make the story vivid, to make the story come alive, are those details I’ve struggled with for the last two months to get in through my witnesses or through cross-examination of the Government’s witnesses. Since these things are fresh in my mind I can relax during the course of retelling the story. I notice that juries tend to relax as well: they sit back and seem to enjoy the story that I’m retelling. After all, they’ve just seen the movie too.92

a. Converting Evidence into Images and Scenes

The next step is to select specifics from evidence and convert the crucial details into imagery (concrete descriptions of what happened). Thereafter, the advocate will develop the imagery into the scenes that will subsequently be ordered93 into the thematic plot. The task for the aspiring advocate is to think systematically about converting the evidence into imagery about moving from images to scenes, ultimately to be shaped along with the analogies into a clearly articulated plot structure that is legally responsive to the charges.94

92. Donovan, supra note 80, at 757.
93. There are numerous models, methodologies, and techniques for ordering scenes into plot. For example, John Gardner distinguished between a plot controlled by causal sequence and a story that develops argumentatively, leading “point by point to some conclusion. In this case events occur not to justify later events but to dramatize logical positions; thus event a does not cause event b but stands in some logical relationship to it.” Gardner, supra note 29, at 165.
94. Gardner’s observations about the craft of fiction writing and storytelling are applicable to constructing closing arguments. Gardner observed:

In all the major genres, vivid detail is the life blood . . . . Verisimilitude [and] suspension of disbelief through narrative voice . . . may be the outer
In Donovan’s closing argument, the “except when” provide the basis for converting evidence into scenes and constructing a thematic counter-story about Failla, responding through narrative to the prosecution’s argument that Failla intended to murder Morales.95 There are five “except-whens” that Donovan must address in his counter-story. These abstract logical propositions must be converted, via evidence, into images and scenes and then prioritized, ordered, and embedded in plot. Reviewing limited portions of the transcript described in Part I of this Article provides a few of the vivid scenes containing the evidence supporting these evidentiary propositions.96

b. Sequencing Scenes into Plot

1. “Except Whens” 1 and 4

After the opening thematic hook (the O’Toole stock story), Donovan moves into the narrative elements of the plot. He establishes the set-up to his later scenes and to Failla’s eventual defense to the murder conspiracy charge. He does this early on as he establishes Failla’s defenses to the lesser RICO charges. These scenes contain evidence and provide a narrative supporting “except whens” 1 (that Failla is not benefitting from Patriarca crime family activities and does not participate in the family’s day-to-day activities) and 4 (that Failla exaggerates about his criminal intentions). This evidence is crucial to Failla’s defense and to the other RICO charges as well. Donovan addresses these “except-whens” only once in his argument, in the aesthetically proper place, and does not revisit them as he builds momentum towards the third-act climax. Repetition would interfere with the force (profluence) of the plot.

For example, in the following illustrative section, Donovan converts his

strategy[,] . . . but in all major genres, the inner strategy is the same: [the listener] is regularly presented with proofs—in the form of closely observed details—that what is said to be happening is really happening.

Id. at 26.

95. According to the ethnographic survey by Bennett and Feldman, redefinition of the story elements in the prosecution’s case is one of three primary defense strategies. That is, the defense may “alter the interpretation of a story’s central action through challenge, redefinition, or reconstruction of the story itself.” W. LANCE BENNETT & MARTHA S. FELDMAN, RECONSTRUCTING REALITY IN THE COURTROOM: JUSTICE AND JUDGMENT IN AMERICAN CULTURE 98 (1981). The success of this strategy “depends on the defense’s ability to find a story element that is ambiguous enough to support another definition and, at the same time, central enough to the story to affect the meaning of the central action.” Id. at 102. In Bennett and Feldman’s model, Donovan attempts to provide a counter-story for Failla with an “internally consistent interpretation of the defendant’s motives.” Id. at 103.

96. This section briefly identifies some sequences of scenes containing evidence supporting Donovan’s inferential argument (the “except whens”). It then illustrates the structured creativity and storytelling intelligence Donovan employs by converting these evidentiary propositions into scenes and by then integrating scenes into plot.
argument that Failla has been shunned by the mob and is struggling to make a living by running a card game outside the control of the mob family.

2. An Illustration from the Argument

After the hook of the tension-relieving "O'Toole" stock story, Donovan sets the stage and begins:97 "[T]his case begins in about February of 1989. What do we know about Louie Failla at that point? Well, he's living in . . . a rented duplex out in East Hartford. Hasn't been painted for eighteen years . . . He is living essentially in poverty."98 The use of evidentiary detail—that the rented duplex hasn't been painted in eighteen years—sets the stage. The tension between this detail and Donovan's conclusion that Louie's condition is, consequently, one of poverty is intentionally ironic and establishes a particular stylistic tonality in Donovan's storytelling voice. This allows Louie to serve as the sympathetic and comedic object for Donovan's good humor and friendly abuse.99 Donovan employs other seemingly minor evidentiary details taken from the surveillance tapes to establish Billy Grasso's character in opposition to that of Louie.100

Donovan does not argue his conclusions, but lets the scenes speak. For example, Donovan establishes the conflict between the two men through dialogue101 in sequences of scenes as he revisits Failla's mob scams. Again, Donovan also employs carefully chosen details to make these peripheral characters come alive.102

97. "Except when" 4 is addressed in the opening hook—the O'Toole story that comes before the set-up—when Donovan uses the classic Irish pub story to depict Louis Failla as an O'Toole-like character, a bragger who exaggerates to gain attention, respect, and affection. Subsequently, in the set-up, additional excerpts of dialogue between Farrell and Failla emphasize Failla's tendency to exaggerate, as he comically exaggerates the amount of money he makes from his scams, his plans to take over the Connecticut faction of the Patriarca family, his friendship with leaders of the family, and even his adolescent sexual exploits.

98. Transcript, supra note 14, at 10.

99. The tone is comedic until the third act when the story turns to the dark plot to murder Morales.

100. Grasso is "the nastiest [man] . . . who's ever walked the shores of Connecticut[,]" a man who orders an enemy buried with his hand up out-of-the-ground, "so [he] can kick it every day as [he] walk[s] by." Transcript, supra note 14, at 11. Grasso, enraged, while walking through McDonald's, "picks up a kid's hat and throws it down." Id.

101. For example, instead of explaining that Failla is petrified of Grasso, Donovan literally assumes Failla's voice, and recites as internal monologue portions of the surveillance tapes: "I used to go home at night worried that he'd say the next day . . . 'I got a fucking hole dug for you already. Go get my fucking money.' . . . I looked in his face, and I saw a fucking totally insane man. I saw a totally insane man." Id. at 12.

102. For example, Failla runs his gambling game with Jack Farrell, "master mechanic" and "guy [who] had all the natural moves" and his "pretty girlfriend, Patty Auletta, [who would] defraud you just by being so quiet that you would never think he had a shoe there where she could feel the next card coming up was a high one or low one." Id. at 13.
3. "Except Whens" 2, 3, and 5

Approximately two-thirds of the way through a two-hour and forty-five minute closing argument, Donovan addresses the remaining “except whens” that pertain to Failla’s supposed involvement in the plot to murder Morales. Donovan in his narrative must establish that Failla has a close relationship with Morales (except when 2), that Failla does not mean what he says when he plots to kill Morales and is stalling for time (except when 3), and that Failla does not attempt to kill Morales, even when he has the opportunity to do so (except when 5). These “except whens” become the plot points of a counter-story that establish Failla’s defense to the murder conspiracy charge, the most serious charge against him. Donovan does not address these “except whens” sequentially by presenting evidence analytically in support of evidentiary propositions. Rather, he employs sequences of scenes as narrative propositions in a counter-story.

4. An Illustration from the Argument

Once again Donovan uses a stock story, or “analogy,” to mark the beginning of this final act and signal his transition to the jury. He then provides a brief reference to the murder conspiracy charge and marks, idiomatically, the crucial and problematic element of this charge pertaining to Louie Failla’s intent. Then, he proceeds with his story.

The first sequence of scenes address why Grasso and his henchmen want Tito Morales dead, and that these three extremely violent men have profound reasons to want Morales murdered while Failla has none. These scenes together supply visual evidence supporting except when 3 (Failla is stalling because he needs to buy time for Morales because otherwise Grasso will have Morales murdered by someone else).

In the next sequence of scenes, Farrell and Failla are “reminiscing back to the days when Billy Grasso controlled everything.” Although these more recent excerpts from the tapes come after Grasso has been assassinated, they fit dramatically and provide additional evidence to support except when 3: that

103. One of the reasons, perhaps, why Donovan relied upon a structure of a narrative form, rather than a more traditional model of argumentation, was the length and complexity of this closing argument. Disciplined and purposeful story structure better ordered the presentation of material and, perhaps, better maintained the attention of the jury. Donovan observed: “The Failla argument was tough. Most final arguments last thirty to forty-five minutes. The Failla argument was two and one-half hours. It is difficult to stand up and talk in front of people for that long while keeping their attention.” See Donovan, supra note 80, at 759.

104. “In order to determine whether Louie is guilty of a conspiracy to murder Tito Morales, you’re going to have to make a decision about whether the conspiracy existed and what Louie’s intent was. . . . There was an agreement between Sonny Castagna and Jackie Johns. Sure, they wanted Tito Morales dead, but Louie did not.” Transcript, supra note 14, at 47-48.

105. Id. at 57.
Failla by stalling is buying time for Morales and, perhaps, also for himself.

Again, Donovan does not merely refer to the evidence of the tapes or read from the transcript. He speaks the dialogue in a memorized, dramatic recitation. Throughout the storytelling, Donovan uses no notes.\(^{106}\) He speaks exclusively from memory, as if he is finding the structure and scenes of his story as he is speaking it. The structure and memorization of lines is obviously the product of choice—meticulous preparation and calculation—even though the informality and the comedic tonality might suggest otherwise. This is not only true of the macro, three-part narrative structure,\(^{107}\) but also of the internal structure of each scene and sequence of the story. Only after scenes or sequences of scenes does Donovan briefly provide explicit meaning.\(^{108}\)

Donovan consistently works from the facts. The story-line, made from concrete and specific detail, and the dialogue are at the core of the presentation. Donovan is careful to avoid intruding upon the story to impose legal meaning prematurely. He only briefly signals that he is addressing a proposition (an "except when") as a counter-factual to the "especially when" in the prosecution’s argument. For example, as he moves on to the next sequence, he signals this shift: "But why did Louie Failla not carry out this order of

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106. Donovan observed:
My arguments all come in three parts because I always do them without notes. . . . The problem is, if you are not talking from notes it is hard to keep the structure of the argument in your mind. But if they always have three parts, you will always know where you are.

Donovan, supra note 80, at 756-57.

107. Donovan purposefully employs a three-part narrative structure. See id. at 757.

108. For example, Donovan reconstructs Failla’s reenactment of a conversation with Billy Grasso as he talks to Jack Farrell:

Failla says, "I didn’t do what he said. That’s why I walked away from the table once . . . . “He came flying back, ‘You motherfucker.’"

“I said, ‘Look, you don’t see the eyes all around. I’ve got people watching me. I know when to fucking move and [when] not to. You’re not supposed to tell me when to move.’”

“‘You do what I tell you, you yellow motherfucker.’"

... Grasso’s furious at him that he’s a yellow motherfucker. What he’s doing is he’s saying, “Eyes all around me. I can’t do it.” He is making an excuse.

Note that it is only after the facts that Donovan provides explicit interpretation, almost an aside, a slight authorial intrusion before quickly moving on. Transcript, supra note 14, at 57-58 (emphasis added).
Grasso?"109 He answers: "Because he and Morales were close."110 This provides sufficient transition to the next sequence of scenes that provides the evidence to support except when 2 (establishing the closeness of the relationship between Morales and Failla and, perhaps, also implicating except when 5—that Failla will not kill Morales even when he has an opportunity to do so).

Donovan positions these scenes in a narrative structure after the scenes in which Grasso had given the order that Morales must die. This sequence departs from chronology because the meetings between Morales and Failla took place before the order came from Grasso that Morales must die. This sequence, however, does not seem digressive, and Donovan’s use of narrative structure to control the ordering of these scenes is shrewd. Donovan makes no misrepresentations to the jury about the time sequence. But the placement of these scenes of the two men expressing their affection to one another through reconstructed and dramatically rendered dialogue become extremely poignant when the previous scenes make it appear as if Morales’s life was already at stake. It is almost as if, following the “action sequences" between Grasso and Failla, and among Johns, Castagna, Grasso, and Morales in which the murder plot takes shape, that Failla is making a choice not to take action against Morales.

Finally, Donovan signals the shift to his final sequence by stepping outside the narrative. “So what does Louie do? Louie does nothing... because of the affection that he had for Tito Morales."111 This sets up the next sequence of a carefully structured dialogue that counters the literal text of the most damaging tapes against Failla. This sequence argues the counter-factual except when 5 (that Failla did not attempt to kill Morales even when he had opportunities to do so). Donovan begins: "to figure out [Failla’s] intent, you got to think what he was thinking... you got to see this."112 Then, using the visual device of an extended series of cartoons, Donovan reconstructs Failla’s thought processes with cartoon bubbles. Like his use of narrative structure, and his use of detail, image, and scene, this artifice has purposefulness and legal significance, differentiating between “what did Louie say"113 and “what was Louie thinking when he said it."114 This sequence provides the evidence to support Donovan’s except when 5 (Failla says incriminating things, but does nothing).

Dramatically, this climax may be one of Donovan’s riskiest moves in a performance filled with strategic and calculated storytelling. In the cartoons, Donovan departs from the text of the trial testimony when he creates an imaginative reconstruction of Failla’s interior monologue. Effectively, he

109. Id. at 59.
110. Id.
111. Id. at 61-62.
112. Id. at 64.
113. Id. at 64-65.
114. Id. at 65.
testifies on behalf of Louie Failla.

Donovan does not revisit the other two crucial except whens (1 and 4) because he has already covered these argumentative points during the set-up to his story when responding to the lesser charges in the RICO conspiracy. Likewise, Donovan chooses not to dilute this ending with non-dramatic legalistic material and has the narrative confidence not to belabor explaining the legal meaning of his story. He uses a brief reference to put a favorable spin on the most problematic element, pertaining to Louie's intent. He also employs a legal set piece emphasizing the defendant’s perspective on the standard of reasonable doubt. But these are, at best, cursory references. The defense is in the story. And the story structure and laws of narrative have already brought Donovan’s storytelling to an end.

3. **Step 3—Identify Analogies**

As I complete each section in my three part structure I always tell an anecdote which has nothing to do with the case itself, but which illustrates some important contention that I’m making. . . .

... One of the most difficult things for me in preparing a final argument is to choose good stories that illustrate the points I am making.

One of the other things the stories do is give me an opportunity to relax in the middle of the argument. As I’ve told these stories many, many times before, it is comforting to find these old friends in the midst of a speech which I have never given before and will never give again, barring, of course, a reversal on appeal.

a. **The Use of Analogies—Generally**

The legal storyteller in closing argument is not constrained, exclusively, by his evidentiary material and may digress to develop analogies supporting the evidentiary propositions in his argument. Analogies can draw upon a repertoire of external stock stories, anecdotes, or personal experiences that help fully articulate the story’s theme. Alternatively, analogies may cohere the meaning of sequences of scenes or acts within the narrative structure of the closing argument.

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115. Donovan leaves explanation of the elements of the complex offenses largely to the judge’s charge.
116. Transcript, supra note 14, at 74-75.
117. Id. at 76.
118. Donovan, supra note 80, at 757-59.
The latitude for structured creativity and use of narratives beyond the events of the story and evidence at trial is considerable and apparent in the work of experienced trial attorneys.

b. An Illustration—The “Roosevelt” Story

At the start of the third act, marking a transition point in his argument, Donovan again relaxes by telling a familiar story, the Roosevelt story. Although the story appears to digress, it does not. It has a strong narrative purpose, marking the transition in Failla’s character arc, the reversal. But the analogy also has clear structural purpose within a more traditional model of advocacy. Specifically, the Roosevelt story supports the generalization that all of us, including Louie Failla, often say things that are inconsistent with our true beliefs, wishes, and intentions. The story further emphasizes that we all do this whenever the situation dictates and serves our purposes. Furthermore, if Roosevelt can do this, then certainly Louie Failla, everyman and low level mobster, can fall victim to the same impulses.119 The Roosevelt stock story undergirds Donovan’s argument and serves to reformulate the evidence in a way that counters the generalization central to the prosecution’s argument: that when the defendant, a “made” crime family member, promises another person, the capo of the family, that he will murder another person, he will carry out that promise for numerous reasons. Interestingly, the prosecution’s generalization, like the defendant’s, rests upon implicit stock stories, popular notions about crime families, and stereotypes about such families. Donovan’s Roosevelt story draws shrewdly upon folk wisdom, psychological heuristics or effects, and metaphor to bolster Failla’s counter-story.

c. The Power of Stock Stories

Recent lawyering theory suggests the reasons for, and amplifies the power and importance of, stock stories, a particular form of analogy. Stock stories give shape to folk wisdom, embody metaphoric reason, and purposefully direct judgment in the law. Stories-within-stories provide a powerful mechanism for framing meaning within a narrative framework. Carefully selected anecdotes articulate and foreshadow the meaning of the larger story. Stock stories anchor jurors’ perceptions in shared referents that have the power to transform judgment.

In many ways these nested stories are analogous to commercial interlineations of popular television programs. The storyline is structured to turn up at the end of a planned sequence into the commercial interlineation with

119. Albert Moore observed, “This generalization[] describes exactly what [Donovan] contends Failla did and he makes the generalization vivid and unassailable with the Roosevelt story (if Roosevelt did it, it can’t be wrong).” Letter from Albert J. Moore, supra note 73, at 3.
a heightened sense of narrative urgency and expectation. The commercial
operates in tandem with the story to anchor a recurring and purposeful
subliminal message to sell a product associated with the pleasurable relief
provided by the commercial from the drama. In Donovan’s commercials, the
recurring message he sells pertains to the nature of Louie Failla’s character and
identity. Each story, although seemingly different, affirms this message in a
purposeful yet humorous way, undercutting the respective parts of the
prosecution’s generalization.

There has been recent literature explaining how anecdotes work and why
storytelling at trial, especially the use of the stock story, is a powerful tool of
persuasion. The collective folk wisdom that guides cultural judgment is
expressed in stock stories. 120 Narrative patternings of stock stories create the
knowledge structures and judgmental heuristics upon which juror judgments
are formulated. 121 The work of lawyering theorists and ethnographers affirms
the role of storytelling in courtroom persuasion. 122

Donovan chooses a selection of stock Irish pub stories and comedic
folktales from popular culture for this closing argument. But it is readily
possible to imagine alternative types of analogies that would be appropriate in
different arguments. Likewise, there are multiple alternative techniques and
methodologies that an attorney might rely upon to move outside of the images
and scenes of the narrative. The Roosevelt story represents one use of creative
analogy well suited to the structure and purposes of this particular argument.

VI. CONCLUSION

This Article explores the structured shrewdness of an attorney who shifts
purposefully from an analytical paradigm into a narrative modality as he
delivers a closing argument. Hopefully, this analysis suggests that the
relationship between analytical argumentation and narrative is not

120. See, e.g., JEROME BRUNER, ACTS OF MEANING 56 (1990) (noting that the “typical
form of framing experience (and our memory of it) is in narrative form . . . [and] that what does
not get structured narratively suffers loss in memory”); see also BRUNER, supra note **, at 11-43
(1986) (observing the power of the narrative mode, discrete from analytic or “paradigmatic”
mode).

121. See Feigenson, supra note 77, at 71, for an important exploration of how recent
psychological research provides the basis for an informed commentary and critique of closing
arguments in tort cases.

122. For example, after an extensive study of criminal trials, Bennett and Feldman
observed, “Our search for the underlying basis of justice and judgment in American criminal
trials has produced an interesting conclusion: the criminal trial is organized around storytelling.”
BENNETT & FELDMAN, supra note 95, at 3. This conclusion affirms work such as Pennington and
Hastie’s proposed story model. See Pennington & Hastie, supra note 1, at 520-33; also see
Richard K. Sherwin, Lawyering Theory: An Overview: What We Talk About When We Talk
About Law, 37 N.Y.L. SCH. L. REV. 9 (1992), for an excellent overview of the narrative core of
recent lawyering theory.
“irreducible,” as Jerome Bruner asserts, and that narrative may be a valuable tool of argumentation to a jury in closing argument. And perhaps this preliminary analysis also suggests that there is still much work to be done to explain the clinician’s admonition to the student to “tell a good story” in closing argument: the process of persuasion via narrative is not merely an intuitive or inspirational process—or even a product of an experienced trial attorney’s storytelling instincts.

A second purpose of this Article is to provide some suggestions for aspiring advocates about how to use narrative in argumentation. No intention to wed students to some abstract narrative formula exists. Instead, this exploration illustrates the potential for structured creativity and the use of narrative in closing argument. This might, in turn, suggest possibilities for students and clinicians attempting to use narratives in closing arguments in other cases.

123. See Bruner, supra note **, at 11.