

Righteous Advocates or Unscrupulous Opportunists? The Opposing Narratives About Lawyers in the *Maracich v. Spears* Briefs

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TABLE OF CONTENTS

INTRODUCTION	668
I. ETHICAL OBLIGATIONS OF LAWYERS AS BUSINESS OWNERS AND AS ADVOCATES.	670
II. THE BACKGROUND OF <i>MARACICH V. SPEARS</i>	671
A. EXCERPTS FROM THE <i>MARACICH</i> BRIEFS: INTRODUCTIONS, STATEMENTS OF THE FACTS, AND STATUTORY INTERPRETATION ARGUMENTS.	673
III. THE NARRATIVE AND CLUSTER METHODS OF RHETORICAL CRITICISM	673
IV. ANALYSIS.	675
A. OBJECTIVE OF THE BRIEFS' NARRATIVE	675
B. BRIEFS' NARRATIVE FORMAL ANALYSIS.	677
1. CHARACTERS	677
2. SETTING	679
3. PLOT.	681
4. THEME	684
C. BRIEFS' NARRATIVE FUNCTIONAL ANALYSIS	685
D. BRIEFS' ETHICAL CONSIDERATIONS	686
V. CONCLUSION	687

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INTRODUCTION

In 2007, a car dealership's director of sales and marketing received a letter stating that if he had been charged unlawful fees when purchasing a car, he could join ongoing litigation against several South Carolina car dealerships, including his own.¹ Edward Maracich—along with 34,000 other South Carolina residents—received this communication labeled “ADVERTISING MATERIAL”² from state-licensed trial lawyers.³ The lawyers had been seeking to determine whether the recipients had been charged illegal fees when purchasing a car and directed them to return an enclosed reply card if they wished to participate in the litigation.⁴ They had obtained the information of the potential plaintiffs from the South Carolina DMV by submitting several Freedom of Information Act (“FOIA”) requests to identify people who had purchased a vehicle from a South Carolina dealership within specified time periods.⁵ A federal statute enacted in 1994, the Drivers' Privacy Protection Act (“DPPA”), prohibits obtaining personal information from motor vehicle records without the person's express consent.⁶ However, the lawyers explained in their FOIA requests that the pursuit of the personal information fell under the “litigation exception” of section (b)(4) of the DPPA, which permits use of personal information “for use in connection with . . . [and] . . . in anticipation of litigation.”⁷

After learning that the lawyers had contacted more than 34,000 people, Maracich and other South Carolina residents filed a class-action lawsuit in the U.S. District Court for the District of South Carolina alleging that the trial lawyers had violated the DPPA by obtaining personal information from motor vehicle records without the express consent of the class members.⁸ The trial lawyers won in both the District and Circuit Courts.⁹ The case made its way to the Supreme Court, where the trial lawyers argued that the communication was lawful—because it fell under the litigation exception of section (b)(4) of the DPPA—and the South Carolina residents argued that it was impermissible lawyer solicitation—not covered by the litigation

1. *Maracich v. Spears*, 570 U.S. 48, 55 (2013).

2. According to South Carolina Rule of Professional Conduct 7.3, when soliciting clients for business, attorneys need to include the wording “ADVERTISING MATERIAL” in prominent type. *See* S.C. App. Ct. R. 7.3(d)(1); *see also* MODEL RULES OF PRO. CONDUCT r. 7.3 (AM. BAR ASS'N 2021).

3. *Maracich*, 570 U.S. at 55.

4. *Id.*

5. *Id.* at 53.

6. Drivers' Privacy Protection Act of 1994, 18 U.S.C.A. § 2721.

7. *See Maracich*, 570 U.S. at 53 (citing 18 U.S.C.A. § 2721(b)(4)).

8. *Maracich*, 570 U.S. at 56; *see also* 18 U.S.C.A. § 2724 (creating a civil cause of action in federal court for persons whose information was obtained allegedly in violation of the DPPA).

9. *See Maracich v. Spears*, No. 09-1651, 2010 WL 358128 at *1 (D.S.C. Jan. 25, 2010) (granting the Defendants' motion to stay because the lawyers' conduct was not solicitation); *see also Maracich v. Spears*, 675 F.3d 281, 294, 300 (4th Cir. 2012) (affirming the District Court's judgment but clarifying that, although the conduct was solicitation, the solicitation was “inextricably intertwined” with the permissible use “in anticipation of litigation”).

exception.¹⁰ The Supreme Court sided with the residents, holding that the DPPA's protections do *not* encompass the use of personal information for solicitation of legal clients.¹¹

Lawyer solicitation has long been considered questionable, even “concern[ing].”¹² Advocates arguing in favor of or against lawyer solicitation—as with any other legal issue—face the challenge of crafting stories that both serve their client and adhere to factual accuracy. These persuasive stories, however, can sometimes stretch the truth to a point that risks violating ethical rules, walking a fine line between the obligations requiring candor to the tribunal¹³ and diligent and zealous client representation.¹⁴ The case of *Maracich v. Spears* provides a valuable lens through which to examine these ethical tensions. By analyzing the parties' briefs in this case—focusing on their introductions, factual statements, and statutory arguments—this Note explores how lawyers navigate the fine line between persuasive storytelling and the duty of honesty to the court.

This Note uses the narrative and cluster methods of rhetorical analysis to emphasize how the parties' briefs before the Supreme Court in this case create dueling “client-centered narratives”¹⁵ about the role of lawyers and the practice of client solicitation, potentially raising ethical issues by blurring the lines between zealous advocacy and candor to the tribunal.

Part I discusses the ethical obligations of lawyers to the court, their clients, and the profession and it questions whether the parties in *Maracich* violated those duties in creating their client-centered narratives. Part II explains the artifacts¹⁶ background, including the circumstances that gave rise to the *Maracich* litigation. Part III briefly summarizes the rhetorical methods used in this analysis. These are the narrative method—which aims to identify the objective, characters, plots, settings, themes, and functions of the narratives—and the cluster method—which looks at the key terms and analyzes how the clusters around them shape a particular picture in the reader's mind.

10. See Brief for Petitioners at 1, *Maracich v. Spears*, 570 U.S. 48 (2013) (No. 12-25) [hereinafter Petitioners' Brief]; see also Brief for Respondents at 1, *Maracich v. Spears*, 570 U.S. 48 (2013) (No. 12-25) [hereinafter Respondents' Brief].

11. *Maracich*, 570 U.S. at 78.

12. See, e.g., Lucian T. Pera, AVOIDING PROHIBITED LAWYER SOLICITATION, 49 *Law Prac.* 18 (2023) (recalling a conversation with a law partner stating that “no single thing had contributed more to the decline of the legal profession than advertising”); see also Ashely M. London, SOMETHING WICKED THIS WAY THUMBS: PERSONAL CONTACT CONCERNS OF TEXT-BASED ATTORNEY MARKETING, 58 *Hous. L. Rev.* 99 (Fall 2020).

13. See MODEL RULES OF PRO. CONDUCT r. 3.3 (preventing “false statements of material fact or law”).

14. See MODEL RULES OF PRO. CONDUCT, r. 1.3 (outlining the duty of “diligence”); see also MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 1 (explaining that a lawyer “must . . . act with commitment and . . . zeal in advocacy upon the client's behalf.”).

15. Term created by the author. Most often, lawyers engage in “client-centered narratives” in their advocacy, whereby competing interpretations and stories often arise from the same set of facts because the narrative is constructed with the client's goal in mind: persuading the decision-maker.

16. In the context of rhetorical analysis, the “artifact” is the written piece the analysis focuses on. In this Note, the artifacts are the Briefs.

Part IV analyzes the artifacts according to the methods described in Part III, and it reveals that each side crafts a narrative most beneficial to their client. Petitioners (the South Carolina residents) paint a picture of privacy violated: the trial lawyers as unscrupulous opportunists who are sending out “mass solicitation” to line their pockets. Respondents (the lawyers) portray themselves as zealous advocates, akin to righteous heroes, who are investigating and fighting for the rights of thousands of individuals. Finally, Part V concludes by affirming that the client-centered narratives employed in the briefs do not constitute ethical violations. Rather, these narratives fall squarely within zealous and diligent advocacy because, though creative and persuasive, they remain truthful and factually accurate and thus do not violate the duty of candor to the tribunal.

I. ETHICAL OBLIGATIONS OF LAWYERS AS BUSINESS OWNERS AND AS ADVOCATES

The Model Rules of Professional Conduct articulate a nuanced framework around the practice of attorney solicitation, embedding ethical integrity and public trust in the legal profession as central staples of the practice.¹⁷ As business owners, lawyers need to advertise their services. However, Rule 7.3 restricts lawyers from engaging in direct, real-time solicitation for pecuniary gain, aiming to mitigate the potential for coercion and undue influence in situations where prospective clients may feel compelled to retain representation without fully informed consent.¹⁸ The Supreme Court’s decision in *Maracich v. Spears* addresses the specific boundaries of lawyer solicitation.¹⁹ But *Maracich* also operates at a “meta” ethical level, presenting attorneys with the dual challenge of defending (or condemning) ethical (or unethical) solicitation practices while remaining bound by broader rules of ethical advocacy mandating both candor to the tribunal and diligent and zealous representation.

The duty of candor to the tribunal is a cornerstone of ethical advocacy, essential to preserving the judicial process’s integrity. Under Rule 3.3, attorneys must avoid knowingly making false statements of fact or law and correct any inaccuracies previously submitted to the court.²⁰ In appellate briefs, attorneys often employ client-centered narratives to frame facts and legal arguments compellingly; but the duty of candor demands that these narratives remain firmly rooted in truth and factual accuracy. Appellate advocates must therefore balance persuasive storytelling with a commitment to factual integrity, ensuring that the court receives briefs that genuinely reflect the case’s underlying facts rather than advocacy-driven distortions.

17. See, e.g., MODEL RULES OF PRO. CONDUCT r. 7.3 (defining “solicitation”).

18. See MODEL RULES OF PRO. CONDUCT r. 7.3.

19. See *Maracich v. Spears*, 570 U.S. 48, 53 (2013).

20. See MODEL RULES OF PRO. CONDUCT r. 3.3.

The duty of diligence reinforces these ethical imperatives by demanding unwavering commitment to the client's objectives—within lawful parameters.²¹ Zealous representation calls on attorneys to deploy every legitimate argumentative tool to advance the client's interests.²² In *Maracich*, lawyers defending or challenging solicitation practices under legal and ethical examination faced the added responsibility of aligning their diligence with their duties of candor and honesty to the court. This intricate balance, required in high-stakes appellate litigation, illustrates the complex ethical flux established by the ABA Model Rules. Here, the interplay between persuasion, truthfulness, and client loyalty reflects the broader commitment of the legal profession to uphold both rigorous advocacy and the integrity of the judicial process. *Maracich* thus underscores the ethical balancing that permeates all appellate advocacy. Advocates must advance persuasive arguments without diluting factual integrity, balancing their roles as both client representatives with a clear goal in mind and officers of the court with a commitment to truthful discourse. Were the *Maracich* briefs able to achieve that ethical balance?

II. THE BACKGROUND OF *MARACICH V. SPEARS*

In *Maracich v. Spears*, Respondents were state-licensed attorneys who practiced in South Carolina.²³ In June 2006, several consumers approached them complaining that certain car dealers were charging unlawful fees.²⁴ Upon learning of this allegation, the attorneys began investigating the claims to determine whether this was a widespread practice.²⁵ To this end, Respondents tried to determine whether this suit was one of “common or general interest” as contemplated by section 56-15-110(2) of the South Carolina Manufacturers, Distributors, and Dealers Act (“MDDA”). If so, the suit could be brought under the “representative action” provision of the MDDA, which is substantially like a class-action, but requires fewer constraints than one.²⁶

A federal statute from 1994, the Drivers' Privacy Protection Act (DPPA), provides that personal information from State records cannot be released without the express consent of the person whose information is sought unless the request falls under some narrow exceptions.²⁷ One of the exceptions is outlined in section (b)(4):

For use *in connection with* any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, *investigation in anticipation of litigation*, and the execution or enforcement of judgments and order, or pursuant to an order of a Federal, State, or local court.²⁸

21. MODEL RULES OF PRO. CONDUCT r. 1.3.

22. See, e.g., MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 1.

23. *Maracich*, 570 U.S. at 52.

24. *Id.* at 52–53.

25. *Id.* at 53.

26. *Id.* (citing S.C. Code Ann. § 56-15-110(2))

27. See 18 U.S.C.A. § 2721(b)(4).

28. *Id.* (emphases added).

This litigation exception authorizes a state DMV to disclose drivers' and car owners' personal information for uses "in anticipation of litigation."²⁹ However, its application is often contested, as litigants must demonstrate that their requests for personal information align with the DPPA's narrow exceptions.³⁰ The contested point in *Maracich* was one of statutory interpretation: whether the lawyers' bulk solicitation was "in connection with" or "in anticipation of" litigation before proceedings had even started.³¹

In June and August 2006, Respondents sent two Freedom of Information Act (FOIA) requests to the South Carolina DMV to obtain the information of around 34,000 South Carolina car buyers. The attorneys noted in their FOIA requests that they were being made in accordance with the litigation exception of 18 U.S.C. § 2721 (b)(4).³² Respondents filed the representative action suit (the "*Herron*" litigation) against the South Carolina dealerships at the end of August 2006.³³ In January 2007, they sent a letter to the affected consumers stating that they represented a group of consumers "in a pending lawsuit arising from South Carolina car dealerships" and that they believed the recipients could be affected.³⁴ The letter also included an invitation to mail an enclosed postage paid card with their contact information.³⁵

The *Maracich* lawsuit was brought against this backdrop. Petitioner Edward Maracich was the recipient of one of the letters from Respondents.³⁶ Maracich's information was disclosed because he was one of the many buyers from a South Carolina dealership.³⁷ However, he was also that dealership's director of sales and marketing.³⁸ One of the attorneys who represented the dealers in the *Herron* litigation filed a class action lawsuit in federal district court seeking to represent the class of consumers whose privacy rights under the DPPA were violated.³⁹ The complaint alleged a violation of the DPPA because the information was obtained by the South Carolina DMV without the express consent of Petitioners and the other class members.⁴⁰ Respondents moved to dismiss for failure to state a claim, arguing that the disclosure of personal information fell under the litigation exception of section (b)(4) of the DPPA.⁴¹ The District Court dismissed the complaint under this theory, noting that the communication did not qualify as "solicitation."⁴² The United States Court of Appeals for the Fourth Circuit affirmed, noting that the communication did qualify as solicitation, but that it was

29. *Id.*

30. *See, e.g.,* *Maracich*, 570 U.S. at 52.

31. *See* *Maracich*, 570 U.S. at 59; *see also* *Maracich v. Spears*, 675 F.3d 281, 283–84 (4th Cir. 2012).

32. *Maracich*, 570 U.S. at 54.

33. *See Herron v. Century BMW*, 693 S.E.2d 394 (S.C. 2010)

34. *Maracich*, 570 U.S. at 52.

35. *Id.* at 55.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 56.

40. *Id.*

41. *Id.*

42. *Id.*

“inextricably intertwined” with conduct satisfying the litigation exception under the DPPA.⁴³ The parties’ briefs before the Supreme Court represented their final opportunity to persuade the Court that the solicitation did—or did not—fall within the litigation exception of (b)(4). Ultimately, the Supreme Court ruled in favor of Petitioners, concluding that an attorney’s solicitation of clients does not fall under the litigation exception of the DPPA.⁴⁴

A. EXCERPTS FROM THE *MARACICH* BRIEFS: INTRODUCTIONS, STATEMENTS OF THE FACTS, AND STATUTORY INTERPRETATION ARGUMENTS

The excerpts from the parties’ initial briefs include the introductions, the statements of the facts, and the argument section regarding statutory interpretation of section (b)(4) of the DPPA. The introduction sets the tone for the entire brief, so it is a representative snippet of what the arguments will look like.⁴⁵ Further, the introduction can be analyzed through a narrative lens because it is the first section in which the writer can, by way of word choice and narrative storytelling, start advocating for the client.⁴⁶ Then, the statement of facts is the section in which that narrative choice can shine through most powerfully.⁴⁷ Careful word choice and factual presentation can make a difference in how the narrative is perceived by the reader.⁴⁸ Finally, the argument section is the “climax” of the narrative.⁴⁹ In this case, the argument most central to the litigation is whether section (b)(4) of the DPPA—the “litigation exception”—applies to lawyer solicitation of business without the consent of the potential client before the investigation in the litigation proceedings start. Therefore, the lens of analysis revolves around how the narrative choices from the introductions and the statements of the facts reach their “climax” in the statutory interpretation sections of the briefs.⁵⁰

III. THE NARRATIVE AND CLUSTER METHODS OF RHETORICAL CRITICISM

Lawyers are storytellers. The most compelling stories are those that elicit an emotional response in the reader.⁵¹ The choice of words in an appellate brief can

43. *Id.*

44. *Id.* at 78.

45. See BRYAN A. GARNER, *THE WINNING BRIEF* 155–56 (3d ed. 2014); see also ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 75 (2008).

46. See SCALIA & GARNER, *supra* note 45, at 76.

47. See Brian J. Foley & Ruth A. Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 *Rutgers L.J.* 459, 465 (2001).

48. *Id.* at 466.

49. Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 *J. LEGAL WRITING INST.* 127, 149 (2008) (“[T]he climax *must* occur within the argument section of the brief”).

50. See *id.*

51. See SOL STEIN, *STEIN ON WRITING: A MASTER EDITOR OF SOME OF THE MOST SUCCESSFUL WRITERS OF OUR CENTURY SHARES HIS CRAFT TECHNIQUES AND STRATEGIES* 224 (1995) (“[L]ike fiction, nonfiction accomplishes its purpose better when it evokes emotion in the reader.”).

also be a powerful tool to veer the reader's emotional response one way or another. A persuasive story in an appellate brief identifies the characters and the conflict, presenting the narrative in a way that convinces the justices choose to resolve the conflict in favor of the authoring lawyer's client.⁵²

To analyze the client-centered narratives in the *Maracich* parties' briefs, this Note uses the narrative and cluster methods of rhetorical analysis. The narrative method used in this Note is a "hybrid" method which combines the Foss method of narrative objective and the Rowland method of formal and functional narrative analyses.⁵³ According to Foss, the first step in the narrative analysis is to identify the objective of the narrative.⁵⁴ The objective could be to persuade five out of the nine Justices that the lower court was wrong based on the applicable law, on public policy grounds, or it could be to assure the Court that this form of solicitation does not pose the risks typically associated with that activity.

Ultimately, the advocates seek a judgment in favor of their client. In *Maracich*, that judgment hinges upon whether the interpretation of section (b)(4) does or does not allow for solicitation of clients in anticipation of litigation.⁵⁵ After identifying the objective of the narrative per the Foss method, this Note uses the Rowland method, according to which the analysis first identifies the features of the narrative, which include the characters, the setting, the plot, and the theme that emerges from these features.⁵⁶ Then, the analysis moves on to identify the functional aspects of the narrative.⁵⁷ Rowland identifies four main functions: (1) energizing the audience, (2) creating a sense of identification between characters or between the narrator and the audience, (3) transporting the audience to a place or time different from contemporary life, and (4) tapping into basic values and needs of the audience.⁵⁸

This Note also uses the cluster method of rhetorical criticism to identify the key terms and cluster that correspond to the client-centered narrative that each side advances. The cluster method originates from Kenneth Burke. In his most famous book, Burke identifies law as a "secular prayer," the "coaching of an attitude by the use of mimetic and verbal language."⁵⁹ Burke compares the cluster method to "geological surveys" showcasing the "hills and valleys" of the mind.⁶⁰

52. Foley & Robbins, *supra* note 47, at 469.

53. Compare SONJA K. FOSS, RHETORICAL CRITICISM: EXPLORATION AND PRACTICE 325 (5th ed. 2018) (suggesting that identifying the objective of the narrative should be the first step of analysis), with Robert C. Rowland, *The Narrative Perspective*, in JIM A. KUYPERS, RHETORICAL CRITICISM: PERSPECTIVES IN ACTION 133 (2d ed. 2016) (laying out a four-step test for formal narrative analysis in which one identifies the characters, setting, plot, and theme of the narrative, and a subsequent functional step of analysis).

54. Foss, *supra* note 53, at 325–27.

55. *See id.*

56. *See* Rowland, *supra* note 53 at 126–27.

57. *Id.*

58. *Id.* at 135.

59. KENNETH BURKE, ATTITUDES TOWARDS HISTORY 223 (Berkeley: University of California Press, 1984)

60. *Id.* at 76 ("[W]ere we to have a survey of the hills and valleys of the mind [of the rhetor], to match . . . geological surveys, it would be done by the charting of clusters").

In his view, by analyzing key terms and word choices, the cluster method reveals the implicit values, attitudes, and associations embedded in each side's narrative. Through this lens, the persuasive power of language is illuminated, as terms are grouped and interpreted to understand the underlying perspectives being communicated. The first formal step in the cluster analysis is identifying the "key terms."⁶¹ Key terms are nouns that depend largely on frequency or intensity.⁶² Frequency simply means the number of occurrences in a document.⁶³ Intensity usually refers to the centrality of a term to the argument.⁶⁴ Then, the next step is to identify the terms that cluster around the key terms.⁶⁵ Finally, the key terms and clusters are interpreted together to contribute to an explanation for the artifact. In this case, they include a tie back to the narrative analysis to determine whether the key terms and their clusters fit within the storytelling advanced by the writers.⁶⁶

IV. ANALYSIS

A. OBJECTIVE OF THE BRIEFS' NARRATIVE

The Petitioners' attorneys, in writing the brief, seek to persuade five of the nine Supreme Court Justices (the audience) that the litigation exception in section (b)(4) of the DPPA does *not* allow lawyer solicitation regarding a currently pending litigation.⁶⁷ They argue that the statutory language of section (b)(4) should be interpreted narrowly, restricting its application to activities directly tied to litigation processes—such as investigation and service of process—rather than recruitment or solicitation of potential clients.⁶⁸ This interpretation emphasizes that the "fundamental purpose" of the DPPA is to protect individual privacy by controlling access to personal information, only allowing it under specific, limited circumstances directly related to the processes of litigation itself.⁶⁹

By framing their objective within the context of privacy protection, the Petitioners' attorneys tell the Court that the DPPA's litigation exception was never intended to cover client solicitation. They aim to persuade the Justices that a broader interpretation would go directly against the privacy safeguards Congress built into the DPPA, turning the litigation exception into an "anomalous loophole"⁷⁰ for obtaining personal data for business development rather than legal process. This narrow reading focused on the protection of privacy aligns with the Petitioners' objective of limiting section (b)(4) to its most restrictive interpretation, reinforcing the

61. Foss, *supra* note 53, at 64.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 65.

66. *Id.* at 66.

67. Petitioners' Brief, *supra* note 10, at 2.

68. *Id.* at 38.

69. *Id.* at 1.

70. *Id.* at 2.

Act's protective intent, and urging the Court to rule against extending the exception to lawyer solicitation.

Cluster analysis reveals a set of word choices consistent with this narrative objective. One of the key terms appearing in the Petitioners' brief is "litigation exception." The word "exception" appears 24 times in the excerpts, or once every two paragraphs, on average.⁷¹ Petitioners frame section (b)(4) as an "exception" to the rule, thus promoting a view of the law that is strict and rigid, one to which exceptions and permissions to deviate from the rule should be granted sparingly. Some of the clusters that surround litigation exception are "permit/permited," "service of process," "integrity," "efficacy," and "judicial proceeding." By carefully associating these words and concepts to the exceptions, the Petitioners' attorneys create a narrative that the exception from section (b)(4) is only permitted when the integrity and efficacy of the judicial processes are at play. For example, obtaining DMV information to identify a possible defendant's address for purposes of service of process would fall in this category.⁷² Lawyer solicitation, on the other hand, does not advance any judicial process and does not further the integrity of the judiciary.⁷³

Like Petitioners, Respondents also hope to create a story in their brief that convinces at least five Justices to rule in their favor. In service of their argument that the litigation exception includes their use of DMV data for investigatory purposes for an ongoing litigation, Respondents craft a narrative that is designed to resonate with the Justices—and perhaps with the general public—by emphasizing that this data use, rather than constituting "solicitation" in the commercial sense, actually supports a legitimate "investigatory" function that is integral to the judicial process.⁷⁴ The end goal is to convince the audience that broad investigatory access under the DPPA's litigation exception is necessary for attorneys to fulfill their roles, especially in cases where a thorough fact-finding process is critical for procedural integrity. This framing positions the Respondents' actions as essential to the pursuit of justice, appealing to the Court's sense that the legal profession's responsibility is to serve clients effectively.

By emphasizing words such as "investigation," Respondents construct a client-centered narrative in which their use of personal information is portrayed not as solicitation for profit, but as a necessary step in building a robust legal case on behalf of consumers allegedly harmed by the car dealerships' actions.⁷⁵ According to the Respondents' narrative, the intent behind accessing DMV information was to conduct a thorough investigation to determine whether the fees in question were part of a "widespread" pattern,⁷⁶ a purpose directly tied to the "integrity" of their

71. *See id passim*.

72. *Id.* at 39.

73. *Id.* at 40–41.

74. Respondents' Brief, *supra* note 10, at 59.

75. *Id.* at 3.

76. *Id.* at 8.

“[legal] proceeding[s].”⁷⁷ Gathering information from the DMV allowed them to identify additional plaintiffs with direct standing, a legitimate legal objective that aligns with the DPPA’s intent to facilitate fair legal proceedings.⁷⁸ This portrayal of their outreach as a targeted investigation to meet the needs of the ongoing litigation creates a narrative in which “investigation” is not only permissible under the DPPA’s litigation exception but essential to achieving justice for the individuals who were harmed by the dealers and were charged illegal fees.

B. BRIEFS’ NARRATIVE FORMAL ANALYSIS

The objective of the formal analysis of the narrative is to identify the characters, the setting, the plot, and the overall themes that emerge from these forms.⁷⁹

1. CHARACTERS

From the outset of the Petitioners’ brief, the characters who clearly jump out are the “individuals” who have had their information released to the attorneys without their consent.⁸⁰ The individuals whose privacy has been ruthlessly and needlessly violated by greedy, sleazy lawyers. These individuals are the protagonists of the Petitioners’ story. Immediately, Petitioners say that the “fundamental purpose” of the DPPA is to “protect the privacy of . . . millions of individuals.”⁸¹ Petitioners create the client-centered narrative that Respondents can access the information of “only” those people who “expressly consented” to the release of such information.⁸² The very next sentence says that the attorneys engaged in “mass solicitation” of individuals who “never consented” to this use.⁸³

In contrast, the “lawyers” are portrayed in a light that makes them part of the problem.⁸⁴ They are the antagonists of the individuals whose privacy has been violated. This characterization establishes a conflict between the innocent individuals whose privacy has been compromised and Respondents, attorneys who are actively undermining these individuals’ rights to privacy. This portrayal casts these individuals as a vulnerable group in need of legal protection, framing them as the true beneficiaries of the DPPA’s “fundamental purpose.” Respondent-attorneys on the other hand, are portrayed as taking advantage of a narrow statutory exception, not to serve justice, but to benefit their own business interests by soliciting clients.⁸⁵ Words like “mass solicitation” evoke an image of impersonal outreach, reinforcing the idea that Respondents have prioritized their own gains over

77. *Id.* at 55.

78. *Id.*

79. Rowland, *supra* note 53, at 126.

80. Petitioners’ Brief, *supra* note 10, at 1.

81. *Id.*

82. *Id.* at 2.

83. *Id.*

84. *Id.* at 3.

85. *Id.* at 40.

the privacy rights of thousands of individuals. This rhetorical strategy positions Respondents as characters who disregard the boundaries set by the DPPA and exploit the “anomalous loophole” of the exception at the expense of personal privacy.⁸⁶

The conflict created within the characterization of this narrative arises from the competing values of privacy and justice. Petitioners emphasize the sanctity of individual privacy, framing the Respondents’ actions as a blatant violation of the DPPA’s core purpose.⁸⁷ This framing portrays the attorneys who exploit legal loopholes for self-serving reasons as “unscrupulous opportunists.” In turn, this characterization serves to advance the Petitioners’ core argument: that the DPPA was enacted to protect law-abiding individuals from precisely this type of opportunistic behavior. By highlighting the contrast between the individuals’ *passive* role and the attorneys’ *active* solicitation efforts, Petitioners characterize Respondents as not merely disregarding the law but also undermining its “fundamental purpose.” These characters contribute to the Petitioners’ narrative aimed at convincing the audience (the Justices) to interpret the DPPA narrowly, urging the Court to view the Respondents’ actions as inconsistent with the intent to safeguard individual privacy.

In the Respondents’ narrative, the protagonists are the “lawyers” or “Respondents” (who, for purposes of this analysis, are treated interchangeably as they represent the same party engaged in the legal actions under review).⁸⁸ These lawyers are portrayed as diligent and righteous advocates, working tirelessly on behalf of consumers to address a widespread pattern of unlawful fees imposed by car dealerships across South Carolina. Respondents frame themselves as the agents responsible for pursuing justice, drawing on investigative efforts as a core aspect of their role within the litigation. This narrative is enhanced through the strategic use of clusters like “representative,” which serve to reinforce the Respondents’ role as advocates acting in a collective capacity for the public good. The term “representative” is used to suggest that a fiduciary duty and an attorney-client relationship already exists, potentially indicating that, because the litigation is already ongoing, the communication to the potential plaintiffs falls under the (b)(4) litigation exception. The Respondents’ self-portrayal as representative actors follows their argument that the DPPA’s litigation exception should accommodate their investigative steps, which they argue are necessary to build an inclusive and legally compliant case. Seen in this light, the lawyers are not just fulfilling their obligations to their clients but are acting as “private attorneys general,” undertaking an investigative function that supports public interests by attempting to uncover widespread malpractice among car dealerships.⁸⁹ Respondents emphasize their commitment to investigation as a means of establishing fairness and integrity in the proceedings. This portrayal positions them as ethical actors whose

86. *See id.*

87. *See id.* at 1.

88. Respondents’ Brief, *supra* note 10, at 1.

89. *Id.* at 7.

primary goal is to build a comprehensive case in alignment with the DPPA's litigation exception, under which investigation *is* allowed.

In contrast, the car dealerships—referred to as the “dealers”—are depicted as the antagonists of these characters, the enemy entities whose misconduct necessitates the very investigation the lawyers are poring over.⁹⁰ Respondents characterize the dealers as conscious actors in a coordinated effort to charge consumers unlawful fees, creating a story in which the dealerships represent a threat to consumer protection and legal compliance. This depiction casts the dealers as complicit characters whose actions have triggered the need for legal intervention. Terms like “rectify” and “remedy” underscore the Respondents' role as righteous and selfless problem-solvers, addressing and attacking the practice of charging unlawful fees.⁹¹ By using these terms, Respondents convey that their investigatory steps were corrective in nature, designed to resolve legal issues and ensure that the lawsuit could proceed on solid procedural grounds.

This character dynamic supports the Respondents' client-centered narrative by establishing a conflict between attorneys working to safeguard public interests and dealerships allegedly prioritizing profit over lawful practice. The lawyers emerge as active agents in pursuit of broader public values, while the dealerships are portrayed as the so-called “evil dragons” that the “hero knights” are fighting. By constructing this conflict, Respondents reinforce the argument that their investigative actions fall well within the DPPA's litigation exception, portraying themselves as essential players in a storyline that centers on legal integrity and consumer protection.

2. SETTING

The setting, according to the narrative created by Petitioners, is one in which “consent” and “personal information” are violated.⁹² The Petitioners' brief takes the readers to the day Maracich received the letter asking him to sue his own dealership. The sanctity of one's home, where privacy is at its highest, becomes the central setting of the Petitioners' brief. The DPPA is portrayed as a protective barrier whose “fundamental purpose” is to prevent unauthorized access to law-abiding citizens' personal information.⁹³ Petitioners paint a scene by which the individuals, whose rights are supposed to be protected by the DPPA, go about their lives, live within their home, and work within their offices, assuming that their information is protected. Unbeknownst to them, the unscrupulous attorneys engage in “mass solicitation” with the sole purpose of exposing and exploiting that sacred personal information.⁹⁴

The Petitioners' setting is also judicial and legislative. The Court is seen as a both the scene of the conflict and a safe haven for Petitioners. On one hand, the

90. *See id.* at 7–8.

91. *Id.* at 13.

92. *See, e.g.*, Petitioners' Brief, *supra* note 10, at 2.

93. *Id.* at 1.

94. *Id.* at 2–3.

conflict between the greedy attorneys and the law-abiding citizens happens in the courtroom. In this sense, the Justices assume the role of saviors who can resolve the narrative in favor of the only possible winner—the parties whose privacy has been violated. On the other hand, the Court is seen as a safe space and refuge from the lawyers' illegal pursuit of the personal information. In this context, the Justices appear as safe havens who will not tolerate violations of the law and who can restore the balance between good citizens and evil lawyers. Petitioners place the conflict in the Court by emphasizing that the DPPA's statutory purpose was to prevent exploitation of the personal information that Petitioners saw desecrated and the Fourth Circuit is an antagonist who continues to permit this type of violation.⁹⁵ This placement situates the Supreme Court and Justices as sort of "guardians" of the values of privacy and the sanctity of everyone's personal lives, positioning the Justices as the only actors who can "save" the DPPA's original "fundamental purpose" of protecting the privacy of millions of individuals.⁹⁶ By constructing this environment centered around sacred "privacy," Petitioners aim to convince the Court that its interpretation of the DPPA will have deep implications for the protection of privacy rights in society at large.⁹⁷

In the Respondents' brief, the setting centers on "investigation" within the framework of a broader litigation "provision" rather than a narrow "exception."⁹⁸ The conflict begins in the lawyers' offices, when the car buyers contact the attorneys to express concern about being charged illegal fees. From that moment on, the attorneys take on a role of protagonists and heroes at the same time. They are the righteous-advocates, quasi-detectives who are fighting for the consumer rights of thousands of individuals by investigating the claims that their clients are alleging, while also questing to defeat the evil dealerships who are violating these rights.⁹⁹ By framing their actions as part of an investigatory landscape, Respondents argue that their use of DMV data falls within the permissible scope of the DPPA's "litigation provision," emphasizing that it is not a rare exception but an established use of the statute that their conduct "falls squarely within."¹⁰⁰ The cluster "falls squarely within" reinforces this setting perfectly within the bounds of the law by suggesting that the statute's language was designed to encompass investigatory actions directly related to litigation. Respondents position their data requests as part of an "investigatory" process necessary to achieve goals within litigation, such as verifying claims, identifying affected individuals, and addressing standing concerns.¹⁰¹

95. *Id.* at 45.

96. *Id.* at 2.

97. "Privacy" appears 19 times in the Petitioners' Brief. *See id.* at 1, 4, 6, 16, 18, 20, 32, 36, 38.

98. Respondents' Brief, *supra* note 10, at 1.

99. *See id.* at 8–9.

100. *See, e.g., id.* at 22.

101. "Investigate/investigation" appears 22 times in the Respondents' Brief. *See id.* at 3, 6, 8, 9, 15, 16, 17, 22, 23, 44, 51, 53, 57, 59, 60.

The cluster “permissible uses” further emphasizes the legitimacy of the Respondents’ actions within the setting of a litigation “provision,” rather than “exception.”¹⁰² By framing their communications as part of the DPPA’s permissible-uses, Respondents argue that Congress *intentionally* allowed investigatory activities within ongoing litigation. This language situates the Respondents’ conduct within a permitted framework, reinforcing the idea that their requests were lawful and directly tied to the statutory purpose of supporting litigation. Additionally, the cluster “not criminalize” strengthens the setting by framing the DPPA’s litigation provision as a mechanism meant to protect rather than criminalize legitimate legal practices. Respondents argue that Congress did not intend for the DPPA to penalize attorneys engaged in good-faith investigation within the context of legitimate legal claims. Finally, “permitting disclosure” underscores that the DPPA is structured to allow necessary disclosures within the litigation process.¹⁰³ Respondents present disclosure of personal information as not only allowed but contemplated by the DPPA’s litigation provision, arguing that such disclosure is essential for legal representatives to conduct thorough investigations. Together, these clusters create a setting where “investigation” is not just an allowable activity but an integral part of the DPPA’s litigation provision, essential for upholding justice and procedural integrity.¹⁰⁴

3. PLOT

The Petitioners’ client-centered narrative builds through a rising action that steadily introduces escalating concerns about the Respondents’ actions and their implications for the integrity of privacy protections under the DPPA. It begins with the revelation that the personal information of tens of thousands of individuals was accessed without their consent. “Solicitation” becomes the center of a plot centered on privacy invasion, depicting Respondents as exploiting the DPPA’s “litigation exception” for commercial gain rather than for legitimate legal needs.¹⁰⁵ This sets the stage for growing unease, as Petitioners create an image in which the Respondents’ actions resemble an advertising campaign aimed at recruiting potential clients, rather than an honest attempt to prepare for litigation.¹⁰⁶ By framing the Respondents’ outreach as “mass solicitation,” Petitioners highlight the indiscriminate and formulaic nature of the Respondents’ actions, implying that personal information was accessed on an impersonal, almost wholesale basis.

The tension deepens as Petitioners raise questions about the broader consequences of allowing such conduct to stand. They argue that the litigation exception has “no basis” as a permissible pathway for solicitation.¹⁰⁷ The phrase “no

102. *Id.* at 1.

103. *Id.* at 3.

104. *See, e.g., id.* at 55.

105. Petitioners’ Brief, *supra* note 10, at 38.

106. *See id.* at 2–3.

107. *Id.* at 19.

basis” here reinforces a rigid separation between legitimate and illegitimate uses of personal data, framing the Respondents’ actions as fundamentally disconnected from the DPPA’s purpose. Petitioners repeatedly point to the notion of “potential clients” as an indication of the Respondents’ true intent, i.e. to generate business from people they are not yet affiliated with. Their actions seen only as part of a broader strategy to generate business. By focusing on the idea of potential clients, Petitioners depict the Respondents’ motives as self-serving and egotistical, far removed from any legitimate litigation goals.

Clusters of terms like “protect the rights” serve to reinforce the idea that any decision allowing solicitation within the litigation exception would erode these fundamental protections. With each layer of discussion, the stakes are raised: the problem is no longer confined to this case, but it extends to the potential weakening of privacy laws more broadly. Respondents are portrayed as having taken advantage of citizens’ expectations of privacy, using personal information as a resource in a broad “advertising campaign” aimed not at justice but at profit.

The climax occurs in the argument section, where Petitioners make their case for a narrower interpretation of the statutory language of the DPPA. They contend that the Respondents’ conduct constitutes an impermissible expansion of the scope of the Act, which has the words “Privacy Protection” in its name.¹⁰⁸ By dissecting the statutory language and presenting their interpretation as the only one consistent with the DPPA’s core purpose, Petitioners elevate their narrative to its most persuasive and high-stakes moment. The Petitioners’ plot not only presents the DPPA as a necessary safeguard of personal privacy but also urges the Court to affirm that the law’s provisions should be interpreted strictly, protecting individuals from undue intrusion into their private lives.

The resolution comes with the Supreme Court’s decision in favor of Petitioners, affirming their interpretation of the DPPA and rejecting the Respondents’ actions as falling outside the litigation exception. The majority opinion, authored by Justices Kennedy and joined by Justices Roberts, Thomas, Breyer, and Alito, reflects the core of the Petitioners’ narrative: that safeguarding individual privacy requires vigilance against the misuse of personal information. By siding with Petitioners, the Court emphasized the importance of narrowly interpreting statutory exceptions to prevent potential overreach, reinforcing the DPPA’s purpose as a protective measure. The decision validated the Petitioners’ portrayal of privacy as a fundamental value that must be guarded, underscoring the broader societal significance of their argument. By structuring their narrative around a steadily intensifying rising action, a sharp conflict of interpretations, a high-stakes climax, and a decisive resolution, Petitioners craft a story that not only persuades the Court but underscores the broader implications of the case for privacy law and public trust.

The Respondents’ narrative also follows a structure of rising action, conflict, climax, and resolution that seeks to position their actions as essential to the

108. *Id.*

pursuit of justice, aligning their interpretation of the DPPA with their ethical duties as attorneys. The rising action builds as they introduce the problem they faced: uncovering a potentially widespread pattern of unlawful fees charged by car dealerships. In this context, the requests submitted to the South Carolina DMV are portrayed as the necessary engine driving the case forward.¹⁰⁹ These requests serve as “permissible uses” that allows Respondents to gather critical information about the car dealerships’ unlawful practices, facilitating an investigation aimed at uncovering widespread misconduct.¹¹⁰

The tension increases as Respondents argue that without access to this information, they would be unable to verify claims, address standing concerns, or build a case that could effectively hold the car dealerships accountable.¹¹¹ The rising action escalates further as they emphasize the public interest at stake, portraying their efforts as not merely benefitting them or their clients, but advancing justice for a broader group of consumers.¹¹²

The conflict emerges as Respondents defend their interpretation of the DPPA’s litigation exception against the Petitioners’ narrow reading. Respondents frame the exception as a critical provision designed to facilitate legitimate investigatory efforts in anticipation of litigation. They argue that their use of DMV data “falls squarely within” this provision, emphasizing the importance of flexibility in allowing attorneys to gather the information necessary to build strong cases.¹¹³ The conflict is framed as a question of statutory interpretation, but it also reflects a broader debate about the ethical role of attorneys in balancing privacy rights with the pursuit of justice. Although the Court ultimately entered a resolution against Respondents, the Respondents’ narrative highlights a masterful use of storytelling that elevates the craft of legal advocacy.

Both Petitioners and Respondents constructed impressive narratives that strategically framed the facts and law to favor their clients. Petitioners relied on an emotionally resonant portrayal of privacy as under attack, which aligned with broader societal anxieties about data misuse. In contrast, Respondents employed a more nuanced approach, crafting a story that intertwined the statutory language with their professional obligations to investigate and advocate on behalf of their clients. Rather than diminishing the significance of privacy concerns, Respondents reframed the issue as one of balance: how to safeguard privacy without hindering the essential work of the legal profession. This tension added complexity to their narrative, compelling the Court to grapple not just with the statutory interpretation but with the broader implications for the adversarial system.

109. See Respondents’ Brief, *supra* note 10, at 11.

110. *Id.* at 3.

111. See *id.* at 10.

112. *Id.*

113. *Id.* at 22.

4. THEME

The explicit theme that emerges from the Petitioners' narrative is one of "privacy protection" versus exploitation, framed within the context of individuals' rights to control their personal information. Petitioners emphasize this theme by contrasting the innocence and vulnerability of the "individuals" with the self-serving and opportunistic behavior of Respondents, whose "mass solicitation" tactics are portrayed as direct violations of this protective intent, the "fundamental purpose" of the DPPA. This theme of sacred privacy is central to the Petitioners' argument, suggesting that privacy laws like the DPPA play a crucial role in preserving anonymity and the security of individuals against exploitation. Petitioners position the Court as the ultimate "guardian" of this sacred right, responsible for upholding the DPPA's purpose by denying an interpretation of the litigation exception that would allow for unauthorized access and misuse of personal data.

The Petitioners' characterization of Respondents as actors who disregard ethical and legal boundaries creates an implicit theme of power dynamics and vulnerability. By repeatedly referring to "mass solicitation" and the notion of "potential clients," Petitioners subtly but effectively portray Respondents as not merely engaging in preparation for litigation but leveraging private data in a way that takes advantage of those unable to safeguard their own information. This portrayal resonates with the broader explicit theme of privacy violation, suggesting that without strict enforcement of privacy laws, there is a risk of unchecked actions by those who hold access to sensitive information, further amplifying societal concerns about fairness and trust.

Ultimately, the theme that emerges from the Petitioners' client-centered narrative (both explicitly and implicitly) is the need to uphold strict privacy protections to prevent the exploitation of individuals' personal data. Petitioners build a narrative that underscores their commitment to the interests of those whose privacy the DPPA was designed to protect, framing these individuals as clients in need of the law's safeguards. Through this client-centered approach, Petitioners argue that the DPPA's litigation exception must be narrowly interpreted to preserve its mission to protect the rights of individuals against unwarranted access and commercial exploitation.

The explicit theme that emerges from the Respondents' narrative is one of "responsible investigation," grounded in the belief that lawyers must have the freedom to pursue evidence when it plays a part in advancing the integrity of the judicial system. By portraying themselves as dedicated advocates for consumers, Respondents further emphasize a mission-driven implicit theme: they are not simply representing individual clients but acting on behalf of a broader class who may have been affected by widespread unfair practices in car dealerships. Their use of terms like "representative" and "remedy" reinforces this idea of a shared responsibility, suggesting that the lawyers' actions go beyond their own interest to safeguard all affected consumers. Through this lens, the DPPA's "litigation

provision” is presented as not an “anomalous loophole”¹¹⁴ or a special exception, but a necessary tool that allows lawyers to do fulfill their obligations. When they say their actions “fall squarely within” the law, Respondents attempt to highlight that Congress made room for exactly these kinds of disclosures, with the intent to support lawyers gathering the facts needed to see a case through. By grounding their actions in a “provision” instead of an “exception,” Respondents send a clear message: investigation of potential wrongdoing, especially in response to standing and procedural concerns, is a permissible use of personal information under the DPPA’s (b)(4) exception.¹¹⁵

Implicitly, Respondents urge the Court to interpret the DPPA as enabling attorneys to conduct legitimate case investigations. The narrative invites the Justices to interpret the DPPA as a statute that empowers attorneys to uncover facts and pursue claims that advance justice and uphold the integrity of the judicial system.

C. BRIEFS’ NARRATIVE FUNCTIONAL ANALYSIS

Among the four functions defined by Rowland,¹¹⁶ the Petitioners’ narrative is primarily crafted to create a strong identification between the individuals whose privacy was violated and the audience (Rowland’s Function #2), particularly the Justices, by tapping into fundamental needs for privacy and protection (Rowland’s Function #4).¹¹⁷ By portraying the affected individuals as everyday citizens who have had their personal information accessed without consent, the narrative encourages the audience to see these individuals not as distant or abstract figures but as relatable people whose rights have been unjustly compromised. This strategy of identification seeks to build empathy, prompting the audience to view the violated individuals’ experiences through a personal lens, as though their own privacy was at stake.

Moreover, the narrative taps into widely held values and needs, such as the desire for control over personal information and the expectation that privacy will be respected. In constructing this narrative, Petitioners appeal to a deeply rooted understanding of the need for boundaries around private information. By emphasizing that these individuals’ rights were dismissed for profit-driven purposes by unscrupulous opportunists, Petitioners highlight that legal exceptions should not be stretched beyond their intended purpose. This appeal to basic values underscores a broader societal message that privacy is a fundamental right, and any threat to that right affects not just the individuals in the case, but the audience as well. Through these techniques, the Petitioners’ narrative invites the readers to internalize the individuals’ experiences as a shared concern, building a compelling case for interpreting the DPPA as a safeguard for privacy that must be preserved against exploitation.

114. See Petitioners’ Brief, *supra* note 10, at 2.

115. See *id. passim*.

116. See *supra* text accompanying note 58.

117. Rowland, *supra* note 53, at 135.

The main function of the Respondents' client-centered narrative is to energize the audience by restoring faith in lawyers as thorough investigators, righteous advocates, and officers of the court who advance the integrity of the judicial system. By framing their investigative actions as essential to protecting the public from potentially widespread exploitative practices, Respondents invite the Court to see their investigative work as necessary to maintain the integrity of the judicial system. The narrative suggests that the DPPA's litigation provision is meant to empower lawyers in their investigative role, allowing them to gather information that can substantiate claims and bring to light patterns of unlawful conduct. Through terms like "representative" and "permissible-uses," Respondents build a story that does not just defend their specific actions but speaks to a larger ideal of legal practice as a public good. They present the litigation provision not as a technicality or a narrow exception, but as a vital part of the system that upholds citizens' rights by enabling lawyers to pursue truth and justice. This narrative functions to restore and reinforce faith in the profession, portraying lawyers as advocates who, when permitted to conduct necessary investigations, can hold powerful interests accountable and prevent the erosion of consumer protections.

By underscoring that their requests "fall squarely within" the DPPA's bounds, Respondents communicate that their actions are consistent not only with a professional commitment to integrity, but also with the DPPA's legislative purpose. Respondents create an image in which they are not filing this lawsuit for personal ends; they are acting as "private attorneys general" and representing the rights of the individuals who may have been wronged by car dealers. This focus on integrity helps reframe public perception, suggesting that when lawyers are granted the proper investigatory tools, they strengthen the judicial system by ensuring all relevant information comes to light.

Ultimately, the Respondents' client-centered narrative serves a restorative function because it positions their actions as a reaffirmation of the legal profession's role in advancing justice. By presenting the attorneys as actors committed to ethical investigation in the public interest, the narrative energizes the audience, appealing to shared values of integrity, transparency, and a belief in the power of the law to protect citizens and ensure fairness.

D. BRIEFS' ETHICAL CONSIDERATIONS

The briefs submitted in *Maracich v. Spears* are a compelling illustration of the balance attorneys must strike between zealous advocacy and their ethical duty of candor to the tribunal. While both sides constructed narratives that frame the facts and law in the light most favorable to their clients, these narratives remained firmly rooted in truth and transparency, demonstrating that neither party violated ethical rules. Both parties' attorneys demonstrated adherence to these ethical obligations, constructing persuasive narratives that reflect their clients' positions while remaining within the boundaries of truth and transparency.

The Petitioners' attorneys construct a narrative focused on privacy protection, portraying Respondents as opportunistic lawyers exploiting a statutory exception for financial gain. By emphasizing terms like "mass solicitation" and "invasion of privacy," they craft a story that aligns the Court with the broader societal interest in safeguarding individual privacy. Their rhetorical choices evoke the vulnerability of ordinary citizens whose personal data was allegedly misused, reinforcing their argument that the DPPA's "litigation exception" must be narrowly construed to prevent such overreach. This narrative, while emotive and persuasive, adheres to Rule 3.3 by rooting its claims in the statutory language and legislative history of the DPPA, avoiding factual exaggerations or distortions.

Similarly, the Respondents' attorneys construct an effective but competing narrative centered on the investigatory purpose of their actions, portraying their use of DMV data as a necessary step in fulfilling their obligations under the DPPA's litigation exception. Their strategic use of terms like "investigation" and "anticipation of litigation" frames their actions as lawful, essential to the judicial process, and consistent with Rule 1.3's demand for zealous advocacy. Respondents focus on the legitimacy of their requests under the statutory framework, emphasizing the importance of broad investigatory access to ensure justice for consumers allegedly harmed by car dealerships. Their arguments remain firmly grounded in legal and factual accuracy, demonstrating compliance with Rule 3.3 while employing persuasive rhetorical tools.

Ultimately, the briefs in *Maracich v. Spears* exemplify the ethical challenges and opportunities of appellate advocacy. Both parties adhere to the Model Rules of Professional Conduct, crafting narratives that are truthful, transparent, and persuasive. The case highlights the power of storytelling in legal advocacy and reaffirms that attorneys can zealously represent their clients while maintaining their ethical responsibilities to the tribunal.

V. CONCLUSION

In *Maracich v. Spears*, the attorneys on both sides skillfully took on the role of storytellers, turning the same set of facts into two compelling, yet opposing, narratives regarding the role of lawyers soliciting clients. Petitioners framed the lawyers as unscrupulous opportunists, exploiting a legal exception for personal gain. Meanwhile, Respondents painted a picture of lawyers as righteous advocates, fulfilling their role as diligent investigators by ensuring that wronged consumers had access to justice. These narratives offer two competing visions of what it means to be a lawyer: one of exploitation, opportunism, and overreach; the other of service, advocacy, and integrity.

Both briefs stayed firmly within ethical boundaries, balancing persuasive storytelling with the duty to remain truthful and transparent. Neither side distorted the facts or the law; instead, they each selected and emphasized the details that best supported their narrative. This is the essence of zealous advocacy under the

Model Rules of Professional Conduct—pushing for your client’s interests while respecting the tribunal’s need for candor and accuracy. Petitioners tapped into universal concerns about privacy and trust, while Respondents focused on the necessity of thorough investigation in pursuit of justice. Both strategies were powerful and persuasive, reflecting the attorneys’ dual obligations to their clients and to the Court.

Ultimately, the case returns to a single, seemingly simple moment: when Maracich received a letter marked “ADVERTISING MATERIAL” inviting him to sue his own dealership. That letter ignited the legal and ethical questions at the heart of the case—questions that gave rise to dueling narratives, each vying for the Supreme Court’s favor on the scope of the litigation exception under section (b)(4) of the DPPA. Beyond its doctrinal value, the case offers a broader lesson in appellate advocacy: great storytelling isn’t about embellishing facts—it’s about framing them in ways that resonate, persuade, and reflect the values of the decision-makers. *Maracich* stands as a vivid reminder that ethical, strategic narrative remains one of the most powerful tools in an advocate’s arsenal.