

## LEGAL STORYTELLING:

### THE THEORY AND THE PRACTICE—REFLECTIVE WRITING ACROSS THE CURRICULUM

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Pull up a chair. Let me tell you a story.

I was listening to NPR's *Humankind* program. A professor of education asked his class to write an autobiographical piece. At the end of the class in which he gave the assignment, a student hesitantly approached him and asked, "Is it ok if we use the word 'I' in our paper?" The professor said that he almost burst out laughing, because it seemed like such a silly question, but he was glad that he didn't, because he might have hurt this student who had made himself vulnerable by asking the question. So the professor just said, "Yes, that is fine. In fact, I don't think you could do this assignment without using the word 'I' quite a bit. But I'm curious, why do you ask?" The student replied, "Well, I'm a history major, and every time we use the word 'I' in any paper, they mark us down a full letter grade."<sup>1</sup>

It is experiences like these that may help explain the most common question law students ask when one is trying to teach

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1. Parker Palmer, NPR Broadcast, *Teaching from Within*, [http://www.humanmedia.org/catalog/product\\_info.php?products\\_id=33](http://www.humanmedia.org/catalog/product_info.php?products_id=33) (accessed Feb. 1, 2009) (interpreting the story).

them about reflective journaling practices: “Do you want citations with that?” Students who have been taught to cleanse their writing of all first-person perspectives may have difficulty developing into storytellers who have their own opinions.

## I. INTRODUCTION

Writing Across the Curriculum is still in its nascency in law schools.<sup>2</sup> Promoting *reflective* writing in law schools—*across the curriculum*—is a real uphill battle. But as some of the critical theorists who first brought storytelling to law can attest, the Sisyphian challenges are the ones worth undertaking: “The struggle itself toward the heights is enough to fill a man’s heart.”<sup>3</sup>

Others have written about the benefits of journaling and other exploratory writings in clinical practice.<sup>4</sup> This Article concentrates on the theory of narrative or storytelling and then addresses the reasons why it is vital to encourage its practice in law schools in non-clinical or primarily doctrinal courses. Not all reflective writings are narratives (and some narratives are not particularly reflective). My interest in this Article is in storytelling or narrative (and I use those terms interchangeably at times) as a particular type of reflective writing.

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2. See Louis N. Schulze, Jr., *Transactional Law in the Required Legal Writing Curriculum: An Empirical Study of the Forgotten Future Business Lawyer*, 55 *Clev. St. L. Rev.* 59, 98 (2007). Part of the Writing Across the Curriculum movement is a “writing throughout the curriculum” approach. A few law schools have integrated writing components in doctrinal courses—typically in small sections, such as Contracts Plus Drafting, with assignments appropriate to the substantive area. See e.g. Pamela Lysaght & Cristina D. Lockwood, *Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implications*, 2 *J. ALWD* 73, 99–104 (2004); see also Larry Dubin, *Bringing the Spirit of Martin Luther King Jr. into a Legal Ethics Course*, 85 *Mich. B.J.* 49 (June 2006) (“The Writing Across the Curriculum program at the University of Detroit Mercy School of Law requires every course after the first year to have a writing assignment worth at least 15 percent of the final grade.”).

3. Albert Camus, *The Myth of Sisyphus and Other Essays* 1 (Justin O’Brien trans., Alfred A. Knopf 1955); see e.g. Derrick Bell, *Racial Realism*, 24 *Conn. L. Rev.* 363, 377 (1992).

4. See e.g. Anahid Gharakhanian, *ABA Standard 305’s “Guided Reflections”: A Perfect Fit for Guided Fieldwork*, 14 *Clin. L. Rev.* 61 (2007); Harriet N. Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*, 1 *Thomas M. Cooley J. Prac. & Clin. L.* 7 (1997); Cheri Wyron Levin, *The Doctor Is In: Prescriptions for Teaching Writing in a Live-Client In-House Clinic*, 15 *Clin. L. Rev.* 157 (2008); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 *Clin. L. Rev.* 55 (1996).

Part I traces the advent of storytelling in legal theory and practice: while lawyers have long recognized that part of their jobs is to tell their clients' stories, the legal academy was, for many years, resistant to narrative methodologies. Part II examines students as legal storytellers and the current applications of Writing Across the Curriculum in law schools. Most exploratory writing tasks in law school come in clinical courses, although a few adventurous professors are adding reflective and narrative assignments in doctrinal classes. This section explores the value of narrative writing in encouraging students to sharpen their legal analysis and to reflect on their ethical responsibilities.

Part III considers three interrelated advantages of teaching students to encode legal information in story form. It makes the argument that narrative could even be considered imperative. First, emerging evidence from neuroscience indicates that people remember stories much better than they recall snippets of fact. Second, narratives pay attention to humans—and this emphasis on identity, voice, perspectives, and lived experiences offers more accurate representations of human conditions than legal doctrines can capture. Third, narrative writing is a particular type of advocacy that appears in legal briefs and opinions. Use of storytelling as a persuasive technique may encourage courts and academia to probe more deeply for the criteria of narrative truths. Finally, Part IV concludes by urging attention to the stories told in legal practice and at law firms.

## II. STORYTELLING IN LEGAL THEORY AND PRACTICE

Despite some contentious debate in the early 1990s about whether storytelling constituted credible legal scholarship,<sup>5</sup> storytelling has become firmly entrenched not only in jurisprudence, but, more fundamentally in the ways we think about teaching and practicing law.<sup>6</sup> The idea that stories are a useful method of provoking thinking about law has sifted into the legal academy.

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5. Compare Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 Stan. L. Rev. 807 (1993), with Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 Mich. L. Rev. 2411 (1989). The debate is far from over. See e.g. Paul Secunda, *The First-Person Narrative in Legal Scholarship*, [http://www.concurringopinions.com/archives/2008/03/the\\_firstperson.html](http://www.concurringopinions.com/archives/2008/03/the_firstperson.html) (Mar. 19, 2008).

6. See generally Robert L. Hayman, Jr. & Nancy Levit, *The Tales of White Folk: Doc-*

Storytelling is an essential method of legal practice, teaching, and thought. In the days of the classical Greek orators who were lawyers, telling stories was a primary technique for practicing law.<sup>7</sup> Good lawyers have always had the ability to tell stories. The best lawyers, as Tony Alfieri and others have observed, and this is a slightly different point, pay attention to the stories their *clients* want them to tell.<sup>8</sup>

Good advocacy—both oral and written, in trial and appellate work—demands the ability to capture the audience’s attention through the recitation of facts. Two things are new: as legal education has broadened beyond the appellate case, more attention is focused on elements of advocacy once left to practice, and storytelling is integral to this broader education.

The use of outsider narratives has a particular place in the development of critical theory.<sup>9</sup> When feminist and critical race theorists began to tell stories of discrimination to demonstrate the effects of particularly oppressive legal rules, traditionalists responded that stories had no place in law school or legal theory and should not factor into legal decisions.<sup>10</sup> Critical theories responded that legal decisions really *were stories*—but they were simply ones that told a dominant narrative.<sup>11</sup> As Catharine MacKinnon wryly observed, “Dominant narratives are not called stories. They are called reality.”<sup>12</sup> In the 1980s critical theorists

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*trine, Narrative and the Reconstruction of Racial Reality*, 84 Cal. L. Rev. 377, 417 (1996).

7. See M. Fabius Quintilianus, *The Institution Oratoria of Quintilian* (H.E. Butler trans., Harv. U. Press 1966). This was also the original way cultures and laws were passed from one generation to the next; it was the most primitive form of law-giving. A colleague and I have elaborated on this theory of the embrace of storytelling in jurisprudence in Nancy Levit & Allen Rostron, *Calling for Stories*, 75 UMKC L. Rev. 1127 (2007).

8. See e.g. Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 Yale L.J. 2107 (1991); Lucie White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 Buff. L. Rev. 1 (1990).

9. I am indebted to June Carbone for this point.

10. See e.g. Farber & Sherry, *supra* n. 5.

11. See e.g. Richard Delgado, *The Rodrigo Chronicles: Conversations about American and Race 194–195* (N.Y.U. Press 1995) (“White folks tell stories, too. But they don’t seem like stories at all, but the truth. So when one of them tells a story . . . few consider that a story, or ask whether it is authentic, typical, or true. No one asks whether it is adequately tied to legal doctrine, because it and others like it are the very bases by which we evaluate legal doctrine.”).

12. Catharine A MacKinnon, *Law’s Stories as Reality and Politics*, in *Law’s Stories: Narrative and Rhetoric in the Law* 232 (Peter Brooks & Paul Gewirtz eds., Yale U. Press 1996).

in the legal academy began to tell counterstories to question and resist the traditional canon. Stories thus became not just the dominant discourse, but also a tool of liberation.<sup>13</sup>

In the late 1980s, law professors began to write law review articles in the form of stories.<sup>14</sup> Some used fiction as an approach to critique doctrine;<sup>15</sup> others told the stories of factual events, often from the perspective of outsiders to law and the legal academy.<sup>16</sup> Legal theorists began to appreciate what historians and trial attorneys had long known<sup>17</sup> and what cognitive psychologists were beginning to discover<sup>18</sup>—the extraordinary power of stories.

Stories are one of the primary ways that humans understand situations. People remember events in story form. Stories illuminate diverse perspectives; they evoke empathic understanding; and their vivid details engage people in ways that sterile legal arguments do not.<sup>19</sup> As Derrick Bell says simply, “People are moved by stories more than by legal theories.”<sup>20</sup>

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13. John Braithwaite, *Narrative and “Compulsory Compassion,”* 31 L. & Soc. Inquiry 425, 428 (2006).

14. See e.g. Derrick Bell, *The Final Report: Harvard’s Affirmative Action Allegory*, 87 Mich. L. Rev. 2382 (1989); Richard Delgado, *Rodrigo’s Chronicle*, 101 Yale L.J. 1357 (1992).

15. See Hayman & Levit, *supra* n. 6, at 398 (suggesting that narratives provoke critical thinking because they force a consideration of context and because they engage in “dialogic, rather than dialectic, discourse”).

16. See e.g. Patricia J. Williams, *The Alchemy of Race and Rights* (Harv. U. Press 1991); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 Stan. L. Rev. 317 (1987); Patricia J. Williams, *Alchemical Notes: Reconstructioning Ideals from Deconstructed Rights*, 22 Harv. Civ. Rights-Civ. Libs. L. Rev. 401 (1987).

17. Ariela Gross, *Beyond Black and White: Cultural Approaches to Race and Slavery*, 101 Colum. L. Rev. 640, 645 (2001).

18. See e.g. Reid Hastie et al., *Inside the Jury* 22–23 (Harv. U. Press 1983); see also James W. McElhaney, *Just Tell the Story*, 85 ABA J. 68 (Oct. 1999) (“The story is the tool that people have used since before recorded history to grapple with events and try to understand their meaning.”). Some cognitive psychologists made the connections to narrative a little earlier. See e.g. Jerome Bruner, *Actual Minds, Possible Worlds* (Harv. U. 1986).

19. Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?* 87 Mich. L. Rev. 2099, 2104 (1988) (citations omitted) (describing how there are “stories that bridge, providing connections between people of different experience, stories that explode (like grenades) certain ways of thinking, stories that mask, devalue, or suppress other stories, [and] stories that consolidate, validate, heal, and fortify (like therapy)”).

20. Vincent Harding, *Equality Is Not Enough*, N.Y. Times 7 (Oct. 11, 1987) (book review) (reviewing Derrick Bell, *And We Are Not Saved: The Elusive Question for Racial Justice* (Basic Bks. 1987)) (Derrick Ball also made the statement during a phone interview

Think about the role of stories as an instrument of restorative justice. When organizations like Human Rights Watch and Amnesty International gather stories from victims or witnesses to arbitrary detention, forced labor, rape, torture, and cultural genocide, they are doing much more than simply illuminating these violations of rights. They are creating institutions to listen to people whose voices would otherwise be silenced.<sup>21</sup> The United Nations has also recognized the importance of storytelling. The U.N. Security Council established a Commission of Experts to investigate whether to set up an international criminal tribunal to address the allegations of war crimes in the former Yugoslavia. The Commission gathered testimony and catalogued stories of thousands of human rights violations and created the International Criminal Tribunal for the former Yugoslavia.<sup>22</sup>

The South African Truth and Reconciliation Commission pursued a similar, although more adjudicatory, project. Although the Commission did not seem to elicit heartfelt admissions of guilt.<sup>23</sup> But victims wanted the opportunity to tell their stories—and they testified repeatedly that speaking the truth was healing. When more than seven thousand victims told of the atrocities they had suffered and witnessed,<sup>24</sup> those narratives provided some measure of “human justice” that no court could ever impose.<sup>25</sup>

This consciousness of a different method of resolution serves as a broader critique of the limits of litigation. Perhaps also the stories can at least help prevent the errors of history and evil from recurring. Tribunals that publicize victims’ testimony not

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with the Author.).

21. See Marcia L. McCormick, *The Truth Is Out There: Revamping Federal Antidiscrimination Enforcement for the Twenty-first Century*, 30 Berkeley J. Emp. & Lab. L. \_\_\_\_ (forthcoming 2008) (available at <http://ssrn.com/abstract=1142979>).

22. Sharon A. Healey, *Prosecuting Rape under the Statute of the War Crimes Tribunal for the Former Yugoslavia*, 21 Brook. J. Intl. L. 327, 328 (1995).

23. Eric K. Yamamoto, *Interracial Justice: Conflict and Reconciliation in Post-Civil Rights America* 265–267 (N.Y.U. Press 1999).

24. See Richard Goldstone, *Historical Evolution—From Nuremburg to the International Criminal Court*, 25 Penn St. Intl. L. Rev. 763, 774 (2007); Patricia M. Wald, *International Criminal Courts—A Stormy Adolescence*, 46 Va. J. Intl. L. 319, 335 (2006); *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (The Commn. 2004) (available at <http://www.trcsierraleone.org/pdf/start.html>).

25. Ian Ward, *Narrative Jurisprudence and Trans-National Justice*, 12 Tex. Wes. L. Rev. 155, 160 (2005).

only acknowledge their suffering, but also contribute to the restoration of post-conflict peace by discouraging victim retribution.<sup>26</sup>

When we teach students to write reflectively across the curriculum, we are teaching them so much more than simply the art of storytelling. One is to give voice to experiences that might otherwise be lost . . . or denied. Maybe as part of this we are implicitly teaching them to seek out the position of persistent oppression, and identify with it. We are also teaching some of the psychological dimensions of client relations—such as closure for victims. This social justice aspect of stories is precisely why reflective writing belongs in doctrinal classes: stories are evidence of importance; nonmainstream stories are part of this country's social reality; and students need to learn how to express the ways that legal doctrines have marginalized and silenced various types of minorities—how to tell their stories.

But couldn't law students just *read* good reflective writing? A little Gabriel Garcia Marquez, *Love in the Time of Cholera* (the book, not the movie), to understand that stalking behavior has been romanticized.<sup>27</sup> Maybe some Camus, to understand rebellion as a positive force: "The logic of the rebel is to want to serve justice so as not to add to the injustice of the human condition, to insist on plain language so as not to increase the universal falsehood, and to wager, in spite of human misery, for happiness."<sup>28</sup> Why do law students have to *write* it?

### III. STUDENTS AS LEGAL STORYTELLERS AND REFLECTIVE WRITING IN LAW SCHOOLS

Whether law students become lawyers who do transactional work or litigation, they will always be professionals who tell stories and people who understand experiences in narrative form. Susan Bandes capsulized it well when she said, "metaphor is not merely an optional, rhetorical flourish. It is our most pervasive

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26. Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?* 95 Am. J. Intl. L. 7, 9–10 (2001).

27. See Rebecca E. Lee, *Romantic and Electronic Stalking in a College Context*, 4 Wm. & Mary J. Women L. 373, 394–395 (1998).

28. Albert Camus, *The Rebel: An Essay on Man in Revolt* 285 (Anthony Bower trans., Vintage Bks. 1956).

means of ordering our experience into conceptual systems.”<sup>29</sup> This is a skill only learned by doing.

In addition to learning how think in metaphor—and to develop empathy for human conditions<sup>30</sup>—students can use narratives to learn how to distill analysis into succinct packages. This is one of the key insights of *Writing Across the Curriculum*: “to write is to learn.”<sup>31</sup> Related to this is another central proposition—that writing “must be practiced and reinforced throughout the curriculum.”<sup>32</sup> These propositions are supported by the work of legal writing theorists, who have long observed that students need multiple opportunities outside the confines of legal research and writing courses to practice their skills.<sup>33</sup> Part of this need for repeated writing opportunities is simply that the more they practice, the better they’ll get, but part also relates to the fact that writing is learning.

Students will learn best by writing about a subject; thus, they need to write in every one of their doctrinal classes to get the most out of them. Writing about a subject encourages students to “explore the nuances of law and fact and reflect on the social policies underlying legal issues.”<sup>34</sup> Emphasis on the skills necessary to communicate arguments also develops analytical abilities—it helps students “think about and better understand the material they are writing about”<sup>35</sup>—so this kind of writing is appropriate throughout the law school curriculum. Writing assignments in doctrinal classes reinforce the lessons taught in legal research and writing classes. In addition, being given writing assignments

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29. Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. Chi. L. Rev. 361, 383–384 (1996).

30. See e.g. Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing Students to the “Heart” of Lawyering*, 87 Neb. L. Rev. 1 (2008).

31. Martha A. Townsend, *Writing Across the Curriculum*, <http://cwp.missouri.edu/cwpinfo/aboutwac.htm> (last updated Oct. 20, 2006).

32. *Id.*

33. See Lysaght & Lockwood, *supra* n. 2, at 73–74; Sarah O’Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration between Clinics and Legal Writing Programs*, 14 Clin. L. Rev. 301, 302 (2007).

34. Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561, 565 (1997).

35. Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. Colo. L. Rev. 115, 137 (2007); see also Laurel Currie Oates, *Beyond Communication: Writing as a Means of Learning*, 6 Leg. Writing 1 (2000).

in doctrinal classes emphasizes to students the centrality of writing to the profession.

The use of writing as a conduit to absorbing, understanding, and seeing multiple dimensions of subjects is summarized by Kenney Hegland: “[T]here is no better way to learn something than to write about it. Not only do we understand our topic better but it will stay with us much longer.”<sup>36</sup> Despite these understandings about the values of both storytelling and repeated practice of skills, the use of student narrative writing exercises has remained limited primarily to clinical courses and externships.

#### A. *Reflective Writing in Clinical Courses and Externships*

Many, if not most, clinical professors require students to keep journals of their experiences.<sup>37</sup> These journals are more than just a record of the time spent and the work done. Some professors urge students to choose one observation or experience and write a reflection on it. Others ask students to reflect and write about specific topics with guided prompts,<sup>38</sup> or about their goals and objectives.<sup>39</sup> These journal entries are critical tools for students to transform a passive experience of observation into active learning. Perhaps even more importantly, they prompt students to explore their own professional identity, values, and emotions as they engage the world of clients and their problems.<sup>40</sup> “Journaling assignments require students to reflect upon personal values, ethics, morality, and the psychological aspects of dealing with clients, as well as the emotions and personal beliefs that are involved in the decision making process.”<sup>41</sup> Telling the stories of

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36. Kenney F. Hegland, *On Essay Exams*, 56 J. Leg. Educ. 140, 145 (Mar. 2006).

37. See ABA Stands. 305(e)(7) (2008–2009) (available at <http://www.abanet.org/legaled/standards/standards.html>) (requiring “opportunities for student reflection on their field placement experience”). Even a dozen years ago, more than half of the clinical externship programs surveyed used journals as at least a component of the grading system. Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems, and Possibilities*, 2 Clin. L. Rev. 413, 435 (1996).

38. See Gharakhanian, *supra* n. 4, at 82.

39. Carolyn A. Young & Barbara A. Blanco, *What Students Don't Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 Clin. L. Rev. 105, 126 n. 60 (2007).

40. See David A. Schön, *The Reflective Practitioner: How Professionals Think in Action* (Basic Bks. 1983); Richard K. Neumann, Donald Schon, *The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 Clin. L. Rev. 401 (2000).

41. Leslie Larkin Cooney, *Giving Millenials a Leg-Up: How to Avoid the “If I Knew*

their clients—and their own internal stories in response—encourages reflection, awareness, and self-discovery. It also enhances empathy and professionalism.<sup>42</sup> Teaching students to reflect critically on and learn from their experiences trains them to be responsive to new situations, so that they will be ready to do that in practice as the law evolves and changes.<sup>43</sup>

Barbara Glesner Fines, who teaches a course in poverty law and supervises a legal aid clinic, observes that journaling exercises have encouraged students to write about their preconceptions—about poor people or poverty, about poverty lawyers, about judges and other attorneys. Since reflective writing is much more private than a discussion, students are willing to reveal more about their own biases and assumptions.

Many students write about themselves—their growing confidence, their fears, their resolutions to practice this way or not to practice that way. Some students reflect on the law or the legal system in fundamental ways that we would love to hear in the classroom on a more regular basis. The lived experience of their clients gives their reflections on structural and policy backdrop of the law a grounding much more immediate and real than these same abstract discussions in the classroom.<sup>44</sup>

Faculty who assign reflective journaling exercises do note that the assignments impose time demands to respond to each writing exercise. However, one colleague said that the most difficult part was that many law students simply did not know how to write reflectively. The most common question students would ask when she assigned them to write a personal or reflective essay was: “Do you want citations?”

To get students started on exploratory writing, particularly with respect to client interactions, it is useful to offer examples. Numerous superb examples can be found in the critical lawyering literature.<sup>45</sup> Professors in the clinical area have broadened the

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*Then What I Know Now* Syndrome, 96 Ky. L.J. 505, 513 (2008).

42. See Gerdy, *supra* n. 30, at 45.

43. I am indebted to Terry Pollman for this point.

44. E-mail from Barbara Glesner Fines, Assoc. Dean for Faculty Ruby M. Hulen Prof. of L., UMKC Sch. of L., to Nancy Levit, Curators' & Edward D. Ellison Prof. of L., UMKC Sch. of L., Legal Storytelling (Nov. 6, 2007) (on file with Author).

45. See e.g. Louis S. Rulli, *Too Long Neglected: Expanded Curricular Support for Public Interest Lawyering*, 55 Clev. St. L. Rev. 547, 571–572 (2007) (recommending Lucie E. White's article, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the*

idea of reflective papers to give students assignments of writing how the course's materials, cases, or social science information relate to their experiences of handling cases; this adds a dimension of critical thinking to the introspection (and also ensures the reading of materials that will not be covered on an exam).<sup>46</sup> Others have offered suggestions on whether and how to grade student reflective writings.<sup>47</sup> Those who assign some form of journaling or reflective writing seem agreed that it can promote not only self-directed learning and self-awareness, but also independent problem-solving abilities.<sup>48</sup> When students are able to reflect on their own reactions and analyze why they had those reactions, they are better able to critically evaluate the stories others present to them. The question is whether these methods can be used and advantages can be gleaned from reflective writing in doctrinal courses.

### B. Reflective Writing in Doctrinal Classes

The hardest case to make, it seems, and the one that has attracted the least attention, is for reflective writing in doctrinal courses.<sup>49</sup> Reflective writing is a way of comprehending doctrinal law, legal issues, and ethical responsibilities. Let me just offer a

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*Hearing of Mrs. G.*, 38 Buff. L. Rev. 1 (1990), and noting "the article contains the author's thoughtful observations about the attorney-client relationship, and reflects upon several important themes such as client voice, lawyer-filtering of client stories, and tensions that arise between lawyer and client in developing and implementing a theory of the case"; see also Alfieri, *supra* n. 8.

46. See Linda F. Smith, *Benefits of an Integrated (Prosecution and Defense) Criminal Law Clinic*, 74 Miss. L.J. 1239, 1246 (2005).

47. See e.g. Michael Moffitt, *Lights, Camera, Begin Final Exam: Testing What We Teach in Negotiation Courses*, 54 J. Leg. Educ. 91, 98–100 (2004).

48. See e.g. Ogilvy, *supra* n. 4, at 63; Greg Sergienko, *New Modes of Assessment*, 38 San Diego L. Rev. 463, 479 (2001).

49. A number of professors who see the value of writing across the curriculum are integrating writing exercises in doctrinal classes, see e.g., Laurie C. Kadoch, *The Third Paradigm: Bringing Legal Writing "Out of the Box" and Into the Mainstream: A Marriage of Doctrinal Subject Matter and Legal Writing Doctrine*, 13 Leg. Writing 55 (2007); Michael J. Madsen, *Writing to Learn in Law and Writing in Law: An Intellectual Property Illustration*, 52 St. Louis U. L.J. 823 (2008); Scott A. Schumacher, *Learning to Write in Code: The Value of Using Legal Writing Exercises to Teach Tax Law*, 4 Pitt. Tax Rev. 103 (2007). These are wonderful projects and I do not mean to diminish them at all; I am concerned here with something different—reflective writing (in which students comment on their experiences and those of others) and storytelling (in which students learn how to tell stories) in doctrinal classes.

couple of examples to make this point. We are moving here from the theory of reflective writing to its practice.

Although this is the newest venture, several professors, in a variety of doctrinal and theoretical courses—from Civil Procedure to Civil Rights—have asked students to keep journals or diaries to articulate doctrinal understandings or to develop illustrative scenarios to make sure they understand a point of law.<sup>50</sup> For journal assignments in substantive classes, the entries could cover “what was learned from simulation experiences; whether a certain technique was more or less effective compared to one used in a previous exercise; and how particular reading assignments or class discussions have impacted the student’s perception” of the topical area.<sup>51</sup> Keeping a journal offers students the opportunity to organize and revise information, and to engage with it on a deeper level than simply recording.<sup>52</sup>

Other professors have become more experimental in bringing literary or creative models into doctrinal classes. Andrew McClurg asked his students to write a poem about *Katko v. Briney*, the spring gun case, from Torts—which raises the issue of whether an older couple could protect their property from thieves by use of a spring gun when they were not home.<sup>53</sup> This is a case in which the thief, whose leg was blasted by a spring gun, was able to recover \$20,000 in actual damages and another \$10,000 in punitive damages. This elderly couple (mental picture: American Gothic, aged about twenty more years and weathered by farm life) literally had to auction off a portion of farmland to pay the judg-

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50. Derrick Bell et al., *Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L. Rev. 1037, 1041–1043 (1990); J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 Clin. L. Rev. 55, 66–68 (1996); see also James R. Elkins, *Writing Our Lives: Making Introspective Writing a Part of Legal Education*, 29 Willamette L. Rev. 45 (1993) (detailing the use of journals in an Introduction to Law class); Mae Kuykendall, *No Imagination: The Marginal Role of Narrative in Corporate Law*, 55 Buff. L. Rev. 537 (2007) (suggesting that principles of corporate law can be placed in the context of stories to engage students’ interest); Cheryl B. Preston, *Joining Traditional Values and Feminist Legal Scholarship*, 43 J. Leg. Educ. 511, 528–530 (1993) (describing journaling exercise in Feminist Legal Theory class).

51. Paul Secunda, “*Arasoi O Mizu Ni Nagasu*” or “*Let the Dispute Flow to Water*”: *Pedagogical Methods for Teaching Arbitration Law in American and Japanese Law Schools*, 21 Ohio St. J. on Disp. Res. 687, 712–713 (2006).

52. Ogilvy, *supra* n. 4, at 65.

53. Andrew J. McClurg, *Poetry in Commotion: Katko v. Briney and the Bards of First Year Torts*, 74 Or. L. Rev. 823, 824–825 (1995).

ment. This set up—of a thief recovering compensatory damages from a homeowner—usually incenses students (especially those students who own guns and are disappointed that the Second Amendment did not come in first place). One of his students, Laurie Peterson, wrote,

The Old Farmhouse

Twat nightttime in the country  
And all through the farmhouse,  
Not a creature was stirring  
Except Katko, the louse.  
All the windows were boarded  
With precision and care,  
In hopes that all criminals  
Would keep away from there.  
Then inside the house  
There arose such a clatter,  
Katko looked at his feet  
To see what was the matter.  
And what to his wondering eyes  
should appear?  
But a gaping hole in his shin  
And with no doctor near.  
“I’ve been shot? I’ve been shot!  
Oh, this must be a tort!  
I will sue the old couple,  
I will take them to court!”  
From the high court of Iowa  
The edict came down,  
All the neighbors were shocked  
In the small farming town.  
The Brineys had lost,  
Their farm had to be sold.  
Katko was the winner,  
A criminal—brazen and bold!  
Deadly force is not right  
Just to protect your land,  
A life is more important,  
The high court took this stand.  
So protect your home well,

You do have that right,  
But you must sleep in the house  
To shoot someone at night!<sup>54</sup>

McClurg said that the poetry assignment caused students to hone in on the fundamental principle for which *Katko* stands, as well as to express the moral outrage they felt about the inability to use deadly force in defense of property.<sup>55</sup>

If you want even more conciseness of thought, try a haiku contest, like my friend and co-author Rob Verchick does. Seventeen syllables. Below are just a few examples from contests he originated and that he and I have run at our respective schools over the years.

#### Teaching Evolution in Public Schools

Did Darwin figure,  
Examining finches' beaks,  
There'd be a Kansas?  
--Doug Linder

Class Participation  
Nothing makes me more  
uncertain of who I am  
than quiet whispers.  
--BTD

A law faculty:  
Too big to be a jury,  
Too small for a mob.  
--*Mike Waggoner*

"I am color-blind,"  
said Justice Clarence Thomas  
(Just like Justice Brown).<sup>56</sup>  
--Richard Delgado

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54. *Id.* at 837.

55. *Id.* at 825.

56. *See Plessy v. Ferguson*, 163 U.S. 537 (1896).

Other professors have made haiku assignments part of substantive or clinical classes.<sup>57</sup>

Reflective writing (and especially particular forms of it) demands more than succinctness. It sharpens analytical skills; it insists that its authors have the ability to shift perceptual frameworks. Exploratory writings are not vague or abstract or sterile—they are detailed, contextualized, and concrete. When students are asked to write poems, essays, or op eds, their writing becomes animated, thoughtful, nuanced, and engaged.<sup>58</sup>

It may not even be a matter of assigning an entire writing project. You can get mileage in class (in the form of student engagement and in training storytellers) if you simply ask your Criminal Law students to give the closing argument in a case they have read. For example, Marcia McCormick has her students make explicit the two different stories that could be told about the defendants in the principal cases. Patty Hearst is a good example of this—on the one hand, maybe she's a kidnapping victim, brainwashed, afraid, and incapable of thinking clearly after two months of beatings, sexual violence, and deprivations of food, sleep, and movement. On the other hand, maybe she's simply a spoiled rich girl who enjoys the excitement of the radical SLA activities and the positive attention from its members. McCormick says, "When the students see that these two stories are competing in their heads, they understand how a case might come

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57. See e.g. Gail Hammer & James Celto Vaché, *A Conversation Between Friends: Adventures in Collaborative Planning and Teaching Ethical Issues in Representation of Children*, 75 UMKC L. Rev. 1025, 1041 (2007) ("Writing haiku is an exercise in discipline and creativity, both of which are important for attorneys representing children. We are convinced that this form of poetry both gives vent to creativity for students and imposes a discipline that is helpful in their development as professionals."); Kathleen Magone & Steven I. Friedland, *The Paradox of Creative Legal Analysis: Venturing into the Wilderness*, 79 U. Det. Mercy L. Rev. 571, 585–586 (2002) (offering extra credit in legal writing, property, and constitutional law classes for creative projects expressing interest in knowledge of the subject matter; the authors note that "students wrote haiku, created cartoons and montages, painted, and submitted audiotapes. The students depicted scenes in cases, from class, and the outside world. Students created stories around legal rules, around class examples, and about how the rules affected them in their real-world lives.").

58. Andrea McArdle, *Teaching Writing in Clinical, Lawyering, and Legal Writing Courses: Negotiating Professional and Personal Voice*, 12 Clin. L. Rev. 501, 521 (2006).

out either way and how a lawyer might use the story to do some of the work of persuasion.”<sup>59</sup>

Assigning the writing of poetry to comprehend and respond to legal cases is not just stimulating and engaging (or good for a laugh). Why is creative writing good for *legal* analysis? It rewards original thought, forces conciseness, and promotes independent thinking. The writing is not judged by standard community norms.<sup>60</sup>

### C. *The Development of Professional Identity*

Another reason to encourage students to write in creative ways in a variety of doctrinal classes is that reflective writing is essential to professional development. Others writing in this symposium, like Andrea McArdle, have written about the importance of narrative writing in forming a professional identity: preserving students' individual voices and promoting ownership of ideas and writing.<sup>61</sup> Writing reflectively about morals and ethics in the specific context of human relationships, rather than in disengaged law school hypotheticals, offers the prospects for self-critical assessment and consideration of the complexities of legal practice.<sup>62</sup>

The dean at our law school, Ellen Suni, has long been one of our ethics wizards. In her Professional Responsibility course, Suni requires students to submit several anonymous journal entries (just two typed pages) each semester and then she writes responsive comments. The questions she has students address include:

Discuss a real situation (either from observation at work, as a client, through knowledge of a friend or family member's experience, from news reports) or a fictional situation (either from books, movies, TV, etc.) involving lawyers and assess the lawyer's conduct in light of material in the readings and/or in class. Dis-

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59. E-mail from Marcia L. McCormick, UMKC Asst. Prof, Samford U. Cumberland Sch. of L., to Nancy Levit, Curators' & Edward D. Ellison Prof. of L., UMKC Sch. of L., *Truth and Reconciliation* (June 4, 2008) (on file with Author).

60. Jessie C. Grearson, *Teaching the Transitions*, 4 Leg. Writing 57, 75 (1999).

61. See generally McArdle, *supra* n. 58; see also Grearson, *supra* n. 60, at 75.

62. Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 Clin. L. Rev. 611, 643 (2004).

cuss a rule that you have serious concerns about. Explain why you have these concerns and how you might deal with them. . . . What issue do you expect to be the most troublesome for you when you get out in practice? Why? How do the existing Rules help or hamper your dealing with that issue? How do you think you will address it when it arises? . . . <sup>63</sup>

Dean Suni says that ninety percent of all lawyers who have been disciplined sat in a classroom at one point and read the cases of lawyers being sanctioned and said, “This isn’t me. I’ll never do something like that.” And yet they did. How did that happen?

Lawyers are always going to be asked to make professional decisions for themselves in a world that is complex, murky and may have norms of practice that conflict with the Model Rules. Studies show that norms replace Model Rules, especially in smaller firms; that norms are forged early in students’ careers and are hard to change.<sup>64</sup> Students need to learn to make conscious decisions about what they are doing and why. Unless the law students can empathetically imagine themselves in a world where they will have to resist temptations, understand the interplay of norms and rules, and make professional decisions for themselves, they won’t be able to do it.

The ethical rules are one set of rules with which *every lawyer* must meaningfully engage. Other teachers of ethics have encouraged engagement by assigning students to write responsive commentaries on how an essay by Dr. Martin Luther King on “The Ethical Demands of Integration” was relevant to the ethical responsibilities of lawyers.<sup>65</sup> Perhaps if we keep reminding students about the ennobling stories of our profession, it will remind them not only of why they came to law school, but of the kind of lawyers they want to be.<sup>66</sup>

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63. Ellen Suni, *University of Missouri-Kansas City School of Law, Faculty and Class Links, Professional Responsibility*, [http://www1.law.umkc.edu/suni/Professional\\_Responsibility/syllabus.htm](http://www1.law.umkc.edu/suni/Professional_Responsibility/syllabus.htm) (accessed Feb. 1, 2009).

64. See generally Leslie C. Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 Hous. L. Rev. 309, 316–317 (2004).

65. See Dubin, *supra* n. 2, at 49.

66. To this end, the *UMKC Law Review* has added a Law Stories section to one issue every year: to collect the oral narratives, history, and fiction about legal practice and legal education. See Levit & Rostron, *supra* n. 7, at 1128.

Reflective writing is not only useful for students' professional development, it merges with developing curriculum requirements. In 2001 the ABA Standards for Accreditation began to require a "rigorous" upper level writing experience.<sup>67</sup> That standard was amended in 2005 to require both "writing in a legal context" and "other professional skills generally regarded as necessary for effective and responsible participation in the legal profession."<sup>68</sup>

The law and narrative or storytelling movement and the reflective writing push are both often treated as nice-but-frills stuff. I am going to make the stronger argument that narrative is necessary.

#### IV. Narrative Is Imperative<sup>69</sup>

Teaching students how to tell stories offers numerous advantages to this pool of lawyers-to-be. First, scientific information is emerging that people remember stories better than simply sets of facts. Second, stories offer more accurate depictions of human experience than sterile legal arguments. Third, stories persuade in ways that doctrinal arguments do not, and they may encourage greater probing for narrative truths.

##### A. *The Neuroscience of Narrative*

Stories are the way humans learn best. Research is emerging in cognitive neuroscience that "[t]he brain is structured, or 'wired,' to detect patterns" and that stories are a better way than simply the conveyance of facts to "encourage . . . the recognition of

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67. ABA Stands. § 302(a)(2).

68. ABA Stands. § 302(a)(3)–(a)(4). Kenneth Chestek suggests that these requirements dovetail naturally with the broader academic movement of Writing Across the Curriculum, and that all three goals could be furthered by an integrated writing plus skills approach:

Students taking a Business Associations course could be required to draft a partnership agreement or corporate bylaws. Students taking a course in Intellectual Property could draft a licensing agreement. Students taking Professional Responsibility might be asked to draft an ethics opinion. Students taking Evidence could draft a motion in limine and a supporting memorandum of law.

Chestek, *supra* n. 35, at 144.

69. See generally Julian C. H. Lee, *The Narrative Imperative*, 15 *Anthropological Forum* 115 (July 2005).

new patterns and relationships among objects and ideas.”<sup>70</sup> Magnetic resonance imaging studies show that stories activate different regions of the brain than those stimulated when the brain is processing information encoded in sentences.<sup>71</sup> Narratives “light up” the areas of the brain that produce an affective response.<sup>72</sup>

In the world of brain science, facts, information, and cases that come “with an inadequate narrative charge do not and cannot produce this neocortical experience . . . the arousal and emotive response critical to the learning experience.”<sup>73</sup> But it is not just an *emotional* response that is triggered. Narratives trigger a release of neuro-transmitters (catecholamines, such as epinephrine and dopamine) that affect both hemispheres of the brain—and this leads to holistic learning.<sup>74</sup>

When people tell stories or listen to them, they form mental images that are stored in memory as symbols. Studies show that while people retain “only 20% of what they read, . . . they recall 80% of symbols.”<sup>75</sup> In law, jury studies confirm that jurors recall more specific facts when cases are presented to them as narratives rather than simply as issues.<sup>76</sup> The narratives help jurors create a coherent picture—and then they merge these facts with the legal issues.<sup>77</sup>

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70. Delores D. Liston, *Story-Telling and Narrative: A Neurophilosophical Perspective* (1994) (available on ERIC at [http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/15/c0/90.pdf](http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/15/c0/90.pdf)).

71. Elena Plante et al., *Processing Narratives for Verbatim and Gist Information by Adults with Language Learning Disabilities: A Functional Neuroimaging Study*, 21 *Learning Disabilities Research & Prac.* 61, 70, 72–73 (2006).

72. John Batt, *Law, Science, and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning*, 40 *J. Leg. Educ.* 19, 25 (1990).

73. *Id.* at 22.

74. *Id.* at 25.

75. Michael Berman, *A Few Words on Story-Telling*, 5:3 *Humanising Language Teaching* (May 2003) (available at <http://www.hltmag.co.uk/may03/pubs4.htm>).

76. *Using Storytelling Techniques to Craft a Persuasive Legal Story, Decision Points*, [http://www.decisionquest.com/litigation\\_library.php?NewsID=131](http://www.decisionquest.com/litigation_library.php?NewsID=131) (accessed Nov. 29, 2007); see generally Hastie, et al., *supra* n. 18; Nancy Pennington & Reid Hastie, *A Cognitive Theory of Juror Decision Making: The Story Model*, 13 *Cardozo L. Rev.* 519 (1991).

77. Hastie et al., *supra* n. 18, at 97 (describing the way that in jury deliberations, a “substantial proportion of the discussion made simultaneous reference to both facts and legal issues”); see also W. Lance Bennett & Martha S. Feldman, *Reconstructing Reality in the Courtroom 4* (Rutgers U. Press 1981) (“The structural features of stories make it possible to perform various tests and comparisons that correspond to the official legal criteria for evaluating evidence (objectivity, reasonable doubt, and so on.)”).

### *B. Stories and Humanness*

We spend most of at least the first year of law school teaching students to be skeptical of intuitive and emotive responses. We teach students to write in a professional voice—which often means to sanitize their writing by removing emotion and certainly by eliminating the horror of a first-person response. This system of disinfecting legal writing by eliminating the humanness creates outsiders and distances students from themselves.<sup>78</sup>

Stories, in many ways, are more faithful representations of the human condition than doctrinal arguments. Stories challenge the view that truth is singular and recognize that lived experiences have plural truths.<sup>79</sup> Stories insist on acknowledging perspective and voice—and differences in racial, cultural, economic, and ethnic backgrounds.

This is the theory behind Foundation Press's new *Law Stories* series—a set of companion readers for doctrinal areas such as family law, torts, and employment discrimination that illuminate the background stories behind landmark cases.<sup>80</sup> When students read about the people behind the celebrated cases, they better understand the social conditions of the people bringing the suits, the history of the litigation, the legal system in that time or place, and the human emotions attendant to cases that play out over years. Conscious attention to narratives in doctrinal classes can make desiccated appellate cases come alive.

### *C. Persuasion*

Another distinct purpose of teaching students to write reflectively across the curriculum is to introduce them to a different method of advocacy. Andrea McArdle has written on the importance of drawing student attention to “rhetorical features bearing

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78. See generally Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 *Dick. L. Rev.* 7 (1998).

79. Hayman & Levit, *supra* n. 6, at 398–399, 426.

80. See e.g. Joel W. Friedman, *Introduction: The Story of Ten Employment Discrimination Stories*, in *Employment Discrimination Stories 1* (Found. Press 2006); see also *Constitutional Law Stories* (Michael C. Dorf ed., Found. Press 2004); *Labor Law Stories* (Laura J. Cooper & Catherine Fisk eds., Found. Press 2005); *Legal Ethics Stories* (Deborah Rhode & David Luben eds., Found. Press 2006).

on persuasiveness.”<sup>81</sup> Critical race and feminist legal theorists have long recognized that stories are an incredibly powerful tool to persuade people to revisit long-held beliefs. Stories, unlike logical or doctrinal arguments, “are insinulative, not frontal; they offer respite from the linear, coercive discourse that characterizes much legal writing.”<sup>82</sup> Stories create a sense of connection between the reader and the story’s author or characters.<sup>83</sup> These “empathic narratives”<sup>84</sup> work “not by convincing others to change their values, but by making them aware of values they already have which they simply had not initially thought were relevant.”<sup>85</sup> Numerous resources exist to convey to students how stories are acts of persuasion, the role of narrative in various legal venues (such as mediation, appellate argument, and sentencing), as well as techniques of storytelling in persuasive advocacy.<sup>86</sup>

One of the best uses of clients’ stories in appellate litigation has been the National Abortion Rights Action League’s “Voices Brief.”<sup>87</sup> Submitted as an amicus brief in major Supreme Court abortion cases, the brief contains letters and accounts from women who have had both legal and illegal abortions. The idea of this brief was to have women tell their stories directly to a Court now composed of eight older men and a single older woman—to tell the Justices the many circumstances that can compel the need for an abortion and that the decision whether to have an abortion is not made thoughtlessly or easily. This technique of sharing women’s stories in a brief was intended to convey through experience and empathy what sterile legal arguments about the right of choice could not. It said to the Justices that women—women you now

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81. McArdle, *supra* n. 58, at 518.

82. Delgado, *supra* n. 5, at 2415.

83. Joseph William Singer, *Persuasion*, 87 Mich. L. Rev. 2442, 2456 (1989).

84. Lynne N. Henderson, *Legality and Empathy*, 85 Mich. L. Rev. 1574, 1592 (1989).

85. Singer, *supra* n. 83, at 2456.

86. See generally e.g. William Twining, *The Great Juristic Bazaar: Jurists’ Texts and Lawyers’ Stories* chs. 12–16 (Ashgate-Dartmouth 2002); Michele G. Falkow, *Pride and Prejudice: Lessons Legal Writers Can Learn From Literature*, 21 Touro L. Rev. 349 (2005); Randy Lee, *Writing the Statement of the Case: The “Bear” Necessities*, 10 Whittier L. Rev. 619 (1989); Kim Lane Scheppelle, *Foreword: Telling Stories*, 87 Mich. L. Rev. 2073 (1989).

87. Br. for Amici Curiae Women Who Have Had Abortions & Friends of Amici Curiae in Support of Appellees, *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (available on Westlaw at 1989 WL 1115239).

know—will be in terror and some of them will die if the rights protected in *Roe v. Wade* are taken away.<sup>88</sup>

Students can learn this theory of persuasion—that “moral convictions are changed . . . not through argument,” but through empathetic imagination.<sup>89</sup> They can develop a sensitivity to the details of clients’ lives. They can learn how to tell what abstract rights mean in the reality of people’s lives. They can learn that law is not about rules, but about people.

Yet stories are not just a tool of the political left. In *Gonzales v. Carhart*,<sup>90</sup> in 2007, the Supreme Court reversed the position it took seven years earlier in *Stenberg v. Carhart*,<sup>91</sup> and upheld the Partial Birth Abortion Ban Act. Citing to an amicus brief filed by a right-to-life group, Justice Kennedy concluded that some women who have had abortions regret their choice and suffer anguish and depression.<sup>92</sup>

Which of these stories is true? Perhaps both. Perhaps whichever is told more persuasively—although something about that sounds glib and rings partly false. Unpacking the idea of “regret” indicates that the *Carhart* Court is using the term too sweepingly to refer to a constellation of emotions—sadness for being in a difficult situation, disappointment over past behavior regarding the use of contraceptives, and regret at the decision to terminate a pregnancy.<sup>93</sup> The Court, however, conflates all of these different

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88. Robin L. West, *The Constitution of Reasons*, 92 Mich. L. Rev. 1409, 1436 (1994). The Supreme Court has never cited to the “Voices Brief.” However, some evidence indicates that these or other stories may have prompted some empathetic insights among some of the Justices. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, for example, when the Court held unconstitutional the spousal notification provisions in Pennsylvania’s abortion law, the plurality discussed the prevalence of domestic violence and recognized that married women who have suffered spousal abuse may have good reasons to not inform their husbands about their pregnancies. Nancy Levit & Robert R.M. Verchick, *Feminist Legal Theory: A Primer* 142 (N.Y.U. Press 2006).

89. West, *supra* n. 88, at 1436.

90. 550 U.S. 124 (2007).

91. 530 U.S. 914 (2000).

92. “While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained.” *Gonzales*, 550 U.S. at 159; see generally Allen Rostron, *Right to Life Movement*, in *Encyclopedia of the Supreme Court of the United States* 256 (Gale Publ. 2008).

93. Reva Siegal, Panel Remarks, *Reproductive Justice after Carhart* (Assn. Am. L. Sch. Annual Meeting, Jan. 4, 2008) (available at <http://www.aals.org/am2008/friday/index.html>).

types of regret into a single package, and then leverages that regret into a justification that the law should have restrained them from action. Preventing people from doing things they may regret has never been a legitimate, let alone, compelling governmental interest. Also, information from social psychology about the ways regret actually operates indicates that people overestimate the regret a situation is likely to produce, find ways of dampening regret they do feel, and use regret as a learning tool to avoid similar future situations.<sup>94</sup> Thus, the Court's invocation of an emotion that some women might feel—for varied reasons and in different ways—as an invitation for further abortion regulations is improper.<sup>95</sup>

One lesson to draw from this battle of narratives in the realm of abortion is that perhaps we should search more deeply for the criteria of narrative truth.<sup>96</sup> Hopefully, the legal academy is moving toward greater acceptance of the value of stories—particularly when those stories comport with and are bolstered by empirical data from a variety of disciplines.<sup>97</sup>

Teaching students about the importance of narrative is an essential first step in encouraging them to learn how to become storytellers.

## V. CONCLUSION: STORIES ABOUT LIFE AND LAW

In this Article, I have encouraged the use and teaching of storytelling in doctrinal courses. The Article traced the fairly recent emergence of narrative in the legal academy and developed the idea that stories are a powerful way to evoke understanding. Then it turned to reasons for adding and ideas on ways to include reflective writing components in doctrinal classes. Last, it addressed the neuroscience of narrative—that people remember more if events are told in story form—as well as the advantages of stories in better representing the human condition and persuad-

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94. Chris Guthrie, Carhart, *Constitutional Rights, and the Psychology of Regret* (Vand. Pub. L. Research Paper No. 07-33, Nov. 19, 2007) (available at <http://ssrn.com/abstract=1031235>).

95. *See id.*

96. Robert L. Hayman, Jr. & Nancy Levit, *The Stories of American Law*, in *On Philosophy and Law* (forthcoming Francis J. Mootz, III ed., Cambridge U. Press 2009) (copy on file with Author).

97. *See* Hayman & Levit, *supra* n. 6, at 422.

ing listeners. The Article concludes with the point that for students to pay attention to stories and to become storytellers themselves, they need to understand the importance of stories.

Narratives can emerge in small ways, and not just as major projects. The stories that are told tell a great deal about the humans who are telling them. Perhaps your students ask you for ideas about interviewing with firms. One question to suggest they ask is: “Who are the heroes in this firm?” If the associates and partners at the firm regale the student with the tale of “So-and-so who got the \$14 million verdict,” that tells them something about the firm. If the associates and the partners tell the story of the modern day Thurgood Marshalls, Belva Lockwoods, or Atticus Finches or the office manager who is indispensable, that tells them something else.<sup>98</sup>

Law schools train students to constantly verbalize. It is perhaps more difficult to train students toward silent observation and listening well.<sup>99</sup> Encourage students to listen to stories about legal mavericks, innovative thinkers, and lawyers who have developed a reputation for professionalism and the quality of service they deliver—entrepreneurs who spun off into boutique specialties or female headed smaller practices;<sup>100</sup> lawyers who created new specialty areas of practice (such as cyber law, law and entrepreneurship, animal rights, or transnational law); and attorneys who developed stellar reputations for trustworthiness, fair play, and an exemplary work ethic.<sup>101</sup> Stories raise themes about the structural features of law firms, like the gendered organization of legal practice or questionable billing practices.<sup>102</sup> Stories inform

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98. See e.g. Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society* 90 (Farrar, Straus & Giroux 1994) (“The stories lawyers told themselves about professionalism were not just self-serving facades. They were efforts to answer Holmes’s question of questions (by no means unique to lawyers): does all this ‘make out a life?’”).

99. See Richard H. Weisberg, *The Quest for Silence: Faulkner’s Lawyer in a Comparative Setting*, 4 Miss. C. L. Rev. 193, 207 (1984).

100. See e.g. Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 Tex. J. Women & L. 27, 58–59 (2004).

101. See e.g. Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 Hamline L. Rev. 555 (2007).

102. See generally e.g. William R. Keates, *Proceed With Caution: A Diary of the First Year at One of America’s Largest, Most Prestigious Law Firms* (Harcourt Brace Leg. & Prof. Publications 1997); Cameron Stracher, *Double Billing: A Young Lawyer’s Tale of Greed, Sex, Lies, and the Pursuit of a Swivel Chair* (W. Morrow & Co. 1998).

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about a firm's culture, history, and expansion, and they indicate what a firm values.

The stories told about life in practice tell about ethical codes, human relationships, the craft of law—about what is important. If we train students while they are in law school to write their stories with care, with attention to detail, and with passion—and to pay attention to their own roles in the life of the law—we will be training a generation that cares about people and fair treatment of them. The narrative form—of stories, chronicles, parables, poems—encourages writers to imagine different versions of events. Perhaps ultimately, storytelling can encourage the re-imagination of law.