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# THE SECOND DRAFT

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## Once Upon a Time: The Influence of Narrative in Legal Writing

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### **LWI Policy Statement on Law Faculty** *Adopted March 2015*

The Legal Writing Institute is committed to a policy of full citizenship for all law faculty. No justification exists for subordinating one group of law faculty to another based on the nature of the course, the subject matter, or the teaching method. All full-time law faculty should have the opportunity to achieve full citizenship at their institutions, including academic freedom, security of position, and governance rights. Those rights are necessary to ensure that law students and the legal profession benefit from the myriad perspectives and expertise that all faculty bring to the mission of legal education.

**Dear LWI members:**

**This column provides a preliminary report on progress toward the LWI Board's priority goals for the current biennium. I hope you will keep an eye on the LWI website's home page for additional and updated information.**

The Board set two priorities for the 2014-16 biennium: (1) improving and protecting professional status for LWI members and (2) building the discipline of legal writing. These priorities are linked in several ways: they are political, their purpose is to advance and strengthen legal education, and they require institutional and local action.

The goals of improving professional status and building the discipline of legal writing are political because they challenge established structures and advocate progressive change. Current hierarchies of law school faculty members indirectly subvert improvements in legal education because they interfere with the ability of all faculty members to fully and effectively engage in teaching, scholarship, and professional service. Moreover, current hierarchies among law school curricula directly hinder advancements in legal education because they support the status quo in law school hiring, course offerings, and teaching methods. The LWI policy supporting "full citizenship" for all law school faculty would eliminate one hierarchical pillar while a recognized and shared disciplinary knowledge base would undermine another.

In addition to LWI-wide policies and programs, we understand that local action is necessary to achieve these goals for individual members. Substantial challenges to faculty, courses, and teaching methods grow out of the particular conditions existing at an individual law school. Though some aspects of these challenges will be similar across the country, their resolution is often possible only through information sharing and collaboration among educators and administrators at the individual law school. As a result, we view LWI's role as institutional—setting policy, gathering data, disseminating information—and as local—responding to individuals facing specific challenges.

The new LWI Professional Status Committee is working toward the first priority in several ways. First, LWI, ALWD, and SALT have adopted a jointly drafted policy statement supporting "full citizenship" for all law faculty members, and we are asking other organizations and faculty members to adopt the policy statement as well. Second, the Committee is collecting data and information on status and security of position in order to help individual faculty members and faculty groups advocating for program and status improvements. Third, in cooperation with other organizations, the Committee

is drafting a set of best practices governing the most frequently provided category of security of position for legal writing and clinical faculty, presumptively renewable contracts under ABA Standard 405(c). Finally, the Committee is responding to concerns raised by individual members about



pending program and status issues. The Committee expects to make additional information, resources, and contact information available on the LWI website.

The relationship between professional status and discipline building becomes clearer when a law school supports full citizenship for all law faculty and encourages the professors who teach legal writing to engage in study, practice, and teaching as essential components of their professional development. In contrast, both professional status and discipline building are under attack when a law school discourages scholarship or engagement in professional service activities and when a law school requires teaching loads or administrative duties that make scholarship or professional service impossible. The LWI Board's discipline-building projects will be designed to concretely and actively support legal writing professors when they engage in scholarly work—because such work is good for the profession, law students, and teachers themselves—and also to help legal writing professors build support and opportunities for their scholarship and service endeavors within their own law schools.

Please feel free to contact me or other members of the LWI Board with questions or suggestions relating to these goals.

On behalf of the Board, our best wishes for an enjoyable and productive fall semester, and our thanks to the Editorial Board of the Second Draft for their consistently excellent work producing this valuable resource.

Linda Berger  
*President, Legal Writing Institute*  
*UNLV William S. Boyd School of Law*

# Narrative in Law and Life: Some Frequently Asked Questions (FAQ's)



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As an introduction to this issue of *The Second Draft*, I address some FAQ's about the role of narrative (as below defined) in law and in life. I hope these brief FAQ's might also double as a workable handout for teachers first introducing students to the importance of narrative in law and in life.

## WHY SHOULD WE STUDY NARRATIVE?

I use the term "narrative" broadly as "a story."<sup>1</sup> Deriving from the Latin, *historia*, the story is "[a]n account or a recital of an event or series of events."<sup>2</sup> Since we are temporal beings whose lives play out as series of events (mental and physical), we by definition unfold as stories. If we are to understand ourselves and others, we must therefore understand the nature, opportunities, and limits of narrative.

These limits include inherited forms of narrative that restrict us where we do not push back. As Alasdair MacIntyre puts it:

We enter human society . . . with one or more imputed characters—roles into which we have been drafted—and we have to learn what they are in order to be able to understand how others respond to us and how our responses to them are apt to be construed. . . . Deprive children of

stories and you leave them unscripted, anxious stutterers in their actions as in their words. Hence there is no way to give us an understanding of any society, including our own, except through the stock of stories which constitute its initial dramatic resources.<sup>3</sup>

We must thus grasp narrative for self-understanding, for understanding others, and for understanding how others view us and those depending upon us. Where current or inherited stories fail us or those depending upon us, we must understand how to tell better stories with equal or greater plausibility.

## DOES NARRATIVE HAVE A BASIC OVERARCHING FORM OR FORMS?

Yes. Since a story is "[a]n account or a recital of an event or series of events,"<sup>4</sup> a story's most basic form is perhaps just the recounting of some person or thing (or some persons or things) moving from any point (or number of points) to another point (or number of points) in time. This basic form allows infinite permutations and lawyers need the best of these forms for their purposes.

Amsterdam and Bruner give us one powerful candidate for best plotting such narrative movement: a five-part structure involving (1) an "initial steady state," (2) a "Trouble" that disrupts the initial steady state, (3) ". . . efforts at redress or transformation, which succeed or fail," (4) ". . . [an] old steady state . . . restored or a new (transformed) steady state . . . created," and (5) possibly a concluding "moral of the story."<sup>5</sup>

This five-part structure seems particularly useful for lawyers because our clients come to us with problems needing solution. We need to understand the state preceding the problem, the trouble that caused the problem, the desired new “steady state,” and the best means to the end of achieving that new “steady state.” Understanding the “moral” of the “tale” is also important. If the matter is a transactional one, we need to understand what is right for the parties so that we construct a win-win deal if that is at all possible. If the matter is one of litigation, we want to understand and articulate the justice of our client’s position to increase the chance that we prevail.

## HOW DOES FRAMING DRIVE NARRATIVE?

In constructing the “moral” of our tale as well as discerning the best means to achieve the desired new “steady state,” we must understand the role and flexibility of framing in narrative. In any such understanding, we can often plausibly reject inherited or opposition frames. Of course, to understand this, we also must take care to be conscious of the frames in play.

To illustrate, we might take Wittgenstein’s famous example of a drawing that on its face can just as plausibly picture a duck or a rabbit.<sup>6</sup> If we represent a client whose duck was stolen (the “Trouble”) and believe that a similar picture is actually a drawing of the duck made by the thief, we will want to frame the drawing as one of a duck. If we step into a courtroom where everyone is speaking of a rabbit drawing, we will of course want to push back. Our opponents may have framed first but we can reframe and resist.

## HOW DO CONCEPTS DRIVE NARRATIVE?

To talk about someone’s or something’s journey through time, we must be able to clearly refer to that person or thing. Without getting into the philosophical weeds about how we do this, we can, among other ways, name them, use contextually-clear pronouns, or describe them.<sup>7</sup>

For example, if I want my story to be about George Washington and not Thomas Jefferson, I can use Washington’s name or I can use some descriptive term or phrase such as “the first President of the United

States.” To do the latter, to describe persons or things, I need descriptive categories that can single out such persons or things.

As Amsterdam and Bruner note, “To put something in a category is to assign it meaning, to place it in a particular context of ideas.”<sup>8</sup> As the second part of this quotation indicates, categories bring with them their “context of ideas” and the careful storyteller is conscious of, and careful to understand, this broader context and the various ways such context may be framed. A female judge, for example, once responded to a recusal motion in a case of gender discrimination that all judges have gender.<sup>9</sup>

## WHAT CAN WE DO WHEN WE LACK THE NECESSARY CONCEPTS FOR THE NARRATIVE WE NEED TO TELL?

When we lack concepts that specifically apply to a given situation, we must either create new concepts or “stretch” the ones that we have. To “stretch” a concept, we can use analogy or simile (X is like Y) or we can use metaphor (X is Y).<sup>10</sup>

For example, to tell stories from our laboratory we might view atoms as little solar systems where electrons are planets that revolve around a nucleus of protons and neutrons. In so doing, we will be focusing on the similarities between the two parts of the equation and ignoring the dissimilarities.

Of course, good lawyers ignore nothing of potential relevance and will always be cognizant of both suppressed dissimilarities and of problematic implications of metaphors chosen. A solar-system atom, for example, might imply that neutrons and protons are hot while electrons are colder like planets. It might also imply that electrons are solid and particulate like planets. The metaphor presumably ignores such things as moons of planets, comets and other things within solar systems. This may ultimately work or it may not depending on how close the correlations must be for purposes of the narrative.

Interestingly, despite all the admonitions of our English teachers, there are times when metaphors should be mixed. Staying with laboratory examples, quantum mechanics tells us that light can be explained as both a particle and a wave.<sup>11</sup> Of course light is not a particle

(at least in the sense of the dust particles that traverse its beams) nor is it a wave (at least in the sense of waves that wash the beach under its beams). A fortiori is it therefore not a combination of these contradictory things. Yet, just such a mixed metaphor can be required for good science.<sup>12</sup>

## ARE THERE BASIC STORYLINES THAT REPEAT?

Yes. Ruth Anne Robbins, Steve Johansen, and Ken Chestek provide seven good examples: (1) a person against herself, (2) a person against another person, (3) a person against society (or the reverse), (4) a person against a machine or institution, (5) a person against nature, (6) a person against God, and (7) God against persons.<sup>13</sup> Though I do not claim this list exhausts the basic possibilities, knowing these seven basic types helps lawyers invent compelling narratives.

## ARE THERE BASIC CHARACTER TYPES THAT WE REUSE?

Yes. We no doubt reuse various prominent character types in narrative. These include such archetypes as Hero, God, Savior, Creator, Self, Father, Mother (including Earth Mother, Nurturing Mother, Devouring Mother), Child (including Divine Child, Eternal Child), Explorer, Wanderer, Outlaw, Monster, Devil, Scapegoat, Victim, Sage, Fool (including Wise Fool), Trickster, Tyrant, and Warrior.<sup>14</sup> One character may exhibit one or more of these archetypes. For example, an Eternal Child could also be a Wanderer and a Trickster.

Additionally, literature shows common traits that reappear in stock characters. Theophrastus, for example, long ago listed the following such traits:

Dissembling, Flattery, Idle Chatter, Boorishness, Obsequiousness, Shamelessness, Garrulity, Rumor-Mongering, Sponging, Pennypinching, Obnoxiousness, Bad Timing, Overzealousness, Absent-mindedness, Grouchiness, Superstition, Gripping, Mistrust, Squalor, Bad Taste, Petty Ambition, Lack of Generosity, Fraudulence, Arrogance, Cowardice, Authoritarianism, Rejuvenation, Slander, Patronage of Scoundrels, [and] Chiseling.<sup>15</sup>

.....

*Amsterdam and Bruner give us one powerful candidate for best plotting such narrative movement: a five-part structure involving (1) an “initial steady state,” (2) a “Trouble” that disrupts the initial steady state, (3) “. . . efforts at redress or transformation, which succeed or fail,” (4) “. . . [an] old steady state . . . restored or a new (transformed) steady state . . . created,” and (5) possibly a concluding “moral of the story.”*

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Though I do not claim that these lists exhaust the basic possibilities, knowing them also helps lawyers invent compelling narratives.

## CAN NARRATIVE DRIVE THE RESULTS OF A SUPREME COURT CASE?

Yes! Linda Edwards give us a good example with *Hamdi v. Rumsfeld*.<sup>16</sup> In this case, a U.S. citizen was born in Louisiana, relocated to Saudi Arabia with his parents, and was later captured in post September 11 violence. He was imprisoned in Afghanistan, Guantanamo, and then in U.S. military jails. As Linda Edwards puts it, “The administration did not disclose its allegations against him, and he had no opportunity to refute them. The government argued that because the United States was under attack by terrorist forces, it could keep Hamdi . . . essentially for as long as it chose.”<sup>17</sup>

As Prof. Edwards deftly maintains, the case turned on competing narratives: the “myth of redemptive violence” where the executive branch needed a “virtually free hand” to protect us from a world described as “an overwhelmingly dangerous place”<sup>18</sup> vs. the story of “the hard-won freedoms secured [for American citizens] by the American Revolution and the founding of the Nation.”<sup>19</sup>

As Prof. Edwards notes, the Supreme Court found the “hard-won freedoms” narrative more compelling and ruled that Hamdi could not be indefinitely detained without a trial. In doing so, “[t]he majority of the Supreme Court saw the arguments primarily through the lens of the American story establishing the liberty and safety of citizens as against an unconstrained Executive.”<sup>20</sup>

As Prof. Edwards also notes, examining such narratives allows us to ask questions of great importance. It allows us to question such things as whether revenge can really heal us, whether following the rule of law really weakens us, and whether violence is “the only effective answer to human evil.”<sup>21</sup>

## CAN NARRATIVE DRIVE TRANSACTIONAL PRACTICE?

Yes! As in litigation, parties who construct the better narratives increase their chances of prevailing in their negotiations. In negotiations, good narratives account for the interests of all the parties and, if possible, show how the story teller’s desired results achieve a new “steady state” that is a win-win for all.

Additionally, basic contract form permits documentation of these narratives for future readers, interpreters, and enforcers of contracts. Recitals allow parties to tell their transactional story and a good lawyer does not waste the story-telling opportunities recitals provide. In the event future disputes arise, the recitals stand ready to tell their story again.

## FINALLY, HOW DOES NARRATIVE’S IMPORTANCE UNDERSCORE THE IMPORTANCE OF AN EDUCATION IN THE HUMANITIES?

As the above answers show, the more stories and character types that one knows, the more ammunition one has to be a lawyer. Lawyers with such knowledge start well ahead of lawyers who lack it.

For what it is worth, I would advise the lawyer lacking a liberal arts background to begin with the complete Shakespeare. As Jane Austen notes:

[Shakespeare’s] celebrated passages are quoted by everybody; they are in half the books we open, and we all talk Shakespeare, use his similes, and describe with his descriptions . . . .<sup>22</sup>

In Shakespeare one finds a plethora of the personality and quandary types one faces over the years. The older I become and the more I see, the more I appreciate the incredible scope of Shakespeare’s genius. A lawyer who has never met Falstaff or Prince Hal or the rest of Shakespeare’s universe is surely at a disadvantage to the lawyer who has.

That is not to say that lawyers can dispense with other works. I of course greatly value my marked-up volumes of Homer, Aeschylus, Sophocles, Euripides, Virgil, Chaucer, Dante, Villon, Du Bellay, Racine, Molière, Marlowe, Milton, Fielding, Hawthorn, Melville, George Eliot, Jane Austen, Hardy, Balzac, Poe, Borges, and Faulkner just to name a few.<sup>23</sup> As one who appreciates the importance of literature in life and in practice, I am thrilled to hear others’ thoughts on these volumes and on the countless works that I have unfortunately missed in my own studies (including non-Western works neglected in Western canons).

With these introductory thoughts, I now commend the articles and essays that follow in this issue of *The Second Draft*.

### NOTES

\*© 2015. I thank Prof. Abigail Perdue for her many helpful comments and for suggesting narrative as the topic of this edition of *The Second Draft*. I also thank my Research Assistant Steven Verez for his helpful thoughts and comments. Any errors are of course my own.

1. THE AMERICAN HERITAGE DICTIONARY 907 (3d ed. 1992). This is a broader usage than employed by Amsterdam and Bruner, who define narratives as “. . . stories that illustrate what happens when a [model or canonical story] is thrown off track or threatened with derailment.” ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW 45 (2002).
2. THE AMERICAN HERITAGE DICTIONARY, *supra* note 1, at 1339.
3. ALASDAIR MACINTYRE, AFTER VIRTUE 201 (1981).
4. THE AMERICAN HERITAGE DICTIONARY, *supra* note 1, at 1339.
5. AMSTERDAM & BRUNER, *supra* note 1, at 113-14 (italics are in the original).
6. LUDWIG WITGENSTEIN, PHILOSOPHICAL INVESTIGATIONS 194 (G.E.M. Anscombe trans., Pearson 3d ed. 1972) (1953).
7. See ALAN CRUSE, MEANING IN LANGUAGE: AN INTRODUCTION TO SEMANTICS AND PRAGMATICS 392-96 (outlining some possible ways to refer and some questions about them). Though the mechanics of how we do this can be questioned, Cruse correctly notes that “. . . the job of the speaker is to give enough information to uniquely specify the referent within some limited domain.” *Id.* at 393.
8. AMSTERDAM & BRUNER, *supra* note 1, at 28.
9. *Id.* at 28.
10. GEORGE LAKOFF & MARK JOHNSON, METAPHORS WE LIVE BY 5 (1980) (“The essence of metaphor is understanding and experiencing one kind of thing in terms of another” (italics omitted)).
11. Franco Selleri, Preface to WAVE-PARTICLE DUALITY (Franco Selleri ed. 1992); see also generally B. H. Bransden & C. J. Joachain, Quantum Mechanics, 760 (2nd ed. 2000).

12. See *again supra* note 11. Of course, our English teachers rightly condemned carelessly-mixed metaphors. For example, "Life's whale ate Jonah then it licked its paws" ruins otherwise good iambic pentameter.
13. RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING 96 (2013).
14. See, e.g., *id.* at 90; JOS VAN MEURS, JUNGIAN LITERARY CRITICISM: AN ANNOTATED CRITICAL BIBLIOGRAPHY OF WORKS IN ENGLISH 1920-80 (1991); 1 AN ENCYCLOPEDIA OF ARCHETYPAL SYMBOLISM (Beverly Moon ed., 1997).
15. THEOPHRASTUS, CHARACTERS 48-49 (I. C. Cunningham trans., Loeb 1993) (numbers, Greek terms, and commas omitted for ease of reference).
16. *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).
17. Linda H. Edwards, *Where Do the Prophets Stand? Hamdi, Myth, and the Master's Tools*, 13 CONN. PUB. INT. L.J. 43, 60 (2013).
18. *Id.* at 61-63.
19. *Id.* at 64.
20. *Id.* at 66.
21. *Id.*
22. 1 JANE AUSTEN, *Mansfield Park*, in THE COMPLETE NOVELS OF JANE AUSTEN 553, 797 (Modern Library 1992).
23. Perhaps I should not have hazarded this incomplete list of my own preferences but it gives (for whatever it is worth) a small window into what has moved me over the years. Again, I am always happy to discuss particular volumes with others and hear their suggestions about the countless works that I have missed in my own studies.



# Marriage Equality on the Arc of Civil Rights History: A Broad Historical Narrative<sup>1</sup>



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## I. INTRODUCTION

With the Supreme Court's recent decision in *Obergefell v. Hodges*, recognizing a constitutional right to same-sex marriage,<sup>2</sup> our country has turned a page within a chapter of its civil rights history. An ongoing narrative of that civil rights history reveals a repeating pattern to the justifications advanced in each era for discrimination—justifications that are ultimately rejected in one context, but then invoked in slightly modified form to oppose the next civil rights movement. Opponents of marriage equality often protest that this claim to equality is “different” from previous claims. But the nature of the opposition is eerily similar to forms of opposition rejected in previous chapters of our civil rights history.

This historical narrative in the marriage equality movement is sufficiently compelling that it suggests a possible technique for advocacy in any emerging civil rights claim: an introduction or theme to a brief, oral argument, or legislative testimony that places the emerging claim in its historical context. Making the historical narrative explicit might help society, legislatures, and the courts recognize when we are in the midst of a transition period associated with a civil rights movement that inevitably will, and should, prevail.

## II. NARRATIVE AND STORY-TELLING

Narrative in advocacy most typically takes the form of telling the client's story.<sup>3</sup> And story-telling of that form has contributed effectively to advocacy for marriage equality. In many cases, the record has painted a vivid picture of the lives of a same-sex couple, their aspirations as partners and parents, and the burdens they face when denied the rights and dignity that a marriage license affords.<sup>4</sup> In turn, some judicial decisions recognizing a constitutional right to same-sex marriage have reproduced these stories in the opinions.<sup>5</sup>

When I discuss this issue with acquaintances who argue that same-sex marriage will in some inexplicable way cause harm to opposite-sex marriages, I tell the story of my son, Alex, and his husband, Alek, who were able to marry in California after the demise of Proposition 8, and whose love and marriage have served as an inspiration to their heterosexual friends.

Indeed, my son has presided over the marriages of two of those opposite-sex couples.

Further, Linda Edwards reminds us that narrative in the law can take a much broader view.<sup>6</sup> We can tell stories about the law itself and its development over time, and we can even reveal the deeply seated cultural myths that help us make sense of the world, that sit in the background to influence us in our subconscious construction of right and wrong.<sup>7</sup> Indeed, in *Obergefell*, Justice Kennedy's opinion for the majority tells several stories at different levels: the personal stories of petitioners,<sup>8</sup> the story of the evolution of the marriage institution over centuries,<sup>9</sup> the story of the evolution of our law on gay rights,<sup>10</sup> and the story of the ongoing dialogue in federal and state courts and legislatures regarding same-sex marriage.<sup>11</sup>

By examining the evolution of our civil rights law over the centuries, we can better understand the place of marriage equality in the context of that arc. In turn, recounting the narrative of past civil rights struggles – including our most embarrassing lapses in protecting civil rights – might help us recognize and advance meritorious civil rights causes in the future.

### III. CIVIL RIGHTS HISTORY

I begin this narrative with nineteenth century case law referring to the blessing of the Christian church for European enslavement of Native Americans and Africans, as purportedly legitimate treatment of “heathen” non-Christians.<sup>12</sup> Case law and other literature from that era refers to the ancient traditions of slavery, to Biblical and otherwise Divine support for slavery, and to the slave status of Africans and their descendants as their “natural position.”<sup>13</sup>

In 1865, our country finally broke with the tradition of slavery by adopting the Thirteenth Amendment.<sup>14</sup> In 1866, Congress followed with legislation that prohibited racial discrimination in the making and enforcement of contracts,<sup>15</sup> and in 1870 we adopted the Fifteenth Amendment, prohibiting voting discrimination on the basis of “race, color, or previous condition of servitude.”<sup>16</sup>

Although the struggle to achieve full racial equality has continued well more than a century after Reconstruction,<sup>17</sup> and though various forms of slavery tragically are very much a reality today around the globe,<sup>18</sup> the Thirteenth Amendment explicitly ended the legally sanctioned evil of slavery in the U.S.

But in the same era, despite the call for equal rights for women at Seneca Falls in 1848,<sup>19</sup> women were denied full legal status and agency. John Stuart Mill characterized the cultural and legal restrictions on women in this era as “the primitive state of slavery lasting on, through successive mitigations and modifications.”<sup>20</sup>

For example, just four years after adoption of the Fifteenth Amendment, the Supreme Court upheld states' authority to deny the vote to women, citing to a “uniform practice long continued,”<sup>21</sup> a practice that persisted until the adoption of the Nineteenth Amendment a full half-century after the Fifteenth Amendment.<sup>22</sup>

Moreover, in contrast to the 1866 legislation that on its face provided equal contract rights on the basis of race, state laws affirmatively restricted those opportunities for women. For example, a married woman largely lost her civil capacities, such as the capacity to enter into contracts, capacities that were maintained exclusively by her husband.<sup>23</sup>

In short, in the Reconstruction Era, federal law protected newly freed slaves from racial discrimination, but it did nothing to protect women—whether former slaves or members of high society—from sex discrimination.<sup>24</sup> So, in that world, it likely seemed quite natural for the Supreme Court, in *Bradwell v. Illinois* (1872)<sup>25</sup> to uphold a state law prohibiting women from practicing law. In his concurring opinion, Justice Bradley articulated the prevailing assumptions of the time:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. . . . The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator.<sup>26</sup>

One can imagine traveling back in time, to tell Justice Bradley: “I know your concurrence sounds sensible now, but consider your place in history. Look at the full arc of civil rights history. Our nation just passed the Thirteenth, Fourteenth, and Fifteenth Amendments, and it’s not difficult to predict that your words will be infamously jarring some day.”

Justice Bradley’s legacy is a lost cause, but we may be able to take a lesson from that era. While acknowledging that full racial equality is still a work in progress in our country, let us focus on the decade of 1865-75 and strive to explain how the law could deny women economic agency and the right to vote while a Reconstruction Congress was engaged in a flurry of legislative activity to protect the economic and voting rights of newly freed male slaves.

I offer this simple explanation, suggested by Justice Bradley’s concurrence: in the mindset of that time, sex was “different.” Sex and sex roles implicated procreation, childrearing, and the typical man’s need to view himself as the smarter, stronger sex, uniquely capable of acting as the family bread-winner and as the sole participant in democratic self-governance. So, even as one civil rights movement made at least temporary progress, our society displayed a great capacity to see the next cause as different, as distinguishable, and as justifying renewed resistance on similar grounds based on what was viewed as traditional, natural, and consistent with religious beliefs.

Similar concerns help to explain majority disapproval of interracial marriage in 1968,<sup>27</sup> more than a decade after *Brown v. Board of Education*,<sup>28</sup> more than four decades after women gained the right to vote,<sup>29</sup> a few years after enactment of the 1964 Civil Rights Act,<sup>30</sup> and – most tellingly – a year after the Supreme Court recognized a constitutional right to interracial marriage in *Loving v. Virginia*.<sup>31</sup>

Again, in the eyes of those who had defended the discriminatory state laws, and of those continuing to disapprove of interracial marriage after *Loving*, interracial marriage was *different* from previous civil rights issues. As reflected in some judicial opinions of the time, interracial marriage triggered new fears and sensitivities about race coupled with sexual relations, procreation, and childrearing.<sup>32</sup> Seventy years before the election of President Obama, some advocates for State defendants warned of uncertainty about how the

mixed race offspring of interracial couples would fare in our society.<sup>33</sup> And, in a familiar refrain, some cases justified bans on interracial marriage as upholding that which was natural and was consistent with both religious doctrine and long-standing tradition.<sup>34</sup>

Of course, we have since traveled along the arc of civil rights history. Although only four per cent of the population approved of interracial marriage in 1958, in 2013 only four percent *disapproved*.<sup>35</sup> Today, the judicial opinions defending bans on interracial marriage sound as jarring as Justice Bradley’s appeals to God, nature, and tradition when he sought to justify banning women from the practice of law, or nearly as jarring as similar rationales for slavery.<sup>36</sup>

A few decades after *Loving*, we entered a transition period on the issue of same-sex marriage. Religious objections,<sup>37</sup> tradition,<sup>38</sup> or simple animus<sup>39</sup> sometimes have surfaced as explicit justifications for same-sex marriage bans, or those motivations can be inferred from the implausibility of the justifications expressly advanced by states after the fact.<sup>40</sup>

Less formally, in conversations with friends over the years, I have heard others justify bans on same-sex marriage on familiar grounds: on religious convictions, on what seemed “natural” to them, and on the belief that the issue of same-sex marriage is “different” from earlier issues such as interracial marriage.

Of course it’s different. It’s always different. Each new civil rights claim is different from the last, or it wouldn’t be the next step on the civil rights arc.

And meritorious civil rights claims need not be equivalent on some moral scale. For example, banning interracial marriage is undoubtedly less horrible than buying, selling, and holding human beings for slave labor, but they are both terribly wrong. We don’t need to weigh marriage equality against other civil rights claims to know that the law should not prohibit loving, committed consenting adults from sharing their lives together with dignity and legal rights.<sup>41</sup>

Of course each new civil rights claim is different from the last. Yet our society seems to repeat the same patterns of resistance that have been rejected in each step forward. The same-sex marriage debate, and other issues affecting the LGBT community, are simply the latest examples.

## IV. CIVIL RIGHTS ADVOCACY

In light of this historical narrative, advocacy in future civil rights chapters might be advanced if claims are placed in the context of the full narrative. The narrative might help our society see how opposition to each successive civil rights claim is similar in nature to justifications advanced in an earlier era and now clearly rejected. If so, our society and lawmakers can be collectively self-aware that we are once again in a transition period and that we should not impede our evolution by clinging to familiar justifications for discrimination.

If communicated effectively, this narrative might help the general population address emerging civil rights issues more thoughtfully, and it might help legislators gain the courage to help society evolve rather than pander to its most fearful elements. Primarily, however, it could help persuade a judge to choose an analytic framework that propels the law forward rather than one that mires it in the past.

### A. Indeterminacy: Choosing Between Competing Analytic Frameworks

Indeterminacy in constitutional interpretation is illustrated in the Supreme Court's decision in *DeShaney v. Winnebago County Department of Social Service*.<sup>42</sup> The majority held that social workers did not violate the substantive due process rights of a child who was permanently injured by his father, because the social workers' failure to intervene after prior parental abuse amounted to *inaction* rather than oppressive state *action*.<sup>43</sup> In dissent, Justice Blackmun was unusually candid about the role that judicial values can play in the application of precedents interpreting the Constitution: "Like the antebellum judges who denied



*[R]ecounting the narrative of past civil rights struggles – including our most embarrassing lapses in protecting civil rights – might help us recognize and advance meritorious civil rights causes in the future.*

relief to fugitive slaves . . . the Court today claims that its decision, however harsh, is compelled by existing legal doctrine. On the contrary, the question presented by this case is an open one, and our 14th Amendment precedents may be read more broadly or narrowly depending upon how one chooses to read them. Faced with the choice, I would adopt a "sympathetic" reading, one which comports with dictates of fundamental justice and recognizes that compassion need not be exiled from the province of judging."<sup>44</sup>

Same-sex marriage litigation has provided similar opportunities to choose between permissible interpretations and analytic frameworks. The choice between two permissible approaches can either propel the claim forward or erect a

wall against it. For example, prior to resolution by the Supreme Court, state and federal courts accepted or rejected claims to a constitutional right to same-sex marriage depending on the approach they adopted on issues such as the following:

- 1. Fundamental Right Triggering Heightened Scrutiny** - To trigger heightened scrutiny for a fundamental right, some judges have required the plaintiff to bear the impossible burden of showing that same-sex marriage is supported by long tradition.<sup>45</sup> Other judges have easily found that marriage in general is a fundamental right supported by tradition, thus triggering heightened scrutiny of the exclusion of same-sex couples from that right.<sup>46</sup>
- 2. Classification Warranting Heightened Scrutiny** - Some judges have found that a same-sex marriage ban triggers heightened scrutiny by operating as sex discrimination, because – as applied to a specific plaintiff, who claims an individual right – the restrictive marriage law permits the plaintiff to marry the plaintiff's female

partner only if the plaintiff is a man rather than a woman (or to marry the plaintiff's male partner only if the plaintiff is a woman rather than a man).<sup>47</sup> Other judges have concluded that a ban on same-sex marriage treats both sexes equally, and thus does not trigger heightened scrutiny, because it applies in the aggregate to exclude both men and women who wish to marry a member of the same sex.<sup>48</sup> Alternatively, a few judges have been prepared to recognize that sexual orientation discrimination independently warrants heightened scrutiny,<sup>49</sup> while many have reviewed only for a rational basis.<sup>50</sup>

### 3. Application of a Rational Relationship Test

When a court evaluates a ban on same-sex marriage on the basis of the highly deferential test of a rational relationship to a legitimate state interest, some judges nonetheless have found that the ban is irrational if granting same-sex marriage would do nothing to hamper the state's purported goal of funneling heterosexual procreation into the marriage institution.<sup>51</sup> Other judges have found that a law restricting marriage to opposite-sex couples is rational so long as granting state licenses solely to opposite-sex marriage advances the state's legitimate goal in some way, even if granting same-sex marriage would not hamper that goal and even if the fit between the state's regulation and its goal is far from perfect.<sup>52</sup>

### 4. Deference to Popular or Legislative Will -

During an era of vigorous national debate over same-sex marriage, some judges have erred on the side of deferring to the democratic process as reflected in the laws enacted by elected legislators or adopted by popular vote in a referendum.<sup>53</sup> Other judges have shared the view of Judge Posner when he wrote, "Minorities trampled on by the democratic process have recourse to the courts; the recourse is called constitutional law."<sup>54</sup>

Time and time again, lower courts either upheld or struck down same-sex marriage bans based on which way judges leaned regarding these competing values or analytic frameworks. This pattern continued when the *Obergefell* case reached the Supreme Court.

In the Supreme Court's 5-4 decision in *Obergefell*, the fences that primarily divide the majority and dissenting opinions are the first and fourth described above. Justice Kennedy's majority opinion explains that bans

on same-sex marriage burden a fundamental right to marry;<sup>55</sup> in contrast, Justice Roberts's dissenting opinion notes that the precedent supporting a right to marry dealt solely with opposite-sex marriages, and Justice Roberts complains that the petitioners' claim seeks to "make a State change its definition of marriage."<sup>56</sup> But far more ink was spilled, especially in the four dissenting opinions, on the propriety of judicial resolution of a topic of ongoing democratic debate in political arenas. Justice Kennedy's majority opinion emphasizes the responsibility of the Court to protect a fundamental right while resolving a split in the circuits, and it notes that the decades of political debate on the issue had informed the Court's analysis;<sup>57</sup> in contrast, the dissenting opinions emphasize that "this Court is not a legislature,"<sup>58</sup> and they characterize the majority opinion as "a threat to American Democracy,"<sup>59</sup> a "usurp[ation of] the constitutional right of the people to decide,"<sup>60</sup> and a means of "undermining the political processes that protect our liberty."<sup>61</sup>

In future cases, the broader civil rights narrative might help a judge to choose between competing analytic frameworks in litigation over any emerging civil right. In such a case, a judge could lean either way on novel issues, depending on what result the judge believes is right, is just, and is consistent with our progress on the arc of civil rights history.

Eleven years ago I wrote the Introduction to an ACLU brief in a same-sex marriage case in Arizona, presenting the civil rights narrative in eight pages, to set the tone for the legal arguments in the brief.<sup>62</sup> The Introduction began with these two sentences:

Throughout our nation's history, American courts have come to the aid of minority groups that large segments of the population viewed with fear, derision, or condescension. Although Courts accord appropriate deference to the majority will as expressed through democratic institutions, they have also recognized that some constitutional principles are designed to protect minority groups from oppression at the hands of those who are sufficiently numerous, powerful, or motivated to wield control of political processes.<sup>63</sup>

The historical narrative has also surfaced in a few judicial opinions. In cases in which courts have denied same-sex marriage rights, a few dissenting judges have referred quite candidly to the place of this issue

in a broader historical perspective or even to the harsh judgment of future generations.<sup>64</sup>

The tide has turned, and same-sex marriage is now a constitutional right.<sup>65</sup> But other civil rights issues will arise, some raising novel issues and others bringing us full circle. Some will again affect the LGBT community, such as the movement to add sexual orientation and gender identity as protected classifications to laws banning discrimination in employment and in public accommodations.<sup>66</sup> Others will reflect our continuing quest for racial equality, particularly in our criminal justice system.<sup>67</sup> In at least some of these struggles, advocates should consider whether retelling the civil rights narrative might help illuminate the next point of light on the arc of civil rights history.

#### NOTES

1. The following is a slightly edited version of the author's oral presentation of the general thesis of his article, *Advocacy for Marriage Equality: The Power of a Broad Historical Narrative During a Transitional Period in Civil Rights*, forthcoming in 2015 Mich. St. L. Rev (expected publication Jan. 2016). He presented the paper at the Symposium on Persuasion in Civil Rights Advocacy held at Michigan State University College of Law, April 10, 2015. Readers are urged to consult that formal law review article for the full argument and comprehensive citations to authority.
2. *Obergefell v. Hodges*, No. 14-556 (S. Ct. June 26, 2015).
3. See, e.g., Ruth Ann Robbins, Steve Johansen & Ken Chestek, *Your Client's Story: Persuasive Legal Writing* 292 (2013); Ruth Anne Robbins, Harry Potter, Ruby Slippers, and Merlin: *Telling the Client's Story Using the Characters and Paradigm of the Archetypal Heroes Journey*, 29 Seattle U. L. Rev. 767 (2006); Jonathan Shapiro, *Lawyers, Liars, and the Art of Storytelling* 125 (2014) ("The client will be your story's central character, or at least one of them.").
4. See, e.g., Mary L. Bonauto, *Goodridge in Context*, 40 Harv. C.R.-C.L. L. Rev. 1, 32-33 (2005) (summarizing the plaintiffs' perspective set forth in the complaint in *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003)); Brief for Petitioners at 6-12, *Obergefell v. Hodges*, No. 14-556 (U.S. Feb. 27, 2015) (telling the stories of the lives and relationships of petitioning same-sex couples).
5. E.g., *Whitewood v. Wolf*, 992 F. Supp. 2d 410, 416-18 (M.D. Pa. 2014) (describing plaintiff couples in vivid and sympathetic terms); *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128, 1133 (D. Or. 2014) (summarizing the plaintiffs' stories, showing that they "share in the characteristics that we would normally look to when we describe the ideals of marriage and family").
6. Linda H. Edwards, *Where do the Prophets Stand? Hamdi, Myth, and the Master's Tools*, 13 Conn. Pub. Int. L.J. 43 (2013).
7. *Id.* at 46-59 (2013) (synthesizing the work of other authors).
8. *Obergefell*, slip op. at 4-6 (summarizing "stories [that] reveal that they seek not to denigrate marriage but rather to live their lives, or honor their spouses' memory, joined by its bond").
9. *Id.* at 6-7 (describing "deep transformations in its structure").
10. *Id.* at 7-8.
11. *Id.* at 8-10.
12. E.g., *Fable v. Brown*, 2 Hill Eq. 378, 393-94, 11 S.C. Eq. 378, 393-94 (1835).
13. E.g., *Pirate v. Dalby*, 1 U.S. 167, 168-69 (Pa. 1786) ("By the sacred books of Leviticus and Deuteronomy, [slavery] appears to have existed in the first ages of the world" and is "consistent with the precepts of nature"); John Patrick Daly, *When Slavery Was Called Freedom: Evangelicalism, Proslavery, and the Causes of the Civil War* 32, 35-37, 60-67, 85, 92-93 100 (Univ. Kentucky Press, 2002) (referring to a popular pre-Civil-War religious defense of slavery based on the conclusion that God had not destroyed it and so was permitting it).
14. U.S. Const. amend XIII (1865).
15. 1866 Civil Rights Act, ch. 31, 14 Stat. 27 (1866) (current version codified at 42 U.S.C. § 1981).
16. U.S. Const. amend. XV (1970).
17. See, e.g., Theodore Eisenberg, *Civil Rights Legislation, Cases and Materials* 3-70 (4th ed. 1996) (shortly after Reconstruction, the Reconstruction-era civil rights legislation and constitutional amendments were largely ineffective tools for vindication of civil rights due to restrictive judicial interpretations that persisted for nearly a century).
18. See, e.g., Ellen L. Buckwalter, Maria Perinetti, Susan L. Pollet, & Meredith S. Salvaggio, *Modern Day Slavery in Our Own Backyard*, 12 Wm. & Mary J. Women & L. 403 (2006).
19. In 1848, women's rights activists held a convention in Seneca Falls, N.Y., "to discuss the social, civil, and religious condition and rights of woman." *History of Woman Suffrage* (hereafter, "Suffrage"), Vol. 1, at 67 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage, eds., Source Book Press 1970) (1881) (quoting journal announcement of the convention). The Convention adopted a "Declaration of Sentiments," patterned after the Declaration of Independence, but specifically extending the "truths" of equality and inalienable rights to women as well as men, including the rights to vote and serve in elective office, to participate actively in political and moral discourse, to retain civil legal capacities after marriage, to equality under the law in child custody disputes, to gain equal access to all professions and church ministries, and to abolition of oppressive gender-based social and moral codes. *Id.* at 67-73.
20. John Stuart Mill, *The Subjection of Women* 6 (Susan Moller Okin, ed., 1988) (1869).
21. *Minor v. Happersett*, 88 U.S. 162, 178 (1874).
22. U.S. Const. amend. XIX (1920) (prohibiting sex discrimination in voting rights).
23. See, e.g., *Latta v. Otter*, 771 F.3d 456, 475 (9th Cir. 2014) (reviewing legal disabilities imposed on married women in the nineteenth century, and later abandonment of them); *id.* at 487-89 (Berzon, J., concurring) (thoroughly tracing these legal disabilities, as well as their repeal and replacement in the twentieth century).
24. Although the Supreme Court would eventually apply mid-level heightened scrutiny to sex-based classifications challenged under the Fourteenth Amendment, it did not do so until a century after Reconstruction. See, e.g., Wendy W. Williams, *Justice Ginsburg's Equal Protection Clause: 1970-80*, 25 Colum. J. Gender & L. 41-43 (2013) (summarizing litigation in the 1970's that elevated the level of scrutiny for sex-based classifications above the lowest tier).
25. 83 U.S. 130 (1872).
26. *Id.* at 141 (Bradley, J., concurring).
27. A 1968 Gallup poll asking about personal approval or disapproval of "marriage between whites and non-whites" revealed only 20% approval and 73 per cent disapproval. Gallup News Service, *Gallup Poll Social Series: Minority Rights & Relations*, Q.25, uploaded in Frank Newport, "In U.S., 87% Approve of Black-White Marriage, vs. 4% in 1958," Gallup, July 25, 2013, <http://www.gallup.com/poll/163697/approve-marriage-blacks-whites.aspx>? (click on "full question results" at bottom of page).
28. 347 U.S. 483 (1954).
29. *Supra* note 17 and accompanying text.
30. Pub.L. 88-352, 78 Stat. 241 (1964).
31. 388 U.S. 1 (1967).

32. See, e.g., *Naim v. Naim*, 87 S.E.2d 749, 756 (Va. 1955) (in upholding state regulation of marriage to avoid “a mongrel breed of citizens,” the court found “no requirement that the State shall not legislate to prevent the obliteration of racial pride, but must permit the corruption of blood even though it weaken or destroy the quality of its citizenship.”); *Scott v. Georgia*, 39 Ga. 321, 323 (Ga. 1869) (“The amalgamation of the races is . . . always productive of deplorable results . . .”).
33. *Perez v. Sharp*, 198 P.2d 17, 26 (Cal. 1948), (in defense of state ban on interracial marriage, the County Clerk argued that “the progeny of a marriage between a Negro and a Caucasian suffer not only the stigma of such inferiority but the fear of rejection by members of both races”).
34. See, e.g., *Baehr v. Lewin*, 852 P.2d 44, 63 (Haw. 1993) (“the Virginia courts declared that interracial marriage simply could not exist because the Deity had deemed such a union intrinsically unnatural”); *Goodridge*, 798 N.E.2d at 967 (“Alarms about the imminent erosion of the ‘natural’ order of marriage were sounded over the demise of antimiscegenation laws . . .”).
35. Gallup News Service, *supra* note 19.
36. See *supra* notes 7, 8 & 21 and accompanying text.
37. Ex parte State ex rel. Alabama Policy Institute, \_\_ So. 3d \_\_, 2015 WL 892752, at \*7 (Ala. Mar. 3, 2015) (citing to nineteenth century case law, which in turn quotes a nineteenth century contracts treatise, for the proposition that marriage is “founded on the will of God”); *Perry*, 704 F. Supp. 2d at 945, 955-56, 985-86 (reviewing evidence that religious arguments were advanced to support Proposition 8’s ban on same-sex marriage).
38. E.g., *Baker v. Nelson*, 191 N.W.2d 185, 186 (Minn. 1971), *appeal dismissed*, 409 U.S. 810 (1972) (referring to the Book of Genesis in emphasizing the longstanding view of marriage as a heterosexual institution advancing procreation);
39. E.g., *Huntsman v. Heavilin*, 21 Fla. L. Weekly Supp. 916a (Fla. Cir. Ct. 16th Dist. July 17, 2014) (finding animus when “[t]he Amici Curiae’s memorandum paints a picture of homosexuals as HIV infected, alcohol and drug abusers, who are promiscuous and psychologically incapable of long term relationships or raising children”).
40. See, e.g., *Baskin v. Bogan*, 766 F.3d 648, 666 (7th Cir.), *cert. denied*, 135 S. Ct. 316 (2014) (Indiana’s recognition of out-of-state marriages between fertile cousins, though banned in Indiana, but its failure to recognize out-of-state same-sex marriages, along with its “inability to make a plausible argument” for the latter ban, “suggests animus against same-sex marriages”).
41. See Greg Johnson, *We’ve Heard This Before: The Legacy of Interracial Marriage Bans and the Implications for Today’s Marriage Equality Debates*, 34 Vt. L. Rev. 277, 287 (2009).
42. 489 U.S. 189 (1989).
43. *Id.* at 191-203.
44. *Id.* at 212-13 (Blackmun, J., dissenting).
45. E.g., *Andersen v. King Cnty.*, 138 P.3d 963, 979-80 (en banc) (Wash. 2006).
46. E.g., *Kitchen v. Herbert*, 755 F.3d 1193, 1216-26 (10th Cir.), *cert. denied*, 135 S. Ct. 265 (2014).
47. E.g., *Goodridge*, 798 N.E.2d at 957 n.15; see also *id.* at 971 (Greaney, J., concurring). At least one judge has additionally found sex discrimination in same-sex marriage bans on the basis of sex stereotyping; *Latta v. Otter*, 771 F.3d 456, 485-90 (9th Cir. 2014) (Berzon, J., concurring), *petition for cert. filed* (Jan. 2, 2015).
48. E.g., Ex parte State ex rel. Alabama Policy Institute, \_\_ So. 3d \_\_, 2015 WL 892752, at \*30 (Ala. Mar. 3, 2015).
49. E.g., *Whitewood*, 992 F. Supp. 2d at 425-30 (finding that sexual orientation is a quasi-suspect class meriting intermediate scrutiny, after analyzing relevant factors).
50. E.g., *DeBoer v. Snyder*, 772 F.3d 388, 406 (6th Cir. 2014), *rev’d*, *Obergefell v. Hodges*, No. 14-556 (S. Ct. June 26, 2015).
51. E.g., *Baskin v. Bogan*, 766 F.3d 648, 656 (7th Cir.), *cert. denied*, 2014 U.S. LEXIS 5797 (2014).
52. *DeBoer*, 772 F.3d at 406 (finding no constitutional violation after applying an extremely deferential rational basis review, which was satisfied despite “foolish, sometimes offensive, inconsistencies that have haunted marital legislation from time to time”), *rev’d*, *Obergefell v. Hodges*, No. 14-556 (June 26, 2015); *Andersen*, 138 P.3d at 980-85 (same, in pre-*Windsor* case, after rejecting argument that state’s real goal was an illegitimate expression of animus toward same-sex couples).
53. E.g., *DeBoer*, 772 F.3d at 421 (6th Cir. 2014) (preferring to “allow change through the customary political processes”), *rev’d*, *Obergefell v. Hodges*, No. 14-556 (S. Ct. June 26, 2015); *Andersen*, 138 P.3d at 998 (Johnson, J., concurring) (“novel changes in public policy through judicial decree . . . erode the protections of our constitutions and frustrate the constitutional balance”).
54. *Baskin*, 766 F.3d at 671; see *DeBoer*, 772 F.3d at 436 (Daughtrey, J., dissenting) (courts have the responsibility to ensure that rights are not “held hostage by popular whims”), *rev’d*, *Obergefell v. Hodges*, No. 14-556 (S. Ct. June 26, 2015).
55. *Obergefell v. Hodges*, No. 14-556, slip op. at 11-19 (S. Ct. June 26, 2015) (specifically rejecting a framing of the issue that would ask whether precedent and tradition established a fundamental right to same-sex marriage).
56. *Id.*, slip op. at 16 (opinion of Roberts, C.J., dissenting); see also *id.*, slip op. at 2 (opinion of Alito, J., dissenting) (“it is beyond dispute that the right to same-sex marriage is not among” the rights deeply rooted in our nation’s history and traditions).
57. *Id.*, slip op. at 23-26 (opinion of Kennedy, J., for the majority).
58. *Id.*, slip op. at 2 (opinion of Roberts, C.J., dissenting).
59. *Id.*, slip op. at 1 (opinion of Scalia, J., dissenting).
60. *Id.*, slip op. at 6 (opinion of Alito, J., dissenting).
61. *Id.*, slip op. at 14 (opinion of Thomas, J. dissenting).
62. Brief of the Arizona Civil Liberties Union as Amicus Curiae in Support of Petitioners at 2-9, *Standhardt v. Superior Court*, No. CV-03-00422-PR (Ariz. Mar. 31, 2004).
63. *Id.* at 2. The full Introduction to the brief will be set forth, in slightly edited form, in the Appendix to *Advocacy for Marriage Equality: The Power of a Broad Historical Narrative During a Transitional Period in Civil Rights*, forthcoming in 2015 Mich. St. L. Rev. (expected publication Jan. 2016).
64. E.g., *Andersen*, 138 P.3d at 1032 (Bridge, J., concurring in dissent) (“future generations of Washingtonians will undoubtedly look back on our holding today with regret and even shame”); *Pareto v. Ruvin*, No. 14-1661 CA 24, slip op. at 34 (Cir. Ct. of 11th Jud. Cir. for Miami-Dade Cnty., Fla., July 25, 2014) (“The Court . . . foresees a day when the term ‘same-sex marriage’ is viewed in the same absurd vein as ‘separate but equal’ and is thus forsaken and supplanted by ordinary ‘marriage.’”) (citing to and quoting from *Whitewood*, 992 F. Supp. 2d at 431); see also *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003) (“Those who drew and ratified the Due Process Clauses of the Fifth Amendment and the Fourteenth Amendment . . . knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.”).
65. *Supra* note 2.
66. See, e.g., *Katie Eyer, Brown, Not Loving: Obergefell and the Unfinished Business of Formal Equality*, 125 Yale L.J. F. 1 (2015) (a ruling for marriage equality in *Obergefell* likely will not fully settle other LGBT equality issues, including in the context of employment, adoption, housing, and public accommodations).
67. See, e.g., United States Dept. of Justice, Civil Rights Div., *Investigation of the Ferguson Police Dept.*, 62-78 (March 4, 2015) (finding unlawful discriminatory intent and disparate impact in policing practices affecting the African-American community).

# Everafter: The Stories Told About U.S. v. Virginia



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“[W]hat happens is of little significance compared with the stories we tell ourselves about what happens. Events matter little, only stories of events affect us.”

– Rabih Alameddine, *The Hakawati*

From fairy tales and biblical parables to morality plays and illness narratives, stories are powerful tools that have been used throughout history to inform and persuade. The central role that narrative plays in legal discourse is unsurprising given that stories are “a primary form of human communication.”<sup>2</sup> As Ruth Anne Robbins explains, stories “help us create knowledge, reinforce knowledge, and change existing knowledge and beliefs.”<sup>3</sup> Nowhere is this more apparent than in the institutional myths and narratives that have been woven about U.S. v. Virginia – the controversial case that prompted the Virginia Military Institute (“VMI”) to admit women.<sup>4</sup>

The story begins in 1839 when the Virginia state legislature established VMI in the small, Southern town of Lexington, Virginia, to train young men to guard the town’s munitions arsenal.<sup>5</sup> As the nation’s first state-sponsored military school, VMI aimed “to produce educated and honorable men . . . ready as citizen-soldiers to defend their country . . .”<sup>6</sup> Still today, VMI fulfills this mission via a singular adversative educational model that employs extreme physical rigor, intense mental stress, an almost complete absence of privacy, and draconian regulation of behavior to instill strength of character, honor, and integrity in each cadet.<sup>7</sup> Other defining

features of the VMI experience include a strictly enforced Honor Code, a class system, and a *Dyke System*<sup>8</sup> that assigns a senior, or *first classman*, to mentor each first-year student, or *rat*.<sup>9</sup> Taken together, these integral aspects of the VMI experience engender a culture of egalitarianism and homogeneity reflected by the cadets’ uniforms and buzzed haircuts as well as in VMI’s architecture.<sup>10</sup>

Like everything else at VMI, daily life is spartan and structured.<sup>11</sup> Four cadets share a cramped room with a single sink.<sup>12</sup> There are no telephones, televisions, or even air-conditioning.<sup>13</sup> Cadets rise early to perform chores and complete a rigorous exercise routine and a 1.5-mile run – all *before* breakfast.<sup>14</sup>

Yet the most distinctive feature of VMI is its infamous *Ratline*, a seven-month system of intense hazing.<sup>15</sup> Rumored to be more demanding than Army boot camp, the Ratline aims to break down each rat’s individuality and rebuild him or her into a VMI cadet – a rebirth symbolized during Breakout, a Ratline graduation ritual in which rats form a human chain to scramble up a muddy hill.<sup>16</sup> As with most forms of adversity, only through teamwork and perseverance do rats overcome the obstacles and reach the top.<sup>17</sup> Perhaps not surprisingly, cadets often forge ironclad bonds in this hellish environment, making VMI a stronghold of masculinity akin to a fraternity or tight-knit brotherhood.<sup>18</sup>

It is the sanctity of this brotherhood that VMI fiercely defended against the perceived threat of coeducation. To preserve this stronghold of masculinity, VMI crafted a powerful story to support its repeated contention that admitting women would destroy the very essence of the VMI experience women sought to enjoy.<sup>19</sup>



Yet the notion that the VMI experience could not withstand change was simply not true. To the contrary, the essence of the VMI experience has survived despite VMI undergoing extensive cultural changes through the years.<sup>20</sup> For example, before 1859, all cadets came from Virginia,<sup>21</sup> but by the late 1850s, VMI began admitting non-Virginians when extra slots remained.<sup>22</sup> Indeed, 47.2% of students in the Class of 2016 are not Virginia natives.<sup>23</sup> Furthermore, to avoid closure after the Civil War, VMI transformed itself from Virginia's "first normal school" primarily producing teachers and soldiers, into an avant-garde scientific and technical school offering courses in fine arts, agriculture, and engineering.<sup>24</sup> Likewise, around 1905, VMI began admitting Chinese citizens<sup>25</sup> who, according to VMI Foundation Historian and alumni Henry Wise, were "excellent cadets [who] rendered outstanding service to their country."<sup>26</sup> Cadets from South and Central America, Europe, other Asian countries, and Canada soon followed.<sup>27</sup> By 2013, 1.5%, or 25, cadets self-identified as "nonresident aliens."<sup>28</sup> Similarly, although VMI had once owned slaves,<sup>29</sup> in 1968 it voluntarily admitted its first African American students.<sup>30</sup> According to Wise:

It cannot be said that integration has been without a single problem, since the Negro heritage and some of VMI's traditions of 100 years and more are mutually incompatible. Yet integration at VMI has reinforced its proud boast that once a man walks through that arch and becomes a cadet, his background, name, and circumstances do not count.<sup>31</sup>

Thus, as Dianne Avery observes, "the most powerful myth constructed about VMI is that it is an institution that has never changed."<sup>32</sup> Indeed, "[t]o become a

national asset and to carry out its timeless ideals, VMI has transformed and re-created itself many times . . . If VMI had not changed, it would not have survived."<sup>33</sup>

Yet sometimes the stories spun about an event overshadow the event itself, ultimately refashioning the truth. Thus, despite the fact that VMI had not only

survived but arguably been strengthened by extensive changes and diversification in the past, VMI's powerful narrative of maleness as integral to its adversative pedagogy and that pedagogy as the bedrock of the VMI experience was so compelling that the District Court seemed to accept VMI's version of the story. It upheld VMI's single-sex admissions policy and concluded that VMI remaining all-male was substantially related to a legitimate state interest in fostering educational diversity.<sup>34</sup>

On appeal, the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") disagreed, concluding that Virginia had not "advanced any state policy by which it can justify its determination, under an announced policy of diversity, to afford VMI's unique type of program to men and not to women."<sup>35</sup>

Yet rather than require VMI to admit women, the Fourth Circuit permitted the VMI Foundation to create an all-female military college alternative – the Virginia Women's Institute for Leadership ("VWIL") – at Mary Baldwin College.<sup>36</sup> Unlike VMI's adversative educational model, VWIL involved a student-run, one-week wilderness program, an Honor System, community service projects, leadership programming, and a confidence-building program.<sup>37</sup> Students were not required to endure the rigor of the Ratline, live in barracks, or even eat together.<sup>38</sup> Although these differences ultimately contributed to the Supreme Court's determination that VWIL did not cure VMI's



*[S]ometimes the stories spun about an event overshadow the event itself, ultimately refashioning the truth.*

equal protection violation, Mary Anne Case rightly observes that VWIL was a “quiet success.”<sup>39</sup> Other supporters applauded VWIL as a singular opportunity for women, which featured cooperative learning and leadership cultivation.<sup>40</sup> Yet opponents told a different story, casting VWIL as nothing more than “an unconstitutional throwback to the separate-but-equal doctrine of racial segregation.”<sup>41</sup>

In any event, the District Court approved VWIL, and on appeal, a divided panel of the Fourth Circuit affirmed.<sup>42</sup> Despite the fact that women had served in the military and attended coeducational federal service academies for years, the Fourth Circuit still concluded that “the adversative method vital to a VMI education ‘has never been tolerated in a sexually heterogeneous environment . . .’ [and that] ‘female participation in VMI’s adversative training ‘would destroy . . . any sense of decency that still permeates the relationship between the sexes.’”<sup>43</sup> The powerful myth of maleness as essential to the VMI experience appeared to prevail.<sup>44</sup>

But VMI’s story did not end there. Instead, it continued all the way to the Supreme Court of the United States where on June 26, 1996, a seven to one majority held that VMI’s all-male admissions policy violated the Equal Protection Clause of the Fourteenth Amendment.<sup>45</sup> According to Justice Ruth Bader Ginsburg, “[t]he notion that [the] admission of women would downgrade VMI’s stature, destroy the adversative system and, with it, even the school, is a judgment hardly proved, a prediction hardly different from other ‘self-fulfilling prophec[ies]...’ once routinely used to deny rights and opportunities...”<sup>46</sup>

As Case observes, VMI had several options to cure its equal protection violation: (1) go private and remain all-male; (2) admit women and continue to receive public funding; (3) modify or abandon its adversative educational system; or (4) make both VWIL and VMI coeducational so that a cooperative learning military model was available to men while an adversative military model was accessible to women. After much research and reflection, the VMI Board of Visitors voted 9-8 to admit women,<sup>47</sup> and on August 18, 1997, the first female students arrived.<sup>48</sup>

To further explore the narratives told about U.S. v. Virginia, I partnered with a sociologist<sup>49</sup> and psychologist<sup>50</sup> to conduct an anonymous online survey

of VMI’s entire student population.<sup>51</sup> 364 students responded, including 311 men (85.4%) and 53 (14.6%) women.<sup>52</sup> Our data reveal that just as institutional narratives dramatically influenced the VMI litigation, so, too, do they continue to impact student attitudes toward coeducation and perceptions of the opposite sex.

Although VMI ultimately chose to become coeducational, many respondents perpetuate the myth that VMI had no choice but to surrender. Indeed, 132 respondents describe U.S. v. Virginia as “forcing” VMI to admit women, even though VMI retained several other options such as going private.<sup>53</sup>

Another common refrain is that VMI only admitted women to avoid reputational harm or that VMI bowed to political and societal pressure.<sup>54</sup> Several respondents noted that VMI became coeducational to avoid losing public funding, sometimes framing coeducation as the result of coercion, not consent.<sup>55</sup> Only a minority of respondents pinpointed the constitutional issue at the heart of U.S. v. Virginia, which involved VMI’s violation of the Equal Protection Clause. Even then, some respondents recast the Court’s reasoning quite negatively, blaming the “flawed separate but equal clause.”<sup>56</sup>

Such responses may reflect continued resistance to and disagreement with U.S. v. Virginia. Still today, some members of the VMI community characterize coeducation as erroneously imposed by “outsiders” who neither understood nor appreciated VMI’s unique culture.<sup>57</sup> To some, U.S. v. Virginia even exemplifies the age-old battle between “states’ rights [and] federal intrusion, Southern tradition versus Northern self-righteousness.”<sup>58</sup>

More than two decades after the onset of the VMI litigation, these powerful narratives about U.S. v. Virginia persist and may adversely impact student attitudes toward coeducation and the opposite sex. Male students who view coeducation as the direct result of judicial coercion may be likelier to resent female students as unwelcome intruders or infidels. The institutional myth that the all-male VMI of yesteryear was harder, tougher, and better than the coeducational VMI of today may be transmitted from one dyke to another, from VMI alumni to current students, and from family members to VMI legacies, exacerbating the ever-present tension between male and female cadets.<sup>59</sup> As one student remarked:



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*“The notion that [the] admission of women would downgrade VMI’s stature, destroy the adversative system and, with it, even the school, is a judgment hardly proved, a prediction hardly different from other ‘self-fulfilling prophec[ies]’ ... once routinely used to deny rights and opportunities.”*

– Justice Ruth Bader Ginsburg, *U.S. v. Virginia*

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Women should not be here. They breed trouble. There are a few women who are tough enough to make the cut. But most are worthless and weak. My father went here when it was just guys and I wish it had stayed that way. If women want to go a military college, what is Mary Baldwin? That’s an all girl school so they can go there and not come to my school. But no they have to have everything equal.

Although it is unclear whether the student is expressing his personal beliefs or simply regurgitating the story his father had told him about coeducation, his response tends to support the theory of myth transmission.<sup>60</sup>

Likewise, female students may anticipate resistance and stigmatization, even where none exists, because they expect their male peers to resent coeducation because it is perceived as imposed, instead of consensual.<sup>61</sup> Female students, alumna, and relatives may transfer their own institutional narratives of a battle between the sexes, which still wages at VMI. Transmitting stories of gender tension, inequality, and resistance to coeducation from one generation of women to another may shape female students’ views of the opposite sex before they ever set foot on campus.<sup>62</sup>

The stories spun about why members of the opposite sex attend VMI shed further light on the dynamics underlying students’ sharply contrasting views regarding coeducation. Most male respondents believe that women attend VMI “to prove something,” “to feel equal,” “because they are ‘manly,’” “to get an education and commission,” “to ‘hunt’ men,” “because they are raging lesbians,” “because of athletics,” “to find husbands,” “to get a VMI degree,” “to be in a physically and mentally challenging environment,” and “to get a military commission.”<sup>63</sup> Many of

these perceptions are negative and relate to unsubstantiated (and arguably misguided) beliefs about the sexual orientation or sexual proclivities of most female cadets, thus perpetuating gender myths and sex stereotypes.

Indeed, male cadets frequently implied that women attend VMI because they are promiscuous or homosexual.<sup>64</sup> Illustrative responses include: “they came here to hookup [sic] with very desperate men,” “they want a place where it’s easy to find men to have sex with,” “easy sex apparently,” “they are looking to get laid,” “to sleep with as many guys as possible,” “because they see hot guys in uniforms,” “because they want to have a lot of sex,” “to hook up with a bunch of guys,” “promiscuity,” “to find mates,” “because they are raging lesbians who are seeking to change the world,” and “attention.”<sup>65</sup> Similarly, another student added:

to make it easier for them to fool around. Where the ratio of male to female cadets is 5 to 1. Most women here have no desire to accept a military commission and are here on a free ride for athletics. Most of them are fat and fail to take care of themselves physically and freely chase men with little to no regard for their reputations.<sup>66</sup>

Taken as a whole, the stories these men weave about their female peers imply that many, if not all, female cadets are wanton women who do not belong at VMI. Such myths trap female cadets between a rock and a hard place. If women assimilate by becoming androgynous and deemphasizing their femininity and sexuality, they may be erroneously perceived as manly or homosexual because the traits they exemplify are traditionally associated with masculinity and homosexuality through the gender-polarized lenses

through which these cadets view the world.<sup>67</sup> On the other hand, female cadets who display traditional forms of femininity are often labeled as promiscuous or inferior.

Perhaps not surprisingly, in an environment that idolizes all things masculine, women tell a very different story regarding why men attend VMI. While male cadets often frame women's motivations for attending VMI in a negative light or one entirely divorced from reality, female cadets tend to frame men's reasons for attending VMI more positively and in terms that relate to factors integral to the VMI experience, such as preparedness for military service (e.g., "to get a military commission,"); male solidarity (e.g., "because of the brotherhood"); VMI's history of academic excellence and high ranking (e.g., "for the education"); and VMI's unique traditions (e.g., "because of the tradition").

The dramatically different narratives woven about the motivations of male and female cadets likely result from male cadets perceiving their female counterparts as violating traditional gender norms and boundaries. According to Serena Nanda, Americans often dichotomize what is feminine and masculine and fuse biological sex with gender, even though gender is a social construct.<sup>68</sup> As a result, we often stigmatize and sanction attempts to breach this polarized cultural template. The stories spun about us not only impact the way others see us but also how we see ourselves. Thus, the myths regarding why women attend VMI may not only adversely impact each woman's gender identity and self-image but may also fuel men's staunch opposition to coeducation.<sup>69</sup>

Only time will tell how this story unfolds, but one thing remains clear. So long as members of the VMI community continue to transmit the harmful institutional narrative that the all-male VMI of yesterday surpasses the coeducational VMI of today, neither the Institution nor its cadets will live happily ever after.

#### NOTES

1. Abigail Perdue is an Associate Professor of Legal Analysis, Writing, and Research at Wake Forest University School of Law. This article includes excerpts from *Transforming Shedets into Keydets: Examining Coeducation through the Lens of Gender Polarization*, 28 *Columbia J. Gender & L.* 371 (2015). These excerpts have been reprinted here with the Journal's permission, and some citations have been omitted.
2. Ruth Anne Robbins, *An Introduction to Applied Legal Storytelling*, 14 *LEG. WRITING* 3, 7 (2008).
3. *Id.*
4. *United States v. Virginia*, 518 U.S. 515 (1996).
5. PHILIPPA STRUM, *WOMEN IN THE BARRACKS: THE VMI CASE AND EQUAL RIGHTS* 9, 10 (2002); see also HENRY A. WISE, *DRAWING OUT THE MAN: THE VMI STORY* (1978).
6. *United States v. Virginia*, 518 U.S. 515, 521-22 (1996) (quotation marks omitted).
7. *Id.* at 577 (citing *United States v. Virginia*, 766 F. Supp. 1407, 1421 (W.D. Va. 1991)). According to Dianne Avery, "VMI has immersed itself in, and drawn from, the myths and culture of Southern manhood as it has attempted to give content to its mission of educating citizen-soldiers." Dianne Avery, *Institutional Myths, Historical Narratives and Social Science Evidence: Reading the "Record" in the Virginia Military Institute Case*, 5 *S. CAL. REV. L. & WOMEN'S STUD.* 189, 197 (1996).
8. "Dyke" originates from the phrase to "dyke out" (a mispronunciation of "to get all decked out"), which referred to putting on the white cross belts of a cadet's dress uniform. 2014-2015 *New Cadet Handbook*, VA. MIL. INST., at 17 (2014).
9. *United States v. Virginia*, 518 U.S. at 522. Until completion of the Ratline, first-year students "are called 'rats' because the rat is 'probably the lowest animal on earth.'" Upon completion of the Ratline, they are known as fourth classmen. *United States v. Virginia*, 766 F. Supp. 1407, 1422 (W.D. Va. 1991).
10. LAURA FAIRCHILD BRODIE, *BREAKING OUT: VMI AND THE COMING OF WOMEN* 6 (2000).
11. PERDUE, *supra* note 1, at 378 (citations omitted).
12. STRUM, *supra* note 5, at 44.
13. *Id.*
14. *Id.* at 45; *The First Year – The Rat Line*, VA. MILITARY INST., <http://admissions.vmi.edu/experience/first-year/> [<http://perma.cc/8A8B-8EEL>] (last visited Dec. 2, 2014).
15. BRODIE, *supra* note 10, at xiii, 6.
16. *Id.* at xiii, 6, 102, and 312.
17. PERDUE, *supra* note 1, at 380.
18. *Id.* at 379.
19. *United States v. Virginia*, 518 U.S. at 540.
20. According to Avery, "VMI has re-created itself many times to accommodate both external and internal pressures to alter or abandon certain formal and informal rules and practices." AVERY, *supra* note 7, at 197.
21. *Id.* at 205.
22. *Learning the Lifestyle, Self-Selecting for Success*, <http://www.vmi.edu/Content.aspx?id=10737426170> (last visited Nov. 19, 2014).
23. *Profile of the Class of 2016*, VA. MIL INST., [http://www.vmi.edu/uploadedFiles/Admissions/Class\\_of\\_2015%20Sheet1.pdf](http://www.vmi.edu/uploadedFiles/Admissions/Class_of_2015%20Sheet1.pdf).
24. AVERY, *supra* note 7, at 257, 259-60.
25. WISE, *supra* note 5, at 85.
26. *Id.*; see also AVERY, *supra* note 7, at 209.

27. WISE, *supra* note 5, at 85.
28. VMI Common Data Set, 2013-2014; *see also* AVERY, *supra* note 7, at 210 (observing that in 1974, VMI coordinated with the Royal Iranian Navy to enroll thirty Iranian midshipmen for the 1975-76 session and enrolled ten more the following year) (internal citations omitted).
29. AVERY, *supra* note 7, at 204.
30. *Id.* at 16-17.
31. WISE, *supra* note 5, at 289.
32. AVERY, *supra* note 7, at 200-01.
33. *Id.* at 201, 218.
34. *United States v. Virginia*, 766 F. Supp. 1407, 1408 (W.D. Va. 1991).
35. *United States v. Virginia*, 976 F.2d 890, 892, 899 (4th Cir. 1992).
36. BRODIE, *supra* note 10, at 20.
37. *See, e.g.*, STRUM, *supra* note 5, at 204; BRODIE, *supra* note 10, at 20.
38. PERDUE, *supra* note 1, at 383 (citations omitted).
39. *See* Mary Anne Case, *Two Cheers for Cheerleading: The Noisy Integration of VMI and the Quiet Success of Virginia Women in Leadership*, 1999 U. CHI. LEGAL F. 347, 354 (1999).
40. *See* Richard Carelli, *Justice Department Says "Women's VMI" Would Perpetuate Bias*, ASSOCIATED PRESS, May 26, 1995; *United States v. Virginia*, 44 F.3d at 1234.
41. Spenser S. Hsu, *U.S. Takes VMI Case to Supreme Court: Court Officials Call Program for Women Separate-But-Equal Treatment*, WASH. POST, May 27, 1995, at B5.
42. *Id.*
43. *United States v. Virginia*, 518 U.S. at 528 (citing *U.S. v. Virginia*, 44 F.3d 1229, 1239 (4th Cir. 1995)). Avery argues that: [e]ven if it is assumed that most women are different than men, there is no reason why they, like black men, or Chinese or Iranian nationals, could not be treated as equals at VMI: no reason why the Institute could not survive this change as it has survived other profound changes in its past. AVERY, *supra* note 7, at 211-12.
44. Judge Phillips dissented, emphasizing that the original aim of VMI's single-sex admissions policy was "to preserve [VMI's] historic character and mission." *Id.*; *see also* AVERY, *supra* note 7, at 229 (describing educational diversity as an "after-the-fact rationalization[]" of VMI's all-male admissions policy).
45. *United States v. Virginia*, 518 U.S. at 515. Justice Clarence Thomas recused himself because his son was attending VMI at the time of the litigation. *See* Joan Biskupic, *Supreme Court Invalidates Exclusion of Women by VMI*, WASH. POST, June 17, 1996, at A1.
46. *Id.* at 542-43 (internal citation omitted); *id.* at 550 (concluding that "generalizations about 'the way women are,' estimates of what is appropriate for most women, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.").
47. Mike Allen, *Defiant V.M.I. to Admit Women, But Will Not Ease Rules For Them*, N.Y. TIMES (Sept. 22, 1996), <http://www.nytimes.com/1996/09/22/us/defiant-vmi-to-admit-women-but-will-not-ease-rules-for-them.html>.
48. BRODIE, *supra* note 10, at 197, 226.
49. Dr. David Novack is Chair of the Sociology Department at Washington and Lee University and teaches and writes on various subjects, including gender and race.
50. Dr. Lesley Novack formerly served as a Professor of Psychology at Mary Baldwin College.
51. Approximately 1,300 students attended VMI at the time of the litigation. *United States v. Virginia*, 518 U.S. 515, 521 (1996).
52. VMI Common Data Set, Fall 2010, VA. MIL. INST., <http://www.vmi.edu/content.aspx?id=8047> (last visited Apr. 11, 2014). In the fall of 2010, VMI's student body consisted of 1,425 males but only 144 females. *See id.*
53. Many respondents stated that VMI admitted women "because [it was] forced to by the Supreme Court," "[t]he Supreme Court ordered us to," and "[t]he Supreme Court made [VMI] admit women." Such narratives seemingly ignore the reality that a majority of VMI's Board of Visitors voted to admit women.
54. Such responses attribute coeducation to "political correctness," "political pressure," "government pressure," "societal pressure," and "pressure from other military schools." As one student opined, VMI "buckled under the pressures of society and admitted the weaker sex into our school." Others framed coeducation as VMI's attempt to preempt "a ridiculous amount of lawsuits from women's rights activists" or to avoid "bad publicity."
55. One respondent remarked that "[t]he Supreme Court legally forced VMI to accept women by stating that without such action, VMI would lose all funding from the state; an action which would have bankrupted [VMI]."
56. It remains unclear when and by whom these narratives are inculcated into students.
57. As one student remarked, "[p]eople who do not understand the military in general or VMI in particular decided to make policy on an issue that they were almost entirely ignorant of."
58. *Id.*
59. PERDUE, *supra* note 1, at 397.
60. *Id.*
61. *Id.*
62. *Id.* at 398.
63. *Id.* at 403.
64. *Id.*
65. *Id.*
66. *Id.* at 404.
67. *See* SANDRA LIPSITZ BEM, *THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY*, 2 (1993) (referring to gender polarization as a lens involving "hidden assumptions about sex and gender . . . embedded in cultural discourses, social institutions, and individual psyches that invisibly and systemically reproduce male power in generation after generation.").
68. SERENA NANDA, *GENDER DIVERSITY: CROSSCULTURAL VARIATIONS*, 87 (2000).
69. *See, e.g.*, CHRIS CLEAVE, *LITTLE BEE*, 131 (2008) ("Our stories are the tellers of us"); PATRICK ROTHFUSS, *THE NAME OF THE WIND*, 658 (2007) ("It's like everyone tells a story about themselves inside their own head. . . . That story makes you who you are. We build ourselves out of that story.")

# Finding Perspective in the Institution



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Consider this story. One spring, a few years ago, a school district in a town near me suspended a high school senior and as part of that suspension denied him access to his prom, graduation, and the other accompanying traditions. While this happens every year in many towns, this particular senior's chain of events started with his cell phone ringing after school during a debate club practice and ended in federal court.

On that fateful March day, the student's cell phone began chiming from inside his backpack, which was sitting in the front basket of a knee scooter the student was using after a foot surgery. The chiming apparently was loud enough to be disruptive, and the teacher supervising the debate club asked the student to hand it to him. Just as the student did so, a text message appeared, sent from another student, which made reference to a party scheduled for that evening and ended with the phrase "will Mary J be there too or should I bring?" The phrase could have been interpreted innocuously as either a reference to a person or to marijuana. The student found himself escorted by his teacher to the principal's office, where, in the presence of a member of the school security team, the principal asked the student to unlock his phone, which he did. Together, the principal and the student looked at the phone's text messages and emails. The student navigated these for the principal and also navigated the principal to websites in answer to questions about certain messages. The student's backpack was also

searched. At some point the school security guard in the principal's office told the principal that another security guard had searched the lockers of the student and the text message sender—nothing had been found. The principal then called the student's mother and then excused the student from her office to wait for his mother to pick him up. While he was waiting, the principal kept the phone and the student's backpack in her office and the student could see from the bench outside the principal's office that the principal continued looking at the phone and tapping on the screen for a minute or two after the student had left the office. Neither the student who received nor the student who sent the text message were ever criminally charged, but the student whose cell phone rang in the debate club meeting was suspended in connection to the cell phone. That student was prohibited from attending graduation, prom, or other related activities. I am sure that by now you have probably begun imagining the preliminary injunction prayers for relief.<sup>1</sup>

While your sympathies may immediately attach with the student, consider how you would tell the story for the school district if it was your client. You would have to select the facts to include, decide on a sequence, and select the characters to present those facts in the particular sequence. This essay discusses my approach to this process, in my own thinking about a case and in my discussions with my students about their approaches to telling their client's story.

Storytelling requires the writer to select a perspective from which to describe the events.<sup>2</sup> Information is filtered according to how that character would perceive it and is tinted by the character's life experiences and schema. The perspective might be a single character's understanding of the events or a series of

characters' understandings of different aspects of the same progression of events. The HBO Series, *Game of Thrones*, uses a multiple-perspective approach to its storytelling.<sup>3</sup> Likewise, there are times when a multiple-perspective storytelling technique works effectively in persuasive legal writing. Linda Edwards has written about this as a unique method of alternative storytelling in the "voices" amicus briefs pioneered by then-recent-law-school-graduate Lynn Paltrow.<sup>4</sup> But because most of what we do in written legal advocacy is part of direct representation, the storytelling happens with the lawyer in the role of omniscient third person narrator, using the perspective of his or her client.

This all sounds quite straightforward and relatively easy, and it is—unless the client is not an individual person but is something less tangible. When the legal writer represents an organization, company, or government agency, things are murkier. For the lawyer with an institutional client, the "client's perspective" may involve aspects of one or more employees or citizens or both.

If I try to imagine myself representing the school district in my opening story, I confess that I might have a moment of difficulty beginning my visualization process of organizing the storytelling. By definition, stories require characters, and I start the visualization there. In simulations, I ask my students to spend a few minutes doing the same sort of visualization exercise. There will be some visuals that spring to mind initially with the phrase "school district"—I picture a series of school buildings and dozens of buses—which seems unwieldy to try and use as a client, even if the readers would accept the group of them anthropomorphized. I also picture people—teachers and principals and maybe a board of education (an abstraction unto itself). While that starts to feel a little abstract, it is still unwieldy to try and tell a story with too many large groups shuffling around. I realize I am belaboring the point a little bit here because there are some obvious candidates for storytelling perspective, but the idea of the mental exercise is useful for those times when the new attorney is a prosecutor or works for a government agency.

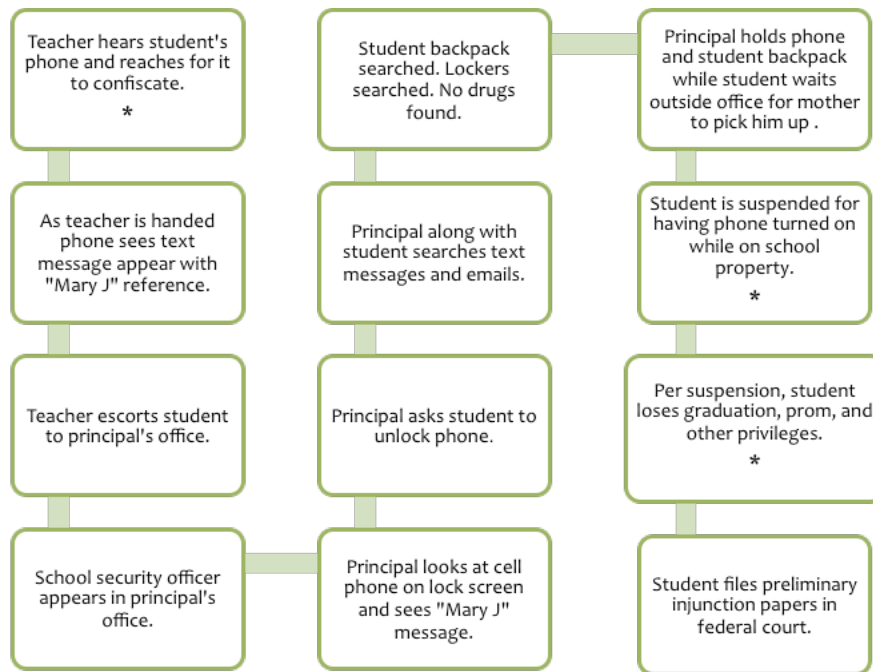
That kind of strategic decision can tangle the novice legal writer. Yet, as I alluded above, many simulations we use with our novices ask half of them to represent institutional clients. Per the typical subject areas of law studied by first-year law students, institutional clients in simulations typically appear in the form of an employer or company owner or in the form of the state in a

criminal case. Asking a student to write as a prosecutor in a criminal case is a particularly difficult abstraction and serves as an easy entry place for this article's first discussion point. Where should the writer attach the perspective? The victim? The law enforcement officials? The prosecuting attorneys? The citizens of the state generally? The defendant as the anti-hero? I am not suggesting professors avoid simulations based in criminal law—I use them myself. Rather, I offer tools.

To wit, institutions are made up of multiple individuals working together to accomplish the institution's goal. Quite possibly, then, the best answer will be telling the story using the perspectives of a combination of individuals within the institution. Picture the story being told as a relay race, with characters from the institution passing the perspective baton from one to another, within a carefully drawn changeover box.

To help with the visualization, you can easily turn the characters' baton-passing into a flow chart on paper. It's a schematic version of a first draft. Simply imagine walking through the scenario as the school district, using the boxes to help guide you either one beat<sup>5</sup> at a time (as a trial attorney might lay out the action) or one character perspective at a time. The flow chart below organizes it by character perspective, changing perspective as I move the reader through the action. The goal of this diagram is to keep the baton in the hands of only those characters that are part of the school district. Don't worry about spotting gaps in the story. You want to spot them. You will come back to them in a few steps.

Diagramming the progression shows the layout of the institutional client's story. In truth, I had to revise the blocks a few times to make sure each one was written from the perspective of the school district. A few were originally written from the student's perspective. As I did so, I discovered that in three blocks I used or relied on the perspective of an inanimate object within the institution—the school's rules. I put an asterisk in those three boxes. The first and second boxes with asterisks come from the same perspective, i.e., there must be a rule that students cannot have cell phones on inside the classroom, during school hours or activities. The third box with an asterisk comes from a different perspective—a different rule—the student must have lost privileges to attend graduation and the prom because of the suspension. The school rules must make an explicit causal connection. The details of those school rules will likely appear somewhere in the final version of the story.



As an aside, despite my seeming reluctance to tell stories with buildings and school buses, it is fine to use the perspective of an inanimate object. A teaching tool called The Rock Cycle teaches elementary-age students geology by telling stories from a rock’s perspective.<sup>6</sup>

While that diagram lays out the rough sketch of the relay racers, there are some gaps in the story. To fully realize the story, those and any other gaps need to be identified and explained. The next step in my process is visualizing the story as the characters would—trying to ascertain what might have caused their actions. I call it “mental image unpacking,” but it is just as appropriately termed “finding the holes”. It is a mental exercise derived from the technical acting techniques I was taught a long time ago in high school theater. A technical actor conceptualizes a character from the textual clues. The actor spends time before rehearsals deconstructing the character and the scene, piece by piece—working to understand where the character fits in relation to the other characters. The metaphor is imperfect—a technical actor is creating a character and can thus create a backstory that remains offstage if it helps the actor with the role. A lawyer cannot do that. But the metaphor works in that the best actors and lawyers both deconstruct scenes and spend time asking “why?” and “what?” questions.

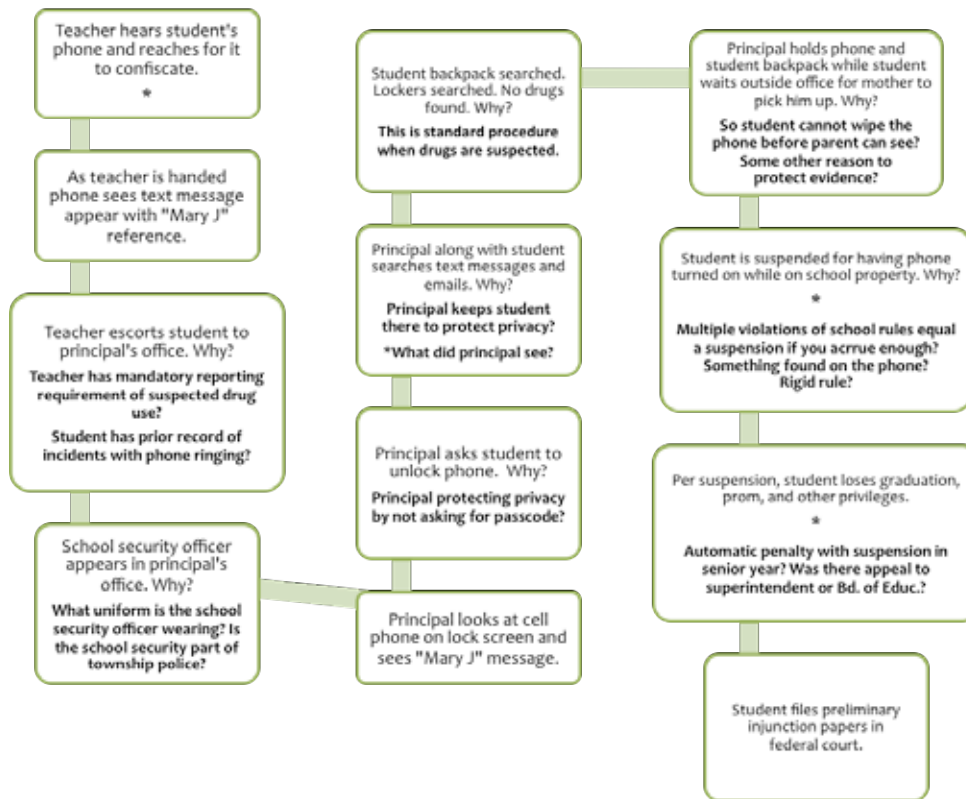
To put this down on paper, the same flow chart can be used to locate and ask questions. Here’s what it might look like.

And from there the decision-making for the storytelling becomes much easier. There might be more fact research to do, but the major outlining has been accomplished. What is left are decisions such as where to write about the school’s history with student parties and drugs or the school’s low tolerance for cell phones even during after-school activities, and so forth.

This process is the product of rehearsing my imagination in which I can vividly see the student and teacher walking down the hallway towards the principal’s office. I have trained my visual mind to walk the story from the client’s perspective. That training allows me to walk into the principal’s office, see the security officer there, and immediately wonder, “What kind of uniform is the security officer wearing?” because the answer might make a difference for Fourth Amendment purposes.

The field of legal writing is an institutional client in many respects. It is made up of individuals working towards a common goal of improving the quality of legal representation by teaching future lawyers research, analysis, and communication skills. The perspective of 1L-professor is just one of many. Other perspectives include those who teach legal writing in 2L and 3L courses or clinics; those legal writers who are supporting or providing direct services to clients through law school or volunteer work; and the scholars who write about the legal writing field as an inquiry of persuasion, rhetoric, and communication—the





latter of whom represent the field's public persona to other academics, practitioners, and judges. For all of these perspectives, it is important that we are facile with the world of practice. To teach future lawyers, our own skills must be modern and honed so that our perspective as lawyers remains authentic. These simulation rehearsals are important to the storytelling of legal writing itself as an institution and field, but there is also a special joy of individual teachers watching law students use their skills on behalf of a client in a clinic, externship case, or in a pro bono matter. And there are simple delights found in the small acts of going to the courthouse to observe a case that a student or former student is handling or reading a clinic brief after it is filed. Finally, legal writing can be portrayed via the perspective of the reflective group because reflection leads to growth. Imagine "collision spaces"—both virtual and real—of people having conversations about topics in our discipline designed to provoke thought, further a scholarly debate, challenge norms, or provide meaningful feedback to another—even if it is a critique. If we can form the mental image, then we can create the reality. I look forward to hearing the field's story through these many perspectives.

#### NOTES

1. This story is deliberately told with shifting perspectives. This story is also but a story: it shares a framework but uses different outcome-determinative facts as those in an advanced legal writing course simulation that I co-created with Jenean Kirby, Esq., and with nine wonderful 3L legal writing fellows (also known as our internal moot court board): Lauren Alfaro, Aysha Ames, Elizabeth Carbone, Dan DeFiglio, Noah Dennison, Kiara Han, Catherine Kiernan, Keith Nagy, and Meha Siyam.
2. Perspective is different from point-of-view. Whether a character's perspective is conveyed in first, second, or third person (narrator) is the point-of-view.
3. George R. R. Martin's unfinished *SONG OF FIRE AND ICE* series (Bantam Books) utilizes this technique in an extreme fashion. Chapters are not numbered but are simply noted by each character's name. By the end of the fifth book in the series, Martin has juggled thirty-one different perspectives. *POV character*, A WIKI OF ICE AND FIRE – A SONG OF ICE AND FIRE & GAME OF THRONES (last modified March 1, 2015, 1:01 PM). [http://awoiaf.westeros.org/index.php/POV\\_character](http://awoiaf.westeros.org/index.php/POV_character). Each chapter is told in the third person. *Id.*
4. LINDA H. EDWARDS, READINGS IN PERSUASION, BRIEFS THAT CHANGED THE WORLD, 353-55 (2012). The first "voices" brief was submitted in *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986), on behalf of the National Abortion Rights Action League. The narratives were written in first person.
5. We don't often talk about "beats" in storytelling the same way we talk about chapters or acts. These are all units of measurement of the story's action. A beat is the smallest unit. One thing happens in a beat. For example, this is a beat, "the cell phone rang while the student was at his debate club meeting after school."
6. Base 12 Innovations, *The Rock Cycle* (mobile app, April 3, 2013), <https://itunes.apple.com/us/app/the-rock-cycle/id471106554?mt=8>.

# Attorneys for the Damned: Using Legal Storytelling to Facilitate Zealous Representation of Unpopular, Unlikeable, or Infamous Clients.



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“If you just learn a single trick, Scout, you’ll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view . . . [u]ntil you climb inside his skin and walk around in it.”

—Atticus Finch, *To Kill a Mockingbird*<sup>1</sup>

“You can only protect your liberties in this world by protecting the other man’s freedom.”

—Clarence Darrow, addressing the court in *People v. Lloyd*<sup>2</sup>

“Judy’s gift is that she sees the people she represents as human beings when they are monsters to everyone else . . . [s]he was able to see the humanity in my brother, to find it in spite of the horrible, horrible things he’d done, and it helped to save his life.”

—David Kaczynski, brother of Unabomber Ted Kaczynski, describing attorney Judy Clarke<sup>3</sup>

Atticus Finch. Clarence Darrow. Judy Clarke. Three very different attorneys—a fictional attorney who inspired a generation of elementary and high school students to pursue law<sup>4</sup> and two real-life attorneys who inspire other attorneys to use law as a social justice tool—with one very important thing in common: they gained notoriety for zealously representing unpopular, unlikeable, or infamous clients.

Tom Robinson, Atticus Finch’s innocent African-American client, is the literary archetype of an unpopular client. In depression-era Alabama, a client such as Robinson, accused by a white woman of rape, was a social pariah: someone who was presumptively guilty and someone who most white lawyers would only begrudgingly represent.<sup>5</sup> Instead of shunning his unpopular client, Atticus Finch mounted a zealous defense, one that challenged deeply-engrained social mores (i.e., that a white woman’s rape accusation always trumps an African-American man’s protestations of innocence) by inviting an all-white, male jury to reject “the evil assumption that all Negroes

lie, all Negroes are basically immoral beings, all Negro men are not to be trusted around [white] women.”<sup>6</sup>

John Scopes, Clarence Darrow’s admittedly guilty client in the famous “Scopes Monkey Trial,”<sup>7</sup> is an archetypal unlikeable client. In 1925, Tennessee high school students began the day praying to a Christian God, and their teachers faced prison time for teaching evolution.<sup>8</sup> Like Atticus Finch, Clarence Darrow’s zealous defense of his client’s First Amendment right to embrace a scientific theory inconsistent with the dominant religious ideology—an unlikeable pedagogy widely viewed by many Southerners and Midwesterners as sacrilege—invited the American public to re-evaluate what had once been an irrefutable assumption that the biblical creation story was the only acceptable explanation of how the universe began.<sup>9</sup>

Boston Marathon Bomber Dzhokhar Tsarnaev, Unabomber Ted Kaczynski, and child-murderer Susan Smith,<sup>10</sup> are just a few of Judy Clarke’s archetypal infamous clients. The death penalty has been a staple of American justice since the 1600s.<sup>11</sup> And Clarke’s clients have committed crimes that are seemingly tailor-made for the death penalty—bombing innocent participants at an iconic American sporting event,<sup>12</sup> disguising lethal bombs in seemingly benign postal packages,<sup>13</sup> and murdering one’s own children to regain a lover’s affection.<sup>14</sup> However, much like Atticus Finch and Clarence Darrow, Judy Clarke invites modern-day society to re-evaluate its acceptance of the death penalty by humanizing some of the nation’s most notorious criminals.

But what if these attorneys had been willing *only* to represent clients with whom they shared a personal affinity, a similar political ideology, or a similar racial background? Atticus Finch’s client wouldn’t have received the impassioned defense that challenged jurors to re-examine their stereotypes about African-American men; Clarence Darrow’s client would’ve been banned from teaching evolution; and Judy Clarke’s clients would most likely have been summarily executed without the world getting a glimpse of their humanity. In short, had these attorneys refused to represent their clients simply because they were unpopular, unlikeable, or infamous, then they would’ve missed their opportunity to become social engineers.

The attorney’s identity as a social engineer is the crown jewel of a profession that has historically been publicly

maligned.<sup>15</sup> The concept of the attorney as a social engineer is most often attributed to Charles Hamilton Houston, the architect of the litigation strategy in *Brown v. Board of Education*.<sup>16</sup> According to Houston, a lawyer was “either a social engineer or . . . a parasite on society.”<sup>17</sup> He defined a social engineer as “a highly skilled, perceptive, sensitive lawyer who [understands] the Constitution of the United States and [knows] how to explore its uses in the solving of problems of local communities and in bettering conditions of the [sic] underprivileged citizens.”<sup>18</sup> The NAACP’s litigation strategy in *Brown* was the culmination of a masterful social engineering effort. Its goal was not simply to harness the power of the Equal Protection Clause to defend zealously its unpopular and unlikeable clients, the parents of African-American students denied entry to the school of their choice because of race, but to eradicate de jure segregation from the nation’s schools, an educational policy jeopardizing the constitutional rights of all African-American students.<sup>19</sup>

Lawyers who embrace their function as social engineers typically represent unpopular, unlikeable, and infamous clients.<sup>20</sup> These kinds of unconventional clients often have personal affinities or social and political ideologies that differ from mainstream society.<sup>21</sup> However, students often have a skewed notion of the lawyering process that compels them to want only to represent clients whose personal affinities or social and political ideologies are consistent with those that they, their families, or their peers deem acceptable. Students’ unwillingness to represent clients with different affinities and ideologies decreases the likelihood that they will embrace their role as social engineers. Given the profession’s reverence for social engineering, legal writing professors have a vested interest in preparing students to embrace this facet of their professional identity.<sup>22</sup>

Introducing novice legal writers to fundamental legal storytelling<sup>23</sup> principles increases the likelihood that they will embrace their role as social engineers. Legal stories convey themes or lessons that transmit universally shared experiences.<sup>24</sup> Consequently, legal stories help students empathize with clients whose affinities and ideologies differ from their own. When students empathize with their clients, they create engaging legal stories that decision-makers find persuasive. What follows are two techniques that help students build effective legal stories for unpopular, unlikeable, or infamous clients:

## VISUALIZE THE CLIENT

“A vision is not just a picture of what could be; it is an appeal to our better selves and a call to become something more.”

—Psychotherapist, Dr. Cathryne Maciolek, discussing the power of visualization<sup>25</sup>

Visualization is the first technique for building persuasive legal stories for unpopular, unlikeable, or infamous clients. The palpable psychological discomfort that students feel when we require them to write briefs for unconventional clients stems from a lack of empathy. Visualization techniques help students develop empathy. Clinical psychologists define visualization as “a cognitive tool accessing imagination to realize all aspects of an object, action or outcome.”<sup>26</sup> Visualization helps students overcome psychological barriers to find commonalities that trigger empathetic responses.<sup>27</sup>

Consider the following scenario: For the first persuasive writing assignment of the semester, my students represent a client objecting to her ex-husband’s petition to relocate their child to another state. The client, a litigation associate at a large national law firm, works in excess of ninety hours per week. The client is ambitious. At the initial interview,<sup>28</sup> she tells the class that her goal is to become the firm’s first female managing partner. Because of her career ambitions, the client voluntarily relinquished custody in exchange for liberal visitation on weekends and holidays. The client’s ex-husband, also an attorney, works for a small law firm where he typically works twenty hours per week.

During the brainstorming session immediately following the interview, a few students insult the client, calling her a “disgrace,” some even refer to her as “dead beat” or “scum bag.” Not everyone insults the client, but everyone is upset that I’m “making” them represent her. Perplexed, they ask questions such as “What kind of mother puts a job before her child?” “Why won’t she just move?” “Why won’t she consider petitioning for custody and stopping the relocation?” As this vignette demonstrates, the client doesn’t meet the class’s, or perhaps even society’s, definition of a good mother—a woman willing to sacrifice everything for her child. The client’s unwillingness to risk losing a highly coveted partnership brands her with a scarlet letter, transforming her into an unpopular and

unlikeable client. Because the class is blinded by its prejudices, it can only see one story: the client is a bad mother who isn’t entitled to prevail in her efforts to prevent the child’s relocation.

Visualization helps students move beyond their prejudices and build a plausible counter-story about why the client is entitled to relief. I begin the visualization process by highlighting areas of commonality. In the custodial relocation example, the most obvious commonality is the client’s profession: the students are aspiring lawyers, and the client is a lawyer. Another more subtle commonality is that most first-year students have experienced the same sort of familial tensions that the client is experiencing. After exploring these commonalities in a modified Socratic dialogue, I ask questions that invite students to use their law school experiences as a scaffold for understanding the client’s dilemma:

*-Are there any limits to what you would do to achieve success as a lawyer? If so, what are they?*

*-If you were faced with the client’s legal dilemma, how would you handle it? Assume that the client was a loved one or close friend, would that change your answer?*

*-What would you have to know about the client to help you understand why she voluntarily relinquished custody or why she’s not interested in petitioning the court for full custody, even if full custody would prevent a battle over the child’s relocation?*

Next, I attack the class’s explicit and implicit biases, asking questions that examine stereotypes about motherhood:

*-What are some stereotypes about mothers who relinquish custody of their children or who work in professions that have been traditionally dominated by men?*

*-Do these stereotypes apply to working fathers? Should they? Why or why not?*

*-Does society have different expectations for male and female attorneys when it comes to work life balance? If so, what are they?*

Identifying stereotypes removes students’ psychological blinders and creates the foundation for empathetic responses to unpopular, unlikeable, or infamous clients.<sup>29</sup>

## FIND THE STORY

“There just didn’t seem to be anyone or anything that Atticus couldn’t explain. Though it wasn’t a talent that would arouse the admiration of any of our friends, Jem and I had to admit he was very good at that . . .”

—Jean “Scout” Finch, *To Kill a Mockingbird*<sup>30</sup>

Building plausible stories to explain the actions of unpopular, unlikeable, or infamous clients is another effective technique. Using core societal values embedded in relevant legal rules, effective legal storytellers create plausible explanations for the actions of unconventional clients. Just as visualization facilitates empathy, building plausible stories around core societal values facilitates persuasion. Linking arguments to core societal values facilitates persuasion because a court or legislative body determined that these core societal values were so important that they created civil or criminal sanctions for those who act in ways that undermine those values.

Effective legal storytellers create theories and themes to communicate how the client’s case is consistent with core societal values. A theory unifies arguments, and a theme is a brief catch-phrase summarizing the theory. A good theme engages the decision-maker’s emotions and then, once hooked, the decision-maker can “hear” the advocate’s theory about why the client is entitled to relief. In this way, theme and theory work in tandem to create a framework for persuasive legal stories.

Consider this scenario: For the second persuasive writing assignment of the semester, my class represents a non-profit religious organization that operates a shelter for homeless teens. The organization has been sued for firing a popular youth counselor because she had a child out-of-wedlock, an activity that violated the organization’s religious teachings. For many students, the new client’s religious teachings are radically different from their beliefs about human sexuality—namely, that age and maturity level, not marital status, are more relevant criteria for evaluating the propriety of sexual activity. The philosophical difference between the client’s religious teachings and the students’ secular beliefs make this new client as unpopular and unlikeable as the ambitious client in the custodial parent relocation example. After visualizing areas of commonality and working through

questions that challenge explicit and implicit biases about premarital sex, the class is ready to identify core societal values and then use those values to create a plausible explanation for the client’s personnel decision. The professor can help students identify core societal values by asking the following questions:

*-What is the underlying purpose of the rule?*

*-Are any key ideas, concepts, or values reflected in the rule?*

*-What is the underlying message of those key ideas, concepts, or values?*

*-Do external sources such as secondary authorities, case law, or legislative history provide any clues about important ideas, concepts, or values reflected in the rule?*

After grappling with these questions, the class identifies a core societal value, brainstorms arguments, and develops a theory and theme:

**Core Societal Value:** Employer autonomy

**Arguments:** An interpretation of the promissory estoppel exception that would transform an indefinite, casual remark praising the plaintiff’s job performance into a promise of lifetime employment jeopardizes the autonomy at the core of the at-will employment doctrine.

This Court should align itself with appellate courts in neighboring jurisdictions and abolish any exception to at-will employment that unduly burdens the defendant’s autonomy to fulfill its organizational mission of rescuing troubled children.

**Theory:** Recognizing an exception to at-will employment in this case would unduly burden the defendant’s autonomy by jeopardizing its mission to rescue troubled teens.

**Theme:** “The community suffers when the exception swallows the rule.”

Notice how the core societal value, theory, and theme work in tandem to create a plausible explanation about why this unpopular and unlikeable client should prevail. Instead of appearing to be an authoritarian bully whose personnel decision was based on antiquated notions of human sexuality, the client morphs into a caregiver. When viewed within this context, its decision to fire the employee is primarily

about protecting its vulnerable clientele, not its religious teachings. Shifting the focus from religion to the client's secular organizational mission eases the classes' psychological discomfort. Armed with a plausible counter-story about why the client is entitled to relief, students are less distracted by their personal feelings about premarital sex, more focused on defending the client's autonomy, and better equipped to write a compelling brief.

Using the storytelling techniques described in this article eases the psychological discomfort students often experience when representing unpopular, unlikeable, and infamous clients. Once freed from their psychological blinders, students will have an "Atticus Finch-like" ability to build powerful legal stories for unconventional clients. Who knows? That unassuming student sitting in the back row of your class might become the next Clarence Darrow or Judy Clarke.

#### NOTES

1. Harper Lee, *To Kill a Mocking Bird* 30 (Grand Central Publ'g 1988) (1960).
2. See <http://www.quotationspage.com/quote/41659.html> (last visited June 8, 2015).
3. See Holly Bailey, *Gentle Judy's Biggest Challenge: Defending the Accused Boston Marathon Bomber*, Yahoo News (January 19, 2015), <http://news.yahoo.com/judy-clarke-tsarnaev-boston-ma-rathon-bombing-185641991.html> (last visited June 8, 2015).
4. See e.g., Michael L. Boyer, *Atticus Finch Looks at Fifty*, 12 U. Md. L. J. Race, Religion & Class 356, 356 (2012); Peter Zwick, *Rethinking Atticus Finch*, 60 Case W. Res. L.R., 1349-50 (2010) (discussing the book's popularity among high school students, aspiring lawyers, and collecting critiques of the book's protagonist, Atticus Finch).
5. See Kevin Merida, *To Cite a 'Mockingbird'*, The Washington Post, Oct. 1, 2007, at 1 (describing the novel's social and political context). See generally, Malcolm Gladwell, *The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism*, The New Yorker, Aug. 10, 2009 (same).
6. See <https://www.goodreads.com/work/quotes/3275794-to-kill-a-mockingbird?page=4> (last visited June 8, 2015).
7. See *The Scopes "Monkey" Trial*, <http://xroads.virginia.edu/~ug97/inher-it/1925home.html> (last visited June 8, 2015).
8. *Id.*
9. See *State of Tennessee v. Scopes*, ACLU, <https://www.aclu.org/state-tennessee-v-scopes> (last visited June 8, 2015).
10. Bailey, *supra* note 3, at 3.
11. See generally John D. Bessler, *Revisiting Beccaria's Vision: The Enlightenment, America's Death Penalty and the Abolition Movement*, 4 NW. J.L. & Soc. Pol'y 195, at 32-34 (2009).
12. Bailey, *supra* note 3, at 2.
13. Nona Yates, *Recap of the Unabomber Case*, Los Angeles Times, Jan. 23, 1998, <http://articles.latimes.com/print/1998/jan/23/news/mn-11362> (last visited June 8, 2015).
14. Mike Dorning, *Susan Smith's Ex-lover Testifies: Prosecution Says Failed Affair Was Motive For Murders*, Chicago Tribune, July 20, 1995, [http://articles.chicagotribune.com/1995-07-20/news/9507200152\\_1\\_tom-findlay-hot-tub-david-bruck](http://articles.chicagotribune.com/1995-07-20/news/9507200152_1_tom-findlay-hot-tub-david-bruck) (last visited June 8, 2015).
15. See generally, Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?* 29 SETON HALL L.R. 1405 (1999) (exhaustively describing the origins of the public's negative perceptions about lawyers).
16. See Jose Felipe Anderson, *The Criminal Justice Principles of Charles Hamilton Houston: Lessons in Innovation*, 35 U. BALT. L. REV., 313, 313 (2006).
17. *Howard University Law School, About the Law School*, <http://www.law.howard.edu/19> (last visited June 8, 2015); See also, John C. Britton Dean, *Black History Month Tribute to HBCU Law Schools*, 15 Nat'l B. Ass'n Mag. 10 (January/February 2001).
18. *Id.*
19. See Leland Ware, *The Story of Brown v. Board of Education*, in *Education Law Stories* 19, 20, 22, 24, 36-40 (Michael A. Olivas & Ronna Greff Schneider, eds.) (2008).
20. See *supra*, pp. 2-3 (discussing Clarence Darrow and Judy Clarke).
21. *Id.*
22. See Douglas L. Colbert, *Clinical Professors' Professional Responsibility: Preparing Law Students to Embrace Pro Bono*, 18 Geo. J. On Poverty L. & Pol'y 309, 310-11 (2011) (describing the law as a profession that "claims a special responsibility for the quality of justice" and arguing that law professors must prepare the current generation of law students to embrace the public service aspect of the profession); Linda F. Smith, *Fostering Justice Throughout the Curriculum*, 18 Geo. J. On Poverty L. & Pol'y 427, 433-34 (2011) (arguing that "[e]very course in the law school curriculum should be analyzed to see if it might be retooled to foster justice and public service.")
23. Legal storytelling is an approach to persuasive writing which recognizes that effective written advocacy uses core societal values embedded in legal rules as the foundation of powerful legal stories that explain why the client should prevail. Camille Lamar Campbell & Olympia R. Duhart, *Story-craft: A Primer for Writing Persuasive Legal Stories* (forthcoming winter 2016) (manuscript at 14) (on file with authors).
24. See Jennifer Sheppard, *Once Upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 43 Willamette L. Rev. 255, 257 (2009).
25. See <https://www.psychologytoday.com/blog/the-psychology-dress/201111/visualize-it> (last visited June 8, 2015).
26. *Id.*
27. *Id.*
28. A former student or the colleague typically plays the role of this fictional client.
29. *Supra* note 25.
30. Lee, *supra* note 1, at 65.
31. Core societal values are things, ideas, or concepts that a particular society collectively believes are important. See Campbell, *supra* note 23, at 8.
32. *Id.*
33. *Id.*; see also, Kenneth D. Chetek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. Ass'n Legal Writing Directors 1, 14-16 (2010).
34. See generally *Is premarital sex morally acceptable?* Debate.Org., <http://www.debate.org/opinions/is-premarital-sex-morally-acceptable> (last visited June 8, 2015) (reporting that 61% of the population approves of premarital sex).
35. For example, the client's religious beliefs inform its corporate identity, and many students also have strongly-held beliefs that inform their personal identities. Another more subtle commonality is that, like our new client, many first-year students also have strongly-held beliefs that often influence their behavior towards others.
36. An in-depth discussion of the process of extracting core societal values from legal rules is beyond the scope of this article. However, see Campbell, *supra* note 23, at 40-43, for a detailed discussion about methodology.

# “Gender Degradation”: New Words to Tell an Old Story



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As new teachers, we learn quickly that students pay more attention to stories than lectures. They sit up straight, stop fidgeting, and listen. And thanks to a growing body of scholarship on narrative reasoning and applied legal storytelling, we know we need to do a better job of teaching students to tell their clients’ stories. In recent months, I have become keenly aware of not only how much stories matter, but how much words do too. For that reason, I now believe that the words we choose to tell the story about the importance of legal writing to law students and the inequitable treatment of its faculty are critical to improving and maintaining our status. But let me tell you the story of how I got there.

In March, Ruth Anne Robbins,<sup>2</sup> an expert on narrative reasoning and legal storytelling, spoke at a conference about persuasive word choice in statements of fact and legal argument.<sup>3</sup> Legal argument, she explained, calls upon the reader to compare new information to pre-existing knowledge to construct new knowledge (i.e., reach certain conclusions). As part of this cognitive process, readers search their memory for similar

images and experiences. If legal writers choose words intentionally to conjure up the image(s) they want their readers to have, they are more likely to persuade. For example, assume a court has interpreted a controlling statute broadly to the client’s detriment. Using the phrase “with boundaries” to describe the statute can conjure up the familiar image of a fence to set some limits on the statute’s ultimate reach.

At the same conference, Jill Smith<sup>4</sup> demonstrated the cognitive priming that Ruth Anne described. First, Jill asked if we had ever discovered a word that stands for a complex concept that often takes several words to describe. Her example was “schadenfreude”, a German word that translates into “harm-joy” and means taking joy or pleasure in another’s misfortune. She then described her professional joy in learning the word “transliteracy,” which means the ability to understand and communicate across all communications platforms, including proprietary research databases and social media.<sup>5</sup> Jill explained that law faculty often mistakenly assume that law students are adept at using all forms of electronic media, and she stressed the need to teach these specific skills. Having primed us with the act of discovering a new word like schadenfreude, she invited us to similarly discover transliteracy.

More recently, I had occasion to read Catharine MacKinnon’s book *Sexual Harassment of Working Women*. In it, MacKinnon articulated for the first time two forms of workplace sexual harassment (quid pro quo and hostile environment) that she and like-minded feminists ultimately succeeded in having recognized

as violations of Title VII of the Civil Rights Act of 1964. Although sexual harassment in the workplace was not new, acknowledging it as sex discrimination and the economic and psychological harm it causes its victims was groundbreaking. Quoting Sheila Rowbatham, MacKinnon acknowledged that harassment had seemingly become an invisible and immutable part of the working landscape for women: “Where the conception of change is beyond the limits of the possible, there are no words to articulate discontent so it is sometimes held not to exist.”<sup>6</sup> MacKinnon’s words thus brought sexual harassment into being for purposes of Title VII.

Each of these “word experiences” in rapid succession has underscored for me the importance of the words we use to describe legal writing—its history, its doctrine, the nature of its scholarship, the courses we teach, who we are, and what we contribute to legal education. As Ruth Anne teaches us, these words should conjure up familiar, positive images that accurately represent what we as a community of practitioners, teachers, and scholars hope to and do accomplish. For that reason, legal writing needs to be rigorous, relevant, innovative, experiential, effective, integrated, intellectual, flexible, steadfast, and valued. As Jill demonstrated, we can use words to predispose the audience to understand our message and convey complex concepts. And finally, as MacKinnon did, we can strive to use powerful and evocative words or combinations of words to bring new concepts into being.

The story of legal writing begins in the mid-1980s, when law schools hired a disproportionate number of women into non-tenure track, teaching positions such as legal writing.<sup>7</sup> By the late 1990s, we were describing legal writing faculty as a “permanent underprivileged stratum of untouchables”<sup>8</sup> and “second-class citizens” in the “pink ghetto”<sup>9</sup> and their status as one of law

schools’ “dirty little secrets.”<sup>10</sup> At the same time, we struggled to understand how and why this segregation occurred, why it continues, and what we might do to improve the situation.<sup>11</sup>

Since then, our story has grown to include the contributions we’ve made to legal education in terms of teaching and scholarship.<sup>12</sup> As for our status, we are speaking out now in stronger terms about institutionalized discrimination, which the ABA has both created and sanctioned,<sup>13</sup> and the impact of gender and race on our status.<sup>14</sup> And our stories are based on sound social theory too: law school faculties are illegitimate status hierarchies that demean teaching legal writing as unintellectual “women’s work.” They exclude those considered inferior (i.e., “female” legal writing faculty) for the sole purpose of maintaining the integrity of those considered superior (i.e., “male” doctrinal faculty).<sup>15</sup> Despite these and related employment practices that might subject law schools to liability under Title VII of the Civil Rights Act,<sup>16</sup> very little has changed in twenty years: sixty-four percent of tenured law faculty are male, and last year, 72% of legal writing faculty were female.<sup>17</sup> Only 12 out of 204 law schools hire legal writing faculty exclusively on a tenure track.<sup>18</sup>

We need better words for talking about these status issues. Words that describe not how we feel, but

what is happening. Ideally, the words we use would represent a complex concept—like *schadenfreude* or *transliteracy*— that often takes several words or sentences to describe. The complex concept is this: the open and unapologetic, yet unacknowledged bias in the workplace against women with equal education and training, often in service positions, that pervades the language and behavior of male-dominated communities. Very little, if any, guilt is experienced by the dominant community because the prevailing, sometimes unconscious, assumption is that if we

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.....



were motivated or talented enough, we would be more successful.<sup>19</sup>

Catch-all phrases like “sex discrimination” and “gender discrimination” are a start in the right direction, but they are too generic and vague; they lack needed specificity and nuance. In contrast, phrases like “sexual harassment” and “hostile environment sexual harassment” connote specific subsets of sex discrimination for Title VII purposes. Is there an analog for this situation? As a start, I’ve rejected any phrase that starts with “sexual.” In the context of workplace discrimination, “sexual” seems inseparable from “harassment.” Any pairing of “sexual” and another word might pale in comparison or be misinterpreted to mean the offending behavior need be sexual in nature. “Gender,” then, seems the next best choice to describe the behavior directed at this protected class. Is there a word or phrase that can stand for disrespect, derision, presumption, subordination, indifference, humiliation, and powerlessness all combined?

The first word that came to mind was “disparagement,” but “gender disparagement” has been taken. It means the use of language that does not rise to the level of sexual harassment but nevertheless demeans or reduces the status of women.<sup>20</sup> Gender disparagement includes references to a woman’s gender characteristics or her sexuality and infantilizing terms of address such as “honey.”<sup>21</sup> Instead, I tentatively propose the phrase “gender degradation.” “Degradation,” meaning humiliation brought about by a loss of status, seems right to me, stronger in both sound and meaning than disparagement. “Gender” and “degradation” actually appear together in an article by Ann McGinley about law school faculties. She uses these words interchangeably with “gender devaluation” to refer to the process by which service and administrative positions “lose their aura of status, power, and authority when held by women.”<sup>22</sup> Since “degradation” has more teeth to it, and “devaluation” could be interpreted to mean only economic harm, “degradation” seems a better choice.

If we can agree on this or a better phrase to capture the essence of this subset of workplace discrimination, we will speak with a stronger, more unified voice. Over time, we will have primed our audience to recognize this complex concept and be better positioned to argue the force of our conclusions. Just as MacKinnon’s words brought “sexual harassment” into being, we can bring “gender degradation” into being. Like our

tenured colleagues, we have a J.D. (and perhaps unlike many, we have practiced law), yet most of us are categorically denied tenure. The majority of us are on short-term contracts, and we earn, on average, 55 cents for every dollar that male, tenured faculty earn. We have the title “professor” without the qualifying or limiting phrase “of legal writing” at just 47 schools. Many of us are lecturers or instructors. We are entitled to attend faculty meetings and vote on hiring, promotion, and tenure matters at just 42 schools. What if we started calling the sum of these and other disparities gender degradation?

And what about the fact that many of us find it so difficult to teach and write at the same time, knowing that scholarship is valued most at our institutions? Or that when we do find time to write, we can find ourselves caught between a rock—writing in our discipline—and a hard place—writing in “theirs”? Or that we can sometimes be afraid to advocate for ourselves or to speak out on controversial matters for fear of losing, at most, our contracts and, at least, our good will? Or that many of us are being asked to do more without additional compensation? Could gender degradation incorporate these insults as well?

Finally, there is that mixture of anger and sadness at not being eligible to attend faculty meetings or at having to get up and leave one when important matters are being voted on. Similar feelings can arise when we are not included in faculty events, or, when we are included, having tenured faculty sit apart from us or fail to acknowledge our presence. Even more painful can be having that nagging sense of “us” and “them,” an invisible line we could not have imagined before we started teaching. Or having a tenured faculty colleague say something like, “I can’t imagine doing what you do” and sensing the hidden meaning in that statement. Or a member of the tenured faculty getting on the elevator and having no idea who you are. Could gender degradation, like sexual harassment, be supple enough to include psychological harm as well?

To bring gender degradation into being would be to imagine the impossible—to challenge a seemingly invisible and immutable part of our working landscape. By giving a name to something we have no common words to describe, we can validate our collective experience. As we continue to shape and reshape our story, we may want to conjure up more positive images of legal writing and its faculty, letting go of some of the more negative images that others have of us.

In so doing, we will shift the focus away from us and our perceived shortcomings to where it belongs: the discriminatory behavior itself. Having identified and named it, we can cease to be responsible for it.

#### NOTES

1. A note of thanks to Kirsten K. Davis, Ruth Anne Robbins, and Kathryn M. Stanchi for their advice on this essay.
2. Ruth Anne is a Clinical Professor of Law at Rutgers School of Law-Camden.
3. Ruth Anne Robbins, *Writing the Client into the Argument: Image Decision, Word-Choice Precision* (forthcoming 2015, online at <http://legaledweb.com/>).
4. Jill is an Instructional Technology Librarian at Georgetown Law.
5. Jill Smith, *Bringing Transliteracy to Legal Education* (forthcoming 2015, online at <http://legaledweb.com/>).
6. Catherine A. MacKinnon, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION 28 (1979)(quoting Sheila Rowbatham, WOMAN'S CONSCIOUSNESS, MAN'S WORLD 28 (1973)).
7. See, e.g., Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 555 (1988)(“Commitments must be made by all American law schools to recruit, hire, and tenure women aggressively. The failure of a sizeable segment of law schools, including many of the highest stature, to hire substantial numbers of women is appalling.”); see also Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000).
8. Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 118 (1997)(quoting Arthur S. Wilke, THE HIDDEN PROFESSORiate—CREDENTIALISM, PROFESSIONALISM, AND THE TENURE CRISIS xii (1979)).
9. Jo Anne Durako, *Second Class Citizens in the Pink Ghetto*, 50 J. LEGAL EDUC. 562, 563 (2000)(quoting the Comm’n on Women in the Profession, ABA, *Elusive Equality: The Experience of Women in Legal Education* 4 (1996)).
10. Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 BERKELEY WOMEN’S L.J. 3 (2001).
11. See, e.g., Pamela Edwards, *Teaching Legal Writing as Women’s Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN’S L.J. 75 (1997); David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105 (2003); Kristen Konrad Robbins (now Tiscione), *Philosophy v. Rhetoric in Legal Education: Understanding the Schism between Doctrinal and Legal Writing Faculty*, 3 J. ALWD 108 (2006).
12. See, e.g., Linda L. Berger, Linda H. Edwards & Terrill Pollman, *The Past, Presence, and Future of Legal Writing Scholarship: Rhetoric, Voice, and Community*, 16 J. LEG. WRITING 521 (2010); Linda H. Edwards, *Legal Writing: A Doctrinal Course*, 1 SAVANNAH LAW REV. 1 (2014); Michael R. Smith, *The Next Frontier: Exploring the Substance of Legal Writing*, 2 J. ALWD 1 (2004).
13. Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 476-83 (2004); Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. \_\_\_ (forthcoming 2015); Melissa H. Weresh, *Form and Substance: Standards for Promotion and Retention of Legal Writing Faculty on Clinical Tenure Track*, 37 GOLDEN GATE UNIV. L. REV. 281, 287-89 (2007).
14. See Lorraine K. Bannai, *Challenged 3X: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275 (2014); Teri A. McMurtry-Chubb, *Writing at the Master’s Table: Theft, Criminality and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41 (2009).
15. Stanchi, *supra* n. 13, at 471, 487. Although men teaching legal writing are similarly accorded lesser status, they tend to earn higher salaries than their female counterparts. See, e.g., ALWD/Legal Writing Inst., REPORT OF THE ANNUAL LEGAL WRITING SURVEY Appendix A (2014)[hereafter 2014 SURVEY], available at <http://www.lwonline.org/surveys.html>.
16. See Ann C. McGinley, *Discrimination in our Midst: Law Schools’ Potential Liability for Employment Practices*, 14 UCLA WOMEN’S L.J. 1 (2005).
17. 2014 SURVEY, *supra* n. 15, at 68.
18. *Id.* at 5.
19. See, e.g., Anne Lawton, *The Myth of Meritocracy and the Illusion of Equal Employment Opportunity*, 85 MINN. L. REV. 587, 592-99 (2000)(explaining the myth of meritocracy as the dual belief that 1) discrimination no longer exists, and 2) differences in success between white men and black men, black women, white women, or all of these groups are attributable to “unequal talent and effort”); Ann C. McGinley, *!Viva la Evolución!: Recognizing Unconscious Motive in Title VII*, 9 CORNELL J.L. & PUB. POL’Y 415, 434 (explaining that “gender schemas” are responsible for undervaluing women in the workplace).
20. See, e.g., Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 306 (2008); Janet Rosenberg, Harry Perlstadt and William R. F. Phillips, *Now That We Are Here: Discrimination, Disparagement, and Harassment at Work and the Experience of Women Lawyers*, 7 GENDER AND SOCIETY 415, 419 (1993).
21. Rosenberg, et al. *supra* n. 20.
22. *Reproducing Gender on Law School Faculty* 2009 BYU L. Rev. 99, 151 (2009).



# Everything Old is New Again: Using IRAC to Teach Basic Writing Skills



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When I started teaching the Writing Skills Workshop in 2011 at Touro Law Center, I was faced with the reality that many of the students in front of me felt that they were “wasting their time” in a basic writing skills workshop. After all, these students were law students; they had completed college, had taken the LSAT, and had submitted an application essay. Now, for fourteen weeks, these first-year students and I would meet to discuss topics as varied as grammar, punctuation, subjects, semicolons, modifiers, and moods. But before law school, the students argued, no one had told them that their writing was deficient. The students believed that if their writing skills were, in fact, poor, a college professor, a teaching assistant, a roommate, a fellow member of their drum circle—someone!—would have informed them. But no one did.

With one hundred and eight frustrated students before me, I had to modify my approach to teaching grammar and punctuation. Not only did I need to convince some of the students that their skills were deficient and that grammar and punctuation mattered, I also needed to teach them in a way they perceived to be sophisticated. Thinking about what “sophisticated” meant to a law student, I reflected on my law school education. Although I did well in my legal writing classes, exam writing, specifically the IRAC format, mystified me as a first-year student.

“IRAC” is an acronym for “Issue, Rule, Application, and Conclusion,” a format that students use to organize law school exam answers, and a format I am sure a majority of this reading audience recognizes. In retrospect, there was nothing particularly difficult about the IRAC format, but I was too embarrassed to admit what I did not know as a 1L, as it seemed that all law students, except for me, knew everything about law school within the first week of classes. I realized, then, that there were students sitting in my class who probably were too embarrassed to ask these important questions integral to their academic success. I decided I wanted to give these students the opportunity to learn grammar and punctuation through the IRAC format.

Without beginning a debate about descriptivism versus prescriptivism, I believe it is safe to state that law students are expected to abide by conventional writing “rules.” These rules are not different from the legal rules students encounter in law school classes. Like legal rules, writing rules can be broken down into their “elements,” which can be satisfied by explaining how parts of a sentence work together. The following table illustrates an example:

## Two Independent Clauses combined by a Coordinating Conjunction, also known as the “FANBOYS” Rule (For, And, Nor, But, Or, Yet, So)

According to Diana Hacker: “When a coordinating conjunction connects two or more independent clauses—word groups that could stand alone as separate sentences—a comma must precede it.”

Written differently, a comma must come before a coordinating conjunction when the coordinating conjunction combines two complete sentences.

*The FANBOYS rule can be broken into the following elements:*

1. Coordinating conjunction; and,
2. Two or more independent clauses (This is one comma rule of many punctuation rules that can be taught using IRAC.)

Like any rule in law school, the rule is useless without an issue to which it applies. The next step, then, is to create a hypothetical problem that students can use to apply the rule. The following text is a hypothetical problem I created that students used to apply the FANBOYS rule (or other comma rules we had covered). This hypothetical can also be used as a common law burglary hypothetical problem.

### Directions:

*There are seven comma mistakes in this hypothetical. Pick two mistakes and write an IRAC answer as if you were answering the question on a law school exam.*

Stacy met a man named Ken, a real estate broker from Manhattan and they fell madly in love. Ken spoiled Stacy with romantic candlelight dinners at expensive restaurants jewelry and endless red roses. Stacy’s neighbor, Tom, noticed that Ken gave Stacy a thirteen thousand dollar diamond Tiffany’s necklace which Tom coveted. One night when Stacy and Ken were out Tom decided that he was going to steal the Tiffany’s necklace from Stacy’s apartment. Tom climbed the fire escape to Stacy’s bedroom window, and opened it. Tom could see the diamond necklace sparkling across the room on Stacy’s dresser. Slowly Tom slipped his foot through the window but knocked over a lamp in the process. Unbeknownst to Tom, Ken bought Stacy a ninety-five pound Rottweiler, named Charlie, who charged at Tom at the sound of the crashing lamp. Tom, panicking, fled down the fire escape, down the back alley, through the doors of the apartment building, up the staircase, and into his apartment, where no one was the wiser. Stacy and Ken went home that evening and found the broken lamp on the floor. Ken surmised that someone tried to steal the diamond necklace but Charlie prevented the intruder from completing the theft. That night, as his reward, Charlie ate the biggest steak Ken could afford.

How does a student write an IRAC answer applying punctuation rules? Here is an example answer using the following sentence and applying the FANBOYS Rule.

### **Problem Sentence:**

*Ken surmised that someone tried to steal the diamond necklace but Charlie prevented the intruder from completing that theft.*

The issue is whether a comma must come before a coordinating conjunction when the coordinating conjunction combines two complete sentences.

According to Diana Hacker, when a coordinating conjunction combines two complete sentences, a comma must come before the conjunction. A complete sentence is another name for an “independent clause.” An independent clause contains a subject, verb, and expresses a complete thought. The seven coordinating conjunctions are for, and, nor, but, or, yet, and so.

Here, “Ken surmised that someone tried to steal the diamond necklace” is a complete sentence because it contains a subject, “Ken,” and a verb, “surmised.” “That someone tried to steal the diamond necklace” is the object of the transitive verb “surmised” and therefore expresses a complete thought. Similarly, “Charlie prevented the intruder from completing the theft” is a complete sentence because it contains a subject, “Charlie,” and a verb, “prevented.” Further, “the intruder from completing the theft” is the object of the transitive verb “prevented” and therefore expresses a complete thought. “But” is one of the seven coordinating conjunctions and is combining two complete sentences.

Therefore, the writer should place a comma before “but.” The sentence should read, “Ken surmised that someone tried to steal the diamond necklace, but Charlie prevented the intruder from completing the theft.”

As illustrated, the issue statement is written like any other issue statement, following the “whether . . . when” format. This issue statement is written to reflect the rule, a connection I wanted to make explicit for the students.

The rule paragraph contains a source for the rule and the relevant rules necessary to address the issue. The rule paragraph may include additional information, such as the definitions of a “subject” and “verb” or the relationship between transitive verbs and direct objects to explain “expresses a complete thought,” an elusive phrase.

The application paragraph begins with “Here,” just as many application paragraphs begin. In the application paragraph, the student must show an understanding of the sentence’s grammar; that is, the student must be able to identify a subject and a verb and must be able to understand what makes a sentence complete. The student must also be able to recognize the seven coordinating conjunctions. Without understanding independent clauses, the student will not be able to correct the sentence.

The conclusion is simply the corrected sentence.

Like for any law school exam, students should not create issues where issues do not exist. When I distributed this problem to my students, some students chose the following sentence to address: “Stacy and Ken went home that evening and found

the broken lamp on the floor.” The students wrote that because no comma came before the coordinating conjunction “and,” the sentence was correct because the “and” was not combining two complete sentences. Although the students were correct, if this were a real law school exam, the students would not have received credit because the students failed to identify an issue. The students simply stated that an issue did not exist (I also questioned their ability to follow directions, as the directions stated to pick two mistakes).

Like most law school exams, this hypothetical problem contains “issues” that may be resolved in more than one way. The first sentence, “Stacy met a man named Ken, a real estate broker from Manhattan and they fell madly in love” contains both two complete sentences (“Stacy met a man named Ken” / “they fell madly in love”) and a nonrestrictive appositive (“a real estate broker from Manhattan”). Therefore, students may choose to include the comma before “and” in conformity with the FANBOYS rule. Alternatively, students may choose to place a comma after “Manhattan” to offset the nonrestrictive appositive, “a real estate broker from Manhattan.” Either answer would be correct, but of course, the answer that would most likely receive the “A” in law school would be the answer that addressed both issues.

Students should be encouraged to use IRAC to learn basic writing skills. Most law students do not begin law school with the necessary schema to understand the IRAC format as applied to the law. The opportunity to teach writing skills through IRAC is invaluable because it provides students with the background knowledge necessary to tackle exam writing. If students can understand how to use IRAC to learn basic grammar, students may be able to better understand how to use IRAC when writing about common law burglary or negligence.

# BRIEF-A-PALOOZA



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A few years ago, I attended a “Pitchapalooza” event at a local bookstore. Over two hours, approximately twenty writers had a minute each to “sell” their ideas to a panel of agents. While listening to the presentations, it struck me that the requirements of a good book “sell” overlapped with many of the qualities required to draft a compelling opening statement in a brief.<sup>1</sup> Both a Preliminary Statement and a novel pitch have to accomplish a number of crucial tasks in a very short amount of time; thus, for both every word counts.<sup>2</sup> Just as an effective pitch provides an overview of the story and presents the protagonist in a way that makes the reader lean toward that character’s perspective, a well crafted opening statement needs to identify the protagonist’s/client’s goals and struggles up front, using specific images/facts instead of relying on general statements, and maintaining authorial credibility by avoiding overstatement.<sup>3</sup>

Like the one minute book pitch, the introduction to a brief must be short and should leave its audience wanting to know more. If a Preliminary Statement goes on for too long or is bogged down by detail, the reader is likely to lose patience and overlook the key points the writer is trying to make. Not surprisingly, during the Pitchapalooza event, I noticed eyes glazing over in the audience when a presentation veered away from the dilemma of the central protagonist to sub-plots or minor characters. Similarly, a Preliminary Statement should be limited to a central theme, namely why justice and equity require that your client prevail. Thus, the writer needs to focus on the key facts that will lead the court to see an issue from the client’s perspective.

Another flaw in the book pitches that did not work was the use of jargon or unfamiliar terms or expressions. By way of example, a story that centers on the treatment of a rare psychiatric disease is unlikely to be compelling to an audience of lay people who have never heard of that particular syndrome. On the other hand, if the author spends too much time describing the details of the illness, the audience will miss the heart of the story, namely, how the illness impacts the key characters. Similarly, the Preliminary Statement should not rely on unfamiliar terms or concepts, but focus instead on how those concepts relate to the key legal argument or narrative theme.

“Overselling” is another mistake writers must be careful to avoid in both a Preliminary Statement and a book pitch. As one book agent noted, “[c]laiming to have written the next *Eat Pray Love* or *Harry Potter* only makes the writer look like a deluded amateur.” Similarly, a Preliminary Statement that is replete with

underscoring, italics or exclamation points is likely to impact negatively on the author's credibility.

If a writer has been lucky enough to acquire an agent and sell a book, he/she has to carefully consider how to "pitch" it to the public. Thus, two key parts of a book are the endpapers summarizing the story and the opening pages. One technique that creative writing teachers have used is to begin a workshop by reading the first paragraph of a story aloud and asking students whether they would continue reading the work or put it aside after that short passage. While judges do not have the option of "putting aside" a brief, a compelling opening will affect how they view the rest of the document. As both psychologists and writing experts have noted, "[o]nce a person has a first impression, all other information about the subject will be filtered through that impression."

Consider the differences between the following two versions of an opening of a brief:

### Version One:

The instant appeal stems from a jury trial. At the conclusion of the trial, the jury found Defendants liable for the use of excessive force against the Plaintiff and awarded damages of \$10,000 for injuries that included a broken jaw and cheekbone. Noting that the award barely covered medical costs, the trial court found that the jury failed to follow its instructions to compensate Plaintiff for obvious pain and suffering and granted an additur of \$150,000. Defendants subsequently appealed.

### Version Two:

On March 4, 2010, Plaintiff suffered a broken jaw and cheekbone when one of the Defendant officers kicked him in the head in the course of an arrest. At the time this beating occurred, Defendant was lying face down on the ground, and another of the Defendants was holding his hands behind his back to handcuff him. Plaintiff's injuries required surgery lasting over four hours, during which two metal plates and eight screws were inserted into Plaintiff's jawbone. The beating also left him with a permanent loss of sensation. After finding the Defendants guilty of using excessive force, the jury awarded Plaintiff only \$10,000, which barely covered his medical expenses. Notably, the award ignored the trial court's specific instructions to

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*[T]he Preliminary Statement of a brief is a critical opportunity to shape the way a judge responds to the issues. If the opening is nothing more than a statement setting out the parties, the nature of the claim and the procedural history, that opportunity is lost.*

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compensate Plaintiff for his obvious pain and suffering. As a result, the court granted an additur of \$150,000. Defendants subsequently appealed.

The first version follows the format of the traditional introduction to a brief, noting the parties/characters and the nature of the conflict at issue, while the second version sets out the narrative theme or emotional core of the story. In the second version, the writer uses the image of the Plaintiff lying on the ground, face down to underscore his vulnerability. The information that his two assailants were both standing makes them appear as deliberate agents of the abuse. Physical details, such as the metal insertions and the permanent loss of feeling in Plaintiff's face, are used to evoke a visceral response on the part of the reader.

In sum, to paraphrase Jane Austen, it is "a truth universally acknowledged" that the beginning and end of any piece of writing make the greatest impression on readers. Thus, the Preliminary Statement of a brief is a critical opportunity to shape the way a judge responds to the issues. If the opening is nothing more than a statement setting out the parties, the nature of the claim and the procedural history, that opportunity is lost. Given the importance of "first impressions" in any form of writing and the heavy workload of most judges, instead of the traditional neutral introduction, practitioners should consider drafting Preliminary Statements that effectively lay out the narrative theme of the case and then summarize a client's strongest facts and law. As with a book pitch to an agent, a compelling brief opening will draw the protagonist/client and his struggles/legal problems in a way that will engender empathy from the audience/court and leave that audience wanting to learn more.



## NOTES

1. Preliminary Statements have also been compared to movie trailers. Steven J. Johanson, *Coming Attractions: An Essay on Movie Trailers & Preliminary Statements*, 10 LEGAL COMM. & RHETORIC: JALWD 41, 43 (2013) (noting that, like a movie trailer, a Preliminary Statement has to convey the context of the story and introduce the main characters in a very short space of time).
2. David Henry Sterry, *Pitchapalooza 2010: Tips for Perfecting Your Book Pitch*, PUBLISHING PERSPECTIVES (Nov. 16, 2010), <http://publishingperspectives.com/2010/11/pitchapalooza-2010-tips-for-perfecting-your-book-pitch/>.
3. *Id.*
4. Johansen, *supra* note 1, at 42.
5. Sterry, *supra* note 2.
6. *Id.*
7. Johansen, *supra* note 1, at 44.
8. JANE AUSTEN, *PRIDE AND PREJUDICE* 1 (The Heritage Press 1940) (1813). Notably, *First Impressions* was the original title of Austen's *Pride and Prejudice*; its heroine, Elizabeth Bennet spends the first half of the book ignoring warning signs about the treacherous Mr. Wickham, who subsequently seduces her youngest sister, because she is so reluctant to modify her initial positive impression of him. DAVID CECIL, *A PORTRAIT OF JANE AUSTEN* 160 (1979).
9. Douglas E. Abrams, *What Great Writers Can Teach Lawyers and Judges: Wisdom from Plato to Mark Twain to Stephen King* (Part I), 4 PRECEDENT 16, 17 (2010) (reporting that "judicial dockets have increased faster than population growth for most of the past generations or so").

# Turning Student Opinions into Compelling Narratives: An Assignment for Upper-Level Legal Writing Electives



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Jose Godinez-Samperio's story is a heartbreaking tale of opportunities lost because he was born in the wrong country. Patrick Snay's story of loss stems from an unfortunate comment his daughter posted on Facebook. And in Jesse Teplicki's story, he faces the loss of his freedom for growing a drug he needed to treat a serious medical condition.<sup>1</sup>

These personal stories are just a few of the many compelling examples my students used as a focus for a legal writing assignment. The assignment was to identify a legal issue, find a personal story to illustrate the conflict, and draft an op-ed for a newspaper or other publication. Op-eds—short for opposite the editorial page—are articles traditionally selected by a newspaper's editorial board that share the author's opinion on a newsworthy issue.

I created an op-ed assignment for my Legal Storytelling course, an upper-level writing elective that focuses on narrative style. To highlight good storytelling techniques, the course uses examples from newspapers, magazines, fiction, and the law. The op-ed assignment encourages students to develop their storytelling and persuasive writing skills in a format that is unfamiliar, challenging, and exciting. The assignment is so popular that I incorporated it into my Judicial Writing course, and my colleagues adopted it for other upper-level legal writing courses at Miami Law as well.

For the assignment, students explore a topic of interest, find a personal story behind it, and make their case. Students' op-eds have addressed everything from trying juveniles as adults and the use of drug-sniffing dogs to Crimea's secession from Ukraine and Edward Snowden's leak of classified information.

In each op-ed, students have crafted convincing arguments, built around a personal story. For instance, one student urged Florida lawmakers to enact immigration reform similar to California's to help people like Jose Godinez-Samperio. Jose is an undocumented, Mexican immigrant who has lived in the United States since he was 9 years old. He was his high school's valedictorian and eventually graduated with honors from the Florida State University College

of Law. He passed the Florida bar exam and its moral character test portion but was denied admission. Jose's story added depth to the op-ed—it not only grabbed the attention of readers but also gave them added insight to a complicated immigration issue.

## AIM HIGH

The instructions for the op-ed assignment fit within the parameters for submissions to most major newspapers, which generally require articles of 400 to 1,200 words. For added guidance, we read an article describing how op-eds work by Trish Hall, the Op-Ed and Sunday Review editor at *The New York Times*.<sup>2</sup> She says that newspapers need “a diversity of voices and opinions about a range of topics. Anything can be an Op-Ed. We’re not only interested in policy, politics or government. We’re interested in everything, if it’s opinionated and we believe our readers will find it worth reading.” These guidelines allow students to be creative and to choose a topic that might not be covered in their traditional law school courses.

The assignment requires students to write two drafts. I provide comments and editing suggestions on the first draft, and then I work with students to select an outlet for possible publication as they revise their op-ed. A few students have tried *The New York Times*—to no avail—yet! But because the *Times* requires exclusive submissions and cannot respond to all of them because the number of submissions is so large, I encourage students to consider submitting to other outlets and casting a wider net. Students’ op-eds often relate to local or statewide issues, so we usually focus on South Florida’s major newspapers: the *Sun-Sentinel* and *Miami Herald*. Some students focus on issues related to their home state or home town, so part of their assignment is to find the submission guidelines for their local newspaper.

A handful of students have been successful in publishing their op-eds—and the experience has been a highlight of their law school careers. Before introducing the assignment to a new class, I always share the published op-eds from students in prior semesters. The chance to see their name in print always motivates students. Their enthusiasm especially shows as they make the final revisions to their op-eds and prepare to submit them. Even though the assignment is usually worth only 10 or 20 percent of their final grade, students’ efforts have been so

intense that they initially surprised me. In the weeks following the assignment, they regularly email me with new drafts, ideas, and questions. Because of their eagerness, I now schedule additional office hours, and even then, students line up to review their newest draft with me, line by line and word by word.

## LEARNING FROM THE BEST

I regularly use a variety of examples of good writing in my legal writing classroom—novels, poems, magazine articles, and political speeches, just to name a few. Good writing, I remind my students, is good writing, no matter the format and audience. All of the examples are built on solid storytelling. Chief Justice John G. Roberts’ dissent in *Pennsylvania v. Dunlap*<sup>3</sup> is an obvious choice. In true crime noir fashion, with a staccato rhythm marked by sentence fragments, Chief Justice Roberts writes of a police officer who was working a neighborhood as “[t]ough as a three-dollar steak” and saw a suspicious exchange on a street corner.<sup>4</sup> “Officer Stein picked up the buyer. Sure enough: three bags of crack in the guy’s pocket. Head downtown and book him. Just another day at the office.”<sup>5</sup>

Another example that has become a favorite among students is a three-part series from the *Tampa Bay Times* about a struggling public defender. The opening paragraph illustrates how narrative can use the five senses to describe a scene:

The day of his job interview, he pulls on his one good suit to find it no longer fits. The navy slacks and coat, bought off the rack from JCPenney, are uncomfortably tight. He stands in the mirror, practicing his answers. Around his neck goes the gold tie from Ross Dress for Less. Under his chin, a dab of Versace cologne that may or may not mask his desperation.<sup>6</sup>

It’s the kind of writing—and the kind of storytelling—that makes you want to read more. And students always do. After devouring the three-part series, they ask for more newspaper articles, more magazine articles, more book suggestions, and more examples that they can study to make their own writing more compelling.

The op-ed assignment offers plenty of opportunities to use examples of great writing, and hopefully, to have students mimic it in their own work. Of course, the op-ed pages of the major newspapers offer

plenty of excellent examples of op-eds on a variety of interesting topics every week. But I also try to pull in older examples, including a 1995 opinion piece written by Alex Kozinski, a judge on the Ninth Circuit Court of Appeals. Judge Kozinski uses humor, anecdotes, and his personal story to explain why snowboarding is superior to skiing.<sup>7</sup> He uses his own experience—transitioning from a mediocre “klutznik” skier to a snowboarder who has “no trouble handling any run on the back bowls at Vail.”<sup>8</sup>

Judge Kozinski writes that skiers have to juggle skis and poles, and when they “take a spill on the slope, all that equipment gets scattered about (a condition known derisively as a “yard sale”), and you then have to go chasing it, usually uphill. . . . It makes you laugh out loud and wonder, why do all these people split snowboards in half?”<sup>9</sup> By injecting humor, Judge Kozinski lets students see a more personal side of a great jurist. And his stance and personal story evoke a surprising number of classroom reactions and debates—just like any good op-ed should.

The op-ed assignment also offers an opportunity to discuss persuasive writing and storytelling in other formats. *The Times’* Op-Docs Video Channel, for instance, shares compelling stories through video clips, interviews, graphics, and narration.

One widely viewed op-doc is *Great Expectations for Female Lawyers*, which tells the story of five women who started their careers at a large Wall Street law firm. *The Times* had interviewed the women 12 years earlier at the start of their legal careers, and in present-day interviews, the women reflect on their careers, ambition, and success. The video snippets of the women are, at times, funny, sad, and heartwarming. They inject real faces, real words, and real emotion into the story, illustrating to students the power of using personal stories to tell any story and, hopefully, inspiring them to do the same.

Behind every contentious legal issue is a compelling human story and a law student willing to make an argument one way or the other. An op-ed assignment takes advantage of these two opportunities, giving students valuable practice in both persuasive writing and storytelling. The assignment lets professors show off legal writing in a new light. And the payoff is that students are incredibly enthusiastic—just for the chance to try a different kind of legal writing and to maybe—hopefully!—see their name in print

#### NOTES

1. Jose Godinez-Samperio is an undocumented immigrant who faced years of legal battles before being admitted to the Florida Bar. See Katie Mettler, *Undocumented immigrant Jose Godinez-Samperio tells of becoming lawyer*, TAMPA BAY TIMES, Oct. 21, 2014, [www.tampabay.com/news/courts/from-undocumented-immigrant-to-lawyer-jose-godinez-samperio-to-tell-his/2203066](http://www.tampabay.com/news/courts/from-undocumented-immigrant-to-lawyer-jose-godinez-samperio-to-tell-his/2203066).

Patrick Snay lost an \$80,000 discrimination settlement from his former school when his daughter posted about the win on Facebook, which violated a confidentiality agreement. See Matthew Stucker, *Girl costs father \$80,000 with ‘Suck It’ Facebook post*, CNN, March 4, 2014, [www.cnn.com/2014/03/02/us/facebook-post-costs-father/](http://www.cnn.com/2014/03/02/us/facebook-post-costs-father/).

Jesse Teplicki was found not guilty of growing marijuana because he needs the drug for a medical condition. See Jesse Teplicki, *South Florida Man Charged With Growing Marijuana, Found Not Guilty*, NBC 6 South Florida, March 2, 2015, [www.nbcmiami.com/news/local/Jesse-Teplicki-South-Florida-Man-Charged-With-Growing-Marijuana-Found-Not-Guilty-294721291.html](http://www.nbcmiami.com/news/local/Jesse-Teplicki-South-Florida-Man-Charged-With-Growing-Marijuana-Found-Not-Guilty-294721291.html).

2. Trish Hall, *Op-Ed and You*, N.Y. TIMES, Oct. 13, 2013, [www.nytimes.com/2013/10/14/opinion/op-ed-and-you.html?\\_r=0](http://www.nytimes.com/2013/10/14/opinion/op-ed-and-you.html?_r=0).

3. 555 U.S. 964 (2008) (Roberts, C.J., dissenting).

4. *Id.* at 964.

5. *Id.* at 965.

6. Christopher Goffard, *In His Own Defense*, TAMPA BAY TIMES, January 22, 2006, at A1.

7. Alex Kozinski, *The Mobile Guide: Skiers Beware Riders of the Apocalypse*, WALL ST. J., March 15, 1995, at A12.

8. *Id.*

9. *Id.*

10. N.Y. TIMES, Op-Docs Video Channel, [www.nytimes.com/video/op-docs](http://www.nytimes.com/video/op-docs) (last visited June 3, 2015).

11. Florence Martin-Kessler, N.Y. TIMES, *Great Expectations for Female Lawyers*, Nov. 12, 2013, [www.nytimes.com/video/opinion/100000002547135/great-expectations-for-female-lawyers.html](http://www.nytimes.com/video/opinion/100000002547135/great-expectations-for-female-lawyers.html) (last visited June 3, 2015).

# J.D. Stories



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Institutions, like individuals, tell stories. These organizational tales shape our culture, guiding our actions and ambitions. Law schools, for example, tell two notable stories about the J.D. degree. The first story counsels students that the J.D. is a “graduate degree in the liberal arts.” The second proclaims that law graduates can “do anything” with this degree.

Are these stories true? Do they accurately reflect the educational experience and career prospects of law students? Changes in the employment market have pushed us to examine the veracity of these stories. As I explain below, both stories retain relevance for contemporary legal education. Properly construed, however, they favor three key changes in our degree program: (1) writing and experiential courses should receive greater prominence; (2) professors who teach those courses should share equal status with other faculty; and (3) schools should transform the first year of law school into a college major, reserving upper level courses for a two-year J.D. program.

## I. THE LIBERAL ARTS STORY

One Friday afternoon, I sat with a committee drafting an academic mission statement for our law school. What should we aim to teach students? What should we expect them to know when they finish our program? Several of us spoke loftily about the value of legal education as a “graduate degree in the liberal arts.”

We were happily elaborating on that idea when a senior colleague interrupted.

“You can’t say that,” he declared. “Law school has gotten too expensive. No one can afford to pay this much for a liberal education. That’s what college is for, that’s what books and music are for. Students should pay for a law degree if they want to be lawyers.”

His words made me think. I had long believed in the value of legal education as an advanced degree in the liberal arts. But then, I went to law school at a time when tuition was low—and when faculty brats like me didn’t pay any tuition at all. As my colleague spoke, I recalled the hefty tuition increases occurring at both public and private law schools. Perhaps he was right that we should no longer encourage students to attend law school simply to further their pursuit of a liberal arts education.

What do we even mean by that phrase, “a graduate degree in the liberal arts”? Sometimes the words refer to the critical thinking skills we attempt to teach through our Socratic method. More often, we seem to use the phrase “liberal arts” as the opposite of “trade school.” By describing legal education as a “graduate degree in the liberal arts,” we stress our opposition to narrow technical training. A law graduate should be someone who can think broadly about legal issues and reform of the legal system, not someone who simply knows how to register a deed.

This story of a “liberal arts education,” however, creates a false dichotomy between broad thinking and technical expertise. More troubling, it overlooks the essence of professional education. A professional needs to know how to solve difficult problems and how to register deeds. A good professional education, therefore,



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*An excellent liberal arts program centers on writing...To the extent that law schools are deepening their writing courses, therefore, we are embracing the liberal arts ideal – not moving away from it. The same is true of clinics and other forms of experiential education.*

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embodies both a liberal arts spirit and more specific training. When combined properly, the two ingredients create a whole that is greater than the sum of its parts.

Law schools have started revising their story about the liberal arts to tell a tale more focused on professional education. This shift has been good for us and for our students. Legal writing courses have expanded in the first year and spread throughout the upper-level curriculum. Experiential education is on the rise, along with courses focused more explicitly on problem solving. Schools have even experimented with post-graduate incubators and apprenticeships, which tie education more directly to client service.<sup>2</sup>

Some educators resist these changes because they perceive lawyering courses as antithetical to a liberal education. For these critics, any coursework focused on a particular career—even one as diverse as law—connotes a trade school rather than a liberal arts education. The same attitude explains legal education's longstanding ambivalence toward legal writing courses and the professors who teach them. These courses are essential to educate accomplished lawyers, but traditionalists denigrate them as too "practical" or "technical" to further the lofty aims of a graduate degree in the liberal arts.

Other professors perceive a different relationship between our liberal arts story and the evolving curriculum. A liberal arts education, we have realized, need not be vocationally useless. On the contrary, "[a] liberal education is a practical education because it develops just those capacities needed by every thinking adult: analytical skills, effective communication, practical intelligence, ethical judgment, and social responsibility."<sup>3</sup>

For too long, law schools and other academic units have confused the goals of a liberal education with the pedagogies sometimes used to pursue those goals. Seminar discussions and Socratic dialogue are

two ways to develop critical thinking and other skills associated with a liberal arts degree. They are not, however, the only means to that end; nor are they necessarily the best avenues.

An excellent liberal arts program centers on writing.<sup>4</sup> Writing stimulates critical thinking, creative analysis, and problem solving. This is particularly true in law school where we teach students several styles of written communication. Composing a memo for another lawyer requires analysis, synthesis, and concision. Offering counsel to a client draws upon the same skills but with additional expository challenges. Persuasive writing adds even more dimensions to the mix, including ethical judgments about overstatement.

To the extent that law schools are deepening their writing courses, therefore, we are embracing the liberal arts ideal—not moving away from it. The same is true of clinics and other forms of experiential education. These courses do not, as some traditionalists assume, simply teach students how to file documents or register deeds. Technical skills play a very small role in law school clinics and simulations. Instead, these courses are about problem solving, ethical judgments, social responsibility, and reflection. One can talk about poverty, racism, and mental health in a law school classroom, but one can reflect much more deeply on these issues—and their relationship to the legal system—in a clinic that represents indigents.

Paradoxically, the law school curriculum is improving its commitment to a liberal arts education at the same time that it becomes more professional. These two missions are complementary rather than opposed. How does this discovery affect our traditional story about law as a graduate degree in the liberal arts? As my senior colleague suggested, I think we need to modify that story to clarify our primary commitment to educating legal professionals. That focus, however, does not mean that we need to abandon the principles of a liberal arts

education. When properly understood, the goals of liberal education are quite compatible with professional study. Both seek to develop knowledgeable, reflective, and ethical graduates.

As we update our liberal arts story, we should also recognize the central role that writing and clinical faculty play in bringing that story to life. Many law schools still assign these faculty second-class status. In a school that values the liberal arts, however, writing and clinical faculty should stand at the faculty core. A genuine commitment to liberal arts education would integrate writing and clinical faculty fully with their more doctrinal colleagues.

## II. “YOU CAN DO ANYTHING WITH A LAW DEGREE”

The third-year student sits in my office, picking at the spine of a securities regulation casebook. “I like law school well enough,” she says frowning, “but I don’t want to be a lawyer. It’s too adversarial for me.”

“Well,” I respond. “You don’t have to be a lawyer. You can use your law degree in lots of different jobs.”

“Hmm,” the student replies. She clearly has heard this line before.

“I met my husband in law school,” I continue, “and he worked as a judicial law clerk, corporate associate, and tenured law professor after graduation. But then he decided to become a bluegrass musician. He’s been playing music for the last ten years.”

Now I have the student’s attention. She’s delighted to learn that there are law graduates who stray so far from the practice path. She’s even more relieved to see that these rebels do not become outcasts; their friends and family members still value their work. We proceed to talk about the alternative careers that beckon her.

I have had this conversation with dozens of students over the years. The discussion is easy with third-year students because they have already completed most of their legal education. Disenchanted third-years do not face the difficult decision of whether to abandon a degree program midstream. The conversation is more challenging with first-year students. Should I encourage the student to maximize options by completing the law degree before heading in a different direction? Or should I affirm his or her commitment to a new destination?

I fumble my way through those discussions, trying to identify the root causes of the student’s frustration. Sometimes the student is unhappy with his or her first-year performance and, after some reassurance, enthusiastically re-commits to law school. Other times, the student has a genuine preference for another career and decides to leave law school. Whatever the outcome, I try to discern the career story that the student wants to tell with his or her own life.

In all of these discussions, however, a different type of story lurks in the background: our institutional story about the flexibility of a law degree. A law degree will help you in politics! In business! In public health! You can do anything with a law degree! This story has grown in volume over the last three decades, as smaller percentages of law graduates secured work requiring bar admission.<sup>5</sup> During the last five years, with cutbacks in the legal market, the story has become particularly prominent.<sup>6</sup>

I worry about this story. It is true that people pursue many careers after earning a law degree. In addition to politics, business, and public health, they turn to bluegrass music, cabinet making, and cupcake baking.<sup>7</sup> But do these outcomes validate the initial choice of law school? Law school is much more expensive than when earlier generations obtained the degree. A legal career is also harder to reignite than it was at an earlier time. When the bakery closes, can today’s cupcake maker really resume work as a litigator?

The flexibility story, like the liberal arts one, requires review. A law degree seems flexible because our graduates pursue a wide range of jobs. There is evidence, however, that many of these graduates would prefer a position practicing law.<sup>8</sup> We know very little, moreover, about the relationship between legal study and these non-practice positions. Do graduates really use their J.D. in those jobs? If so, would a smaller dose of law-related coursework suffice for these positions? We talk about the “flexibility” of a law degree based on a small number of positive anecdotes, rather than any systematic understanding of the relationship between our degree and careers outside of law.

Our educational program, meanwhile, displays very little flexibility. Students must commit to an expensive, three-year course of study. Most attend classes full-time with limited opportunities for outside employment. Part-time programs and online classes provide some accommodation for students who balance school with

other commitments, but these options usually offer less prestige than full-time programs. If we value flexibility, can't we make legal education itself more adaptable?

I propose making legal education more flexible by moving the first year of law school to the undergraduate curriculum. Students majoring in law would take the same foundational courses that they currently complete in law school. Those courses, however, would span three years of college, allowing students to learn legal writing, research, and doctrine at the same time that they pursue courses in economics, psychology, biology, and other subjects. The first year of law school would lose some of its intense competition while benefiting from interdisciplinary perspectives.

After college, these law majors could apply their education in many fields. Some might take law-related jobs; others would pursue more diverse careers. Graduates who wanted to practice law would enroll in a two-year J.D. program. That program, building upon the foundational courses completed in college, would offer students the same opportunities they currently enjoy in the second two years of law school. The new J.D. programs, however, would focus more coherently on preparing graduates for law practice.

This structure would bring real flexibility to legal education. Students could learn the basics of "thinking like a lawyer" while enrolled in college. Those who wanted to practice law could continue their study in a graduate program. Perhaps most important, students could opt out of legal study without losing substantial investments of time or money. Undergraduates who did not find the law major satisfying could shift to another major. Those completing the BA in law would have a valuable degree even if they decided to forgo graduate study in that field. Only those wanting to practice law would complete the full B.A.-to-J.D. program. Even these students would benefit by finishing their study in six years rather than seven.

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*[L]aw schools can revive their connection with the liberal arts by enhancing their writing and experiential courses. . . . [A] renewed focus on the liberal arts reminds us that professors who teach writing and experiential course should enjoy the same status as other faculty; writing and experiential education lie at the core of a contemporary liberal arts curriculum.*

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In addition to benefiting students, this structure offers advantages to law schools. Changes in the job market have reduced J.D. class size at many law schools, and enrollments may not rebound to their previous level.<sup>9</sup> Rather than pare faculty size and curricular offerings, law schools could expand their mission to encompass both undergraduate and professional degrees. By increasing their student body, schools could continue offering a full range of courses from basic doctrinal subjects to clinics. This approach also capitalizes on the pedagogic strengths of law faculty: the pedagogies we use in the current first-year curriculum pair nicely with the movement towards more interactive education in undergraduate classrooms.

Excellent writing programs, notably, are essential for this proposal to succeed. It would be irresponsible to create an undergraduate major in

law without providing intensive courses in legal writing and analysis. Those courses, like the ones currently taught at most law schools, should be offered in small sections with full-time faculty specializing in that field. As I have suggested above, these professors should have the same professional status as other full-time faculty teaching in the program.

Writing courses would also play a key role in the two-year J.D. program that I propose. Students in this J.D. program would have already completed their foundational coursework and committed to a professional career practicing law. To serve these students, our faculties could develop a rich series of advanced writing courses. Indeed, we have already developed many of those courses for today's upper-level students.

### III. HAPPILY EVER AFTER?

Two of our conventional stories about legal education are unraveling. Students can no longer afford a "graduate degree in the liberal arts" that does not lead



to law practice. They also question whether the law degree is as “flexible” as law schools have claimed. Both of these stories require reexamination and repair.

Reflecting on these stories suggests three constructive paths for the future. First, law schools can revive their connection with the liberal arts by enhancing their writing and experiential courses. These classes advance both liberal arts and professional goals. Second, a renewed focus on the liberal arts reminds us that professors who teach writing and experiential courses should enjoy the same status as other faculty; writing and experiential education lie at the core of a contemporary liberal arts curriculum. Finally, law schools can provide true flexibility for their graduates by creating two layers of legal education: an undergraduate major followed by a two-year J.D. program. If legal educators have the courage to make changes like these, we might in fact live happily ever after.

#### NOTES

1. I thank Daniel C. Merritt and the editors of *The Second Draft* for their helpful comments on this essay. I have had the pleasure of teaching first-year legal writing several times during my career. My current course load includes two clinics and a large lecture course, both of which build upon the superb education that my legal writing colleagues provide to our students.
2. See Sheldon Krantz & Michael A. Millemann, *Legal Education in Transition: Trends and Their Implications*, \_\_ NEB. L. REV. (forthcoming 2015), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2510609##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2510609##).
3. ASS'N AM. COLLS. & UNIVS., GREATER EXPECTATIONS: A NEW VISION FOR LEARNING AS A NATION GOES TO COLLEGE 26 (2002), <http://www.greaterexpectations.org/pdf/gex.final.pdf>.
4. See, e.g., Fareed Zakaria, *What Is the Earthly Use of a Liberal Arts Education?*, THE WORLD POST (Nov. 26, 2014, 6:59 PM) [http://www.huffingtonpost.com/fareed-zakaria/fareed-zakaria-liberal-arts-education\\_b\\_5380896.html](http://www.huffingtonpost.com/fareed-zakaria/fareed-zakaria-liberal-arts-education_b_5380896.html) (“for me, the most important earthly use of a liberal education is that it teaches you how to write”).
5. See NALP, *New Grads Find More Jobs for Second Year in a Row, But Not Enough More to Offset the Larger Class Size*, NALP (Aug. 2014), <http://www.nalp.org/O814research#table1> (Employment Trends — 1985–2013) (showing downward trend in the percentage of graduates taking “legal” jobs or those “requiring bar passage”).
6. For a recent example, see Jill Backer, *J.D. Advantage Versus J.D. Required: The Old Rules No Longer Apply*, N.Y.L.J. (Apr. 20, 2015), <http://www.newyorklawjournal.com/id=1202723607549/JD-Advantage-Versus-JD-Required-The-Old-Rules-No-Longer-Apply#ixzz3YZ7p9YKl>.
7. For a story about one of many cupcake bakers, see *Ingredients for Success in Following Your Career Dreams: Passion and Foresight*, WASH. POST (Sept. 25, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/25/AR2010092503339.html>.
8. See Deborah J. Merritt, *What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession*, 2015 MICH. ST. L. REV. (forthcoming), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2577272##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2577272##).
9. *Id.*

## BOOK REVIEW:

# Storytelling for Lawyers

Philip N. Meyer, Oxford U. Press 2014, 240 pages



Diane Kraft

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It is for good reason that television shows and movies with law-centered stories have been popular for many decades. Legal cases arise from conflict, and conflict is at the heart of a good story. “For sale: Baby shoes” is a classified ad, but “For sale: Baby shoes. Never worn” is a story.<sup>1</sup> In his book *Storytelling for Lawyers*, Philip N. Meyer applies narrative theory to examples from movies and books to show lawyers—whom Meyer correctly labels professional storytellers—how to mine these inherent conflicts to tell persuasive stories when arguing for their clients, whether in the courtroom or in an appellate brief.

The seeds of the book were planted more than twenty years ago, according to Meyer, at a colloquium led in part by Anthony Amsterdam and Jerome Bruner, who would go on to write the influential book *Minding the Law*. While reveling in the discussions about narrative theory and legal storytelling at the colloquium, Meyer noted the lack of application of theory to practice. He wrote *Storytelling for Lawyers* to fill that gap. Given his long interest and involvement in narrative theory and legal storytelling, including as a trial lawyer and law professor, Meyer is the right person for the job.

In its organization, the book serves as an introductory text on narrative theory: It starts with plot, and moves on to character, style, place, and time. In terms of practical application, the book is essentially divided into two parts: storytelling for lawyers in the courtroom and storytelling for lawyers writing briefs. There is overlap, to be sure, but the nature and audience of each is different, which means the ways a lawyer can tell an effective story are different, too.

The chapters devoted to plot use examples from movies (*Jaws* and *High Noon*) and the closing argument by Gerry Spence in the Karen Silkwood trial<sup>2</sup> to demonstrate how directors and courtroom lawyers alike use traditional story arcs, themes, and genres—particularly melodrama—to tell stories that will rivet their audiences. In each example, initial calm is interrupted by a villain (shark/outlaw/corporation), who is (or who the lawyer hopes will be) vanquished by a hero (shark hunter/western hero/whistleblower).

Meyer remains focused primarily on courtroom argument in his discussion of character, although here he adds an excerpt from Tobias Wolf’s memoir *This Boy’s Life* (which was also made into a movie) to a discussion of the characters in the movie *High Noon* and Jeremiah Donovan’s closing argument in *United States v. Bianco* in demonstrating the importance of creating protagonists and villains when telling a story.

It’s in the second half of the book, in the sections on style (voice, point of view, image and detail, rhythm, scene and summary, and quotations), place (setting, description, environment) and narrative time where the examples are most useful to legal writers. Meyer compares beautifully written excerpts from James

Ellroy's *My Dark Places*, Norman Mailer's *Executioner's Song*, Frank McCourt's *Angela's Ashes*, Joan Didion's essay "The White Album," and W.G. Sebald's story "The Emigrants" to excerpts from the statements of the case in several appellate briefs to show how brief writers use some of the same narrative techniques as nonfiction and fiction writers to tell a compelling and moving story. While recognizing that brief writers are limited in ways writers of novels and nonfiction are not—the latter have no page or word limits, for one—he urges legal writers to use the narrative conventions of plot, characterization, style, place, and time to tell stories that will help them persuade judges and win cases for their clients.

As a writing professor, I appreciate the thoughtful choices Meyer made in the literary excerpts he included in the book. Every year I tell my students to read good writing. Reading good writing is what will help a good legal writer develop into a very good legal writer. This book explains at least one of the reasons why: people who read good writing are exposed over and over to excellent examples of the techniques Meyer highlights in this book. In turn, they use these techniques in their writing, if only unconsciously. Any book that encourages law students and lawyers to read good writing is doing a great service.

My one quibble is that the book lacks a sufficient discussion about the judge-as-audience. While the jury-as-audience is central to the discussion in the parts of the book focused primarily on trials, only passing reference is made to judges as the audience for legal briefs. Meyer correctly notes that "[t]he dangers for the legal storyteller are obvious when the machinery of the story becomes apparent, and this is especially so where an already skeptical audience is suspicious of the truthfulness of the story and wary of manipulation."<sup>3</sup> But that's where the discussion begins and ends. A lawyer can write the most compelling Statement of the Case imaginable, but if the reader—the judge—doesn't buy it, it has failed in its purpose. An examination of this danger is perhaps beyond the scope of the book, but it is certainly relevant to it.

Meyer suggests that legal education has failed to emphasize the importance of storytelling. Fortunately, at least from the perspective of a legal writing professor, that seems less true every year. Meyer's description of legal writing and clinical pedagogy (students told to organize facts "simply and

'chronologically,'" to be "straightforward and candid" in presenting the facts, "and to be wary of overly shaping the facts of the story") seem outdated. When we have a legal writing textbook entitled *Your Client's Story: Persuasive Legal Writing*<sup>4</sup>, we know we're on the right track in returning our focus to telling stories. To that end, if I were teaching a course devoted to advanced persuasive legal writing or to trial or appellate advocacy, *Storytelling for Lawyers* would be one of the required texts.

#### NOTES

1. While this six-word story is frequently attributed to Ernest Hemingway, the authorship is in fact disputed. See, e.g., *Hemingway Didn't Write Baby Shoes, Never Worn*, The Daily Beast (Jan. 30, 2013), <http://www.thedailybeast.com/cheats/2013/01/30/hemingway-didn-t-write-baby-shoes-never-worn.html>.
2. The Estate of Karen Silkwood v. Kerr-McGee.
3. PHILIP MEYER, STORYTELLING FOR LAWYERS 204 (2014).
4. RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING (2013).



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## PROGRAM NEWS

### UNIVERSITY OF OREGON SCHOOL OF LAW

Oregon Law has added a credit to the required Legal Research and Writing sequence, bringing to six the total number of credits allocated to the first-year course.

### SEATTLE UNIVERSITY SCHOOL OF LAW

Seattle University School of Law's Legal Writing Program was ranked #1 in the country by U.S. News & World Report.

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## HIRING AND PROMOTION

### ARIZONA STATE UNIVERSITY SANDRA DAY O'CONNOR COLLEGE OF LAW

**Brenda L. Tofte** will be joining the legal writing faculty at Arizona State University Sandra Day O'Connor College of Law as a Visiting Clinical Professor of Law for Fall 2015 and Spring 2016. Brenda will be helping with an increased demand for upper-level legal writing courses and with sabbatical coverage.

### CHAPMAN UNIVERSITY FOWLER SCHOOL OF LAW

**Abigail A. Patthoff** has been promoted to full professor of Legal Research and Writing at Chapman University Fowler School of Law.

### CHICAGO-KENT COLLEGE OF LAW

Chicago-Kent College of Law is pleased to announce that it has hired **Seth Oranburg** as a Visiting Assistant Professor to teach the Legal Research and Writing Program's required first-year courses. Seth was most recently a Visiting Assistant Professor at Florida State University College of Law, where he taught courses in corporations, closely held business, and electronic discovery. He holds degrees from the University of Chicago Law School and the University of Florida, and practiced law for Fenwick & West LLP and Cadwalader LLP.

### FLORIDA INTERNATIONAL UNIVERSITY COLLEGE OF LAW

Florida International University College of Law is pleased to welcome **Dionne Anthon** to its Legal Skills and Values Program faculty.

### GEORGETOWN UNIVERSITY LAW CENTER

Georgetown Law is pleased to announce that **Jessica Clark** and **Jarrod Reich** have joined its Legal Practice faculty. Jessica was most recently Associate Director of the Legal Research and Writing Program and Co-Director of the Scholarly Writing Program at the George Washington University School of Law. She is a lead editor of *Legal*

*Communication & Rhetoric: Journal of the Association of Legal Writing Directors*, co-chair of the ALWD Teaching Workshops Committee, and co-chair of LWI's Idea Bank Committee. Jarrod was a Legal Writing Professor at Florida State University College of Law, where he also taught courses in alternative dispute resolution and appellate advocacy, and coached several moot court and mock trial teams. Prior to teaching, Jarrod spent nearly a decade at Boies, Schiller & Flexner LLP. He also clerked for the Honorable William J. Haynes, Jr. in the United States District Court for the Middle District of Tennessee.

### UNIVERSITY OF KENTUCKY COLLEGE OF LAW

**Melissa Henke** was promoted to Associate Professor of Legal Research and Writing at the University of Kentucky College of Law, effective July 2015.

### UNIVERSITY OF MEMPHIS CECIL C. HUMPHREYS SCHOOL OF LAW

**Jodi Wilson** was promoted to Associate Professor of Law and awarded tenure, effective September 2015. Jodi serves as the Director of Legal Methods at the University of Memphis Cecil C. Humphreys School of Law.

### UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW

The University of Missouri-Kansas City School of Law is pleased to announce the hiring of **Norman E. Plate** as Associate Clinical Professor of Law. Prof. Plate will teach full-time in the Lawyering Skills Program. Prof. Plate comes to us from Western Michigan University Cooley Law School where he taught for nine years. He is the past Executive Director for Scribes: The American Society of Legal Writers.

### OHIO STATE UNIVERSITY MORITZ COLLEGE OF LAW

**Katrina Lee, Anne Ralph, and Todd Starker**, of The Ohio State University Moritz College of Law, were promoted this year to the rank of Associate Clinical Professor.

### UNIVERSITY OF OREGON SCHOOL OF LAW

University of Oregon School of Law is pleased to announce that **Joan Rocklin** has been promoted to Senior Lecturer 2, the highest rank for legal writing professors. **Rebekah Hanley** is returning to the Oregon Law faculty after serving four successful years as the Assistant Dean of the Center for Career and Professional Development. She will teach Intensive Writing, Legal Research and Writing, and Legal Profession.

### SOUTHERN ILLINOIS UNIVERSITY

The Provost at Southern Illinois University has selected Professor **Sue Liemer** to serve as the Provost Faculty Fellow for fall semester 2015, based on her proposal to revive the long defunct, university-wide Communications Across the Curriculum Committee. She will receive a reduced teaching load as compensation.

## SOUTHWESTERN LAW SCHOOL

Southwestern Law School is thrilled to welcome **Kathryn Fehrman** as an Associate Professor of Legal Analysis, Writing, and Skills. Kathryn is an experienced legal writing and skills professor with an impressively deep and broad legal career that has included public sector, criminal (both prosecution and defense), civil, and military service.

## ST. JOHN'S UNIVERSITY SCHOOL OF LAW

St. John's University School of Law is happy to announce that **Rachel Martin** has joined the faculty as an Assistant Professor of Legal Writing. Rachel is an accomplished practitioner—over the past 12 years, she has served as a federal public defender in Northern Virginia, a litigation associate at two different major firms, and a law clerk to a federal district judge in Ohio. An honors graduate of Northwestern University and Georgetown Law, she has also recently taught Legal Writing at George Washington University Law School as an adjunct.

St. John's University School of Law wishes to congratulate **Elyse Pepper** on her retirement. During her 13 year tenure as a Legal Writing Professor at St. John's, she made countless contributions to the law school and was instrumental in transforming the legal writing program into the success it is today. Among her contributions, she created and taught two innovative and very popular seminars: Law Through Film, and Fact-Writing and Persuasion in Legal Documents. She also served as the faculty advisor to the Moot Court Honor Society for many years, developing it into a first-rate nationally recognized program.

## UNIVERSITY OF TEXAS SCHOOL OF LAW

The University of Texas School of Law's Beck Center for Legal Research, Writing, and Appellate Advocacy is pleased to announce the hiring of **Amanda Schaeffer** as its newest faculty member. Ms. Schaeffer is a 2008 Texas Law graduate, a former Texas Supreme Court clerk, and a former associate at Locke Lord LLP. Her hiring brings to nine the total number of full-time faculty in the Beck Center.

## TEXAS A&M UNIVERSITY SCHOOL OF LAW

Texas A&M University School of Law is pleased to announce the hiring of **Angela D. Morrison** on our tenure-track program to teach Legal, Analysis, Research & Writing. Angela is an expert in employment and immigration law. She was previously the Legal Director of the Nevada Immigrant Resource Project, where she conducted outreach on immigration-related issues to community partners, governmental organizations, and immigrant communities. She has also worked for the U.S. Equal Employment Opportunity Commission as a trial attorney and taught at University of Nevada, Las Vegas, William S. Boyd School of Law.

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## PUBLICATIONS, PRESENTATIONS, AND ACCOMPLISHMENTS

**Sonya G. Bonneau and Susan McMahon**, both of Georgetown University Law Center, published their textbook *Legal Writing in Context: Rhetoric, Reasoning, and Procedure* (Carolina Academic Press, forthcoming 2016). This book introduces first-year students to the fundamentals of legal analysis and communication, with an emphasis on the role procedural posture plays in the development of legal argument.

**Mary Bowman**, of Seattle University School of Law, published *Full Disclosure: Cognitive Science, Informants, and Search Warrant Scrutiny*, 47 Akron L. Rev. 431 (2014). She is currently reviewing a manuscript and writing a preface for an upcoming monograph dealing with police policies and integrity testing of confidential informants. The monograph, written by **Jon Shane** of the John Jay College of Criminal Justice, is part of an interdisciplinary monograph series on policing and is aimed at both academics and police practitioners. Bowman is co-chairing the new LWI Professional Status Committee. She also presented the Scribes Law-Review Award at the Scribes Dinner during the National Conference of Law Reviews meetings in Louisville, Kentucky. She chairs the Scribes committee that honors the best student note or comment.

**Mark Edwin Burge**, of Texas A&M University School of Law, published *Too Clever by Half: Reflections on Perception, Legitimacy, and Choice of Law Under Revised Article 1 of the Uniform Commercial Code*, 6 Wm. & Mary Bus. L. Rev. 357 (2015). He also presented *Thinking Outside the Four Corners of Contract Doctrine in the Legal Education Crisis* in February 2015 at the Tenth International Conference on Contracts at the University of Nevada, Las Vegas, William S. Boyd School of Law and organized and moderated a panel entitled *Thinking Outside the Four Corners of Contract Doctrine* at the 2015 Southeastern Association of Law Schools (SEALS) Conference in Boca Raton, Florida.

**Charles Calleros**, of Arizona State University Sandra Day O'Connor College of Law, published *Contracts: Cases, Text, and Problems* (Carolina Academic Press 2014) [Digital Book] [Chapters 13 & 14 primarily authored by co-author **Stephen Gerst**], *Legal Method and Writing* (7th ed., Wolters Kluwer Law & Business 2014), and *Advocacy for Marriage Equality: The Power of a Broad Historical Narrative During a Transitional Period in Civil Rights*, \_\_\_ Mich. St. L. Rev. \_\_\_ (2015) (forthcoming Symposium on Persuasion in Civil Rights Advocacy). Calleros received the Outstanding Faculty Award from the 2015 graduating class, the Outstanding Faculty Moot Court Coach from the 2015 Executive Moot Court Board, the inaugural Charles C. Calleros "Campeon de Justicia" Award from the ASU Chicano Latino Law Students Association, and the MLK Award for Education from the Tempe City Council on Diversity.

**Erin Carroll**, of Georgetown University Law Center, has written *Protecting the Watchdog: Using the Freedom of Information Act to Preference the Press*, which the Utah Law Review will publish in 2016. In August 2015, she presented at the Southeastern Association of Law Schools Conference on a panel entitled, *Speaking of Experience: Newer LRW Teachers Share Their Best Classroom Tips*. The panel was moderated by **Suzanne Rowe** and panelists also included **Dana Hill**, **Anne Mullins**, **Thomas Noble**, and **Rachel Stabler**.

**Andrew Carter**, of Arizona State University Sandra Day O'Connor College of Law, published *The Reader's Limited Capacity: A Working Memory Theory for Legal Writers*, 11 Legal Comm'n & Rhetoric: J.ALWD 31 (2014). He presented *The Value of Elegance: First Steps Toward an Economic Analysis*, at the 15th Rocky Mountain Legal Writing Conference at the University of New Mexico School of Law in March 2015. He also presented *The Economics of Legal Writing: Does Main Street Pay for Elegance?* at the ALWD 2015 Biennial Conference at University of Memphis Cecil C. Humphreys School of Law in June 2015. Carter also served as Co-Program Chair for the 15th Rocky Mountain Legal Writing Conference at the University of New Mexico School of Law in March 2015.

**Michael Cedrone** and **Susan McMahon**, both of Georgetown University Law Center, presented to Georgetown's Board of Visitors and Law Alumni Board a report on a new course they created for Georgetown's "Week One" January program. The intensive, one-credit simulation course asks first-year students to investigate and evaluate a potential violation of the Foreign Corrupt Practices Act (FCPA) that arises in the course of a corporate acquisition. During the course, students interview a key witness, report to the general counsel of their corporate client (played by distinguished Georgetown alums), and renegotiate terms of the acquisition to account for FCPA-related risk. The course has been well-received by Georgetown's 1Ls and alums.

**Susan Chesler**, of Arizona State University Sandra Day O'Connor College of Law, presented *The 1L On-Ramp: Orientation Sessions and Legal Writing Faculty* (with **Amy Langenfeld**) at the ALWD 2015 Biennial Conference at the University of Memphis Cecil C. Humphreys School of Law in June 2015. She also presented *Team up for Collaborative Teaching* (with **Judy Stinson**) at the 15th Rocky Mountain Legal Writing Conference at the University of New Mexico School of Law in March 2015. Chesler served as co-chair of the Teaching Resources Committee for LWI.

**Jennifer Cooper**, of University of Seattle School of Law, presented her working paper, *Illusions of Competence: Using Empirical Research on Undergraduate Study Behaviors to Maximize Law Learning* to the faculty of the University of Missouri School of Law.

**Frances DeLaurentis**, of Georgetown University Law Center, published *When Ethical Worlds Collide: Teaching Novice Legal Writers to Balance the Duties of Zealous Advocacy and Candor to the Tribunal*, 7 Drexel L. Rev. 1 (2014).

**Diana R. Donahoe**, of Georgetown University Law Center, has upgraded the third edition of her book, *Teachinglaw.com*:

*Legal Research & Writing*. The interactive, online book has an updated look and feel, new functionality and navigation, and new chapters with contributing authors on *Professionalism* (**Andrea Funk**) and *Exam Writing* (**Jessica Clark**). It is now hosted at Georgetown University Law Center and available to students at an extremely affordable price. She is working on a forthcoming article about providing students with "Affordable Access" to law school textbooks. She is also collaborating with **Julie Ross** on a legal writing pedagogy textbook entitled *Legal Writing Pedagogy: Commenting, Conferencing, and Classroom Teaching*, published online through eLangdell. She also published *Fourth Amendment "Cheeks" and Balances: The Supreme Court's Inconsistent Conclusions and Deference to Law Enforcement Officials in Maryland v. King and Florence v. Board of Chosen Freeholders of the County of Burlington*, 63 Cath. U. L. Rev. 549 (2014). She presented at the Southeastern Association of Law Schools Conference on a panel entitled, *The Problems and Possibilities of Using Technology in the Classroom*, with **David Thomson** and **Abigail Perdue**.

**Anne Enquist**, of Seattle University School of Law, presented *Teaching ESL Law Students: Desperate Times Call for Simple Measures* at the Global Legal Skills Conference in Chicago. Enquist also presented *Designing Your Legal Writing Course to Maximize Learning and Engagement* at the AALS New Law Teachers Workshop in Washington, D.C.

**Liz Frost**, of University of Oregon School of Law, organized the Legal Writing and Leadership Conference at Oregon Law held in April 2015. The conference included a panel of LRW pioneers **Ralph Brill**, **Mary Lawrence**, and **Marjorie Rombauer**, moderated by **Greg Johnson**. The plenary featured deans and associate deans **Darby Dickerson**, **Susan Duncan**, **Carol Parker**, and **Judy Stinson**. After two days of panels featuring LRW leaders in positions ranging from clinics and the career center to student journals and moot court, as well as numerous presentations, the conference closed with a panel on Leading in Legal Writing, with **Dan Barnett**, **Laurel Oats**, and **Suzanne Rowe**, moderated by **Mary Beth Beazley**. Frost has published several new articles in the Oregon State Bar Bulletin including *Tricky Little Words: The Special Team of the Grammar Squad and Mental Shrinkage: The Many Costs of Multitasking*.

**Vicki W. Girard**, of Georgetown University Law Center, presented *Medical-Legal Partnership: An Opportunity for Georgetown* at the Georgetown University School of Medicine Health Justice Scholars Lecture Series in February 2015. She has organized and will moderate the panel, *Incorporating Medical-Legal Partnership Into Your Law School's Triple Aim: Education, Research, and Community Engagement*, as an Academy Program at the AALS Annual Meeting in January 2016.

**Melissa Henke**, of the University of Kentucky College of Law, published *Effective Writing is Organized Writing* in the May 2015 edition of the Kentucky Bench and Bar Magazine.

**Tamara Herrera**, of Arizona State University Sandra Day O'Connor College of Law, received the Rocky Mountain Award for distinguished service at the Rocky Mountain Legal

Writing Conference in March 2015. She presented *Creative Ways to Integrate LRW into the Evolving Law School Curriculum* (with **Judy Stinson**) at the ALWD 2015 Biennial Conference at University of Memphis Cecil C. Humphreys School of Law in June 2015.

**Dana Hill**, of Northwestern University School of Law, received the Student Bar Association Faculty Appreciation Award for 2014-2015.

**Kim Holst**, of Arizona State University Sandra Day O'Connor College of Law, presented *Framing Films and Facts*, at the 15th Rocky Mountain Legal Writing Conference at the University of New Mexico School of Law in March 2015.

**Sherri Lee Keene**, of University of Maryland Carey School of Law, published *Are We There Yet? Aligning the Expectations and Realities of Gaining Competency in Legal Writing*, 53 *Duquesne Law Review* 99 (2015). This article urges legal educators to consider what law schools are asking their first-year law students to learn in just two semesters of practical legal writing in comparison to what law students can realistically achieve. Her essay, *Victim or Thug? Examining the Relevance of Stories in Cases Involving Shootings of Unarmed Black Males* is forthcoming in the *Howard Law Journal*.

**Connie Krontz**, of Seattle University School of Law, has been selected for the Black Law Students Association Faculty Award.

**Amy Langenfeld**, Arizona State University Sandra Day O'Connor College of Law, presented *The 1L On-Ramp: Orientation Sessions and Legal Writing Faculty* (with **Susan Chesler**), at the ALWD 2015 Biennial Conference at University of Memphis Cecil C. Humphreys School of Law in June 2015. She presented *'Never Deprive Another Student of a Learning Opportunity': Images of the Law Class in TV and Movies from The Paper Chase to How to Get Away with Murder* at the 15th Rocky Mountain Legal Writing Conference at University of New Mexico School of Law in March 2015, and *The Introvert in the Classroom (Might Be Me)* at the Fourth Annual Western Regional Legal Writing Conference at Stanford Law School in September 2014.

**Megan McAlpin**, of University of Oregon School of Law, has been named the Galen Scholar in Legal Writing for the 2015-16 academic year. Her project will (1) explore the opportunity to add a writing specialist at Oregon Law and (2) share with doctrinal faculty the concept of transfer to build on student work in LRW. She was chair of the Program Committee for the 2015 ALWD Biennial Conference, *Heart and Soul: LRW at the Center of Legal Education*. She continues to serve on the editorial board of *Legal Writing: The Journal of the Legal Writing Institute*. She was on sabbatical during the Spring 2015 semester.

**Susan McMahon**, see **Sonya G. Bonneau and Michael Cedrone**

**Patricia Montana**, of St. John's University School of Law, published the article, *Legal Education Reform: Simulating Complex Litigation Practice in an Advanced Legal Writing Course*, in the German, peer-edited law journal "Zeitschrift für Didaktik der Rechtswissenschaft" (ZDRW). The journal

focuses on legal education and is published quarterly by Nomos, one of the four leading publishing houses in Law in Germany. Her article appears in Volume 1, Issue 4 of 2015 on pp. 318-337 and is printed in English.

**Samantha A. Moppett**, of Suffolk University Law School, was elected Secretary of the Legal Writing Institute. In addition, she made the following presentations: *What Do I Have to Do Around Here to Get Published?* at the ALWD Biennial Conference held at the University of Memphis Cecil C. Humphreys School of Law in June 2015 (with **Brooke Bowman, Terrill Pollman, and Ruth Anne Robbins**); *"Zooming" In: A Prezi Primer* at the Fifteenth Annual Rocky Mountain Regional Legal Writing Conference held at the University of New Mexico School of Law in March 2015; *Teaching Tips for Advanced Research & Writing Courses*, at the Legal Writing Institute One-Day Workshop at the University of Nevada, Las Vegas, William S. Boyd School of Law in December 2014 (with **Jeanne Price and Melissa Bernstein**); and *When the Novice Becomes Master*, at the New England Consortium of Legal Writing Teachers Regional Conference at Vermont Law School in September 2014 (with **Kathleen Elliott Vinson**).

**John F. Murphy**, of Texas A&M University School of Law, has accepted an offer from the Nevada Law Journal to publish his article *Teaching Remedial Problem-Solving Skills to Underperforming Law Students*. He also presented *Bottom Up: Teaching Remedial Problem-Solving Skills to Underperforming Law Students* at the SALT Teaching Conference at the University of Nevada, Las Vegas, William S. Boyd School of Law in October 10, 2014; *What LARW Professors Can Learn From Teaching Underperforming Students*, at the Legal Writing Institute One-Day Workshop at the University of Detroit Mercy School of Law in December 2014; and *Developing a Targeted Class to Improve Academic Performance and Bar Passage* at the Southwest Consortium of Academic Support Professionals Annual Conference at Texas A&M University Law School in March 2015.

**Chad Noreuil**, of Arizona State University Sandra Day O'Connor College of Law, published a book and documentary film called *Law 101: What Law School's Really Like* (Carolina Academic Press 2015).

**Laurel Oates**, see **Mimi Samuel**

**Abigail A. Patthoff**, of Chapman University Fowler School of Law, published *This is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students*, 2015 *Utah L. Rev.* \_\_\_ (forthcoming).

**Abigail Lauren Perdue** of Wake Forest University School of Law published *Animal Cruelty and Freedom of Speech: When Worlds Collide* (Purdue University Press), which she coauthored with **Dr. Randall Lockwood**. She and her colleague, **Gregory Parks**, published their article, *The Nth Decree: Examining Intra-racial Use of the N-Word in Employment Discrimination Cases* with *DePaul Law Review*. This summer, she published *Transforming "Shedets" into "Keydets": An Empirical Study Examining Coeducation through the Lens of Gender Polarization* with the *Columbia Journal of Gender and Law*. In 2014, she presented at the Southeastern

Association of Law Schools Conference on a panel entitled *The Problems and Possibilities of Teaching with and about Technology* with **David Thomson**, **Diana Donahoe**, and **Tessa Dysart**. She also presented on a paper entitled *Teaching and Reaching Millennials: Fresh Perspectives from an Insider* at the Capital Area Legal Writers' Conference at the William & Mary School of Law in March of 2015. She currently serves as Co-Chair of the Professional Development Committee of the Legal Writing Institute and is working on a forthcoming book and article.

**Carol Pauli**, of Texas A&M University School of Law, has accepted an offer from the Pepperdine Dispute Resolution Law Journal to publish her article *Transforming News: How Mediation Principles Can Depolarize Public Talk*. She presented *Other People's Stories: Narrative Mediation and Immigration News* at the 2015 Law & Society Association Annual Meeting in Seattle in May 2015. She also chaired an author-meets-reader panel discussing the book *Equitable Sharing: Distributing the Benefits and Detriments of Democratic Society* by Prof. Thomas Kleven of Texas Southern University's Thurgood Marshall School of Law, and she was a participant in a panel entitled *Responding to Inequality* at the 2015 Southeastern Association of Law Schools (SEALS) Conference in Boca Raton, Florida.

**Tanya Pierce**, of Texas A&M University School of Law, published *It's Not Over 'til It's Over: Mandating Federal Pretrial Jurisdiction and Oversight in Mass Torts*, 79 Mo. L. Rev. 28 (2014) and has accepted an offer from George Mason Law Review to publish her article, *Class Action Tolling: Assessing Outer Limits and Avoiding Bright Lines*. She also presented *Hot Topics in Legal Writing Curricular Development* in December 2014, at the Legal Writing Institute One-Day Workshop at the University of Connecticut School of Law, and she presented *Cross Jurisdictional Tolling* at the 2015 Southeastern Association of Law Schools (SEALS) Conference in Boca Raton, Florida.

**Sara Rankin**, of University of Seattle School of Law, published *A Homeless Bill of Rights (Revolution)*, 45 Seton Hall L. Rev. 383 (Spring 2015) (available at <http://ssrn.com/abstract=2376488>), and *Invidious Deliberation: The Problem of Congressional Bias in Federal Hate Crime Legislation*, 66 Rutgers L. Rev. 563 (2014) (available at <http://ssrn.com/abstract=2350591>). She is an editor of *The New 1L: Teaching First-Year Students To Be Lawyers Through Actual Practice* (Carolina Academic Press, April 2015). Rankin also made the following presentations: *National Strategy Session on the Criminalization of Homelessness*, Denver, CO (April 2015) (invited); *Innovations in Clinical Teaching*, Eugene, OR (April 2015) (invited); *Who Is At Risk For Homelessness?* Crosscut Public Media, Seattle, WA (January 2015) (invited); *Washington State Studies of Criminalizing Homelessness*, Antioch University, Seattle, WA (January 2015) (invited guest lecture); *The Crime of Homelessness*, Gonzaga Law School, Spokane, WA (November 2014) (presentation to faculty); and *Creating the Political Will to End Homelessness*, Interfaith Community Task Force on Ending Homelessness, Seattle, WA (October 2014) (invited plenary panel presentation). With the support of **Bob Chang** and **Lori Bannai**, Rankin has launched the Homeless Rights Advocacy Project (HRAP)

within the Korematsu Center. HRAP engages law students in effective legal and policy research, analysis, and advocacy work to advance the rights of homeless adults, youth, and children. HRAP builds partnerships across a broad range of disciplines with community members, advocates, academic institutions, and other stakeholders to advance the rights of homeless people. HRAP also develops strategic partnerships between SU students and other law school faculty. Rankin was interviewed by Alyssa Figueroa of AlterNet media regarding the research and analysis she and her students are doing on the criminalization of homelessness, and her homeless rights advocacy course was mentioned in two articles in February 2015: *Alternet* and the *SU Spectator*. Rankin's press and media interviews are available at the following web addresses: *Real Change* (available at <http://realchangenews.org/2015/04/01/seattle-university-students-build-resource-stop-laws-criminalize-homelessness>), *CrossCut Public Media* (available at <http://www.stitcher.com/podcast/httpwwwstitchercompodcastdryrain/crosscuts-the-crosscut-podcast/e/who-is-homeless-37085578>), *Alternet* (available at <http://www.alternet.org/civil-liberties/guess-which-liberal-state-has-500-laws-aimed-oppressing-homeless>), and *SU Spectator* (available at <http://www.seattlespectator.com/2015/02/04/after-21-homelessness-increase-seattle-looks-for-solutions/>).

**Lisa A. Rich**, of Texas A&M University School of Law, has accepted an offer from the Loyola of Los Angeles Law Review to publish her article, *CERD-ain Reform: Dismantling the School-to-Prison Pipeline through Coordination of the Departments of Justice and Education*, and an offer from the Berkeley Journal of Criminal Law to publish her article, *A Federal Certificate of Rehabilitation Program: Providing Federal Ex-offenders More Opportunity for Successful Reentry*. She also received a 2015 ALWD Teaching Grant to support her work on a new project entitled: *Legal Drafting & Public Policy: Effective Written Communication in Policy Making*. Materials developed with this grant will support Texas A&M School of Law's new public policy drafting class and its Washington, D.C. & Austin, Texas, Residency Externship Programs.

**Joan Rocklin**, of University of Oregon School of Law, received the Orlando Hollis Award, the highest teaching award of the law school. She led a session on critiquing student work at the AALS 2015 Workshop for New Legal Writing Teachers in Washington, D.C. in June 2015.

**Julie Ross**, of Georgetown University Law Center, published *[Un]Happy Together: Why the Supremacy Clause Preempts State Law Digital Performance Rights in Radio-Like Streaming of Pre-1972 Sound Recordings*, in the *Journal of the Copyright Society of the U.S.A.* (forthcoming summer 2015).

**Suzanne Rowe**, of University of Oregon School of Law, led two sessions at the ALWD 2015 Biennial Conference at the University of Memphis Cecil C. Humphreys School of Law in June 2015. She was a panelist on *Leading with Style: Administrative Choices with Institutional and Faculty Consequences*, and she was co-facilitator of the *New Director Roundtable*.



**Mimi Samuel** and **Laurel Oates**, both of University of Seattle School of Law, recently presented a one-week workshop, *Legal Writing Training for Ethiopian Legal Academics*, for approximately 20 faculty members of the law department at Bahir Dar University in Bahir Dar, Ethiopia. The workshop focused on academic writing, but also included sessions on teaching methods and providing feedback.

**Rosario L. Schrier**, of Florida International University College of Law, and co-author **Annette Torres**, of University of Miami School of Law, published *Before Midnight: Deadlines, Diligence and the Practice of Law*, Fed. Lawyer 68 (Dec. 2014). Drawing on the perspectives of judges, leading practitioners, and innovative thinkers, this article offers guidance and best practices on meeting external and internal deadlines in law practice. The authors discuss (i) the courts' lack of tolerance for missed deadlines and the consequent harm to clients; (ii) the career-related and reputational consequences for practitioners who miss deadlines; (iii) the critical importance of effective communication skills and relationship intelligence in law practice; and (iv) ten takeaways to help practitioners develop successful time-management strategies. The authors interviewed United States Court of Appeals Judge Adalberto Jordan, Patricia Lowry of Squire Sanders, and John Kozyak of Kozyak Tropin & Throckmorton. Additionally, the article incorporates pertinent concepts from Facebook executive Sheryl Sandberg's book *Lean In*, Malcolm Gladwell's *Outliers: The Story of Success*, and Richard Susskind's *The End of Lawyers? Rethinking the Nature of Legal Services*. Schrier also published *Working on Our Night Moves: Strategies to Engage Evening Students*, 22 Perspectives: Teaching Legal Res. & Writing 151 (2014). This article discusses some of the unique challenges and opportunities that new and seasoned professors encounter when teaching evening division law students. She presented *Legal Writing: It's Electrifying* at the ALWD Biennial Conference at the University of Memphis Cecil C. Humphreys School of Law in June 2015. Motivating first-year students to commit to rigorous and meaningful learning is especially challenging when students are weighed down by a fixed learning mindset, which does not give them freedom to take risks or be comfortable short-term failures. This presentation offers strategies to help law students shift from a fixed to a growth mindset of learning, and to embrace the wisdom of feeling insecure. The presentation incorporates concepts from Carol Dweck's studies on mindset, **Gerald Hess's** scholarship on optimal learning environment in law school, and *Make It Stick: The Science of Successful Learning* by Peter C. Brown et al.

**Jeffrey Shulman**, of Georgetown University Law Center, won the law school's top honor for teaching excellence, the Frank F. Flegal Award. He also recently published *The Constitutional Parent: Rights Responsibilities, and the Enfranchisement of the Child* (Yale Univ. Press, 2014). In March 2015, he delivered a lecture entitled *The History and Current Landscape of Children's Rights* at Harvard Law School.

**Rima Sirota**, of Georgetown University Law Center, presented *Effective Motion Writing for Domestic Violence Volunteers* to the DC Volunteers Lawyers Project in June 2015.

**Judy Stinson**, of Arizona State University Sandra Day O'Connor College of Law, published *Legal Writing* (with **Terrill Pollman & Elizabeth Pollman**) (Wolters Kluwer Law & Business, 2d ed. 2014). She also presented *Creative Ways to Integrate LRW into the Evolving Law School Curriculum* (with **Tamara Herrera**) at the ALWD 2015 Biennial Conference at the University of Memphis Cecil C. Humphreys School of Law in June 2015, and *Team up for Collaborative Teaching* (with **Susan Chesler**) at the 15th Rocky Mountain Legal Writing Conference at the University of New Mexico School of Law in March 2015.

**Kristen Tiscione**, of Georgetown University Law Center, has the following works forthcoming: the second edition of *Rhetoric for Legal Writers* (West, American Casebook Series, Spring 2016); U.S. Feminist Judges Project, commentary on feminist judgment in *Meritor Savings Bank v. Vinson* (with **Angela Onwuachi-Willig**) (Cambridge Univ. Press, forthcoming 2015); *Faculty Status and Effectiveness* (with **Deborah Maranville** and **Ruth Anne Robbins**) and *Revisiting the Effective Teaching of Analysis, Research, and Communication* (with **Ruth Anne Robbins** and **Amy Sloan**) in *Building on Best Practices & Carnegie's Educating Lawyers: Legal Education in a Changing World* (Maranville, Sedillo Lopez, Bliss, & Kaas, eds., forthcoming 2015). She presented *Teaching Analysis as More Than Arrangement* at LegalED, Igniting Law Teaching Conference, March 2015 (live presentation and video to be accessible from <http://legaledweb.com/>) and *Scholarship in the Field of Legal Writing* at the AALS New Teachers Conference in June 2015. She also spoke on the following panels: *Podia versus Pens: Is it Time to Dismantle the Two-Track System?* (with **Amy Vorenberg** moderating, co-panelist **Lisa McElroy**, and others) at the AALS Annual Meeting in January 2015, and *Scholarship and Skills: The Fusion of Legal Theory, Doctrine, and Practice* (with **Mary Beth Beazley**, **Michael Higdon**, and **Emily Zimmerman**) at the Southeastern Association of Law Schools Conference in July 2015. She provided invited remarks, *The More Things Change the More They Stay the Same: Exploring Solutions to Persisting Discrimination in Legal Academia* at the AALS Annual Meeting in January 2015, and *The Importance of Rhetorical Theory in Legal Education*, at the Legal Education Reform Symposium at Wake Forest University School of Law in October 2015.

**Neil L. Sobol**, of Texas A&M University School of Law, published *Protecting Consumers from Zombie-Debt Collectors*, 44 N.M. L. Rev. 327 (2014) and has accepted an offer from Maryland Law Review to publish his article, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*. He presented his forthcoming article on criminal justice debt at ClassCrits VII at University of California Davis School of Law in November 2014, and at the Law & Society Association Annual Meeting in Seattle in May 2015. He was also a participant in a panel entitled *Reversing Mass Incarceration: What Reforms are Working (or Could Work) and Why?* at the 2015 Southeastern Association of Law Schools (SEALS) Conference in Boca Raton, Florida.

**Annette Torres**, see **Rosario L. Schrier**

**Tracy Turner**, Director of Legal Analysis, Writing, and Skills at Southwestern Law School, has published a legal writing textbook, *Legal Writing from the Ground Up: Process, Principles, and Possibilities* (Aspen 2015).

**Kathleen Elliott Vinson**, of Suffolk University School of Law, published *Problem Solved: How to Incorporate Problem Solving in Your Course to Prepare Students to Practice*, The Learning Curve 16 (forthcoming Winter 2015). She presented *Lock it Up to Write it Down: Dedicated On-Campus Writing Days*, at the ALWD Biennial Conference at the University of Memphis Cecil C. Humphreys School of Law in June 2015. Vinson was appointed to the Massachusetts Supreme Judicial Court Advisory Committee on Professionalism. The Committee is responsible for overseeing the mandatory Practicing with Professionalism course that all lawyers admitted to the Massachusetts bar must take. Her work on this important committee helps connect academia and practice.


Two books in the Legal Research Series by Carolina Academic Press have been published in new editions: **Mary Garvey Algero, Spencer Simons, Suzanne Rowe, Scott Childs & Sarah Ricks**, *Federal Legal Research* (2d ed. 2015); and **Elizabeth Adelman, Theodora Belniak, Courtney Selby & Brian Detweiler**, *New York Legal Research* (3d ed. 2015). The series editor is **Suzanne Rowe**.





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