



THE UNIVERSITY of
TENNESSEE **UT**
KNOXVILLE

College of Law

**THE TRUTH IS NOT ALWAYS
STRANGER (AND MAY BE MORE
USEFUL):**

***CURRENT EVENTS STORYTELLING IN
SUMMATIVE AND FORMATIVE LAW
STUDENT ASSESSMENT***

Joan MacLeod Heminway

The University of Tennessee College of Law

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FOCUS – A FEW CORE BELIEFS AND VALUES

- The construction of stories is a critical component of legal practice (advocacy-oriented and **transactional**), legal reasoning, and applied legal analysis.
- Assessment
 - Can both test knowledge (summative) and extend teaching (formative);
 - Is highly contextual;
 - Should be consistent with teaching and learning objectives; and
 - Should be transparent and fair to students
- In a nonclinical context, simulation and other **real-life teaching methods** are essential components of good legal education.



OVERVIEW

- Law student assessment
- The role of storytelling in law student assessment
- Current events as a basis for assessment storytelling
- Two examples
 - In-class written examination with facts supplied in advance; questions on exam day
 - Substantial written project – memorandum + drafting (instrument or agreement provision)
- Advantages and challenges
 - First-year vs. upper division
 - Advocacy vs. transactional
 - Clinical vs. nonclinical
 - Theoretical vs. policy-oriented vs. doctrinal vs. skills-based



LAW STUDENT ASSESSMENT

- Hot topic – ABA Standards Review Committee
- Teaching and learning objectives – testing what you have asked your students to learn through your teaching
 - Substantive law
 - Legal analysis (IRAC, etc.)
 - Legal process
 - Law practice skills
- Assessment parameters
 - Formative or summative
 - In-class or out-of-class
 - Written or oral or demonstrative



THE ROLE OF STORYTELLING IN LAW STUDENT ASSESSMENT

- Testing legal reasoning and applied legal analysis as a skill requires engagement with/employment of facts and stories.
- Traditional law school exam fact patterns may constitute narratives, stories, or parts of stories, but they are (in most—but not all—cases)
 - Prepackaged, determinate, and self-contained;
 - Linear representations, carefully constructed to focus on specific legal issues to be analyzed by students in response to issue-spotting or directed questions;
 - Geared to test substantive legal knowledge (sometimes a narrow range) and perhaps legal reasoning/analysis.
- Assessment tools can be developed to enable law students to practice and demonstrate competence in constructing (as well as employing) stories.



CURRENT EVENTS AS A BASIS FOR ASSESSMENT STORYTELLING

- Clients and co-professionals (incl. other lawyers) do not typically come to lawyers with narratives or stories, but rather, e.g., with facts they deem relevant to getting the legal help they need.
- The facts relevant to legal reasoning and analysis most often are derived from multiple sources and are not wholly consistent with a single legal conclusion.
- The fact-givers may have motives, viewpoints, or biases to be assessed and used or discarded.
- Current events supply real-life facts that may more closely resemble the types of facts that lawyers are afforded in practice situations.



EXAMPLE #1

- In-class written examination with facts supplied in advance; questions on exam day
- **Comparative Mergers & Acquisitions** seminar
- Supplied facts = current events fragments from government filings, news media, weblogs, etc.
- Exam preparation: students both review the course material and construct one or more narratives from the current events fragments
- Exam questions can
 - Focus on embedded issues (like traditional issue-spotters or directed-question exams);
 - Vary the facts;
 - Test understandings of policy or theory.
- Can also be used for oral examinations



EXAMPLE #2

- Substantial written project – memorandum + drafting (instrument or agreement provision)
- **Corporate Finance** planning and drafting seminar
- Memorandum explains drafting choices on a transaction of the student's choosing.
- Students are encouraged to take facts from current events (among other sources) and develop them into stories.
- Students process stories using law, practice norms, and drafting principles to make their drafting choices, and the memorandum reveals their reasoning.



ADVANTAGES

- Instructors can reinforce, teach, or evaluate skills beyond legal reasoning and analysis.
- Students may better appreciate the role of stories (and even facts) in legal reasoning and analysis.
- Students experience the relationship between facts and legal conclusions in a more realistic setting.
- Instructors can use current events as a tool for story construction in both advocacy and transactional courses and in both clinical and nonclinical teaching.
- Current event storytelling can be used in assessing theory, policy, doctrine, or skills.



CHALLENGES

- Suitable current events may not always be available or perfectly align with an instructor's teaching and learning objectives for a particular course.
- Current events may be in a state of flux, making Web site references problematic.
- Students may believe that they have to research facts not in the assignment (or may do so believing that may be helpful—when it may not).
- Story construction may be too much to ask of first-year students.
- Current events storytelling is not taught to or practiced by students in every course.



IN CLOSING – TIPS

- For written and oral examinations with facts distributed in advance, closed universe assignments work best.
- Give detailed instructions to students.
 - Consider giving them in advance.
 - Alert students if you expect them to create stories with a particular viewpoint or audience (including you as a law professor or senior supervisor).
- Be explicit about what you are assessing.
 - Is storytelling itself being assessed, or
 - Is storytelling a foundation to what is being assessed?
- Develop a grading rubric consistent with your instructions and explicit assessment objectives.

