

# Elements of the Law

Intertwining Legal Storytelling, Legal Reasoning, and  
Legal Practice in the First-Year Curriculum

Presented by Almas Khan

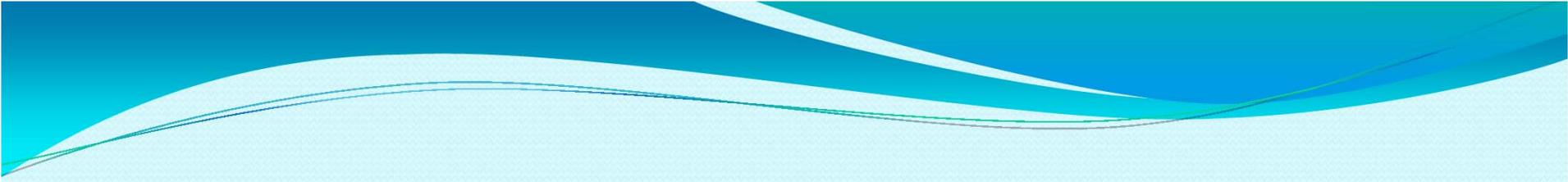
## Karl Llewellyn, pre-eminent professor of Elements, discussing cases:

Put yourself into them; dig beneath the surface, make your experience count, bring out the story, and you have here dramatic tales that stir, that make cases stick, that weld your law into the whole of culture. There are parties. There are, as well, the judges: working at shaping the law to human needs. In every case the drama of society unrolls before you – in all its grandeur, in all its humor, in all its futility, in the eternal wonder of the coral reef. The clash of ideals, the courage of high hope – and man's purblind inadequacy with man's problems. This, for the seeing. Humanity and law – not two, but one.

*-The Bramble Bush (page 128)*

# Presentation Overview

- Introduction: legal education in transition
- Historical and theoretical context
- Elements of the Law
  - Curricular history and description
  - Benefits and drawbacks
  - Conclusion
- Selected references



# Introduction

Legal Education in Transition

## The Lawyerly Ideal

“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”

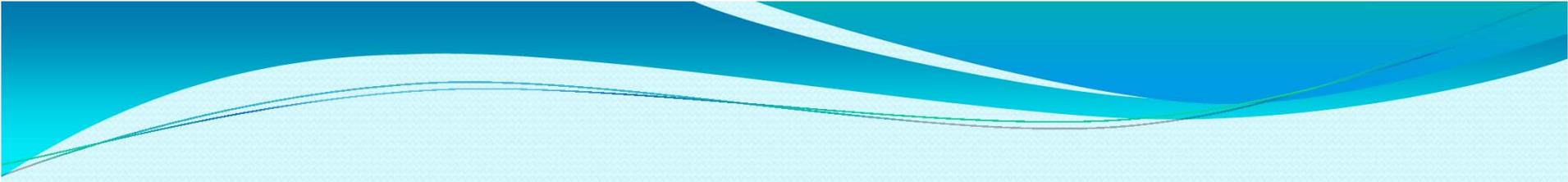
-Preamble to ABA Model Rules of Professional Conduct

## Challenges to Traditional Practice and Traditional Assumptions - A “Perfect Storm”

- “Commercialization” of law, characterized by hyper-competition, declining client loyalty, and increasing client frugality
- Decrease in mentoring and rising expectations for new lawyers to “hit the ground running”
- Increasing law student population with rising debt loads as number of legal positions decline
- Decreasing rigor of entering law students’ reading and writing instruction
- Mounting dissatisfaction with legal education, notably its failure to prepare students for practice

## Legal Academia's Incipient Curricular Response

- “Paring knife” approach: Changing teaching techniques and content of current curriculum
- “Utility knife” approach: Modifying curriculum by adding traditionally-taught classes in new subject areas and more practical courses resembling those presently taught
- “Chef’s knife” approach: Creating novel courses in response to the “new reality” of legal practice



# Elements of the Law

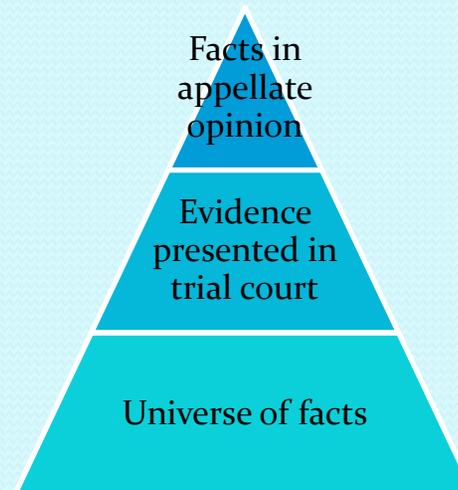
Historical and Theoretical Context

## Four Major Developments in Legal Education

- Greater incorporation of practical skills into the curriculum
- Legal writing across the curriculum
- Storytelling across the curriculum, drawing on Applied Legal Storytelling research
- Attunement to advances in learning theory

## Greater Incorporation of Practical Skills Into the Curriculum: Restoring a Holistic Balance to Legal Training

- Evolution of legal education in the U.S.:  
Independent study or study abroad → apprentice-master → proprietary school → modern university model Langdell helped entrench in the 1870s
- Major critiques of case method's narrow focus stem from law schools' dual role as vocational and scholarly institutions



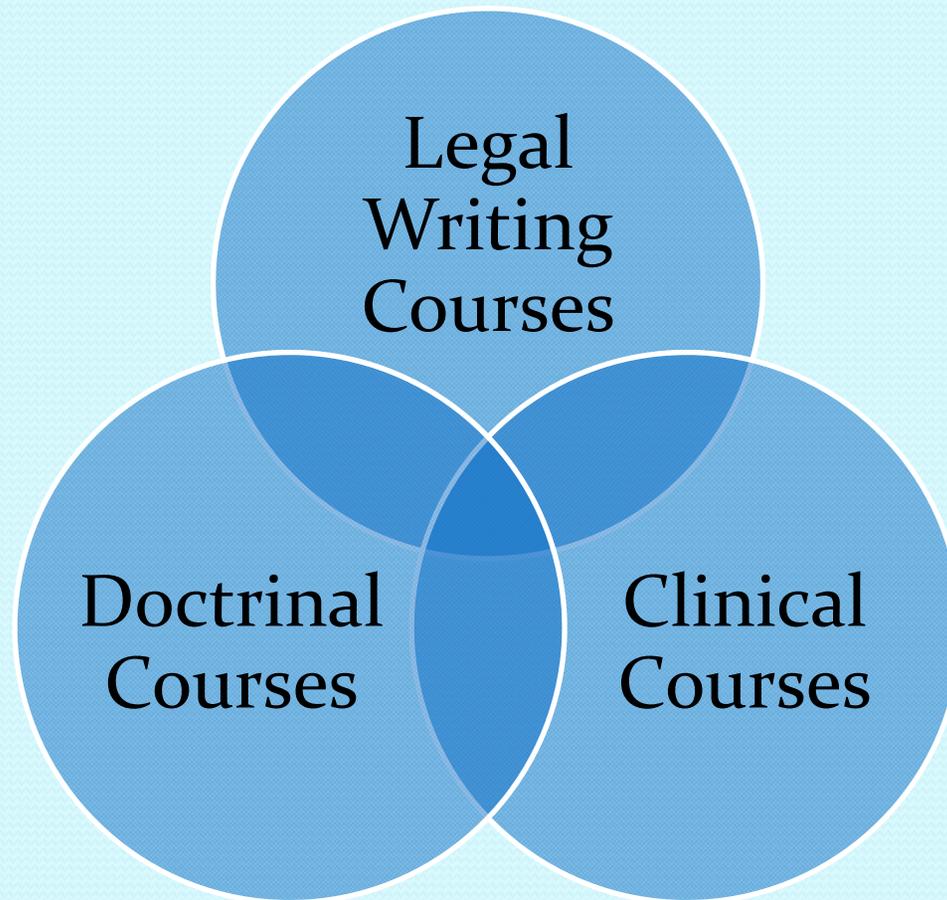
## Practical Skills Law Schools Should Teach Students

- Three professional apprenticeships (Carnegie Report, 2007): knowledge + skill + judgment
  - Knowledge and way of thinking of the profession (intellectual training)
  - Forms of expert practice shared by competent practitioners (practical training)
  - Purposes and attitudes guided by the values for which the professional community is responsible (ethical training)

# Practical Skills Law Schools Should Teach Students

- Statement of Skills and Values (MacCrate Report, 1992):
  - Ten skills: problem solving, legal analysis, legal research, factual investigation, communication, counseling, negotiation, litigation and ADR, organization and management of legal work, and recognizing and resolving ethical dilemmas
  - Four values: competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development

# Legal Writing Across the Curriculum: New Modes of Assessment



# Storytelling Across the Curriculum and the Applied Legal Storytelling Movement

Cases as narratives

- Exposition = events leading to litigation
- Development = legal proceedings likely offering counter-narratives of those events, framing problems and potential solutions
- Resolution = court's decision in the case (i.e., its narrative)



Judicial opinions as narratives

- Exposition = facts
- Plot point = question
- Development = analysis
- Resolution = holding



Subsequent opinions retell and reinterpret precedential narratives as new cases arise, creating a narrative circle

# Storytelling Across the Curriculum and the Applied Legal Storytelling Movement

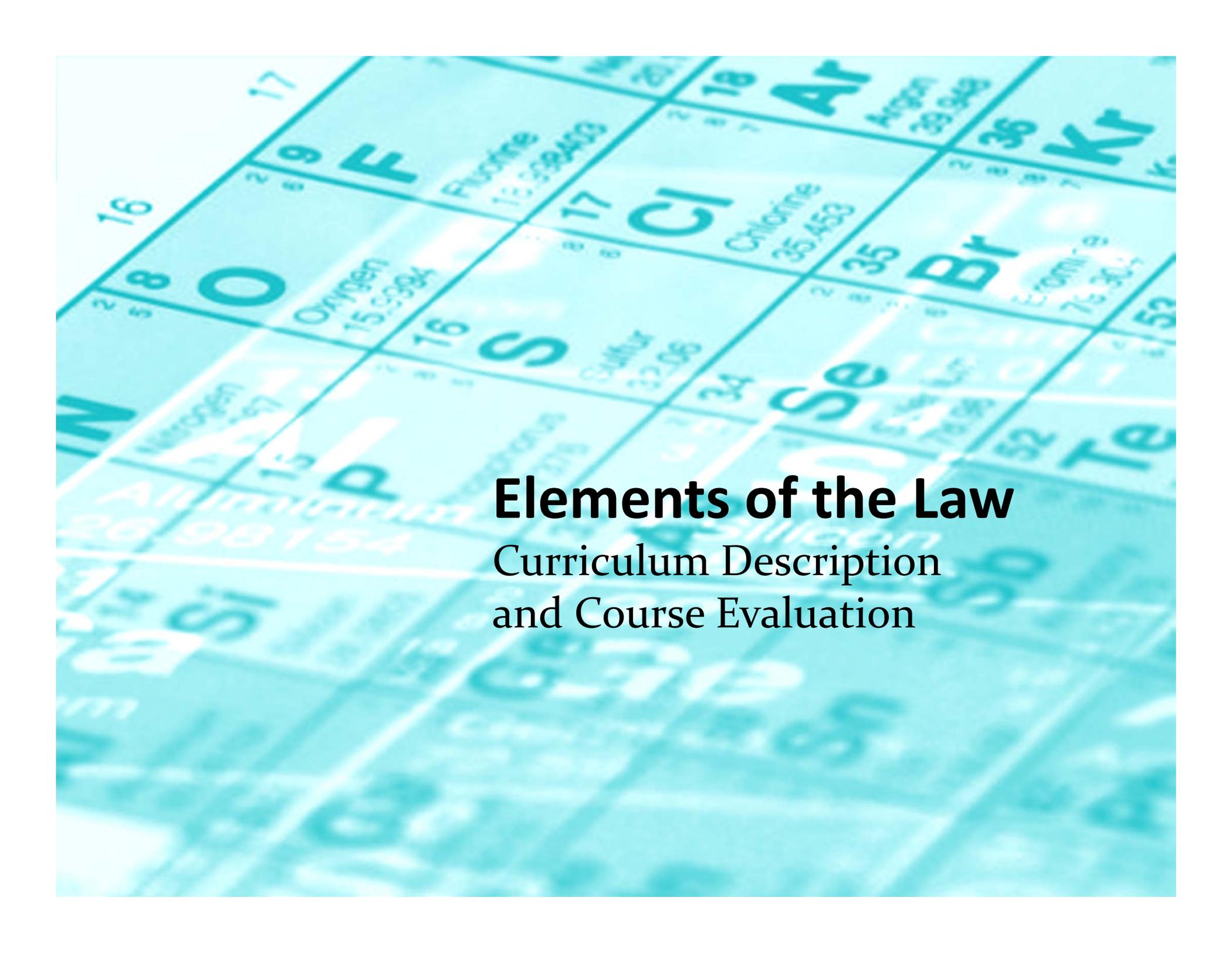
- Narrative's familiar, innate structure helps to communicate and illuminate human experience:  
Steady state → trouble → efforts at redress → outcome or resolution  
→ coda or moral

-Anthony Amsterdam and Jerome Bruner, *Minding the Law* (pages 113-14)

- Narrative unites theory and practice; lawyers are professional storytellers weaving narratives of problems and solutions
- Applied Legal Storytelling movement uses storytelling to enhance understanding of skills lawyers practice, especially advocacy, and how to improve those skills
- Legal archaeology movement and compelling “master cases” approach legal studies from a historical perspective

# Seven Principles for Good Practice in Legal Education

- Encouraging student-faculty contact
- Encouraging cooperation among students
- Encouraging active learning
- Giving prompt feedback
- Emphasizing time on task
- Communicating high expectations
- Respecting diverse talents and ways of learning



**Elements of the Law**  
Curriculum Description  
and Course Evaluation

# A Capsule History of Elements of the Law

- 1937: Inaugurated by Edward Levi and Roscoe Steffen as a gateway first-year course at the University of Chicago Law School, introducing students to fundamental legal principles from a philosophical perspective and using leading common law cases as examples
- 1951: Revolutionized by legal realist Karl Llewellyn, who emphasized “craft-skills” and legal process over doctrinal instruction in his novel jurisprudential course tracing a line of cases
- 1974: Incorporated into the curriculum at the University of Miami School of Law by Dean Soia Mentschikoff
- 2009: Taught at the University of Miami School of Law using the legal storytelling approach by Dean Patricia White

## Elements at the University of Miami School of Law: Current Course Description

*Elements: The Theory and Craft of American Law.*

Unlike most first-year courses which concentrate on specific substantive fields of law, *Elements* focuses explicitly on legal institutions, the theories underlying them, the process of legal reasoning and the ways in which the law evolves.

## Elements at the University of Miami School of Law: Course Objectives

“[T]o develop the analytical and professional skills a first-year student needs to make the most of his legal education . . . by contrasting the articulated structure of the law with the unarticulated and by showing that life situations and social settings structure the law through the intellectual efforts of attorneys, legislators, and judges – all of whom play a role in determining the law’s content.”

-John Gaubatz, late Elements professor at the School of Law

## Elements at the University of Miami School of Law: Premise of the Course's New Incarnation

“[S]tudents are supposed to study cases. They do not. They study, almost entirely, upper court opinions. Any such opinion, however, is not a case, but a small fraction of a case, its tail end . . . . [T]he study of cases which will lead to some small measure of real understanding of how suits are won, lost and decided should be based to a very marked extent on reading analysis of complete records of cases – beginning with the filing of the first papers, through the trial in the trial court and to and through the upper courts. A few months properly spent on one or two elaborate court records . . . will teach a student more than two years spent going through twenty of the casebooks now in use.”

-Jerome Frank, *Courts on Trial* (pages 225, 227, 233)

## Elements at the University of Miami School of Law: Curriculum of the Course's New Incarnation

- Week 1 = students randomly divided into teams of three and instructed to find an intriguing reported appellate case (torts or contracts)
- Weeks 2-8 = the “dig”; students work backward to excavate information about the case:
  - Court documents: record, trial transcripts, and briefs
  - Experiential sources: living participants and site visits
  - Secondary sources: social, political, and economic context
- Weeks 9-16 = students outline and write substantial papers reconstructing a “story” of their case

## Benefits of the Storytelling Approach to Elements

- Prepares students for practice
  - Imperative skills for practice: legal analysis and reasoning, written communication, legal research, legal document drafting , listening, oral communication, teamwork, and factual investigation
  - Long-term benefits:
    - Process: moves beyond appellate process, providing a 3-D sense of a lawsuit's life cycle without artificial compartmentalization of doctrinal courses
    - Legal skills: cultivates greater awareness of clients, context, and facts necessary for students to become effective legal storytellers and develops legal research and time management skills
    - Interpersonal skills: encourages teamwork and networking
  - Short-term benefits: results in unique writing sample for job search and skills useful for summer employment

## Benefits of the Storytelling Approach to Elements

- Promotes legal writing across the curriculum
  - Cues students about the importance of legal writing in law school and practice
  - Fosters collaboration among faculty
  - Enriches students' perspectives and hones their legal reasoning skills in doctrinal courses
  - Aligns with the goals of clinical education
  - Reinforces lessons learned in legal writing classes

## Benefits of the Storytelling Approach to Elements

- Reflects best practices in legal education
  - Draws on students' prior experiences and knowledge, increasing self-confidence and ability to comprehend
  - Provides a bridge to core first-year courses
  - Generates enthusiasm because of its realism
  - Gives students autonomy to pursue their interests
  - Promotes experiential learning
  - Improves student learning through collaboration and continuous feedback
  - Challenges students to exceed expectations and reflect on their learning

## Drawbacks of the Storytelling Approach to Elements and Recommendations to Alleviate the Drawbacks

- Drawbacks
  - Course's unstructured nature
  - Single case and paper focus
  - Interpersonal conflicts
- Recommendations
  - Regularly scheduled class meetings and explicit guidelines
  - Intermediary assignments, such as outlines, and progress checks
  - Group self-selection and periodic meetings to share updates

## A Parting Reflection from Karl Llewellyn

It is not easy to turn human beings into lawyers. Neither is it safe. For a mere legal machine is a social danger. Indeed, a mere legal machine is not even a good lawyer. It lacks insight and judgment. It lacks the power to draw into hunching that body of intangibles that lie in social experience. None the less, it is an almost impossible process to achieve the technique without sacrificing some humanity first. Hence, as rapidly as we may, we shall first cut under all the attributes of *homo*, though the *sapiens* we shall then duly endeavor to develop will, we hope, regain the *homo*.

-*The Bramble Bush* (p. 101)

## Selected References

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- Zigurds L. Zile, *Vosburg v. Putney: A Centennial Story*, 1992 Wisc. L. Rev. 877.
- For additional references, feel free to e-mail me at [akhan@laverne.edu](mailto:akhan@laverne.edu).