

Capturing Stories as Legal Scholarship, Reading Stories as Professional Pedagogy

**Third Annual Applied Storytelling Conference
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Capturing Stories as Legal Scholarship

Ethnographic research

- Methods of gathering data
- Comparison to quantitative research
- Values and limitations
- Ethical issues
- See writing.colostate.edu/guides/research/observe/com2d4.cfm
- See Jaber F. Gubrium & James A. Holstein, "Narrative Ethnography," *Handbook of Emergent Methods* 241 (Sharlene Nagy Hesse-Bieber & Patricia Leavy eds. 2008)

My project: *Thorns and Roses: Lawyers Tell Their Pro Bono Stories*

- Process: identifying and recruiting storytellers, conducting interviews, shaping and editing narratives, collaborating with storytellers, adding broader context and questions to chapters, adding overall observations, getting it published
- Attributes of stories
 - "Outside" story: narrator as character, client as character, setting, plot
 - "Inside" story: reflections, lessons
 - Legal and social context
 - Imagery
 - Questions

Reading Stories as Professional Pedagogy

Lawyer stories versus case stories

Power of stories as teaching tools generally

- Making meaning or sense out of new information by rendering abstract ideas concrete
- Creating transactional relationships between reality and memory
- Evoking emotional responses (interest, empathy) and facilitating storing and recall of information
- Creating interpersonal connections between teacher and student
- Effective stories: compelling characters, suspense, surprise, humor, evocative endings
- See Center for Excellence in Teaching and Learning

Teaching through stories in law school

- On-the-spot stories told by teachers
- Book-group approach
- Gnarly topics that stories make teachable: justice, diversity, ethics and professionalism
- Peace (versus war) stories; good deeds (versus misdeeds)

Thorns and Roses

Lawyers Tell Their Pro Bono Stories

Deborah A. Schmedemann

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In one case, my client was a Cambodian woman who survived the killing fields of Cambodia. She fled when she was eight years old and ended up at a refugee camp in Thailand. Her mother died when she was very young. Her father was not particularly competent. She came to the U.S. as a refugee and wound up in the Twin Cities where her brother and sister-in-law lived.

By the time my client was in her mid-thirties, she had four boys with three different fathers; the oldest was sixteen. Her work history was virtually nonexistent.

She had treating physicians, psychologists, and social workers at the clinic. Someone at the clinic told me that one of her diagnoses was post-traumatic stress disorder. You become pretty hard-nosed about post-traumatic stress disorder when you practice employment law, because you hear it a lot. I talked to people at the clinic and read about Cambodia. I quickly learned that anyone who has survived the killing fields of Cambodia has post-traumatic stress disorder, and it's not to be trifled with.

My client had lupus, which is a widely-accepted physical diagnosis. It exists; it's not malingering; it's not fake; it's there. But a lot of people have lupus, and they work. I have colleagues who have lupus and who continue to do their jobs. My client's mental disabilities were depression, PTSD, and limited intellectual functioning. She had minimal intellectual capacity.

She also had extremely limited English language skills and virtually no education. She didn't have a checkbook or bank account. She was not ignorant, but she was a woman overwhelmed with problems and very little resources or ability to cope with them.

I think she was receiving state aid for her children. One of the fathers of her children was providing a small amount of money. Frankly, it's amazing to me what people cobble together to live on. It's really horrifying. She did have medical assistance. When she first arrived as a refugee, there was some financial assistance, subsidized housing, and food stamps. But at some point those things ratchet down, and either you work, or you get on SSI. Her tax returns showed virtually no income. It's several hundred dollars a month that is at stake in an SSI case. I'm not sure how much; it wasn't my job to calculate the money.

When you meet someone like this you think: my goodness, something has to be done to help. This person came here as a refugee, and you can certainly

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You want to make sure that you bring forward everything that limits your client. There are all these functional analysis sheets that people fill out, and you have to, basically, fail on a certain number of items. To some extent it's very mathematical. It's like putting up a pyramid: put one piece here, and one piece there, another piece over there. Eventually you construct a cohesive story.

To do this, I met with my client five or six times for fifteen minutes to two hours. I asked my client many questions. I wanted to understand what her life had been like, both before and after she came to the United States, in the same way as I would with any client. You just focus on the person, whether they speak English, whether they are educated, whether they have a high IQ or not, whether they come from Cambodia or from northern Minnesota.

We had a Cambodian translator from the clinic. The most important thing is to talk to the client. I have discovered that a lot of people understand more English than they admit and more than you think they understand. It's very degrading when a person who is the subject of a conversation is sitting there while you focus your attention on the translator. The translator will follow you and translate. The best thing to do is pretend the translator is not there and focus on the person.

I bring to my pro bono clients the courtesy of a respectful advocate. I listen to them. Thanks to my legal training, I know how to sort a large pile of documents and to figure out how to take a story and put it together in a way that makes sense. This is exactly the same process one goes through for any other client. Lawyers know how to represent businesses, individuals, or organizations; we know what to look for and how to find the issues. We know that you can't hide the bad stuff. You either have to explain it away or mitigate it or do something with it. Many people, including our clients, don't know that. They think that if you pretend it didn't happen, then you won't have to deal with it. This often comes up if a person has allegations of drug or alcohol use, which can be a huge bar to obtaining SSI. If you're a lawyer, you know you have to deal with it. It's the same skill you would apply to any representation.

You also, however, need to empathize with people who are very different from you. I am sure I am more similar to many of my paying clients than to my pro bono clients. So how do you empathize with a person who is so different? You don't bring any preconceived notions; you don't judge before you listen; you don't, even to yourself, say: I would never be in this position, because you really don't know. I don't have very much patience with people who

think that everything they have achieved, they have achieved on their own, either because they were chosen by God or because they worked harder than anybody else. Life does different things to different people, and not everyone can respond the same way. I learned that, I think, from my family and from my upbringing.

Putting an SSI case together is not much different from doing anything else. The legal rules are in the book. Your mission as an advocate is to make your facts sing with the law. We have examples to rely on since so many people in the firm have already done this work. I am fortunate to have legal assistants who work with me on these cases. They sort the documents that the government collects, develop outlines, and make copies, because you want to keep the documents in the proper order. Then you reorganize things so that you know what's medical, what forms your client has filled out, what is missing, and where you can find it. You may need more medical information; you may need additional witnesses. The legal assistants are invaluable.

In this particular case, my client had applied for SSI twice and been denied both times. Somebody in a previous document had concluded that my client was an alcohol abuser, and that is why her application had been denied. Having an alcohol or drug problem is a nightmarish hurdle. It doesn't disqualify you automatically, but you have to prove you would have had problems regardless of that.⁴ Drugs, I think, are worse than alcohol.

We developed a record with witnesses and assessments that she never was an abuser and this was a mistaken piece of information. We gathered medical information updated by a treating physician, by the social worker, and by the counselor. Then we identified witnesses to testify. If the person has applied twice before and been denied, what you really want to prove is that she was disabled from the first time that she was denied so she can get retroactive benefits.

Once you have all your information, you put the brief together. You attach your own records to the file you already have. You tell your story with your exhibits and, as much as possible, with references to what social security already has.

In my introduction to the brief, I tried to describe what it must have been like to be eight years old in the killing fields. My client had memories, which were horrible. I kept wondering: how I would have stood up in those killing fields? I'd probably be dead.

4. 20 C.F.R. §§416.214, 416.935 (2008).

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My first SSI case, I was totally new at it, and I did it basically on my own. It was scary. My client was in desperate need of assistance, and I woke up at night worrying about what was going to happen if I lost the case. I was afraid the poor woman was going to be picked up frozen on a street corner, and it would be my fault.

By the time the client I am describing here came into my life, I was no longer doing it for the first time and had wonderful support. Even though your sense of fear that something is going to go wrong never totally ends, you at least have the confidence that experience and support provide. Nonetheless, it's always scary to take into your hands someone who has no visible source of income, no visible source of support, few family, few friends, and nothing, except the chance for some kind of benefits, and they are now trusting you to help untangle the mess that either they have made or has been made for them. It's pretty scary.

On the other hand, when you are successful, it's a very good feeling. It's always a wonderful feeling to get a good result for a client, a pro bono client or a paying client. With these pro bono cases there is definitely a sense you've made an immediate real difference in some individual person's life: this person will now be getting a check indefinitely, and no matter what else happens, they'll have the money to buy food and pay the rent.

After the brief comes the hearing. For my Cambodian client's hearing, I brought my own translator, the social worker, statements from two doctors (a psychiatrist and a treating physician for lupus), her sister-in-law, and her oldest son to testify about her functional incapacity. I met with the witnesses in advance and spent particular time explaining that the son needed to look orderly and respectful. They knew what their job was—to talk about the general impact of her problems and her incapacity. The sister-in-law was there to say, "She can't go to the store unless I take her." Her son was there to say, "I have to do this for her; I have to do that for her." Preparing them was just like preparing any other witness.

Once the hearing comes, you get only an hour. Our hearing was scheduled for 2:00 on a Friday afternoon. My client was very intimidated. You march in; there are the judge, the government's translator, the vocational expert, and maybe a doctor, as well; and here are you, your family, the translator, and your witnesses. It's all about you: Are you a drunk? How come you couldn't snap your fingers and recover from this awful life experience?

In our case there was a delay. We were finally heard at 4:00 p.m. on Friday. The judge had a doctor and a vocational expert. Neither had seen the client. They hadn't talked to her family, to her doctors, or to anyone. But they had read the whole record, both what I turned in and the older record. They made their own independent assessment.

First the doctor concurred that she was disabled. And then the vocational expert concurred there was no work she could do. At this point, the judge said, "I think I can short-circuit this process if you'll let me say what I think before you call the witnesses."

I said, "Well, I'm fine with that, Your Honor, as long as I reserve the right to call my witnesses later."

And he said, basically, "I conclude she's disabled, and I'm granting her appeal."

It took only fifteen minutes after we got into the room. I was pretty shell-shocked that it happened that fast, because I'm used to "we'll take it under advisement and send you a letter." I thought: my god, I've spent a whole year on this. And then, of course, you get the huge rush of adrenaline.

My client was shocked as well. She did not understand what was happening. As the case went on, I didn't try very hard to explain details of the American legal system, but she knew basically what was going on. She always knew I was trying, and she was nothing but appreciative. When we went out into the hall, she was asking the translator what happened. All she knew is we sat there for two hours, then we sat there for fifteen minutes, and then we were out in the hall again. When the translator explained to her what happened, she burst into tears and threw her arms around me.

What this means for my client is that she will now get SSI and retroactive benefits, not all the way back to the first application date, but to some date that seemed sensible. She will continue to receive SSI unless at some point she is able to work.

Sometime later, the social worker wrote me a beautiful letter, which I still have. It is very touching.

I have not kept in touch directly with my client. I have, however, checked on her through the clinic a couple of times. Her children are not doing well, and her health is not good.

In 2009, SSI payments ran about \$500 per month on average. Roughly 7.5 million people received SSI benefits, some from the federal government only, others both

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federal payments and state supplements. In one month, the blind and disabled received about \$3.6 billion in federally administered payments.⁵

Unfortunately, not all cases are won. I have lost an SSI case where I knew the woman had drug and possible alcohol problems and that she might indeed have been capable of working. However, she had a child, and her life was such a mess that I thought it was worth it to try anyway. This one did not go well. Fortunately, most of them go better.

You win some; you lose some. When it's not going very well, I'm always beating up on myself, looking for something else to do. Then, of course, I wonder: how did I ever get into this in the first place? I knew this was going to be impossible when I took it. We all hate to lose. I think that comes with being a lawyer.

For the client, when you lose there is anger. The client feels like once more society has beaten them down, and there is always the sense that if someone different had done it, the result would have been different. Nonetheless, you keep on trying.

I do pro bono because it's important. I recently read Doris Kearns Goodwin's book, *Team of Rivals*, about Abraham Lincoln and his cabinet. It is so interesting that these egotistical, arrogant men were constantly looking for their own personal gain and, on the other hand, volunteering to represent freed slaves for nothing. There seems to be an eternal struggle between wanting to use your skills and talents to benefit yourself and also knowing that you have an imperative to use those skills and talents to better the world.

I am a woman who went to law school, at least in part, because I needed to change careers, and I wanted to find a profession that would be both intellectually and financially satisfying. I've never apologized for that. The pro bono work serves different needs from my regular work. The pro bono work keeps me connected to my sense of giving. You know that old cliché: of those to whom much is given, much is required. I don't think that I have been so lucky to have a wonderful education; a good, useful brain; and a fine job to fritter them away on strictly selfish needs. But that doesn't mean I don't enjoy the benefits of my well-paid profession, because I do.

5. SSI statistics (August 2009) at www.ssa.gov/policy/docs/statcomp/ssi_monthly2009-08/index.html.

Life is lived person by person. Getting someone to receive SSI benefits may not turn a person's life around. It certainly hasn't for the people I've gotten it for. But it's a start, and it is something I have the skill to do for at least a few people, and it seems like a good use of my time to try to do it.

The thorn of pro bono work is this: no matter what you do on these individual cases, you are not really addressing the bigger issues. Sometimes when I read the newspaper or listen to politicians, I want to shake them and say, "Do you have any idea how many people there are in this world who have no health care, no place to live, no way to educate or take care of their children?" In reality, constantly appealing SSI rulings is not the real life-time solution. But if I can help one person, I figure that's the rose—at least, no matter what kind of trouble she has in her life, she's getting a payment every month. And that's better than nothing.

Right before my Cambodian client's case came to successful fruition, our son and daughter-in-law were back in the United States from their foreign service posting in West Africa, awaiting the birth of their first child. They observed the final chapter. When the benefits were obtained, they were as excited as anybody. It seemed like procuring the benefits for my client was one light in a tough world.

Questions to Consider

1. Is there anything more than coincidence to the facts that the lawyer is a doctor's daughter and she obtains her pro bono cases through a medical clinic?
2. In the story about the eighth-grade graduation, what is it about the lawyer that prompts her father to say, "That's my girl"? Would her father still say that about her?
3. The lawyer and the Cambodian client are literally from different parts of the world and share very few traits. Do they have anything in common?
4. How should our government support people in the position of the Cambodian client? The approach is to provide money if the person can demonstrate disability and incapacity to work through a process based on records and hearings. What does this approach reveal about our culture? How might another culture handle her situation?
5. The lawyer uses the term "shell-shocked" to describe her reaction to the hearing. What was shocking about it? How does the use of this military term resonate with the story of the Cambodian client?

6. Why might the lawyer check up on the Cambodian client through the clinic? Why might she not keep in direct contact with her?
7. What lesson does the lawyer draw from the book about Abraham Lincoln and his cabinet? Has she resolved the "eternal struggle" for herself? To the satisfaction of her family?
8. When the lawyer refers to "emptying the ocean teaspoon by teaspoon," is this a satisfying or frustrating activity?
9. This lawyer explicitly discusses the metaphor of thorns and roses. Complete her similes: Pro bono work is like a rose because.... Pro bono work is like a thorn because.... In nature, the thorn is, of course, a part of the rose. Is that so here?
10. Does this story end happily? What could a happy ending be here?

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