Program

The 2011 Applied Legal Storytelling Conference

Chapter 3:
Trail Blazing on the Great Divide

July 8-10, 2011

University of Denver
Sturm College of Law

Clinical Legal Education Association
Thank you for your support
The Legal Writing Institute is a nonprofit corporation founded in 1984 by the University of Puget Sound School of Law – now Seattle University School of Law. LWI’s stated purpose is to exchange ideas about legal writing and to provide a forum for research and scholarship about legal writing and legal analysis. The Institute has over 2,100 members, representing all the ABA-accredited law schools in the United States. The Institute also has members from 37 other countries, as well as from English departments, independent research-and-consulting organizations, and the practicing bar. LWI is currently housed at Mercer University School of Law in Macon, Georgia.

LWI’s activities include publications, conferences, scholarship support, teaching mentoring, and collaborations with other professionals. Its peer-reviewed journal is produced annually: Legal Writing: The Journal of the Legal Writing Institute and its magazine, The Second Draft is published, electronically, twice a year. The biennial conference draws approximately 650 people in even-numbered years. Specialty conferences, such as the Applied Legal Storytelling Conference, occur in alternate years.

LWI also sponsors a 2-day workshop for professors working on scholarly articles, and mentoring support is also available. The “Idea Bank,” sponsored by LWI and hosted by Rutgers School of Law – Camden, contains hundreds of teaching resources for legal writing professors. LWI also has over 20 working committees, all staffed by volunteers. Anyone who is interested in legal writing or the teaching of legal writing may join LWI. There are no membership fees or dues. To join, visit the Institute’s website, http://www.lwionline.org/.

The Clinical Legal Education Association exists to advocate for clinical legal education as fundamental to the education of lawyers. CLEA seeks to foster excellent teaching and scholarship by clinical educators. In advancing the mission "to advocate for clinical legal education," CLEA serves as a voice for clinical teachers and represents their interests inside and outside the academy.” As such, CLEA has been a vigorous advocate on matters relating to clinical teachers and clinical legal education over the years.

One of CLEA’s primary missions is to help integrate clinical teaching methods into the legal education program of every law school. To support its mission, CLEA has been responsible for publishing the 2007 Best Practices in Legal Education (Roy Stuckey and Others), a well-known and oft-cited resource for legal educators. CLEA is now working on an implementation strategy that includes workshops and a national conference. New clinicians are mentored with a handbook specifically written for new clinical teachers. CLEA also co-sponsors The Clinical Law Review, a Journal of Lawyering and Legal Education, which is a peer-review journal published semi-annually.

CLEA also pursues and promotes justice and diversity as core values of the legal profession. Its Per Diem project was launched in 2003 to learn about, acknowledge and financially support social justice work in the community. Donations are collected annually, and distributed to a recipient local to the annual clinician’s conference site. For more information about CLEA, visit its website, http://clea.memberlodge.org/
Friday, July 8

4:30–5:15 p.m.

One 8' x 4' Foam Board, 2000 Index Cards, and Total Immersion: Storyboarding As An Approach to Legal Storymaking

Stefan Krieger, Hofstra Law School
Reza Razvani, Hofstra Law School
Room 165

While a number of scholars have identified the similarities between the narrative process in film and in litigation, none have examined in-depth the use of the film maker's storyboarding process to prepare for litigation. In preparing their clinic students for a major civil rights federal jury trial, Professor Stefan Krieger and Clinic Fellow Reza Rezvani have been adapting the storyboarding process to a trial setting. In that case, students were required within a short time span to gain a mastery of 24 deposition transcripts, thousands of pages of exhibits, numerous declarations, and four complex legal theories, to craft a persuasive narrative for the jury, and to prepare for the examinations of at least 30 witnesses. With the help of a senior vice president at NBC/Universal, they have replicated the process of film storyboarding to help students organize the evidence in the case and develop a compelling story told through the voices of their witnesses.

Stef and Reza will describe their process for storyboarding a case for trial. Through video clips of their own brainstorming sessions and conferences with students, they will discuss how they developed this process. They will also show how they are applying storyboarding in practice, walking through the technical steps of this process, and demonstrating a "boarded" case. Additionally, they will assess the benefits of this method both for developing a persuasive narrative at trial and for guiding students through the creative process of crafting a narrative in a legal case. And they will discuss the possible use of this method in different kinds of cases and legal settings.

Finally, Stef and Reza will address the implications of this method for consideration of the nature of applied legal storytelling. They will distinguish the storyboarding process from other methods for developing case theories and stories. And they will share their initial understanding of the unique cognitive process at play not only when lawyers are engaged in presenting stories, but when they are engaged in the creation of those stories from evidence.
5:15–6:00 p.m. Interactive plenary

Refining our vocabulary: “narrative” and “story(telling)”

Derek Kiernan-Johnson, University of Colorado Law School

Michael Higdon, University of Tennessee College of Law

Brian J. Foley, Florida Coastal School of Law

Room 165

The terms “narrative,” “story,” and “storytelling” do not yet have settled meanings in Applied Legal Storytelling scholarship. For ALS to continue to develop as a discipline, its scholars should use such key terms more carefully. Come hear this panel discuss and debate several approaches to our vocabulary.

6:15–7:45 Welcome & Reception
The Forum
Saturday, July 9

8:30 a.m. Continental breakfast in the conference area

9:00–9:45 a.m.

“Sometimes isn’t always”: why judges should not base credibility determinations on minor mistakes in a witness’s story

Jason Eyster, Ave Maria School of Law

In 2005, Congress gave immigration judges the right to deny asylum to refugees based on minor inconsistencies, inaccuracies, and contradictions in their narratives, even if the perceived error does not “go to the heart of the claim.” Review of storytelling practices, psychology, statistics, and the practices of immigration officers in other nations reveal that one should not reject the heart of a story because of tangential mistakes. In this session, we will explore the relationship between truth and credibility in legal storytelling through skits, reflection, and small group interaction.

Why not a legal storytelling school?

Doug Smith, Turtle Mountain Community College
Monique Myers, Stonehill College

This session describes Project Peacemaker, a legal studies program, offered for students at tribal colleges nationwide, which is explicitly uses an educational platform of storytelling to train students for advocacy in tribal courts and for leadership positions in government. One interesting aspect of the story of the development of this program concerns the involvement of law students involved in a clinical law program at the University of North Dakota, who helped to create the program in part as a reaction to their concerns about the inadequacy of traditional law school education and their commitment, born from their experience in advocacy and policy making, to the efficacy of storytelling as a means for social change.
Using history in persuasive storytelling: the Constitutional Convention, Franklin, & the power of prayer

Louis Sirico, Villanova University School of Law

In recent discussions of storytelling and persuasion, the role of history has received little attention. In my presentation, I will discuss why history has persuasive appeal, how easily verifiable history can be distorted, and how the iconic images of the participants can make a story attractive. To illustrate, I will tell a story from the Constitutional Convention in which Benjamin Franklin urges the delegates to request local clergy to open each day of the Convention with a prayer.

Digital media and legal narrative: three teaching ideas

Lucy Jewel, Atlanta's John Marshall Law School

This presentation will introduce non-linearity, memes, and emergence, three major concepts from the world of Digital Media, and then explain how each provides a springboard for infusing digital narrative concepts into legal communication.

9:50–10:35 a.m.

Using a narrative lens to understand empathy and how it matters in judging

Andrea McArdle, City University of New York School of Law

When President Obama announced in 2009 that his criteria for selecting a Supreme Court Justice included evidence of a capacity for empathy, his remarks triggered a contentious debate over the attributes of empathy and its legitimacy in judicial decision making. Several months later, during widely followed Senate confirmation hearings, Supreme Court nominee Sonia Sotomayor appeared to distance herself from the President's embrace of empathetic judging while suggesting that a judge's background knowledge and experience can aid in the process of reaching a decision. Drawing on the framework for understanding narrative developed in Anthony Amsterdam and Jerome Bruner's Minding the Law, this session analyzes attributes of empathy in relation to the contested understandings that the Sotomayor confirmation process highlighted, considers what empathy can offer to judging, and uses narrative analysis of selected judicial opinions to illuminate how empathy can contribute to a richer understanding of facts and legal argument.
Stories told and untold: confidentiality laws and the master narrative of child welfare

The master narrative of child welfare counter-factually portrays parents of children in foster care as brutal, deviant monsters who inflict on their children unfathomable abuse. The inaccurate narrative is protected from challenge in most states by confidentiality laws, which prohibit parents, children, lawyers and social workers involved in the cases from speaking openly about their experiences. Thus, confidentiality laws prohibit the telling of stories publicly (i.e., outside the confines of court cases) about the reality of child welfare -- poverty, racial disproportionality, governmental dysfunction, children unnecessarily taken from their families -- which depart from the meta-narrative. I argue that the law's limitations on storytelling outside the courtroom affect children's care by influencing proceedings inside courtrooms, because lawyers, judges and case workers reenact the master narrative by taking children unnecessarily and treating children and parents as voiceless and deserving only the worst treatment.

American Presidents as Writing Heroes

We all need heroes. Yes, even lawyers need heroes, especially those who want to be great at that one critical skill - writing. This presentation is about a group of writers - our eloquent American Presidents - who should be our writing heroes. The presentation will explore the stories behind the eloquence of several American Presidents including Abraham Lincoln, Thomas Jefferson, James Madison, Ulysses Grant, and Teddy Roosevelt.

Teaching narrative theory through Clint Eastwood's GRAN TORINO

Despite the fact that storytelling permeates so many aspects of legal practice, law students can find analyzing narrative structures difficult and narrative theory opaque. This presentation will demonstrate how film can be used to make narrative theory more accessible (and fun) to law students.
10:50–11:45 a.m.

**Metaphors of the mind: a critical analysis of metaphors for cognition under doctrinal law**

Michael R. Smith, University of Wyoming College of Law

Consider the following legal terms, each of which is a metaphoric construct representing a particular mental state or process: “depraved heart,” “heat of passion,” “shocks the conscience,” “meeting of the minds,” “the four-corners rule for contract interpretation,” “reviewing facts in a light favorable to the nonmoving party.” As these examples illustrate, the law is rife with doctrinal metaphors for cognitive positions and operations. This presentation will demonstrate the prevalence with which metaphors are used under doctrinal law to represent cognitive phenomena and will explore the problems created by the law’s over-reliance on such metaphors.

**Come a little closer so that I can see you my pretty: the use and limits of fiction point of view techniques in appellate briefs**

Cathren Page, Barry University School of Law

When I read a great book, like The Book Thief, I feel as though I am actually there witnessing events unfold through the characters. I feel like I know these people, and I empathize with their struggles. As a fiction writer and legal writer, I have identified the techniques used to place us inside the viewpoint character in such books, and we will discuss and critique examples of these techniques in both fiction works and appellate briefs.
Women hold up half the sky: metaphor and narrative as embedded knowledge structures that persuade audiences through identification

In this presentation, we will explore some of the ways in which the images and stories we acquire through our culture and experience become embedded knowledge structures. These knowledge structures then frame our understanding of the world and our approach to resolving problems. When a lawyer's arguments accord with what is already there in the reader's or listener's mind, less is needed to move the audience toward agreement; instead, the result follows as the night follows the day. Embedded images and stories induce an audience to identify with the speaker and the message by providing shared frameworks, shared understandings, and shared expectations. To illustrate, the presentation will focus on Buffy the Vampire Slayer and other images of women as murderers, mothers, victims, and avengers.

The City as protagonist, the professor as archaeologist: five years of excavating the chronicle of Milkweed Park

Our presentation will describe how, and why, a chronicle of the history of a nineteenth century mill town became the core of a textbook on community development advocacy. The neighborhood of Milkweed Park, within the town of Ourfuture City, is our fictional creation. We will explain the uses of an imagined city as protagonist: first, to illustrate how the physical geography and the politics of the built environment isolate and elevate different groups by race and class; and next, to prompt our students to think about how the choices they make in representation - and the choices that their clients make in being represented - have consequences for their own Milkweed Parks for generations to come.
1:15–1:45 p.m.

**A trial attorney’s dilemma: how storytelling as a trial strategy can impact a criminal defendant's successful appellate review**

Todd Berger, Rutgers School of Law–Camden

Room 180

Criminal defense attorneys frequently employ the use of storytelling as a trial tactic. However, often times little consideration is given to how the use of storytelling at trial impacts the issues that can be successfully raised on appeal. This presentation will examine from the prospective of appellate review, the consequences of storytelling as part of a defense strategy in a criminal trial.

**Writing about writing: how copyright infringement teaches story on multiple levels**

Elisabeth Cannon, University of San Diego School of Law

Room 155

This presentation will describe how a legal writing course can incorporate copyright substance to enhance learning. Copyright infringement analysis requires students to scrutinize words on multiple levels: in the original and infringing works as well as in their own briefs. Writing about copyright, therefore, makes students more aware of language.

**Elements of the law: intertwining legal storytelling, legal reasoning, and legal practice in the first-year curriculum**

Almas Khan, University of La Verne College of Law

Room 170

I recently team-taught a novel first-year class that bridged the divide between legal writing courses, clinical courses, and the doctrinal curriculum through applied legal storytelling. Students in my Elements of the Law course deconstructed a single appellate case during the semester, revealing the nuanced personal and legal stories behind the opinion they had selected. Since the students ultimately drafted a substantial paper narrating their case, they not only became better raconteurs after taking the class, but developed a keen appreciation for legal storytelling's potency.
The truth is not always stranger (and may be more useful): current events storytelling in summative and formative law student assessment

Joan MacLeod Heminway, University of Tennessee College of Law

Room 125

This presentation illustrates and examines the use of news media, websites and weblogs, and other written, video, and oral documentation of current events in assessing student learning in the law school setting. The session is designed (1) to showcase and promote assessment methods and tools that incorporate stories from current events and (2) to highlight and explore advantages and challenges associated with the use of these methods and tools in different law school instructional environments (e.g., first-year vs. upper division, advocacy vs. transactional, clinical vs. nonclinical, theoretical vs. policy-oriented vs. doctrinal vs. skills-based).

1:50–2:20 p.m.

Where the road forks: the art of creating and telling a client’s story at trial court versus appellate court

Heather Zuber-Harshman, Duncan School of Law

Room 180

The story of a case portrayed to a trial court versus an appellate court often varies, as does how that story is portrayed. This presentation will discuss these variations, how attorneys can adapt their story and storytelling between these courts, and how to convey these variations to students in their legal writing courses. It will also provide video/audio tips from attorneys who have practiced at the trial and appellate level.

Why is this student different than all other students? The Passover seder as a metaphor for teaching to different learners

Susan King, Widener University School of Law – Wilmington

Room 155

Using the story of the Israelites' exodus from Egypt, recounted each spring at the Passover Seder, as a metaphor for teaching appellate brief writing, I will discuss the Four Children (wise, defiant, simple, and the child who does not know what to ask) as a way of thinking about teaching our legal writing students. The talk will end with a discussion of the students we cannot (or do not) reach.
Creating better lawyers through creative writing

Lurenle Contento, John Marshall Law School  
Room 170

Students long to break free from the constraints of legal writing. Each semester, my students write a narrative about a "character" in a case. While these narratives allow the students to exercise their creativity, they also reinforce - or maybe first introduce - the notion that behind every lawsuit lie human beings. Learning to see the humanity behind legal conflicts will not only help students in their relationships with their clients but will help them relate their clients' narratives to others.

Complicated plots and the choices lawyers make

Jeanne M. Kaiser, Western New England College School of Law  
Room 125

When Phoebe Prince, a fifteen-year-old high school student, committed suicide after having been bullied by her classmates, the local district attorney's office brought serious felony charges against those classmates. In so doing, the DA's office adopted the simple narrative reported by the media. This presentation explores how a failure to recognize the complexities of a narrative can have substantial and deleterious effects on attorney decision-making.

2:25–3:00 p.m.

True stories – the appellant’s statement of facts in a criminal appeal, telling the story that should have been told

Diane E. Courselle, University of Wyoming College of Law  
Room 180

Crafting the Appellant's Statement of Facts in a criminal appeal requires looking at the established facts with an open mind, in an effort to conceive of different ways the story can be told. This session will explore the different types of stories that can be told on appeal, and strategies for making the story (or stories) you choose to tell as persuasive as possible.
Prometheus Unbound: using the power of myth, folklore, and legends to convey legal concepts in a multi-cultural classroom

Why using tales based on myths, folklore, and legends from various cultures is an effective tool for teaching legal concepts to international students in a multi-cultural classroom. The presentation will include examples successfully used in casebook and skills-building courses.

Why storytelling is so important to good legal writing

This presentation will explore in detail why the ability to tell an effective story is crucial to good legal writing. It first presents a theoretical account as to the essential nature of good legal writing, and then places storytelling within that larger framework. In doing so it discusses how the recent literature on persuasion also explains how and why storytelling engages the reader.

Breathing This American Life into the legal writing classroom: making legal writing and analysis accessible, provocative, and fun for new law students

This presentation focuses on using This American Life as a vehicle through which to engage new law students in legal writing and analysis. By sharing in-class exercises using video from the nonfiction storytelling show, the presentation will provide concrete ideas for discussing legal analysis, editing, and polishing with students in an accessible, fun, and provocative way.
3:15–4:00 p.m.

**Analogical reasoning as a potential site for storytelling**

Christy DeSanctis, The George Washington University Law School

Room 180

My presentation will explore analogical reasoning as an instance of, or potential site for, storytelling. This presentation will bring into conversation two threads - narrative as argument and argument by analogy - that crossover into several discourse communities (among them: legal theory and legal reasoning; philosophy, linguistics and cognitive science; and applied storytelling).

**Emails, narrative and A Midwife’s Tale: what historical methodology can teach us about attorney correspondence and the “story of the case”**

Betsy Lenhart, University of Cincinnati

Room 155

Every email tells a story. The greeting, the tone, the substance, the recipients, the inclusion (or not) of text-message-type abbreviations - every detail is part of the narrative as it passes from one attorney to the next. And, in the context of an actual client matter, the body of emails generated by the attorneys involved memorializes the larger case narrative from beginning to end. This presentation uses historian Laurel Thatcher Ulrich's Pulitzer prize winning book, A Midwife's Tale: The Life of Martha Ballard Based on her Diary, 1785-1812 to illustrate the connections between legal story-telling, history, and attorney correspondence. In addition to a discussion of how History (as an academic discipline) provides the perfect interdisciplinary tool for examining the narrative importance of attorney correspondence, this presentation will also offer practical techniques for teaching students the importance of both small scale and large scale narrative in their own work. Several in-class exercises will be shared, which incorporate my use of A Midwife's Tale with simple email exercises geared to creating a single "narrative" of the final first-semester memorandum.

**The experience of women law students in law school: a collaborative narrative**

Eli Wald, University of Denver Sturm College of Law

Room 170

In the spring of 2010 nine law students enrolled in a class called Legal Profession: Women in the Law at the University of Denver Sturm College of Law collaborated on unique project - a narrative detailing their individual experiences as female law students at the law school. The narratives explore various aspects of their experiences in law school and examine the interaction of their emerging professional
identities as law students and future lawyers with facets of their personal identities including gender, racial, socioeconomic, cultural and national origin characteristics. The narratives tell a compelling and rich story, that of women law students in a contemporary law school environment.

First person, conflict, and denouncement: storytelling in last wills and testaments

Karen J. Sneddon, Mercer Law School

Room 125

A Last Will and Testament is a first person narrative that is one of the most personal legal documents that an individual ever executes. To that end, the drafts-person should craft a document that is more than the rote recitation of mechanized provisions. This interactive presentation showcases the opportunities to draft the Will with reference to the elements of fiction and elements of poetry in a manner that maximizes the effectiveness of the Last Will and Testament.
4:05–4:50 p.m.

**An empirical study of the effect of student storytelling and story writing on learning in doctrinal courses**

Scott DeVito, Florida Coastal School of Law

Room 180

This paper summarizes the results of an empirical study of the effects of storytelling upon student learning of doctrinal material. The study compares the effectiveness of storytelling to traditional methods of teaching doctrinal material (flowcharting, outlining). In addition, the study compares active modes of storytelling (student creating stories) to passive modes of storytelling (student reading stories) as well as comparing visual storytelling (movies, cartoons) to textual storytelling (written stories).

**Finding lost stories in the digital morass and emerging modalities for telling them**

David Thomson, University of Denver Sturm College of Law

Room 155

The amount of digital data we produce is exploding. While we have developed some techniques to find and use large data streams, in recent years the magnitude of the data we produce has been threatening to grow beyond our ability to use it. In civil litigation, eDiscovery is overwhelming the parties and the courts, because the amount of discoverable information is so vast that it is impracticable - and sometimes even impossible - to search and use the data effectively. This means that stories are being lost - stories that are embedded in the data stream. What we need are new methods of finding and telling stories from the firehose of digital data that we currently produce. Fortunately, these methods are developing, and this presentation will introduce some of them, explain how they work, and show how they are beginning to be used in the law, as well as in other fields.
Capturing stories as legal scholarship, reading stories as professional pedagogy

Deborah Schmedemann, William Mitchell College of Law

Room 170

Working off of a new collection of a dozen first-person narratives by a diverse group of pro bono lawyers, this session will explore two topics. First, how does one conduct ethnographic research, and what is its value to legal scholarship? Second, how can real practice narratives be used to teach—indeed inspire—students as they develop their professional identity?

Tales of life and death

Deborah S. Gordon, Drexel University Earle Mack School of Law

Room 125

Most of the past presentations and articles about "applied legal storytelling" examine the topic by considering how individual stories can improve a litigant's ability to persuade. This presentation will look at how stories can and do function in a transactional and, more specifically, estate planning context. Notwithstanding most drafters' reluctance to include "extra" language in the documents they prepare, wills and other testamentary documents contain implicit family stories; this presentation will consider the numerous reasons for making these stories explicit and thereby allowing the tales of life and death to be transmitted to the objects of the decedent's bounty.
Sunday, July 10

8:30 a.m. Continental breakfast in the conference area

9:00–9:45 a.m.

Forbidden stories

Who killed the Kennedys? Was 9/11 an inside job? Are Republicans engaged in class war? If so, are they working with Democrats? Did Bush lie about WMD in Iraq? Is Obama’s birth certificate fake? Is Osama Bin Laden really dead?

These sorts of questions pervade our culture (OK, its fringes) but are pervasively dismissed by “the polite classes,” which includes “the lawyer class.” Such questions are seen as ridiculous, far-fetched musings. They suggest “conspiracy theories,” the ravings of imaginative lunatics… But perhaps we shouldn’t dismiss these ideas so readily. I will discuss how our entertaining these often very entertaining ideas and stories can help us as lawyers, teachers, and citizens, even if we ultimately don’t believe these stories are true. (I’m not going to argue that these theories are true.)

Come to this talk. I won’t tell anyone you were here – if anyone finds out you attended, I promise to mention that you disagreed strongly with any and all conspiracy theories that were discussed. That should protect you … unless the powers that be are spying on us.

The truth, the whole truth and nothing but the truth: or trying to make sense of The Woman in White without hearing from Count Fosco

“Can you guess yet,” inquired Mr Franklin, “who has stolen the Diamond?”

“Nobody has stolen the diamond,” answered Sergeant Cuff.

We both started at that extraordinary view of the case, and both earnestly begged him to tell us what he meant.

“Wait a little,” said the Sergeant. “The pieces of the puzzle are not all put together yet.”

-Chapter XII, The Moonstone, by Wilkie Collins (Penguin Classics, pub. 1998)

“In the absence of agreement…the evidence may have to remain incomplete. That, it seems to us, is an acceptable consequence of an adversarial procedure.”

-Maurice Kay LJ, in R v Shafiq Khan, Nazeer Khan and Maskeen Khan [2010] EWCA Crim 1692
We tend to regard the oath to ‘tell the truth, the whole truth and nothing but the truth’ as a crucial foundation of the fact-finding process. But this is an oath taken by those called as a witness at trial. It most certainly is not an oath taken by the advocates, nor by the accused in his capacity as litigant, rather than as a witness. If one searches for articles on the oath, one finds perhaps not so many as might have been thought. Those that are to be found tend to focus on an advocate’s power to select which topics to question witnesses about and when to cut off a witness from addressing the topic. It certainly seems that, at least under English law, the advocates are able to influence the story by determining whose voices are heard in its telling.

1 It is not of course taken by those whose evidence is not given live at trial in the witness box but instead in the form of hearsay evidence, a growing practice in England and Wales. See the Criminal Justice Act 2003, sections 114 etc.

**Heuristic use of metaphor in family mediation: tool for shifting perspectives to transform stories of past conflict to stories of future promise and hope**

Robert Lancaster, Louisiana State University Law Center

Room 170

After separation or divorce, parents in conflict over raising their children come to mediation with stories of conflict. These stories lock them into the past. A mediator must change their story through shifting the perspective of their narrative. The use of metaphor is an effective tool to recast the narrative from one of conflict to one of future collaboration.

**The power of story to affect legislation: farmer David versus agribusiness Goliath and the safety of our food**

Amy Montemarano, Drexel University Earle Mack School of Law

Clare Coleman, Drexel University Earle Mack School of Law

Room 125

The power of stories to affect legislation is explored through the example of the new food safety bill and its controversial amendment that exempts small, local farmers from many food safety requirements. The locavore movement’s narrative that small-farmed food is inherently safer, healthier, and of higher quality than food produced by large agriculture corporations may illustrate a negative aspect of storytelling – that stories can lull listeners into forming a social construction of knowledge that is at odds with the role of quantitative and qualitative data in the legislative process.
9:50–10:35 a.m.

The use of storytelling to build self confidence in legal writing students

Anthony Renzo, Vermont Law School
Room 180

Storytelling is an essential component of persuasive writing. Storytelling is also a useful pedagogical tool to help students find their voice and develop the self-confidence necessary to become competent professional writers and advocates. This presentation will focus on how narrative and storytelling can be used in the classroom to help legal writing students better understand the connections between the persuasive process and the analytical framework of good legal writing.

12 Angry mentions for law, literature and film

Hugo de Rijke, University of Plymouth, England
Room 155

Responding to the current climate in UK higher education, this paper proposes 12 'angry mentions' to demonstrate the pedagogical value and to argue the necessity of using literature and film within the law curriculum. In an attempt to validate the growing interest in this area at UK universities and to highlight its importance for students of law, it refers in particular to the content, learning outcomes and skills elements of the Law, Literature and Film module at the University of Plymouth. In terms of the themes and issues raised, the module is deliberately challenging and provocative but above all, the intention is toward revelation, inspiration and the enhancement of individual skills.

Transforming student narratives: the appeal of clinical legal education demystified?

Victoria L. Chase, Rutgers School of Law – Camden
Room 170

This presentation seeks to explore ways that clinical teachers affect student narratives. Using examples from the presenter's experience, the audience will be introduced to examples of how a clinical teacher may intentionally affect collective student narratives about lawyering and individual student narratives.
A case of wrongful conviction: a lesson in storytelling

Mark Rabil and Phoebe Zerwick present a case study on the intersection of investigative journalism and the law through the story of Darryl Hunt, who was wrongly convicted in 1985 in the murder of a young newspaper editor. Rabil, one of Hunt's original defense attorneys, spent 19 years trying to prove his client's innocence. Zerwick investigated Hunt's case for the local newspaper and chose to write the story of his legal battle as a narrative. New DNA evidence combined with the retelling of Hunt's story led to his exoneration in 2003. The presentation examines what lawyers and law students can learn from narrative journalism and what lawyers can teach journalists and writers about storytelling.

10:45 a.m.–12:00 p.m.

“Battle and betrayal, tricksters and champions: the stories we tell about law”

We have long accepted the role of narrative in fact statements and jury arguments, but perhaps unwittingly, we also tell stories when we talk about cases, statutes, rules, and legal doctrines. This presentation will use famous Supreme Court briefs to demonstrate stories of battles, betrayals, tricksters, champions, journeys, births, and quests.
The national health care reform litigation: a case study of story in action

A recent empirical study suggests that judges prefer briefs which include a story-based argument in addition to the traditional rule-based argument. This presentation will examine the briefs and opinions in the recent litigation over the Patient Protection and Affordable Care Act (the national health care reform bill) to test that hypothesis. Can the divergent results in the six trial court decisions to date be explained, at least in part, by the different stories told by the parties? If so, does that mean that "activist judges" are using story to create the dreaded "government of men" rather than the "government of law" that conservatives claim to prefer? This presentation will consider these questions and conclude with a group discussion of whether story-based reasoning is desirable so that the law can retain its legitimacy in society.

Impact of Learning Outcomes on Storytelling (10:45 – 11:20 am)

Learning Outcomes, the new trend in education, including legal education, has the potential of negatively impacting storytelling. How we can incorporate storytelling and still meet the goals of learning outcomes will be the focus of the presentation.

Thinking With Our Students' Stories: Listening to and Teaching the Wounded Storyteller (11:25 – 12:00 pm)

The unique nature of the wounded storyteller is a concept borne in the fields of medicine and viewed as a vital part of the healing process and professional development of the physician. Are our clients and students also wounded storytellers when they come to us with impediments in their lives? Can we more effectively represent our clients and serve our students by thinking with their stories than merely thinking about them? This presentation will explore the circumstances of several students, all wounded, as their dean of students navigated the story listening, moral lessons and teaching opportunities that arose from the telling of their stories.
“Vessels of Wrath Fit for Destruction”: a multimedia story presentation about the Mississippi convictions & exonerations of Levon Brooks and Kennedy Brewer

Kennedy Brewer and Levon Brooks were each convicted of—and spent over thirty years in prison for—crimes that they did not commit. Were the tragedies visited upon them the residue of Southern bigotry? The unavoidable costs of doing business—an acceptable risk of error, as Justice Scalia would have it, in the “meting out of condign justice for horrible crimes”? Or are they something else entirely: empirical evidence, perhaps, of the invidiousness of lawfully sanctioned injustice? The multimedia presentation of the stories about these cases will offer some of the documentary evidence necessary to begin answering these important questions.

Does the casting of the story portend the outcome: a study of the impact that case captioning has on the narrative in family court cases?

The title of the story has an impact on the telling of the tale. Moving away from an adversarial approach to captioning cases goes hand-in-hand with bench and bar efforts to better serve children and families in family law cases.
Meeting Walter Younger: civil rights storytelling, legal education – show or tell

Storytelling in a civil rights context is examined through Raisin in the Sun, the famous theatrical work by Lorraine Hansberry that became an award winning film. Meeting Walter Younger: Civil Rights Storytelling and Legal Education, looks at various ways that an important segment of A Raisin in the Sun can be used in legal education to have students examine a civil rights problem that is still commonplace in our society. By examining the text of the play, the film of the play, and then a simulation of the play, this paper expands the possibilities of storytelling in legal education. It reduces a real event to a simulation only to again elevate it to reality. What is the best way to teach law students how to understand and interpret the story? Should we tell students the story and let them analyze the event or show them the story? Or even better, how can we help them discover the story on their own and use storytelling to enhance their legal skills? Going deeper, what about the real story behind this legendary work of art? What are the ethical and practical considerations in using the actual story and case in order to further dramatize and enhance the story and its use in legal education? As one of our most famous fictional stories takes centerstage, Meeting Walter Younger examines all of these issues in legal education.

2:20–3:05 p.m.

A new critical interpretation of briefs: What critical literary theory can teach about persuasive writing

"New criticism" is a critical literary theory that examines formal components of a literary text to evaluate its effectiveness and determine its meaning. According to new criticism, what a work says is inseparable from how it says it. In this presentation, I, together with the participants, will examine a legal text through the lens of this critical literary theory, and thereby learn what this theory can tell us about writing better texts to create a desired meaning.
The written summary of the marriage as an effective litigation tool in family law cases

A written summary of the marriage from a divorce party is a powerful, effective litigation tool for the family law litigator. The factual basis for a divorce is the “story” of the marriage as lived, viewed, and perceived by the divorce party. The final outcome in a divorce case depends upon the persuasiveness of the story of the marriage from the storyteller, the family law litigator.

Goal of narrative persuasion – knowledge rather than love

Narrative is a powerful persuasive tool, but what should the goal of narrative be in legal argument? A number of authors suggest that the goal of narrative should be to persuade the audience to like or respect the client, but this is not a possible or even desirable goal for many clients. This paper argues that viewing the goal of narrative as creating a likeable client is simplistic, and that the goal of legal narrative should be knowledge rather than love.

The Role of Storytelling in Ensuring Racial Justice in Capital Sentencing

This session concerns storytelling during capital sentencing trials. Specifically, the presentation focuses on the use of storytelling during the capital sentencing trial to challenge jurors' implicit and unconscious racial biases and to minimize the effects of jurors' unconscious racism.
### 3:20-4:05 p.m.

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<th>Time</th>
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<td><strong>The sense of an ending: narrative closure in legal storytelling</strong></td>
<td>Christopher Rideout, Seattle University School of Law</td>
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<td><strong>Telling refugee stories: truth, narrative, and the asylum adjudication process</strong></td>
<td>Stephen Paskey, University at Buffalo Law School</td>
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<td><strong>Storytelling for the criminal appellant</strong></td>
<td>Keith A. Findley, University of Wisconsin Law School</td>
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<td>Byron C. Lichstein, University of Wisconsin Law School</td>
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#### The sense of an ending: narrative closure in legal storytelling

Aristotle noted that any tragedy consists of a beginning, a middle, and an end. But what constitutes an ending—or more specifically, what provides a sense of closure to an ending? And in what ways does the resolution to a legal case, which almost always achieves legal closure, also achieve narrative closure—or not? Is closure a problematic concept for narratives in the law? This presentation explores these questions.

#### Telling refugee stories: truth, narrative, and the asylum adjudication process

Trauma survivors have difficulty telling their story in a way that many people (including many immigration judges) would consider to be "credible." As a result, the adversarial process by which we adjudicate claims for asylum cannot reliably distinguish between false or fraudulent claims and the claims of genuine refugees who have experienced trauma. The presentation will examine this problem from the perspective of narrative theory and scholarship on trauma narratives, and will discuss the implications for written and oral storytelling in the context of claims for asylum.

#### Storytelling for the criminal appellant

Storytelling has long been a staple of the criminal trial lawyer, and has become accepted wisdom for appellate advocates in general. But the criminal defendant on appeal, or in a postconviction challenge to the conviction or sentence, presents unique problems for narrative theorists and practitioners. Drawing on our experiences litigating criminal appeals and postconviction challenges, as well as a more general survey of successful criminal appeals, we hope to apply storytelling theory to the unique challenges confronting the criminal appellant.
Unpacking the differences between oral and written storytelling

Stefan Krieger, Hofstra Law School
Serge Martinez, Hofstra Law School

The legal storytelling process can differ significantly depending on whether the story is being told orally or in writing. This presentation will address the import of this distinction for client representation in oral and written legal settings and will propose methods for teaching students to use storytelling effectively in both of these modes.

4:10–4:55 p.m.

Reinventing the second semester

Steve Johansen, Lewis & Clark Law School
Ruth Anne Robbins, Rutgers School of Law – Camden

Being interested in storytelling is one thing. Understanding the power of storytelling is another. But figuring out how to incorporate it into an already over-crowded Legal Writing curriculum? That’s a whole different kettle of corn. We cannot expect to simply add more to a busy schedule. Rather, it is time to reinvent the second semester of Legal Writing so that students learn to develop the skills of effective storytelling on behalf of a client. This program will explore what goes, what stays, and what will be new in a second semester course designed around Applied Legal Storytelling.

Saints or Sinners? Discretion and Narrative in Immigration Court

Elizabeth Keyes, Washington College of Law

Societal narratives about “good immigrants” versus “bad immigrants” infuse the practice of immigration law implicitly and explicitly. This article uses three fictional immigrant stories to explore the complicated, multilayered ways in which unnamed societal narratives about immigrants arise in immigration litigation, and how our efforts to place complicated individuals into narrative frameworks may inadvertently undermine the efforts of immigrant advocates to shape broader societal norms about who is welcome in America during our age of immigration anxiety.
Achieving a better understanding of teenaged clients/witnesses/interviewees: lesson learned from *Adventures of Huckleberry Finn*, *The Outsiders*, and *The Uglies*

Teenagers who are clients, potential witnesses, or simply persons who need to be interviewed in conjunction with a client's case have unique, often-scrambled issues of personal image, conflicts, ethics, and culture, all of which affect lawyering. This presentation will explore themes prevalent in the storytelling of three young adult books - two very popular among the current teenage crowd (*The Outsiders* and *The Uglies*), one not so widely popular, but nevertheless a classic and commonly assigned in class (*Adventures of Huckleberry Finn*) - and the teenage issues they present to cultivate lawyers' and clinical law students' better understanding of the modern teenage world, ultimately facilitating more effective and accurate client representation.

7:00 p. m. Closing dinner
Fritz Knobel School of Hospitality Management  University of Denver
(map is included in packet).
*Cocktails at 7:00, dinner at 7:45.*
The 2011 Applied Legal Storytelling Conference
July 8-10, 2011  Thank you!

Special thank you’s at U. Denver to:

Marty Katz
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Fred Cheever
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Wayne Rust
Media Services Coordinator

Other thanks . . .

Administrative support
Stacie Pacheco
Lewis & Clark Law School

Lisa Frenz
Lewis & Clark Law School

Ahn Le
Lewis & Clark Law School

Marjorie Hemings
Rutgers School of Law – Camden

LWI–CLEA collaboration support
Derek Kiernan-Johnson
University of Colorado Law School

. . . for the CLEA logo recreation

Cynthia M. Adams
Indiana University School of Law – Indianapolis

. . . for the CLEA banner and committee work

The conference organizers

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Journal of Legal Writing – Call for Articles

The Journal of the Legal Writing Institute ("Legal Writing") is the peer-edited, scholarly publication of the Legal Writing Institute ("LWI"), a non-profit organization devoted to the promotion and discussion of issues concerning legal writing, analysis, and research. The journal is seeking articles from other disciplines that extend the boundaries of legal writing as well as those that seek to improve pedagogy and scholarship in the field of legal writing through interdisciplinary and empirical research. These articles can involve a broad range of disciplines, including classical rhetoric, linguistics, composition, psychology, communication and ethics. They can also encompass a broad range of skills, including analysis, research, interpretation, drafting, storytelling, and related skills.

We wish to publish articles, research reports, empirical studies, book reviews, and critical commentary from persons interested in both the theory and the practice of legal writing, or writing issues that have application to the field of legal writing, the design of courses and curricula, and in teaching techniques for the classroom and law office. These articles should address a gap in existing literature and be based on theory and/or original research. In recognition of the fact that a variety of disciplines can contribute to knowledge about legal writing, Legal Writing is multi-disciplinary.

Manuscripts:
Legal Writing welcomes the submission of unsolicited manuscripts. Send the manuscript to the Editor-in-Chief, Kristin B. Gerdy, as a Word attachment to gerdyk@law.byu.edu. Citations must comply with the ALWD Citation Manual (ISBN 0-7355-3640-6) and the journal will conform your footnotes if you follow a different system of citation. To learn more about LWI and its activities, please visit www lwionline org, www.journallegalwritinginstitute.org.
Clinical Law Review
A Journal of Lawyering and Legal Education

The Clinical Law Review (ISSN 1079-1159) is a semi-annual peer-edited journal devoted to issues of lawyering theory and clinical legal education. The Review is jointly sponsored by the Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), and New York University School of Law. The views expressed in the Review are those of the authors and should not be attributed to the sponsoring organizations, the institutions with which the authors are affiliated, or others.

The Review welcomes unsolicited articles (as well as essays, comments, and other types of shorter pieces) on lawyering, clinical teaching, legal practice, or related subjects. Text and citations should conform to The Bluebook: A Uniform System of Citation (18th ed.). Because the Review employs a system of anonymous peer review of manuscripts as part of its process of selecting articles for publication, manuscripts should not bear the author’s name or identifying information.

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Submissions of manuscripts and all other communications should be directed to:

Professor Randy Hertz
Email: randy.hertz@nyu.edu

Electronic submissions of manuscripts are preferred.

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Clinicians who wish to apply for positions on the Review’s Board of Editors or as Readers of manuscripts should contact Randy Hertz at the above address.

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The subscription rate is $24 per volume ($26 for foreign mailing). Single issues are $14 per copy ($15 for foreign mailing). If a subscription is to be discontinued at expiration, notice to that effect should be sent.

Subscription inquiries and back issue requests should be directed to:

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Legal Communication & Rhetoric: JALWD

Call for Articles - Volume 9 - Deadline: September 15th

Legal Communication & Rhetoric: JALWD invites submission of articles for its Volume 9 (Fall 2012) issue. Volume 9 will include articles on the full range of topics that fall within the mission of LC&R.

LC&R’s mission is to advance the study of professional legal writing, broadly defined, and to become an active resource and a forum for conversation between the legal practitioner and the legal writing scholar. Traditionally, LC&R does not publish articles that are of interest to a purely academic or teaching audience. LC&R is dedicated to encouraging and publishing scholarship (1) focusing on the substance of legal writing; (2) grounded in legal doctrine, empirical research, or interdisciplinary theory; and (3) accessible and helpful to all doers of legal writing: attorneys, judges, law students, and legal academicians.

Possible topics for Volume 9 include at least the following:

- scholarship exploring the nature and dimensions of a lawyering skill, technique, strategy or process;
- scholarship exploring the nature of legal writing audiences and the effectiveness of legal writing in practice;
- scholarship critically analyzing the use of legal writing techniques or strategies in existing legal texts;
- scholarship on ethics and professionalism in legal writing;
- scholarship about metaphor, narrative or storytelling theory as used in legal writing;
- scholarship on legal method and the nature of legal authorities; and
- scholarship on appellate advocacy.

LC&R is published annually, thanks to the support of West, which prints LC&R, and of ALWD, which distributes LC&R by mail to some 4,000 practicing lawyers and judges; law school libraries, deans, and professors; and others interested in the field of legal writing. LC&R is available electronically on the ALWD website (http://www.alwd.org/lc&r.html) and from Westlaw, Lexis, SSRN, HeinOnLine, H.W. Wilson Company, and EBSCO.

LC&R encourages submissions from law professors, practicing lawyers, and judges as well as from academics, researchers, and specialists in other disciplines. The deadline for submission of articles for the Fall 2012 issue is September 15, 2011. Article selection will begin June 13, 2011, and will be completed by November 15, 2011.
General Guidelines

Submission of Articles

Submissions are due on or before September 15 of the calendar year before an upcoming issue. We welcome articles on any topic that falls within the mission of *LC&R*: to develop scholarship focusing on the substance and practice of professional legal writing, broadly defined, and to make that scholarship accessible and helpful to practitioners as well as to legal academics. Without compromising analytical rigor and the necessary theoretical and research foundation, our goal is to publish articles that are readable and usable by the broader audience of professional legal writers. We are looking for clear, concrete, direct writing; strong, interesting, intelligent voices; and a style that uses the text for substance and the footnotes to provide support, sources, and references for additional study.

Potential authors may wish to consult articles published in past issues, as well as the more specific information for authors available under the “Submissions” tab at [http://www.alwd.org/lc&r.html](http://www.alwd.org/lc&r.html)

Technical requirements

Manuscripts should be accompanied by (1) a cover letter summarizing the article and (2) the resume of the author, including telephone number and e-mail address. For major articles, *LC&R* will consider manuscripts from 15–25 single spaced typewritten pages (7,500 to 12,500 words). For practice notes, *LC&R* recommends manuscripts from 5 to 15 typewritten pages. All manuscripts must be prepared in Microsoft Word, using single-spacing, one-inch margins, 12-14 point font, and footnotes (not endnotes). *LC&R* follows the *ALWD* citation manual format for citations. If an accepted article is submitted in *Blue Book* format, the author will be responsible for converting the citations during the editing process.

How to submit

Submissions should be sent electronically to the following e-mail address, directly or through the ALWD website: jalwd@alwd.org or online via Express-O.

Process

*LC&R* is a peer-reviewed journal. All submissions that meet the mission of the journal are sent to anonymous peer reviewers.

Questions and subscriptions

Feel free to contact the editors-in-chief: Joan Ames Magat, magat@law.duke.edu and Ruth Anne Robbins, rthanne@camden.rutgers.edu or the managing editor, Suzanne Painter-Thorne, painter_s@law.mercer.edu. Subscriptions are free. Please send an email to the managing editor, Suzanne Painter-Thorne at the aforementioned address.