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The Moral of the Story: The Power of Narrative to Inspire and Sustain Scholarship

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To be a person is to have a story to tell. —Isak Dinesen

I am sitting at a bagel shop on the busy main street of Concord, New Hampshire, waiting to meet a young twenty-something man named Justin who has recently been released from jail. I’ve contacted Justin through a former colleague from my days as a public defender, and it’s been tricky trying to set up this meeting. Justin lives at a homeless shelter and can’t receive mail there. He doesn’t have the money for a cell phone. I’m not sure what he looks like and have no idea if he even remembers that he agreed to meet me. Does he even have a watch to know that he’s late? As I nervously glance toward the street, I catch a partial

1 Amy Vorenberg is a Professor of Law at University of New Hampshire School of Law. I am deeply grateful to “Justin” for sharing his story with me, and to Professors Kimberly Kirkland, Melissa Greipp, Dana Remus and Erin Corcoran for their comments and input. I also wish to thank law students Lauren Breda and Caroline Shleh (now a lawyer) for their excellent research assistance.

2 Name has been changed
reflection of myself in the shop window. It strikes me that this is perhaps a big waste of time. What is this endeavor going to lead to? Is this any way to pursue a scholarly article about a change in juvenile law – one that lowered the age at which kids are treated as adults. I hope Justin’s story will illustrate the reality of the law’s impact – a personal account of how treating young people as adults leads to more, not less, crime and is overall a misguided idea.

The door to the bagel shop swings open and I see a young man in his 20s enter and look around with nervous expectancy. This has to be Justin. I signal to him and after warm but awkward greetings we sit down together. I’m delighted. He is well-dressed and has a humble demeanor, not the street-swagger I had expected. His open countenance and intelligent brown eyes communicate immediately; this is a kid I can connect with. Here is someone with the self-possession and thoughtfulness to articulate his story. And he does. Over the next few months as I researched an article about juvenile law, Justin and I, along with my research assistant, talk about how his life was impacted by the law.
I entered the door to academia through the clinical entrance and from there I evolved into a Skills professor – teaching Legal Writing and Criminal Law. Like so many of my colleagues who entered the academy in a similar fashion, my interests lay mostly in teaching practice skills. Scholarship was not a requirement either to get, or to keep, my job. These days, however, scholarship – either as a requirement or a tacit expectation, has made its way into the ranks of clinical and practice professors. For me, and I suspect for many of my colleagues who teach skills courses, scholarship presents both an opportunity and a dilemma. We get to deeply examine issues, but do we pursue those issues from a theoretical perspective, an empirical perspective or do we focus on scholarship that has a more practical application? Can we combine the approaches? This piece offers an approach to scholarship that combines empirical research with practical application by using a story.

3 For example, the 2010 ALWD/LWI Survey indicates that the number legal writing faculty either expected, encouraged or required to has undergone substantial increases since 2007. See 2010 ALWD/LWI SURVEY P. 78 (2010)
I knew I wanted to write about the juvenile legislation because I felt so strongly that it was wrong. Thus identifying the legal issue I wanted to write about was not hard. However, the hook, or angle through which I wanted to examine the issue did not come as easily. Writing about a change in juvenile law in the abstract, without specific context, seemed too detached, too removed from the real world of practice. While theoretical constructs are critical to advancing and supporting needed changes in the law, I wanted to write about something that mattered on a personal, human level. Justin’s story provided the hook I needed.

The idea for researching the legislative “adultification” of juveniles came from my experience representing kids. I directed a criminal clinic in New Hampshire in the 1990s and many of our clients were juveniles. Like many states looking to address a perceived increase in violent crime by teenagers during that period, New Hampshire changed the statute regarding juveniles so that
offenders as young as seventeen could be prosecuted as adults.\textsuperscript{4} Sitting in interview rooms with these youngsters, I realized the disconnect between the law that wanted increasingly to treat them like adults, and the kids themselves, who were just kids. Nothing about holding these kids accountable in the same way as their adult counterparts seemed to make sense to me.

A retrospective look at the data on juvenile offenses did not support a change in the law. However, a few grisly and sensationalized teenage crimes at the time sparked a national reaction, and no politician wanted to be accused of being “soft on crime” when a seemingly simple prescription was available. But what, I wondered, had happened to all those 17 year-olds thrust into the system? Did they find a way to cope with life in jail side-by-side with much older fellow prisoners? Was any provision made for them to continue their education? And what happened after release when they returned to their homes and neighborhoods? Did this

legislation do anything to make us safer? The research suggested that the answers to these questions were by and large – no. The legislation did not make us safer and the impact on juveniles in general was counter-productive. My conversations with Justin added a personal, emotional aspect to the research and connected me to the subject matter. Though I started the project with an idea about what I would find, getting to know Justin caused me to ask and explore different questions. It also made a connection for my reader between the abstract and the actual impact of the legal issue on an individual. Justin’s experience gave me a deeper understanding of the issue I was writing about and his story, once I got invested in it, became an


4 Id.
inspiration for me. In turn, reading about the law’s impact through the Justin’s eyes gave the reader a better sense of the law’s misguidedness.

Case studies and the stories they provide add value to scholarship in many different ways. Here, I will reflect on three in particular. First, stories vividly illustrate law’s impact. By observing law’s impact from the ground up, the researcher’s viewpoint gains depth. Second, they can inspire a writer, providing needed motivation to focus on relevant topics. Finally, scholarship that brings the researcher face to face with a subject of their research inevitably leads to a deeper understanding of the legal issue and indeed can prompt asking new and different questions that take research I new directions. The process of examining the personal impact of law thus leads to a less detached, more relevant and useful analysis.

*Looking at laws’ impact: from the ground up*
Stories have grounded and transformed law for decades.⁷ Early scholars viewed the law as evolving in precisely this fashion. ⁸ “A rule of law is a provisional hypothesis. It represents, as [Cardozo] said, the adjustment that seemed best to the judges at the time it was made under the circumstances of that case. The new case presents a different circumstance from the old case, and applying the old rule to the new case is making law.”⁹

The “circumstances” referred to here are stories, and it is as a consequence of those stories--disputes, or injury to people or property--that judges apply and extend rules. ¹⁰ The common law develops and changes as new stories push the limits of existing

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⁸ Id.


¹⁰ Id. At 51.
rules. Thus, stories are natural and logical fodder for traditional scholarship about current trends and doctrines.

“The life of the law has not been logic: it has been experience.” In these time-worn words, Oliver Wendell Holmes put into words what we, as scholars, teachers and lawyers, understand and apply intuitively; law does not evolve from abstract principles but from individual or collective experiences. Holmes’ view of the law focused on allowing societal influences to steer legal decisions, and at the root of his view was his recognition that human stories matter because they reflect a collective human context.


12 A relatively new casebook series focuses only on the stories behind pivotal cases in a multitude of law subjects including Tax, Property, and Evidence. See e.g., Tort Stories (Robert Rabin & Stephen D. Sugarman, eds., 2003).


14 Id.

15 Id.

16 Id.
Increasingly social science, which is essentially the cumulative study of collective anecdotes - or stories - plays a role in judicial decision-making. 17 Statistics about United States Supreme Court decisions reveal that the court now often cites social science research in their decisions. 18 For example in its 2005 decision on striking down the death penalty for juveniles, the Court cited numerous articles from psychology journals about the impulsivity of juveniles as a justification against death penalty as punishment. 19 Likewise, in the Court’s decision holding a strip search of a middle school student unconstitutional, Justice Souter cited to an Amici Curiae brief that described individual stories of youngsters as compelling support for the striking down the search. 20


18 Id.


20 See Brief for National Association of Social Workers et al 6-14 “These findings are reinforced by individual accounts of student victims of strip searches. For example, a 15-year-old girl with no disciplinary history was strip searched by New York school *10 officials for suspicion of possessing marijuana. A psychiatrist who
The role of story in forming law is thus, nothing new.

However, using a story to enrich scholarly contribution is perhaps not something that academicians think of when planning research.

Yet narratives of those affected by law can be useful and powerful.

An individual story offers a perspective on a legal issue that theoretical research may not. I discovered that it can also offer

treated the girl during fourteen visits following the strip search stated, “Quite consistently, she showed, symptoms of intense anxiety, loss of concentration, loss of sleep. She gave up her plans to go to an out-of-town college and, in fact, had to repeat a semester in school.” Dennis Hevesi, *Jury Awards $125,000 to Student Strip-Search at a Bronx School*, N.Y. Times, Nov. 24, 1988, at B3; see also *Verdict Summary, McCloud v. Fortune, 510 F. Supp. 2d 649 (N.D. Fla. 2007), 2006 WL 1195092* (psychologist for 15-year-old girl strip searched by police testified that girl “now has fear of all authority figures .... cloistered herself after the search and has stopped socializing with friends and family.”). See Also Lauren Collins, *New Yorker Number Nine; Sonia Sotomayor’s high-profile début*. January 11, 2010 In the case, three Chinese aliens—the unmarried partners of women who had been subject to China’s forced-abortion policies—petitioned for automatic asylum on the basis of persecution. The majority rejected their claim, ruling that automatic asylum did not extend to spouses or to unmarried partners. “Sotomayor’s opinion united two sometimes conflicting strands of her jurisprudence—an aversion to going beyond the issues at hand and a concern about the effects of laws on people—citing dry procedural principles to reach a compassionate conclusion.
something else – a motivation and inspiration to put (and, more importantly, keep) pen to paper.

**Finding motivation and inspiration in stories**

An academic’s life of writing and publishing comes with many challenges, both positive and negative. For academics, writing is both a means to an end and a way to explore issues that inform and enrich the subject areas in which we teach. 21 Scholarship as a means to an end, namely job security in the form of tenure or its equivalent, has become a sore spot in the academy, prompting questions about the relative lack of usefulness in scholarship.22


22 Newton, Brent Evan, Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy, (July 22, 2010). SOUTH CAROLINA LAW REVIEW, FORTHCOMING. Available at SSRN: http://ssrn.com/abstract=1646983 (“The practical irrelevance of law reviews became noticeable toward the end of the last century. Many of the intellectual giants in the legal profession who have shown mastery as both as judges or practitioners and legal scholars and who span the ideological spectrum have commented critically on law reviews” decreasing utility to the bench and bar.”)
Indeed an emerging body of scholarship *about* scholarship’s role suggests that it is becoming either obsolete or that its only function is to provide the proverbial feather in our cap in furtherance of our own professional status. However, equally strong voices that support scholarship’s usefulness to judges, lawyers and other academics. Certainly, not all scholarship is self-serving. Finally, scholarship engages us in a pursuit to establish ourselves as experts in our fields.

For those of us with more extroverted temperaments that called us to teaching in the first place, the idea of “doing

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24 Pollman, *supra* note 21, at 17–18.
scholarship” often fails to inspire as it calls to mind images of sitting alone sequestered in a library, staying up nights studying Bluebook minutiae, and sweating the rejections that come with submission. For me, this imagery is compounded by the fact that as a legal writing teacher, I do a lot of writing during the semester. Reading and commenting on students’ work is wonderfully rewarding, but by the end of a semester, my arthritic thumbs and aging eyes need something truly engaging to get the scholarship wheels turning. Moreover, for legal writing professors, the conundrum is whether to write in our “field.”

There are multitudes of articles about how to do scholarship. See e.g., Mary Beth Beazley & Linda Edwards, The Process and The Product: A Bibliography of Scholarship About Legal Scholarship, 49 MERCER L. REVIEW 741 (1998).

For a wonderful, hilarious “recounting” of the difficulties of producing scholarship see Erik M. Jensen, The Unwritten Article 17 NOVA L. REV. 785 (1990).

In her thoughtful essay, “The Quest for Scholarship” Susan Liemer discusses the struggle legal writing professors face in trying to find time to write. 80 Or. L. Rev. 1007 (2001).

Though legal writing teachers may feel pressure to write about writing, in fact many write about topics other then writing. In their 2005 compilation of publications authored by legal writing
writing? 29 Do we write about teaching writing? 30 Our courses require us to become jacks-of-all-trades because we assign problems based on a variety of legal issues. 31

In hopes of moving beyond my daunting (and, frankly depressing) imagery of scholarship, I put into practice suggestions I had heard repeatedly: write about something that truly interests you.

professors, Terrill Pollman and Linda Edwards noted that 75% of articles written by legal writing professors were written about topics other than legal writing. Pollman supra note 21.

29 My first article was just that – an article about keeping our teaching up-to-date with the expectations students face in when they graduate. Amy Vorenberg, Margaret Sova-McCabe, Practice Writing: Do Writing Programs Really Teach Practical Skills? ___Phoenix L. J. __(Fall 2010).


31 Because of the way writing programs are structured (some using part-time, contract or alternative security models), writing professors are often closer to their practice experience than their doctrinal colleagues. Thus, we are uniquely positioned to write about a legal issue drawn from our practice experience. See Mitchell J. Nathanson, Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor, 11.1 J. LEGAL WRITING INST. 329–376 (2005). (arguing that writing professors should be encouraged to produce practical scholarship).
I have loved law stories from an early age. My father was a professor who taught criminal law. He loved to regale my sisters and me with the facts of the cases he used in his classes. As young children, we were intimately familiar with *Regina vs. Dudley*, the infamous case about shipwrecked sailors who cannibalized their young mate to survive. The case addressed the question of whether the sailors killed the boy out of necessity and thus should be

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32 Having a personal mission statement or plan for your scholarship is one way to keep yourself on track and (hopefully) productive. See William Slomanson, *Legal Scholarship Blueprint*, 50 J. LEGAL EDUC. 431 (2000).

33 Developing a character or protagonist is, of course, central to any good story and can be the key persuasive element of a legal brief’s facts section. See Brian J. Foley, Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*. 32 Rutgers L. J. 459,462 (2001) In the context of scholarship, I suggest that character development is also key to motivating the writer, and in turn, the reader.

relieved of criminal liability. Frequently long car rides began with the three of us pleading from the back seat, “Tell the life-boat story again, Dad!” To us, these great stories were about colorful people who committed crimes, who suffered injustice, or who did hilariously stupid things. The dilemmas faced by the protagonists in each case provided many life lessons for us, ethical and otherwise.

As I began to research and plot my approach to an article about the legislative change to lower the age of juveniles, I happened to run into a friend who worked as a public defender. Her caseload included many juveniles and young adults and we got to talking about the new law. I told her about my research. Her eyes lit up when she heard about the project and she offered to introduce me to her seventeen-year-old client, Justin. She told me that Justin had been arrested for underage alcohol possession in his car. He was charged as an adult. At the time he was arrested, he was living in his car because his parents had kicked him out of his house.

According to my colleague, Justin’s involvement in the justice

35 Id.
system had pushed him into a downward spiral from which he
could not seem to escape. He was, she said, “a textbook case” of
why the change in the juvenile law was a terrible mistake because he
had been caught between two worlds – a wayward child in need of
services, and a young adult offender facing punishment, but no help.
I asked if she thought he would be willing to talk to me. He agreed
and after some persistence on my part, we eventually arranged a
meeting – at the bagel store.

I learned about Justin’s childhood, his family, his
incarcerations and his hopes for a decent life for himself. He liked
the free meals and he liked talking about what he’d been through.
As I plodded my way through a summer of research and fall and
winter of writing about the legislation, it was Justin and his story
that provided motivation to stay with the project. If fatigue or
frustration crept in, I only needed only to spend an hour or so
talking with Justin to be re-engaged in the endeavor. I finished the
article in late January. When it was done, I realized how Justin’s
personal story had been so much more then what I had anticipated. It became instrumental in keeping me motivated to finish the project.

*Stories prompt new questions and deeper understanding*

Justin was eager to share his story. He was now 20 and had spent the last few years in and out of jail. Though not aware that he had been among the wave of young adults charged under the new law, he felt that he had been too young and immature to face what the adult system had in store for him. As I listened to Justin at that first meeting I could see and feel the effect the law had on him. He face was battle-worn – he was scarred and missing a tooth - but he also retained a youthful awkwardness. I had been reading about the increased recidivism rates for incarcerated youths and the ill effects of incarceration with adults on their vulnerable, developing

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Justin’s story palpably illustrated for me what the change in the law did to one young man.

It was in jail, Justin said, that he learned how to fight. Before going to jail, he tended to shrink from a fight. As a seventeen-year-old in jail, Justin adapted and developed new “skills.” In large part, these “skills” that continued to plague him and get him into trouble.

Research about the laws that turned seventeen year olds into adults is fairly consistent. The laws are ineffective, and the data behind arguments for adopting the laws is anecdotal and incomplete. My empirical research did not turn up much that surprised me. Talking to Justin, however, did bring some new understanding.

Data showed that youngsters in jail are more likely to commit additional crimes because of their impressionable nature.  

described the “friends” he made in jail as being his downfall each
time he was released from jail. My conversations with Justin also
opened my eyes to something new and unexpected – his jailhouse
friends actually became a source of important support for him. They
became his “family.” Their influence on him was powerful and, in
some ways, positive. Justin felt as though loneliness was his central
problem at the root of his going off the rails. Jail was a social place
where having friends was easy because everyone was living under
the same roof, under the same rules, much like a family.

This perspective on the jailhouse experience for young people
was new for me. I gained a better understanding of the high
recidivism rate of incarcerated juveniles once I gathered just how
important the bonds he made were. Every time Justin got out of jail,
he felt like he had to make a choice between loneliness and social

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connection. But the social connections were mostly his old jailhouse friends, and that would typically get him back in trouble.

**Conclusion**

Justin provided a tangible, human example of the practical and emotional impact that results when a child is treated in an adult justice system. Using his experiences, I gave my reader a connection to the legal issue that was real and, hopefully compelling. There were some downsides to this approach to scholarship. There were times of frustration when Justin would seem to disappear. I would have to track him down through his lawyer or by calling around to jails. On the one hand, it was never boring. On the other hand, I had to depend on a person whose age made him, almost by definition, undependable.

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39 These pitfalls relate to my personal experience. I do not address here the huge body of legal commentary on the use of narrative and rhetoric in legal scholarship. See e.g, Law's Stories, Stories and Rhetoric in the Law (Peter Brooks, Paul Gewirtz eds., Yale University Press1996).
The biggest drawback, however, was also a benefit - I got attached to Justin. It only took a few meetings for me to become invested in his future. I wanted him to make it. I helped him find work, encouraged him to stay off drugs and go to AA, loaned him money, bought him minutes for his phone (more for my benefit then his), and bought him warm winter clothing.

Even after the article was done, my contact with Justin persisted. Once, after being out of jail for a few months, Justin was unable to find a job. Though he had gotten himself into decent housing, his lack of skills and experience in the job market made it impossible to find work in an economy where it is tough even for professionals to find employment. Over the winter, I hired Justin to shovel and helped him pick up some other odd jobs. But as winter turned to spring, I lost touch with him. Over the summer, I finally tracked him down in jail. He told me he had been arrested for resisting arrest and asked if I would come to his next court date. At court, he and his lawyer had arranged a plea and during the colloquy it came out that Justin had been using heroin. Though I
don’t know for certain, I believe Justin was ashamed of his inability
to stay off drugs – and he felt embarrassed for me to know about it.

I wondered at times if I was crossing some sort of boundary,
though I knew of no legal or ethical rules that applied to my
situation with Justin. My gut told me that it couldn’t be a bad idea
to offer a little support to someone who clearly needed it. And, the
support was mutual. After all, he offered me his story, and that was
a gift that truly helped me.

Though getting attached to Justin posed problems, it also
motivated me to push forward. Having gotten to know Justin and
witness, on a personal level, how the change in the law adversely
affected him, I felt a sense of duty to the cause. To not stay with the
project and finish would have risked letting him down.⁴⁰ Having

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⁴⁰ Finding a personal story as motivation to sustain commitment to
legal work is something I used when I was a public defender as well.
Knowing a client’s personal story provided impetus to push forward
in a case that otherwise presented challenges either because of the
nature of the charge or because of the client’s conduct. Charles
Ogletree’s article Beyond Justifications: Seeking Motivations to
Sustain Public Defenders, was an early inspiration to me. Ogletree
writes about finding his own justification for public defender work
gotten to know Justin, I was determined to a good job on the article so that the issues raised by his predicament would stand a chance of coming to light.\(^{41}\)

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after his sister was murdered. Shortly after the murder, Ogletree agreed to represent a man accused of murder. He describes how empathy for his client ended up providing him with the will he needed to zealously represent him. Charles Ogletree, *Seeking Motivations to Sustain Public Defenders*, 106 Harv. L. Rev. 1239 (1993).

\(^{41}\) I have forwarded the article to legislators who I know have an interest in juvenile justice.