Calling for Stories

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CALLING FOR STORIES

Nancy Levit & Allen Rostron*

I. STORYTELLING

Storytelling is a fundamental part of legal practice, teaching, and thought. Telling stories as a method of practicing law reaches back to the days of the classical Greek orators who were lawyers. Before legal education became an academic matter, the apprenticeship system for training lawyers consisted of mentoring and telling “war stories.” As the law and literature movement evolved, it sorted itself into three strands: law in literature, law as literature, and storytelling. The storytelling branch blossomed.

Over the last few decades, storytelling became a subject of enormous interest and controversy within the world of legal scholarship. Law review articles appeared in the form of stories. Law professors pointed out that legal decisions were really stories that told a dominant narrative. Critical theorists began to tell counterstories to challenge or critique the traditional canon. Some

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3 JURISPRUDENCE—CLASSICAL AND CONTEMPORARY: FROM NATURAL LAW TO POSTMODERNISM 462-63 (Robert L. Hayman, Jr., et al. eds., 2d. ed. 2002) (“Examinations of law in literature look at representations of laws, lawyers or legal systems in fiction . . . . Scholars studying law as literature explore the possibilities of interpreting legal texts as works of literature.”).

White folks tell stories, too. But they don’t seem like stories at all, but the truth. So when one of them tells a story . . . few consider that a story, or ask whether it is authentic, typical, or true. No one asks whether it is adequately tied to legal doctrine, because it and others like it are the very bases by which we evaluate legal doctrine.

Catharine A MacKinnon, Law’s Stories as Reality and Politics, in LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW 232 (Peter Brooks & Paul Gewirtz eds., 1996) (“Dominant narratives are not called stories. They are called reality.”).
used fictional stories as a method of analytical critique\(^8\); others told accounts of actual events in ways that gave voice to the experiences of outsiders.\(^9\)

Storytelling began to make its way into legal education in new ways. For instance, a major textbook publisher developed a new series of books that recount the stories behind landmark cases in specific subject areas, such as Torts or Employment Discrimination, to help students appreciate not only the players in major cases, but also the social context in which cases arise.\(^10\) Meanwhile, Scott Turow, John Grisham, and a legion of other lawyers invaded the realm of popular fiction and conquered the bestseller lists.\(^11\)

Legal theorists began to recognize what historians and practicing lawyers had long known\(^12\) and what cognitive psychologists were just discovering\(^13\)—the extraordinary power of stories. Stories are the way people, including judges and jurors, understand situations. People recall events in story form. Stories are educative; they illuminate different perspectives and evoke empathy. Stories create bonds; their evocative details engage people in ways that sterile legal arguments do not.\(^14\)

**II. THE AUTHORS IN THIS INAUGURAL ISSUE**

In this initial issue introducing the *UMKC Law Review*’s stories section, we have been fortunate to collect stories from some of the founding parents of the storytelling movement and some of its best contemporary practitioners.

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\(^13\) See, e.g., Reid Hastie et. al., *Inside the Jury* 22-23 (1983); see also James W. McElhaney, *Just Tell the Story*, A.B.A., Oct. 1999, at 68 (“The story is the tool that people have used since before recorded history to grapple with events and try to understand their meaning.”).

\(^14\) Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds*, 87 *Mich. L. Rev.* 2099, 2104 (1989) (describing how there are “stories that bridge, providing connections between people of different experience, stories that explode (like grenades) certain ways of thinking, stories that mask, devalue, or suppress other stories, [and] stories that consolidate, validate, heal, and fortify (like therapy)”).
ANTHONY ALFIERI

Anthony Alfieri’s work pioneered the school of critical or community lawyering—or, as he calls it, “reconstructive poverty law” 15—which envisions “lawyers work[ing] collaboratively with lower-income, working-class, and of-color clients and communities in joint efforts to make social change.” 16 An essential feature of this collaboration is that lawyers must learn to both hear and tell their clients’ stories and not to allow their own storytelling to supplant client narratives. 17 Now the Director of the Center for Ethics and Public Service at the University of Miami, Alfieri is joined in his contribution here by Maryanne Stanganelli (the Assistant Director of the Center’s Law, Public Policy, and Ethics Program), Wendi Adelson (a Clinical Fellow and Staff Attorney in the Center’s Children and Youth Law Clinic), and Jessi Tamayo (Assistant Director of the Center for Ethics and Public Service).

Alfieri, Adelson, Stanganelli, and Tamayo tell the story of building an ethics institute. Their story is not just about the role of a clinical program for students in a law school setting, but a broader endeavor to create a program that teaches ethics beyond the walls of the law school: public interest direct client representation, corporate and professional responsibility training, and street law projects that reach middle and high school students. If you read between the lines of their individual stories, which come together to depict the development of the Center for Ethics, you’ll see another story line about cultivating new storytellers in the legal academy. What better story than how to build a program that teaches people to “do good” and to think about how to be good in the world of lawyering?

SUSAN BANDES

Susan Bandes is a Distinguished Research Professor of Law at DePaul University College of Law. She writes extensively in the areas of Constitutional Law, Civil Rights, Criminal Procedure, and Federal Courts. 18 More than a decade ago, she began to explore the role of emotions in the legal process and the propriety and impropriety of law’s consideration of what are normally regarded as benign or good emotions, such as empathy and caring. 19 Importantly, she argued that no emotion and no narrative is inherently normative.

[In the legal arena] . . . whether a particular narrative ought to be heard, or a
particular emotion expressed, depends on the context and the values we seek
to advance . . . the difficult questions are which emotions to consider in
judging, which narratives to privilege or silence, and how to circumscribe the
decision-making contexts in which these devices should be used.\(^{20}\)

Bandes saw the importance of subversive stories or counter-narratives
(bolstered by empirical evidence) in offering cautionary tales to the dominant
story that courts tell about such institutional phenomena as police brutality.\(^{21}\)
Several of her latest works have focused on the role of emotion in death penalty
litigation.\(^{22}\) Bandes’ groundbreaking anthology, *The Passions of Law*, develops
theories of how to navigate emotions in law such as shame, remorse, revenge,
disgust and love; questions whether the supposed opposition between emotion
and reason is supported by disciplines such as psychology, anthropology, and
neurobiology; and more broadly examines the integration of emotion studies in
law.\(^{23}\) Her recent scholarship inquires into the ways lawyering and judging reflect
and influence the expectations of popular culture.\(^{24}\)

In these pages, Bandes tells how early in her career she helped draft the
Illinois Freedom of Information Act and secure its passage. Her story captures
the passion and strategic decision-making of a young lawyer facing a difficult
political issue.

**RICHARD DELGADO**

Richard Delgado is not only one of the founders of critical race theory\(^{25}\) and
one of the earliest pioneers of the storytelling movement,\(^{26}\) he is also the single
most prolific law professor in the nation,\(^{27}\) and one of America’s most respected

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\(^{20}\) *Id.* at 365.


political and social critics. In his series of Rodrigo chronicles, Delgado endeavors to change the structures of thinking about race in this country. These stories record discussions between his fictional characters, the brilliant black-Italian law student, Rodrigo Crenshaw, and his aging law professor friend. As Rodrigo and the Professor talk about black crime and white fears, the Bell Curve crowd, the suffering of colonistas, the treatment of civil rights revolutionaries, and the perils of cosmopolitanism, concepts of race and racism become accessible to readers and thinkers outside the legal academy. Delgado urges racial minorities not to seek remedies for enduring racial injustices in constitutional guarantees, litigation, or empathy from majority group members. What Delgado unleashes is something more powerful than law and more faithful than love: the use of literature to explain the history and philosophy of race relations to popular audiences.

Delgado contributes a story about how a white coach and a young man of color establish a relationship based on mutual respect in an area, sports, in which both share common ground. For Delgado, what began as a tribute to an exceptional mentor, a retrospective, and the answer to a friend’s inquiry becomes a provocative question about the future of cross-racial mentoring.

ROBERT L. HAYMAN, JR.

Robert L. Hayman, Jr., is a Professor of Law at Widener Law School and was the H. Albert Young Fellow in Constitutional Law. He writes about discrimination based on race, gender, sexual orientation, and particularly disability. Hayman is especially concerned with the genesis of inequality and how it is usually imposed rather than natural, inevitable, or imbedded or intertwined with biology.

Hayman was telling stories in law long before it was fashionable to do so. Many of the stories he tells unpack cultural myths about merit. For example, in The Smart Culture: Society, Intelligence, and Law, he explodes myths that

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28 He has received eight national book awards and a Pulitzer Prize nomination.


31 Robert L. Hayman, Jr. & Nancy Levit, Un-Natural Things: Constructions of Race, Gender, and Disability, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes et al. eds., 2002).

everyone has come to accept about “intelligence,” “merit,” and “race.” He then shows the ways in which law has been complicit in keeping these myths unexamined. In many of our institutional structures, such as schools and jobs, and our evaluation methods, such as performance reviews or IQ and achievement tests, we have made the assumption that smart people are the ones who succeed. There is a large aspect of complacency to this: some people are smart; some people are not so smart; and that’s just the way it is. We think of smartness and merit as some intrinsic qualities of “betterness.” Hayman argues this traditional interpretation of meritocracy is close to backwards. The causal relationship doesn’t run from smartness to success. Instead, those people who have succeeded—for reasons of race, property-ownership, power—have been the ones who define what smart is. Mini-meritocracies operate in sports (soccer games, football, sandlot games, Wall Ball),\textsuperscript{33} in school cliques, in gendered speech patterns, and in cocktail party conversations. They are manufactured. They are dangerous and destructive. And we make them.

Hayman offers \textit{Suffering From}, a hauntingly beautiful story about Caleb, a child who, unlike other children who are apples and oranges, is a pineapple, and Jake Porter, a high school football player who has chromosomal fragile X syndrome.

\textbf{GARY MINDA}

Gary Minda is better than just about anyone else at reading texts and subtexts—and combining these readings with revolutionary fervor.\textsuperscript{34} He should be. He is one of the early members of Critical Legal Studies who was active in the movement for many years and a former Chair of the American Association of Law Schools (AALS) Section on Law and Interpretation.

Minda’s writings have comprehensively surveyed the panorama of jurisprudential theories,\textsuperscript{35} and they usually have an exceptionally good backbeat.\textsuperscript{36} He often draws on linguistic theory and cognitive psychology to understand the formation of law in American society.\textsuperscript{37} He is not just concerned with employees’ rights (and protections of workers for whistleblowing and

\textsuperscript{33} See, e.g., \textit{Sports and Inequality} (Michael J. Cozzillio & Robert L. Hayman, Jr., eds., 2005).
\textsuperscript{37} See, e.g., Gary Minda, \textit{Boycott in America: How Imagination and Ideology Shape the Legal Mind} (1999).
against unjust dismissals), but more broadly with the effects of a market economy on the power relations in the workplace.38

A professor of law at Brooklyn Law School since 1978, Minda has been a Distinguished Visiting Professor of Law at West Virginia University College of Law, and a Visiting Professor at Stetson University College of Law, Cardozo School of Law, St. John’s University School of Law, and the University of Miami School of Law. He is presently at work on a history of Irish Revolutionary leader Michael Davitt.

Minda offers an engaging slice of revolutionary history, told with great affection. He recounts the story of one part of the genesis of the critical legal studies movement: the production of the underground CLS newspaper, The Lizard, distributed at the AALS meeting in 1984.

MARGARET E. MONTOYA

Margaret Montoya could share a wealth of stories.39 Before she ever came to law, she was involved in the women’s, Chicano, and anti-war movements. After graduation from Harvard Law School, she later practiced corporate law and served as Associate University Counsel for the University of New Mexico before joining its law faculty.

As the former Interim Director of the Southwest Hispanic Research Institute,40 Montoya has long been concerned with interdisciplinary explorations, scholarship, and development. As a scholar, she is not only doing heavy theoretical lifting, but also working with community activists to do things like teaching “linguistic and cultural competence” in medical schools.41 An important innovation in Montoya’s scholarship is that she introduces “taboo” linguistics and information into law reviews—she is the first to use Spanish liberally in her


39 Much of Montoya’s work either involves storytelling or addresses the use of narrative. See, e.g., Margaret E. Montoya, Defending the Future Voices of Critical Race Feminism, 39 U.C. DAVIS L. REV. 1305 (2006); Margaret E. Montoya, Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse, 33 U. MICH. J.L. REFORM 263 (2000); Margaret E. Montoya, Law and Language(s): Image, Integration and Innovation, 7 LA RAZA L.J. 147 (1994).

40 Southwest Hispanic Research Institute, at http://www.unm.edu/~shri/ (last visited Apr. 10, 2007) (“SHRI’s mission is to promote scholarly discourse, conduct teaching and research, and disseminate information concerning historical, contemporary, and emerging issues that impact Hispano people and communities.”).

stories and to discuss female knowledge about such things as childbirth. She is extraordinary at using first person autobiographical stories to bring readers into the lives of cultural and racial outsiders.43

Her works often touch on the lessons that cannot be learned in the classroom.44 Montoya is exceptional at forging links between the academy and communities—bringing law to people and bringing fledgling lawyers into communities. Drawing on the classics and considering the larger political messages they offer for the future—that is the story she tells here.

**JEREMY PAUL**

Jeremy Paul is the newly minted Dean at the University of Connecticut School of Law, where he was formerly the Associate Dean for Research and before that the Associate Dean for Academic Affairs. He has also taught at the University of Miami School of Law and Boston College Law School and served as a Professor-in-Residence on the Appellate Staff of the Civil Division of the U.S. Department of Justice. A professor of Constitutional Law, Jurisprudence, and Property, Paul’s scholarship spans these areas, while focusing on legal reasoning, the value of rules, the process of carving exceptions, and the truly human endeavor of trying to create fair categories.45

He reserves a portion of his seemingly boundless energy and intellectual attention for issues of legal pedagogy. In his exceptional book for law students, *Getting to Maybe: How to Excel on Law School Exams*, Paul and co-author Michael Fischl do much more than offer a handbook on methods for success on law school tests.47 Fischl and Paul encourage law students to recognize and accept the uncertainty that is a part of deliberative thoughtfulness. In the story he contributes here, *Reel to Real*, Paul circles back to a story he told some time ago, about how the process of legal reasoning mirrors the process of reasoning about decisions in everyday life.48

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46 Readers are encouraged to check the number of articles by other authors in which Jeremy Paul is thanked in the first footnote for his contributions to their works.
RUTHANN ROBSON

Ruthann Robson is one of the founders and contemporary leading figures of lesbian legal theory.49 Prolific is too mild a word to describe the rich outpouring of her scholarship.50 Although law is her home discipline, Robson realizes that the transformation of societal reactions to sexual minorities will neither begin nor end in the legal academy. Her novels, such as A/K/A and Another Mother,51 and her numerous periodical articles make lesbian theorizing accessible to a popular readership. Her stories make concepts about lesbian theory come alive for a popular audience. She writes deliciously about lesbian sexuality. She is a meticulous observer of not only humans, but the human condition. Her characters are people you would like to meet.

In these pages, Robson offers Footnotes: A Story of Seduction. She may attract you to the world of footnotes, and the stories—and the power—you can find there. Her revolution begins from the ground up.

III. YOUR STORIES

The UMKC Law Review has decided to invite stories onto its pages and plans to devote a section of one issue each year to them. The Law Review is interested in publishing stories about personal experiences or lessons learned in legal practice, unique clients or enlightening client interactions, or enlightening episodes in legal education. This list is certainly not exclusive, and the Law Review welcomes creative submissions that use stories to illuminate legal theory in unexpected or unconventional ways.

The UMKC School of Law is a fitting home for this endeavor. Recent chapters in its rich tradition of legal storytelling include Professor Doug Linder’s “Famous Trials” website, now garnering over six million hits per month,52 and the back-to-back victories earned by two faculty members, Barbara Glesner Fines

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50 Professor Robson has published four books on legal theory, six books in literature, and a book of poetry. She has also written more than thirty law review articles, more than twenty articles in periodicals, more than fifty short stories, and more than one hundred poems, as well as 112 book reviews, nine works of creative nonfiction, seven articles in anthologies, five encyclopedia entries, and three articles on fiction theory. This count does not include her columns, essays, computer-assisted legal instruction lessons, or audio and video recordings. See Symposium to Honor the Work of Professor Ruthann Robson, 8 N.Y. City L. Rev. 311 (2005).
and Sean O’Brien, in the American Bar Association’s annual Ross Essay Contest.53

We are seeking stories, in the range of 1,000-4,000 words, that make a point. We are particularly interested in narratives from people with slightly unusual or different perspectives about the law.

Tell us your stories.

Send story submissions to Nancy Levit and Allen Rostron, UMKC School of Law, 500 E. 52nd, Kansas City, MO 64110, or to levtn@umkc.edu and rostrona@umkc.edu.