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Storytelling: A Different Voice for Legal Education

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Lawyers are storytellers,¹ using stories as a means of solving problems for clients. Although lawyers tell stories in a variety of settings, the quintessential example of legal storytelling occurs in the courtroom, where two lawyers meet to tell opposing stories about “what really happened on the night of June 12th.” The trial lawyer combines facts with legal rules to tell her client’s story. Parts of the story, such as closing arguments, are presented orally. Other parts, such as motions and briefs, take a written form. The judge’s opinion is the final version of the story, distilled from the versions told by the opposing lawyers.

Although lawyers are storytellers, they are not trained as such. Legal education in the United States today is dominated by the “case method” of instruction,² first used by Christopher Columbus Langdell at Harvard in the late nineteenth century.³ Langdell

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2. In the case method of instruction, students analyze judicial opinions from which principles of common law are derived.

conceived of law as a science: a set of ascertainable, objective rules to be derived in the classroom laboratory. The case method was part of a movement to legitimize law as an academic subject and establish the law school as the preferred method of training for lawyers. The legacy of the case method has been a system of legal education that focuses extensively on the identification and analysis of rules of law.

American society has changed dramatically since Langdell’s time. As society has become more complex and fragmented, the law has become increasingly complex and specialized. The case method of teaching law has also reflected increased specialization and complexity. The narrow focus of specialization ignores the storyteller’s need to connect not only separate parts of the law, but also to connect the law with other disciplines.

The purpose of this Essay is to explore the role of the lawyer as storyteller, a role that has been largely ignored in legal education. Part I explores the uses of storytelling by lawyers. Part II examines the current state of legal education and its institutional failure to recognize the lawyer’s role as storyteller. Part III offers suggestions for recognizing a “different voice” in legal education by bringing the model of the legal storyteller into the classroom.

I. STORYTELLING BY LAWYERS

A. Legal Stories in the Courtroom

The major role of the lawyer in modern society is to act as a problem solver. Individuals look to lawyers to solve the problems associated with events such as automobile accidents or divorce. The solution to the problems caused by an auto accident may involve obtaining compensation for the injury; in a divorce case the lawyer may help arrange for the division of marital assets, the custody of children, and the payment of alimony or child support, or both. In each situation the lawyer provides a connection between the “real world” in which the problems occur and the “legal world” that has the power to effect a solution.

Legal problem solving also requires creativity. Creativity is involved in identifying alternative ways to solve problems. The sale of a family business, for example, can be structured in several different ways that produce the same result in terms of ownership, but vastly different tax consequences. Other challenges to the

4. The term comes from Carol Gilligan’s important work In a Different Voice (1982).
creativity of the lawyer result from the ever changing nature of society. The lawyer’s role as problem solver requires adaptation of the legal rules to fit new situations. Examples of these challenges abound:

- When a couple divorce, should the rules for division of marital property or the rules for child custody be applied to decide who should receive frozen embryos?
- An individual is free to sell an extra car; should she also be free to sell an extra kidney?
- Sales tax statutes often tax sales of property but not sales of services. Is the sale of custom computer software the sale of property or the sale of a service?

Lawyers solve problems through the medium of storytelling, by creating a legal story that identifies the client’s problem and suggests a solution. In creating legal stories the lawyer connects the legal culture with the “real world” in which legal problems arise. The legal story places the legal rules in a narrative context, providing a framework for creativity and effective problem solving.

The term “storytelling” has an obvious relationship to the oral storytelling tradition of stories handed down over time as a means of transmitting the history and values of a culture.⁵ Such stories are typically told in a narrative form, with an identifiable beginning, middle, and end. A good storyteller is aware of her audience, selecting language and images that will be understood by the listener. Stories are preserved and reformulated through repetition.

The lawyer in the courtroom is the modern legal counterpart of the oral storyteller. The story told at trial is essentially an oral one; opening statements, questioning of witnesses, and closing arguments all take place in the courtroom. The audience for the courtroom story consists of the key participants in the trial including other lawyers, the judge, and the jury.

The legal storyteller must work within two sets of rules: the rules of storytelling and the complex rules of the legal system. Both legal and nonlegal stories usually have an identifiable beginning, middle, and end and employ narrative to connect these parts in a meaningful way. Little attention seems to have been paid to this use of narrative, although scholars have studied other aspects of the relationship between law and narrative.⁶ Some scholars,

recognizing the persuasive power of stories, have begun to incorporate narrative into their own scholarship.  

The trial lawyer's legal story is shaped by a cause of action, or a right that can be enforced in court through litigation. The lawyer's choice of a cause of action determines both the beginning and ending of the story. The lawyer begins her story by associating the client's problem with reference to the chosen cause of action. The end of the story identifies the result the client wants, or, in legal terms, the relief to be granted. The choice of a cause of action also determines the possible endings for the story because each cause of action can produce only certain results. For example, an individual convicted of a misdemeanor criminal offense could receive a sentence of several months in jail, but not life imprisonment.

The middle section of the story consists of the legal arguments that justify the cause of action. Legal arguments identify rules of law and apply these rules of law to the client's problem. Although the middle of a legal story obviously differs from the middle of a nonlegal story, the essence of the lawyer's task is narrative. The cause of action dictates a logical sequence of rules, or elements, that must be included in the legal story.

For each rule, the lawyer must show both why the rule applies and how it applies to the client's situation. Some legal rules are found in statutes, others are stated in judicial opinions. A judicial opinion presents the official final version of another set of legal stories. A lawyer using rules from a judicial opinion will often draw analogies between her client's problem and the prior story. Old stories are retold and reinterpreted as part of a new story. This provides the law with stability, through the concept of precedent, and allows for change.

The storytelling function of the trial lawyer can be illustrated by example. This illustration is taken from an opinion deciding a dispute about a silver fox. Mary raised silver foxes on a ranch in Colorado. One particular fox, Duncan, escaped and was shot approximately six miles from the ranch, prowling around a chicken house. The rancher who shot Duncan gave the pelt to Steve.

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8. This example is taken from the facts in E.A. Stephens & Co. v. Albers, 256 P. 15 (Colo. 1927). The dispute involved property rights to a silver fox known as McKenzie Duncan.
lawyer Mary consulted to solve this problem began to look for a story she could tell in court even though she would first try to solve Mary’s problem informally. While the nonlegal storyteller is limited only by imagination, a lawyer must choose from among a number of pre-existing stories, or causes of action.

The choice of a cause of action depended in part on the results Mary wanted to obtain. If Mary had simply wanted to punish the rancher who shot Duncan, her lawyer could have explored charges for hunting without a license or hunting a protected species. In this instance, Mary wanted to be compensated for the loss. Her lawyer chose “replevin,” a cause of action to compel the return of personal property wrongfully detained, or monetary payment equal to its value.

Mary’s cause of action in replevin was based on the principle that Mary owned Duncan and that, as his owner, she was entitled to possess him, dead or alive. Mary’s lawyer began the legal story by identifying the problem: Mary owned Duncan, Duncan had been shot, and Steve had his pelt. The result Mary wanted supplied the ending for the legal story: Steve must return Duncan to Mary, or pay the equivalent in money.

In the middle section of the legal story, Mary’s lawyer related the elements of the cause of action and the facts in a logically ordered sequence, or narrative. The order in which the rules of law and facts are presented depends upon the cause of action and often follows the chronology of events. Mary’s story is relatively simple, other legal stories are quite complex.

The American legal system is an adversary system; for every story placed before the court there is a competing story. Steve’s lawyer could be expected to tell another version of the story that ended with Steve as the rightful owner of Duncan. In addition to telling Mary’s story, her lawyer had to anticipate and refute Steve’s story.

The competing versions of this story revolve around the legal rules for ownership of animals. These rules recognize two categories of animals: wild and domestic. Mary’s story took the approach that Duncan was essentially a domestic animal. Mary had clearly established ownership of Duncan by keeping him in a cage, feeding and caring for him, and identifying him with a number tattooed in his ear. Duncan even ate out of her hand. Although he had escaped from the cage, it was Mary’s story that she still owned him and was entitled to his return.

Duncan, however, was not a pet poodle, but a silver fox—per Steve, a wild animal. Steve’s story followed the traditional rule
that an individual owns a wild animal only while the animal is captive. Therefore, Mary's ownership of Duncan ceased once the famous fox escaped from the ranch and went off in search of a chicken dinner.

The difference between the stories here turns on the characterization of Duncan as either a domestic animal or a wild animal. The characterization would determine which legal rule applies. If Mary could not convince the court that Duncan was a domestic animal, Steve would win under the traditional rule for wild animals.

Mary's lawyer finished her story by arguing that the traditional rule should not apply, and that Mary's ownership should not end with Duncan's escape. She pointed out that the traditional rule was a very old one. Changing social needs, such as the emergence of commercial activity, require new rules of law. The traditional rule was not well suited to Mary's commercial fox farm. Mary's considerable investment of time, energy, and money in Duncan deserved protection.

After listening to both versions of the story, the trial judge resolved the conflict by entering a judgment ordering Steve either to return Duncan's pelt or to pay Mary its value. The story, however, did not end with the trial court. Steve's lawyer appealed, asking a higher court to review the trial court's version of the story. The legal rules of procedure become more complex, and the storyteller's role is limited, as the legal story proceeds through the appeal process.

Steve's lawyer had to identify specific errors in the trial court's conclusion. The appellate court's review is limited to those points. The appeal process also reflects varying levels of deference to the trial court's decisions. Some matters, such as findings of fact, are thought to be best decided by the trial court; the standard of review is to affirm these issues unless they are shown to be clearly erroneous. The appellate court is not required to show deference to the trial court on matters of law. On these issues, the appellate court has more latitude to disagree with the trial court.

The appellate courts eventually affirmed a judgment in Mary's favor. The resulting opinion became part of the library of legal stories concerning ownership of wild animals. The opinion suggests that this story, and others like it, prompted the Colorado legislature to adopt legislation pertaining to ownership of foxes as part of commercial activity. Mary's lawyer might well have taken part in that change.

9. Id. at 15.
10. See id. at 15, 18.
11. See id. at 16.
B. Legal Stories Outside the Courtroom

Many of the problems that lawyers address are governed by the kind of legal story that might end up being told in court by a trial lawyer. Nontrial lawyers, on the other hand, spend most of their time engaged in an office practice—planning transactions and preparing documents, such as wills, trusts, and contracts. The drafting of documents is another form of legal problem solving that requires different kinds of legal storytelling.

Part of the storytelling involved in drafting a contract, for example, looks ahead to the possibility that breach of the contract may result in litigation to enforce its terms. Drafting the contract requires the lawyer to anticipate the stories that might be necessary in court. The author Madeleine L'Engle observed:

In a movie contract, I was asked to grant the right to my book to the producers, in perpetuity, throughout the universe. When I wrote in, 'With the exception of Sagittarius and the Andromeda galaxy,' it was accepted. Evidently the lawyers, who are writing to avoid litigation in a litigious world, did not anticipate a lawsuit from Sagittarius.12

The storytelling function in drafting documents goes beyond the prevention of litigation, which tends to focus on the elements of a potential cause of action. A good drafter needs a larger sense of the purpose of the document and its relationship to other aspects of a transaction. Preparation of a will offers a good example of this.

Fred Client, who has a wife and two small children, wants a simple will leaving all his property to his wife, Wilma. In order for a will to be enforceable through probate, it must comply with the statutory formalities for wills.13 The formalities are easily supplied: the will must be signed by Fred (the testator) in the presence of two witnesses,14 and the witnesses must not be beneficiaries of the will.15 Specific language is required in the execution and attestation clauses, stating that Fred and the witnesses signed in each other's presence.16

Fred's lawyer undoubtedly prepares Fred's will from a standard form containing these formalities. Other clauses might be added to anticipate the variety of legal problems that arise in the context of litigation over the enforcement of the will. Fred's county of

residence is identified to help establish where the will should be probated. Special instructions addressing various estate tax questions are typically included in a will; for example, a clause specifying that Wilma should be presumed to survive Fred in case they die at the same time.

Drafting a will is thus influenced by the possibility of litigation. Legal rules that apply to all wills are translated into the standard language of forms. The use of forms is common in many kinds of legal drafting: for example, wills, trusts, contracts, and deeds. The practice is sensible and efficient to the extent it does not require a lawyer to reinvent the wheel every time a document is prepared.

The more interesting and creative side of drafting is expressed in adapting the form to Fred Client’s particular situation. Here the lawyer is engaging in a different kind of legal storytelling. Fred has quite likely identified the problem that he may die in the near future. His immediate goal might be to provide for Wilma and their children, Rocky and Pebbles. The lawyer as storyteller will identify many other possible scenarios that should also be addressed in the will.

Fred assumes he will die before Wilma, but this may not be true. He and Wilma may perish at the same time, or Wilma may die first, leaving Fred as the survivor. Fred is worried at the moment about minor children, but he may survive to a ripe old age, when Rocky and Pebbles are adults, perhaps with spouses and children of their own. The entire family may die, leaving no one but their second cousin Betty and the family dog, Dino. The storytelling function here requires identification of many possible stories. An effective will must anticipate all of these outcomes and provide for them.

The storytelling function also involves recognition of the relationship of the will to Fred’s property, or estate. A will is effective only at the death of the testator. Although death is certain to occur, its timing is uncertain. Fred’s goal is to distribute his property to those who survive him. He, again, is thinking of property he owns at the time the will is prepared.

18. This reverses the effect of section two of the Uniform Simultaneous Death Act (1991) as to Fred’s estate and is necessary to ensure that Fred’s estate would be able to take advantage of the marital deduction for estate tax purposes.
19. Murder mysteries may be a source of inspiration for the lawyer specializing in estate planning.
Fred’s lawyer must write a will that anticipates changes in Fred’s wealth, both positive and negative. Great increases in wealth may pose estate tax problems that do not exist at the time the will is prepared. A bequest of $10,000 to Fred’s favorite charity makes sense if Fred’s estate is $500,000; if Fred suffers a reversal of fortune and leaves an estate of $10,000 or less, the bequest could leave Wilma with nothing.

Fred’s estate also includes property not disposed of by will, such as assets owned in joint tenancy or life insurance proceeds. All of these items need to be identified and coordinated with the will to effectively distribute Fred’s property.

Legal storytelling clearly goes beyond the identification and application of legal rules. Storytelling is a creative activity placing legal rules in a narrative framework to solve problems. Legal stories may be focused on a specific outcome such as a story told in court, or may be more open-ended stories such as those told in a will or contract. Legal stories connect human problems with the legal culture, preserving and reformulating the legal culture in the process.

II. Langdell’s Legacy

A. The Case Method

Legal education, as an institution, has failed to recognize the storytelling aspects of the lawyer’s craft. This is largely due to the continued dominance of the case method of instruction. The case method was introduced at Harvard by Christopher Columbus Langdell about 1870. In Langdell’s day most lawyers received their training by reading law in the offices of a practicing attorney, often having no prior college or university education.

The case method quickly became part of a long struggle to make law an academic subject, and to establish the law school as the only training ground for lawyers. That movement was enormously successful. Formal legal education in an academic setting is virtually the only way to become a lawyer today. Not only has law become an academic discipline, but virtually all law schools require an undergraduate degree as a minimum credential.

22. See id. at 1051.
23. See id. at 1057.
24. See id.
25. See Stevens, supra note 3, at 209.
The case method of instruction enjoyed a similar success. Langdell's invention is the dominant paradigm of legal education today. It continues to shape the expectations of both law professors and law students in very powerful ways. Students are introduced to the case method on the first day of law school, and, by the end of the first year (if not the first semester), they have internalized the case method as the primary model.

The first year curriculum is an excellent example of the strength of the case method paradigm. Although Langdell would not recognize many of the courses taught in a modern law school (Income Tax, Bankruptcy, Securities Regulation), he would find the first year curriculum virtually unchanged: Property, Contracts, Criminal Law, and Torts. The growth of statutory law since Langdell's day has been astronomical, yet the first year curriculum continues to stress "common law" courses. Statutory courses, along with methodological reforms, such as the use of the problem method of instruction and the introduction of clinics, have largely been confined to the second and third years.

Langdell's legacy of case analysis takes the form of analysis of judicial opinions, usually written by appellate courts. An appellate opinion comes at the end of a dispute, often several years after the client first contacted a lawyer. A case must proceed through several stages before reaching an appellate court: informal attempts to settle the dispute, filing of litigation, discovery and pretrial preparation, the trial itself, the decision by the trial court, filing the appeal, exchange of appellate briefs, oral argument, and, finally, the rendering of an opinion by the appellate court.

The primary teaching texts in law schools are collections of appellate opinions known as case books. In its classic Langdellian form, the case book is simply a collection of appellate opinions. Although modern case books often include additional materials such as questions and excerpts from law review articles, the law school case book bears little resemblance to the in depth presentation associated with a "case study" in other parts of academia. The organization of the case book mirrors its use in the classroom.

Only a very small percentage of appellate opinions are included in case books. Although these opinions are fascinating stories, classroom discussion resembles laboratory dissection of a preserved specimen. Students are expected to separate the opinion into dis-

26. See Griswold, supra note 21, at 1058.

27. Even a topic such as landlord-tenant law, which is largely statutory in most states, is presented in case books through a series of opinions.
crete elements: facts, issue, holding, and rationale. The emphasis is not on appreciation of the story or narrative, but on analysis. Indeed, students rarely read an entire appellate opinion. Most case books present only highly edited versions, often omitting the human elements. Legal discourse prides itself on its neutrality and objectivity. Even the identity of the parties disappears as they become plaintiff and defendant.

Law professors use appellate opinions primarily to teach the rules of a particular area of law. They are frequently critical of judicial opinions, pointing out flaws in the court’s reasoning, or suggesting a better rule. Concentrating on the result reached by a court reinforces the student’s perception of the importance of the rules, rather than the underlying story. Classroom discussion is highly objective and abstract. The court’s opinion is analyzed and criticized at length, with only minimal references to all the stages that preceded it. The resulting classroom dynamic is rule-oriented and hierarchical, characterized by “a ‘tough-minded’ and analytical attitude.”

The modern version of the case method of instruction tends to focus student attention on the identification and analysis of rules of law, a legacy of Langdell’s conviction that law is a science. The importance of rules and analysis is underscored by the examination process, which tests primarily for the student’s ability to state and apply legal rules to various fact patterns. Essay exams are typically graded objectively against a model answer that suggests there is only one correct answer and one mode of analysis. A more recent trend toward the use of objective questions that

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28. In a set of lectures to beginning law students at Columbia Law School in 1929-30, Karl Llewellyn suggested that an opinion could be broken down into 12 separate items. Karl Llewellyn, The Bramble Bush 54-55 (7th ptg. 1978).


30. I presented an earlier version of this paper at a faculty colloquium. Some of my colleagues disagreed with this description of the case method. One stated emphatically that he does not teach rules, but instead teaches students to make arguments. Another described himself as a realist, not a Langdellian scientist. What I have described here is the message I believe students receive from the use of the case method.


32. See Griswold, supra note 21, at 1056.

33. See Philip C. Kissam, Law School Examinations, 42 Vand. L. Rev. 433, 444 (1989). Study guides for law students suggest that all law school essay exams can be successfully answered by following the “IRAC” format: identify the legal Issue, state the legal Rule, Apply the rule to the facts in the exam question, and state a Conclusion. As one might imagine, this mechanical approach produces dull essays.
can be machine graded underscores even further the quest for certainty.

While interesting and challenging to the student, the search for rules that occupies the scientific classroom prepares the student for only a fragment of the problem-solving role of the practicing lawyer. The scientific model focuses almost exclusively on the judicial opinion that is the result of litigation and appellate review; little attention is spent on the creative process of getting to those results. In keeping with the theory that law can best be learned in a classroom rather than by apprenticeship, modern legal education devotes little attention to showing students what lawyers actually do with the rules of law. Law school trains students to think about law in analytical rather than narrative terms. Students receive a great deal of practice in the dissection of rules from legal stories (judicial opinions), but very little practice in the creation of legal stories. Students thus graduate from law school largely unprepared for the role of problem solver.

B. Writing in the Science Curriculum

When the lawyer is viewed as a problem solver and storyteller, the importance of writing becomes readily apparent. A practicing lawyer spends a great deal of time preparing written documents. Some of these documents, such as letters, memoranda, pleadings, and briefs, are stages of the litigation process. Other documents, such as contracts and wills, are planning oriented. All of these documents reflect the lawyer's role as problem solver and storyteller. Telling stories in writing is essential to the practice of law.

Law students, on the other hand, are trained in the case method, which sends the dual messages that (1) in order to become a lawyer, one only needs to learn rules; and (2) writing is not an important part of learning rules. Telling stories in writing is currently not an important part of legal education. Courses which emphasize storytelling, and in particular telling stories in writing, occupy a second-class status in legal education.

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34. Courses in civil procedure and evidence may cover the mechanics of the litigation process, but the emphasis there is largely on rules about the process, rather than the use of rules in telling legal stories.

35. In order to master the law, the student must first learn, as the legendary Professor Kingsfield would say, "to think like a lawyer." Professor Kingsfield, the creation of John Jay Osborne, Jr. in The Paper Chase (1971) was portrayed by John Houseman in the movie and television series based on the book.

36. "Law is, as William Proser wrote, 'one of the principle literary professions. One might hazard the supposition that the average lawyer in the course of a lifetime does more writing than a novelist.'" Teresa G. Phelps, Writing Strategies for Practicing Attorneys, 23 Gonz. L. Rev. 155, 155 (1987-88).
The scientific model that dominates the classroom and sets the tone of the law school suggests that there are two categories of courses in the curriculum: Science courses and nonscience courses. Science courses are those courses that focus on the rules of law in a particular area; for example, torts, contracts, property, or tax. Nonscience courses that do not focus primarily on a body of rules occupy a second-class status. Clinics, legal research and writing classes, and moot court type programs are examples of nonscience courses.

The second-class status of nonscience courses at most law schools is mirrored in both faculty and student perceptions. Those perceptions are shaped by the case-method paradigm and its science tradition. "Real courses" teach rules; any course that does not teach rules is inferior. Evidence of this perception can be found in various forms.

Science courses are generally taught only by full-time tenure-track faculty members. Student-teaching assistants never teach science courses. Nonscience courses, on the other hand, are often relegated to student-teaching assistants or nontenure track instructors. Clinics are classic examples of nonscience courses, viewed with the disdain reserved for courses that do not address the "real" law school mission of teaching rules. Faculty that teach clinical courses have suffered from the same second-class status as the clinics themselves. Some law schools even established a separate nontenured status for clinical teachers when clinics first became popular in the 1970s.

Although clinics have become an established part of the curriculum, clinical courses are still viewed with distrust by science teachers. Schools may limit the number of clinical hours that can count toward the total credit hours required for a degree. No such limit applies to science courses.

The message to the students is clear: faculty perceive science courses to be a more valuable use of faculty—and student—time than clinics and other nonscience courses. Students quickly adopt this perception themselves.

This hierarchy of courses sends a second message as well: writing—and storytelling—is not an important part of law school and, thus, not an important part of the practice of law. Science courses, especially in the first year, typically have large enrollments of 100 or more students. Indeed, part of the science tradition is an innate suspicion of smaller classes. The theory, which dates back to Langdell himself, is that rules can be taught just as well, if not better, in a larger class.37

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37. Indeed, the unwritten institutional definition of a good teacher at the University
Relatively little writing occurs in science courses, especially those with large enrollments. The student's grade in a science course is generally based entirely on a final exam at the end of the semester. Although law schools have a tradition of essay exams, there is a move toward machine graded exams that require no writing at all by students.

Writing in science courses tends to follow the rule-oriented analytical model of the classroom. Most law schools require students to take at least one seminar—that is, a course which requires a paper in lieu of an examination. Many courses that bear the title "seminar" are actually science courses: a rule-oriented course, but with a limited enrollment and a narrow focus tailored to a faculty member's research interests. The seminar paper in most instances falls into the science tradition. Although the kinds of papers written by students vary somewhat from seminar to seminar, their focus is on rules of law.

The model for the seminar paper is the law review case note. The typical case note discusses a single judicial opinion, analyzing and criticizing the rules of law applied in the opinion. The classroom type of scientific analysis is reproduced in excruciating detail. Law review membership is the most prestigious credential available to a law student. Both students and faculty view the case note as the superior form of student writing.

The law review model of student writing can be traced directly to Langdell and the case method. The case note discusses an appellate opinion, analyzing and criticizing the opinion in the same manner that a professor would do in the classroom. Student work is heavily edited by other students who have no training in writing or editing beyond the required Legal Research and Writing course. The end result, in the words of one commentator, lacks both style and substance. In spite of this, law review is praised by students of Kansas School of Law is one who receives good evaluations from students in large classes.

38. Stevens defines "seminar" in his history of legal education: "The distinction between courses and seminars is, unfortunately, clear only to those who have spent many years in the law school culture. But a seminar generally presupposes smaller numbers and written work. Furthermore, professors normally sit to teach seminars and stand (possibly in honor of Langdell?) for case classes." Stevens, supra note 3, at 166 n.24.

39. These same untrained students do all of the editing of articles written by faculty members as well. The experience can be frustrating. One editor wanted to remove all use of the past perfect tense from an article I published in the Kansas Law Review, observing that the "had" was redundant.

and faculty as an excellent learning experience.\textsuperscript{41}

Most law students are required to do very little writing beyond that associated with science courses.\textsuperscript{42} Required writing courses—for example, Legal Research and Writing, Moot Court, or Appellate Advocacy—are particularly low-status courses, taught primarily by teaching assistants or nontenure track faculty.\textsuperscript{43} Students chosen to be instructors in these courses are often law review members who quite naturally strive to imitate and teach the law review style of writing. Law students with training in writing or literature find the law review style especially stifling.

Science courses stress rule-oriented writing. Science writing, however, is something only academic lawyers actually do. Most lawyers solve problems for clients through the means of telling stories. Lawyers frequently tell these stories in writing.

Story writing in law school generally occurs in nonscience courses.\textsuperscript{44} The message from the institution appears to be that these courses are not as important as the science courses; that writing in the way a lawyer actually writes is not important. Telling stories in writing as a means of solving problems should be one of the most important aspects of the education of a lawyer-storyteller. Instead, it is one of the most overlooked.

III. **TELLING STORIES IN THE CLASSROOM**

Recognizing the lawyer's role as storyteller would bring an important "different voice" to legal education. There are many possible ways to do this, including more opportunities for student writing and more clinical courses. Storytelling can be readily in-

\textsuperscript{41} Many, perhaps most, faculty members were on law reviews themselves as students.

\textsuperscript{42} Of the 90 credit hours required for graduation at the University of Kansas, a minimum of 6 credit hours is devoted to writing: Legal Research and Writing (2), Appellate Advocacy (2), and a seminar (2).

\textsuperscript{43} George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 Mich. L. Rev. 333, 355 (1987). At the University of Kansas first year students take Legal Research and Writing in the fall semester and Appellate Advocacy in the spring semester. Each class carries two credit hours. Anecdotal evidence from students suggest that these courses occupy as much time as three hour science classes. This credit differential is typical of the institutional bias against nonscience courses.

\textsuperscript{44} There are exceptions to this rule. Students in the Estate Planning and Business Planning courses do storytelling types of writing. At least at the University of Kansas, both courses have successfully maintained the facade that they are traditional science courses, probably because they are taught by tax teachers as part of the tax curriculum.
incorporated into course materials organized around problem solving.  
It is especially important that storytelling be introduced into the first-year curriculum, before students have internalized the case method paradigm.  
Students begin to experience and assimilate the scientific premise of Langdellian analysis from their first day of law school. The large size of most first-year courses means that students spend relatively little time in one-on-one discussions with faculty members. Students’ impressions of, and attitudes toward, law school are formed during the first year, beginning with the first day of class.

Questioning the case method, which has been in use for over a hundred years, is a form of heresy in legal education. This powerful paradigm continues to be viewed as a brilliant educational tool.  
Students and faculty who are comfortable with the case method are naturally reluctant to accept other approaches. (If it’s not broken why fix it?)

The case method paradigm is also an administrator’s dream—a teaching method for graduate education that is best used in very large classes. Large enrollments have historically justified the practice of basing course grades entirely on a final exam. Faculty members, especially experienced ones, need to devote only a few hours a week to classroom teaching and preparation. With exam grading concentrated at the end of the semester, faculty members have large amounts of time to concentrate on research and publication.

Reforms oriented toward storytelling—such as smaller classes, increased opportunities for student writing, and clinical courses—all require a greater commitment of institutional resources and faculty time than the case method. In an age of shrinking resources, it may be unrealistic to expect expensive reforms. While faculty members could pursue storytelling goals on an individual basis, it is equally unrealistic to expect many faculty to devote additional time to teaching when the institutional rewards are for publication, not teaching. The case-method paradigm is especially seductive in that it avoids this dilemma by defining good teaching in a manner that allows maximum time for research.

One possibility for recognizing storytelling, while still using existing case books and teaching materials, is to focus classroom

47. Stevens, supra note 3, at xv.
discussion on the lawyer’s role as problem solver, thereby shifting emphasis from the rules themselves to the stories told by lawyers. The appellate opinions used in most law school case books can be viewed as problems. Students can re-create the stories told by the lawyers for the opposing parties in the process of solving the problem, instead of focusing on the result reached in the opinion. In order to duplicate the stories, the student, by combining rules of law with facts, must go through the creative process a lawyer uses in telling a legal story. The story of Mary and Steve in Part I offers an illustration of this kind of storytelling analysis of a court opinion.

The most obvious benefit to the student is the opportunity to do in the classroom what lawyers do in practice: tell stories to solve problems for clients. Storytelling analysis shows students the connections between the classroom dialogue, the writing projects required of first year students, and writing done by lawyers. A first year student typically writes an office memorandum (in a legal research and writing course) and an appellate brief (in an appellate advocacy course). These projects are opportunities for students to practice the lawyer’s craft of storytelling; yet the tasks seem frustrating because they are unfamiliar and unrelated to what goes on in the science classrooms. Classroom instruction related to these projects is limited to advice on technical issues of citation form usually presented by upper-class students trained in the law review style.

It is no wonder that the student approaches a written assignment with bewilderment. If lawyers think differently than nonlawyers, they must surely write differently as well. The classroom dialogue shows the student how to dissect and criticize opinions. It does not identify the creative aspects of putting rules into a narrative structure to tell a client’s story.

The storyteller model will remind the student (and lawyer) of basic rules for writing. Although the legal system imposes a fairly complex form and structure on written documents, lawyers must work with the same rules of grammar and syntax that govern other


49. My experience is that students seem more comfortable with the brief than with the memo. I attribute this in part to the fact that the brief is more obviously related to the appellate opinions students are reading in class. The memo is farther removed from the classroom dialogue. It may also be a function of timing. Although both writing assignments are first year projects, the memo is assigned during the first semester. The brief, however, is written during the second semester when students are more comfortable with the system.
writers. Basic principles of good writing apply to lawyers as well as nonlawyers. Indeed, with the complexity of the legal system it is perhaps even more important that the lawyer write clearly and concisely.

Storytelling analysis offers a classroom dialogue that goes beyond the search for rules to show how lawyers use rules to tell stories. Putting those stories into writing will be a logical extension of the classroom dialogue. The student who has practiced telling stories orally is better prepared to tell them in writing than the student who has only searched for rules.

Incorporating the model of lawyer as storyteller has other benefits as well. Emphasizing the stories behind the opinions can make the classroom dialogue more interesting and human. Names of parties, judges, and even lawyers make the stories come alive.50 Creating legal stories to solve problems requires lawyers to make connections between law and other fields of study. For instance, Mary’s lawyer in Part I had to research the fox-farming industry in Colorado to tell her story.

The narrow focus of the science-oriented law school classroom sends the message that students’ prior knowledge and experiences are irrelevant to the study of law.51 This can lead to feelings of


51. For example, see Ruth P. Knight, Remembering, 40 J. LEGAL EDUC. 97, 98 (1990) in which the author relates the following incident during her first year property course:

During the first month we read fascinating cases about “finder keepers” that reminded me of everybody’s ancient pottery and human-bone collections back in Arizona, where we lived before moving to Virginia. Many Arizona finders kept, but it seemed to me that they were not supposed to.

“Ah,” I said to myself, looking at the dignified property professor behind the podium, “this is the man who can answer my question.” I raised my hand. He looked startled, but called on me. “What about ancient Indian pottery? Can you keep that if you dig some up while you are plowing or laying sprinkler pipe or something?” The professor stopped cold. Irritation washed across his face like a sour washcloth.

“If there is time at the end of class, I will comment on that.” He looked back at his seating chart and asked the next student a question about the next case. When people were noisily leaving he said, “As to Indian pottery, statute probably controls over the common law.” The answer took less time than the avoidance tactic had taken at the time the question was asked. I felt like my former second graders must have felt when I had only fifteen minutes to teach them about the four basic food groups and they wanted to tell me how much they liked pizza. I had no defense; I could not tie up everyone’s time with anchovies or long-buried bones. Still, I was disappointed that only the endless court analysis, with bare facts to hang it on, was touched in class.

Id.
alienation, confusion, and frustration. More importantly, students are not being shown the critical connection between law and human experience necessary to the lawyer's role as storyteller.

Viewing lawyers as storytellers offers many possibilities for improving legal education. The image can affect students long after their graduation from law school as well. Emphasizing storytelling and problem solving will make legal education and the practice of law more creative and flexible. This may help provide students more flexibility in choosing careers and in measuring their success along the way.


53. See MARY F. BELENKY ET AL., WOMEN'S WAYS OF KNOWING (1986) (discussing the negative effect of this kind of message on learning).