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Using a Literary Case Study to Teach Lawyering Skills: How We Used Damages by Barry Werth in the First-Year Legal Writing Curriculum

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USING A LITERARY CASE STUDY TO TEACH LAWYERING SKILLS: HOW WE USED *DAMAGES* BY BARRY WERTH IN THE FIRST-YEAR LEGAL WRITING CURRICULUM

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First-year law students arrive for their first day of classes with varying perceptions about the practice of law and what it means to be a lawyer. Although some students have first-hand knowledge of the profession based on their work in a law office or from family members who are attorneys, many students base their entire conception of what it means to be a lawyer on images from popular media. Thus, many students open their books on the first day of law school filled with visions created by *Law and Order*,[1] Court TV Network, and *Legally Blonde*.[2]

Most law school professors would agree that these images are woefully inaccurate pictures of the actual practice of law; however, most first-year classes have as little in common with the actual practice of law as do the adventures of Bobby and Eleanor in *The Practice*.[3] Instead, traditional first-year courses are taught through a study of appellate decisions, using the Socratic approach to lead students, it is hoped, toward an understanding of legal doctrine. Classes often focus, at least in the beginning of the year, on concepts that are obsolete in many jurisdictions, such as estates in land and demurrers. Consequently, a student's original perception—that lawyers spend their days making eloquent speeches in the court room—might be replaced by an equally inaccurate perception that lawyers spend all day holed up in a room reading legal decisions from prior centuries.

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[1] *Law and Order* (Wolf Films, Inc. 1990–present) (TV series).

[2] *Legally Blonde* (MGM Studio 2001, 2003) (motion pictures, versions 1 & 2).

[3] *The Practice* (ABC 1997–2006) (TV series).

Legal research and writing programs combat these conflicting images by creating legal writing problems that are both instructional and reflective of the real world of legal practice. A good legal writing problem serves the twin goals of teaching basic research, writing, and analytical skills, and introducing students to the professional life of a lawyer. One way to achieve these goals is to use one of the excellent literary accounts of complex litigation written for the enjoyment and education of the general public as a basis for legal research and writing assignments.[4] These books provide students with accurate, if sometimes painful, pictures of complicated litigation, along with the very real stories of people who are caught up in that litigation. Moreover, not only are such books filled with potential legal writing assignments, but the students who read them know that these assignments are drawn from the real-world experiences of actual lawyers.

For two years at Western New England College School of Law, we successfully used a literary account to acquaint our students with an authentic picture of litigation, while still teaching the rudiments of legal research and writing. The book we used was *Damages*, Barry Werth's gripping account of a medical malpractice case.[5]

This Article details our use of *Damages* in the first-year legal research and writing program at our school. Section I describes the pedagogical objectives that we sought to achieve by using the book and reviews the literature about the best practices in teaching. Section II describes the substance of the book and, briefly, how we used the book both to teach discrete topics and as a source of legal research and writing assignments. Section III details our evaluation of the use of the book and how it served to achieve our teaching goals. Finally, Section IV provides our conclusion and plans for the future.

I. PEDAGOGICAL OBJECTIVES

We decided to use *Damages* in our first-year legal research and writing classes to serve several goals. Primarily, we wanted to

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[4] Examples of such accounts include Jonathan Harr, *A Civil Action* (Random House 1995), the story of toxic tort litigation in Massachusetts, and Gerald M. Stern, *The Buffalo Creek Disaster* (Vintage 1977), the story of plaintiffs' litigation resulting from a mining disaster in a small West Virginia town.

[5] Barry Werth, *Damages: One Family's Legal Struggles in the World of Medicine* (Berkley Bks. 1999).

provide our students with a more accurate perception of litigation than is commonly provided in the media and popular culture. We wanted the students to see that litigation is not a process that begins at the outset of a one-hour television show or at the beginning of a two-hour movie and is resolved by the end, always with a predictable result and usually with the good guys prevailing. We wanted them to see that litigation is, instead, usually a long, sometimes tedious process, in which a case will, at times, lie fallow for months and at other times will consume the lives of all involved. We also wanted them to see that a lawsuit usually involves no clear heroes and villains and that the outcome is usually mixed. Finally, we wanted our students to see the hard, hard work and intense persistence that goes into being a good lawyer. We were intrigued with how the eagle-eye view of a lawsuit provided by *Damages* could help us achieve this goal.

Moreover, we believed that the use of a narrative like *Damages* could help accomplish the pedagogical goal of law schools everywhere: to teach students to "think like lawyers" by showing them how lawyers think. *Damages* is only one among a growing number of books devoted to telling "lawyer stories."[6] Using lawyers' stories in the law school curriculum is important because those stories show lawyers applying doctrine in the real world. While traditional courses using casebooks containing edited appellate decisions have obvious value in teaching doctrine and analysis, the use of well-written attorney narratives provides a realistic backdrop for exposing students to the practice of law. Using such narratives in the first-year legal research and writing curriculum allows students to step into the shoes of practicing attorneys, while learning the skills that they need to become successful lawyers.[7]

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[6] Jamison Wilcox, *Borrowing Experience: Using Reflective Lawyer Narratives in Teaching*, 50 J. Leg. Educ. 213, 224–229 (2000) (providing a discussion of and reference to several books).

[7] The use of attorney stories or narratives is not limited to legal research and writing courses. Lawyer stories also belong in the teaching of legal ethics. *E.g.* Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 Fordham L. Rev. 787 (2000). Attorney stories have been used to teach torts, Tom Baker, *Teaching Real Torts: Using Barry Werth's* Damages *in the Law School Classroom*, 2 Nev. L.J. 386 (2002), and civil procedure, Kevin M. Clermont, *Teaching Civil Procedure through Its Top Ten Cases, Plus or Minus Two*, 47 St. Louis U. L.J. 111 (2003). In fact, at the University of Missouri School of Law at Columbia, *Damages* has been used in a multidisciplinary seminar, encompassing such topics as writing, torts, and alternate dispute resolution. Melody Richardson Daily, Chris Guthrie & Leonard L. Riskin, Damages*: Using a Case Study to Teach Law, Lawyering, and Dispute Resolution*, 2004 J. Dis. Res. 1.

Next, we thought that the use of a narrative like *Damages* would illustrate for students the difference between writing as a lawyer and writing for other purposes. Our students often struggle because the skills that they need for legal writing are different from the skills that they needed for the writing they did in their undergraduate programs. Students often have difficulty understanding why the skills they used so successfully in other contexts are not working for them in their legal research and writing assignments.

A narrative account such as *Damages* illustrates why different writing techniques and styles are necessary for different audiences and forms of communication. Students can easily see the difference between an author's purpose in writing a book meant to tell a story to a popular audience and a lawyer's purpose in writing a brief, a client letter, or a motion for one of the clients in that same story. The students can further see that every author is required to make choices, whether the writer is an attorney writing on behalf of, or to a client, or an author making dramatic and narrative choices for a book's readers.[8] A nonfiction account of a real case thus can provide the opportunity to teach about the writer's voice and audience.

The next advantage of using a legal narrative is to provide a source of legal research and writing assignments. Many good ways exist to develop a legal research and writing problem; however, we hoped that using a narrative from a real case would add a level of genuineness to our assignments. We felt that by using *Damages* as a source of assignments, not only would we be able to achieve our usual goal of constructing writing and research projects of increasing complexity, but we would also be able to enrich that process by drawing upon a factual backdrop far better than any we could have created ourselves and one that students would know came straight from the real world.

Finally, we hoped that using *Damages* would give us the opportunity to enrich our curriculum beyond the rudimentary tasks of teaching research and legal writing. Legal narratives provide the opportunity to discuss topics based on the social issues presented by the narrative facts, as well as topics related to broader lawyering issues.[9] Topics may include developing a theory of the

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[8] Melody Richardson Daily, Damages *as Narrative*, 2004 J. Dis. Res. 21, 21.

[9] We were able to discuss what happens when something goes wrong in the provision of health care and there is no clear answer as to why. In this context, we discussed tort law

case, finding an expert witness to support that theory, handling ethical issues that arise during the course of litigation, addressing quandaries presented by the settlement process, and grappling with difficulties that arise when clients come from a different cultural or economic class than the lawyer.[10]

II. DESCRIPTION OF THE BOOK

Damages is the story of a childbirth that went horribly wrong. In April 1984, Donna Sabia went to Norwalk Hospital in Connecticut to deliver twin sons. Her pregnancy until that point had been uneventful, but after a brief and tumultuous labor, one of the twins, Michael, was stillborn. The other, "Little Tony," was born with brain damage so serious that it left him severely disabled.[11] He is blind and cannot walk, talk, understand language, or even perform the most basic self-care.[12] Werth recounts the story of the birth and the ensuing medical malpractice litigation in riveting detail. He reports the perspective of all parties involved in the litigation: the twins' parents, the obstetrician who delivered the twins, the hospital executives, and the nurse and nurse-midwife involved in the birth, as well as all the attorneys involved in the complex litigation. The book follows the litigation from its inception, two and one-half years after the twins were born. It then tracks the case through the discovery process, including multiple expert depositions, two mediation attempts, and final settlement of the case for over seven million dollars.[13]

At the end of the book, the medical cause of Michael's death and Little Tony's disability remains unknown. All aspects of the litigation, however, are fully explored. Werth reveals, for example, the impact of the lawsuit on Donna and Tony Sabia's marriage and their struggles to raise their disabled child. Werth also focuses on the disruption to the life and career of the obstetrician, Maryellen

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and whether it represents the best way to provide for individuals who suffer bad medical outcomes**.**

[10] *See* Charles R. Calleros, *In the Spirit of Regina Austin's Contextual Analysis: Exploring Racial Context in Legal Method, Writing Assignments and Scholarship*, 34 John Marshall L. Rev. 281 (2000) (discussing the value of including diversity in law school assignments).

[11] Werth, *supra* n. 5, at 14–20.

[12] *Id.* at 245.

[13] Dr. Maryellen Humes, the obstetrician, settled the claim against her for $1,350,000, almost the entire amount of her malpractice insurance policy. *Id.* at 212. Norwalk Hospital settled its claim separately following mediation. *Id.* at 365.

Humes, who delivered the twins but was involved in Donna Sabia's care for less than two hours after the phone call alerting her to come to the hospital.

Throughout the book, the parties and their attorneys grapple with questions that should interest any aspiring lawyer, including the role of truth in a medical malpractice lawsuit, the effect such lawsuits have on medical malpractice insurance coverage and how a doctor practices medicine, how the amount and availability of liability insurance can drive a lawyer's strategy, and the ethical and professional questions faced by the lawyers for all parties at each juncture of the litigation. The book also offers a very readable, nuts-and-bolts dissection of complex litigation, and provides the uninformed reader with a full picture of the way those lawsuits operate.

We were able to accomplish our primary goal—giving our students a true-to-life vision of litigation—simply by having them read the book. *Damages* captures the highs and lows of litigation in a way that no number of lectures or personal anecdotes could. By immersing the reader in the personal lives of all the parties—lawyers, plaintiffs, and defendants alike—the author provided a picture of litigation that is missing from the innumerable appellate decisions that students read during their first year of law school.

Our goal of enriching the curriculum was also largely accomplished by having the students merely read the book. Once the students had read *Damages*, we had a common point of reference for discussion of any number of topics, from the structure of the courts, to civil procedure, to issues of professionalism, to the benefits of alternate dispute resolution.[14] This commonality gave us the opportunity, when we were teaching the basics of the legal system during orientation, to refer the students to an example with which they were all familiar. We also used the book in our orientation sessions that focus on professionalism. For example, during orientation, we divided the students into small groups for discussion. The issues raised in *Damages* provided a springboard for discussions about the ways that lawyers do behave, the ways that lawyers should behave, and the overall purposes of the American system of justice. A book like *Damages*, which contains so many am-

[14] We achieved this by having incoming students read the book over the summer. This was effective for two reasons. First, because *Damages* is 375 pages of often dense reading, the students benefited by getting it out of the way before they began their daily reading assignments for class. Second, when students arrived at orientation, we already had that common point of reference available.

biguities, is ideally suited for encouraging good discussions on these issues.

Throughout the year, we brought the book into our discussions of many issues raised in class. For instance, during a negotiation exercise, we reminded the students of the two mediations in the book and the way that the approaches of the two different mediators led to two very different results. We also used the book to discuss questions of litigation strategy, the management of witnesses, and the general ebb and flow of litigation. The book provided a common point of reference, which the students knew was genuine, to serve as a basis for these discussions. Later in the first year of this program, we further enriched our curriculum by inviting author Barry Werth to present a lunchtime lecture. He gave the students insight into his writing of the book, his own opinions about the lawsuit, and the fate of the Sabias since the book was published, thus satisfying many points of the students' curiosity.

As appealing as these uses were, our main use of *Damages* was as a source of legal writing and research assignments. We used *Damages* as an assignment source because we thought that the students would see these assignments in a different light than they do other first-year assignments, which they might wrongly believe are purely academic exercises chosen to accomplish vague or unimportant goals. We believed that knowing that the assignments came from real problems faced by real people during the course of litigation would help the students see the important role of legal research and writing in success in litigation and their need to master those skills.

We had no difficulty developing assignments from the contents of the book. The very filing of the Sabia case provided us with an excellent series of beginning assignments. The students know from their reading that the Sabias did not consider suing Dr. Humes or the hospital immediately after the birth. To the contrary, the Sabias were grateful for the sensitivity that they believed the medical personnel showed them in the aftermath of the tragedy. Donna Sabia went so far as to bring Little Tony into the hospital to show him off to the nursing staff.[15]

Their attitude changed after Donna Sabia attended a support group for parents of a disabled child and met another mother whose child had been delivered by Dr. Humes. This mother, who had been embroiled in a messy lawsuit with Dr. Humes, strongly

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[15] *Id.* at 29–30.

urged Donna and Tony to consult with her lawyers. The Sabias followed her advice, but not until two and one-half years after Little Tony's birth.[16] Consequently, the first issue in the Sabias' lawsuit was whether the statute of limitations barred the malpractice claim.

We were able to devise three assignments from the Sabias' case, each building upon the other, to help our students develop rudimentary research and writing skills. Prior to using *Damages*, our first legal research and writing assignment had almost always been to write an analysis of a fairly straightforward statute. We find this provides students with a relatively easy way to jump into legal analysis and communicate that analysis on paper. The statute-of-limitations problem that arose at the beginning of the Sabia case allowed us to use the lawsuit portrayed in *Damages* without departing from our usual plan. For the assignment, we simply had the students find the Connecticut statute of limitations and write a one- or two-paragraph memorandum about whether the Sabias' action was time-barred, and if not, how long the law firm representing the Sabias had to file the case.[17] The students simply had to find a statute, read and interpret it, and report their findings in writing.

Prior to using *Damages*, we typically added a level of complexity to our next assignment by requiring the students to do the more advanced task of synthesizing a statute with cases. Again, we did not have to depart from this plan because of our decision to use *Damages* as a source for the assignment; however, this time, we did have to depart from the plot of the book. We created an imaginary character who attended the same support group as Donna Sabia. A newspaper article alerted her to the possibility that her child's disability was related to medication she had been prescribed during her pregnancy. Because the child was already four years old, the students had to interpret case law to determine if any exception exists to the three-year statute of repose that Connecticut imposes on malpractice actions.[18] While the answer was straightforward, this assignment required the students to

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[16] *Id.* at 37–45.

[17] The Connecticut statute provides that parties alleging medical malpractice have two years from the date of the incident, the date of discovery of malpractice, or the date that malpractice reasonably should have been discovered in which to bring a suit. The statute also contains a three-year statute of repose that bars all claims brought over three years after the date of the incident. Conn. Gen. Stat. Ann. § 52-584 (West 1991).

[18] *See id.*

read unedited cases to determine whether the suit could be brought. The students were required to communicate their answers and their reasoning in writing to a fictional senior partner in a law firm representing the child.

The final and most complicated assignment in this trilogy related to an issue that the actual Sabia litigation addressed: whether the Sabias' suit was timely even though it was brought more than two years after Little Tony's birth. The "discovery rule" is written into the Connecticut statute of limitations, and a number of appellate level cases in the state provide a good interpretation of the rule.[19] Generally, our goal with our third assignment is to force the students to cope with a more complex fact pattern and both to find and to use a number of cases that are either analogous to, or distinguishable from, the case that they are handling.

Using *Damages* for this fairly routine first-year assignment provided some additional and interesting intricacies for the students. Typically, in an assignment of this type, we would give the students a fictional narrative that included limited facts, such as those relating to the reasonableness of the Sabias' failure to recognize that malpractice might have caused Little Tony's injuries until he was over two years old. Instead, however, we had the students glean the facts relevant to discovery from the text of *Damages*.

By employing *Damages*, this assignment more closely paralleled the practice of law than our usual canned provision of the facts to the students. Werth included in the book excerpts from both Donna and Tony Sabia's depositions in which they testified about how their original faith in their doctors was transformed into their ultimate conclusion that Little Tony had been harmed by medical malpractice,[20] and the students had to derive the facts from those depositions. While this method of deriving facts had the disadvantage of being more difficult for the students, it had the distinct advantage of showing the students how lawyers gather facts and then put them together to construct their arguments and legal theories. It also helped us accomplish our goal of illustrating that the students must tailor their writing for the audience who will receive it. Many students were tempted to use the dramatic and informal writing style that Barry Werth used in conveying the

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[19] *See e.g. Taylor v. Winsted Meml. Hosp.*, 817 A.2d 619 (Conn. 2003); *Burns v. Hartford Hosp.*, 472 A.2d 1257 (Conn. 1984).

[20] Werth, *supra* n. 5, at 87–103.

story of Little Tony's birth and its aftermath. We were able to show them how this writing style was not necessarily appropriate in a legal memorandum.

Taken together, these three statute-of-limitations assignments accomplished our pedagogical goal of giving the students a growing understanding of statutory interpretation and the need to synthesize statutes and cases when solving a particular problem for a client. We hope that they also gave the students an understanding of why statutory interpretation and legal synthesis are so important and how they fit into the course of litigation. The statute of limitations was especially important in this set of assignments because we reminded the students that if the lawyers were unable to show that the Sabias complied with the filing deadline, it would be fatal to their entire claim.

We also used *Damages* for one more research and writing assignment in both years that we have used the book, though we significantly changed the assignment in the second year. The first year that we used *Damages*, we had the students write a longer objective memo stemming from a claim of negligent infliction of emotional distress (NIED) advanced by the Sabias' lawyers on behalf of Donna Sabia. In the text, the claim remained subject to an undecided motion for summary judgment when the lawsuit was settled.[21] Consequently, the issue was never resolved. This issue caught our attention, not just because it was unresolved in the book, but because NIED writing problems are common in first-year legal writing curricula. Such problems are well-suited to the first-year class because NIED claims generally require the students to analyze a number of relatively straightforward factors and apply them to the factual situation presented to them.[22]

The problem generated by *Damages*, however, as is often the case when real-world problems are used in an academic setting, turned out to be somewhat more than we bargained for. Rather than providing a standard first-year factor-analysis problem, it presented a number of issues of first impression that are being

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[21] *See id.* at 331.

[22] The tort of bystander NIED was first established in *Dillon v. Legg*, 441 P.2d 912 (Cal. 1968). In that case, the California Supreme Court determined that recovery was available if the plaintiff suffered emotional trauma from observing an accident, and (1) the plaintiff was near the scene the accident; (2) the shock resulted from a contemporaneous observation of the accident; and (3) a close family relationship existed between the plaintiff and the primary victim of the accident. *Dillon*, 441 P.2d at 920. Other jurisdictions have adopted this or similar standards. *See e.g. Dziokonski v. Babineau*, 380 N.E.2d 1295 (Mass. 1978); *Sinn v. Burd*, 404 A.2d 672 (Pa. 1979).

vigorously litigated in Connecticut's trial courts, without guidance from the appellate courts. First, although in *Damages,* the lawyers involved in the case viewed the claim as a case of bystander emotional distress, the lower courts in Connecticut have engaged in a continuing dispute about whether a woman giving birth to her children is truly a bystander to the event. Most lower courts have determined that the woman is not a bystander and that an NIED claim involving childbirth should be viewed as a direct injury.[23] Direct-injury NIED claims in Connecticut are analyzed in a completely different way than bystander cases. Thus, the students' first task was to determine whether this was a case of direct victim or bystander NIED, a difficult assignment given the lack of binding appellate authority.

Then, because a number of trial level cases do view childbirth NIED claims as bystander cases,[24] the students had to analyze whether recovery was available to Donna Sabia under this theory. This raised yet another thorny problem for first-semester law students because of the unsettled nature of this aspect of the law in Connecticut. The lower courts disagree about whether bystander NIED claims are cognizable when the plaintiff's distress stems from witnessing an event related to medical malpractice. Connecticut came late to the national trend of allowing bystander claims for close family members.[25] Nonetheless, dicta from a case decided before Connecticut adopted bystander liability makes it extremely unclear whether such claims are available in medical malpractice cases.[26] Connecticut's trial level courts have seen a spate of litigation about this issue, with about half of those courts deciding that such claims are available and half deciding that they

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[23] *See Smith v. Humes*, 1997 WL 435862 (Conn. Super. July 28, 1997) (collecting and citing cases); *Golymbieski v. Equia*, 1997 WL 297111 (Conn. Super. May 22, 1997).

[24] *See e.g. Turner v. Obstetrics & Gynecology Assocs. of Stamford, P.C.*, 2001 WL 1199850 (Conn. Super. Sept. 6, 2001); *Huhn v. Goldstone-Orly*, 2000 WL 226432 (Conn. Super. Feb. 10, 2000).

[25] In 1988, twenty years after California established the tort of bystander NIED, see *supra* note 23, Connecticut declined to follow California's example when considering such a claim in the medical malpractice context. *Maloney v. Conroy*, 545 A.2d 1059, 1061 (Conn. 1988). *Maloney* involved a woman who watched her mother die over the course of several days due to alleged malpractice by her doctors. 545 A.2d at 1060. The Connecticut Supreme Court did an about-face eight years later in *Clohessy v. Bachelor*, 675 A.2d 852 (Conn. 1996). In that case, which involved a mother who watched as her child was struck and killed by a car, the court decided to follow the national trend and adopt the tort of bystander NIED. *Clohessy*, 675 A.2d at 860.

[26] *Maloney*, 545 A.2d at 1063–1064.

are not.[27] This lack of resolution in Connecticut courts added significant difficulty for the students, both in analyzing the problem and in organizing their memos.

This difficulty was not entirely bad, however. While the problem was more difficult than we initially anticipated, it provided an excellent lesson in the importance of precedent along with the persuasive value of trial level cases. The students witnessed the disarray that results when a hotly contested issue remains unresolved at the appellate level. They also were able to weigh the relative value of various trial level decisions. Some of those decisions reflected hasty and shallow analysis by the courts, whereas others involved a careful study of precedent and thoughtful dissection of the law. Both types of opinions gave the students a model—first of what their work should not look like, and second of what they should aspire to in their own work.

In the end, we decided that this assignment, while valuable, was too complex for the place and time we had given it in our curriculum. The students received the assignment at the end of their first semester, while their mid-term exams were looming. The assignment demanded much of their time and intellectual energy at a point when they were anxious to begin preparing for their exams. Because of these concerns, we recast the assignment as the persuasive brief that forms the basis of the students' year-end moot court argument. We also simplified the problem by making the father, not the mother, the plaintiff in the NIED claim. This eliminated the problem of having to determine whether the plaintiff was a bystander or a direct victim of the NIED: the father clearly was a bystander. Thus, we eliminated this complication while retaining the complexity of the problem and the breadth of the nonbinding authority. Fortunately for our teaching goals, the Connecticut Supreme Court has not yet resolved whether bystander NIED recovery is available in a medical malpractice case.

III. EVALUATION

The advantages of working with a narrative like *Damages* were quite apparent throughout both years that we used the book. It provided a real-life picture of litigation to brand new members of the legal profession. It also raised numerous issues involving legal

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[27] *Compare Turner*, 2001 WL 1199850; *Huhn*, 2000 WL 226432 (declining to follow *Maloney*), *with Golymbieski*, 1997 WL 297111 (following *Maloney*).

ethics, professionalism, and justice in the adversarial system. Students were able to view their clients as whole people, with problems and lives beyond the litigation. The students also knew that the legal research and writing problems we used were completely authentic and, in fact, had been raised and argued by real lawyers in a real case. *Damages* also provided a backdrop for many conversations throughout the year about a wide variety of topics: mediation and negotiation, zealous advocacy, and stereotypes of all sorts of people from the working-class Sabias to the polished hospital executives.

One unanticipated benefit of working with *Damages* was that it has great value in the overall curriculum and, thus, can help integrate legal writing instruction with doctrinal instruction. *Damages* contains lessons for many law school classes besides legal research and writing. It can be used in torts, insurance law, health law, professional responsibility, alternate dispute resolution, and civil procedure, just to name a few. A number of our faculty at Western New England College read the book after we assigned it to the first-year students. Of those, quite a few committed themselves to discuss the book in their classes. Shared use of a text fostered both greater collegiality and greater collaboration between doctrinal and legal research and writing faculty.

Working with a narrative text did present some drawbacks. The biggest of these was "Sabia fatigue." At a certain point in the semester, the students were anxious for assignments that did not involve the Sabias or medical malpractice. This problem was probably exacerbated by the depressing and emotionally intense nature of the Sabia case. We addressed this in the second year of our use of the book by assigning the first three *Damages*-related problems in the first semester and leaving the larger assignment on NIED until the end of the second semester. In between, we used lighter assignments, for instance, a copyright problem pitting the creators of South Park against the creators of Star Wars.[28]

Even the weariness over the Sabias' case provided us with teaching moments. We asked our students to remember that most litigation lasts years, rather than a semester. We also reminded

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[28] The Star Wars assignment was inspired by Susan McClellan and Connie Krontz's presentation on July 1, 2002, at the 2002 LWI Conference in Knoxville, Tennessee. The presentation was entitled "Effectively Teaching Arguments: What Works and What Doesn't: Teaching Coherency in Three-Part Harmony." Susan McClellan is the Director of the Externship Program at the Seattle University School of Law, and Connie Krontz is a member of the legal writing faculty at the Seattle University School of Law.

them that when they enter the profession, they will not only have to write motions and memos about clients; they will have to meet with them and answer their phone calls as well. In other words, in addition to legal research and writing, new lawyers must learn patience and fortitude.

We were also somewhat concerned that the book provides too cynical a picture of the practice of law for new law students who are, we hope, somewhat idealistic and committed to obtaining justice for their clients. *Damages* portrays the adversarial system in full swing. For instance, when the respective attorneys searched for experts, they did not search for expert testimony about what really happened; rather, they searched for experts who could assign the blame where it was most advantageous for their clients. Similarly, none of the lawyers seemed particularly concerned that Dr. Humes settled her case for almost her entire insurance policy limit, even though the evidence developed during discovery appeared to exonerate her from any responsibility for the bad outcome.

Despite our concerns, few of the students seemed upset to learn that litigation would not necessarily lead them on a search for the truth. To the contrary, this seems to be one area in which the media has successfully educated the public on the role of the lawyer. Students typically believed that the *Damages* lawyers acted appropriately, as long as they vigorously represented their clients and stayed within the bounds of the ethical rules. Most students seemed quite comfortable with the prospect of fulfilling a similar role in the future.

IV. CONCLUSION

The use of *Damages* enriched the first-year curriculum sufficiently to justify using it for a third consecutive year, though we continue to tweak the way in which we use it. In fact, we look forward to the possibility of using it four years in a row so that every student in either the part-time or full-time program at Western New England College will have the book as a common point of reference. Our use of *Damages* as a basis for first-year legal research and writing assignments will leave our students with both the research and writing skills they need for their new profession and a more accurate picture of the real world of the practicing lawyer.