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The law school calls this course "Torts" (or "Contracts", or "Property" — my advice is not course-specific), but a more accurate name might be "An Introduction to Torts, Lawyering and the Legal System." Although we will study the substantive law of torts — that body of law which provides remedies for civil wrongs not arising from contract — we will also explore the larger legal culture that provides the context for the tort system's operation. Our central concern will not be "What is the law of torts?" but rather "What is it that *lawyers* do about problems involving tort law?" In addressing that question, we will necessarily talk in a general way about the problem-solving activities of lawyers and about the legal culture in which they function.

If we think of the legal culture as a foreign culture, then torts is a subculture of that foreign culture. When we ask "What do lawyers do about tort problems (and other kinds of legal problems)," we may be pursuing either of two concerns. Our question can reflect either the detached scholarly inquiry of an anthropologist or the intensely personal curiosity of a potential member of the culture. I will assume throughout this course that most of you are driven by a desire to become members of the tribe rather than anthropologists. The emphasis of the course, therefore, will be on helping you translate your existing problem-solving skills into those necessary for survival and success in the legal culture.

The emphasis on learning how to function as a lawyer should not

* I wish to thank my former colleague, Jerry Lopez, for all that I learned from him about teaching and storytelling in our many discussions and varied teaching enterprises.

distract you from the recognition that you will also be learning about this new culture as a critical observer. That is, in order to be a good lawyer and intelligent critic of the legal system, you must not only learn to operate within the system (become a member of the tribe), but you must be able simultaneously to function as an anthropologist — to view the system analytically and critically from the outside. Because lawyers constantly move back and forth between the legal culture and the larger society and because much of their work involves explanation of the legal culture to those outside the tribe, they must retain an ability to see the legal culture as an intelligent outsider would see it. Some of you may decide in the end to become only anthropologists or critics of the legal system and decline membership in the tribe. All of you, I hope, will retain throughout your lives some anthropological curiosity — some interest in the legal system as a complicated and fascinating aspect of human existence — beyond any immediate professional concerns. To that end, you should view your legal education as a continuation of your prior general education, and not just as professional training.

I. The Lawyer as Storyteller

I have stated that our emphasis in this course will be on exploring what it is that lawyers do when they represent clients. Lawyers are essentially problem-solvers; they are simply problem-solvers who have unique access to a special culture — the legal culture. During the next several years, you will learn a lot about the legal culture generally and about what lawyers do within that culture. You will, I hope, eventually develop your own framework for thinking about law and lawyers. For the moment, however, most of you know very little about the legal culture and do not have a clear picture of exactly what lawyers do. Let me suggest one way of thinking about what your new tribe does that may help you connect your new professional identity with all that you already know about the world.

A lawyer is a storyteller.[1] To be sure, he is an instrumental story-

1. For a full account of the lawyer as storyteller, see Lopez, *Lay Lawyering*, 32 UCLA L. Rev. 1 (1984). The storyteller metaphor emphasizes the persuasive and interpersonal aspects of a lawyer's work; some may see it as excessively downplaying both the view of law as formal rules and the lawyer's need for technical accuracy and expertise. I believe that the doctrinal and technical aspects of lawyering are already overemphasized both in students' minds and in legal education generally, and I therefore deliberately chose a metaphor which both describes law as involving persuasion rather

teller — he wants something from his audience. But every storyteller wants something from his audience — attention certainly, but also a reaction — laughter, tears, shock, joy, perhaps even financial rewards. Lawyers want attention from their audience, too, but usually in order to obtain legal remedies or non-legal solutions for their clients. They must, therefore, learn to tell a story that will elicit the desired reaction. They must persuade the audience, whether judge, jury, opposing party, government official, or other person in control of the desired remedy, to grant whatever it is the client desires or needs. The story may be a simple one — "X was careless, X hurt my client, X must pay the damage" — or a much more complicated one — "The language in this agreement may appear to mean X, but once I tell you about the context of the agreement, the expectations of the parties, the customs of the trade, the nature of the technology involved, and the consequences of a literal interpretation, you will see that the language can only mean Y" — but it must make sense as a story. That is, in both human terms and legal terms, the story told by the lawyer must develop a narrative or paint a picture that is plausible and that suggests to the audience some obvious, indeed necessary conclusion — what the client wants.

The lawyer's job, then, is to "make sense" out of the client's problem, first to his own satisfaction, and then in a way which will persuade the relevant audience to grant the desired remedy. How does he do that? Most likely by asking himself a series of questions. First, do I really understand what happened, or is happening, or is about to happen in my client's world? Do I understand why whatever is happening is a "problem" for my client? Do I understand as well as possible the identity and motives of the other people involved? These questions all have two aspects: do I have whatever information is available, and can I make sense out of whatever is going on in my client's situation? Making sense out of the client's human story requires no special legal expertise, but it is in many ways the most important part of what a lawyer does.

As the lawyer works himself into the client's world and tries to understand the client's situation and concerns, he must also, of course, "make sense" out of the client's story in legal terms. Several legal stories may fit the client's situation, and each story will have a different plot and different ending. The legal story which appears to fit the facts best may, from the client's point of view, have an unhappy ending. The

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than compulsion and emphasizes the audience-oriented aspect of most lawyering.

lawyer must then find or develop a more promising story. He may do so by thinking about the facts in a different way, investigating previously unexplored aspects of the situation, or perhaps rewriting one or more legal stories to satisfy the conventions of legal narrative but provide a happier ending for his client.

Finally, the lawyer in developing his human and legal story must also keep his various possible audiences in mind. A judge will typically need to hear a rather highly-structured, tightly-crafted, conventionally-acceptable legal story before he can grant the desired remedy; the other party to a negotiation may find a more free-wheeling, open-ended narrative more appealing. In each case, however, the audience must hear a story which not only moves but compels the audience to end the story in a particular way — by granting the desired remedy.

As the storytelling metaphor suggests, your task during the first year of law school has several aspects. You presumably come equipped with a basic understanding of human stories — the psychology, history, politics and philosophy of the human race generally, and of American culture particularly. The more you know about human behavior and culture, the better storyteller you will be. You must now learn about the structure and values of the legal culture and you must become familiar with a few basic legal stories that underlie much legal storytelling. You must come to understand the role and nature of a special audience — the court. Finally, you must begin to identify and practice, over and over, the basic skills you need as a legal storyteller.

II. Legal Stories and the Legal Audience

A lawyer's primary task is translating human stories into legal stories and retranslating legal story endings into solutions to human problems. For our present purposes, we can define a legal story as any story that can be told to the specialized audience that we call a court. Individual courts, however, are not generally permitted to decide what stories they will hear; they are required to listen to all proper legal stories and are barred from listening to stories not in the existing legal repertoire.[2]

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2. My colleague Stephen Yeazell has previously noted the highly constrained nature of the legal story:

> As readers, all of us sort narratives for sheer convenience; we can more readily follow, think and concentrate less, as soon as we recognize a familiar pattern. At its simplest, sorting complaints into contract, negligence,

Legal stories have both procedural and substantive elements. Not only must a client's story indicate that the client has come to the right court at the right time, but the narrative itself must satisfy some rather rigid requirements of plot and character. If the story told does not resemble some previously approved legal narrative, the court will not hear it. If the lawyer says to the court, "I am going to tell you a story about a person whose immoral conduct offends my client's moral sensibilities, and I want you to enjoin that person's conduct or make him pay damages to my client," the court will say, "I am sorry; I am not going to listen to your story — there is no story about moral offense in my approved catalog and I cannot grant you legal relief." In other words, the client may have a problem, but it is not one the court can do anything about. On the other hand, if the lawyer says to the court, "I am going to tell you a story about my client's neighbor, who is producing sulphur dioxide in his back yard, thus offending my client's nose," then the court will say, "Aha! The nuisance story! That is a story I can listen to — tell me all about it."

The first story, if presented in a complaint filed to commence a lawsuit, would be vulnerable to a demurrer: the other party to the suit could get the lawsuit dismissed without the client's story ever gaining an audience. The second story would survive a demurrer, and the client would have a chance to tell his entire story to a judge or jury. Of course, he would not necessarily win in court; the other side might tell a better story. But he would at least have gotten the court's attention, and he would have an opportunity to try to persuade the judge or jury — at some length — that his version of the world was accurate and that the desired remedy should be granted.

Before a lawyer can analyze his client's problem, predict legal outcomes, or suggest solutions, he must translate the client's situation into one or more legal stories. Since every client's problem is unique, the lawyer can only give legal advice if he can transform the client's unique situation into a recognizable legal story that has an established plot and

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> fraud, battery and the like performs a similar function: it helps the reader to organize the story. Writers who omit the closing-circle ending in what otherwise appears to be a comic genre may excite critical acclaim — at worst they risk obscurity; but generic divisions matter in law far more than that. The plaintiff who alleges breach of contract but fails to allege that it caused the loss of which he complains suffers a worse fate: only complaints that meet conventional generic standards will be heard. The novel tale, if it seeks relief from a court, must mask itself as an old favorite.

Yeazell, *Convention, Fiction and Law*, 13 NEW LITERARY HISTORY 89, 92 (1981).

ending. While legal stories come in variant forms and sometimes have multiple endings, it is only the lawyer's ability to see how unique, idiosyncratic human situations can be recharacterized to fit a much smaller set of acceptable legal narratives that enables him to give legal advice, make legal arguments, and otherwise function as a lawyer.

The lawyer may sometimes conclude that there is no legal story that even remotely resembles the client's situation; some human stories cannot be told in the legal culture. In other cases, translation into a legal story may so distort a human story that the client abandons any attempt at a legal solution. But the story form does allow many of the idiosyncratic elements of human stories to be preserved in the translation process, and legal narratives often communicate meanings that would be legally taboo if explicitly argued to a legal audience. Indeed, one aspect of legal change is the gradual incorporation of formerly taboo human stories into the legal repertoire.

The transformation of human stories into legal stories commences with the initial client interview and, in the litigation context, concludes with the rendering of a final, written decision by an appellate court. It is usually a long way (both chronologically and conceptually) from the first conversation with a client to the commencement of a lawsuit and usually even longer to the final decision by an appellate court. At the time of the initial interview, however, a good lawyer is already likely to be considering, in the back of her mind, both what the complaint might look like if the lawsuit were ever filed, and what the ultimate outcome might be in an appellate court.[3] In other words, while both lawyer and client will typically want to and should try to solve the client's problem without litigation, legal problems and their possible solutions are typically analyzed, bargained over and disposed of in the shadow of a single question, "What is a court likely to do if this dispute is ever litigated?" From the initial interview forward, the lawyer will have at least two audiences in mind, the court and whatever more immediate audience might solve the client's problem without litigation.

The legal stories with which you will become familiar are, thus,

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3. This account of the lawyer as storyteller focuses on litigation because the course setting is Torts. The lawyer as planner and counselor is equally concerned with the outcome of legal stories even though her goal is to plan and advise so as to avoid any legal disputes. What a court would do if a deal did give rise to dispute significantly frames the way the deal will be structured, and the risks of adverse legal outcomes have an important impact on the perceived value of a deal or proposed legal arrangement.

built around a single requirement — what does a court as audience need to see in order to grant a particular remedy? Or, in the client's terms, what is the likely ending of the legal story or stories that we might tell in this case? While most of you, no doubt, have some sense of what makes a good story in human terms, you are probably not yet familiar with the catalogue of accepted legal stories in various areas of the law. One of your primary tasks in law school is to learn the legal stories that are acceptable and persuasive in various legal subcultures, and to practice translating a variety of human problems into standardized legal narratives. While our particular focus will be legal stories in the torts subculture, we will also consider the general problems involved in the translation process.

III. Legal Stories and Legal Cases

The translation of human to legal stories typically takes place for lawyers in the context of a particular case. "Case" has two meanings for lawyers. It means, first, the problem-solving task associated with a particular individual who has sought help from a lawyer. Thus, when we talk about the "Howard case," we mean to refer to whatever it is that brought Mr. or Ms. Howard to see a lawyer in the first place. "Case" in this sense is client-oriented and calls to mind an individual and his or her worries, goals and situation. A case is, in other words, a human story.

In its second meaning, "case" refers to the published opinion of a court rendering a decision in a particular litigated dispute. *Palsgraf v. Long Island R.R. Co.*[4] is a case in this second sense. When we refer to the *Palsgraf* case, we are usually focusing not on the problems of poor Helen Palsgraf, but rather on the decision and reasoning of the court as reflected in its published opinion and its significance for other similar cases which we might have as lawyers.[5] "Case" in this sense is doctrinally-oriented and calls to mind the substantive standards and institutional constraints affecting a particular audience — the judge — whose response is crucial to lawyers. A case is, thus, a legal story.

Since lawyers cannot function without clients, the importance of

4. 248 N.Y. 339, 162 N.E. 99 (1928).

5. Helen Palsgraf's individual situation is described at some length in "The Passengers of *Palsgraf*," in J. NOONAN, PERSONS AND MASKS OF THE LAW 111-51 (1976), which I assign to my Torts students to help convey the distance between a human "case" and a legal "case."

individual client cases is self-evident. The discussion of storytelling above suggests why published cases are so central to a lawyer's problem-solving activities. Cases (in the second sense) record the stories that have been told in the past, with sad or happy endings, and they thus represent the limits on and the possibilities for the stories that lawyers can tell to future audiences. It is important, however, to understand what cases are and are for, not only as a future lawyer, but as a present law student. Cases have a central role in legal education as well as in the legal profession. The "case method" has been a fundamental element of legal education for at least 80 years, and your ability to participate fully in your own education depends on your understanding the use of cases in the classroom.

IV. Storytelling and the Classroom

Many law students initially find law school studies and classroom discussions somewhat mysterious. They are asked to read numerous published cases and are expected to analyze and discuss those cases intelligently in the classroom, but their assigned reading typically does not provide an overall framework for the individual cases, and the purpose of the ongoing class discussions is rarely explicitly explained. There have been surprisingly few attempts to articulate what it is we are trying to do in law school classes, particularly in the traditional first-year courses. If asked, many first-year teachers would say something like, "Oh, we are trying to teach them the basics of tort (property, contract, criminal) law, and, more importantly, we are trying to teach them to think like lawyers." If one then asks, "How, exactly, *do* lawyers think, and what is the connection between reading contracts cases and learning to think like a lawyer," one frequently gets no answer at all. While the task of explaining legal pedagogy is not an easy one, I think it is possible to be more explicit than we have traditionally been about the purpose of assigning and discussing cases.

As I have stated, I believe that the purpose of legal education is to introduce you to the legal culture generally, to provide you with a basic repertoire of accepted legal stories, and to train you in the art of legal storytelling. Our use of legal cases serves all three purposes, in ways that I think can be articulated much more than is done at present.

A. Learning the Legal Stories

Most new law students focus almost exclusively on the second pur-

pose stated above — learning specific legal stories. They come to law school to learn legal rules, and when they take Torts, they expect to learn the rules of torts. When they read torts cases, they assume they are expected to derive one or more rules of tort law from the case. When they find that reading cases is an inefficient or frustrating way of learning rules, they turn to *Gilbert's*, *Emmanuel's*, or *Sum and Substance*. Their view that rules are very important is to a large extent confirmed by their initial experience of law school exams. Although much time in class is spent exploring the legal culture and discussing or practicing the art of legal storytelling, first-year exams typically test almost exclusively the student's familiarity with basic legal stories in the course area. The skill of translating human to legal stories is tested somewhat by the need to recognize legal issues in very brief and artifically preprocessed fact situations which bear little resemblance to real human stories. The art of storytelling is hardly tested at all; most faculty members grade primarily on the skills of issue-spotting and making a few basic arguments, not on the overall quality of factual and legal argument or on highly persuasive presentation of coherent legal stories.[6] Overall familiarity with the legal culture and its values is not explicity tested in most exams. (For a more thorough discussion of the failings of — and proposals for — the law school examination process, see Janet Motley's article, p. 723.)

For exam-taking purposes, student focus on mastering the basic legal stories in the required course areas is sensible. Most students do come to understand that learning rules in the abstract does not give them good control over tort law or contract law, and that it is necessary to learn to recognize the recurring fact patterns which are merely summarized by doctrinal labels. They come to see that minor variations in legal stories can produce different endings and that no set of formal rules can capture completely the factual distinctions that compel those

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6. This conclusion is based on years of going over exam results with students and conferring with colleagues. *See also* Kelso, *The 1981 AALS Conference on Teaching Contracts: A Summary and Appraisal*, 32 J. LEGAL EDUC. 616, 636 (1982):

> Whit Gray and I remarked that, while professors attending an ETS-sponsored conference on grading Contracts papers said they did quite different things when grading exams, statistics indicated that they were doing pretty much the same thing. An analysis of that "thing" by Fred Hart, Steve Klein, and Bob Linn said that it was grading for discovery of issues and for arguing both ways on those issues while driving toward a conclusion.

Id., *citing* Linn, Klein & Hart, *The Nature and Correlates of Law School Grades*, 2 REPORTS OF LSAC-SPONSORED RESEARCH 32 (1970-74).

different endings. In the end, only practiced story-sense can help distinguish mistakes which excuse contractual performance from mistakes which don't count, or distinguish between negligent conduct which proximately causes harm and conduct which is "too remote".

Because most students understand that they are reading cases to master the basic legal stories, and that some discussion of those cases is necessary if they are to move beyond memorizing rules to developing the required "story-sense", this aspect of case use in legal education is usually understood by students and is the aspect of class discussion most likely to be explicitly discussed by faculty.

B. Exploring the Legal Culture

In addition to illustrating the basic repertoire of legal stories in contract or tort law, published cases provide general information about the legal culture. Cases tell much about the history and functions of legal stories and institutions, and provide substantial insights into behavior of clients, legal storytellers, and legally-relevant audiences. Although we could provide this information more directly by assigning texts and other secondary works, and we do so to some extent, most of the information you acquire about the legal system during your first year will come from cases and class discussion.

Thus, reading and discussing published cases, you are not only learning specific legal stories but are also exploring the legal culture of which such cases are artifacts. You might usefully think of yourselves as novice anthropologists, told to look at several dusty shards of pottery or the lower jaw of some indeterminate primate and asked to speculate about the entire culture behind the physical object you are examining. Published cases are just such dusty shards and remnants of complex, intractable, ambiguous human stories which have been filtered through a highly-constraining set of conceptual and institutional forms to appear as formal judicial opinions. Our exploration of the general legal culture will involve learning about the kinds of stories, roles and institutions which make up that culture, and, most importantly, exploring over and over again in different settings the interaction of highly-varied human stories with a relatively limited set of legal stories which both transform and are transformed by the human stories they are meant to reflect and resolve. Only by connecting the special concerns and values of the legal culture with the basic human concerns which they reflect can you fully understand the relationship between the legal culture and the larger society of which it is a part.

The use of cases to inform you about the larger legal culture is intended, therefore, both to provide you with information about the history and functioning of the legal system and to encourage you to identify the psychological, philosophical, historical, social and political components of legal stories. Some of the questions we ask during class discussion of particular cases reflect this general cultural perspective. What is the human story here? How did this problem come to be seen as one to be dealt with by the legal culture? What impact did the nature of the particular audience have on the way the story was told? What constraints affect the ability of specialized audiences like judges and juries to grant remedies, and are such constraints founded in history or in notions of institutional competence? Why are the legal stories that can be told about this case so limited? Why are they shaped the way they are? What do the legal stories that apply to this problem tell us about the society that produced these stories? Can we make up new stories? Who creates the legal stories for a particular society? Who can change them and when? We might ask these and similar questions about a single published opinion, and in discussing these questions we are exploring the entire landscape of the legal culture.

As suggested earlier, you should be interested in the general legal culture from two perspectives. Many of you have a substantial anthropological interest in law; your interest in the subject is a function of your general intellectual curiosity and your interest in continuing your education about the world. Most of you presumably have a more immediate need to become familiar with legal culture, since you aspire to membership in the legal tribe. Responding to your presumed desires, we introduce you to the legal culture primarily through cases because we are more concerned with immersing you in the ongoing activity of the legal culture than with providing you a good opportunity to stand back and see the culture whole from an anthropologist's point of view. Some law professors clearly see themselves more as anthropologists than as members of the tribe, and in their courses you may spend relatively more time developing critical and theoretical perspectives on the legal culture as a whole and relatively less time becoming familiar with the legal culture as if you planned to live there. Both perspectives are valuable, but unless you focus on their dual aspect, some class discussion may appear confusing or irrelevant.

C. Learning the Art of Storytelling

When we use case materials to teach you basic legal stories and to

explore the legal culture, we are using cases primarily for informational purposes; that is, we are asssigning the cases so that you can learn and understand and think about the doctrinal and cultural information they contain. As the storyteller metaphor suggests, however, law is not a collection of definitions and rules to be memorized and applied, but a culture consisting of storytellers, audiences, a set of standard stories, and a variety of conventions about the practice of the storytelling art. Law, in other words, is not something you simply learn about, but something you also learn how to do. In order to transform human stories effectively and persuasively into legal stories, you must not only learn about the conventions and values of the legal culture, you must internalize them and make them habitual. You must add to the human intuitions, which guide you through your everyday existence, a set of specialized legal intuitions that can guide you and your clients effectively through the legal culture when explicit signposts are few and far between. You must be able to speculate intelligently about all the possible meanings in legal stories and use those meanings to persuade different audiences to see the world as you want it seen. These are qualities which require not only intelligence and memorization of rules, but the acquisition and constant practice of a variety of skills.

Case materials not only provide information about legal stories and the legal culture, they provide the occasion for practicing the varied skills which are crucial to the legal storyteller. As indicated earlier, a legal storyteller must be able to make sense out of human stories which are confused, complex, incomplete, and therefore ambiguous. She must then be able to translate those stories into one or more legal stories that not only match her client's human story but have a happy ending. She must be able to identify what particular audiences need to hear and she must be able artfully to combine human and legal stories so that her particular audience will be moved to provide the happy ending she seeks. By reading and thinking about cases, discussing their underlying human stories, and listening to and telling a range of legal stories about a given situation, you are constantly practicing skills which will be important to you as a lawyer.

Before discussing the specific skills which you will practice by doing your class assignments and participating in class discussions, let me emphasize the difference between understanding law school as a place to acquire information and seeing it as a place to practice skills. First-year law school classes are more like practice sessions than were most of the classes you attended in college or graduate school. Although, as I have indicated above, you are learning a lot of new information in your

courses, they also contain a substantial component of skill acquisition and refinement. Reading, listening to and telling stories is intended to be an active, not a passive endeavor. You should be learning not only the content of the legal stories, but new ways of reading, and new ways of listening to and telling stories. In other words, class discussion is, in many ways, more like hitting a tennis ball against a backboard or practicing free throws than like reading or talking about tennis or basketball. Viewing class solely as a means of acquiring information about the legal culture is likely to lead to a high degree of frustration and hostility; an awareness that we are practicing lawyering skills by discussing cases may make class discussions more comprehensible.

I am sure that different law teachers implicitly emphasize different skills in the way they orchestrate class discussion. I will discuss briefly below the skills that I believe most faculty would agree are important, whether or not they have made a conscious decision to encourage the practice of those skills in their classes.

Lawyering as story telling

Making sense out of human stories. The cases in your torts book illustrate the spectrum of human stories with which lawyers deal in the area of torts, from simple auto accidents and slip-and-fall cases to professional malpractice, environmental pollution, and the complicated mass torts generated by modern pharmaceutical and high technology products. By exploring these stories in class, you become familiar with the range of problems which clients bring to lawyers rather than to other kinds of professional problem-solvers. Although it would be peda-

gogically more effective to provide live clients for this purpose, the practical and ethical problems of doing so appear insurmountable in the first year of law school. Clinical courses do provide you with the opportunity to interact with live clients later in law school, and limited role-playing exercises can be provided even in the traditional first-year classroom. For most first-year students, however, published cases provide the only client situations they confront.

Thus, published cases provide a range of specific fact situations to discuss during class in order to understand client problems and to explore possible solutions. They are simulated client problems with which we can practice problem diagnosis and client counseling and through which we can explore legal, ethical, and practical constraints on our problem-solving abilities. Since published cases are a pale substitute for the rich factual situations provided by live clients, we must use our imaginations and knowledge of the world to provide what is lacking. As we speculate in class about the human stories behind the brief fact statements in the cases, we find that different students and faculty members may have very different perceptions of any given fact situation. The need to use our imaginations to fill out the client stories behind the cases thus makes us sensitive to the ambiguities of a given set of facts, and we learn that every client situation can be approached in many different ways, with very different results. We also have a chance to explore what it means to be professional storytellers and try to identify some of the limits on our ability to tell other people's stories.

Making sense out of legal stories. One of the major skills taught during the first year of law school is how to read legal cases both accurately and creatively. In order to read cases intelligently, you must not only be able to understand the relationship between the human and legal stories involved, you must also be able to predict fairly accurately how other individuals, particularly other lawyers and judges, might read the same case. You can only learn this effectively by listening to other people, with values and perceptions different from yours, discussing the same cases which you have read. Why does a story which seems to you clearly to lead to one right conclusion seem so difficult or wrong to another person? What differences in experiences or values lead to the different perception, interpretation, or choice of outcomes? Class discussion allows you to listen to other intelligent people trying to read cases intelligently and exposes you dramatically to the variety of readings possible from a single case. As your reading and listening progress, you also begin to see that the traditional legal culture systematically favors certain kinds of interpretations and disfavors others.

The art of storytelling. Class discussion not only involves exploring the potential meanings of assigned cases, it also involves trying to tell persuasive legal stories about problems or hypothetical cases different from the assigned cases. In other words, we will practice using our understanding of decided cases to tell legal stories about cases not yet decided. Listen to your classmates. Do you find their suggested stories persuasive? If so, why? If not, why not? Why would another intelligent person who has read the same cases you have think this story persuasive? Again, different readings of the same cases, different values, different goals and experiences will produce different stories. Listening in class gives you a chance to speculate about why different people find different stories persuasive.

Because there are so many of you, you will spend much more time listening to other people tell stories than telling them yourself. But you need to practice telling legal stories. You speculate about a story which you think might be persuasive. Is it? If you don't have a chance to tell it in class, tell it out of class, to me or to your classmates. Does it work? Does it work better than other stories? If so, why? If not, why not? Why does it persuade one classmate but not another? As you listen in class, try to imagine the stories you would tell, as well as evaluate the stories told by others.

Because class discussion is frequently so disjointed, you will often hear and tell not entire stories, but little bits of stories. In order to really practice listening to and telling legal stories, you need to have an opportunity to put the pieces together in a coherent whole. During the semester, I will ask you to carry out several oral and written exercises in which you have to create an entire legal story or stories for a given audience. As with the case of live clients, it would be preferable for you to have numerous occasions to do this, but the few exercises we are able to do will, at least, give you a sense of what it means to put a coherent story together.

Storytelling and legal argument. When we discuss creating whole stories, we will address two questions. What makes a good legal story? What makes a good torts story? That is, we will consider not only what stories are persuasive in particular contexts, but also what characterizes persuasive legal stories generally. In that connection, we will necessarily consider the relationship between effective storytelling and traditional forms of legal argument. Cases are traditionally presented not as human and legal stories, but as tripartite constructs of facts, rules and argument, or facts, holding and reasoning. The notion of legal storytelling implicitly calls into question more traditional notions of case

analysis, but storytelling is not at all inconsistent with placing a heavy emphasis on forms of legal argument. Argument makes explicit the meaning of stories, forcing us to distinguish between meanings that are legally acceptable (the poor old man should win because he was defrauded) and meanings that are legally taboo (the poor old man should win because he is poor). Effective legal arugments about particular human and legal stories underline those meanings in the story which are both acceptable and persuasive in particular legal contexts. Part of the art of storytelling is knowing which meanings of a story can be articulated explicitly in formal legal argument and which meanings are partially or completely taboo in the legal culture and must be communicated to the audience only in narrative form if they are to be communicated at all.

Much of what you will learn in the first year consists of becoming familiar with a rather small number of kinds of argument which recurs in varied forms throughout all areas of law. You will practice making arguments based on logic, on history, on specific policy concerns, on notions of institutional competence and jurisdiction, on efficiency and administrability, and you will develop a sense of what categories of argument are appropriate and persuasive in what settings. This involves your learning to distinguish arguments persuasive in the legal culture from those different, although frequently overlapping, arguments you already know to be persuasive in the larger human culture. It also involves learning to distinguish between arguments which are persuasive in the torts subculture and, for example, those which are more persuasive in the contracts or criminal law subcultures.

As the above discussion suggests, in the classroom we will use cases to not only learn about, but continually practice, the art of legal storytelling. We will work with the facts of particular cases, expanding our understanding of the various human stories lawyers often confront. We will practice using the basic repertoire of legal stories in our area of the law and explore their relationship to the underlying human stories they reflect. We will examine the relationship between storytelling and legal argument, learning to distinguish those meanings of a story that are persuasive from these that are barely acceptable or even taboo in particular legal settings and subcultures. We will explore the nature of particular audiences and identify what judges, juries, legislatures, officials, and individual parties need to hear in order to grant some desired remedy.

V. Storytelling as a Social Enterprise

As the storyteller metaphor suggests, lawyering is a social enterprise. It is impossible to be a lawyer without clients, other lawyers, judges and other participants in the legal culture. You need them and they need you. It is impossible to learn to be a good lawyer without participating in a common enterprise with your fellow students and teachers. You need each other as an audience for your storytelling and as intelligent readers and listeners who can show each other the many meanings of a legal story. The art of storytelling cannot be either learned or practiced in isolation.

Our joint enterprise in the classroom will prosper and we will all share equally in the prosperity to the extent that we all try our best to share our insights with each other and to instruct each other in the ways of storytelling. We need not all agree — it is our different values and experiences which make us most helpful to each other in exploring the legal culture — but we do need to recognize that we have a common interest in producing the richest possible classroom experience.

In an attempt to demonstrate to you the educational values of cooperation and communication with each other, I will ask you to do several of your assigned oral and written exercises in teams. I will assign you to teams rather than let you choose your teammates so that you will be required to work with classmates you do not know and perhaps would not normally choose to know. By being curious about each other, while being patient and tolerant of differences, you can learn a great deal by listening to each other and by attempting to teach each other what you know. You will also see that there are many ways to approach client problems and lawyering tasks. Whether or not you find that your own views and attitudes change as a result of working with others, you will at least learn in a more vivid way that every individual is living in a slightly different world and that only if you always have those many possible worlds in mind will you be an effective lawyer.

VI. Conclusion

I have attempted to explain briefly to you how I see the first year of law school and what I think we are trying to do in the classroom. Because there are so many of you, I cannot know exactly what each of you needs to become a good storyteller. Some of you are already masters of the storytelling art, but may find the legal culture and its special stories alien and distressing. Some of you will find technical legal argument congenial but will be uneasy at the lurking ambiguities in most

legal stories. Some of you will find upsetting the fact that others disagree with your perceptions of human and legal stories. As I help you learn what I think you need to know, you must tell me what you are learning successfully and what remains obscure. Each of you will have to master the storytelling art in your own way, and, while I can help, I cannot do it for you. As with any beginning endeavor, you will have to use trial and error and be willing to make mistakes in order to learn what you need. No one becomes a good storyteller by simply memorizing the stories of others. You must be able to tell your own stories, and you must learn to tell them in your own way.