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The Association of American Law Schools Section on Legal Writing Reasoning and Research Section Annual Meeting: Developing the 5th MacCrate Skill--The Art of Storytelling

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Panel Discussion

Developing the 5th MacCrate Skill— The Art of Storytelling

The Association of American Law Schools Section on Legal Writing, Reasoning and Research Section Annual Meeting Program

On January 7, 2005, the AALS Section on Legal Writing, Reasoning and Research sponsored a panel on the art of storytelling. Both Legal Writing Professors and non-Legal Writing law school professors attended the session which explored how the skills and lessons of storytelling can emphasize the human components often overlooked in the sterile environment of the law school classroom. Teaching students these storytelling components and techniques greatly benefit students, helping them become better storytellers and as a result better attorneys. What follows is a transcript of this session.

Thomas M. McDonnell:¹ Welcome to the AALS Legal Writing Section Program. My name is Tom McDonnell. I am the Section Chair. Please pick up a hard copy of our current newsletter and a copy of our past newsletter, which are all available electronically on our website. Among other articles, our current issue lists all of the legal writing activities at the Annual Meeting. We will be having a short business meeting at the close of the program.

Susan Kosse, our Program Chair, has put together an outstanding panel after conceiving the timely theme, “Developing the 5th MacCrate Skill—The Art of Storytelling.”

[Susan H. Kosse, Program Chair, introduced the storytelling topic and its importance to legal education.]

1. Professor of Law, Pace University School of Law.

Susan H. Kosse:² Welcome to the Legal Writing, Reasoning, and Research Section's session on Developing the 5th MacCrate Skill of Communication—The Art of Storytelling. The heart of persuasive writing and oral argument centers on the ability to create a compelling story about the client or issue. The elements that define a good story—characters, conflicts and resolution—are also central facets to a convincing legal argument. Recognizing the importance of storytelling in legal education, law schools have recently explored how best to incorporate this skill into the traditional legal education curriculum. A growing body of literature is emerging within the legal academy on the importance of the story method and the value of narratives. Today, with a fantastic panel, we explore this subject.

The first member of our panel is Philip Meyer³, who teaches Criminal Law and directs the Legal Writing Program at Vermont Law School. Previously, he served as Coordinator of the Lawyering Program at NYU School of Law. He is currently co-writing a teaching manual on narrative persuasion. His co-author is Anthony G. Amsterdam, who was a co-author of the MacCrate Report.

Our next speaker is Joel ben Izzy. Joel has been a professional storyteller for over 20 years since graduating from Stanford with the self-designed degree in storytelling. He has gathered and told stories in over twenty-five countries, on four continents, and throughout the United States. He has produced six award winning recordings of his work and written a highly acclaimed book, *The Beggar King and the Secret of Happiness*, all available from his web site, www.storypage.com. Joel has been consulting with attorneys since 1991, and his clients include the United States Attorney's Office, the California Attorney General, and numerous top law firms. He now offers his legal story consulting through the Focal Point, an Oakland-based legal graphics and strategy group. Joel will share with you his definition of a good story in his training sessions with the legal community.

Joel ben Izzy:⁴ Thanks so much for that introduction and thank you for having me here. I'll start off with a story because that's my job.

2. Associate Professor, University of Louisville, Brandeis School of Law.

3. Professor of Law and Director of Legal Writing, Vermont Law School. Professor Meyer's remarks are not available due to technical difficulties at the conference.

4. Professional Storyteller.

It happened long ago, in the old city of Jerusalem, back in the days when Solomon was King. In those days there was a bakery that baked the best, freshest smelling bread. You know that smell—freshly baked bread from the oven. The smell was so good that people walking along would smell the bread and find themselves drawn into the bakery. Sometimes they would smell the bread and go on their way. One morning there was a woman, a poor old woman standing before the bakery begging for coins. And as she stood there she thought, “I don’t have money to buy bread, but at least I can smell it.”

As she stood there surrounded by the smell of that bread and the baker came out and said, “Lady what are you doing?”

She said, “Oh, I’m smelling your bread. It smells so good.”

“I know it smells good, I baked that bread and if you are going to smell the bread in my bakery, pay for it.”

She said, “Wait, wait, I didn’t eat it, I just smelled it.”

“I know,” said the baker. “I own the bread and I own the smell. Pay for it.” Now it’s a ridiculous claim, but you all know you don’t need a reasonable claim to start a fight—especially in the Middle East. Even here you can get pretty far.

So there was a big argument with people shouting back and forth and finally somebody said, “Baker, if you think this woman has to pay you for just smelling your bread, take your case to King Solomon, he’ll judge it fairly.”

The baker drags the woman into court and he says: “Your Highness, this woman has been smelling the bread in my bakery, and I insist she pay for the smell.”

Now those in the court laughed because the claim was ridiculous. But Solomon—Solomon the wise—did not laugh. He said to them, “Never judge a case until you have heard all the facts.” He turned to the woman and said, “Is this true? Have you indeed been smelling this man’s bread?”

She said, “I’m a beggar. I was standing in front of the bakery, everyone smelled it.”

“I didn’t ask if everyone smelled it. Have you been smelling his bread?”

“Yes, but must I pay for the smell?”

Solomon thought for a moment and said, “This man is a baker. He owns

the bread and, therefore, he also owns the smell. And yes, if you admit that you smelled it, it is only fair that you pay for that smell.” Now the court grew silent. He said to her, “How much money do you have?” She said, “I am a beggar, this is all I have.” And he said, “Count it.” Rattling her coins in her hand, she said, “It’s a half a shekel, it’s all that I have, do I have to give it to him?”

Now Solomon turned to the baker and said, “There, you have been paid.”

“I haven’t been paid,” said the baker. “She has to *give* me the money.”

“Give you the money?” asked Solomon. “Didn’t you hear the coins? The sound of those coins is the payment for the smell of your bread. Case dismissed.”

So one story leads to another . . .

I was invited to a retreat of a law firm. This is a very fancy law firm in Los Angeles. The firm of somebody, and somebody, and somebody else. And at this retreat, I told the story and afterwards somebody came up to me, and he was the partner. He was the somebody else. And I always thought that if your name is at the top of the letterhead, you had to be dead, so I was very impressed because he seemed to be alive. Not only alive but he said, “Joel, I love that story and I wonder if you could help, because I have a case going to trial next week. At the moment, I have about fifteen feet of depositions in my office and I’ve got to be able to explain this thing that I can’t quite understand to twelve people who couldn’t get out of jury duty. Can you help me with that?”

So we went back to his office and we talked about this, this and this, and finally after all this talk he sort of boiled it down into a very simple little narrative. He said, “Ah, I wish I knew this when I was writing up my briefs on this because this is really the whole story. It’s just about a paragraph and I can even use that story about the coins, because, I love that story.” He used it in his closing, he won his case, he got his 50 million dollars for his client—and this was back in 1991, when 50 million dollars was a lot of money, and he was pleased.

And suddenly, I find myself being drawn to do more work with lawyers and stories. So, that’s how I got into this—but let me ask you a question: What is a story?

(Long pause) All right, what is a writ of habeas corpus? . . . No, back to the question. What is a story? You’ve heard them since you were kids. You heard me tell one, you’ve heard Philip tell one, what is a story?

Audience Member: It's a narrative sequence with a beginning, middle, and end; involving character, conflict and resolution.

Joel ben Izzy: Ooh that's great, it's a plant. Character, conflict, resolution, point of view, setting, and those are the ingredients that make up a story. That's exactly right, that's a perfect point. But, for our purposes, for our working purposes, I'd like to flesh out that definition just a little bit more. Does anybody want to add to that, what a story is?

Audience member: An emotional snapshot.

Joel ben Izzy: That's nice and it certainly has that in it, but let me give you a definition that might be a workable one to think about with your students. A story is the recounting of a problem in a way that makes us care and want to know what happens next. Now that is not a very technical definition, but that is a very simple definition . . . it is a way of recounting a problem in a way that makes us care and makes us want to know what happens next. The problem in the story is that the woman seems to know that she is going to be unjustly charged for smelling the bread. We care, and we want to see what happens next. The time to pause—in this story, comes right when King Solomon says, "It's only fair, if you admit that you smelled his bread then you have to pay for the smell."

That's the moment, that's the moment when we come to a pause, in silence, and we stop and we care. That is such a crucial thing for lawyers to learn, and I would agree with Philip that it's a bit of the opposite of what they are generally or traditionally taught. I think in law schools we have the idea, and I think historically this has been true, that we need to teach logic: if A then B, if B then C, and so on and so on. The Socratic method is a dialogue back and forth like that. Stories take the opposite approach. They say if A then B, if B then C, but what about Q? They invoke that curiosity and it is almost a flip of the mind stance to say what draws in that curiosity.

You know, whenever I think of storytellers I think of my favorite storyteller from when I was a kid—Bill Cosby. Does anyone listen to Bill Cosby records? Anybody remember records? Big black CDs. I used to listen on rainy afternoons to his records and he was so good. In one of them he said:

You know my grandpa used to call me over when I was a kid and he'd hold up a quarter and say: "Now William I'm going to tell you something and I

want you to listen good.” I would stare at that quarter and I’d listen to him for three days. Because I knew that at the end of those three days I was going to get that quarter.

Now metaphorically, that is what a story is: when someone launches into it you know you’ll get something at the end. You’re going to get it. It invokes that spirit that’s so deep in us, so far back, to get that we see an elder, maybe a grandparent, somebody sitting around the fire. And they say, “Let me tell you something” By their first words, we know they got something good we’re going to get at the end, not a quarter, something even better. So the challenge, I think, is to get your students to be able to see the value in this and see how to do this. It is a tricky thing because they are taught to go one way to get into law school logic: proof, point . . . but to succeed they need to do the other, and I think the real trick is to get your students to appreciate the value of this.

I’ll tell you something I’ve learned about lawyers; maybe you found the same, lawyers are more interested in the downside than the upside. Have you found this? I see groups of lawyers and I give talks to a lot of law firms. I can give an example of somebody who told the right story and won a lot of money, which is fairly interesting to them. But more interesting is the example of someone who told the wrong story and lost a lot of money.

Here’s an example: A lawyer came up to me and said, “I want to learn how to tell stories.”

“Yeah? Tell me why.” And here’s the story he told:

Well, I just finished a case. It was one of these big complex cases, Party A had signed a contract with Party B, my client, and we had subcontracted to Party C. Well Party C didn’t do their job so Party A blamed us, and we blamed Party C, and Party C blamed us, Party B and Party A were there and they blamed both of us. But, the problem was it all depended on testimony of experts in accounting, who didn’t speak a language that anybody could understand. All the jury knew is we kept shouting at each other. This case went on for weeks until finally we got up and did our best to give our closings and sum up what had been said. I said my part; the lawyer for Party C said his part.

And then the lawyer for Party A got up and he looked at me and he looked at the lawyer for Party C and said, “You know this reminds me of a story.” And I could see the jury’s eyes light up, like they might actually understand something.

“Not only that,” he said, “but it’s a story you might already know. It’s one of Aesop’s fables. It’s the one about two guys who go into a butcher

shop.”

One says to the butcher “Have you got any chicken?”

The butcher puts a chicken on the counter and he looks away for a minute. When he looks back the chicken is gone.

There are only two guys in the shop, so the butcher says, “Where’s the chicken?”

And the first guy says, “I don’t have it.”

So the butcher turns to the other and says, “Where is the chicken?” The second guy says, “I didn’t take it.”

So the butcher looks back and forth between the two. “*You* don’t have it and *you* didn’t take it. This is interesting for I can see that though each of you tells half the truth, put together, your two half truths make *one complete lie*.”

He sat down; the jury was out for two hours adding up numbers; they came back and said, “We, the jury, have found for Party A, because we think that the other parties tell one complete lie.”

So the attorney for B wanted to learn how to tell stories.

Now this is a way to think about it that your students might be able to relate to, and I find again and again when I go to law firms; the younger associates can’t seem to see how it relates to billable hours—what do I do with storytelling? And yet the older ones or judges instantly see the value in this because they have seen the power of stories that work and stories that don’t. So I would say this, the challenge is to come up with examples and those stories that clinch. I would call that story a clincher. And that a story is a set of facts, a problem recounted in an interesting way that makes us care.

That is a simple definition. As for your students, let them hear stories that will help them out of the box. So that they will come up with the great clincher that works at the closing, but starts long before, in the opening. In fact, it starts before that, in the writing, and even before that when you’re sitting and listening to your client. That’s when they should be thinking not “How am I going to prove this?” but “How will I tell this story, and what stories will support it?” It is something that is not only necessary and practical, but it actually makes law a lot more fun. Thank you very much.

Susan Kosse: Steven Hobbs is a storyteller, educator, lawyer, poet, ethicist, historian, quilter, entrepreneur, consultant, actor, community organizer, and world traveler. Steven sees himself as a story framer, one who structures stories around history, law, entrepreneurship, culture, and life. Storyteller Hobbs likes to share stories of wisdom, humor, and triumph of the human spirit. Steven will share how he has used storytelling in his classroom when he teaches about entrepreneurship.

Steven H. Hobbs:⁵ Thank you Susan, good morning. The first thing a storyteller has to do is tell a story about himself. That was one of them.

I'd like to begin by sharing a story about a farmer who has a hidden treasure.

There's a farmer who once lived on this farm, maybe about twenty or thirty acres. It was up in a mountain past a little valley with rich soil. It was a beautiful little farm and he had worked the farm his entire life. He raised his children, and his children moved off into the city after they were educated, and they really didn't care much about the farm. His wife had passed on and he was there by himself, but he would hire people to come in to work on the farm when it was harvest time or when it was time for planting. But as it comes to all of us, you know, it got to be that he was too old to work and he became very ill. His children were called to his side in his final weeks of life. He was under hospice care and as he lay there his children gathered around his bed and they listened to him breathe.

Now we know children tend to run and laugh and breathe from their belly. When we become older, and become more restricted, we breathe from our chest, which is why lawyers should take a deep breath before they speak. If you breathe from your chest you are restricted. As you get older you hear older people, and they start breathing from their neck. In the final moments of life you are breathing from your mouth trying to struggle to get air, and it was so with this farmer.

He opened his eyes and he feebly motioned to his children. "When I'm gone the farm will be yours." He closed his eyes and went back to sleep. His children gathered in the far side of the room, there were four of them, and they talked amongst themselves, and said when the old man's gone we're going to sell this farm to a developer and we're going to split up the proceeds. And one said, "You know I could use a new car," and with that, they started spending the

5. Professor of Law, Tom Bevill Chair, University of Alabama School of Law.

money. The old man had opened his eyes again, and again he called his children to him. "In the land there is a buried treasure," and he breathed his last.

Now the children thought about that, and they said, "You know this old man was kind of tight, and he never spent any money on himself, and I bet you there is gold up there in them there hills." Since the harvest had been brought in they went out there and they plowed every inch of that farm looking for this treasure, and they didn't find anything. But since they grew up on the farm they knew that after the harvest you plow it and you turn over the soil and you plant winter rye grass to renourish the soil and keep it from blowing away. The next spring, after the rain had slackened, they again plowed every inch of the farm. This time they plowed deeper, and they still couldn't find that buried treasure.

So they said, "Well we did all this work so we might as well plant something." So they planted a few crops and they grew and they had a good harvest and again they plowed the fields after the harvest was over and they couldn't find anything. And this sort of got to be regular for them and they sort of liked the idea of working with the soil—it really was less stressful then their jobs in town. They figured organic crops were big now, and why don't we put a few of those in, and free range chickens are something everybody is into so let's put some of those in as well and let them run around since they help to fertilize the field. And then it came to them, as they washed the dirt off of their hands at the end of the day, how much they enjoyed working the land and they said, "Our father was right, there is a buried treasure on this land."

One of the things I like about this story is that you can almost imagine what the farm looked like. When I was telling that story, the story was out there and hopefully as you listened you may have even known people, you may have known farmers yourself. I live in Alabama, and it's a fairly rural state still, and family businesses and family farms are something that are really big. My students begin to relate to this story, particularly in an entrepreneurship class when we are talking about the idea of succession. How do we pass a business on from one generation to the next? One of the things that tends to be missing when lawyers are talking about this, is understanding the story of the business or the farm.

Now I won't tell you what the story means. You have to assign your own meaning to it. Certainly it is about relationships between siblings and fathers and the land, but also I think it is a way for me to connect individuals into thinking about what this all means, particularly

when we are talking about small or family owned businesses. Now, I could ask you, "Well what is this farm going to look like about ten years from now?" Use your imagination to think about how this farm will be successful with these individuals working together. And it's at that point of imagination that I think is the crux between law and entrepreneurship. Consider a world that doesn't exist, how do we envision it? When we're talking to entrepreneurs they are trying to explain to us their visions, their dreams. And we as lawyers have to take their dreams and tell their stories to a bunch of other stakeholders, be it bankers, or other lawyers, or other participants in the business. I think the other thing that goes with this imagination is the notion of creativity. With family farms, it is really a big issue today. How do we create this way of living, and preserve this way of life in a way that is profitable? There are actually ways of using satellites to know when to water the land. Do we use technology and computers to know when to fertilize the crops and fields?

How do we use the tools that we have to create innovative ways to help these individuals to proceed? Do we create farming cooperatives so the individuals can join with other small farms? Are the farmers growing a product that could be imported to other countries and if so, how do they import the product? You know, we know a lot about contracts and commercial transactions in an international way—how can we use those tools in a creative way? So the process in my law and entrepreneurship seminar is to get people to think anew. To re-see that which we know in law, and put it in a business entrepreneurial context; to think in the future.

I think a story helps us do that. It helps us open up our imagination, the right side of the brain. I always thought about that when I went to law school. I used to write poetry until I went to law school. I couldn't write poetry until about ten years after I got out of law school, because law school killed that creative sense. I had to have the answer, and poetry doesn't allow you to have that. Free flowing, it thinks about metaphors and words that don't count in legal writing when you are a legal writing instructor. "Your writing is too flowery, get rid of that." "That's okay, for an English major." Well, let's talk about how we can use stories to access imagination.

When I first discovered storytelling about five or six years ago—that's one of the things in doing workshops, and I'm sure Joel's workshops are like this and I know Linda's workshops are like that as well, is that they get you moving. When you are in law school, you sit, you don't move your body, and I think what I discovered is when you

move your body around, and I have my students in the workshop do funny things like jump up and down and imitate the animals, and they sort of scratch their heads. But once you suspend judgment about these activities, you discover that an awareness of how your body moves is essential to communicating your client's story. We do this as lawyers. Now they teach you this in legal advocacy; hold on to the podium, don't move, have no facial expressions, look directly at the judges. That is a way of communicating, but that is not a way to reach someone's heart in terms of, can I see the emotion in your face, do I understand what you are trying to tell me?

The story about your client is important. I want to believe that and I find that movement and thinking about creative movement helps us loosen up and get to that part. I also have individuals begin to tell stories to each other. For instance, if we had more time, it would be fun if you were to pair up with someone you didn't know. I have done this in workshops: say, remember the first day in law school? Do you know what that was like? You know for some of us, it was a painful experience. For some of us it was scary, you could taste that fear. You get to describe that. I ask my students on the first day of class to pair up with someone you don't know and ask them three things about themselves, tell them three things about yourself. So the list that Susan read is three things that people know about me perhaps. And I find that you've gone to school with these people for three years and you don't know a lot about them. As you start to understand who these people are, your classmates, you begin to understand the value of listening. I don't have enough handouts, but in the outline it talks about the exercises that we go through, and what it ends up being is sort of tagging onto what Joel says . . . when the client walks through the door you begin to listen.

That notion of listening is something we don't tend to think about. Well, here's what they're saying and we're trying to parse that into this legal analysis. Okay, what fact do I put into this legal form that is going to go in this complaint? As opposed to what they're saying behind their words, behind their movement. Who is this father who is talking to his children? What are his hopes, desires and dreams for them? These are the things that I want them to know and I want them to begin to listen, and if I tell you my story as to why I went to law school, then I want you to tell it back to me in my own voice. I want you to tell it right. That's the way our clients are. They want us to tell their story right, and get the whole vision and picture of it. And so this experience in storytelling has taught me a lot about listening, because you listen for the story, and

that's the other half of telling. I can't tell a story unless there is someone there to listen, and as a person who wants to tell stories, I want to listen to the stories my clients are telling. And so in this entrepreneurship class, I think that students come away with it, and think about what the symbol is, and I then articulate in a more forceful way what their vision is, what their dream is, what the future is out there that is not even in existence at the moment. One short story:

There was a time when trees talked and flowers sang. That was a long time ago, even animals would talk. There was this woman who lived in a little cottage outside this village and she lived by herself. She was about mid-life and her children had grown and gone on, and she lived there by herself until this little boy, who looked like an orphan, came by and asked her if he could do some work for her. And he was an orphan and she took him in and helped him go to school, and he helped her around the house, and she had this little garden and she had little flower pots along her drive and the farmers in the town used to give her extra meat for her larder, and sometimes she would go out into the woods and find mushrooms, fruit, or berries and nuts.

One day she was out picking some mushrooms. It was a gorgeous day, the sun was shining, and she was in a part of the woods that she didn't really know, but that she was kind of familiar with, and she wasn't paying attention to where she was going. So she looked up and she found that she was lost, and she couldn't figure out how to get home again. She was really mad at herself because she had taught her children when you go out into the woods, really orientate yourself to where you are so that you can come back home, and the only thing she could do was, she said, "Maybe I should pray." It was something that she wasn't in the habit of doing for a while and so she brushed herself off, and she leaned up against the tree, and she said, "Spirit help me get out of these woods." As she was leaning against the tree, she heard this voice say, "This way." She looked up and she didn't see anyone. "This way," and she thought it was the tree, and she went over to this tree, and she put her hand on it and she heard it again, "This way." This tree, "This way, this way, this way"—until she got to the road that lead to a house. When she got home that evening she made mushroom soup for this little boy and she was telling how she got lost. He said, "Well how did you get out?" as he was eating his soup. She said, "The trees talked to me."

I think that we as teachers have to believe again that trees talk and flowers sing and then the whole world is a big possibility that we use our imagination to access. Thank you.

Susan Kosse: Our last speaker is Linda Gorham who performs internationally, year round as a professional storyteller. She began storytelling after a thirteen-year career as a human resource manager for Prudential Insurance Company's home office in Newark, New Jersey. That developed her lab learning skills, the left side of the brain, but she credits her storytelling skills for enhancing her right brain cells, her creative side. Combining the two skills has been successful for Linda. In addition to performing and publishing, Linda co-chaired the National Storytelling Conference in 2003, and in 2004 she hired a group of sixty-two American storytellers on a professional exchange trip to South Africa. Her CD called, "Common Sense and Uncommon Fun," just won four national awards including the coveted Parents' Choice Award. I can tell you that my three daughters love Linda's stories. When she comes to Kentucky they beg her to tell more stories. Linda is going to talk to you about exercises that she has done with my legal writing classes for two years in a row. This is something that I have used in my legal writing classes for the past few years, and I think they will sound very familiar to some of you.

Linda Gorham:⁶ Hello. I have enjoyed watching your faces during the presentations that preceded me. Your facial expressions and your body language changed when the stories were being told. Several things happened; your bodies moved forward, your eyes got wider, and those of you who were nodding, woke up. This is what happens with stories. I'd like to look at it this way: when I'm giving you facts, information is being passed down from me to you. I'm the giver; you are the receiver. But when I'm telling you a story, we're developing a relationship—a three-way sharing connection. We now have the story, the teller and the audience. That is the key. When sharing stories, the teller is more aware of the audience; in fact, the audience participates in the event. Storytellers adjust what they say by the reactions they receive from the audience. It's a powerful dynamic.

Since I'm a storyteller, I'll start with a story. That's what we do. This is a little story, a parable.

Truth. Truth was naked and cold and hungry. Truth knocked on the doors of all the villagers. When the villagers saw Truth they were afraid of her nakedness and they turned her away. Parable found Truth. She was hungry and shivering in a corner. Parable took Truth home, warmed her,

6. National Storyteller, www.LindaGorham.com (last visited May 3, 2006).

fed her and clothed her in story. Truth went out again. This time when Truth, clothed in story, knocked on the villagers' doors, they welcomed her, invited her in and gave her food.⁷

You can't stand the naked truth—right? We're always trying to give truth—tell it like it is, so to speak. I have teenagers. They don't like hearing the truth, at least not from me. But when talking with my teenagers, if I follow Joel's advice and start with, "Let me tell you a story," they may listen; especially if my story has sex or something like that in it. I got a great reaction when I started a conversation with one of my sons by saying, "When I was your age I had a boyfriend . . ." His response was, "Oh mom, go ahead, I want to hear this." He listened to my piece of true advice clothed in story. That's what we have to do. We have to wake up our audiences by connecting with them. We have to find a way to say what we need them to hear in a way that makes them want to listen.

Two years ago Susan Kosse invited me to the University of Louisville to tell stories. One of her goals was to have me tell the background story of a legal case her class was studying. Susan said, "They know the facts, will you come tell the story?" My response was, "Are you sure?" Law students, *whoa*, will they listen to a storyteller? My brain raced. Then I calmed down. Okay, I told myself, I can do that. I may not know law, but I understand stories. And all I have to do is tell stories—the right stories. It became a most fascinating but still scary proposition. Whenever I take on a new job—and you know how that is—on one hand I'm excited because someone has faith in me, but on the other hand I say, "Oh shoot why did I take that job?" Well I thought about it for a while and of course I took on the challenge. After the conversation, I hung up the phone and thought more about it. Story is a universal medium, an art form that transcends all disciplines. Surely law students need to understand its power. This made perfect sense. After the first year, Susan invited me back to present my program again.

The case she mentioned was *Palsgraf*.⁸ You all know the facts of the *Palsgraf* case, right? If not, don't tell anybody. You were supposed to have learned about it somewhere during your first year of law school. So, I assume you do know the facts, but do you know the story? How might you view the facts differently if they're told in the context of the victim's personal story? Well, it was the personal story that I told to

7. Annette Simmons, *Truth*, in *THE STORY FACTOR: INSPIRATION, INFLUENCE, AND PERSUASION THROUGH THE ART OF STORYTELLING* 27 (2002).

8. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928).

Susan's class. We also did a few story related exercises and discussed the components of a good story.

I want to start by refreshing your memories by sharing the facts of the *Palsgraf* case with you. The facts. First the facts. Just the facts. Wasn't that sentiment expressed on an old TV show? "Dragnet," right? Jack Webb, who played Detective Friday, used to say, "Give me the facts and just the facts." After reviewing the details, I'm going to tell you the story behind the facts.

It was a Sunday in August. The plaintiff was standing on a platform of the defendant's railroad. The plaintiff was going to Rockaway Beach. A train came, not the Rockaway train. Two men ran to catch it. One reached the train without mishap. The second man carrying a package apparently jumped onboard but was unsteady. One guard leaned out of the train to try to help the man, but he couldn't quite reach him; another guard on the platform tried to help by pushing the man from behind. In this act a package was dislodged from the man's arms. It fell on the rails. It was a small package about fifteen inches in diameter. It was covered by newspaper. It contained fireworks. No one knew it at the time. The fireworks exploded when the package fell. The shock of the explosion knocked down some scales at the other end of the platform many feet away. The scales struck the plaintiff knocking her down. The plaintiff sustained injuries for which she sues.

Now, what's your reaction? Is this enough to find fault? Would you like to know about the plaintiff? She was a real person. She had a story. It was a memorable day for her. It was an event she would never forget. Here is her story.

You remember that hot day back in August? That was one of the hottest days that I will remember for a long time. Now when it's hot like that, I often take my girls outside and try to find some shade for them to play in. On this day they didn't even want to be outside. I saw an ice truck go by. That ice truck had water running out the back of it because it was so hot. I brought the girls inside. My basement flat is usually pretty cool, even on a hot day. But even that day my basement flat was really hot. Now I can usually stand the heat; it's not a big deal. But my girls, Elizabeth and Lillian, they started to complain about the heat, and I'm not going to have my baby girls complaining. I told them, "You know what? I know what to do. I'm going to do for you what my parents did for me when it was really hot. We're going to Rockaway Beach." Good thing. I started packing up all the things I needed for the girls, you know, the blankets and the towels and the toys. I also made some sandwiches. It's a lot of work getting together all you need to for the beach. It would have been easier if my

husband had been with me, but he left; he left well over a year ago. I don't know where he is, and he doesn't send any money for the girls either, but it's all right, I do the best I can. I have a job working as a janitor, \$419.00 a year. It's not much, but I do what I can to make a good living for myself and my daughters.

Well, I packed up all our things, and we walked down to the train station. When we got there I was very careful to stand way back from the platform and I held both of my daughters' hands. Then we stood there and waited for the train. A train came, not the Rockaway train, but a train came by and we watched it pass. Now I didn't see everything that happened at the other end of the platform, but I did hear about it. They said after the train came, it began to pull out. There were two men running to get on that train. The first man apparently was able to easily jump on. The second man, well I guess he was having some trouble so, as he was running for the train, the conductor on the train reached out to grab him while the conductor on the platform reached out to push him from behind. I guess it didn't work real well because a package he held fell down on the rails. Well that was when all hell broke loose.

First I heard a loud explosion. Now it was already hot down in that railroad station. When that explosion went off, it was as if that heat intensified one hundred fold. I remember turning and I saw a ball of fire running down that platform coming toward me and glass seemed to be flying everywhere. I held even tighter to Lillian's and Elizabeth's hands and I said, "Elizabeth, Elizabeth turn your back," and that's all I remember. Next thing I knew I got hit by something. I didn't know what it was, but later I learned that it was a large penny scale, the kind you weigh yourself on. That thing knocked me down onto the platform and I knew I was stuck. I couldn't move. But that wasn't the worst part.

When I was knocked down, I let go of Elizabeth and Lillian's hands and I heard one of them calling out, "Mommy, Mommy!" You know how that feels? There I was stuck under a machine, and I couldn't protect my babies. It was so dark and there was so much smoke, plus there was so much yelling, and so many people; I could not see a thing. They asked me later why I started stuttering after the incident. They called it hysteria, traumatic hysteria. I don't know what they call it. They can call it anything they want. All I know is I live to protect my babies. I'm all they have, and here I was trapped. I didn't have either one of them in my hands and all I knew is I wanted to protect them. I was really panicked about what was happening to them.⁹

9. Louis J. Sirico, *Cardozo's Statement of Facts in Palsgraf, Revisited*, in 6

Now when I told this story to the students it generated a lot of interesting comments and questions. Susan had prepared questions in case the class fell silent, but her questions weren't needed. All of a sudden the students had a different, more personal perspective on the case—they had a story. We talked about the difference between the facts and the story. My key point was that facts push, while story pulls. And if, while telling a story, you understand a few codes of body language, you have some tools to help you read your audience and adjust what you say by their reactions. When we tell stories, people are pulled into the experience. As Joel said, people want to know more, they begin to care.

There is a story told by a storyteller named Dan Keding. He learned it from his grandmother and graciously he gave me permission to share this part of his story in my way.

There was a war, a terrible war. After an awful battle, two men from opposing sides were left on the battlefield. Everyone around them was dead or dying. But these two men were fervent about the reasons for fighting the war and each felt honor-bound to fight and finish the battle. They stood and angrily stared at each other for a long time. But they were both exhausted and it was very late. After a time, one spoke and suggested they finish the next day. The other gratefully agreed. Exhausted they sat among their comrades to rest. One man said, "You know I have two sons and they think war is exciting. They love to play war games." The other man said, "Yeah I understand. I have two sons, ages nine and eleven. They think war is the best thing in the world. They were so proud when I went off to war. They were so proud of me doing something so valiant, but war is not valiant. War is hell."

Well those two men talked all night long. They talked of many things. First, they talked about the war and their experiences on the battlefields. As the night grew later, their conversations turned to talking about their homes, their families, and their dreams for the future. Amazingly, even though they were from opposing sides, they found they had a lot in common. When the sun rose the next morning, they got up, dusted themselves off and stood facing each other because they knew they were honor-bound to finish that battle. Just as they were about ready to begin, they looked in each others' eyes. They remembered each others' stories. Then each man turned with his back toward the other. And each man walked home to the life they loved so much more than that terrible war. It

is hard to hate someone once you know his story.¹⁰

That is so true. It is hard to hate someone once you know his story. Storytellers are in the business of connecting and influencing. You are in the business of connecting and influencing. And I believe that before you can influence you must make some kind of connection. I believe that “Story” is the best way to make that connection. Telling a story that people can relate to, finding some kind of human emotion in any situation, taking the facts and giving them a flavor—these qualities make connections, these qualities makes facts come alive. “Facts” push people to simply accept. “Story” pulls people to believe and internalize acceptance. “Story” gets people to buy into your point of view.

It is said that if you tell somebody a bunch of facts without the background story, you give them free range to fashion a story to their liking and within the context of their paradigms. Many years ago, I remember being on jury duty. Now this was back when I was “Miss Professional Business Woman” working for Prudential Insurance Company’s home office in Newark, New Jersey. I had all of the career trappings: briefcase, business card, bowtie, the whole thing. While I worked there, I was called to serve on jury duty. The trial I was assigned to lasted a few days and then we went to deliberate. I was the jury foreman. As we discussed the facts of the case, I remember one woman distinctly because she shocked me so much. She said, “You know what happened during the case reminds me of one of my soap operas.” Then she began to tell the members of the jury all of the soap opera connections to the case.

For her, and sadly for a few others, watching soap operas was the highlight of her day and her paradigms were built around that fanciful world. Soap operas! And then another person said, “Well you know, my cousin . . .” then he began to tell a story about how his cousin’s personal story was similar to the case. In fact, far too many people had crafted individual stories to help them understand the facts of the case. And in my mind, they were all dealing with fantasy. I could not believe that this was supposed to be a jury of my peers. Not *my* peers I hoped. I was appalled. I said, “Wait a minute, you didn’t hear the facts and relate them to the case, you heard facts and related them to something totally unrelated—and how could you relate them to soap operas? That’s illogical. That’s unethical.”

10. Dan Keding, International Storyteller, www.dankeding.com (last visited Mar. 6, 2006).

To hear these analogies was amazing, but it helped me understand how some people process information. Unlike them, I felt I was capable of hearing the facts, putting them into the context of the case, and making sense of them. I could synthesize facts. I could make sense of them. I, “Miss Professional Business Woman,” used logic. In my opinion too many of these jurors of my so-called peers had no such ability. Instead they created their own stories. That was scary! The lawyers probably had no idea how the jurors were processing the facts they thought they had clearly spelled out.

That is the power of story. That is what we’re all here to say to you today. Think about how story can influence so much more than a list of logical facts and arguments. You never know how your listeners interpret what you say. You can risk having your facts left to personal interpretation because some of your listeners may be consumed by creating their own stories. And sadly, when their stories are fueled by television shows, and especially soap operas, you may be in serious trouble. Make your facts count! Fashion them into a story! Have a wonderful day.

Susan Kosse: Thank you Linda. Following Linda’s stories, my class got into groups for their appellate briefs and they tried to “tell their stories” of the cases. And then Linda and I would critique what they were saying to see if the story was persuasive. It was a really good exercise.

When I was preparing for this, the New York Law Journal published something on December 10th that I thought all of you might find interesting about *Palsgraf*. Palsgraf’s relatives said that the case started a curse. Evidently, her first grandchild fell off a ladder three stories tall and shattered his wrist. He brought a lawsuit, but it never made it to trial because the ladder was stolen from the court room and the case vanished with the evidence. Then his wife accidentally got her thumb caught in a collapsing ping-pong table when getting ready for a Halloween party. She sued the school but settled for peanuts, and her thumb actually had to be amputated. The curse continued with the next generation. Their son fell off a broken curb and broke his ankle. But they say the curse has a kind of ironic humor. For many years William Jr., who is the grandson, worked as a truck driver for among others, Petroleum Heat and Power. One night in 1968 he took to the road during an ice storm carrying a tanker full of oil for Petroleum Heat and Power. “I had to go down a hill by the Long Island Expressway and the whole

hill was ice,” he said in an interview. He made a turn, and, “the minute I made the turn I spun around like a cyclone and went over the sidewall and through a fence.” His truck hung over the edge of the cliff and only one thing kept the truckload of oil tethered to the road, saving the life of Mrs. Palsgraf’s closest living relative and preserving the family, its name, and its curse for one more generation: the tanker’s wheels were caught on a track for, of all things, the Long Island Railroad.

Question: When Philip was done telling that story from Norman Mailer, I was sitting there thinking wouldn’t it be terrible to have to follow that story which is what trial work is all about. There are two competing stories and if you have to follow Norman Mailer that can be very upsetting. And I felt somewhat drawn, as you were saying Linda, into the story and at the same time I was really resentful. I thought why do I want to hear about murder at 10:15 in the morning in San Francisco? But also, because I do criminal defense work, I think he was like a prosecutor telling the story and I hate hearing stories, knowing I’m going to go next. I was wondering, what am I going to say? So what I was wondering about is if any of you were thinking, what would you say in response to such a powerful story? Do you then tell your own story? Do you stay to your script? Do you start talking about the presumption of innocence or nice legal theory? What do you do when you are following such a powerful story?

Joel ben Izzy: You change channels. I think that’s metaphorically and actually what you do. It’s something that has come up at storytelling before you go to a storytelling festival, and sometimes you follow a really intense powerful story and you look for a way to give a little pallet cleanser, something a little bit neutral, and you say, “Now putting that aside let me take you over here.” So that’s my first take on it. You know it would be hard to follow a story like this, or any of them. Ideally your students are the ones telling these powerful stories.

Steven Hobbs: I was thinking of the dozens of stories, which is a cultural tradition, that talk about “your mama”. I would talk about your mama and you would talk about my mama and it would be back and fourth until each one of them got so much bigger so that when someone tells a good story in a closing argument one of the things is to tell the same story in a sense of . . . yeah that is a nice story but you forgot this, or you didn’t say this, and you didn’t say this. That is really what they

pay you the big bucks for: to be able to think on your feet in a creative way to debunk the story they just told to take the wind out of the sails. Certainly Joel pointed out another way and in some ways when you become familiar with stories some of you may read in the ABA Journal with James McElhaney's column about storytelling and he sort of stores up these things that you can be able to use at the appropriate time and that is sort of the other power stories have that I am really beginning to understand; sometimes stories will appear to you when they are needed and they will come to you and speak to you and say this is the story that needs to be told. I hadn't planned on telling that story about the trees, it just seemed to have fit to show where I was coming from.

Question: I remember in law school, when at Berkeley, I don't know how many of you remember Justice Peters who served with Justice Trainor in California on the Supreme Court, but I remember that the two things that Justice Peters always said when he was on an appellate argument that he wanted to know two things. That is the Court wants to know two things, which is why a lawyer's client should win the lawsuit, which is the storytelling part, and then the second part provide the court with a legal basis to find for the client. Without either of those you lose the case. Now you don't go into storytelling, I don't think, when you are talking about the legal argument, you have to always remember, so in a case like you're saying if there is a compelling story you could still undercut the legal basis by saying . . . if we adopted this rule then these are the results I would follow. This is a very sympathetic case, but unfortunately bad things would happen if we did this. So that's a way of attacking that kind of an argument.

Steven Hobbs: Yes it also seems there are other stories. There is actually the story about the law, you know, and you're right when you come to telling the legal analysis sometimes you have to tell the story about why this law is the way it is and even though that's a compelling story we don't want to go there. Of course you know about jury nullification and all those types of things, but it's the story behind the law is why this particular principle ought to be applied in this case.

Mary Beth Beazley:¹¹ Hi, thank you first of all for these stories. I love to tell stories in my teaching, and drive my students crazy with them as

¹¹ Member of the audience.

well. One of the reasons facts push and stories pull is because I think one of the things that is such a powerful thing about storytelling is that as a reader, we are thinking of readers rather than listeners. The reader will reach the conclusion before our facts statement and perhaps before we tell them the law statement and it makes them more willing to accept our legal conclusion that we are maybe trying to push on them if we have pulled it out of them with a story. But I guess after hearing a lot of wonderful oral stories, I wonder if you would sort of think about what are things; the differences between the ways you might use a metaphor orally verses in writing. We can't shake the shackles in paper.

Steven Hobbs: That's a very good question. One of the things a storyteller does is write the story down so it's like a script and then they memorize the story word for word so that the process of writing is connected to the process of telling. A lot of our stories that we tell are written down and so the oral process is really bringing that story to life in real time and I think about this when we talk about storytelling verses narrative. Narrative is, of course, reading and it is putting you there in a different way than when you do hear it and, of course, the response activates, and I'm not sure of the theory about this, but they activate different parts of the brain when we use our imagination. In other words, reading something is different then when we hear it. Because, sometimes reading provides the script, the color, and the details, where sometimes storytelling leaves it up to the listener to provide these details.

I also write everything down before I tell it. It is just my logical side at work again, which is hard to resist. But I think the difference is that there are some compelling details in the narrative, as opposed to a list of facts. Stories have to have facts, they have to have order, but they have a compelling component that takes them up to another level.

Joel ben Izzy: Yes. And as I hear the question and mull this over, I remember something that I heard when I was at college; I studied writing for a while at Stanford, Creative Writing, with Brett Singer, who is the niece of Isaac Bashevis Singer. And she said that one thing she believes that writing does, is that it begins in the unconscious mind of the writer, surfaces to the conscious in the form of writing, and then travels from the conscious to the unconscious mind of a reader, and I think that's a nice understanding of that process, and just what happens in storytelling.