

Works-in-Progress Paper for AALS Clinical Section

“Integrating Fictional Narratives into Clinical Education Curricula”

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This article advocates that clinical law professors should incorporate fictional narratives into their course readings. There are three principal reasons for doing so: (1) helping law students understand and empathize with the lives of their often-marginalized clients, so they can better tell their clients’ stories; (2) seeing how laws and policies impact individuals and groups, which can serve as a springboard for discussing the need for legal reforms; and, (3) teaching effective story-

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I want to acknowledge the substantial assistance I’ve received from my wife, Sara D. Schotland, in writing this article. Sara has both a J.D. degree and a Ph.D. in English literature, and she has published several articles advocating the incorporation of literature in non-clinical law school and college courses: Sara D. Schotland, *Junk Tales: Incorporating Women Drug Addict Narratives in Law School Courses*, 4 *Crim. L. Practitioner* 38-54 (2019); Sara D. Schotland, *Finding a Home: A Plea for Inclusion of Fiction Involving Immigrant Women in Law and Literature and Immigration Policy Courses*, 33 *Geo. Immigr. L. J.* 39-53 (2018); Sara D. Schotland, *Breaking Through the Bars: Incorporating Prisoners Writing in the Teaching of American Literature*,” *Teaching American Literature: A Journal of Theory and Practice* 4-20 (2022).

telling techniques that are often the heart of effective advocacy, which has received relatively less emphasis in the literature.

Where better to learn essential narrative techniques than from literary master works or realistic works of fiction written by the authentic voice of outsiders who have been marginalized by our laws and policies? In my view, the teaching of effective story-telling is compelling, not only for the formulation of the theory of the case, and in briefing and oral advocacy, but equally in policy advocacy.

This article is divided into three parts. The first discusses the benefits of incorporating fictional narratives into clinical classes, and emphasizes the value of learning effective story-telling techniques.

The second part provides examples of fictional narratives that could be incorporated into criminal trial and appellate clinics, beginning with the prosecutor's effective opening statement in the climatic criminal trial scene in E. M. Forester's novel *A Passage to India*. This opening statement is compared to a non-fictional text--an effective prosecutor's opening statement in a recent D.C. murder trial involving feuding local drug crews.

The article then discusses *Junk Menagerie*, a fictional, semi-autobiographical short story about the life, arrest, conviction, and incarceration of a woman addicted to heroin. The narrative, written by a heroin-addicted woman convicted and imprisoned for selling heroin, employs several trenchant story-

telling techniques, and raises important drug policy issues related to drug addiction and criminal penalties.

I then briefly discuss excerpts from a novel, *Jill's Trials*, involving a law student in a criminal defense clinic who becomes overly involved with one of her court-appointed clients, raising strategic and ethical issues for both the student and her supervising professor. The narrative is intended to appeal to and engage clinical law students who may experience similar professional “growth pangs” to Jill’s. It also suggests that in criminal defense narratives, as in fictional narratives, the best course may be to argue that the ultimate “truth” of what happened remains unknown, casting doubt on the prosecutor’s factual narrative to prove guilt beyond a reasonable doubt, rather than a traditional theory of the case approach of countering one narrative claimed to be absolute truth with one’s own opposing version of the truth.

The final section of this article contains practical tips for clinical law professors on how to successfully incorporate fictional narratives into their curricula, even if they have no training in literature.

Although my background is in criminal defense, as are most of the illustrations in this article, it is my conviction that the threefold objectives of incorporating fiction into clinical syllabi apply across the broad spectrum of law school clinics.

## **I. Reasons to Include Fictional Narratives in Law School Clinics**

There are several important reasons why students would benefit if fictional narratives were more widely included in clinical curricula.

### **A. Empathizing with Clients and Appreciating Underlying Policy Issues**

Prior law review articles have emphasized two reasons why it is important for clinical courses to include narrative fiction: they help law students empathize with their clients and understand the challenges that they face;<sup>2</sup> and they prompt discussion of important legal and social policy issues.<sup>3</sup> This article will discuss these two goals, but will focus largely on a third goal that has not received sufficient attention in the literature: the value of fiction in teaching effective narrative techniques that form the bedrock of good legal advocacy.

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<sup>2</sup> See, e.g., Sara P. Benson, *Beyond Protective Orders: Interdisciplinary Domestic Violence Clinics Facilitate Social Change*, 14 *Cardozo J. L. & Gender* 1, 9 (2007) (incorporating fictional narratives into domestic violence clinics allows the students to counter stereotypes about battered women, enhance compassion for clients, and assist students to better convey the narratives of clients in the courtroom); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 *Mich. L. Rev.* 485, 486 (1994) ("clinical theory has long grounded narrative in the actual practice of lawyering.").

<sup>3</sup> See, e.g., Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory* 43 *Hastings L. J.* 717, 734 (literary accounts can inform students in criminal law clinics about important criminal justice policy issues); Richard F. Storrow, *Finding a Home for Migrant Stories: A plea to Include Fiction Involving Migrant Women in Law and Literature and Immigration Policy Courses*, 33 *Geo. Immigr. L. J.* 39, 42 (2018) (immigrant stories in immigration clinic classes can "spark debate about policy choices and potential reforms."); Mira Edmonds, *Why We Should Stop Talking About Violent Offenders: Storytelling and Decarceration*, 16 *N.E. U. L. Rev.* \_\_\_ (2023) (modified narratives about so-called "violent" offenders can stimulate sentencing reform and early release from prison).

Realistic fiction includes both fiction by professional authors and “outsider fiction” written by non-professional authors who describe their own experiences. These “outsider” authors include prisoners, people addicted to drugs, immigrants, or others who are marginalized by society.<sup>4</sup>

Law school clinics regularly include service to criminal defendants, immigrants, victims of domestic abuse, tenants, juveniles and the disabled. The student who is exposed to these stories will have a much better appreciation of their clients’ backgrounds and the institutional and legal barriers that influenced their lives, and will be better able to advocate for them.

There is, as Martha Nussbaum has argued, a powerful argument to read fiction as a spur to creating the empathetic awareness and moral outrage necessary to effect change.<sup>5</sup> Outsider narratives routinely tell stories of poverty, disadvantage, and discrimination. They are written in hopes of increasing awareness of injustice and effecting change.<sup>6</sup>

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<sup>4</sup> As defined by Carolyn Gross, the outsider is “someone who does not have access to the channels of power and communication in this society.” Carolyn Gross, *supra* n. 2 at 110, n. 4.

<sup>5</sup> Martha Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon Press 1995).

<sup>6</sup> See generally Marijane Camilleri, *Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury*, 39 *Cath. U. L. Rev.* 557 (1990).

In our clinics we daily see the effects of racial, ethnic, and gender discrimination. Students who come from minority backgrounds or who are the first in their family to attend college are especially engaged when our class discusses stories relevant to their lives and community.

The meatiest stories also raise challenging policy issues pertinent to course subject matter. Many “law and literature” stories will complement policy questions that are, or should be, debated in clinic seminars: Should a mother with a history of drug addiction be given custody of her child? How many “strikes” before a juvenile is subject to detention rather than alternative disposition? What are the real-life experiences of the felon released from prison under probation restrictions that restrict his movements and efforts to reconnect with family members? What waivers and allowances should be given to those with mental illness, PTSD, or neurodivergent behaviors?

### **B. Developing Good Narrative Skills**

Teaching students how to develop good narrative skills is another important reason to include fictional narratives in clinical curricula. Good narrative techniques that typically form the basis for good fiction are often at the heart of effective advocacy as well. As Thomas Mauet and Stephen Easton observe:

Effective storytelling is the basis for much of what occurs during a trial, including the opening statements, direct examinations, and

closing arguments. Small wonder, then, that good trial lawyers are invariably good storytellers.<sup>7</sup>

In his recently-published book on wrongful criminal convictions, Ralph Grunewald argues that: “It is the power of narrative that influences how police, prosecutors, juries, and judges construct suspicion, legal reality, and the evidence for legal reality, *even when that reality is objectively inaccurate.*”<sup>8</sup>

So, what are good story-telling techniques that can form the basis of effective legal advocacy? Professors Mauet and Easton set them out as follows:

Good stories organize, humanize, and dramatize. They have plot, characters, and emotion. They have a narrative structure.... The story uses sensory language; vivid, visceral, and visual images; present tense; pace; and simplicity to give life to the story and dimensions to its characters. The story is told in a way that puts the members of the audience into the picture, engaging their hearts and minds, so that the audience cares about the people and what happens to them. The story’s moral is consistent with the audience’s beliefs and attitudes, so that the ending of the story is fair and justice is served. The story is

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<sup>7</sup> Thomas A. Mauet and Stephen D. Easton, *Trial Techniques and Trials, Eleventh Edition 27* (Aspen Publishing 11th Ed. 2021) (hereafter Mauet & Easton”). Professors Stephan Krieger and Richard Neuman, Jr. similarly urge legal advocates, whether they’re engaging in interviewing, negotiations, or trials, to find “the story in the facts” of the case by engaging in “narrative thinking” that focuses “not only on the verbal and logical but also on the emotional and irrational. Stefan H. Krieger and Richard K. Newman, Jr., *Essential Lawyering Skills: Interviewing, Counselling, Negotiation, and Persuasive Fact Analysis* 183 (Fourth Ed. Wolters Kluwer Law and Business 2011).

<sup>8</sup> Ralph Grunewald, *Narratives of Guilt and Innocence: The Power of Storytelling in Wrongful Conviction Cases* 5-6 (emphasis added) (New York University Press 2023). The thesis of Professor Grunewald’s book is that in wrongful conviction cases the “narrative—its imagination, construction, and presentation—has a force so strong that it goes beyond legal reasoning and scientific evidence.” *Id.* at 6.

highlighted with gripping visual aids. And the story is told efficiently and always moves forward, so that it never stalls or becomes boring.<sup>9</sup>

One key element of good story-telling in fiction and in legal advocacy is to develop the theory of the case:

A theory of the case is a clear, simple story of “what really happened” from your point of view. It is based on the law and the facts and shows why jurors should find in your favor. It must be consistent with the undisputed evidence as well as your version of the disputed evidence and the applicable substantive law. It must not only show what happened, but also explain why the people in the story acted the way they did. It should be consistent with the jury’s beliefs and attitudes about life and how the world works. It must be a persuasive story that will be the basis of your evidence and arguments throughout the trial.<sup>10</sup>

Another key story-telling principle applicable to legal advocacy as well as fiction is to “show not tell.”<sup>11</sup> This dictum emphasizes the importance of the actors in your narrative using their own speech and actions to tell the story, rather than the author or legal advocate’s summary descriptions of the actors’ actions and thoughts. In fiction, the author “shows” through the character’s dialogue, interior monologue, gestures or actions.<sup>12</sup>

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<sup>9</sup> Mauet & Easton, *supra*, n. 7 at 25-26.

<sup>10</sup> *Id.* at 24.

<sup>11</sup> *Id.* at 558; Krieger & Neuman, *supra* n. 8 at 184.

<sup>12</sup> Renni Browne and Dave King, *Self-Editing for Fiction Writers* 16 (2nd Ed. Harper Collins 2004).



Of course, the “show not tell” principle is not an inviolable rule in either fiction writing or legal advocacy. There are numerous situations where a narrative summary (telling not showing) may be appropriate, such as where it condenses repetitive action, describes minor plot developments or actors, or is useful to vary the rhythm or pace of the narrative.<sup>13</sup>

Reading good fictional narratives should assist the student-attorneys in developing their own narrative skills. Whether the student-attorney will be making an opening statement to the jury in a criminal trial, a final argument at the conclusion of a suppression hearing, or negotiating with opposing counsel, it is important to elicit understanding of the client’s situation, stir compassion, and mitigate the offense. And, as other law professors have urged, inclusion of narratives can assist in educating clinic students to prepare for interviews with clinic clients “whose story is so different from their own that it won’t appear on their radar screen.”<sup>14</sup>

## II. Fiction That Can be Incorporated into Criminal Law Clinics

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<sup>13</sup> *Id.* at 15.

<sup>14</sup> Carolyn Gross, *supra* n. 2 at 123. Gross describes her interactions with a white male heterosexual clinic student and his lack of experience with a lesbian client who had no experience with non-biological mothers in lesbian relationships. Susan Benson advocates interdisciplinary approaches to domestic violence clinics, advocating that student lawyers will better be able to advocate for their clients if they are exposed to “[n]arratives from ‘outgroups’ such as battered women,” thus breaking down stereotypes and enable students to see the world through their client’s eyes. *See also* Sara P. Benson, *supra* n. 2 at 9.

Each of the narratives discussed below is very different, showing the wide range of stories that can usefully be incorporated into clinical courses. I encourage clinical law professors to come up with their own texts based on fiction, true narrative accounts, court hearing transcripts and other materials relevant to their clinics, as discussed in part three of this article.

### A. The Trial Scene in *A Passage to India*

It is useful to begin our literary journey by focusing on an opening statement in a trial because there is substantial support for the view that jurors often make up their minds early in a trial, making preliminary judgments on guilt or innocence of the defendant after opening statements, and then viewing the evidence introduced at the trial through that lens.<sup>15</sup>

The prosecutor's opening statement in the climatic trial scene in E. M. Forester's *A Passage to India* is an excellent example of the persuasive power of a strong narrative. It paints a portrait of the criminal defendant's villainous motivation for his actions that varies substantially from the defendant's "actual" motivation for those events as relayed by the third-person omniscient narrator of the novel. The prosecutor weaves a powerful but misleading narrative of the

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<sup>15</sup> Harry Mitchell Caldwell and Deanne S. Elloit, *Hit the ground Running: The Complete Opening Statement Supported by Empirical Research and Illustrations*, 24 Suffolk J. Trial & App. Adv. 171, 173 (2018); Mauet & Easton, *supra*, n. 5 at 78.

defendant's malevolent plan to set up improper advances to a helpless young woman.

The novel is set in India under British colonial rule in the early 1900s. It focuses on the relationships, or lack thereof, between the English colonists residing in India and their India subjects. Ms. Adela Quested, a young British woman, has just come to India with the elderly Mrs. Moore with the intention of deciding whether to marry the magistrate, Mrs. Moore's son. They are invited by a young Indian physician, Dr. Aziz, to join him and two other men on a visit to the nearby Marabar caves. The omniscient narrator of the novel describes Dr. Aziz as an affable, friendly, warm-hearted doctor, eager to please and a lover of poetry. We readers of the novel accept this description of Dr. Aziz as objectively accurate.

The two men that Dr. Aziz invites to the cave expedition are his friend, Cyril Fielding, the principal of a nearby college, and Narayan Goodbole, a professor at the college. On the day of the planned excursion, they mistakenly arrive a few minutes late, after the train has just departed the station, and they are unable to join the expedition, as Dr. Aziz had expected.

Dr. Aziz, together with Ms. Quested and Mrs. Moore, a guide and a number of servants, continue with the expedition and enter the first cave in their visit. Inside the cave, Mrs. Moore feels crowded in the small area by all the people inside, including the guide and a number of servants. The frail old woman is

overcome with claustrophobia and disturbed by echoes she hears inside the cave. She therefore remains behind at the base camp when Dr. Aziz, Ms. Quested, and the guide head toward caves higher up the mountain. Dr. Aziz and Ms. Quested become separated, Dr Aziz enters one cave on his own and Ms. Quested enters another cave on her own. Inside, she becomes disoriented in the dark and panics. Feeling alarmed, she runs out of the cave and down the mountain, suffering numerous cuts and scrapes from cacti in her dash down. Dr. Aziz sees Ms. Quested leave in a car and criticizes the guide for not keeping track of her movements near the caves, and strikes him, after which the guide runs off. Dr. Aziz sees Ms. Quested's field glasses with a broken leather strap lying on the ground, picks them up, and places them in his pocket.

When Ms. Quested returned to her house, badly cut and shaken up, with hundreds of cactus spines stuck in her flesh, she signs a statement asserting that Dr. Aziz made improper advances towards her when she was in the second cave, and he's charged and arrested. As Ms. Quested was recovering from the ordeal, "vibrat[ing] between hard common sense and hysteria,"<sup>16</sup> she described the incident in the cave as seeing a "shadow, or sort of a shadow," at the entrance to the cave, she hit at him with her field glasses, he pulled her around the cave by the

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<sup>16</sup> E. M. Forester, *A Passage to India* 201 (Edward Arnold & Co. 1947).

field glasses' strap, which broke, and she then escaped out of the cave.<sup>17</sup> "He never actually touched me once. It all seemed such nonsense"<sup>18</sup> Ms. Quested subsequently told the magistrate, her fiancé, that Dr. Aziz was innocent of any misconduct inside the cave, and she had made an "awful mistake" in accusing him.<sup>19</sup> The magistrate responded that the case must proceed to trial because "the machinery has started."<sup>20</sup>

The novel does not definitely tell us what actually happened to Ms. Quested inside the cave. The weight of scholarly opinion has concluded that she had a hallucinatory experience that she perceived as an attempted sexual assault by Dr. Aziz,<sup>21</sup> but other scholars have reached different conclusions.<sup>22</sup> Just before the

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<sup>17</sup> *Id.* at 202.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 211.

<sup>20</sup> *Id.* at 213.

<sup>21</sup> Jo Ann Hoepfner Moran, *E. M. Forester's "A Passage to India": What Really Happened in the Caves*, *Modern Fiction Studies*, Vol. 34, No. 4, 596, 579 (1988); Louis Dauner, *What Happened in the Cave? Reflections on "A Passage to India"*, *Modern Fiction Studies*, Vol 7, No. 3, 258, 262 (1961) (Ms. Quested's experience in the cave "adds up to hallucination, hysteria, and physical and psychic illness"); Keith Hollingsworth, *"A Passage to India": The Echoes in the Marabar Caves*, *Criticism*, Vol. 4, No. 3, 210, 221 (1962) (Ms. Quested suffered a hallucination in the cave and broke the strap on her field glasses "presumably by her own panicky efforts" to escape the cave).

<sup>22</sup> Jo Ann Hoepfner Moran argues that subtle clues throughout the novel indicate that an attack did in fact occur in the cave, "probably by the guide." Jo Ann Hoepfner Moran, *supra* n. 21, at 602.

incident, Ms. Quested had asked Dr. Aziz about his relationship with his wife and some scholars believe that Ms. Quested experienced a crisis in the cave about her uncertainty whether to marry the magistrate.<sup>23</sup> Other scholars have concluded that what actually happened in the cave is ultimately unknowable, and that Forester intended the incident to remain a mystery.<sup>24</sup>

The trial scene is the climax of the novel. The prosecutor (the Superintendent of Police) began his opening statement by describing how Dr. Aziz first met Ms. Quested at a social event given by his friend Principal Fielding “and had there conceived his intentions concerning [Ms. Quested].”<sup>25</sup> The prosecutor continued that “the darker races are physically attracted by the fairer, but not vice-versa,” and that was “just a fact which any scientific observer will confirm.”<sup>26</sup> The prosecutor then pointed out that Dr. Aziz was a “man of loose life” shown by his possessing a letter from a friend who kept a brothel, suggesting that Dr. Aziz intended to visit the prostitutes.<sup>27</sup>

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<sup>23</sup> A Passage to India, *supra* n. 16 at 159.

<sup>24</sup> Roger L. Clubb, *A Passage to India: The Meaning of the Marabar Caves*, CLA Journal, Vol. 6, No. 3, 184, 192 (1963).

<sup>25</sup> A Passage to India, *supra* n. 16 at 227.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

The prosecutor then described the other invited quests to the cave expedition, calling them “dupes” of Dr. Aziz – Principal Fielding, who missed the train, the servant who Dr. Aziz struck outside the second cave, which caused the servant to run away, and Mrs. Moore, who remained behind at the base camp when Dr. Aziz and Ms. Quested went up the mountain to visit additional caves after Dr. Aziz “crushed” her when they visited the first cave.<sup>28</sup> According to the prosecutor, Dr. Aziz connived to get all of these people out of the way so he could pursue his plan to make improper advances towards Ms. Quested in the second cave.<sup>29</sup>

Continuing in this vein, the prosecutor recounts Ms. Quested’s dash down the mountain away from Dr. Aziz and her subsequent signing of the statement accusing Dr. Aziz of making improper advances inside the cave.<sup>30</sup> The prosecutor emphasized that it was very important that Ms. Quested’s statement indicated that she had lost her field glasses when Dr. Aziz attempted to make improper advances toward her in the cave and he pulled at the field glasses breaking the leather strap, and that Dr. Aziz was subsequently discovered in possession of those field glasses,

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<sup>28</sup> *Id.* at 232-33.

<sup>29</sup> *Id.* at 233.

<sup>30</sup> *Id.* at 232.

which had the broken strap.<sup>31</sup> The prosecutor ended his opening statement as follows:

I will now call my witnesses. The facts will speak for themselves. The prisoner is one of those individuals who had led a double life. I dare say his degeneracy gained upon him gradually. He has been very cunning at concealing, as is usual with the type, and pretending to be a respectable member of society, getting a Government position even. He is now entirely vicious and beyond redemption, I am afraid. He behaved most cruelly, most brutally, to another of his guests, another English lady [Mrs. Moore]. In order to get rid of her, and leave him free for his crime, he crushed her into a cave among his servants.<sup>32</sup>

This opening statement can be discussed on several levels. What does it reveal about the racism of British colonialists towards their Indian subjects, even a highly educated one like Dr. Aziz, and the impact that racism would be expected to have on the verdict in his trial? Professor Allen Mendenhall has argued that the novel reflects the reality that in colonial India at the time the respective races of Dr. Aziz and Ms. Quested would be the “determinative factor of guilt or innocence,” rather than the weight of the evidence that would be introduced by the prosecutor and defense counsel at the trial.<sup>33</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 232-33.

<sup>33</sup> Allen Mendenhall, *Mass of Madness: Jurisprudence in E.M. Forester's A Passage to India*, in *Modernist Cultures* 327, 6.2 (2011), DOI: 10.3361 Mod. 2011.0018 (Edinburgh University Press 2011).



The prosecutor making this opening argument included overt racial stereotyping—“the darker races are physically attracted by the fairer—to reinforce his argument that Dr. Aziz made an improper sexual advance toward Ms. Quested in the cave. In clinic cases where there is a risk of race stereotyping, the *Passage to India* trial scene can be a vehicle to trigger discussion of effective strategies the students could pursue to counter the impact that racial biases (overt or implicit) might have in their cases.

The trial episode also invites consideration of the prosecutor’s narrative strategy. How does he structure the vivid factual details he relates and use appropriate repetition? And does he go too far in mischaracterizing the circumstantial evidence that corroborates Ms. Quested’s assertion of improper advances? The prosecutor’s opening statement and theory of the case presents a clear, easy to follow general theme, that Dr. Aziz, attracted to a woman of the fairer race, plotted a visit to nearby caves, and then eliminated everyone else so he could make improper advances to Ms. Quested when the two were alone together in one of the caves. Was the prosecutor’s narrative improper when he put a malevolent spin on everything that Dr. Aziz did, emphasizing that he was a man of loose morals, who intended to frequent prostitutes, and a villain who cunningly set up everything to enable him to assault an innocent young White woman? Was the

prosecutor’s opening statement an abuse of the prosecutor’s role of being a vigorous advocate but ultimately ensuring that justice is done?<sup>34</sup>

The prosecutor’s opening statement contained several distortions of what the evidence was expected to show. Dr. Aziz didn’t “dupe” Principal Fielding and Professor Goodbole into missing the train to begin their trip to the caves; they missed the train by accidentally arriving a few minutes late, after the train left the station. Dr. Aziz did not “dupe” the guide into running away and leaving him alone with Ms. Quested; the guide ran away after Dr. Aziz struck him for loosing track of Ms. Quested, but this occurred after Ms. Quested ran down the hill after leaving the cave. Perhaps the most egregious example of distortion in the prosecutor’s opening statement was his assertion that Dr. Aziz “crushed” Mrs. Moore in the first cave among his servants in order to get her to remain behind when he and Ms. Quested later went up the mountain to explore other caves, with the intent of making improper advances towards her—when at most Mrs. Moore felt claustrophobic in the crowded narrow space.<sup>35</sup> Did it, together with the prosecutor’s other distortions, cross the line from being a vigorous, partisan

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<sup>34</sup> See, e.g. D.C. Rules of Professional Conduct (2023), Rule 3.8, Comment 1: “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”

<sup>35</sup> Richard Clarke Sterne argues that the prosecutor’s characterization of what happened to Mrs. Moore in the cave was a “bizarre distortion” of what actually happened. Richard Clarke Sterne, *The Trial in A Passage to India: Justice Under Colonial Conditions*, in *Counterpoints*, Vol. 121, pg. 211 (Peter Lang A G 1999).

narrative to being an unfair or improper mischaracterization of what occurred in the cave?

Luckily for Dr. Aziz, his lawyer did not have to present a counter-narrative or counter evidence of his innocence, because when the complainant, Mr. Quested, was called to testify at the trial she recanted her accusation against Dr. Aziz, stating that Dr. Aziz did not make improper advances towards her in the cave.<sup>36</sup> The case against Dr. Aziz was then dismissed by the magistrate. But the power of the narrative created by the prosecutor would have been very difficult for defense counsel to overcome if Ms. Quested had not recanted. Discussing this passage in a clinic would allow the student attorneys to confront strategic and ethical issues they are likely to face in court involving the line between proper vigorous story-telling advocacy and improper, unfair mischaracterization of evidence to the decisionmaker, and the potential impact of racial biases in the outcome of their cases.

**B. Comparing the Prosecutor's Opening Statement in *A Passage to India* with the Prosecutor's Opening Statement in a Recent Murder-Conspiracy Trial in D.C.**

Narratives from trial and motion hearing transcripts are excellent sources for comparison to address story-telling techniques. I have critiqued above the prosecutor's opening statement in *A Passage to India*; as a comparison I present to

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<sup>36</sup> *Id.* at 238.

my class the opening statement a prosecutor made in a recent murder-conspiracy trial in D. C. Superior Court. That case, according to the prosecutor, involved a feud between two competing D.C. neighborhood drug crews or gangs.<sup>37</sup> The prosecutor's opening statement in that case was, I believe, both compelling and a fair summary of the facts that would be introduced at the trial. A copy of the transcript excerpts cited in this article is attached as an appendix.

The prosecutor began his opening statement by painting a vivid picture of the central shooting incident in the case that occurred in September 2010, first describing the events that occurred right before the shooting. Note the emphasis that the victims were on the way to a funeral and that the defendants, in cowardly fashion, “snuck up” to commit the killing:

Good afternoon. A little over three years ago, three young men sat in a car at the intersection of 13th and U Streets NW. They were waiting for a funeral procession to begin to take the body of a young girl that they knew and had grown up with who had passed away to her burial site. While they sat there in their car, waiting for the procession, in front of a Starbucks in the middle of broad daylight at one of the busiest intersections in Northwest D.C., this man, Lester Williams, sitting behind Mr. Oliver, snuck up behind them while holding a 9mm gun. This man, Keir Johnson in the bow tie, snuck up on the driver's side of the car, Mr. Williams on the passenger, Mr. Johnson on the driver's side, snuck up behind them. Mr. Johnson had a 40mm gun. .<sup>38</sup>

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<sup>37</sup> *United States v. Robert Givens, et al.*, No. 2010 CF1 014920, *et al.*, D.C. Superior Court (transcript of November 12, 2013).

<sup>38</sup> *Id.* at 16-17.

The prosecutor then vividly described the shooting itself:

While they snuck up, Mr. Johnson and Mr. Williams behind them, Mr. Williams fired that 9mm over and over and over at point-blank range. One of those bullets went through the back of the head of a young man sitting in that car named Jamal Coates, burying itself in his brain, killing him virtually instantly. Another bullet passed through the back of his arm. Another bullet passed through his face and buried itself in his tongue, passing through the back of his face to the front of his mouth.

Mr. Johnson on the driver's side of the car, again from behind, tried to shoot at the driver, but his gun jammed. His 40mm jammed. He fixed it and he got a shot off shooting the driver in the back.<sup>39</sup>

The prosecutor then described how a month earlier two of the co-defendants had shot at three other teenagers in a nearby school parking lot, killing one of them. “You will see the video of him being shot, and you will see the video of him dying.”<sup>40</sup> The prosecutor then described how a month before that one of the co-defendants shot at another young man in a nearby gas station; the prosecutor told the jury that “you will actually see the concrete around the young man exploding from the bullets being shot at him.”<sup>41</sup>

The prosecutor then pivoted in his narrative and asked:

How did it come to this? Three young men at a funeral in broad daylight. Fourteen, 15-year-olds shot at in school parking lots. A man shot at in broad daylight at a gas station. All in a three and-a-

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<sup>39</sup> *Id.* at 17.

<sup>40</sup> *Id.* at 17-18.

<sup>41</sup> *Id.* at 18.

half-month span in one summer in 2010. How did it come to this?<sup>42</sup>

The prosecutor answered his rhetorical question:

Well, it is not a good answer, but it's an old answer. One that goes back as old as history. Power. These men were not content to just live in the neighborhood where they were from. They and their friends wanted power over it, to control that neighborhood. And to control that neighborhood they were willing to do anything, even kill. That is what brought that summer of violence on.<sup>43</sup>

The prosecutor then explained how the co-defendants were part of a neighborhood crew that sold crack cocaine and marijuana on the streets of the area.<sup>44</sup> This crew had a long-standing feud or “beef” with another drug crew from an adjoining neighborhood, and the prosecutor described in extensive detail the history of that feud, and the incidents that started and prolonged it over the years.<sup>45</sup> All three shooting incidents in the case, and other acts of violence that would be introduced by the government during the trial, involved the feud between the members of the two drug crews.<sup>46</sup>

This opening statement is impressive for several reasons. First, it described in detail the predominant pattern of street drug sales in D.C.--mostly by

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 22-23.

<sup>45</sup> *Id.* at 23. 28-43.

<sup>46</sup> *Id.* at 43-44.

neighborhood crews or gangs of young Black or Latino men who grew up together and have staked out an area where they sell drugs. The prosecutor explained that it's been that way for generations. These crews sometimes cooperate and sometimes feud with each other. The prosecutor explained that D.C. is unusual because in most cities large criminal gangs or cartels control the drug trade. The opening statement is also a window into the lives of the young men growing up in these poor D.C. neighborhoods with very little economic opportunities besides selling drugs.

The opening statement is also an excellent example, in my view, of using a number of story-telling devices to convey a powerful and convincing narrative. The prosecutor begins with the key shooting incident in the case and then tracks back to two earlier shooting incidents. He does not develop the narrative chronologically but begins with the central shooting incident in this case. The prosecutor gives dramatic, vivid detailed descriptions of all three shooting incidents that will likely be memorable to the jury. And the prosecutor effectively uses repetition to reinforce his clear and compelling theory of the case.

The prosecutor then asks dramatically: "How did it come to this?" and he explains that the answer is as old as history, the battle for "power" between adjacent neighborhood drug crews. The prosecutor has given, in the first few minutes of his opening statement, a very dramatic, vivid, and convincing

presentation of the government's entire case, which would last almost four months. It's an excellent example, I believe, of how effective advocacy equals good storytelling.

The defense also had a compelling counter-narrative in this case. Focusing on the shooting incident outside the Starbucks that was the centerpiece of the government's case, the defense pointed out that the government's evidence consisted largely of the testimony of a member of the defendants' crew who had "flipped" and agreed to testify against his former associates. This informant was not credible, defense counsel argued. He was lying to get a reduced sentence on his own charges and had given the police constantly changing and inconsistent versions of what happened at the shooting incident. The more reliable evidence about what happened outside the Starbucks that day, defense counsel argued, would come from two independent, unbiased eyewitnesses who were close to the car when the shooting occurred—a teacher and a plumber. Both would testify that the two shooters wore their hair in the style of dreadlocks, and there would be no dispute that the two co-defendants charged with the shooting never wore their hair in the form of dreadlocks. They weren't the shooters.

Defense counsel also had a counter-narrative about the nature of the defendants' crew. It was not a tightly organized, hierarchical organization with bosses and formal membership, and orders from the bosses to their underlings to



commit criminal actions, like what occurs in large, organized criminal enterprises. Instead, the crew was a loose association of friends and associates who grew up together in the neighborhood who hung out and partied together, like a social club. If some members sold drugs and acted violently towards perceived threats to their turf, those were the personal actions of individuals, and did not implicate the defendants charged in this case. This counter-narrative was an important part of the defense theory of the case because, similar to the government's case in *A Journey to India*, the government's case here could rely on the expected implicit biases of the jury that members of a violent street drug crew were likely to have committed the shootings alleged by the prosecution.

In many criminal prosecutions, in contrast to this crew case, the defense counter-narrative is not and need not be a detailed alternative version of events, but instead focuses only on the weaknesses in the government's evidence – witnesses who are lying, biased, inaccurate, or forgetful – to show that the government has not proven its case beyond a reasonable doubt. In these prosecutions, the defense narrative is that there is sufficient uncertainty as to what actually happened or who the perpetrators were. And that can certainly be an effective counter-narrative in itself.

C. **“Junk Menagerie” Short Story by Haley Teget**

PEN America is an organization that publishes essays, short stories, poems, and plays from prisoners whose writing have won awards either on their website or in annual compilations.<sup>47</sup>

The short story *Junk Menagerie*, which was awarded first prize in fiction in the PEN America 2015 prison writing contest, serves the dual objectives of eliciting empathy for a drug user ensnared by the criminal justice system and providing a factual scenario that raises challenging policy questions.<sup>48</sup> It can also be analyzed for its creative narration—it has a tripartite structure that conveys a three-fold message: a first-person narrative describing the difficult life on the street for a person addicted to heroin; then switching to a bureaucratic second-person police report on her arrest that eliminates her personality; and, finally returning to a first-person narrative that portrays her life as a prisoner serving an unexpectedly long sentence with a resulting loss of personal identity.

In this triptych tale, Haley Teget tells the harrowing semi-autographical story of how her life was dominated by heroin. Haley Teget was herself arrested for drug trafficking at age twenty-two in Boise in 2012 and received a 20-year

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<sup>47</sup> Pen Prison Writing Archive, [https://pen.org/pen\\_category/prison-writing/](https://pen.org/pen_category/prison-writing/)

<sup>48</sup> Haley Teget, *Junk Menagerie*, PEN America Nov. 23 2015, <https://pen.org/junk-menagerie/>  
<https://pen.org/junk-menagerie/>.

sentence.<sup>49</sup> Teget explains in the first part of her story, through the character

Charlotte:

Going to get a bunch of heroin is an exciting prospect for a heroin addict. I mean, going to get high is a good feeling, but going to get a month's worth of highs is a million times better. It's like when you're starving and someone offers you a few potato chips out of their bag. If you just eat one or two chips, it's only going to make you hungrier, and you'll focus on that certain delicious chip-y taste. Do you even want to go down that road? Most junkies will, but not me. I want the whole bag or it's not worth the effort. I want more than one bag; I want it all, so I go for the box.<sup>50</sup>

Charlotte and her older boyfriend Matt undertake a bus trip (they go by Greyhound bus because they are unlikely to be searched on the bus) to secure a supply of heroin for their own use and for distribution. This road trip bears no resemblance to fun, tourist road trips. The couple take along a supply of heroin they calculate is sufficient for the journey, but soon they desperately inject heroin at a rest stop that they thought would last them the whole trip. Charlotte illustrates that for heroin addicts, there is no joy in the high. She and her boyfriend are no longer able to have sex and students learn of the gross constipation that heroin addicts experience. For most students, the extent of their constant craving and

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<sup>49</sup> *State of Idaho v. Haley Lynn Teget*, Docket No. 40909 2014, Unpublished Opinion No. 435. <https://casetext.com/case/state-v-teget>. The minimum sentence she was required to serve before eligibility for parole was eight years.

<sup>50</sup> *Junk Menagerie*, *supra* n. 48 at 1.

inability to postpone an injection is a revelation—they never knew the intensity of the need.

The brief second part of the story has an entirely different tone—it is an impersonal, detached replica of a standard police incident report, similar to that issued when Teget was herself arrested. The arrest incident is told in the ultimate impersonal third-person narrator style. All that matters is the place and date of the arrest, that she is suspected of multiple heroin sales, and that she was given her *Miranda* rights.

In the third part of the story, Charlotte is in prison. Although a first-time offender, she has been given a sentence of fifteen to twenty years. Her boyfriend has, to her shock, received a more lenient sentence. From a middle-class background, Charlotte never imagined herself in prison and feels the shame she has brought upon her mother and her family. But far worse is the pain of withdrawal. As in so many prisons, she has received no medication and she describes the pain of withdrawal, including vomiting and insomnia:

You don't sleep, only hallucinate. And the deeper your withdrawal, the worse your cravings--the number one reason you've never been able to kick in the first place.... All those euphoric highs you experienced in the early days? Welcome to the other side.

Every bodily fluid runs out of you: through your pores, your nose, your eyes, your butt, until you're a Sun-Maid raisin (with stomach

spasms). You don't get anything to help your symptoms, nothing for insomnia, the nurse is only there to monitor.<sup>51</sup>

The story ends with Charlotte not knowing who she really is: "Tell me who I am because I've lost myself and I just don't know."<sup>52</sup>

Students can consider several policy issues as they read *Junk Menagerie*. First, does it make sense to hold a person with a drug addiction criminally responsible? While the status of being an addict is not punishable,<sup>53</sup> addiction is no bar to conviction for possession or sale of drugs. Courts have reasoned that the decision to use heroin initially was voluntary, and that the choice to abstain later might be difficult, but is not impossible.<sup>54</sup> One commentator who opposes an insanity defense for opioid addicts contrasts a Parkinson's patient who could not stop shaking though threatened with a knife to his throat with an epileptic who accidentally kills a motorist when he has an unexpected fit while driving: the

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<sup>51</sup> *Junk Managery*, *supra* n. 48 at 13.

<sup>52</sup> *Id.* at 17.

<sup>53</sup> *Robinson v. California*, 370 U.S. 660 (1962).

<sup>54</sup> *United States v. Lyons*, 731 F.2d 243, 245 (5<sup>th</sup> Cir.1984) (citing *United States v. Moore*, 486 F.2d 1139, 1183 (D.C. Cir 1973), and *Bailey v. United States*, 386 F.2d 1, 4 (5<sup>th</sup> Cir. 1967)); *see also* Cal. Penal Code § 29.8 (2017) ("In any criminal proceeding in which a plea of not guilty by reason of insanity is entered, this defense shall not be found by the trier of fact solely on the basis of . . . an addiction to, or abuse of, intoxicating substances.").

epileptic could have chosen not to drive.<sup>55</sup> On the other side, the National Institute on Drug Abuse recognizes addiction as “an intense and, at times, uncontrollable drug craving, along with compulsive drug seeking and use that persist even in the face of devastating consequences.”<sup>56</sup>

Many have argued that hardened addicts are substantially unable to conform their conduct to law, and that the law should be reformed consistent with Model Penal Code provisions that adopt such a test for not guilty by reason of insanity-- requiring a showing that as a result of mental disease or defect the defendant lacks "substantial capacity" to "conform his conduct to the requirements of law."<sup>57</sup> The class can be divided into groups who locate textual evidence that a prosecutor would cite to demonstrate that Charlotte and Matt are in control (bribing taxi drivers, circulating between Portland and Boise to buy cheap and sell at higher prices, etc.) with instances in which they take their life into their hands by very dangerous methods of injection. Charlotte tells us that she could not stop when she

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<sup>55</sup> Stephen J. Morse, *Compelled or Cajoled? The Criminal Responsibility of Opioid Addicts*, *The American Interest* (Nov. 6, 2018), <https://www.the-american-interest.com/2018/11/06/the-criminal-responsibility-of-opioid-addicts/>.

<sup>56</sup>National Institute on Drug Abuse, *Principles of Drug Addiction Treatment for Criminal Justice Populations: A Research-Based Guide 3* (2018), <https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-basedguide-third-edition/preface>.

<sup>57</sup> 32 Model Penal Code § 4.01(1) (Am. Law Inst. 1962).

needs a fix even if a policeman were at her side—an illustration that has been used in insanity defenses.

This text may also open up a debate by clinic students on drug decriminalization. Most students will readily appreciate that concern with drug-related crime has thus far impeded decriminalization of “hard” drugs; and that Charlotte and Matt are distributors who to feed their own habit are selling heroin to others. On the other hand, other students perceive the failure of drug laws to date to stem heroin usage, and the injustice of incarcerating addicts without providing methadone. Only about a quarter of prisoners receive any kind of drug treatment while in prison,<sup>58</sup> and heroin addicts are at great danger from fatal overdose when released without methadone.<sup>59</sup> A defendant found criminally insane may languish in commitment longer than the prison sentence normally assigned to the crime, and a comparable result could apply were a similar defense crafted for confirmed

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<sup>58</sup> Among inmates who met the DSM-IV criteria for drug dependence or abuse, 28% of prisoners and 22% of jail inmates received drug treatment or participated in a program since admission to the current facility. National Institute on Drug Abuse, *Principles of Drug Addiction Treatment for Criminal Justice Populations: A Research-Based Guide* 3 (2018), <https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/preface>.

<sup>59</sup> The National Institute on Drug Abuse finds that a former inmate’s risk of death within the first two weeks of release due to overdose is more than 12 times that of other individuals. NIDA, *How is Opioid Use Disorder Treated in the Criminal Justice System* (2021), <https://nida.nih.gov/publications/research-reports/medications-to-treat-opioid-addiction/how-opioid-use-disorder-treated-in-criminal-justice-system#:~:text=Thus%2C%20opioid%20use%20disorder%20goes,death%20being%20a%20fatal%20overdose>.

addicts. Portugal and Oregon have passed laws decriminalization possession of all drugs,<sup>60</sup> substituting medical treatment or non-criminal fines for arrest, prosecution, and possible imprisonment. *Junk Menagerie* could be a useful springboard to discuss the advantages and disadvantages of this approach to America's serious drug abuse problem.

The assignment of criminal responsibility to heroin addicts because of so-called voluntary decisions to consume also skirts the issue that in many instances, drug addiction begins when one is a minor. It is arguably inconsistent to ignore the immaturity of adolescent decision-making when recent Supreme Court jurisprudence such as the *Roper/Miller*<sup>61</sup> line of cases abjures the death penalty and life imprisonment for juveniles in recognition that adolescents are impulsive and more influenced by frequently-troubled home environments.

Additionally, "Junk Menagerie" raises "the boyfriend problem." As Phyllis Goldfarb has observed, female first-time offenders have suffered penalties way disproportionate to their individual involvement in drug activity.<sup>62</sup> A man who

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<sup>60</sup> These statutes were controversial when enacted, and have been criticized for not working out as expected. See Jeffrey Miron and Jacob Winter, *Oregon's Drug Decriminalization Needs to Go Further* (Cato Institute 2022); Anthony Faiola and Catarina Fernandes Martins, *Once hailed for decriminalizing drugs, Portugal is now having doubts*, The Washington Post, July 7, 2023.

<sup>61</sup> *Roper v. Simmons*, 543 U.S. 551, 568 (2005); *Miller v. Alabama*, 567 U.S. 460, 466, 480 (2012) (respectively invalidating the death penalty and mandatory life imprisonment for individuals under age 18 when they commit crimes).

<sup>62</sup> Phyllis Goldfarb, *Counting the Drug War's Female Casualties*, 6 J. of Gender Race & Just. 277, 294 (2002); see also Mark Maurer, *The Changing Racial Dynamics of Women's*



may have a much greater role in a drug conspiracy may secure a lighter sentence because he has more significant information to trade in plea bargaining versus his partner who may have had more minor involvement.<sup>63</sup>

Fiction like *Junk Menagerie*, in addition to creating empathy to tell the stories of drug-addicted individuals, raising substantial drug policy issues for discussion in class, and employing interesting narrative techniques, could also spur law students to choose careers that advocate for social change. Teget's story furthers what scholars have called "ambassadorial empathy," a term credited to Suzanne Keen,<sup>64</sup> referring to the objective of some writers to motivate readers to seek societal change. Students across the broad spectrum of clinical course offerings—from criminal law, immigration, landlord and tenant, poverty, and domestic violence—could be motivated to pursue careers fighting for justice by their involvement in their clinics, including reading and being moved by powerful fictional narratives in their courses.

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*Incarceration* 5 (The Sentencing Project (2013))  
<https://www.sentencingproject.org/publications/the-changing-racial-dynamics-of-womens-incarceration/>.

<sup>63</sup> See Marlyn Harrell, *Serving Time for Falling in Love: How the War on Drugs Operates to the Detriment of Women of Circumstance in Poor Urban Communities of Color*, 11 *Geo. J. L. & Mod. Crit. Race Persp.* 139, 140; Holly Jeanine Boux and Courtenay W. Daum, *Stuck between a Rock and a Meth Cooking Husband: What Breaking Bad's Skyler White Teaches Us about How the War on Drugs and Public Antipathy Constrain Women of Circumstance's Choices*, 45 *N.M. L. Rev.* 567, 574 (2015).

<sup>64</sup> Suzanne Keen, *A Theory of Narrative Empathy*, in *Narrative*, Vol. 14, No.3 (Oct 2006).

#### **D. *Jill's Trials: Strategic and Ethical Dilemmas in a Clinic Setting***

The author of this article has written a novel scheduled for publication by Brandylane Publications in 2024 called *Jill's Trials*. The discussion questions that this novel raises include strategic and ethical dilemmas relevant to law school clinics.

In this novel, a student in a criminal trial clinical program becomes overly involved with her court-appointed client. Talented but troubled, Jill is unwittingly duped into helping him in his criminal activities. Jill's personal involvement with her client was obviously improper, and she did not disclose it to her supervising professor. The D.C. Bar's Conflict of Interest Rule, 1.7 (b) (4) prohibits conflict of interest; such relations may impede a lawyer's ability to offer dispassionate professional advice. What should Jill do when she finds out that her client is threatening to have his accuser murdered? The District of Columbia Rules of Professional Responsibility state that a lawyer "may" inform the legal authorities of a client's plan to commit a crime, but the lawyer is not ethically required to do so.<sup>65</sup> The rule reads "may" not "shall," resulting in an obvious dilemma.

What action should her supervisor, an experienced criminal law professor, take when he learns of the improper relationship and the improper things that Jill has done to assist her client? If he reports her to the dean as he ought, it will

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<sup>65</sup> Rule 1.6, D.C. Rules of Professional Responsibility.

extinguish a promising legal career. If he fails to report her, he violates his duty as her supervisor and if that is found out he seriously jeopardizes his career as a law professor.

Because it is set in a clinical program, my novel addresses topics that clinicians will find familiar, including a controversy over whether to give tenure to an outspoken pugnacious clinical law professor whose scholarship is doubted. I take the reader inside a clinical seminar where students debate the pros and cons of drug decriminalization and engage in a mock cross-examination of a police officer. Many clinical law students will identify with the tough decisions that Jill needs to make regarding her future employment. Can she overcome nervousness to become an effective advocate in the courtroom? Saddled with debt, should she “sell her soul” to big law-which enjoys considerable prestige at her law school?

It turns out that Jill’s clinical experience -- notwithstanding her disastrous involvement with a client--is on balance highly positive. She makes the decision to become a public defender after she successfully represents a woman accused of prostitution; she finds a way to avoid conviction and help her client turn her life around. Following this experience, Jill gives increasing consideration to her role as a defense counsel: is it not only to defend the client but also to help victims of abuse and/or addiction find the help they need, if they are willing to seek it? The lawyer’s professional obligation is limited to the scope of the engagement, and he

or she is not a social worker. But should a lawyer helping clients who have been oppressed by social and institutional barriers see her role more broadly? I think this is an important topic to debate in our clinical seminars.

The narrative style of my novel is intended to show considerable interiority, to give close insight into a thoughtful and not atypical law student's journey through law school and introduction to her professional career. Jill should be a relatable character to the reader: like many students she struggles with parents, loneliness, debts, uncertainty over career path, anxiety about her in-court performance. Relatability should hopefully engage law student readers to also seriously engage with the ethical questions presented.

The trial scene involving her client's innocence is an important corrective to leading narrative theories that juxtapose the plaintiff's and the defendant's case as each presenting directly contradictory narratives, in which the advocates attempt to persuade the trier of fact that their clients' narrative is the true one. Jill's trial strategy is to cast doubt on the government's version of the key event, an alleged assault in the bar. Jill's narrative is that the government cannot prove its case beyond a reasonable doubt because of the unreliability of the complaining witness's testimony.

In many criminal prosecutions, in contrast to the drug crew case discussed above, the defense counter-narrative is not and need not be a detailed alternative

version of events, but instead can focus solely on the weaknesses in the government's evidence—witnesses who are lying, biased, inaccurate, or forgetful—to show that the government has not proven its case beyond a reasonable doubt. In these prosecutions, the defense narrative is that there is sufficient uncertainty as to what actually happened or who the perpetrators were. And focusing on uncertainty can be an effective counter-narrative in itself. In *Jill's Trials*, we may never know definitely who threw the first punch in the bar, or why, as in *Passage to India*, where we may never know definitively what exactly happen in the cave.

### **III. Practical Tips for Incorporating Fiction in Syllabi**

Below I explain why no literary training is needed to include narrative fiction in law school clinics and offer suggestions on how to locate relevant texts or excerpts from novels.

#### **A. No Literary Background Is Needed**

It is easy to include a fictional component in the clinical syllabus without any background in literature. I have no such training, and initially asked a literature professor, my wife Sara, to be a guest lecturer leading my class in discussing the fictional narratives assigned. One approach, therefore, is to invite to the class, in person or by Zoom, a professor who teaches literature at the law school or college. But absent a guest lecturer, there should be no hesitation in

discussing stories though one is a clinical professor who has never taken a class in literature.

No literary background is needed is that the clinical professor is not (or in my view, should not) be giving a lecture. The goal should be to come up with discussion questions to ask students' their responses to the texts, such as the questions included in my above discussion of the narrative fiction in part two of this article. Some general prompts might include: What story-telling devices employed by the author did you find effective or ineffective? How and why were the protagonists depicted as they were? What were their challenges and back stories? As readers, what were your emotions/outrage/concerns? What policy issues were raised? Do any reforms come to mind? What are the practical difficulties in meeting challenges or implementing reforms? In other words, the clinical professor should prompt discussion, rather than see his or her role as to offer definitive expert analysis.

Our goals are first of all thematic. We want to give students a vicarious understanding of the experiences of the characters and their legal/social predicament. We want to stimulate a discussion of the policy issues raised and the need for reform. Additionally, we want to invite students to consider what they found (in)effective in the story's narrative technique-building of character, arc of the plot; description of physical setting. Most of us have the background to do that

with no need to apply advanced literary theory that would be appropriate in a college literature course. Of course, we all have access to library data bases that at least with respect to published authors will include insightful articles. Quite frankly, most outsider fiction is accessible and straightforward. These authors generally seek to communicate their pain, protest oppression and spur reform; their purpose is to tell a story and send a message in the clearest possible terms.

### **B. Sources for Texts**

Most of us will only find the space in our syllabi to devote a class or two to fiction. Short stories thus are extremely practical. We don't need to locate a large number of relevant texts—I find, for example, that three or four is about the limit, of course depending on the length of a clinical seminar class. In addition to texts written by non-professional authors such as the Award winners, in my class I assign stories by professional writers such as James Baldwin, and Madison Smart Bell.<sup>66</sup> I seek stories where the author has first-hand experience with criminal law and or addiction.

The leading literary magazines such as *The New Yorker* offer fertile ground, especially as their archives enable search by topic and categories. For example, a professor teaching an immigration clinic will readily locate in such reviews stories

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<sup>66</sup> James Baldwin, *Sonny's Blues*, in Joyce Carol Oats, ed., *The Oxford Book of American Short Stories* pgs.483-513 (Oxford University Press, 2013); Madison Smartt Bell, *Customs of the Country*, in *Harper's Magazine* (Feb. 1988).

by immigrant authors such as Edwidge Danticat, Christina Henriquez, and Chimanda Adichie.<sup>67</sup> They offer a moving first-hand look at the abuse women immigrants face, obstacles to asylum, and color discrimination. Another source of stories is to inquire of professors teaching relevant courses in your college's English departments what fiction they might recommend.

### **Conclusion**

Including fiction as a component of the syllabus provides clinical law students with the opportunity to better understand their clients' backgrounds and decisions—why they committed a crime and what might mitigate their sentence; why they left their country of origin and how they may gain admission or avoid deportation; how they have been abused as a result of gender status. Students who are moved by these stories are more likely to question oppressive institutional policies. And a student who closely reads a well-told story learns important lesson: good story-telling is an invaluable skill to successful legal advocacy.

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<sup>67</sup> Chimanda Adiche, *The American Embassy*, New York Alfred Knopf, 2009, pgs. 80-87; Edwidge Danticat, *Without Inspection*, from *Everything Inside* (2019); Christina Henriquez, *Everything is Far From Here*, in *The New Yorker* (July 17, 2017).



1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

2 CRIMINAL DIVISION

3 -----x  
4 UNITED STATES OF AMERICA :  
5 versus : Criminal Action Numbers  
6 ROBERT GIVENS, : 2010 CF1 014920 and  
7 LESTER WILLIAMS, : 2011 CF1 023394 and  
8 KEIR JOHNSON, : 2011 CF1 023407 and  
9 MARCELLUS JACKSON, : 2011 CF1 023408  
: Defendants. :  
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10 Washington, D.C.  
11 Tuesday, November 12, 2013

12 The above-entitled action came on for a Jury  
13 trial before the Honorable LYNN LEIBOVITZ, Associate  
14 Judge, in courtroom number 202.

12 GOVERNMENT'S OPENING STATEMENT

13 MR. GEE: Good afternoon. A little over three  
14 years ago, three young men sat in a car at the  
15 intersection of 13<sup>th</sup> and U Streets NW. They were  
16 waiting for a funeral procession to begin to take the body  
17 of a young girl that they knew and had grown up with who  
18 had passed away to her burial site. While they sat there  
19 in their car, waiting for the procession, in front of a  
20 Starbucks in the middle of broad daylight at one of the  
21 busiest intersections in Northwest D.C., this man, Lester  
22 Williams, sitting behind Mr. Oliver, snuck up behind them  
23 while holding a 9mm gun. This man, Keir Johnson in the  
24 bow tie, snuck up on the driver's side of the car,  
25 Mr. Williams on the passenger, Mr. Johnson on the driver's

1 side, snuck up behind them. Mr. Johnson had a 40mm gun.  
2 Across the street Mr. Jackson, sitting here at the end, he  
3 played lookout, spotter. While they snuck up, Mr. Johnson  
4 and Mr. Williams behind them, Mr. Williams fired that 9mm  
5 over and over and over at point-blank range. One of those  
6 bullets went through the back of the head of a young man  
7 sitting in that car named Jamal Coates, burying itself in  
8 his brain, killing him virtually instantly. Another  
9 bullet passed through the back of his arm. Another bullet  
10 passed through his face and buried itself in his tongue,  
11 passing through the back of his face to the front of his  
12 mouth.

13 Mr. Johnson on the driver's side of the car,  
14 again from behind, tried to shoot at the driver, but his  
15 gun jammed. His 40mm jammed. He fixed it and he got a  
16 shot off shooting the driver in the back.

17 About a month before that this man, Robert  
18 Givens, approached a 14-year-old, a 15-year-old and a  
19 19-year-old who were standing in a school parking lot at  
20 9:00 at night talking while this man, Mr. Jackson, again  
21 circled the block in the get-away car. Mr. Givens and  
22 another person, who is not here today, chased that  
23 14-year-old, the 15-year-old and the 19-year-old through  
24 the school parking lot shooting at them. The 19-year-old  
25 was hit and died. You will see the video of him being

1 shot, and you will see the video of him dying. But that  
2 was not it.

3 One month before that August 11, 2010 school  
4 shooting, Mr. Johnson again on June 27, 2010, did the  
5 first shooting. Another young man was in a gas station  
6 parking lot at the corner of Georgia Avenue and Park Road  
7 in broad daylight on a big tricycle. He was hanging out  
8 talking to a friend. Mr. Johnson got out of a get-away  
9 car, ran so close to that young man on the tricycle with  
10 two guns shooting at him. He got so close that you will  
11 actually see the concrete around the young man exploding  
12 from the bullets being shot at him.

13 How did it come to this? Three young men at a  
14 funeral in broad daylight. Fourteen, 15-year-olds shot at  
15 in school parking lots. A man shot at in broad daylight  
16 at a gas station. All in a three and-a-half month span in  
17 one summer in 2010. How did it come to this?

18 Well, it is not a good answer, but it's an old  
19 answer. One that goes back as old as history. Power.  
20 These men were not content to just live in the  
21 neighborhood where they were from. They and their friends  
22 wanted power over it, to control that neighborhood. And  
23 to control that neighborhood they were willing to do  
24 anything, even kill. That is what brought that summer of  
25 violence on. What was this neighborhood, that they care

1 so much about that they are willing to kill for? It's a  
2 place, a neighborhood called 14<sup>th</sup> and Girard Streets NW.  
3 It's about three blocks south of the Columbia Heights  
4 Metro station and the new Target in Columbia Heights.  
5 It's an area up there that today is known more for condos  
6 and cranes and restaurants and coffee shops. But it was  
7 not always that way. When these young men, Mr. Williams,  
8 Mr. Johnson and later Mr. Givens and Mr. Jackson were  
9 growing up in the 1990s, Mr. Johnson, the youngest of  
10 Mr. Jackson, Mr. Williams -- Mr. Johnson was born in 1990,  
11 so when they were growing up in the 1990s, it was a very  
12 different neighborhood. The Columbia Heights Metro didn't  
13 open until 1999. The Target was 18 years away from  
14 opening in 2008.

15 All up and down 14th Street in the late 1990s  
16 there were these clusters of big apartment buildings,  
17 pretty much at each of those intersections. Buildings  
18 that were a lot taller than D.C. had in that time frame  
19 before a lot of these fancy new condos went up. And these  
20 buildings with some of that concentrated housing, by the  
21 '90s and early 2000s made for perfect areas for narcotics  
22 trafficking. Drug dealing, violence, things that went  
23 along with it. And all up and down 14<sup>th</sup> Street each of  
24 those intersections that intersect with 14<sup>th</sup> Street,  
25 streets like Girard Street, Clifton Street, Columbia Road,

1 each of those intersections had their own little  
2 neighborhood gang that controlled the area and controlled  
3 what went on in the area.

4 By the time these young men were growing up at  
5 the peak of the crack wars in the late '90s, there was  
6 already a group there at 14<sup>th</sup> and Girard. It called  
7 itself by various names, 14<sup>th</sup> and Girard, Girard, G-Rod  
8 is the most common, spelled G dash R-o-d. 1-4 were Cut  
9 Crew, named Cut Crew because of the little cuts or alleys  
10 that connected Girard Street and its sister street just  
11 south of it, Fairmont Street. As these young men got  
12 older, this is what they grew up in.

13 Now, Girard, G-Rod, you will not hear that there  
14 is some founding moment for this group. Some moment when  
15 everyone got in a room and signed a Declaration of  
16 Independence or a Constitution. It's a loose  
17 organization. Its membership varies somewhere around 20  
18 or so members that are on the street at any given time.  
19 As older guys die off, go to jail or quit the gang,  
20 younger guys take over. As you'll hear, 14<sup>th</sup> Street is  
21 full of these kinds of groups. We call them here in D.C.  
22 crews or street gangs. Because as you'll learn here in  
23 D.C., we don't have these big gangs like what you see in  
24 TV very much. Bloods and Cripps and those sorts of  
25 things. We have these kinds of smaller neighborhood

1 crews. And what happens is that --

2 THE COURT: I'm just going to ask you to focus  
3 on this case, Mr. Gee.

4 MR. GEE: -- to be part of the G-Rod crew, a  
5 member must be from the neighborhood or he has to be close  
6 to someone from the neighborhood. He joins by hanging out  
7 with other members of the crew, learning the tools of the  
8 trade and putting in work: selling drugs, doing  
9 robberies, committing violence to help hold the  
10 neighborhood down, to control it.

11 Let's be clear. The government is not alleging  
12 that every young man who grows up at 14<sup>th</sup> and Girard and  
13 14<sup>th</sup> and Fairmont is part of G-Rod, the crew. As you  
14 will hear in this case, there are many young men who grow  
15 up in that area to have jobs, go to school, join the  
16 military, have careers, never come back. But not these  
17 defendants and their close friends. They made a different  
18 choice. By the time they got into high school age, so  
19 mid-2000s, they chose to become part of the crew. And  
20 they were not without different choices.

21 As you will hear, Mr. Jackson was a star  
22 football player. He actually had a scholarship to Norfolk  
23 State, played football there. Four years he graduated  
24 from Norfolk State. But while he was at college, he kept  
25 coming back home to Girard Street, staying involved in the

1 crew. And when he graduated he came right back.

2 Mr. Johnson graduated from high school. He also  
3 went away to college briefly. He came right back. You  
4 will hear numerous witnesses tell you Mr. Johnson is one  
5 of the smartest people they ever met. But he made that  
6 choice. Mr. Williams was a star basketball player at  
7 Cardoza High School. Witnesses say he's one of the best  
8 the school ever produced. He had a scholarship to play  
9 ball at a small school in Oklahoma, left there very  
10 briefly, came right on back.

11 Mr. Givens was a young member of the crew who  
12 had a chance to grow up, see the mistakes these older  
13 members were making, and yet he chose to follow them.  
14 Why? What purpose does G-Rod serve? What do they get out  
15 of this control? Well, above all else, G-Rod exists to  
16 control that neighborhood. These defendants and the other  
17 members of the G-Rod, they benefit from that. They get  
18 members of G-Rod to commit robberies. Get money from it  
19 in the area. Many, many members of G-Rod sell drugs. In  
20 that neighborhood mostly crack cocaine and marijuana,  
21 especially a special kind of marijuana called hydro,  
22 hydroponic marijuana, more potent than just regular  
23 marijuana. Some members of G-Rod work together explicitly  
24 to sell the drugs. They put their money together, they  
25 buy large amounts, they sell it together, they split up

1 the profits. You'll hear about some of that.

2 But a lot of the narcotics trafficking that  
3 these members of G-Rod and their friends do is more  
4 passive it than that. They do things like introduce each  
5 other to suppliers. Maybe share suppliers a little bit.  
6 Someone like Mr. Jackson and Mr. Johnson supply other  
7 members of the crew. They share stash houses, homes in  
8 apartments around Girard Street and Fairmont Street that  
9 are usually the homes of addicts who get a little money or  
10 drugs in exchange for giving their house as a place to  
11 store drugs, bag up drugs, cook crack cocaine. They also  
12 report on who is telling the police about their  
13 activities. Above all else, the members of the crew make  
14 sure that no one else but members of the crew and a  
15 certain select people they are cool with get to sell drugs  
16 around 14<sup>th</sup> and Girard. No one Girard has a problem  
17 with can ever hang out in that neighborhood.

18 To prevent this, members of Girard are  
19 permanently vigilant. Permanently vigilant. They put  
20 graffiti around the neighborhood. They write 1-4, G-Rod,  
21 Cut Crew, things like that to mark the territory. They  
22 also spend a lot of time outside making sure that someone  
23 were to come by the neighborhood they know we already own  
24 this. They stockpile guns. They share guns. Guns on the  
25 street are expensive, as you will learn. They still cost



1 several hundred dollars usually for a handgun, much more  
2 for a machine gun. So when a gun becomes available, often  
3 they work together to pool their money and keep the guns.  
4 They keep these guns in places that members of the crew  
5 can easily access: stash houses, each other's stash  
6 houses, outside. They'll keep them in playgrounds, wheels  
7 of cars, bushes, places on Girard and Fairmont where  
8 members of the crew can get to when they need them.

9           So G-Rod sort of functions like a shopping mall.  
10 Every member of the crew has a store in the mall. They  
11 sell their own product, but they all work together to keep  
12 the lights on, to keep the security going. But they are  
13 not just independent contractors that rent their store in  
14 the mall. They own the mall. They are the managers of  
15 the mall. They keep the 14<sup>th</sup> and Girard and the  
16 14<sup>th</sup> and Fairmont mall going. It's theirs.

17           But all this power breeds enemies. It always  
18 has. 14<sup>th</sup> and Girard, like most neighborhood, ultimately  
19 enters into sort of long-standing conflicts, feuds with  
20 other neighborhoods. On the streets they call them beefs.  
21 A lot of times these beefs have gone on for so long that  
22 the youngest generation of the crew doesn't even really  
23 know what started them anymore. But as these beefs go on  
24 and people get hurt, the cycle of violence gets worse.  
25 And ultimately these beefs become in some ways the

1 defining characteristic of G-Rod. Because above all else,  
2 these defendants and the other members of G-Rod will do  
3 anything, they will assault, they will kill, they will  
4 threaten anyone whose interests are against theirs, and  
5 they will do whatever it takes to keep themselves and  
6 other members of G-Rod from getting caught for it.

7 So let's talk a little bit about this  
8 neighborhood, Girard and Fairmont Street. And I want to  
9 show you a little bit about the geography of it. And then  
10 let's talk a little bit about the neighborhoods around it  
11 and these beefs that G-Rod developed with some of them  
12 that lead us to that summer of violence in 2010.

13 This map which you'll see a lot of in this trial  
14 shows some of the main areas around 14<sup>th</sup> and Girard. I  
15 hope everybody can see it. Can everybody see it? Okay.

16 We'll start sort of at the top. Just a little  
17 bit off the top of the map, up 14<sup>th</sup> Street, is where the  
18 Target and the Columbia Heights Metro and all that big  
19 shopping mall has developed. Right there next to it is an  
20 area called Columbia Heights Village. Columbia Heights  
21 Village is a housing development that has its own crew, as  
22 you'll hear about in this case. It's kind of the weakest  
23 crew of 14<sup>th</sup> Street. It's sort of neutral territory. A  
24 lot of guys from Girard Street, including these  
25 defendants, are able to hang out up there.