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Commentary

The Value of Narrative in Legal Scholarship and Teaching

Jean C. Love*

Storytelling¹—particularly storytelling written from an “outsider’s” perspective²—is a new form of legal writing that appears with increasing frequency on the pages of law reviews and specialized legal journals.³ At the same time, critics are questioning whether storytelling deserves to be classified as a form of legal scholarship.⁴ Perhaps storytellers are to be regarded as talented and creative writers, but do they truly deserve to be called legal scholars? At first, the debate was local, arising in the context of the deliberations of appointments committees and tenure committees.⁵ Now the

* J.D., University of Wisconsin, 1968; Professor of Law, University of California-Davis (1972-91); Professor of Law, University of Iowa (1991-present). I would like to thank my partner, Pat Cain, who encouraged me to dive into these unfamiliar waters. I would also like to thank my research assistants, Julie Amador and Yvonne Yung, who kept me from drowning.

1. The first symposium on “storytelling” appeared in 1989. Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989).

2. For an early example of “outsider” scholarship, see DERRICK BELL, *AND WE ARE NOT SAVED* (1987). Richard Delgado has defined “outsiders” as members of “outgroups,” those groups whose “marginality defines the boundaries of the mainstream, whose voice and perspective—whose consciousness—has been suppressed, devalued, and abnormalized.” Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412 (1989). See generally Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683 (1992).

Mari Matsuda coined the phrase “looking to the bottom” to describe the process of “adopting the perspective” of those who have experienced discrimination. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987). Today, an alternative description of “outsider’s stories” is “stories from the bottom.” Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 824 (1993).

“Outsider” scholarship is often written by feminists and members of racial minority groups. Partly for that reason, questions have always been raised as to whether it is taken seriously. See e.g., Patricia A. Cain, *Feminist Legal Scholarship*, 77 IOWA L. REV. 19, 30 (1991); Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349, 1360-61 (1992).

3. For an excellent overview of this body of legal scholarship, see Kathy Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991).

4. Jane B. Barton, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994); See, e.g., Farber & Sherry, *supra* note 2; Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989).

5. See generally Kathryn Abrams, *The Narrative and the Normative in Legal Scholarship*, in REPRESENTING WOMEN 44, 54 n.9 (Susan Sage Heinzelman & Zipporah Batshaw Wiseman eds., 1994).

debate is national, and it is being conducted on the pages of the most prestigious law journals.⁶

I have been asked to comment on two papers written in the narrative tradition. One is a true story told by a transgendered economics professor.⁷ The other is a fictionalized story told by a black female law professor.⁸ Given the heated nature of the debate over whether storytelling constitutes legal scholarship, it may be a relief to learn that each of these two storytellers is tenured.⁹ Therefore, neither of their careers is dependent upon the outcome of the debate. Nevertheless, I would like to take this opportunity to locate each of their stories within the framework of the debate.

There is general agreement that legal cases are “stories” and that “the common law” emerges from the judicial resolution of “cases and controversies.”¹⁰ Most law schools teach by the “case method,”¹¹ and most casebooks are filled with “true stories,” although sometimes law professors write “fictionalized stories” for classroom discussion, such as the “Case of the Spelunccean Explorers.”¹² Traditional law review articles are expected to describe legal cases, analyze appellate opinions, and propose sound solutions to the thorny problems raised by “real world” controversies.¹³ Given the general agreement that “cases” are central both to making law and teaching law, why is there such a vigorous debate over the propriety of “storytelling” as a form of legal scholarship?

The crux of the problem seems to be that “storytellers” are speaking from their own personal experiences, rather than talking about other peoples’ lives, as depicted in legal cases.¹⁴ But why is it so worrisome to many members of the

6. For responses to Farber and Sherry’s article, *supra* note 2, see e.g., Richard Delgado, *On Telling Stories in School: A Reply to Farber & Sherry*, 46 VAND. L. REV. 665 (1993); William N. Eskridge, Jr., *Gay Legal Narratives*, 46 STAN. L. REV. 607 (1994); Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship*, 79 IOWA L. REV. 803 (1994). For responses to Kennedy’s article, *supra* note 4, see Scott Brewer, *Colloquy—Responses to Randall Kennedy’s Racial Critiques of Legal Academia*, 103 HARV. L. REV. 1844 (1990).

7. Dierdre McCloskey, *Happy Endings: Law, Gender, and the University*, 2 J. GENDER RACE & JUST. 77 (1998).

8. Dorothy A. Brown, *The LSAT Sweepstakes*, 2 J. GENDER RACE & JUST. 59 (1998).

9. Dierdre McCloskey is a tenured professor in the Department of Economics at the University of Iowa. Dorothy Brown is a tenured professor at the University of Cincinnati College of Law.

10. Farber & Sherry, *supra* note 2, at 807.

11. Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1 (1951).

12. Lon Fuller, *The Case of the Spelunccean Explorers*, 62 HARV. L. REV. 616 (1949).

13. See generally Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CAL. L. REV. 889 (1992).

14. Farber & Sherry, *supra* note 2, at 808.

legal academy that storytellers speak from their own personal experiences? First, there is a concern about the “validity” or “truthfulness” of stories that appear in narratives.¹⁵ Second, even if a story is “true,” there is a concern that it may not be “typical” of real world experiences.¹⁶ Finally, even if a story is both “true” and “typical,” there is a concern that it may not contain “legal analysis,” which is the “hallmark of legal scholarship.”¹⁷ Rather, it may be purely “emotive”¹⁸ in a way that will not “invite reply.”¹⁹

Why must a storyteller tell a “true” and “typical” story followed by “legal analysis”? The argument goes as follows: If the traditional legal scholar is expected to describe “true” and “typical” cases, subject them to “rigorous legal analysis,” and then propose reforms that are developed from a “systematic, not anecdotal [perspective],”²⁰ then the storyteller who substitutes a “story” for a “legal case” ought to be held to the same high scholarly standards.²¹

How do storytellers respond to this demand for uniform scholarly standards? Some storytellers offer no resistance. They are comfortable conforming to the traditional norms.²² For example, Professor Susan Estrich opens her *Yale Law Review* article on rape with her own personal story of being a rape victim.²³ Then she moves into a traditional format, first discussing and analyzing rape statutes and cases, and then advancing a carefully crafted proposal for rape law reform.²⁴ Her story does not serve as a “substitute” for legal cases. Rather, her story tells the reader why she has developed an interest in this particular area of the law²⁵ and puts the reader on notice that her legal analysis may be informed, at least in part, by her own real-world experiences.²⁶

15. Abrams, *supra* note 3, at 978-79, 1020-28; Farber & Sherry, *supra* note 2, at 831-38.

16. Abrams, *supra* note 3, at 979-80, 1028-30; Farber & Sherry, *supra* note 2, at 838-40.

17. Farber & Sherry, *supra* note 2, at 846, 849.

18. *Id.* at 849.

19. *Id.* at 850.

20. *Id.* at 838-39 (quoting Owen M. Fiss, *Reason in All its Splendor*, 56 BROOK. L. REV. 789, 803 (1990)).

21. *Id.* at 846.

22. Abrams, *supra* note 3, at 983-87.

23. Susan Estrich, *Rape*, 95 YALE L.J. 1087 (1986).

24. *Id.* For a more recent article on rape written in a similar style, see Katherine Lusby, *Hearing the Invisible Women of Political Rape: Using Oppositional Narrative to Tell a New War Story*, 25 U. TOL. L. REV. 911 (1995).

25. Abrams, *supra* note 3, at 983.

26. *Id.* After Susan Estrich wrote her path-breaking “introductory” narrative, see Estrich, *supra* note 23, other feminist scholars began to blend their stories with their legal analysis. Abrams, *supra* note 3, at 987-95 (commenting on Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991)).

Other storytellers express a willingness to adhere to the norms of legal scholarship if (but only if) their topic can be properly developed within the confines of the traditional format. For example, William Eskridge, an openly gay male law professor, readily acknowledges the value of telling stories within the traditional mode.²⁷ However, he simultaneously defends the occasional necessity of turning to pure storytelling, as when legal reform appears to be unattainable unless and until there has been a “rupturing” of the societal “status quo.”²⁸ Thus, he suggests that a gay law professor might tell a personal story of being the victim of employment discrimination,²⁹ followed by a traditional, rigorous legal analysis of the application of equal protection principles to governmental discrimination on the basis of sexual orientation post-*Romer*.³⁰ But that same gay law professor, confronting the universal prohibition on same-sex marriage, might find it necessary to engage in pure storytelling,³¹ hoping that his stories would enable the reader to identify a sufficient number of commonalities between opposite-sex and same-sex intimate relationships to warrant a change in the law.³²

Finally, some storytellers steadfastly refuse to conform to the norms of traditional legal scholarship.³³ Professor Patricia Williams, for example, has written entire books of stories³⁴ based on her life experiences as a black woman who is a “victim” of discrimination, an “observer” of discrimination, and a silent “collaborator” in discrimination.³⁵ Her stories “depict the human

27. Eskridge, Jr., *supra* note 6, at 611-21.

28. *Id.* at 631-44.

29. Eskridge first tells the story of Perry J. Watkins, a gay man who was discharged by the military. *Id.* at 611-21. Eskridge then identifies himself as a gay law professor who was denied tenure at the University of Virginia. *Id.* at 644.

30. *Romer v. Evans*, 517 U.S. 620 (1996).

31. William N. Eskridge, Jr., *A History of Same-Sex Marriage*, 79 VA. L. REV. 1419 (1993). A revised and expanded version of this article appears in WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE* 15-50 (1996).

32. Eskridge emphasizes that “gay law provides a particularly attractive field for narratives” because society has not yet accepted same-sex intimate relationships. Eskridge, Jr., *supra* note 6, at 610. See also Marc A. Fajer, *Can Two Real Men Eat Quiche Together? Storytelling, Gender-Role Stereotypes, and Legal Protection for Lesbians and Gay Men*, 46 U. MIAMI L. REV. 511 (1992). See generally the list of books and law review articles containing “gaylesbian narratives” that appears in Eskridge, Jr., *supra* note 6, at 609 n.12.

33. The work of these storytellers is described by Abrams in several of her pieces on narrative legal scholarship. Abrams, *supra* note 3, at 995-1012; Abrams, *supra* note 5, at 45-46; Kathryn Abrams, *Narrative, Unity and Law*, 13 *STUD. L. POL. & SOC’Y* 3 (1993) (discussing the increased use of narratives in law).

34. See, e.g., PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); PATRICIA J. WILLIAMS, *THE ROOSTER’S EGG* (1995).

35. Abrams, *supra* note 3, at 1001.

condition”³⁶ in all of its complexities, but they offer no concrete specifications for legal reform.³⁷ Rather, they are “paradigm-shifting” narratives.³⁸ Such narratives “are offered when, in the view of the author, the legal system has reached an impasse: the law has progressed to the limits of what it can accomplish, given an ingrained conception of a particular problem; before it can move again, it is necessary that some reconceptualization take place.”³⁹ Paradigm-shifting narratives speak less to “legal problems” and more to “unacknowledged injuries.”⁴⁰ Law professors who write such scholarship “take the . . . position that what persuades decisionmakers to embrace new legal rules is not, or not only, the abstract elegance of a proposed solution,”⁴¹ but rather “a more visceral response: a response animated by a particularized depiction of the lives of those affected by a legal rule.”⁴²

The two presentations that you just heard were “paradigm-shifting” narratives.⁴³ Both speakers told “stories from the bottom”⁴⁴—one with a profound stutter, and the other with a keen sense of humor.⁴⁵ Both stories were based on real life experiences, although one was “true”⁴⁶ and the other was “fictionalized.”⁴⁷ Neither speaker offered a legal solution, and yet each story was developed within a “legal framework,”⁴⁸ and each story was told to you in your capacity as a student of the law. The hope of each speaker was that, as you listened to her story, you would experience a paradigm shift that would enable you to think more creatively about how to solve the intractable problems of discrimination based on race and gender identity.⁴⁹

36. *Id.* at 1002.

37. *Id.* at 1004.

38. *Id.* at 1034; Abrams, *supra* note 5, at 50.

39. Abrams, *supra* note 5, at 50.

40. *Id.* at 53.

41. *Id.* at 52.

42. *Id.*

43. Dorothy A. Brown, The LSAT Sweepstakes, Speech at *The Journal of Gender, Race & Justice* Symposium, *From Class to Community: Reading Our Rights, Writing the Wrongs* (Oct. 3-4, 1997); Dierdre McCloskey, The Anxious Law of Gender: A Novice Woman’s View, Speech at *The Journal of Gender, Race & Justice* Symposium, *From Class to Community: Reading Our Rights, Writing the Wrongs* (Oct. 3-4, 1997).

44. See my earlier discussion of the phrase “stories from the bottom,” *supra* note 2.

45. Brown, *supra* note 8.

46. McCloskey, *supra* note 7.

47. Brown, *supra* note 8.

48. Abrams, *supra* note 3, at 1030.

49. See *supra* text accompanying notes 38-42.

Given the paradigm-shifting objectives of these two papers, let me begin by asking you a question: What did you learn from listening to these stories that you would not have learned from listening to more traditional scholarly presentations? What did you learn from Dorothy Brown's "fictional story" that you would not have learned had she objectively dissected the pros and cons of using the LSAT in law school admissions?⁵⁰ And what did you learn from Dierdre McCloskey's "true story" that you would not have learned had she conducted an economic analysis of the costs and benefits of adopting an ordinance that prohibits discrimination on the basis of gender identity?⁵¹

One of the most-valued benefits of "storytelling" is that the listener is able to empathize with the narrator.⁵² For example, as we in the audience listened to Professor McCloskey's story, we were able to walk in her high-heeled shoes for a few moments, feeling her discomfort and pain.⁵³ Similarly, we were transported to heightened levels of empathy by Professor Brown's fiction. She did not simply enable those of us who are white to walk a mile in her shoes. Instead, she reversed the roles of blacks and whites and told those of us who are white to walk a mile in our own *new* shoes. She let us feel our own blisters! For a moment, we were the ones with an average LSAT score of 140, and she was part of the group with an average LSAT score of 150.⁵⁴ How did we react? Did we say that the test had a disparate impact on whites? Did we say that the test was biased?⁵⁵ Did we say that grades are a better predictor of law school performance than the LSAT?⁵⁶ Did we say that submission of LSAT scores should now be voluntary? Did we say that law school admissions committees should now read the files, including personal essays, instead of admitting

50. For a recent statement by the President and Executive Director of the Law School Admission Council as to the pros and the cons of using the LSAT in the law school admissions process, see Philip D. Shelton, *The LSAT: Good—But Not That Good*, AALS NEWSL., Nov. 1997, at 10-11.

51. For an example of the application of economic analysis to nondiscrimination legislation, see RICHARD A. EPSTEIN, *FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS* (1992).

52. See generally Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987); Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099 (1989).

53. McCloskey, *supra* note 7.

54. Brown, *supra* note 8, at 59.

55. See, e.g., Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U.J. GENDER & L. 121 (1993). See also Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1 (1997).

56. Studies comparing the predictive value of the SAT and high school grades suggest that the SAT adds very little, if anything, to the predictive value of undergraduate grades. William Beaver, *Is It Time to Replace the SAT?*, 82 ACADEME 37, 38 (May-June 1996). Law School Admissions Council studies show that the LSAT alone has more predictive value than undergraduate grades alone, but that a combination of the LSAT and undergraduate grades usually has the highest predictive value. Shelton, *supra* note 50, at 10; Wightman, *supra* note 55, at 29-34 & n.63.

students by the computer?⁵⁷ Did we say that the LSAT should be thrown out?!

⁵⁸ By giving us a new pair of shoes to wear, Professor Brown challenged us to develop a different perspective on the intractable problems surrounding law school admissions.

Just as I was about to experience a paradigm-shifting flash of insight regarding the law school admissions process, my concentration was broken, and I was back in my own, old, flat-heeled, wide, comfortable shoes. What had happened to break my chain of concentration? Well, as I had been holding my imaginary cup of coffee and reading Professor Brown's "fictionalized" headline,⁵⁹ I had been reminded of a "real-world" headline that I had read in the *New York Times* about two years ago: "Men Found To Do Better in Law School than Women."⁶⁰ I was initially shocked when I first read that *New York Times* heading. Now, in retrospect, I realized that that experience had qualified as a paradigm-shifting moment in my own professional life.⁶¹ Truth is indeed stranger than fiction, and sometimes just as powerful.

And why was I so shocked when I first read the *New York Times* headline? Most likely because I had started law school in 1965, when society doubted that women could be good law students, and yet I had graduated at the top of my class. Moreover, a female student in the class one year ahead of me had graduated at the top of her class as well.⁶² I had been teaching for over twenty years, and I had not noticed that men had outperformed women in any of my classes. Could the headline be true? My disbelief drove me to do an empirical study of the performance of male and female students at the University of Iowa College of Law in the Class of 1993.⁶³ My findings showed that men and

57. See, e.g., Leigh H. Taylor, *A Faulty and Narrow Understanding of Merit and Qualification in University Admissions*, CHRON. HIGHER EDUC., Sept. 15, 1995, at B3 (criticizing the overreliance on standardized test scores and grades in the law school admission process and emphasizing the importance of nonnumerical factors).

58. Brown, *supra* note 8, at 71.

59. Professor Brown's headline reads: "Blacks Outscore Whites on LSAT: Lawsuit Threatened," *supra* note 8, at 59.

60. Laura Mansnerus, *Men Found to do Better in Law School than Women*, N.Y. TIMES, Feb. 10, 1995, at A25. The newspaper article summarized a law review article presenting the findings of a survey of male and female students enrolled at the University of Pennsylvania School of Law. See also Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994). The study found "strong academic differences between graduating men and women" despite "identical entry-level credentials." *Id.* at 3. The authors argued that the statistics were evidence of a "chilly climate" for women in the classroom. *Id.* at 3-4.

61. The experience caused me to write an article addressed to law school deans encouraging them to conduct "local" studies on the status of women in their law schools. Jean C. Love, *Twenty Questions on the Status of Women Students in Your Law School*, 11 WIS. WOMEN'S L.J. 405 (1997).

62. *Id.* at 406.

63. *Id.*

women were comparably qualified at the time of admission to law school,⁶⁴ and that they performed comparably well both during their law school careers⁶⁵ and at the time of graduation.⁶⁶ The Class of 1993's headline should have said: "Women Found To Do As Well in Law School As Men," or "Men Found To Do As Well in Law School as Women!"⁶⁷

Once I had proven that my instincts were correct, I paused to reflect upon the value of statistical studies that compare two groups of people, such as women and men, or blacks and whites. I realized that there are only three possible findings:

1. X does better than Y.⁶⁸
2. Y does better than X.⁶⁹
3. X and Y perform comparably.⁷⁰

Given the fact that the release of such statistics will inevitably emphasize the differences between the sexes (or the races), we must be certain that the benefits of publishing such information will outweigh the costs. In the case of law school "gender" studies, I am convinced that annual "local" law school surveys are a very cost-effective means of monitoring a particular law school's educational environment so as to ensure that the climate does not become a "chilly" one for women.⁷¹ Carl Monk, the Executive Director of the Association of American Law Schools, agrees with me.⁷² Publishing the results of "race" studies may be more problematic because the statistical differences often are larger and appear to be less subject to change.⁷³ But then, of course, that is why

64. *Id.* at 408 & n.9.

65. *Id.* at 408 & n.10.

66. *Id.* at 409 & n.11.

67. Headlines announcing the results of local gender studies are now beginning to appear. *See, e.g.,* Chris Klein, *New Studies: Female Students Do Just as Well as Men—Or Better*, NAT'L L.J., Sept. 22, 1997, at A20.

68. *See, e.g.,* Guinier et. al, *supra* note 60 (stating that men perform better than women at the University of Pennsylvania School of Law).

69. *See, e.g.,* Klein, *supra* note 67 (stating that women perform better than men at the University of Dayton School of Law).

70. *See, e.g.,* Love, *supra* note 61 (stating that women perform as well as men at the University of Iowa College of Law).

71. *Id.* at 411.

72. Carl Monk mailed my "Twenty Questions" to the deans of AALS member schools in the summer of 1996. *See also* Carl C. Monk, *The Experiences of Women in Legal Education*, AALS NEWSL., Mar. 1996, at 5.

73. *See, e.g.,* Stephen P. Klein & Roger Bolus, *The Size and Source of Differences in Bar Exam Passing Rates Among Racial and Ethnic Groups*, B. EXAMINER, Nov. 1997, at 8; Wightman, *supra* note 55.

Professor Brown's "fictionalized narrative" has such paradigm-shifting power. She asks us to imagine what we have not yet experienced: "Blacks Outscore Whites on LSAT."⁷⁴

Professor McCloskey's true story has paradigm-shifting power for a different reason. She asks us to imagine what most of us will never experience—"crossing over" from one gender to another. And during that moment when we are standing in her high-heeled shoes,⁷⁵ she asks us to imagine how the law would have to be changed in order to ensure equality for transgendered people.⁷⁶ One option, of course, would be to characterize discrimination against transgendered people as a form of "sex" or "gender" discrimination.⁷⁷ But Iowa led the country in rejecting that approach.⁷⁸ Another option would be to characterize discrimination (by "state actors") against transgendered people as a denial of equal protection.⁷⁹ But in the imagined words of Justice Thomas: "The Constitution of the United States does not mention a right to be weird."⁸⁰ Yet another option would be to enact a nondiscrimination statute prohibiting discrimination on the basis of "gender identity."⁸¹ Although such nondiscrimination provisions have been adopted by the University of Iowa and the City of Iowa City,⁸² no such legislation has even been proposed, much less enacted, in most jurisdictions.⁸³ Transgendered

74. Brown, *supra* note 8, at 59.

75. McCloskey, *supra* note 7.

76. *Id.*

77. See, e.g., Maffei v. Kolaeton, 626 N.Y.S.2d 391 (N.Y. Sup. Ct. 1995) (holding that discrimination against a transsexual is discrimination on the basis of "sex" under New York City law).

78. Sommers v. Iowa Civil Rights Comm'n, 337 N.W.2d 470 (Iowa 1983) (applying state law). See also *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984) (applying Title VII law). Other federal circuits considering the issue in *Ulane* have reached the same result as the Seventh Circuit. *Sommers v. Budget Marketing, Inc.*, 667 F.2d 748 (8th Cir. 1982); *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 663 (9th Cir. 1977).

79. See, e.g., *Holloway*, 566 F.2d at 663 (stating in dictum that transsexuals are not a "suspect class" under the fourteenth amendment).

80. McCloskey, *supra* note 7, at 77.

81. For example, the Nondiscrimination Statement adopted by the University of Iowa states:

The University of Iowa prohibits discrimination in employment or in its educational programs and activities on the basis of race, national origin, color, creed, religion, sex, age, disability, veteran status, sexual orientation, gender identity, or associational preference.

UNIVERSITY OF IOWA, OPERATIONS MANUAL ch. 6 (1998).

82. For the text of the University of Iowa's nondiscrimination policy, see *supra* note 81; IOWA CITY, IOWA, CITY CODE title 2 (1998).

83. The Employment Nondiscrimination Act of 1994, H.R. 4636, 103d Cong., for example, proposed a prohibition on discrimination on the basis of "sexual orientation," but made no reference to discrimination on the basis of "gender identification."

people are about as far “outside” the law as you can get in the United States today.⁸⁴ Therefore, Dierdre McCloskey’s story is particularly compelling. It challenges us, as lawyers, to rededicate ourselves to a vision of law as “a force for multivocality, for the acknowledgment of the other,”⁸⁵ because otherwise law will be an instrument of “bureaucratic and theoretical power”⁸⁶—an instrument of violence.

I want to close my remarks on the value of narrative by shifting from the realm of scholarship to the realm of the law school classroom.⁸⁷ I also want to shift from the realm of anti-discrimination law (where storytelling is common) to the realm of tort law (where storytelling is rare). This will be a “true story” about myself. The events took place over twenty years ago, when I was a young torts professor in a commuting marriage at the University of California-Davis. I was raped at 4:00 a.m. by a stranger who entered the bedroom of my Davis apartment, where I slept by myself during the week. I called the police and they interviewed me, but they never found the rapist. At 10:00 a.m. that morning, I was standing in front of my torts class. The topic? Whether it was defamatory to make a false identification of a woman as a rape victim.⁸⁸ The casebook’s answer? Yes.⁸⁹

I tried to recall what I used to say about the issue. Is it really harmful to a woman’s reputation to make a false statement that she has been raped? Why? Because she is no longer a virgin? Because she is now “damaged goods”? I tried to recall what my students used to say in class about this issue. Did they think the law of defamation should continue to provide a cause of action for falsely-accused plaintiffs so long as some significant segment of the population continues to shun rape victims? Or did they think it was no longer defamatory to describe a woman as a rape victim? I could not remember. Rather, I now saw this body of law through a new set of lenses—through the eyes of a rape victim.

I have no idea what I did in that class, except that I made it through without crying. But the next year I told my class that I had been raped, and instead of

84. McCloskey, *supra* note 7.

85. *Id.* at 81.

86. *Id.* at 82.

87. See Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or “The Fem-Crits Go to Law School,”* 38 J. LEGAL EDUC. 61, 80 (1988) (giving examples of feminist law teachers who have brought personal stories into the classroom to enrich discussion of cases); see also Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 152 (1998) (sharing personal experience in classroom to help empower the silenced).

88. *Youssouppoff v. Metro-Goldwyn-Mayer Pictures, Ltd.*, 50 T.L.R. 581 (C.A. 1934). The plaintiff, a Russian princess, claimed that the defendant’s motion picture defamed her by portraying her as a woman who had been raped by Rasputin, a Russian monk.

89. JAMES A. HENDERSON, JR. ET AL., *THE TORTS PROCESS* 876 (4th ed. 1994) (explaining that the *Youssouppoff* court held that the statements caused the plaintiff to be “shunned”).

spending five minutes on the issue (as I had in the past), we spent over thirty minutes talking first about society's perception of rape victims, and then about the relationship between the manner in which rape statutes are administered and the manner in which rape victims are regarded by the general public. We asked ourselves, "Is it the rape victim who should be shunned, or is it the rapist?!" At the same time, we asked ourselves, "If society still shuns rape victims, then shouldn't we allow a woman who has been falsely identified as a rape victim to sue for defamation?" In the end, the class talked about the proper sequence for legal reform in this area, realizing that reform in the enforcement of rape laws would have to precede any proposed reform in the law of defamation.

Now that you have heard Dorothy Brown's "fictionalized" narrative, Dierdre McCloskey's "true" story, and my "true" story, do you think that there is a value in hearing "paradigm-shifting" narratives, either in legal scholarship or in the classroom? I certainly hope so. It seems to me that when we are able to examine the law from such different perspectives as those of a black female law professor, a transgendered economics professor, and a torts professor who has been a victim of rape, our understanding of the law is deepened and our ability to cope with the complexities of legal reform is heightened. Surely, if there is any profession that benefits from the expression of diverse viewpoints, it is the legal profession, and "outsider" narratives are an excellent vehicle for enabling legal reformers to hear previously-excluded voices.