

Narrative Exercise

What is a story?

A story is an account of a character running into a conflict and the conflict being resolved.¹ Broadly speaking, “[a]ll storytelling from the beginning of recorded time is based on somebody wanting something, facing obstacles, not getting it, trying to get it, trying to overcome obstacles, and finally getting or not getting what he wanted.”²

What are the elements of a story?

- Characters
- Conflict
- Resolution
- Organization / Plot
- Point of view³

What is narrative theory?

Narrative theory is the study of how stories are constructed.⁴ It considers the following: “What are the elements of this story? What choices must the author make about these elements? What process does the author go through to make these choices? By choosing what goes into the story, what has the author left out? How is the story different as a result of those choices? Have those choices been made intentionally or reflexively? What factors influence the author in making those choices?”⁵

What is storytelling?

Storytelling is the art of telling a story. It is the “craft of constructing stories” with “intention and reflection.”⁶

What does this all have to do with being a lawyer?

Good lawyers are good storytellers. Lawyers “are not only hearers and tellers of stories, but also, and perhaps most important, constructors of stories.”⁷ Consider the following:

¹ See Foley, Brian J. and Robbins, Ruth Ann, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Fact Sections*, 32 RUTGERS L. REV. 459, 466 (2001).

² *Id.* (quoting Stein, Sol, *Stein on Writing: A Master Editor of Some of the Most Successful Writers of Our Century Shares his Craft Techniques and Strategies*, 224 (1995)).

³ *See id.*

⁴ See Grose, Carolyn, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to the Classroom*, 7 J. ALWD 37, 39 (2010).

⁵ *Id.* at 39-40.

⁶ *Id.* at 40.

⁷ *Id.* at 40.

Lawyers are particular kinds of storytellers, influenced by variables unique to their role as tellers of their clients' stories. In that role, as makers of legal arguments, we decide what story to tell and how to tell it "guided by some vision of what matters." Put another way, to figure out what story to tell and how to tell it, the lawyer must weigh three substantive factors, the same factors that make up the theory of the case: the law, the facts, and the client's goals. In addition, of course, the lawyer must consider contextual factors, *e.g.*, the audience, the forum, the availability of resources, and the personalities of the client and other potential supporting or detracting characters in the story. The lawyer must also consider particular cultural norms and values in deciding among different stories and ways of telling them. And finally, the lawyer must consider factors personal to himself in determining what story to tell and how to tell it: is he comfortable in a courtroom, can he pull off a humorous narrative, does he do better in a more formal or less formal setting, does the client's situation raise personal moral or ethical concerns?

Storytelling is pervasive. When a lawyer drafts a statement of facts, for example, she does not simply record the known universe of "relevant" facts in an interesting and persuasive way. Indeed, there is no such thing as an absolutely neutral description of the facts. As lawyers, we engage in fact-gathering repeatedly—at initial client interviews, after we've done some legal research, in anticipation of the other side's argument—and then we "pick and choose from available facts to present a picture of what happened" that most accurately reflects our sense of what matters. And the other lawyers involved do exactly the same thing, with exactly the same pool of facts, but emphasizing different details, drawing different inferences, and thus drawing quite a different picture.⁸

Therefore, "[u]nderstanding storytelling is a way to understand persuasion. We persuade by telling stories that decision makers believe and adopt. Narrative theory is so compelling partly because stories are elemental to human interaction—we recognize and react to them instinctively."⁹ In sum, thinking about narrative theory and storytelling "can help students understand that there is no such things as the monolithic Law, rules that are simply discovered or found out there somewhere. Instead, law comprises a series of stories – ever changing – and those stories are constructed not by some objective external Decision Maker in the Sky," but by lawyers, lawyers who were once law students."¹⁰

The Exercise:

Read and analyze Gwendolyn Brooks' poem "Boy Breaking Glass."¹¹ We will discuss the poem in class today.

Then, assume that the Boy in "Boy Breaking Glass" is being prosecuted for his vandalism. **First, how would you tell the story of the case if you were the Boy's defense attorney? Second, how would you tell the story of the case if you were the Prosecution?** In responding to these

⁸ *Id.* at 44.

⁹ *See id.* at 46.

¹⁰ *See id.* at 48.

¹¹ A copy of Brooks's poem is available on the [Poetry Foundation website](#).

two questions, you may also write about what additional information each side might seek in developing the story.

Your responses to the above two questions will not be long (you will likely write only one paragraph per side). Be sure, however, that your stories are rooted in / supported by the text of the poem. You do not need to – and may not – do any research or consult any outside sources to complete this exercise. As you think about the story you will tell for each side – the Boy and the Prosecution – consider the following from each side’s perspective:

- What happened and why?
- What should the fair outcome be?
- What is the human element to what happened?
- How can you tell your client’s story to achieve justice?