Evaluating Storytelling as a Type of Nontraditional Scholarship

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Evaluating Storytelling as a Type of Nontraditional Scholarship

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I. INTRODUCTION

Legal scholarship is in a permanent state of inchoateness. Over the years academics have expressed doubt as to whether law is a valid subject of scholarship.¹ This doubt has persisted through the three stages of “traditional” scholarship: vocational, doctrinal, and interdisciplinary.² Inchoateness continues with the recent appearance of “Nontraditional scholarship.”³

Doctrinal writing (the synthesis and criticism of cases and laws)⁴ is an extension of vocational⁴ (the description of what the law is) while interdisciplinary (the use of other disciplines to explain law)⁵ evolved from doctrinal. In all three forms, “law”—cases, statutes, and rules—is the unifying theme. Writers seek to resolve legal conflicts or to change conventional wisdom. The objective is to influence a target pool of judges, colleagues, lawyers, and lawmakers.⁶

Nontraditional scholarship is defined by style and objective. It is subjective, polemical, and candidly ideologically motivated. The bulk of the new scholarship comes from the politically left people of Critical


2. Vocational writing is descriptive of cases, statutes, or administrative rulings. Doctrinal and interdisciplinary would fall within Rubin’s “standard legal scholarship,” “an essentially prescriptive approach that acknowledges its normative basis. Contemporary legal scholars are now generally aware that their work consists of recommendations addressed to legal decision-makers, recommendations that are ultimately derived from value judgments rather than objective truth.” Edward L. Rubin, The Practice and Discourse of Legal Scholarship, 86 Mich. L. Rev. 1835, 1904 (1988).

3. “It involves the careful reading and comparison of appellate opinions with a view to identifying ambiguities, exposing inconsistencies among cases and lines of cases, developing distinctions, reconciling holdings, and otherwise exercising the characteristic skills of legal analysis.” Posner, supra note 1, at 1113.

4. Stevens concluded that producing vocational work “might well be the kiss of death for one who wants to be employed in one of our leading law schools.” Robert Stevens, American Legal Scholarship: Structural Constraints and Intellectual Conceptualism, 33 J. Legal Educ. 442, 446 (1983).

5. Posner divides interdisciplinary scholarship into two parts: the positive and the normative. “Positive analysis is the effort to understand phenomena, here legal phenomena, and normative analysis is the effort to prescribe and reform the law.” Posner, supra note 1, at 1119.

Legal Studies, the advocates of various forms of feminism, and the Critical Race Theory movement. Types of nontraditional composition include doggerel,7 photography,8 ramblings on pop culture,9 haiku,10 Death-Row Articles11 and the most popular—and controversial—storytelling.12

While nontraditional articles appear regularly in the journals,13 traditional work is still the primary product. Many traditionalists do not know about the new writings,14 or ignore them. To some professors, nontraditional work is the practice of politics rather than legal scholarship.15

Nontraditional authors argue that their work is a new form of scholarship that is just as credible as the accepted forms. Feminists and minorities say that their writing reflects a unique "voice" that traditional literature cannot capture.16 To the crits, traditional scholarship camouflages an oppressive political agenda.17

At the center of the conflict is a critical issue: should nontraditional scholarship be given the same status as traditional scholarship in the promotion and tenure process? Likewise, should it be accepted to justify other rewards such as stipends and salary increases?

It is an issue whose time has come. The AALS Report of the Special Committee on Tenure and the Tenuring Process recently recommended: "The school should commit itself to avoiding prejudice against any particular methodology or perspective used in teaching or scholarship. When evaluating any work embodying innovative or less...

14. "Not every law school numbers among its faculty either scholars who use or scholars who read narratives, so there may be no one present who can explain the objects or innovations of the form. Even those who can offer such explanations may find it difficult to do so ab initio, because of the time pressures and the contentiousness that often surface in this context. Here, as in other areas of academic life, the absence of full public discussion of innovation tends to favor those forms of scholarship that are already established, with palpable consequences for the professional lives of innovators." Kathryn Abrams, Hearing the Call of Stories, 79 CAL. L. REV. 971, 977 (1991).
15. See infra notes 36-37.
16. See infra text accompanying notes 36, 54-56.
17. See infra text accompanying notes 44-50.
widely pursued methodologies or perspectives, the standard should be neither higher nor lower than the standard used for evaluating more traditional work."18

The most difficult challenge to evaluation is storytelling. Typically in narrative form, stories have become the fashion of feminists and minorities who use them to describe experiences of oppression.19 The stories are personal and emphatic in the descriptions of the abuses of patriarchy, hierarchy, and racism. Because of obvious nontraditional characteristics, stories pose the most difficult challenge to evaluation. This Article will discuss the problems of evaluating storytelling.

II. THE GRAND LIBERAL TRADITION

Traditional scholarship is derived from a unifying cluster of liberal values. The liberal legal system dispenses rights, adheres to stare decisis, and seeks truth through confrontation and dialogue. Liberal writers feel obligated to support these values by identifying and endeavoring to resolve problems.20 Following a "grand theory" script, their writing often advocates change so long as it is consistent with liberal values.21

To the liberal traditionalist, law is a vocational profession in which lawyers advise and service clients. However technical or complicated, law is a "job." Likewise, legal scholarship is a job with specific objectives. The process imitates science:22 a problem is identified and ana-

19. See infra text accompanying notes 67-80.
20. The classical tradition of law scholarship is epitomized in the treatises of Samuel Williston (Contracts), John Henry Wigmore (Evidence), and Arthur Corbin (Contracts). They were the masters of vocational-doctrinal writing; large numbers of cases were compared, analyzed, and criticized. In a succinct and elegant style, the grand treatise writers succeeded in identifying rules and defining their operational effects. To the vocationalist, the treatise is the highest form of scholarship. A legal treatise (which must be a multi-volume set, not a single book) was written to be read and used by the profession. If Dean Wigmore supported your position, you won, if Professor Corbin stood against your argument, you talked settlement. See A.W.B. Simpson, The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature, 48 U. CHI. L. REV. 632 (1981).
22. The notion of law as science dates to Langdell. "Langdell, however, had already concluded that 'law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer ... and the shortest and the best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied ... .'" Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s 52 (1983).
lyzed, various positions are recognized and criticized, then comes the recommended solution. Like science, the process is objective, the discussion is rational, and the focus is on problem solving.\textsuperscript{23} Nevertheless, the legal article departs from the science model in its role of making normative statements as prescriptions.\textsuperscript{24}

The doctrinal article is the personification of the liberal tradition and "law as an autonomous discipline."\textsuperscript{25} It has been the dominant influence in scholarship since World War II.\textsuperscript{26} But doctrinal writing did not establish parity with scholarship from other accepted disciplines.\textsuperscript{27} In the university loop, law professors were (and perhaps still are) disdained for applying pseudo-scientific methods to a vocational context and publishing the results in journals edited by law students.\textsuperscript{28} The tactical response to criticism was to co-opt the critics by the "conscious application of other disciplines"\textsuperscript{29} to law to produce interdisciplinary scholarship. How could critics find fault with anyone for appropriating their discipline? Moreover, to the extent that math and other technical jargon could be used, the analytical character of legal scholarship was confirmed.

\textbf{III. DELAWING LAW SCHOOLS AND IDEOLOGY SCHOLARSHIP}

Since the early 1980's, the law academy has been absorbing a new generation of young faculty who have a different set of values, goals,

\begin{itemize}
\item \textsuperscript{23} "In general, the law review articles of the period—or at least those that were seen as trend setting—took a relatively narrow problem and addressed it doctrinally and in terms of goal-oriented solutions." \textit{Id.} at 271.
\item \textsuperscript{24} Rubin, supra note 2, at 1903.
\item \textsuperscript{26} According to Posner, doctrinal analysis "is the traditional and still the dominant mode of legal scholarship." Posner, supra note 1, at 1113.
\item \textsuperscript{27} "For example, publication requirements for law professors generally are strikingly modest compared to the standards applicable to faculty in most other disciplines. Extensive outside activities divert time and energy from research, thereby reducing the quantity (and perhaps also the quality) of legal scholarship. This could reinforce the opinions of intellectual traditionalists who maintain that law schools do not belong in universities. Law schools in this view are trade schools whose primary loyalty is to the bar; their existence on campus undermines the cohesion of the academic community and detracts from the central purposes of higher education." Jonathan L. Entin, \textit{The Law Professor as Advocate}, 38 CASE W. RES. L. REV. 512, 532 (1988)(citations omitted). \textit{See} Gregory, supra note 1, at 996-98. It was not until 1969 that Harvard Law School required even a single article for promotion. JOEL SELIGMAN, THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL 126 (1978).
\item \textsuperscript{28} \textit{See} Arthur D. Austin, \textit{The "Custom of Vetting" as a Substitute for Peer Review}, 32 \textit{ARIZ. L. REV.} 1 (1990).
\item \textsuperscript{29} Posner, supra note 25, at 772.
\end{itemize}
and perspectives about law.30 They do not like the practice of law.31 Many have the Woodstock mentality32 and come from clerking or a few years with a mega law firm. They do not have good memories of their experiences in practice and generally scorn practitioners as greedy and uncaring.33 They reject, at least ostensibly, the yuppie creed that "Greed is healthy."34

Although it is a diverse group composed of blacks, feminists, and white male leftists, they share a common mission: gain control of the academy from the traditionalists (white male liberals) and revise the existing priorities of law.35 Traditional liberal scholarship is viewed as a weapon for maintaining control over the debate and as a source of propaganda.36 It is rejected by the new generation.

There was another reason for rejection of the liberal tradition. The new generation was more in touch with the university culture than the law academy.37 Many speak "a language incomprehensible to law-

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30. Posner explains this as the "flight from humanities to law by graduate students and young faculty, in the 1970s who saw jobs and promotion opportunities drying up and salaries falling steeply in real (that is, inflation-adjusted) terms and decided to go to law school ...." RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 12 (1988).

31. "[L]aw school teaching increasingly recruits those 'who for one reason or another are not happy in practice, adapted to practice or interested in practice.'" Martha Middleton, Legal Scholarship: Is It Irrelevant?, NAT'L L.J., Jan. 9, 1989, at 1, 8 (quoting Judge Richard A. Posner).


33. "Almost all of the principals of the group came to maturity during the late sixties or early seventies. Most began teaching during these years as well, often after a stint in legal services or some other reform-oriented post, as well as participation in the antiwar movement. And while dreams of reform faded, the common politics did not; indeed, many of the principals often moved farther left in an attempt to explain what had gone wrong with earlier great hopes." John H. Schlegel, Notes Toward an Intimate, Opinionated, and Affectionate History of the Conference on Critical Legal Studies, 36 STAN. L. REV. 391, 406-07 (1984)(citations omitted).


35. "Law is conceived to be the instrument of ideology, the ideology of the ruling class, and it is the legal scholar's duty to demystify it, exposing rhetoric as sham and putative truths as spurious." DAVID LEHMAN, SIGNS OF THE TIMES: DECONSTRUCTION AND THE FALL OF PAUL DE MAN 38 (1991).

36. Feminists argue that the ostensible "objectivity" of traditional scholarship serves as a facade to give the appearance of an evenhanded system so as to maintain the status quo of oppression of women. Ann C. Scales, The Emergence of Feminist Jurisprudence: An Essay, 95 YALE L.J. 1373, 1377-78 (1988).

37. The former dean of Yale Law School, Harry Wellington, complains that "law professors today are more concerned with intellectual currents among their colleagues in the arts and sciences and less concerned about law practice and the
EVALUATING STORYTELLING

yers and judges.” They are sympathetic to the politics of diversity and multiculturalism that burns within the university loop. As a result, they want to incorporate these values into their work instead of rehashing existing material. The new generation aspires to be “innovators rather than imitators.”

Some professors look to the interdisciplinary method as a paradigm for innovation. Using this paradigm, they seek to move closer to other disciplines by minimizing the law input. New fields like “law and literature,” “popular legal culture,” and deconstruction have minimal contact with “law.”

The crits were the first group to openly bend scholarship to ideology. To them, traditional scholarship’s only function is to validate the big lie that law is objective, neutral, and rational. By attacking traditional scholarship and the liberal white male establishment, the output of the bench.” John Metaxas, Two Justices, Self Congratulation Mark Harvard Anniversary Bash, Nat’L J., Sept. 22, 1986, at 4. He subsequently wrote that they “do not venture outside the ivory-covered walls, scorn the practicing lawyer and his work . . . and look for rewards only from within the universities.” Harry Wellington, Challenges to Legal Education: The “Two Culture” Phenomenon, 37 J. Legal Educ. 327, 329 (1987).


“Finally, the study of popular legal culture has another major virtue—it promises to be fun. I think what lay people think lawyers do day to day is at least as interesting as legal rules. We may choose to put aside our latest issue of the Harvard Law Review, or even, for that matter, the Yale Law Journal, and watch an episode of L.A. Law. As I have said before, 'perhaps, best of all, I no longer need feel guilty as I watch the Badgers, Bucks, Brewers, and Packers struggle with so little success. It's not wasting time. It's research.' ” Stewart Macaulay, Popular Legal Culture: An Introduction, 98 Yale L.J. 1545, 1558 (1989)(footnotes omitted).

See Arthur Austin, A Primer on Deconstruction’s “Rhapsody of Word-Plays,” 71 N.C. L. Rev. 201 (1992); John Ellis, Against Deconstruction (1989).

For the most balanced and thorough treatment of the CLS movement, see Andrew Altman, Critical Legal Studies: A Liberal Critique (1990).

See Duncan Kennedy, Form and Substance in Private Law Adjudication, 89 Harv. L. Rev. 1685 (1976).
crits seek to debunk this "myth." Professing to practice deconstruction, crits revel in "the indeterminacy of all texts, all writing." The favorite tactic is what they call "trashing": "Take specific arguments very seriously in their own terms; discover they are actually foolish (tragically comic); and then look for some (external observer's) order (not the germ of truth) in the internally contradictory, inherent chaos we've exposed."

The most extreme advocates and practitioners of nontraditional scholarship are feminists and members of the Racial Critique Theory movement. Like the crits, they seek to subvert the liberal white male establishment's control of legal education. Feminists attack the presence and effects of patriarchy while the Racial Critique people attack various forms of racial oppression. They agree that the establishment uses the "Tyranny of Objectivity" to maintain power by preserving the status quo.

Legal feminism is rooted in the broadbased political movement and seeks drastic changes in legal education and law. These aspirations are reflected in advocacy writing with no pretense of balance. Andrea Dworkin and Catherine MacKinnon do not, for example, mince their biases. Presenting a balance of views is objectivity and thus something to be avoided.

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46. CLS has become the main issue at many law schools, dividing faculty and students. See generally Ken Emerson, When Legal Titans Clash, N.Y. Times, April 22, 1990, § 6 (Magazine), at 26 (exploring the rift at Harvard Law School).

47. "This, then is our challenge. To put ourselves on the line, to engage in acts of 'macho self-immolation,' to become moral terrorists, to 'whack-off' in faculty meetings, to construct a praxis which is meaningful, public, and dangerous." David Fraser, If I Had a Rocket Launcher: Critical Legal Studies or Moral Terrorism, 41 Hastings L.J. 777, 804 (1990). See also Guyora Binder, On Critical Legal Studies as Guerrilla Warfare, 76 Geo. L.J. 1 (1987).

48. See Austin, supra note 43.

49. Lehman, supra note 35, at 38.


51. Scales, supra note 36, at 1376-80.

52. "In contrast, outsider scholarship is characterized by a commitment to the interests of people of color and/or women, by rejection of abstraction and dispassionate 'objectivity'..." Mary I. Coombs, Outsider Scholarship: The Law Review Stories, 63 U. Collo. L. Rev. 683, 685 (1992).


54. Robin West argues that women are totally excluded from male jurisprudence. Robin West, Jurisprudence and Gender, 55 U. Chi. L. Rev. 1, 58-60 (1988).


56. To Dworkin, all intercourse is rape. "Physically, the woman in intercourse is a space inhabited, a literal territory occupied literally: occupied even if there has
The rejection of the objective neutral model is based on the "voice" assumption: women's experiences and perspectives are manifest in the different voice of empathy, caring, and nurturing. Unlike men, who rely on deduction, induction, analogy, and other traditional research and scholarship methods, women can exploit their unique intuitive talents. This is the preface that feminists use to explain why their scholarship is expressed in a different voice. The scholarship voice can be subjective or personal and can be expressed in poetry, stories, or other combinations. "Passion," "sorrow," and "anger" are characteristic of feminist voice scholarship.

Like the feminists, the Racial Critique Theory people profess to speak in a different voice that is derived from their race experiences. They took the voice assumption to another level, the level of exclusivity. "[T]he voice of color is identified and synonymous with marginalized groups in our society whose marginal outside status enables them to relate important stories—stories that cannot be sincerely told by their privileged majoritarian peers."

Hence, both groups claim to get special insights from status as victims or outsiders. Outsiders "encompass various outgroups, including women, people of color, poor people, gays and lesbians, indigenous Americans, and other oppressed people who have suffered historical
underrepresentation and silencing in the law schools.64 Their perspective is that of an alienated and excluded underclass.65

IV. THE "OUTSIDER" STORYTELLER: "A NEW GENRE OF LEGAL SCHOLARSHIP"66

Various forms of legal storytelling have been around for years in the form of hypotheticals, problems, and war stories of "real" experiences.67 In addition, fictional narratives date back at least to The Senior Partner's Ghost by Louis Auchincloss.68 It was Derrick Bell who used these "stepping stones"69 to publish the first "outsider" narrative in 1985.70 In the Chronicles, Bell created Geneva Crenshaw, a forceful Black woman who described four fantasies which she and her visitor—presumably Bell—analyzed. Each fantasy concerns a racial conflict.71 "In this new approach, Professor Bell has succeeded in using imagery and metaphors to address the very real problems presented by contemporary racism."72

Outsiders argue that storytelling is an effective way to attack and expose what they view as a coerced objectivity, rationality, and neu-


I resent the way in which the term 'underclass' is now insinuating itself into scholarship, encountering very little critical resistance. You are talking about my sisters and brothers. I know that if not for a few historically accidental occurrences here and there, I might have been among those so arrogantly labeled 'the underclass.'

69. Arthur D. Austin, Narrative Writing as Legal Scholarship: An Interview with Derrick Bell, IN BRIEF, Sept. 1992, at 3 (Case Western Reserve University School of Law Alumni Bull.)
71. For further discussion of Bell's work see infra notes 253-55 and accompanying text.
trality derived from patriarchal values.\textsuperscript{73} "The stories of outgroups aim to subvert that in group reality."\textsuperscript{74} In addition, stories are an "antidote" to the abstraction of traditional scholarship.\textsuperscript{75} "Where we celebrate the specific and the personal, the law tells stories about disembodied 'reasonable men.'"\textsuperscript{76} Narratives can give "significance to emotion."\textsuperscript{77} The most common practice is to describe—or narrate—an actual or fictional experience.

The objective is to use experiences in order to personalize the effects of establishment tactics on outsiders. "Experience narratives" typically describe incidents in which a prevailing rule, custom, or practice marginalizes women or minorities.\textsuperscript{78} The story uncovers the psychological, economic, and social effect of the dominant white male system on the narrator.\textsuperscript{79} Ideally, stories "transform" the views of privileged insiders to the level of tolerance and understanding.\textsuperscript{80}

V. IS THE AALS COMMITTEE'S RECOMMENDATION PRACTICAL?

Nontraditional storytelling scholarship is now the accepted method of expression by a growing number of young professors. It is embraced by "mainstream" law reviews for the sake of balance or ideology.\textsuperscript{81} A-

\begin{itemize}
\item \textsuperscript{73} See Kim Lane Scheppele, Foreword: Telling Stories, 87 Mich. L. Rev. 2073 (1989).
\item \textsuperscript{74} Richard Delgado, Storytelling For Oppositionists and Others: A Plea for Narrative, 87 Mich. L. Rev. 2411, 2413 (1989).
\item \textsuperscript{75} "Stories supply both the individualized context and the emotional aspect missing from most legal scholarship." Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan. L. Rev. 807, 811 (1993).
\item \textsuperscript{76} Charles R. Lawrence, III, The Word and the River: Pedagogy As Scholarship As Struggle, 65 S. Cal. L. Rev. 2231, 2278-79 (1992).
\item \textsuperscript{78} Abrams calls this "first-person agony narrative." Abrams, supra note 14, at 1021. "In agony narratives the author reveals a painful experience—often one whose exposure is interdicted by social taboos—in order to challenge the unapprehended harm inflicted by a practice or rule." Id.
\item \textsuperscript{79} "As a general proposition, I take the position that legal scholarship is not feminist unless it is grounded in women's experience, an experience which produces a feminist point of view." Patricia A. Cain, Feminist Legal Scholarship, 77 Iowa L. Rev. 19, 20 (1991).
\item \textsuperscript{80} Farber & Sherry, supra note 75, at 824. "The broadest claims credit stories with substantial ideological power through which they either 'constitute' a community of outsiders or transform the viewpoints of insiders." Id.
\item \textsuperscript{81} See Arthur Austin, The Top Ten Politically Correct Law Reviews (forthcoming Utah L. Rev.).
\end{itemize}
ternative journals have been created to cater to the new voices.\textsuperscript{82} Thus, while traditional scholarship is still the dominant method and its practitioners control the promotion window, the new generation is making a serious challenge.

When faculties confront the challenge they will debate three issues. One, should storytelling be given parity with traditional scholarship? Two, assuming a positive response to the parity issue, what are the relevant criteria for determining merit? Three, should the "exclusivity" assertion be accepted?

A. The Parity Issue

1. Effect on University Relationship

A decision to grant storytelling parity with traditional scholarship could have critical ramifications on an important relationship. Parity could adversely affect the reputation of the law school within the university culture—including administrators who control promotion, tenure, and salary.

The autonomy law schools once enjoyed no longer exist. It is not unusual to have promotion recommendations reversed by the central administration.\textsuperscript{83} Moreover, as a new member of the academic club, law faculty are viewed with suspicion and jealousy.\textsuperscript{84} Other faculty resent what they consider inflated law school salaries.\textsuperscript{85} Law schools are viewed by many as trade schools who teach "how to do it" skills.\textsuperscript{86} Some respect has been achieved in recent years but it is a fragile relationship that could be ruined by a parity decision that could be interpreted as tolerating irrelevant writing or perhaps even anti-intellectual work. Many nontraditional writers are already sensitive to this risk; they write traditional work to get tenure and then have


\textsuperscript{83} A growing number of universities around the country have restricted the power of law faculty governance in matters of tenure on the basis of a fear of laxity of standards, particularly with regard to scholarly accomplishment. As this University enters a new era, the Law School must maintain its tradition of responsibility and excellence if it is to justifiably retain the confidence of the University's administration. AALS Report, supra note 18, at 489. See also Ken Myers, Decisions on Personnel at Pitt Prompt Staff and Student Protest, NAT'L L.J., June 7, 1993, at 4 (decision of tenured faculty overruled by provost).

\textsuperscript{84} See Entin, supra note 27 and accompanying text.


\textsuperscript{86} "The primary orientation of their work remains teaching and the preparation of casebooks or law-review articles that are useful for teaching or that are directed to practitioners, judges among them." David Riesman, The Law School: Critical Scholarship vs. Professional Education, 32 J. LEGAL EDUC. 110, 115 (1982).
fun. But still there is the issue of salary raises and other perks that come after tenure.

The risk and the dilemma are produced by the brute and irreducible fact that nontraditional storytelling rejects the conventions of the basic tenets of academic scholarship. Serious scholars revere analysis and objectivity. To them, subjective advocacy posturing is best left to the National Enquirer. Bias is a form of fraud. Put together a promotion and tenure review committee of an economist, engineer, an M.D. from the Medical School, and conjure their reaction to a file of storytelling articles from a law professor. "After all, we all know that perspectives come and go, but scholarship must forever look like scholarship." 

There is another hurdle lurking in the underbrush of storytelling. Footnoting, a sacred trust of scholarship, has been politicized. To the traditional scholar, footnotes reference supporting research and tell the reader where to go for amplification. To the nontraditionalist writer, footnoting is a subtle ploy to maintain the status of liberal

87. When I began teaching law in the mid-1970s, I was told by a number of well-meaning senior colleagues to "play things straight" in my scholarship—to establish a reputation as a scholar in some mainstream legal area and not get too caught up in civil rights or other "ethnic" subjects. Being young, impressionable, and anxious to succeed, I took their advice to heart and, for the first six years of my career, produced a steady stream of articles, book reviews, and the like, impeccably traditional in substance and form. The dangers my friends warned me about were averted; the benefits accrued. Tenure securely in hand, I turned my attention to civil rights law and scholarship. Richard Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. Pa. L. Rev. 561, 561 (1984). See also Coombs, supra note 52, at 690.

88. The controversy over the nomination of Lani Guinier to head the civil rights division involved charges that her writings were "advocacy" and therefore not real scholarship. "Mere eccentricity or arrogance can shade into corruption where 'advocacy scholarship' is concerned." Mary Ann Glendon, What's Wrong with the Elite Law Schools, WALL ST. J., June 8, 1993, at A16.


91. "A legal citation serves two purposes. First, it indicates the nature of the authority upon which a statement is based. Second, it contains the information necessary to find and read the cited material." Paul Axel-Lute, Legal Citation Form: Theory and Practice, 75 L. Libr. J. 148, 148 (1982).

A citation is a means "for the interested reader to test the conclusions of the writer and to verify the source of a challengeable statement. As Louis Gottschalk suggests, the footnot thus takes the place of the summons to a witness in a court of law." Carolyn O. Frost, The Use of Citations in Literary Research: A Preliminary Classification of Citation Functions, 49 Libr. Q. 399, 400 (1979)(citing Louis Gottschalk, Understanding History: A Primer of Historical Method 19 (1950)).
white male scholars. As a feminist wrote: "I hate to rely on a dead white man to illustrate this, but I like his weird clarity." They counter with affirmative action in footnoting. To the "affirmative action scholar... citing outsider scholarship is a political act." This is a mindset that would not impress our committee of engineers, M.D.'s, and economists.

2. The Paradigm Argument

Shrewd "counter tradition" scholars rely on Thomas Kuhn to rationalize their work and to respond to criticism. He teaches, at least according to the accepted interpretation of outsiders, that science progresses in vast conceptual jumps instead of in a steady linear progression. Kuhn calls the results of the jumps paradigms. Paradigms are always subject to erosion and change and it is the marketplace of opinion, not scientific judgment, that determines the controlling perspective. As "a canned footnote," Kuhn is used to support the proposition that nontraditional writing is a new paradigm. Most importantly, as a new paradigm, it automatically deserves recognition and full acceptance as scholarship.
At first impression, they have a plausible "new paradigm" argument. The code words of the old scholarship paradigm—analysis, rationality, objectivity, and neutrality—are irrelevant to law under the new paradigm. Why not "altruism" in place of "individualism"? What is wrong with empathy instead of patriarchy? As subjects of the nontraditional scholarship, these new principles are the essence of the emerging new paradigm of voice expression. A paradigm shift is in flow; the paradigm of traditional scholarship is being ousted by the new paradigm of nontraditional writing—including storytelling. And, according to Kuhn, when a new paradigm appears, "there are usually significant shifts in the criteria determining the legitimacy both of problems and of proposed solutions."

There is just one problem with the paradigm shift argument—it wilts under a close reading of Kuhn. Despite "suggestive" com-

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textual evaluative paradigm" for color—voice scholarship. Johnson, Scholarly Paradigms, supra note 61.

On the other hand, when the scholar of color speaks to any racial issue, such as affirmative action, no one can predict that she may see and evaluate that issue differently than her majoritarian colleagues. Her viewpoint will be greatly informed as a result of her different experiences in our society as a person of color. The neutral, consensus-driven paradigm for evaluating such scholarship is too narrowly circumscribed to evaluate the merit and worth of the work of scholars of color when speaking in the voice of color. A new paradigm must be employed—one that recognizes the existence and the worth of the voice of color. This new paradigm must not supplant, but must supplement the majoritarian paradigm.

Id. at 921.

Abrams also raises a paradigm argument: "In this context, the criteria derived from the premise of objectivity remain one paradigm for evaluation—no doubt, at this point, the dominant paradigm. But they are no longer regarded as so unproblematic that feminist scholars must respond to them as the single means of validating our claims." Abrams, supra note 14, at 1015.

100. This is Duncan Kennedy's argument. See Kennedy, supra note 45.


102. KUHN, supra note 95, at 109.

103. While outsider authors nonchalantly refer to Kuhn's *The Structure of Scientific Revolutions*, it is invariably without explanation as to precisely how it supports the arguments in the text. In fact, his book is complicated and difficult to parse. For example, Margaret Masterman reads Kuhn as using paradigm "in not less than twenty-one different senses in [1962], possibly more, not less." Margaret Masterman, The Nature of a Paradigm, in CRITICISM AND THE GROWTH OF KNOWLEDGE 59, 61 (Imre Lakatos and Alan Musgrave eds., 1970).

This accounts for the criticism that Kuhn is "relativistic."

Rather, I have tried to show, such relativism, while it may seem to be suggested by a half-century of deeper study of discarded theories, is a logical outgrowth of conceptual confusions, in Kuhn's case owing primarily to the use of a blanket term. For his view is made to appear convincing only by inflating the definition of "paradigm" until that term becomes
ments indicating a broader scope,\textsuperscript{104} his interest was exclusively in science. Kuhn’s paradigm is concerned with scientific problem solving, \emph{i.e.} what he saw as a crisis in puzzle solving. During the paradigm “revolution,” nothing is arbitrary; instead everyone in the community is trying to solve anomalies. No solutions, no paradigm.\textsuperscript{105} “But if a paradigm is ever to triumph it must gain some first supporters, men who will develop it to the point where hardheaded arguments can be produced and multiplied.”\textsuperscript{106} Moreover, a paradigm occurs only when there is a total consensus among the affected scientific community.\textsuperscript{107} Most importantly, in a Postscript to \textit{The Structure of Scientific Revolutions}, Kuhn disavowed making science “rest on unanalyzable individual intuitions rather than on logic and law.”\textsuperscript{108} In a latter paper he settled the issue: “My methodological prescription is, however, directed exclusively to the sciences and, among them, to those fields which display the special developmental pattern known as so vague and ambiguous that it cannot easily be withheld, so general that it cannot easily be applied, so mysterious that it cannot help explain, and so misleading that it is a positive hindrance to the understanding of some central aspects of science; and then, finally, these excesses must be counterbalanced by qualifications that simply contradict them.”


\textsuperscript{104} See Kuhn, supra note 95.
\textsuperscript{105} “But the sign of Kuhnian consensus is not just some sort of general endorsement of a super-theory but an acceptance that is so strong it eliminates the need for further discussion of foundational questions about the subject-matter and methodology of the disciplines and enables the discipline to devote most of its energy to puzzle-solving. A consensus that does not have this character will not be sufficient to sustain the practice of Kuhnian normal science; and it is this practice that is the mark of a mature science. The very existence of so many attempts by social scientists to use Kuhn’s work to arrive at a basic understanding of what is going on in their disciplines shows that they have no consensus in Kuhn’s sense.” Garry Gutting, \textit{Introduction to Paradigms and Revolutions: Appraisals and Applications of Thomas Kuhn’s Philosophy of Science} 13 (Gary Gutting ed., 1980).

\textsuperscript{106} Kuhn, supra note 95, at 158. Moreover, “the new paradigm must promise to preserve a relatively large part of the concrete problem-solving ability that has accrued to science through its predecessors.” Id. at 169. The feminists, crits, and race theorists do not envision any elements of the liberal white male system surviving.

\textsuperscript{107} Gutting, supra note 105. Kuhn rejects the criticism that he is a relativist. Kuhn, supra note 95, at 205-07.

\textsuperscript{108} Kuhn, supra note 95, at 191 (Postscript). “Though scientific development may resemble that in other fields more closely than has often been supposed, it is also strikingly different.” Id. at 209.
progress." Moreover, whatever the interpretation of Kuhn, science is still viewed from within as cumulative.

Despite Langdell's efforts, law is not a science and is thus not amenable to the puzzle solving imperatives of Kuhn's paradigm. Nevertheless, the notion of paradigm has relevance for analogy purposes. Like sociology, law can use the paradigm to provide perspectives. "When used by sociologists, however, the term comes most often to mean no more than a general theoretical perspective, or even . . . a collection of elements from several more or less distinct perspectives." In a legal scholarship context, narratives do not serve as puzzle solvers, instead they illuminate tensions, expose the politics of the establishment, and serve as a counter to traditional scholarship. These consequences of narrative constitute a new tradition and hence can co-exist with other forms of conventional legal scholarship.

Moreover, it is better, as a matter of academic tactics, to accommodate the new scholarship: give in on parity and avoid the complaints about oppression and victimization of outsiders that would further

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110. Fields of science, I have suggested, make progress in broadly cumulative fashion. As those fields progress, scientists come to employ cognitive strategies that are superior, when judged by versions of the external standard. Despite the existence of periods in which alternative ways of revising practice can be defended by equally good arguments, scientific communities typically resolve these indeterminacies by articulating a superior form of reasoning that can be used to support one of the rivals. PHILIP KITCHER, THE ADVANCEMENT OF SCIENCE 387-88 (1993).

111. "The fact seems to be that this was an extremely early attempt to apply the inductive method of the laboratory to matters foreign to the natural sciences." Eugene Wambaugh, Professor Langdell-A View of His Career, 20 HARV. L. REV. 1, 2 (1906).

112. "Law, after all, is not religion, not physics, and not just an applied social science. Law is law." ROBERT S. SUMMERS, INSTRUMENTALISM AND AMERICAN LEGAL THEORY 271 (1982).


115. Puzzle-solving, unlike aesthetic judgment, is the unique province of specially trained practitioners; and the aesthetic qualities of an artistic achievement remain even after the puzzle-solutions (if any) that produced it have become irrelevant. Kuhn offers a similar explanation of differences in the way art and science develop through time; e.g., in art successful revolutions mean the acceptance of new traditions but generally not (as in science) the abandonment of older traditions; and as a result art but not science characteristically gives simultaneous support to incompatible traditions. GUTTING, supra note 105, at 17.
splinter the academy. With the increasingly strong pressure for political correctness in law schools, it is an inevitable concession. The critical issue is what standard would be used to evaluate nontraditional scholarship. This is where the battle should be fought.

B. Exclusivity

According to the exclusivity argument, the oppression of feminists and minorities by the liberal white male system has given them a unique sensitivity. As the objects of oppression, they have acquired the exclusive credentials to present their stories and experiences—which have "been silenced in traditional legal scholarship." The dominant language of traditional scholarship is manipulated to "lock out" minority groups. Whatever they say about oppression is entitled to a presumption of expertise. There is another presumption: only those who are within the victimization loop can determine the credibility—the sincerity—of oppression writing. Professor Regina Austin suggests that it would be a further extension of dominance if white males engaged in storytelling.

Professor Williams relies on the Black experience to justify exclusivity. To her, Black "experiences of the same circumstances may be


118. Benita Ramsey, Introduction, Excluded Voices: Realities in Law and Reform, 42 U. MIAm L. Rev. 1, 2 (1987). "By manipulating language to create self-serving labels for social conditions, the elite ignore the repressive conditions under which society's less influential groups suffer." Id.

119. Delgado, supra note 87, at 564 n.15.

120. See supra notes 61 and 62 and accompanying text.

121. On the capacity and propriety of white males to evaluate black anti-oppression scholarship, Regina Austin recommends "wariness." Given the dearth of work by any one reflecting a black feminist jurisprudence, an extended answer to the question would be premature. At this point, I would only emphasize that the subject is scholarship, not reportage. Self-awareness and self-criticism are required of all who do it. Adopting a black feminist perspective would require that white male scholars criticize the white supremacist and patriarchial thinking that are the sources of their superior status. Moreover, because white male scholars have the capacity to dominate any area of iniquity they share with minority academics, see Delgado, The Imperial Scholar: Reflections on a Review of Civil Rights Literature, 132 U. PA. L. Rev. 561 (1984), they have the capacity to dilute whatever counter ideological impact black feminist scholarship might have. For these reasons, wariness is in order.

very, very different" from white perceptions and "the same symbol may mean different things to each of us." It is her experiences of racial putdown, invisibility, and exclusion, that give Williams and other Black writers exclusive dominion over "stories." How could a white male colleague write about never-experienced experiences, comprehend the subtle nuances of racism, or determine the merit of the story? Professor Johnson says:

Indeed, I contend that white males do not employ the narrative, storytelling style because to do so would result in their talking about their dominance and that currently is not socially acceptable discourse. Also, to emphasize their dominance and dominant position would demonstrate the fact that the meritocracy they believe in is not really a true meritocracy, but rather a system providing them with built-in advantages.

Recognizing the obvious, Johnson subsequently conceded that storytelling is ubiquitous to all cultures, races, and ethnic groups. He also conceded that "someone other than a person of color should be able to speak in the Voice of Color given the right experience, learning, or aptitude." But this is a vapor concession that does not give up the exclusivity argument. When an insider writes narrative in the Voice of Color, it is a "mimic" or "affectation." Forrest Carter, a pseudonym for a "Ku Klux Klan terrorist" may have fooled the critics and the public into believing the authenticity of the "autobiography" of Little Tree, but it was merely the "equivalent of an affectation that he used when it was to his advantage and discarded


123. Williams, supra note 122 (footnote omitted).

124. On this issue Professor Coombs takes an "agnostic" position, then waffles: "though I think someone who has grown up conscious of her connections to an outsider community can more easily develop the capacity for such scholarship." Coombs, supra note 52, at 712 n.118.

125. See Johnson, New Voice, supra note 61, at 2047 n.170.

126. 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). "Euro-American scholars have used narrative for many years and scholars of color trace their use of it to its use by Euro-American scholars." Id. at 835.

127. Id. at 836.

128. Id. at 835 n.138.


130. FORREST CARTER, THE EDUCATION OF LITTLE TREE (1976). This was the autobiography of Little Tree who, after being orphaned at age ten, was raised by his Cherokee grandparents in the hills of Tennessee. After being published by the University of New Mexico in paperback, it became an instant hit, selling over 350,000 copies. Critics saw it as a "deeply felt" masterpiece "that captured the unique vision of Native American culture." Gates, supra note 129, at 26.
when it was not." Thus when insider scholars write in the Voice of Color they are "impostors" producing "counterfeit" stories.

Exclusivity in legal storytelling parallels a similar movement in literary criticism. Under the "ideology of authenticity," readers can read a work and automatically detect an author's race or gender. "There is an assumption that we could fill a room with the world's great literature, train a Martian to analyze these books, and then expect that Martian to categorize each by the citizenship or ethnicity or gender of its author." The assumption is based on author identity: "[t]he works they create transparently convey the authentic, unmediated experience of their social identities . . . ."

Self-anointed exclusivity is the unilateral creation of power. A self-selected group appropriates the exclusive power to determine the acceptable criteria for evaluation. As a result, only outsiders are entitled to make judgments on the quality of storytelling. This argument is simply "implausible." Exclusivity is grounded in self-aggrandizing political goals that are unacceptable to entrenched scholarship values. As Randall Kennedy says, it constitutes an "ongoing effort by intellectuals of color to control the public image of minority groups and to exercise leadership on their own behalf."

The ethos of scholarship—in all fields—is inclusion rather than exclusion. Scholars within fields speak a common language. There is, to

131. Johnson, supra note 126, at 836 n.146.
132. As a member of the majority group, Forrest Carter undoubtedly possessed some insights about what others like him wished to hear from persons of color speaking in the Voice of Color. That insight could be used to produce a Voice of Color that is attractive (some might say patronizing) to members of the majority group, but not so attractive to members of the minority group apparently represented by impostors like Forrest Carter.
133. At the very least, by speaking in a counterfeit Voice of Color Forrest Carter accomplished a call to a perspective that requires the reader to confront the author's alleged differentness and, in doing so, the white race-consciousness that is implicit and endemic in this society. That is not a total failure.
134. Gates, supra note 129, at 1. In history the parallel is the "doctrine of collective ethnic experience" which assumes that race, sex, religion, or ethnic background endows the members of that group "with unique insights or perceptions denied to those outside the group." Theodore S. Hamerow, Point of View, CHRON. HIGHER EDUC., Aug. 4, 1993, at A36.
135. Gates, supra note 129.
136. Id. at 26. For a discussion of "privileged access to knowledge" under the sociology of knowledge see Robert K. Merton, Insiders and Outsiders: A Chapter in the Sociology of Knowledge, 78 Am. J. Soc. 9 (1972); Joseph Agassi, Privileged Access, 12 Inquiry 420 (1969).
137. See Farber & Sherry, supra note 75, at 818.
138. Kennedy, supra note 61, at 1754.
be sure, consensus on various points. But this consensus can only be achieved by inclusion of challengers and must stand the scrutiny from any source. The reason is obvious; without constant challenge there can be no change and no additions to the "state of knowledge." Artificial barriers to challenge and inquiry inhibit this process. "One's racial (gender, religious, regional) identity is no substitute for the disciplined study essential to achieving expertise." Gates says, "No human culture is inaccessible to someone who makes the effort to understand, to learn, to inhabit another world."

Erecting a synthetic barrier around an academic theme by rejecting criticism and evaluation is a confession of a lack of confidence or an admission of a barren intellectual terrain. What other reasons could explain a demand for race or gender autonomy over scholarship? When Professor Delgado demanded that liberal white males leave civil rights scholarship to minorities, he was literally trying to eliminate a big block of competition.

Exclusivity for forms of race and gender writing can produce counterproductive effects. It endorses Balkanization in scholarship and in other areas of legal education. White males could make out a case for exclusivity based on their voice of rationality and objectivity. "They" could argue for presumed expertise in areas like tax and securities which have traditionally been considered "rational and...

139. "'Publish or perish!' is a fundamental psychological, indeed almost physiological, imperative that is rooted in the very metabolism of scholarship as a vocation. For that is how research remains honest, by exposing itself to the criticism and correction of other scholars and by inviting them—or daring them—to replicate its results (if they can!) and, if possible, to carry those results further.” Jaroslav Pelikan, Scholarship: A Sacred Vocation, Scholarly Publishing, Oct. 1984, at 3, 19.

140. Kennedy, supra note 61, at 1777.


142. The time has come for white liberal authors who write in the field of civil rights to redirect their efforts and to encourage their colleagues to do so as well. There are many other important subjects that could, and should, engage their formidable talents. As these scholars stand aside, nature will take its course; I am reasonably certain that the gap will quickly be filled by talented and innovative minority writers and commentators. The dominant scholars should affirmatively encourage their minority colleagues to move in this direction, as well as simply make the change possible. Delgado, supra note 87, at 577.

143. But we must not forget that the doctrine of inherited cultural tradition is a two-edged sword. It can be used to exclude just as easily as to include; it can serve to discriminate as much as to liberate, perhaps more so. Historically, it has been used to support hierarchy and elitism. By employing it as an instrument of democratization, we may be opening the door to its application once again as a tool of oppression. The doctrine of inherited cultural tradition might well be used anew to enforce elite values in higher education. Beware of it. Hamerow, supra note 134.
analytical." Blacks, females, white males, etc.—may have to negotiate over who specializes and teaches in areas like contracts or tort.\textsuperscript{144}

VI. EVALUATING LEGAL SCHOLARSHIP

There is no consensus on criteria for evaluating legal scholarship.\textsuperscript{145} Professor Carter's experience is typical: "After nearly a decade of sitting through faculty meetings and listening to my colleagues discussing scholarship, I am quite certain that there is no such animal as the 'majoritarian perspective . . . .'")\textsuperscript{146} One reason for the lack of consensus is that law academics do not have the benefit of a scholarship tradition. Compared to other disciplines, legal scholarship is a recent event, becoming a serious responsibility as recently as the 1970s.\textsuperscript{147} This is compounded by the nagging and widespread doubt among law professors that law is a field that can generate "real" scholarship.\textsuperscript{148} They self-consciously see law as a vocation in which the primary purpose of law schools is to train people how to practice.\textsuperscript{149} The bulk of what we call research and scholarship is essentially a form of advice to judges and lawyers on policy or interpretation. Authors may produce new or different perspectives on interpretation, the application of a statute, or the range of a precedent, but they cannot solve puzzles like the scientist.\textsuperscript{150} Unlike the lawyer, the scientist is challenged by the conviction that, "if only he is skilful enough, he will succeed in solving a puzzle that no one before has solved or solved so

\textsuperscript{144} Feminists argue that they have been marginalized in contracts and torts. See Bender, \textit{supra} note 101, at 3; Nancy S. Erickson, \textit{Sex Bias in Law School Courses: Some Common Issues}, 38 J. Legal Educ. 101 (1988); Mary J. Frug, \textit{Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook}, 34 Am. U. L. Rev. 1066 (1985).


\textsuperscript{146} Carter, \textit{supra} note 61, at 2075.


\textsuperscript{148} See \textit{supra} articles collected in note 1. Harvard did not require publication until 1969. Seligman, \textit{supra} note 27. Distressed over the lack of quality, one professor is quoted as saying: "I am not sure that we have reached the point where you could jot something down on a cocktail napkin and get it published, but we're close." Charles Rothfeld, \textit{A Lament: Too Few Interesting Law Articles}, N.Y. Times, Nov. 23, 1990, at B23.


\textsuperscript{150} There is another problem haunting legal scholars—they publish in student edited journals devoid of a peer review system. See Austin, \textit{supra} note 28. While generally ignoring this problem, many faculty nevertheless agree that "student edited journals are the scandal of legal publishing . . . ." Patricia Gray, \textit{Harvard's Faculty Stirs a Tempest With Plans for New Law Journal}, N.Y. Times, May 28, 1986, § 2, at 37.
well.”151 This may account for the lack of empirical research in law—the foundation for puzzle solving.152

All of the above “dilemmas” push the evaluation theme into the school of “I know it when I see it.”153 The AALS Report reflects this position: “[s]chools typically state their expectations in terms like these: [scholarship] should be sufficient . . . to demonstrate a devotion to intellectual inquiry and scholarly production that indicates a promise of a continued intellectually inquiring mind and scholarly productivity throughout the person’s professional life.”154

The AALS Report favors what Racial Critique Theory considers “majoritarian” criteria. “[T]here is a neutral, objective, evaluative standard by which the ‘best’ scholarship can be ascertained, ranked, differentiated from other works, and rewarded.”155 This is what outsiders label “meritocracy,” a system of evaluation imposed by white male scholars that is condemned by many Black scholars.156 Professor Carter, in turn, rejects dual race defined criteria; he proposes an analogy to patentability requirements that would be helpful in accommodating nontraditional scholarship. He argues that it is not the mode of scholarship that is relevant, but “what has resulted from the particular mode that the scholar has selected for work.”157 Merit is determined by a two pronged test: “the argument must be new, meaning that it has not been said before,”158 and the work must “increase human knowledge . . . .”159

While it has the advantage of simplicity, Carter’s test is nevertheless demanding. If rigorously applied, the gates of promotion and tenure would indeed be narrow and “would almost certainly exclude much of existing traditional scholarship.”160 Nevertheless, he makes a valid point—we need something better than “I know it when I read it.” As Professor Rubin points out, without external guidelines, judg-

151. *KUHN*, supra note 95, at 38.
153. As a colleague once said: “If it is not in the last ten pages it is not there.”
156. Proponents of the Monistic dialect assert that their methodology is a distinctive way of approaching moral, legal, and social issues that embodies racial consciousness, and that their legal scholarship and doctrine has heretofore been marginalized. They argue that a dominant perspective that professes cultural neutrality in fact represents cultural hegemony of the majority—white males—and has ignored their insight.
158. *Id.* at 2085.
159. *Id.* at 2080.
160. Farber & Sherry, *supra* note 75, at 848.
ments on scholarship devolves into a game of power and politics.\textsuperscript{161} On the other hand, "A theory of evaluation can become the unifying element in legal scholarship . . . ."\textsuperscript{162}

A. Evaluation Under Rubin's Criteria

Professor Rubin relies on the critique of methodology which "begins with the individual evaluator, and seeks to articulate the rules which that particular person should employ, given her own position and personal set of beliefs."\textsuperscript{163} The objective is to bring the evaluator and author together on common ground.

The first Rubin criterion is that the author must describe the norm that guides his work with "clarity."\textsuperscript{164} The next step is "persuasiveness": would readers be "convinced" if they accepted the author's norm.\textsuperscript{165} Rubin separates—\textit{i.e.}, "distances"—the reviewer's norms from the scholarship by putting the final judgment of persuasiveness in the mind of a "rational public decisionmaker."\textsuperscript{166}

Having addressed the decisionmaker as a reference for evaluation,\textsuperscript{167} Rubin moves to the author's peers—scholars who are "onlookers to the author's act of addressing legal decisionmakers."\textsuperscript{168} Peer scholars are like an audience at a play, watching the "performance" of the author. In this version of theater, the reviewer first looks for "significance," \textit{i.e.}, "the manner in which the work relates to the unfolding historical development of its academic field."\textsuperscript{169} The key questions are whether the work is part of the development of a field and whether it has impact. Finally, the work must add to the reviewer's "understanding." Rubin calls this "applicability": "the operative question is whether the evaluator would apply the work or idea that it contains in her own thinking process."\textsuperscript{170}

\begin{thebibliography}{99}
\bibitem{Note162} \textit{Id.} at 902.
\bibitem{Note163} \textit{Id.} at 909.
\bibitem{Note164} "The legal scholar can achieve understanding only by identifying his controlling norms with clarity and by explaining their relationship to his specific arguments." \textit{Id.} at 915.
\bibitem{Note165} \textit{Id.} at 919-20.
\bibitem{Note166} "The process of imagining how a different person, with different views, would react produces a useful distance; it is a mode of self-discipline that is designed to avoid, or at least dampen, the effect of opinion and bias in a situation where definitive proofs are unavailable." \textit{Id.} at 921.
\bibitem{Note167} "In applying this test for persuasiveness, it helps to recall that the explicit audience for a typical work of legal scholarship is a public decisionmaker." \textit{Id.}
\bibitem{Note168} \textit{Id.} at 925.
\bibitem{Note169} \textit{Id.} at 928. "Is it in the field's mainstream, or on its advancing edge? Is it in a side-eddy, a backwater, or entirely out the channel?" \textit{Id.}
\bibitem{Note170} \textit{Id.} at 935-37.
\end{thebibliography}
Rubin's proposal is the most ambitious and detailed system of evaluation in the scholarship literature. He offers a process that can function to mediate bias and arbitrariness in judging the quality of scholarship. An important byproduct is his analysis of the major problem areas in legal scholarship. Finally, Rubin goes on to provide guides in evaluating nontraditional forms of scholarship—or what he calls "complete" and "partial" subdisciplines.\textsuperscript{171}

When nontraditional scholarship is at issue, the potential for bias is more pronounced. Rubin suggests that this can be dealt with by the reviewer assuming doubt ("a consciously adopted mindset")\textsuperscript{172} and anxiety ("a response elicited by experience").\textsuperscript{173} Rubin wants the reviewer to reexamine his assumptions in order "to stand apart from it . . . see it as merely one position among many."\textsuperscript{174} If the reviewed work creates doubt and anxiety about the credibility of the reviewer's assumptions, it must have value.\textsuperscript{175}

Yet having pursued the issue so thoroughly, Rubin stops at the challenge of storytelling. He concludes that narrative is devoid of methodological content:\textsuperscript{176}

Explicit recognition of these experiences in legal scholarship, the willingness to speak in an individual, rather than a depersonalized, objective voice, could conceivably evolve into a separate method. But method, as discussed above, consists of an interlinked set of consciously articulated procedures that generates research. To date, narrative has not developed to this point; it functions as a specific technique for the presentation of substantive views, not as a comprehensive system that generates its own scholarly approach. It is not, for example, equivalent to the deconstructive arguments that characterize critical legal scholarship or to the microeconomic analysis of the Chicago School.\textsuperscript{177}

\textsuperscript{171.} Complete subdisciplines "possess a different ideology and a different methodology." \textit{Id.} at 947. Rubin puts law and economics and CLS in this category. \textit{Id.} Law and economics assume the ideology of efficiency while CLS condemns prevailing power distributions as unjust. \textit{Id.} at 947-48. In partial subdisciplines the divergence from mainstream norms of ideology and methodology "is limited to one category or the other." \textit{Id.} at 953. Rubin includes law and literature (methodology) and feminism and critical race theory (ideology) in this category. \textit{Id.} "These works are animated by norms that clearly diverge from those of mainstream scholars." \textit{Id.}

\textsuperscript{172.} \textit{Id.} at 945.

\textsuperscript{173.} \textit{Id.}

\textsuperscript{174.} \textit{Id.} at 946.

\textsuperscript{175.} "Thus, the very process of formulating counter-arguments which is a mechanism for outright rejection of the author's work when uncritically performed, becomes a datum for assessing that work's quality in the context of a more disciplined evaluative theory." \textit{Id.}

\textsuperscript{176.} "A methodology is an interlinked set of consciously articulated procedures that generates research and resolves substantive uncertainties in that subject." \textit{Id.} at 899.

\textsuperscript{177.} \textit{Id.} at 955-56 (footnotes omitted).
B. The Farber-Sherry Evaluation Standards

Farber and Sherry are the first non-outsiders to conduct an in-depth analysis of storytelling. After confronting some of the assumptions made by outsiders, they conclude with a set of guidelines for evaluating stories. They start with the requirement that any evaluation system must start with the "analytic component" which includes "the core goals of legal scholarship." The first goal—"comprehensibility,... becomes much more difficult as it shades into questions about how readers understand the law-related point of the story." Next comes the criterion of "originality." The authors express doubt that storytelling can satisfy these standards. For example, what can experiences add to one's knowledge if one has suffered discrimination, and, if one has not, "stories are unlikely to teach us." Likewise, narrative defies application of the originality test: "Even if we limit our inquiry to the minimal standard of 'add[ing] to the totality of knowledge' it will still prove difficult to determine whether a particular narrative has had an additive effect." To them, personal experiences, standing alone without legal analysis, cannot constitute good scholarship. They conclude: "Although we have not found sufficient evidence to support strong versions of the "different voice" thesis, we do find weaker versions credible; we also conclude that legal stories, particularly those 'from the

178. Farber & Sherry, supra note 75.
179. They reject the assumption that Black and Feminist storytellers "speak in a unique voice." Id. at 814, 818. The assumption that stories strengthen "community" among outsiders does not "validate the stories as scholarship." Id. at 824. The assumption that racial and gender attitudes of insiders can be transformed by stories "seems implausible." Id. at 826. They reject the assumption that stories eliminate bias in the legal system "because the problems themselves stem from broader social conditions." Id. at 828. "Moreover, there is reason to question whether the personal stories of middle-class law professors can accurately convey the perspectives of the truly disadvantaged." Id.
180. Id. at 846.
181. Id. at 847.
182. Id. at 848.
183. Id.
184. Id. at 849.
185. Id. at 848.
186. Personal narratives without the analytical component are immune to counter arguments and thus defy an on-going dialogue. Id. at 850-51. The authors note that, "at least in theory," it is possible "that a narrative could be effectively used not only to convey concrete experience, but also to encode abstract arguments which the reader could then analyze. On the whole, we are dubious about how successfully this encoding can be achieved. In any event, while such narrative would not explicitly provide analysis, it would effectively meet our requirement that analysis be conveyed to the reader." Id. at 853.
187. The authors have a third criterion-significance or the importance of a work. They do not have much to say on this point except: "It is ultimately a judgment about how the scholarship will stand the test of time." Id. at 853-54.
bottom,' can play a useful role in legal scholarship. Unlike some advocates of storytelling, however, we see no reason to retreat from conventional standards of truthfulness and typicality in assessing stories. Nor do we see any reason to abandon the expectation that legal scholarship contain reason and analysis, as well as narrative. A legal story without analysis is much like a judicial opinion with 'Findings of Fact' but no 'Conclusions of Law.'

C. Evaluation By Outsiders

The bulk of the writing on storytelling by outsiders describes its origins, what it is, and what it does. Descriptions by people like Derrick Bell, Richard Delgado, and Patricia Williams convey the common theme that stories raise consciousness and serve as a vehicle to educate insiders. Another theme is exclusivity; stories convey the unique messages of Blacks and minorities.

One implication of the unique message assumption is that the stories constitute scholarship by presence and source—i.e., the fact that it is an outsider's story validates it as scholarship. As choreographers of storytelling, outsiders own the right to define evaluation criteria. This is consistent with the view that voice scholarship presumptively conveys “expertise.” Moreover, who can evaluate “experiences” better than the author? Professor Coombs adopts this argument. She accepts the notion that evaluation is important in “all scholarly communities . . .” It is especially important that outsiders adopt criteria so as to “insulate our work from the imposition of inappropriate criteria developed by and for other scholarly communities, such as traditional legal scholarship.” Coombs exults the passion and subjectivity of outsider work, concluding that since outsider scholarship is a “valid” form of scholarship, it is appropriate that those insiders unfamiliar with outsider work “turn to those they recognize as experts in the genre for their assessment.”

Outsider criteria includes suitability for a chosen audience, success in advancing the interests of the outsider community, and a theme

188. Id.
189. See Austin, supra note 69.
190. Delgado, supra note 74.
191. Williams, supra note 123.
193. See supra notes 117-29 and accompanying text.
194. Delgado, supra note 88, at 561 n.15.
195. See supra notes 117-26 and accompanying text.
196. Coombs, supra note 52, at 703.
197. Id.
198. Id. at 713. “An explicit encouragement of passionate engagement with one's subject, I suspect, helps us produce better scholarship.” Id. at n.120.
199. Id. at 709.
“true to the vision of those for whom the work purports to speak.”

Finally, of course, many of the criteria for excellence applicable to traditional scholarship such as clarity, originality, and ambitions can also be applied. . . .”

Professor Delgado uses a different argument to deflect insider evaluation. In a reply to Farber and Sherry, he accuses them of failing to understand what outsider storytelling is all about; their article contains “a number of curious lapses.” For example, they do not distinguish storytelling from the more traditional style of Critical Race Theory jurisprudence, most stories are in fact supplemented with “analysis and commentary that will enable the reader to connect the story with a more general rule or principle,” and they ignore “counterstories.” Counterstories “jar, mock, or displace a tenant of the majoritarian faith.” Finally, Delgado says that Farber and Sherry’s concern that the audience is unlikely to be converted by stories misses the point; storytellers aim at a variety of audiences: “progressive scholars, other crits, or the minority commentary itself.” The bottom line is that majoritarian bias blocks out the values and message of outsider narratives. Then Delgado calls for a truce: forget about evaluation, it’s too early. “Sometimes it may be better to live with uncertainty a little longer, tolerate a degree of experimentation, rather than shut off a world crossing experiment that may one day benefit us all.”

Instead of evaluative criteria, Professor Abrams provides perspective and advice. She vehemently rejects the dominant scholar’s reliance on objectivity, arguing that it is anathema to narrative. Insider dominant scholars must recognize the emergence of a subcommunity of scholars who are developing a new and legitimate form of scholarship. The objective is to bring people from other subcom-

200. Id. at 713-14.
201. Id. at 715.
203. Id. at 668. “These errors, committed by serious and careful commentators, cast doubt on the entire evaluative enterprise.” Id.
204. “This is not a minor quibble: Farber and Sherry focus on the alleged defects of narrative jurisprudence, yet often impute them to CRT as a whole.” Id. at 669.
205. Id. at 670. “Narratives, standing alone, of the sort Farber and Sherry condemn, are rare.” Id.
206. Id.
207. Id. at 671.
208. “Majoritarian tools of analysis, themselves only stories, inevitably will pronounce outsider versions lacking in typicality, rigor, generalizability, and truth.” Id. at 675.
209. Id. at 676.
211. Id. at 1013, 1015, 1028, 1041.
212. This is part of an ongoing process in legal scholarship. “In this period of newly ‘fractured horizons’ in legal scholarship, it is critically important for scholars to
munities and the narrative style into a bond of common understand-
ing.213 Once the reader realizes that outsider writers have varied objectives and do, however cryptically, fashion narrative connections, the criticism becomes irrelevant.214

"Perspective" is interesting but is not too helpful when it comes down to the nitty-gritty of evaluation. However, there is a practical insight in Abram's advice: narratives are not fungible and evaluation turns on the category under scrutiny.215

VII. EVALUATING STORYTELLING: CATEGORIES

One reason that critics of narrative have difficulty in devising evaluation criteria is that they give little, if any, attention to the signifi-
cance of classification. They make the incorrect assumption that all storytelling comes from outsiders and is similar in style and motiva-
tion.216 In fact, there is a range of categories, each with its own style, motive, and perspective. The failure to recognize and deal with the various categories leads to meaningless generalizations, confusion, and false assumptions. It obscures the existence of common elements that connect all categories.217

The threshold problem is the indiscriminate use of the word "nar-
rative" or "story." Outsiders sometimes refer to their work as a story: it is the telling of "my story."218 For example, Professor Dalton refers to her analysis of contract doctrine as a story: "I do not believe that my story is the only one that can be told about contract doctrine. I insist only that it is an important story to tell."219 Her article is not,
however, a story according to the Bell or Williams narrative technique; instead it is an advocacy interpretation written in the conventional law review structure—a linear text incorporating copious footnotes referencing standard sources. Hence, use of the word "story" in this context is in reality an announcement that outsiders have a different interpretation of conventional doctrine.220

A. "Stories" About Pedagogy, Law School, and the Profession

Because this category has overlap in several characteristics, it stands at the edge of storytelling. There is narrative, the "stories" come from the author's experiences, and are often subjective and emotional. What separates them from storytelling is that the primary goal is to convey information about a project or to expose a pedagogical flaw. This genre is similar to a computer network that conveys notices and descriptions of activities. There is no scholarly aspiration. The following quotes reflect the theme of this category:

"My goal for the winter term of the LRW program was to reconstruct a legal academic exercise into a process of political sensitization."221 "I start many of my law school courses with a description of myself."222 "Take risks. Tell your own stories and be willing to think out loud in class."223 "This is the story of a law school course I planned on legal and policy issues affecting women of color."224 "Why would a law professor be interested in rock and roll? Why might law students find rock music helpful for law study?"225 "Teaching feminist legal theory at the J. Reuben Clark Law School of Brigham Young University is, at the least, a conversation piece."226


I would also include in this category “stories” in autobiographical form about practice—such as a description of service as a special master—and narrative discussion of legal problems. Speech autobiographies also belong in this genre: “But law school really did a number on me.”

B. Insider Storytelling

The Case of the Speluncean Explorer was published in 1949, thirty-six years before Professor Bell’s Chronicles. The Supreme Court of Newgarth in the year 4300 resolves the case of trapped explorers who roll dice to decide which one will be killed and eaten. Then there is the fiction of novelist-lawyer Louis Auchincloss whose two short stories flush out the nuances of senior partner influence, while Professor Erik Jensen and I have published satires on the law academy, while Professor Cornell has produced a scene from a play.

While all of these pieces “touch” on law, they are not ideological in the sense of outsider narratives. Another group of nonideological
storytelling focuses on specific areas of law. This includes dialogues, conversations and fictional accounts of events that involve legal issues. The most prolific author of the legal issue narrative is Professor Norval Morris who has produced a series of stories around the experiences of Eric Blair (George Orwell's real name) which Professor Morris claims (although this claim has not been verified) are based upon a set of manuscripts he discovered while retracing the travels Blair made while serving in Burma between 1923 and 1927.

Finally, there is humor, a long standing subject for lawyers and professors. This is an eclectic category which includes narratives of events like faculty meetings, dialogues, plays, an "ode," and monologues. The objective of the humor game is to poke fun, not politicize.

C. Outsider Storytelling

As to either style or objectives, outsider storytelling is not a homogeneous category. On the outer edge there are "stories"—expressions


238. Orwell was a British novelist best known for 1984 (1949).


of ideological interpretations written in conventional doctrinal style. These are excluded from this discussion which refers to the use of narrative to articulate minority and feminists ideology, perceptions, and experiences. This category falls into two groups—the law parable and encounter/conflict stories.

1. Law Parable

Under this format the writer uses the parable medium in conjunction with text and/or footnote references. The text is used either to introduce background information to set up the parable or to discuss and analyze the meaning of the parable. For example, the parable can be used to take the introductory text to a higher, more subtle level. It has been exploited to shock and force the audience to confront race issues. Likewise the parable can be used to dramatize the insider's

246. See supra notes 218-13 and accompanying text.

247. There is a third category: Outsider Miscellaneous. I include in this category monologues, such as a convicted murderer's impression of prison, see Mumia Abu-Jamal, Teetering on the Brink: Between Death and Life, 100 YALE L.J. 993 (1991); reflections on law school experience, see Patty Rauch, Reminiscence, 10 NOVA L.J. 793 (1989); parable about problem solving, see Gerald R. Lopez, Lay Lawyerizing, 32 UCLA L. REV. 1 (1984); creating a story by extrapolating from the events of a case to show prison dehumanization, see Thomas Ford Ascher, If I Had A Hammer... I'd Still Need Some Nails: A Fictitious Reconstruction of Hudson v. Palmer, 9 LAW & INEQ. J. 115 (1990). For an outsider dialogue see Dinesh Khosa and Patricia Williams, Economies of Mind: A Collaborative Reflection, 10 NOVA L.J. 619 (1986).


250. See Derrick Bell, The Final Report: Harvard's Affirmative Action Allegory, 87 MICH. L. REV. 2382 (1989). The initial paragraphs describe an explosion that rips apart the Harvard University President's house, killing him and every member of the Association—a group of Black professors and administrators. "None who heard or saw it ever forgot the earth-shaking explosion and the huge nuclear-like fireball." Id. at 2382. The purpose of the meeting had been to address exclusion of Blacks from all parts of Harvard. The remainder of the story is an account of the Association's deliberations and efforts to deal with an insider administration.

The story of Final Report did in fact serve as the introduction for an affirmative action report submitted by the Harvard Association of Black Faculty and Administration to Derek Bok, President of Harvard. Bell was co chair. "By placing the summaries of our meetings with the deans within the context of an allegorical tragedy, we aim to spark a new level of discussion as to why Harvard
self-serving invocation of objective and rational standards.251 The mixture of parable with text can flush out the issues from a dual perspective. For example, Richard Delgado takes a “race-tinged event” and describes it in a series of five stories. “Each account is followed by analysis, showing what the story includes and leaves out and how it perpetuates one version of social reality rather than another.”252

The originator of the parable technique,253 Derrick Bell, continues to use it to explore race. His pessimism about the future of Blacks in the U.S. is the theme of his text introduction to a parable about the “space traders.”254 In the year 2000, a fleet of space ships appear to trade with what has become an economically besieged U.S. The traders offer gold, critical chemicals and safe nuclear power in exchange for all African Americans. There is loud indignation at this offer of slave trading. After reflection, an enabling constitutional amendment is approved by a seventy percent vote and the trade is made. “And just as the forced importation of those African ancestors had made the nation’s wealth and productivity possible, so their forced exodus saved the country from the need to pay the price of its greed-based excess.”255

In addition to being an active advocate of narrative,256 Richard Delgado is a prolific practitioner of the genre. He imitates Bell (even

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252. Delgado, supra note 74, at 2415. In responding to the Farber and Sherry criticism that stories lack analysis and commentary, (supra note 75, at 846-53), Delgado said: “True, but irrelevant—most of us already follow this counsel. In perhaps the most notable example of legal storytelling, Derrick Bell and his interlocutor, Geneva, agree that their conversations must include statistics, case authority, and doctrinal analysis lest their colleagues reject their work as nonrigorous. Most of us instinctively follow Bell’s example; only a handful of the articles we reviewed consisted of unadorned narratives. Narratives, standing alone, of the sort Farber and Sherry condemn, are rare.” Delgado, supra note 114, at 670 (footnotes omitted).
253. Bell, Chronicles, supra note 70 and accompanying text.
255. Id. at 400. For a “revision” of Bell’s parable see Richard Delgado and Jean Stefancic, Derrick Bell’s Chronicle of the Space Traders: Would the U.S. Sacrifice People of Color if the Price Were Right?, 62 U. COLO. L. REV. 321 (1991). In the revision parable, the trade was rejected by a 93% margin. After congratulating the earth people on their “breakthrough,” the aliens made a gift of the valuable commodities. Id. at 326.
256. See supra note 74.
his lead character is the younger half brother of Bell’s Geneva Crenshaw) with a series of Chronicles that carries the race issue into an eclectic range of topics such as law and economics, socialism, and faculty politics. Delgado is an aggressive evangelist for the outsider movement and, like Bell, he supports his arguments with extensive cites and references.

2. Encounter/Conflict

This category focuses on events that expose victimization or conflicts between the outsider as narrator and insider values. The objective is to challenge the reader with the story, not with text or footnotes. Professor Russell, for example, uses a story unadorned with references to describe the trauma of a mental encounter: one morning the narrator discovers that someone has placed a National Geographic in her mailbox with a picture of a gorilla on its cover. “It was a time-worn message communicated to persons who are not white.” The narrator uses the “encounter” as a catalyst for an examination of her emotions as a “blackwoman scholar” working in an insider law school. Like other narrators, Russell uses the encounter/conflict as part of a catharsis in which feelings, tensions, and frustrations are examined within a race or gender context.

The best known—and most provocative—Encounter/Conflict writer is Patricia Williams. She established the model for experience


259. Id. at 260.

260. “Through it all, the blackwoman scholar must appear neither hypersensitive nor paranoid.” Id. at 261.

narrative with the Benetton story, which is still a magnet for controversy.

“Buzzers are big in New York City.” They are crowd screening devices used by stores to determine the identity of customers. The avowed objective is crime prevention. Christmas shopping one Saturday, Williams as narrator sought admission to a Benetton store. “A narrow-eyed, white teenager wearing running shoes and feasting on bubble gum glared out, evaluating me for signs that would pit me against the limits of his social understanding. After about five seconds, he mouthed ‘We’re closed,’ and blew pink rubber at me.”

Williams analyzes her rage at the boy, ultimately realizing that when Blacks participate in the buzzer system, they accept self-hatred. Several days later she types an account of her “story” which is the centerpiece of a poster she sticks on the store window. The next event comes when the story is submitted to a law review where the editor tries to delete reference to race. “It’s irrelevant... [and] doesn’t advance the discussion of any principle.”

Delgado is correct in noting that stories, “standing alone... are rare.” In fact, when it first appeared in the Miami Law Review, the Benetton story was introductory to text. As with the law parable genre it is not unusual to encounter a blend of experiences and text/footnotes. One technique is to use a short description of an experience to dramatize or humanize the theme of the article. Professor Estrich achieved dramatic effect by introducing her article on rape law with a chilling account of her experiences as a rape victim. “Eleven years ago, a man held an ice pick to my throat and said: ‘Push over, shut up, or I’ll kill you.’” In another example, Professor Brown presents her encounter with an NRA “type” in order to give a more graphic slant to her rebuttal of Professor Levinson’s discussion of the historical un-


263. See infra notes 346-56 and accompanying text.

264. WILLIAMS, ALCHEMY, supra note 262, at 44.

265. Id. at 44-45.

266. Id. at 47-48.


268. See Williams, Spirit-Murdering the Messenger, supra note 262.

269. Susan R. Estrich, Rape, 95 YALE L.J. 1087 (1986)(article was subsequently published as a book: SUSAN R. ESTRICH, REAL RAPE (1987)).

270. Estrich, Rape, supra note 269, at 1087.

271. Wendy Brown, Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson’s The Embarrassing Second Amendment, 99 YALE L.J. 661 (1989). Although he helped jump start her vehicle, she reflects that in a different setting the encounter could have resulted in rape. She thus uses the experience to shift the issue “to the differences between the social positioning and experiences of men and women in our culture.” Id. at 667.
derpinnings of the Second Amendment.\textsuperscript{272} Despite the use of narrative, the Estrich and Brown pieces are doctrinal and would be evaluated as traditional scholarship.\textsuperscript{273} In Encounter/Conflict narratives, the experiences dominate to tell the story while the text or notes are peripheral. For example, in William's \textit{Alchemical Notes},\textsuperscript{274} she introduces the theme with allegory and then uses a text section to describe the conflict between the CLS movement that seeks a new political system and the minority advocacy of a rights based theory.\textsuperscript{275} What follows is a series of experiences that support the need for a rights theory.\textsuperscript{276}

VIII. CRITERIA FOR EVALUATING STORYTELLING

The issue of evaluation is bogged down in the defensiveness of outsiders to critics who reject or disdain storytelling.\textsuperscript{277} The result is a growing division among members of the academy over scholarship. It is important that the conflict be resolved before the dialogue gets more contentious. Moreover, a "truce" as advocated by Professor Delgado,\textsuperscript{278} merely delays a resolution while the issue is exacerbated by the continued appearance of stories. Finally, it is inappropriate to

\begin{itemize}
\item \textsuperscript{272} Sanford Levinson, \textit{The Embarrassing Second Amendment}, 99 \textit{Yale L.J.} 637 (1989).
\item \textsuperscript{273} Another example is Alex M. Johnson, Jr., \textit{Bid Whist, Tonk, and United States v. Fordice: Why Integrationism Fails African-Americans Again}, 81 \textit{Calif. L. Rev.} 1401 (1993). The author's brief narrative describes the trauma of the transition from an all black high school to Princeton. \textit{Id.} at 1439-43.
\item \textsuperscript{274} Williams, \textit{supra} note 122.
\item \textsuperscript{275} "CLS has ignored the degree to which rights—assertion and the benefits of rights have helped blacks, other minorities, and the poor." \textit{Id.} at 405.
\item \textsuperscript{276} Another example of this technique is Waugh, \textit{supra} note 7. The footnotes provide narratives, historical references, and commentary to embellish an Encounter/Conflict poem. On occasion footnotes are obviously surplusage and irrelevant to narrative. See, e.g., Ashe, \textit{supra} note 261; Patricia J. Williams, \textit{Commercial Rights and Constitutional Wrongs}, 49 \textit{Md. L. Rev.} 293 (1990).
\item \textsuperscript{277} Criticism even comes from fellow outsiders. Mark Tushnet, a CLS founder, says “I have been uncomfortable with the publication of law review articles in the form of short stories, or short stories in the form of law review articles, because they strike me as yet another manifestation of the 'lawyer as astrophysicist' mentality that I have criticized.” See Mark Tushnet, \textit{Trust, Justice, and the American Way: An Interpretation of Public Law Scholarship in the Seventies}, 57 \textit{Tex. L. Rev.} 1307, 1338 n.140 (1979). “This was brought home to me in a conversation with a former roommate, now a professor of literature, in which my wife and I were trying to identify the author of a line of poetry quoted in a newspaper puzzle. My friend immediately began by saying something like, ‘Well, it couldn't be by X because the line is too long for him.’ I realized then that there is a world of understanding about literature to which I essentially have no access, and I now wonder about the degree to which other law professors do.” Tushnet, \textit{supra} note 97, at 1515 n.l. See Lloyd Cohen, \textit{A Different Black Voice in Legal Scholarship}, 37 \textit{N.Y.L. Sch. L. Rev.} 301 (1992).
\item \textsuperscript{278} Delgado, \textit{supra} note 114.
\end{itemize}
leave storytellers and those who want to use narrative dangling without guidance.\textsuperscript{279}

Any evaluation system must exploit the commentary of previous studies of scholarship. They, along with the views of outsiders like Delgado, Coombs, and Abrams, have identified some of the major problems. Their commentary provides counsel for defining criteria.

A. Delivering the Message

Evaluation must first confront the unfamiliarity problem. Scholars who are trained in the traditional delivery system of knowledge intuitively reject storytelling as a fringe fad of ephemeral duration. This perspective can be neutralized by calling on two basic instincts of traditional scholarship: objectivity and doubt. Scholars are trained to be objective about the existence of new methods and ideas. Likewise, self-induced doubt over one’s assumptions is a fundamental experience of the scholar. The evaluator should “become aware of the doubts and anxieties about her own approach that the author’s work induces, and use those sensibilities as a guide in deploying the evaluative criteria.”\textsuperscript{280}

The threshold test for any work of scholarship is successful delivery, a concept that is similar to Rubin’s “clarity” test.\textsuperscript{281} The author must identify and compose the message in a form that can be understood by the community. The type of delivery system—be it doctrinal, interdisciplinary, or narrative—is irrelevant; the test is whether the audience knows what the message is about. Delivery also means that the message comes in a logical and rational progression—one point is logically positioned in rational reference to previous and future statements.\textsuperscript{282}

\textsuperscript{279} There is, moreover, an explicit mandate for resolution from the AALS Report. See AALS Report, supra note 18.

\textsuperscript{280} Rubin, supra note 161, at 945-46. “Rather, the test is whether the evaluator experiences sufficient doubt or anxiety so that she must persuade herself that she is right. If one finds oneself rehearsing one’s prior arguments, or articulating refutations in one’s mind, or searching assiduously for new ways to justify one’s conclusions, then a work which generates such responses should be judged to be of value. Thus, the very process of formulating counter-arguments which is a mechanism for outright rejection of the author’s work when uncritically performed, becomes a datum for assessing that work’s quality in the context of a more disciplined evaluative theory.” Id. at 946.

\textsuperscript{281} Id. at 915. “The legal scholar can achieve understanding only by identifying his controlling norms with clarity and by explaining their relationships to his specific arguments.” Id.

\textsuperscript{282} “Similarly, although it is conceivable for a work that is, for example, poorly written or lacking in reasoned analysis to be good scholarship, we believe that it is unlikely.” Farber & Sherry, supra note 75, at 847.
Bell's *Space Traders*\(^{283}\) parable passes the delivery test. The text introduction is an historical review of white dominance and the legal and economic oppression of blacks, followed by the story and a concluding discussion. The message implicit in the parable—and made explicit in the conclusion—is that race is a matter of status and property rights. "The subordination of blacks seems to reassure whites of an unspoken, but no less certain, property right in their 'whiteness.'"\(^{284}\)

B. It Must Add Something

This is the combat zone of evaluation where critics drift into generalities like "originality." Threatening the discussion is doubt as to whether law can generate the level of scholarship acceptable in other disciplines.\(^ {285}\) Nevertheless, scholarship is the vehicle to credibility in the university culture and the ultimate test of credibility is an evaluation process that can identify "impact." The broad test of impact is universal to all disciplines: does the work add something to the existing body of knowledge, does it supply a new or different perspective, or, as might occur in the hard sciences, does it present a new paradigm.

While a test of "originality" has meaning in physics and patent law, it is irrelevant to legal scholarship. There are no "eurekas" in law. Progress comes in increments. Charles Reich's *The New Property*\(^ {286}\) describes property rights in government entitlements while Ward Bowman's article on tying arrangements disputed conventional wisdom to provide a new perspective on the competitive effects of the restraint.\(^ {287}\) Both articles criticize prevailing assumptions, expose gaps, and force the reader to consider alternative arguments. They comply with George Stigler's observation that "Creativity often, and perhaps usually, consists of looking at familiar things or ideas in a new way."\(^ {288}\) Under the Stigler test impact comes from the incremental addition to existing concepts. Does the article change the existing parameters of knowledge by adding a new context?

Bell's *Space Traders* would have serious problems with this test. It merely summarizes the history of racial oppression without adding a

\(^{283}\) Bell, *supra* note 254.

\(^{284}\) *Id.* at 402. Farber and Sherry conclude that Ashe's narrative, *supra* note 261, fails the delivery test. She bombards the audience with a multitude of graphic physical details about her reproductive experience supported by "some brief and cryptic suggestions about law interspersed among the stories." Farber & Sherry, *supra* note 75, at 847.

\(^{285}\) See *supra* articles collected in note 1.


\(^{288}\) GEORGE J. STIGLER, MEMOIRS OF AN UNREGULATED ECONOMIST 79 (1988).
context of new or different perspectives. On the other hand, his Chronicles did make a contribution to the dialogue on the Supreme Court’s responses to race. The work product of the Court is challenged by four chronicles which describe difficult choices. The debate between the cynical Geneva Crenshaw and her friend (presumably Bell) does what the conventional doctrinal article does—provides a discussion of various legal assumptions with critical exchanges. The result is an analysis of what the Court has ostensibly done, what Bell sees as reality, and predictions on the future. Chronicles satisfies the Stigler test.

C. The Dialogue

One of the primary objectives of scholarship is to open a dialogue within the community. It is the only way that ideas can be challenged and tested. “Because articles are part of an ongoing scholarly dialogue, even biting criticism is preferable to silence from other schol-

289. “For example, the tenth story documenting how it feels to be discriminated against is not as original as the first, and does not contribute to knowledge unless it either proposes a new legal solution or describes as discriminatory something that might not ordinarily strike us as particularly hurtful.” Farber & Sherry, supra note 75, at 848 (footnote omitted).

290. Bell, Chronicles, supra note 70.

291. In her first Chronicle, Geneva describes the Celestial Curia, a group of three Black women with unusual powers who are pondering how to deal with “an industrial nation that continued to prosper through the systematic exploitation of the lower classes, particularly those that were not white.” Id. at 18. The solution was to have Agent H infiltrate the Supreme Court to convince the Court to favor the upper classes so obviously that the exploited will revolt.” The Curia was convinced that social justice can be achieved only through the stimulus of a conservative, uncaring Supreme Court.” Id. at 20.

In the second Chronicle, Geneva is a law professor when the school received a substantial gift to subsidize the addition of minority faculty. When the minority faculty approached twenty-five percent, the Dean told Geneva that the “tipping point” had been reached and that “we want to retain our image as a white school.” “[A] law school of our caliber and tradition simply cannot look like a professional basketball team.” Id. at 42.

The Amber Cloud descended to infect the white youth of the nation’s most prosperous families, changing their color to amber and their behavior to resemble “that of many children in the most disadvantaged and poverty-ridden ghettos, barrios, and reservations.” Id. at 57. Many blamed Blacks for the disaster. Eventually a cure was discovered. “The Amber Cloud Cure bill included a ‘targeting’ provision that specifically limited access to the treatment to victims of the Amber Cloud” thereby excluding minority youth. Id. at 59.

Geneva concludes with the Slave Scrolls Chronicle. Discovered in Ghana by Geneva, they describe slave oppression in the U.S. and how Blacks survived with “healing” sessions, which ultimately led to a “fierce desire to excel.” Id. at 70. Fearful of Black success, whites enacted Racial Toleration Laws which prohibited the healing sessions.
Readers must have something—an argument, theory, proposal—to examine and test. Indeed, it is the thoroughness of the dialogue and examination process that determines the credibility of the article.

Critics argue that there is no potential for dialogue in storytelling. Purportedly they do not generate a unique approach to research and do not contain sufficient, if any, analysis that can provide a basis for counterargument. Each story is, according to this interpretation, a dead end street, an "experience" that stands by itself.

On one issue—the credibility of storytelling as a productive methodology of legal scholarship—we already have a vigorous dialogue. That is what this Article is about. Moreover, in the process of the discussion, critics and storytelling advocates have examined such things as plot, objectives, and effectiveness.

Those who reject the dialogue potential ignore the methodology of writers like Bell. The Chronicles is an invitation for rebuttal—it supplies research, argument, and interpretation. Likewise, Delgado presents ample provocation and opportunity for rebuttal. The common feature of the law parable is the existence of text and footnotes to provide a basis for dialogue. But suppose there is no text or footnotes?

There should be no problem if the story "delivers a message" to readers. For example, the Case of the Speluncean Explorers does deliver a clear and intriguing message that continues to generate dialogue. Recently the Explorers dialogue was extended to include multicultural experiences and perspectives, including feminism, Critical Race Theory, and indeterminacy. The Blair narratives of Norval Morris also meet this criterion; his plots give the audience

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292. Farber & Sherry, supra note 75, at 850. "The new ideas will normally require much repetition, elaboration, and desirably, controversy, for controversy is an attention getter and sometimes a thought getter." STIGLER, supra note 288, at 67.

293. Rubin, supra note 161, at 955-56.

294. Farber & Sherry, supra note 75, at 850-51.

295. For a dialogue on Bell's Chronicles, see A Forum On Derrick Bell's Civil Rights Chronicles, 34 ST. Louis L.J. 393 (1990).

296. See Fuller, supra note 230.

297. "A historical understanding of those debates reveals the breathtaking intellectual accomplishment of Fuller's article which closes one period of American statutory law (legislative positivism), announces its successor (the legal process school), and anticipates the arguments that will bedevil the successor in its turn." ESKRIDGE, supra note 230, at 1732.

298. Naomi R. Cahn et al., The Case of the Speluncean Explorers: Contemporary Proceedings, 61 Geo. Wash. L. Rev. 1754 (1993)(seven authors' analyses); id. at 1755 (Naomi R. Cahn); id. at 1785 (Mary I. Coombs); id. at 1807 (Laura W. Stein).

299. Id. at 1764 (John O. Calmone); id. at 1790 (Dwight L. Greene).

300. Id. at 1798 (Geoffrey C. Miller).
hard choices on legal issues, thereby inviting response and dialogue.301

D. The Aesthetic Factor

By emphasizing the unique relevance of the narrative style, outsiders cannot avoid a reference to aesthetics.302 Likewise, critics should not shrug off aesthetics without learning what the aesthetic component is and how it could be helpful in the evaluation process. The assumption that the application of aesthetic criteria is problematic can be rebutted by the existence of a rich body of literature on narrative as a short story.303 It is therefore possible to put together reasonable, understandable and workable guidelines for use by legal scholars.

"A story is an apocalypse, served in a very small cup."304 A short story is a narrative with a plot—"[a] narrative without a plot is a logical impossibility"305—and an ending or a closure. "All short stories . . . proceed to a revelation that establishes a teleology, a retrospective sense of design, informing the whole story."306 It is short and self-contained, and a "vigorous compression is essential."307 The rea-

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301. For an analysis of a Morris story see infra notes 320-25 and accompanying text.
302. Farber and Sherry reject narrative as literature.
305. "Clearly, its fables should be put together dramatically, as in tragedies; concerning a single whole and complete action with a beginning, middle, and end, in order that it may give its own individual pleasure like a single whole picture." L.J. Potts, Aristotle on the Art of Fiction 51 (1968).
sons for the sequence of the events in the plot must be discernible to the reader, otherwise the story lacks "unity." 309

Structural analysis describes the elements of the narrative form as consisting of actions, happenings, characters, settings, and a discourse of expression.310 Action is some change produced by a character or some agent. "The character plays the role of connecting thread helping us to orient ourselves amid the piling-up of details, an auxiliary means for classing and ordering particular motives."311

The end—closure—of a narrative "announces and justifies the absence of further development."312 Closure for the traditional narrative—i.e., one that is plotted, closed, and linear313—occurs with "revelation."314 On the other hand, an unplotted and open narrative presents problems,315 such as leaving confusing gaps in the plot. Moreover, "[o]penness' becomes a deliberate refusal to comply with expected forms of closure316 thereby disrupting the narrative's focus.

With some adjustments these principles can be used to evaluate legal narrative. Obviously the basic structure—discourse, plot, character, and action—must tell a law story. The presence of footnotes should not distract from the plot or create static in the flow of the narrative. We should get a sense of coherence in structure: "in the beginning anything is possible; in the middle things become probable; in the ending everything is necessary."317

A legal storyteller takes a chance in relying on the unplotted and open style. The reason for using the narrative is to present a legal

309. Chatman, supra note 306, at 63.
310. Id. at 26.
311. Id. at 111 (quoting Tomashevsky). This quote assumes that characters are products of plots—a view attributed to Aristotle. Id. Chatman argues that, "A viable theory of character should preserve openness and treat characters as autonomous beings, not as mere plot functions." Id. at 119.
312. BARBARA HERRNSTEIN SMITH, POETIC CLOSURE: A STUDY OF HOW POEMS END 36 (1968). Gerlach says: "How complete the sense of closure needs to be varies from one period to the next, from one writer to the next, from one story to the next. Despite this diversity, all short stories use at least one of five signals of closure: solution of the central problem, natural termination, completion of antithesis, manifestation of a moral, and encapsulation. Because of the large role of endings in the structure of the short story, their influence is readily detectable." John Gerlach, Toward the End: Closure and Structure, in THE AMERICAN SHORT STORY 8 (1985).
313. "The fact that we will keep reading to 'find out what happens' is, of course, the simplest and most powerful function of linearity." SUSAN LOHAFER, COMING TO TERMS WITH THE SHORT STORY 76 (1983).
314. Leitch, supra note 307, at 131.
315. Open and unplotted narratives are indeterminate, a series of unresolved conflicts. "Readers had to figure things out for themselves." Lohafer, Introduction to Part III, SHORT STORY THEORY AT A CROSSROADS, supra note 304, at 109.
316. Lohafer, supra note 313, at 83.
issue in a different perspective or through what the outsiders call a unique experience. Forcing the reader to make inferences in the plot will blur the legal content and thereby confront the reader with an unexpected barrier. The ultimate effect is to subvert the first evaluation criterion of Delivering the Message.318

The most difficult judgment is on the total aesthetic effect. The aesthetic object is not to be confused with the real object, i.e., the piece of marble, the print on the page, the canvas with a painting, etc. "The aesthetic object . . . is that which comes into existence when the observer experiences the real object aesthetically. Thus it is a construction (or reconstruction) in the observer's mind."

It is therefore not the plot—nor the characters—nor the closure—instead, it is the "unity" of the story that is "aesthetic."

The raison d'être for narrative is that it adds an aesthetic perspective that is beyond traditional scholarship. The aesthetic level is achieved by the successful application of the basic principles of narration to law. In other words, the author has the burden of becoming a storyteller about law. Perhaps the best example of someone who has consistently met the aesthetic burden is Norval Morris.320 I offer The Veraswami Story as an example.321

Blair, a District Officer for a Burmese village, learns through an informant that his friend, Dr. Veraswami, is illegally purchasing heroin to relieve the pain of a dying friend. When confronted Veraswami bluntly says: "unless you have me locked up I will continue to care for Mr. Chanduri in the same way."322 His decision raises the legal issue of the doctrine of necessity which is used "to determine whether an individual's apparently criminal or immoral conduct can be excused as the product of an unavoidable choice of evils."323 It is a linear plot which unfolds in the classic structure of action and characters compressed in beginning, middle, and closure. Pain is the motif and character development creates the conflict. Veraswami was brutalized by a nanny as a youth, witnessed the moderating effects of drugs while treating the wounded in WWI, and while serving in Burma dealt with the pain of the victims of a train wreck. Each event introduces a new twist that forces the reader to see the legal issue in a different way.

318. See supra notes 280-307 and accompanying text.
320. See supra notes 238-63 and accompanying text.
321. Morris, The Veraswami Story, supra note 239.
322. Id. at 980.
323. Id. at 987. "Uneasiness about the doctrine stems from two questions: First, should an individual be allowed any discretion about whether to violate the law? Second, if such discretion is allowed, when can one be satisfied that this discretion was not abused—for example, that the individual was not responsible for creating (perhaps recklessly) the choice of evils? Dr. Veraswami's use of heroin to treat patients raises those questions." Id.
For example, Blair is tormented when he becomes suspicious that the authorities have targeted Veraswami because they think he blotched the train wreck rescue by favoring natives over Europeans. Closure is particularly effective. Blair's report gives his reasons for not charging Veraswami, leaving it to his superiors—and the readers—to engage in further dialogue.

IX. AESTHETICS AND THE HONESTY DILEMMA

Encounter/Conflict narratives which rely on experiences raise the issue of honesty. The experience stories are slices of autobiography and thus are presented as true accounts of the author's life. The author is saying, "Look, this is what happened to me and this is how I feel." It is "the hardships endured or the risks taken in exposing a controversial experience that enlist the reader's support." The author is asking the reader to rely on the honesty of the account as a grounds for making judgments on legal issues. But, as Farber and Sherry query, "Is the author's account what it purports to be?"

The reader is "betrayed" by a fictional experience and would be suspicious—if not totally unbelieving—of the author's ultimate argument. The probable consequence is that the narrative will be ignored. Farber and Sherry argue that the betrayal is more serious; to them dishonesty is "intellectual deception," tantamount to "research fraud."

Verification of the honesty of experiences is virtually impossible. Farber and Sherry's advice that "scholars should not be readily allowed to offer their own experiences as evidence" does not address

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324. Thereby conditioning "the whole of the text." Lohafer, Introduction to Part III, SHORT STORY THEORY AT A CROSSROADS, supra note 304, at 111.
325. To help the readers, Morris includes a Selected Annotated Bibliography. Morris, The Veraswami Story, supra note 239, at 986-98.
326. "Autobiography is only one form among many in which a writer speaks of himself and the incidents of his personal experience." ROY PASCAL, DESIGN AND TRUTH IN AUTOBIOGRAPHY 2 (1960).
327. "Professor Williams requires us to see the world through her eyes; her words will not permit us the freedom to ignore her reality." Culp, supra note 222, at 545.
328. Abrams, supra note 14, at 1025.
329. Farber & Sherry, supra note 75, at 833.
330. "If the reader suspected that the author only pretended to endure this hardship or take this risk, it might generate in the reader a feeling of betrayal, as well as casting a shadow over any prescriptive arguments that arose from the author's account." Abrams, supra note 14, at 1025.
331. Farber & Sherry, supra note 75, at 833.
332. Id. at 834.
333. This includes the traditional autobiography. "[A]utobiography may be a means of revealing the truth, it may be a means of hiding it." PASCAL, supra note 326, at 69.
334. Farber & Sherry, supra note 75, at 835-36. Their waffle concludes: "We do not mean to assert that legal scholars should consider only evidence meeting formal
the fact that experience narration is a popular and entrenched category of storytelling. Abrams' response is unsatisfactory in a different way. She says that credibility of a narrative should be gauged according to "the type of narrative offered." Abrams identifies two types: "first-person agony" and "insider perspective" narratives. The latter includes experiences that "provide a metaphor for an abstract concept," and "stories that persuade by prompting a flash of self-recognition." Agony stories must be truthful: "It seems particularly important that the pain described was experienced, in some similar form, by the author." On the other hand, because insider narratives tells us "what it must be like" there is less need for verification. All that is necessary is that there be some "correspondence" between the story and the author's life.

Evaluating honesty according to classification of experiences involves a subjective judgment that renders her suggestion unworkable. Whether a narrative is "agony" or a "metaphor" is in the eyes of the beholder reader. For example, if a reader puts a Williams' experience in the self-recognition category, it renders honesty irrelevant. "What matters is that it is a vivid depiction of a deeply ambivalent experience[,] and that it is capable of evoking in readers a moment of recognition that connects Williams' ostensibly particularized story with social science standards. We cannot always afford the luxury of waiting for definitive findings. Furthermore, practical reasoning allows other forms of experience to supplement formalized research. Nevertheless, we need to be aware of the risks in relying on unverified narratives, and take whatever steps are possible to guard against those risks." Id. at 838.

335. Abrams, supra note 14, at 1027.
336. "In agony narratives the author reveals a painful experience—often one whose exposure is interdicted by social taboos—in order to challenge the unapprehended harm inflicted by a practice or rule." Id. at 1021.
337. Insider perspective "persuades by offering a complex, highly particularized account of an experience unfamiliar to many readers.... It is not so much the author's pain, or the risk of exposure undertaken, as the 'inside information' the narrative provides that enlists the receptivity of the reader." Id. at 1022.
338. Id. at 1026.
339. Id.
340. Id. at 1025. In critiquing Williams' work, Posner says: "We accept one-sidedness in literature, moreover, because we make allowance for autres temps, autres moeurs and because factual accuracy and scholarly detachment are not rules of the literature game. But they are rules of the scholarly game, and Williams is writing as a scholar. If my criticisms of her in this chapter should turn out to be one-sided, misleading, and tendentious, she would not be impressed by my reconjoining that mine is only one voice in an ongoing conversation and I can leave it to others to rectify any omissions or imbalance in my contribution." Richard Posner, OVERCOMING LAW 381 (1995).
342. Id. at 1026. Nevertheless, "[a]n 'insider' narrative that turned out to be a complete fabrication, however, would be a greater problem." Id. at 1025.
EVALUATING STORYTELLING

their diverse experiences. I read the Williams narrative as an example of an agony experience, hence honesty, under Farber and Sherry, is critical. Someone else, on the other hand may see it as a metaphor experience.

Thus far, no one, as Farber, Sherry, and Abrams demonstrate, has satisfactorily accommodated truth and verification with experience narratives. The reason is obvious: absent a confession or a trial, it is impossible to determine truthfulness. The solution is to consider truth as part of the aesthetic component. The story—plot, imagery, character development, shared experiences, and closure,—comprise the aesthetic judgment. Under aesthetic criteria, the authors’ experience must make sense and be plausible in reference to the context and the plot of the story. “With fictions we investigate, perhaps invent, the meaning of human life.”

The most provocative—and instructive—challenge to the honesty issue is Professor Patricia Williams’ story about her Benetton experience. It is an ideal challenge for two reasons: first, it is a classic example of an experience narrative; second, Williams publicly raises the honesty issue by acknowledging “rumors” that the experience was “a fantasy.”

343. Id. at 1027.
344. Delgado seeks to avoid the truth issue by “interpretation.” “The Benetton story is intended to prompt consideration of a new legal category, namely spirit-murder. Spirit-murder is a kind of crime; like most crimes one may not commit it with impunity even on one’s own property. Spirit-murder occurs frequently in the lives of minority people—that is why her story rings true. Her point in telling it was not to urge a small, incremental change in the locus of the public-private line. Rather, she intended to call attention to the law’s inadequacy in a recurring situation. Focusing on the Farber-Sherry requirements—truth, typicality, and conventional reasoned argument—might easily lead the reader to miss the deeper truth at the heart of Professor Williams’ story.” Delgado, supra note 114, at 675.
345. As the experiences of Alger Hiss, Julius and Ethel Rosenberg, Sacco, and Vanzetti confirm, even trials are inconclusive as to the “truth” of experiences.
348. Id. at 242 n.5. “At this point I realized it almost didn’t make any difference whether I was telling the truth or not—that the greater issue I had to face was the overwhelming weight of a disbelief that goes beyond mere disinclination to believe and becomes active suppression of anything I might have to say. The greater problem is a powerfully oppressive mechanism for denial of black self-knowledge and expression. And this denial cannot be separated from the simultaneously pathological willingness to believe certain things about blacks—not to believe them, but things about them.” Id. Farber and Sherry question William’s use of a Supreme Court citation “upholding a state’s right to forbid blacks to testify against whites.” Id. at n.3. “Even on its face, this citation fails to support the textual assertion about the Supreme Court…” Farber & Sherry, supra note 75, at 835 n.146.
The linear plot unfolds in four successive events: the confrontation with the Benetton clerk, attaching the poster to the store door, a squabble with a law review editor, and retelling her story to a conference on racism. Aesthetically two of the events violate the “paradox of truth” in storytelling which requires that the plot convince the reader of its reality. This is what Chekhov meant when he said: “The aim of fiction is absolute and honest truth.”

The first and third events do not meet this burden. Benetton is not the type of store that would allow a teenage boy to control the entrance during the holiday season—or at any time. Whether it actually happened is irrelevant, it simply does not read as reality. The third event—the confrontation with the student editor—has a more serious “reality” defect. “From the first page to the last, my fury had been carefully cut out.” Then, in the final page proofs, reference to her race had been expunged. “What was most interesting to me in this experience was how blind application of principles of neutrality, through the device of omission, acted either to make me look crazy or to make the reader participate in old habits of cultural bias.”

This interpretation simply does not make sense. In a symposium on *Excluded Voices* one would expect “fury” at race exclusion to be a critically dominant theme. It would, moreover, subvert “excluded voices” objectives to impose the principle of neutrality associated with

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349. As it appeared originally the story covered only the first event (Williams, *Spirit-Murdering the Messenger*, supra note 262, at 127-29), the remaining three were added in the book (Williams, *Alchemy*, supra note 347, at 44-51).

350. *Ripfaterre, Fictional Truth* xii (1990). “All literary genres are artifacts, but none more blatantly so than fiction. Its very name declares its artificiality, and yet it must somehow be true to hold the interest of its readers, to tell them about experiences at once imaginary and relevant to their own lives. This paradox of truth in fiction is the problem for which I propose to seek a solution.” *Id.*


352. In his analysis of the Benetton story, Professor Culp describes the reaction of a colleague: “No lawyer I know would have assumed that the actions of a seventeen year old store clerk were reflective of the actual policies of Benetton. She should have gone to the store clerk’s supervisor, written to the company headquarters, or sued, but she should not have responded by putting up a poster board and writing about it in her diary. These are not the responses of a lawyer.” Jerome McCristal Culp, Jr., *You Can Take Them to Water But You Can’t Make Them Drink: Black Legal Scholarship and White Legal Scholars*, 1992 U. ILL. L. REV. 1021, 1032. To Culp it is a matter of Black perspective and experience. “What my colleague wants Professor Williams to do as a lawyer is act like my colleague, a white privileged law professor, would have acted. Professor Williams’s point is that in her reality such actions are often not effective.” *Id.* at 1033.

353. *Williams*, supra note 262, at 47.

354. *Id.* at 48.

the privileged white male dominant group. This theme was in fact expressly recognized by the editor. "This Symposium represents a search for excluded voices, and ideas—a vital link in the chorus of American voices."

X. CONCLUSION

Tension and conflict create a barrier of static around the discussion of narrative. The sources of static are multiple, including the fact that many law academics are unfamiliar with narratives and are inclined to automatically dismiss the genre as a "fad." Moreover, the defensiveness of outsiders, often expressed in a "circle the wagons" demand of exclusivity, generates suspicion or even hostility. Finally, many traditional scholars disdain narratives on the assumption that they offer atypical experiences of limited normative content.

The AALS Report and recommendations confirm the importance of resolving these problems. In fact, the growing body of scholarship on storytelling indicates that the process has already started. Likewise, the continued popularity of the technique among all parts of the community suggests that it is an issue that promotion and tenure committees and administrators cannot ignore. Most importantly, it is

356. Ramsey, supra note 118, at 3-4. In addition, I see a problem with closure. By including the last two events, Williams dissipates the narrator's "fury," especially with the conclusion of the rambling speech at the workshop.

357. A supporter of narratives concludes: "Judging by the vehemence of the responses they are drawing, storytellers are succeeding at being provocative. But the reviews they are drawing tend to be negative." Baron, supra note 192, at 285.

358. "Indeed, some advocates of storytelling come close to suggesting that silence is the only permissible response to stories. Whites who sympathetically attempt to analyze or even recount stories told by people of color are said to be guilty of misappropriating the storyteller's pain. See Farber & Sherry, supra note 75, at 851 n.233. For example, when a white woman at a CLS summer camp referred to a story told by a Native Canadian woman as an example to defend the use of personal experiences, the original storyteller protested: "Did that woman intend to appropriate my pain for her own use, stealing my very existence, as so many other White, well-meaning, middle and upper class feminists have done?" Trina Grillo & Stephanie M. Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -isms), 1991 DUKE L.J. 397, 408 n.34.

359. "The modern academic discourses of critical theory and new voices have thus far contributed nothing to the debate on substantive legal issues beyond the constant, repetitive assertion of their own relevance. Even on the issues most relevant to their own concerns, they lack the basic conceptual apparatus necessary for understanding. What we have are merely assertions that theirs is a large turf that outsiders may not share." Richard A. Epstein, Legal Education and the Politics of Exclusion, 45 STAN. L. REV. 1607, 1626 (1993).

360. Farber and Sherry express another tension: "[W]e are concerned at what seems to be a tendency to subject scholarship to the demands of politics." Daniel A. Farber and Suzanna Sherry, The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth, 46 STAN. L. REV. 647, 650 (1994).
imperative that the community makes an effective response to the deepening fragmentation of scholars into special interest groups, each one with its own agenda.

There are institutional reasons that rationalize the inclusion of narrative in the law scholarship loop. It is not a new fad; instead we have an extensive body of narrative to analyze in order to establish evaluation criteria. The law academy has tradition of, and experience in, embracing new forms of scholarship: doctrinal came after vocational and interdisciplinary came after doctrinal. Each required adjustment and adaptation of criteria. It is time to acknowledge the existence of new audiences. Richard Posner, a pioneer in interdisciplinary work, says, “But where is it written that all legal scholarship shall be in the service of the legal profession? Perhaps the ultimate criterion of all scholarship is utility, but it need not be utility to a particular audience.” Finally, as I have argued in this Article, it is possible to compose an evaluation scheme that with adaptation is consistent with conventional views.