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### The Moral of the Story: The Power of Narrative to Inspire and Sustain Scholarship

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# Essay: The Moral of the Story—

## The Power of Narrative to Inspire and Sustain Scholarship

Amy Vorenberg\*

*To be a person is to have a story to tell.*—Isak Dinesen

### I. Introduction

I am in a bagel shop on the busy main street of Concord, New Hampshire, waiting to meet a twenty-something man named Justin,<sup>1</sup> who has recently been released from jail. I've contacted Justin through a former colleague from my days as a public defender, and it's been tricky trying to set up this meeting. Justin lives at a homeless shelter and can't receive mail there. He doesn't have the money for a cell phone. I'm not sure what he looks like, and I have no idea if he even remembers he agreed to meet me. Does he even have a watch to know that he's late? As I nervously glance toward the street, I catch a partial reflection of myself in the shop window. It strikes me that this is perhaps a big waste of time. What is this endeavor going to lead to? Is this any way to pursue a scholarly article about a change in juvenile law—a change that lowered the age at which kids are treated as adults? I hope Justin's story will illustrate the reality of the law's impact—a personal account of how treating young people as adults leads to more, not less, crime and is, overall, a misguided idea.

The door to the bagel shop swings open and I see a young man in his twenties enter and look around with nervous expectancy. This has to be Justin. I signal to him and after warm, but awkward, greetings, we sit down together. I'm delighted. He is well-dressed and has a humble demeanor, not the street swagger I had expected. His open countenance and intelligent brown eyes communicate immediately; this is a kid I can connect

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\* Amy Vorenberg is a Professor of Law at University of New Hampshire School of Law. I am deeply grateful to "Justin" for sharing his story with me, and to Professors Kimberly Kirkland, Melissa Greipp, Keith Harrison, Dana Remus, and Erin Corcoran for their comments and input. I also wish to thank law students Lauren Breda, Adrian LaRochelle, and Caroline Schleh (now a lawyer) for their excellent research assistance.

<sup>1</sup> "Justin" is a fictitious name.

with. Before long I see that here is someone with the self-possession and thoughtfulness to articulate his own story. And he does so. Over the next few months, as I researched an article about juvenile law, Justin and I, along with my research assistant, talked about how his life had been affected by the law. In the process, something unexpected happened. Justin's story affected *me*.

I entered the door to academia through the clinical program and from there evolved into a professor of legal writing and criminal law. Like so many of my colleagues who came to the academy similarly, I was most interested in teaching practice skills. These days, however, scholarship—either as a requirement or a tacit expectation—has made its way into the ranks of clinical and practice professors.<sup>2</sup> For me, and I suspect for many of my colleagues who teach skills courses, scholarship presents both an opportunity and a dilemma.<sup>3</sup> We get to deeply examine issues, but do we pursue those issues from a theoretical perspective, or from an empirical perspective, or do we focus on scholarship that has a more practical application?<sup>4</sup> Can we combine the approaches? This piece offers an approach to scholarship that combines traditional research with practical application by using a story. The approach, it turns out, has a benefit I had not anticipated—it sparked my motivation to write.

Identifying the legal issue I wanted to write about was not hard.<sup>5</sup> I knew I wanted to write about this change in juvenile legislation because I felt so strongly that something was wrong. However, the hook, or angle through which I wanted to examine the issue, did not come as easily. Writing about a change in juvenile law in the abstract, without specific context, seemed too detached, too removed from the real world of practice. Although theoretical constructs are critical to advancing and supporting needed changes in the law, I wanted to write about something that was current and that mattered. To make the issue more real, I also wanted to know what it was actually like to be someone whose life was affected by the law. Justin's story provided the hook I needed.

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<sup>2</sup> For example, the 2010 ALWD/LWI Survey indicates that the number legal writing faculty either expected, encouraged, or required to write has undergone substantial increases since 2007. See Assn. of Leg. Writing Directors & Leg. Writing Inst., *Report of the Annual Legal Writing Survey 2010* 78 (2010) (available at [http://www.alwd.org/surveys/survey\\_results/2010\\_Survey\\_Results.pdf](http://www.alwd.org/surveys/survey_results/2010_Survey_Results.pdf)).

<sup>3</sup> See e.g. Linda Edwards, *A Writing Life*, 61 Mercer L. Rev. 867, 869 (2010) (including advice from numerous scholars in the legal writing community).

<sup>4</sup> See generally Mitchell J. Nathanson, *Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor*, 11 Leg. Writing 329 (2005).

<sup>5</sup> See Erwin Chemerinsky, *Why Write?* 107 Mich. L. Rev. 881, 893 (2009). Chemerinsky suggests that academicians write for a number of reasons including status and promotion, but mainly because it is an important act of self-definition and because "we have something to say."

The idea for researching the legislative “adultification” of juveniles came from my experience representing kids. I had directed a criminal clinic in New Hampshire in the 1990s, and many of our clients had been juveniles. Like many states looking to address a perceived increase in violent crime by teenagers during that period, New Hampshire had changed the statute in 1995 regarding juveniles so that offenders as young as seventeen could be prosecuted as adults.<sup>6</sup> Sitting in interview rooms with these youngsters, I realized the disconnect between the law that increasingly treated them as adults and the kids themselves—they were just kids. Nothing about holding these kids accountable in the same way as their adult counterparts made sense to me.

A retrospective look at the data on juvenile offenses did not support such a change in the law. However, a few grisly and sensationalized crimes committed by teenagers at the time had sparked a national reaction, and no politician wanted to be accused of being “soft on crime” when a seemingly simple prescription was available. But what had happened to all those seventeen-year-olds thrust into the system? Had they found a way to cope with life in jail beside much older fellow prisoners? Was any provision made for them to continue their education? And what happened after release, when they returned to their homes and neighborhoods? Did this legislation do anything to make us safer? The research suggested that the answers to all these questions were, by and large, no.<sup>7</sup> The legislation did not make us safer, and the impact on juveniles in general was counter-productive.<sup>8</sup>

My conversations with Justin added a personal, emotional aspect to the research and connected me to the subject matter. Though I started the project with an idea about what I would find, getting to know Justin both confirmed these assumptions and caused me to explore different questions. Justin’s experience gave me a deeper understanding of the issue I was writing about. I hoped it would make a similar connection for my reader between the abstract and the actual impact of a legal issue on an individual. Justin’s story, once I became invested in it, inspired me.

Using case studies and the stories they provide adds value to scholarship and is a win–win for both the writer and the reader. First, stories vividly illustrate law’s impact. Second, a good story inspires a writer,

6 N.H. Rev. Stat § 169–B:2.

7 Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* Juv. Just. Bull. 1, 6 (Off. Juv. Just. & Delinquency Prevention, U.S. Dep’t of Just.) (June 2010) (available at <http://www.ncjrs.gov/pdffiles1/ojdp/220595.pdf>); Donna Bishop & Charles Frazier, *Consequences of Transfer in The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* 260–61 (Jeffrey Fagan & Franklin E. Zimmer, eds., U. Chi. Press 2000). These sources provide a thorough summary of the studies done to date on recidivism rates among juveniles who have been transferred to adult court.

8 See generally Redding, *supra* n. 7, at 6; Bishop & Frazier, *supra* n. 7, at 260–61.

providing needed motivation to focus on relevant topics. Finally, scholarship that brings the researcher face-to-face with a subject of her research not only leads to a deeper understanding of the legal issue, it also prompts asking questions that take research in new directions. Writing about the personal impact of law results in less detached, more relevant and more useful analysis—sometimes leading to more-effective scholarship.

## II. What Is It About a Story, Anyway?

Stories are powerful because our minds are hardwired to relate to them.<sup>9</sup> More than prompt an emotional response, story structure actually serves an important brain function—it is an “organizing principle for human action.”<sup>10</sup> Stories are about characters, who bring life and meaning to the story.<sup>11</sup> By seeing through the eyes and experience of a character, a reader identifies with the subject, which sparks his empathy.<sup>12</sup> Thus a reader readily absorbs a story’s message.<sup>13</sup> But that’s not all. Studies also show that story structure improves a reader’s ability to remember, motivates a reader to learn and helps sustain his interest in the story’s subject.<sup>14</sup> If stories can do all that for the reader, can they do the same for the writer?<sup>15</sup>

## III. Looking at Law from the Ground Up

Stories have grounded and transformed law for decades.<sup>16</sup> Early scholars viewed the law as evolving in response to human stories and circumstances.<sup>17</sup> A “rule of law is a provisional hypothesis. It represents . . . the

<sup>9</sup> See Kendall Haven, *Story Proof: The Science behind the Startling Power of Story* 26 (Libs. Unlimited 2007). Haven summarizes the research demonstrating that humans are born with a brain structure ready-made to respond to stories. In support, he refers to a number of studies that reinforce the notion that the “steady diet of stories that children experience modifies the brain to render it *more* predisposed to think in story terms.” *Id.* (emphasis in original) (citations omitted).

<sup>10</sup> Michele Crossley, *Introducing Narrative Psychology: Self, Trauma and the Construction of Meaning* 47 (Open U. Press 2000).

<sup>11</sup> See Kathryn Abrams, *Hearing the Call of Stories*, 79 Cal. L. Rev. 971, 1003 (1991) (describing narrative’s impact as rooted in the reader’s identification with common human experiences).

<sup>12</sup> *Id.* at 1008; see also J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 Leg. Writing 53, 73 (2008) (pointing out that using stories in trial practice works because in listening to narratives, juries are performing “an act of self-definition”).

<sup>13</sup> Haven, *supra* n. 9, at 40.

<sup>14</sup> *Id.* at 118, 108; see also Gerald Zaltman, *How Customers Think: Essential Insights into the Mind of the Market* 198–99 (Harv. Bus. Sch. Press 2003).

<sup>15</sup> Haven also conducted research suggesting that workshops on story writing improve students’ enthusiasm and drive to spend time on writing. See Haven, *supra* n. 9 at 116.

<sup>16</sup> Peter Brooks, *The Law as Narrative and Rhetoric in Law’s Stories: Narrative and Rhetoric in the Law* 16–17, 19 (Peter Brooks & Paul Gewirtz eds., Yale U. Press 1996).

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

adjustment that seemed best to the judge at the time it was made under the circumstances of that case. The new case presents a different circumstance from the old case, and applying the old rule to the new case is making law.”<sup>18</sup>

Such “circumstances” are *stories*, and it is in response to those stories—disputes, or injury to people or property—that judges apply and extend rules.<sup>19</sup> The common law develops and changes as new stories push the limits of existing rules.<sup>20</sup> Thus, stories are natural and logical fodder for traditional scholarship about current trends and doctrines.<sup>21</sup>

“The life of the law has not been logic: it has been experience.”<sup>22</sup> So Oliver Wendell Holmes put into words what we, as scholars, teachers and lawyers, understand and apply intuitively: law does not evolve from abstract principles but from individual or collective experiences.<sup>23</sup> Holmes’s view of the law focused on allowing societal influences to steer legal decisions.<sup>24</sup> At the root of that view was his recognition that human stories matter because they reflect a collective human context.<sup>25</sup>

Increasingly, social science, which is essentially the study of cumulative anecdotes—or stories—plays a role in judicial decisionmaking.<sup>26</sup> Statistics about United States Supreme Court decisions reveal that the Court now often cites social-science research in its decisions.<sup>27</sup> For example, in *Roper v. Doe*, the Court’s 2005 decision on striking down the death penalty for juveniles, the Court cited numerous articles from psychology journals about the impulsivity of juveniles as a justification against the death penalty as punishment.<sup>28</sup> Likewise, in the Court’s decision holding a strip search of a middle-school student unconstitutional, Justice Souter cited to an amici brief that described the individual

18 Duffy Graham, *The Consciousness of the Litigator* 50 (U. of Mich. Press 2005).

19 *Id.* at 51.

20 Kim Lane Scheppele, *Forward: Telling Stories*, 87 Mich. L. Rev. 2073, 2080 (1989)

21 A relatively new casebook series focuses only on the stories behind pivotal cases in a multitude of law subjects including Tax, Property, and Evidence. See e.g. Robert Rabin & Stephen D. Sugarman, *Tort Stories* (Found. Press 2003); see also Brian Foley, *Applied Legal Storytelling, Politics and Factual Realism*, 14 Leg. Writing 17, 51 (2008) (suggesting that fictional stories could be used to show how people would be affected by new laws, noting that although the idea is farfetched and has been criticized, it is still a less costly way to demonstrate potential damage from a proposed law).

22 Oliver Wendell Holmes, *The Common Law* 1 (Little, Brown & Co. 1923); see also Jean C. Love, *The Value of Narrative Legal Scholarship and Teaching*, 2 J. Gender Race & Just. 87, 89 (1988).

23 Holmes, *supra* n. 22 at 1.

24 *Id.* at 1–38.

25 *Id.*

26 Rosemary J. Erickson & Rita James Simon, *The Use of Social Science Data in Supreme Court Decisions* 1–2 (1998).

27 *Id.*

28 *Roper v. Doe*, 543 U.S. 551, 569 (2005).

stories of youngsters as compelling support for striking down the search on constitutional grounds.<sup>29</sup>

So the role of story in forming law is, thus, nothing new. However, using a story to enrich scholarly contribution might not be the first thing academicians think of when planning research. Yet narratives of those affected by law are uniquely effective. An individual story offers a perspective on a legal issue that theoretical research might not.<sup>30</sup>

Take for example, Susan Estrich's article, *Rape*.<sup>31</sup> The article begins with the horrific story of her own rape: "Eleven years ago, a man held an ice pick to my throat and said: 'Push over, shut up, or I'll kill you.'"<sup>32</sup> Although Estrich leaves her own story behind as she analyzes the law, the reader stays aware of Estrich's deeply personal perspective on the issue—a viewpoint that accounts, at least in part, for her convincing critique of the inherent sexism in rape laws.<sup>33</sup>

Using a similar approach, Charles Ogletree wrote about the story of his sister's murder and the effect that experience had on him as he struggled to perform his job as a public defender.<sup>34</sup> He concluded that empathy and heroism are powerful motivators that sustain the difficult work—a point that he demonstrates explicitly by comparing how his feelings for a murder client developed to a point that they actually

29 *Safford Unified Sch. Dist. No. 1 v. Redding*, 129 S. Ct. 2633, 2641 (2009) (citing Amicus Curiae Br. of Natl. Assoc. Social Workers 6–14 (Apr. 1, 2009) (No. 08-479, 2009 WL 870022)).

Regarding the impact of individual stories, the *New York Times* reported,

These findings are reinforced by individual accounts of student victims of strip searches. For example, a 15-year-old girl with no disciplinary history was strip searched by New York school officials for suspicion of possessing marijuana. A psychiatrist who treated the girl during fourteen visits following the strip search stated, "Quite consistently, she showed, symptoms of intense anxiety, loss of concentration, loss of sleep. She gave up her plans to go to an out-of-town college and, in fact, had to repeat a semester in school."

Dennis Hevesi, *Jury Awards \$125,000 to Student Strip-Searched at a Bronx School*, N.Y. Times B3 (Nov. 24, 1988); see also Verdict and Settlement Summary, *McCloud v. Fortune*, 510 F. Supp. 2d 649 (N.D. Fla. 2007) (reprinted in VerdictSearch Fla. Rptr. Vol. 4) (available at 2006 WL 1195092) (psychologist for fifteen-year-old girl strip searched by police testified that girl "now has fear of all authority figures . . . cloistered herself after the search and has stopped socializing with friends and family."); Lauren Collins, *Number Nine: Sonia Sotomayor's High-Profile Début*, New Yorker (Jan. 11, 2010) (available at [http://www.newyorker.com/reporting/2010/01/11/100111fa\\_fact\\_collins](http://www.newyorker.com/reporting/2010/01/11/100111fa_fact_collins)). The Collins piece noted that in a case before the Supreme Court, three Chinese aliens—the unmarried partners of women who had been subject to China's forced-abortion policies—petitioned for automatic asylum on the basis of persecution. The majority rejected their claim, ruling that automatic asylum did not extend to spouses or to unmarried partners. "Sotomayor's opinion united two sometimes conflicting strands of her jurisprudence—an aversion to going beyond the issues at hand and a concern about the effects of laws on people—citing dry procedural principles to reach a compassionate conclusion." *Id.*

30 For example, referring to a conference paper he gave in 2008 about juveniles sentenced to life without parole, Brian Foley has written about the utility of including stories about people whose circumstances would not otherwise be brought to light. Telling these stories was a way to compel an explicit understanding that the punishment does not always fit the crime. Foley *supra* n. 21, at 21.

31 Susan Estrich, *Rape*, 95 Yale L.J. 1087 (1986).

32 *Id.* at 1087.

33 *Id.*

34 See generally Charles J. Ogletree, Jr., *Beyond Justification: Seeking Motivations to Sustain Public Defenders*, 106 Harv. L. Rev. 1239 (1993).

overcame his reservations about representing that accused murderer in the wake of his sister’s death.<sup>35</sup>

In another example of using personal narrative to illustrate a legal issue, Kimberly Kirkland wrote of having “turned in” a colleague who had lied to a tenure committee she headed.<sup>36</sup> The piece describes the discomfort she, an ethics professor and scholar herself, experienced in the role of whistleblower.<sup>37</sup> She uses her unique perspective, her story, as a means to bring a real experience to an ethical dilemma.<sup>38</sup>

#### IV. Finding Motivation and Inspiration in Stories

An academic’s life of writing and publishing comes with many challenges, both positive and negative. For academics, writing is both a means to an end and a way to explore issues that enrich the subject areas in which we teach.<sup>39</sup> Scholarship as a means to an end, namely job security in the form of tenure or its equivalent, has become a sore spot in the academy, prompting questions about the relative lack of usefulness in scholarship.<sup>40</sup> Indeed, there is a body of scholarship *about* scholarship’s role, suggesting that it is either becoming obsolete or functions only to provide the proverbial feather in the cap to further one’s own professional status.<sup>41</sup> Equally strong voices support scholarship’s usefulness to judges, lawyers, and other academics. Although not all scholarship is self-serving, it is a pursuit that ultimately establishes us as experts in our fields.<sup>42</sup>

Whatever personal motivation one has for doing scholarship, most of us engaged in the pursuit agree that it takes considerable time and effort.<sup>43</sup>

35 *Id.* at 1260–68.

36 Kimberly Kirkland, *Confessions of a Whistleblower: A Law Professor’s Reflections on the Experience of Reporting a Colleague*, 20 *Geo. J. Leg. Ethics* 1105 (2007).

37 *Id.*

38 *Id.*

39 Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 *Leg. Writing* 3, 15–16 (2005).

40 Brent Evan Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 *S.C. L. Rev.* 105, 115–17 (2010) (“The growing practical irrelevance of law reviews became noticeable toward the end of the last century. Many of the intellectual giants in the legal profession who have shown mastery both as judges or practitioners *and* legal scholars, and who span the ideological spectrum have commented critically on law reviews decreasing utility to the bench and bar.”) (emphasis added).

41 Law review articles have a reputation for being unhelpful to those outside the academy. See Joshua D. Baker, *Relics or Relevant? The Value of the Modern Law Review*, 111 *W. Va. L. Rev.* 919, 927 (Spring 2009) (“Law reviews are published primarily to serve their authors, not their readers.”); Pierre Schlag, *The Brilliant, the Curious, and the Wrong*, 39 *Stan. L. Rev.* 917 (Apr. 1987); Adam Liptak, *When Rendering Decisions, Judges Are Finding Law Reviews Irrelevant*, *N.Y. Times* A8 (Mar. 19, 2007); Charles Rothfeld, *A Lament: Too Few Interesting Law Articles*, *N.Y. Times* B23 (Nov. 23, 1990).

42 Pollman & Edwards, *supra* n. 39, at 17–18.

43 Edwards, *supra* n. 3, at 869.



And, for those of us with more-extroverted temperaments that called us to teaching in the first place, the idea of “doing scholarship”<sup>44</sup> often fails to inspire because it calls to mind images of sitting alone sequestered in a library, staying up nights studying citation minutiae, and sweating the rejections that come with submission.<sup>45</sup> For me, this imagery is compounded by the fact that I teach legal writing. Reading and commenting on students’ work is wonderfully rewarding, but by the end of a semester, my arthritic thumbs and aging eyes need something truly engaging to get the scholarship wheels turning.<sup>46</sup>

Choosing an issue to write about is even more of a conundrum for our clinical counterparts who typically work in a particular field like criminal or employment law.<sup>47</sup> Do we write about writing?<sup>48</sup> Do we write about teaching writing?<sup>49</sup> Our courses require us to become jacks-of-all-trades because we assign problems based on a variety of legal issues.<sup>50</sup>

In hopes of moving beyond my daunting (and, frankly depressing) imagery of scholarship, I put into practice suggestions I had heard repeatedly: write about something that truly interests you.<sup>51</sup> As one legal writing professor put it, “Choose your topics with passion. Your connection with the topic—your curiosity, fury, fear, or enthusiasm—will keep you well-interested in even the darkest and dullest hours of research.”<sup>52</sup> Issues of law interest me, but the story and the people behind the issue are where I find my passion and connection to the topic.<sup>53</sup>

44 There are multitudes of articles about how to do scholarship. See e.g. Mary Beth Beazley & Linda Edwards, *The Process and The Product: A Bibliography of Scholarship About Legal Scholarship*, 49 Mercer L. Rev. 741 (1998).

45 For a wonderful, hilarious “recounting” of the difficulties of producing scholarship, see Erik M. Jensen, *The Unwritten Article*, 17 Nova L. Rev. 785 (1990).

46 In her thoughtful essay, “*The Quest for Scholarship*,” Susan Liemer discusses the struggle legal writing professors face in trying to find time to write. 80 Or. L. Rev. 1007 (2001).

47 Though legal writing teachers may feel pressure to write about writing, in fact many write about topics other than writing. In their 2005 compilation of publications authored by legal writing professors, Terrill Pollman and Linda Edwards noted that seventy-five percent of articles written by legal writing professors were written about topics other than legal writing. Pollman & Edwards, *supra* n. 39, at 9.

48 My first article was just that—an article about keeping our teaching up-to-date with the expectations students face when they graduate. Amy Vorenberg & Margaret Sovac-McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 Phoenix L. Rev. 1 (2009).

49 Symposium, *The Legal Writing Institute: Celebrating 25 Years of Teaching & Scholarship*, 61 Mercer L. Rev. 803, 804 (2010).

50 Because of the way writing programs are structured (i.e., some using part-time, contract, or alternative security models), writing professors are often closer to their practice experience than are their doctrinal colleagues. Thus, we are typically positioned to write about a legal issue drawn from our practice experience. See generally, Nathanson, *supra* n. 4. Nathanson argues that writing professors should be encouraged to produce practical scholarship.

51 Having a personal mission statement or plan for your scholarship is one way to keep yourself on track and (hopefully) productive. See generally William Slomanson, *Legal Scholarship Blueprint*, 50 J. Leg. Educ. 431 (2000).

52 Edwards, *supra* n. 3, at 41. This advice is given by Jill Ramsfeld, a professor and the director of the Legal Research and Writing Program at the University of Hawai‘i at Manoa William S. Richardson School of Law.

53 Developing a character or protagonist is, of course, central to any good story and can be the key persuasive element of a legal brief’s facts section. See Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive*

I have loved law stories from an early age. My father was a professor who taught criminal law. He loved to regale my sisters and me with the facts of the cases he used in his classes. As young children, we were intimately familiar with *Regina vs. Dudley*,<sup>54</sup> the infamous case about shipwrecked sailors who cannibalized their young mate to survive. The case addressed the question whether the sailors killed the boy out of necessity and thus should be relieved of criminal liability.<sup>55</sup> Frequently long car rides began with the three of us pleading from the back seat, “Tell the life-boat story again, Dad!” But to us, such stories were about colorful people who committed crimes, who suffered injustice, or who did hilariously stupid things. The dilemmas faced by the protagonists in each case provided many life lessons for us, ethical and otherwise.

As I began to research and plot my approach to an article about the legislative change to lower the age of juveniles, I happened to run into a friend who worked as a public defender. Her caseload included many juveniles and young adults, and we got to talking about the new law. When she heard about the project, she offered to introduce me to her young client, Justin. She told me that Justin had been arrested for underage alcohol possession in his car. He had been charged as an adult. At the time he was arrested, he had been living in his car because his parents had kicked him out of his house.

Justin’s involvement in the justice system had pushed him into a downward spiral from which he could not seem to escape. He was, she said, “a textbook case” of why the change in the juvenile law was a terrible mistake: he had been caught between two worlds—that of a wayward child in need of services and that of a young-adult offender facing punishment. A number of months later, with my colleague’s help, Justin agreed to talk with me and after some persistence on my part, we eventually arranged a meeting—at the bagel store.

I learned about Justin’s childhood, his family, his incarcerations and his hopes for a decent life for himself. He liked the free meals and he liked talking about what he’d been through. As I plodded my way through a summer of research and a fall and a winter of writing about the legislation, Justin and his story motivated me to stay with the project. If fatigue or frustration crept in, I needed only to spend an hour or so talking with Justin to reengage in the endeavor. I finished the article in late January. When it was done, I realized how Justin’s personal story had been so much

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*Facts Sections*, 32 Rutgers L. J. 459, 466 (2001). In the context of scholarship, I suggest that character development is also key to motivating the writer, and in turn, the reader.

<sup>54</sup> *Regina v. Dudley*, 14 Q.B.D. 273 (1884).

<sup>55</sup> *Id.*

more than what I had anticipated. It became instrumental in keeping me motivated to finish the project.

## V. Beyond Motivation: Stories Prompt New Questions, Deeper Understanding

Research about the laws that turned seventeen-year-olds into adults is fairly consistent. The laws are ineffective, and the data behind arguments for adopting the laws is anecdotal and incomplete. My empirical research did not turn up much that surprised me. Talking to Justin, however, did bring some new understanding.

Justin was eager to share his story. Though unaware that he had been among the wave of young adults who had been charged under the new law,<sup>56</sup> he felt that he had been too young and immature to face what the adult system had in store for him. As I listened to Justin, I could see and feel the effect the law had on him. His face was battle-worn—he was scarred and missing a tooth—but he retained a youthful awkwardness. I had been reading about the increased recidivism rates for incarcerated youths and the ill effects of incarceration with adults on their vulnerable, developing brains.<sup>57</sup> Justin's story illustrated for me what the change in the law had done to one young man.

Justin said that he had learned how to fight in jail. Before going to jail, he had tended to shrink from a fight. As a seventeen-year-old in jail, Justin had adapted and developed new "skills." In large part, these "skills" continued to plague him and get him into trouble.

Gaining and conveying a human and real view of an abstract principle, as I did in my conversations with Justin, is an important reason to use a story in scholarship.<sup>58</sup> Research that includes the simple act of interviewing those affected by law helps both the researcher and the reader identify with the substance.<sup>59</sup>

The perspective on the actual jailhouse experience through the eyes of a young person was new for me. Through my research, I was well aware of what the numbers showed on recidivism for youths incarcerated in their formative years: they are particularly vulnerable to negative influences

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<sup>56</sup> N.H. Rev. Stat. §169–B:2.

<sup>57</sup> See generally Kevin W. Saunders, *A Disconnect Between Law and Neuroscience: Modern Brain Science, Media Influences, and Juvenile Justice*, 2005 Utah L. Rev. 695 (2005).

<sup>58</sup> Love, *supra* n 22, at 89.

<sup>59</sup> Susan Turley, "To See Between:" *Interviewing as a Legal Research Tool*, 7 J. ALWD 292 (2010). With numerous examples of research that gives voice to individual stories, Turley describes how conversations with subjects of research enhance typical viewpoints and offers qualitative information that can be as, or more, persuasive than statistics.

they experience in jail. Justin gave me a palpable sense of why: the connections he made in jail beat back his profound feeling of loneliness. Every time Justin got out of jail, he felt like he had to make a choice between loneliness and social connection. But the social connections were mostly his old jailhouse friends, and those relationships would typically get him back in trouble.<sup>60</sup> Using Justin's personal story offered not only me, but my reader, the possibility of gaining new understanding of the problem I sought to address—the illogic of incarcerating impressionable youths for minor crimes. I sought to convey to my reader what it was like to *be* Justin under these circumstances in the interest of engaging my reader to agree with my position about the bad law.<sup>61</sup>

## VI. Conclusion

To be clear, using a story as a means to enrich and exemplify research is in no way meant as a substitute for “traditional” research and quantitative support. Reasonable criticism abounds about the relative value of narrative in legal scholarship because, at its most basic level, it is just the portrayal of someone's particular perspective.<sup>62</sup> Instead, I offer a tonic of sorts for motivation in the writing process and a way to stay engaged in a research project.

There were downsides to this approach to scholarship. Sometimes Justin would seem to disappear. I would have to track him down through his lawyer or by calling around to jails. On the one hand, it was never boring. On the other hand, I had to depend on a person whose age made him, almost by definition, undependable.

The biggest drawback, however, was also a benefit—I became attached to Justin. It took only a few meetings for me to become invested in his future. I wanted him to make it. I helped him find work, encouraged him to stay off drugs and go to Alcoholics' Anonymous, loaned him money, bought him minutes for his phone (more for my benefit than his), and bought him warm winter clothing.

Even after the article was done, my contact with Justin persisted. Once, after being out of jail for a few months, Justin was unable to find a job. Though he had gotten himself into decent housing, his lack of skills

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<sup>60</sup> *Id.* at 299 (offering useful tips on doing interviews).

<sup>61</sup> Abrams, *supra* n. 11 at 1022. Abrams describes this type of narrative as giving the “insider perspective.” She writes, “Narratives in general, and this kind of narrative in particular, persuade by depicting a conflict or event with a vividness that is impossible to achieve through abstract expression. The author attempts to offer some detail or juxtaposition of details that will, by virtue of sheer concreteness, provide a sense of ‘what it must be like.’” *Id.*

<sup>62</sup> See e.g. Brooks, *supra* n. 16.

and experience in the job market made it impossible to find work in an economy where it is tough even for professionals to find employment. Over the winter, I hired Justin to shovel snow and helped him pick up other odd jobs. But as winter turned to spring, I lost touch with him. Over the summer, I finally tracked him down in jail. He told me he had been arrested for resisting arrest and asked if I would come to his next court date. At court, he and his lawyer had arranged a plea, and during the colloquy it came out that Justin had been using heroin. Although he had asked me to come, he barely looked at me during the hearing. I don't know for certain, but I believe Justin was ashamed of his inability to stay off drugs—and he felt embarrassed for me to know about it.

I wondered at times if I was crossing a boundary, though I knew of no legal or ethical rules that applied to my situation with Justin. My gut told me that it couldn't be a bad idea to offer a little support to someone who clearly needed it. And the support was mutual. After all, he had offered me his story, and that was a gift that had truly helped me.

Though getting attached to Justin posed problems, it also motivated me to push forward with my scholarship. Having gotten to know Justin and witness, on a personal level, how the change in the law had adversely affected him, I felt a sense of duty to the cause. Not staying with the project and finishing would have risked letting him down.<sup>63</sup> Having gotten to know Justin, I was determined to a good job on the article so that the issues raised by his predicament would stand a chance of coming to light.<sup>64</sup>

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<sup>63</sup> Finding a personal story as motivation to sustain commitment to legal work is something I used when I was a public defender as well. Knowing a client's personal story provided impetus to push forward in a case that otherwise presented challenges either because of the nature of the charge or because of the client's conduct. See Ogletree, *supra* note 34 (writing about finding his own justification for being public defender). *Id.*

<sup>64</sup> I have forwarded the article to legislators who I know have an interest in juvenile justice.