

# BRAIDING THE STRANDS OF NARRATIVE AND CRITICAL REFLECTION WITH CRITICAL THEORY AND LAWYERING PRACTICE

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## INTRODUCTION

This Essay, reflecting on the Clinical Law Review’s 25th Anniversary, explores our ever-evolving thinking about narrative theory and its impact on clinical pedagogy and lawyering practice. Because narrative theory teaches that we can choose to organize a story any way we see fit, we choose to start very close to the beginning — way back in 1997, when Carolyn published her first article in the Clinical Law Review (CLR): *A Field Trip to Benetton . . . and Beyond*.<sup>2</sup>

In that piece, Carolyn explored narrative theory and lawyering in the context of a law school clinic, noting that “we must challenge the students’ ‘common sense’—their sense that they ‘know’ how people

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<sup>1</sup> This is an altered image originally from Etsy. The original is at [https://i.etsystatic.com/10651880/r/il/26bd71/1767007656/il\\_fullxfull.1767007656\\_87z1.jpg](https://i.etsystatic.com/10651880/r/il/26bd71/1767007656/il_fullxfull.1767007656_87z1.jpg).

<sup>2</sup> Carolyn Grose, *A Field Trip to Benetton . . . and Beyond: Some Thoughts on “Outsider Narrative” in a Law School Clinic*, 4 CLIN. L. REV. 109 (1997) (hereinafter Grose, *Benetton*).

act—by offering examples of behaviors that differ from that knowledge, without triggering the very ‘common sense’ we are trying to combat.”<sup>3</sup> The essay concludes by suggesting that students should read relevant fiction and other “outsider” narratives as a way to ease the disconnect between their expectations and assumptions about their clients and their clients’ lived realities.<sup>4</sup>

Some years later, Carolyn and Margaret found each other teaching together at American University Washington College of Law (WCL), under the guidance of and in collaboration with Ann Shalleck.<sup>5</sup> There, we dove deeply into narrative theory and storytelling as teaching and lawyering tools, and each expanded our own scholarship in related areas.

Carolyn continued the conversation about narrative in her CLR article, *A Persistent Critique*,<sup>6</sup> in which she explored “the representation of transgender clients to see what lawyering theory we can export to representation of other clients.”<sup>7</sup> The article suggests that lawyers can overcome the “problem of representation” — the challenge of seeing and hearing clients’ stories, particularly when those stories do not fit in to our understanding of how the world works — by engaging in intentional critical reflection.

Margaret wrote about integrating critical theory into clinical teaching.<sup>8</sup> *An Experiment in Integrating Critical Theory and Clinical Education* discusses how feminist legal theory, critical race theory, and poverty law theory, for example, help students build narratives on behalf of their clients to seek legal remedies, and/or to challenge laws and the legal system’s failures to accept outsider narratives.<sup>9</sup> Specifically, because

critical theory highlights the importance of looking for both the

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<sup>3</sup> *Id.* at 110.

<sup>4</sup> *Id.* at 124-26.

<sup>5</sup> Ann’s important contribution to narrative theory and lawyering includes, but is not limited to, such concepts as narrative probing and narrative listening that bring narrative theory to life in client interviews. See STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE, AND ANN C. SHALLECK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 147-57 and 199-201 (2009). She also introduced us to ANTHONY G. AMSTERDAM AND JEROME BRUNER, *MINDING THE LAW: HOW COURTS RELY ON STORYTELLING, AND HOW THEIR STORIES CHANGE THE WAYS WE UNDERSTAND THE LAW –AND OURSELVES* (2002) and the idea of a “theory” of narrative that could be deconstructed and applied to our lawyering and in our teaching.

<sup>6</sup> Carolyn Grose, *A Persistent Critique: Constructing Clients’ Stories*, 12 *CLIN. L. REV.* 329 (2006).

<sup>7</sup> *Id.* at 333.

<sup>8</sup> Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 *AM. U.J. GENDER SOC. POL’Y & L.* 161 (2005) (hereinafter Johnson, *Integrating Critical Theory*).

<sup>9</sup> *Id.* at 162.

“obvious and non-obvious relationships of domination” . . . [it] informs students of the presence and importance of alternative voices that challenge the dominant discourse. When student attorneys ignore or are unaware of such voices, other voices, including the students’ own voices, invisibly influence the lawyer-client relationship and lawyering activities, such as interviewing, case theory generation, fact investigation, strategic planning, counseling, and problem-solving.<sup>10</sup>

The CLR was a welcoming forum for Margaret to continue these discussions about critical theory and lawyering when she co-authored a piece that used critical theory to support the integration of multidimensional lawyering into clinical legal education.<sup>11</sup> Specifically, *Teaching Social Justice Lawyering* explores the idea that community-defined needs and building “on the capacity within the community to provide or continue to provide community education” are essential components to addressing structural and systemic oppression of marginalized communities.<sup>12</sup>

In our teaching as well, we did not stray far from narrative – initially together at WCL and then independently at University of Baltimore and William Mitchell/Mitchell Hamline. So, eventually, Margaret suggested that we write a clinical textbook that integrates narrative into all aspects of lawyering and clinical teaching. Again, the CLR played a critical role in our developing project — we relied on the Clinical Law Review Writing Workshop two years in a row to hone our ideas and chapters of *Lawyers, Clients & Narrative: A Framework for Law Students and Practitioners*.<sup>13</sup>

Which brings us to where we are today. This Essay reflects on the role CLR has played in the development of our teaching and writing on narrative. But it also builds on that work and lays out the current turn our exploration has taken, identifying our thinking about braiding the strands of narrative theory, critical reflection, and normative theory.

Throughout our scholarship and teaching, we have explored the animating question of what causes a legal narrative to be effective, successful, and persuasive. This exploration has led us to describe and interrogate the intentional practices of engaging in critical reflection,

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<sup>10</sup> *Id.* (citing Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991)) (other internal citations omitted).

<sup>11</sup> Margaret Martin Barry, A. Rachel Camp, Margaret E. Johnson, Catherine Klein, and Lisa Martin, *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLIN. L. REV. 401 (2012).

<sup>12</sup> *Id.* at 405.

<sup>13</sup> CAROLYN GROSE & MARGARET E. JOHNSON, *LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS* (2017).

and being guided by the narrative elements as essential to effective lawyering. So too with the intentional use of critical theory to challenge our assumptions and those of our students and clients, resulting in richer, more compelling narratives.

What our work continues to seek to clarify, though, is how best those practices guide lawyers on the content of their narratives. How do theories of anti-subordination and agency, for example, or values of equality and justice, best become integrated into a narrative? How do the tools of narrative theory and critical reflection guide lawyers on how to craft normative legal narratives? We consider these questions in the remainder of this Essay.

Narrative is a tool for gathering, organizing, analyzing, understanding and conveying information, solving problems, and seeking to persuade. Narrative *construction* requires identifying and working with (or around) embedded norms, and persuasive narratives depend on filtering information through a normative lens. But the theory of narrative construction does not direct the narrative constructor as to what norms to include or through which lens to filter information.<sup>14</sup>

The same is true of critical reflection. It teaches lawyers to review, examine, and critique their narrative construction to evaluate whether it is representative of the client's situation and goals,<sup>15</sup> but it does not provide the lens or perspective for the reflection that would guide the surfacing or challenging of embedded assumptions. As with narrative, it is devoid of normative direction.

Of course, lawyering itself is heavily normative, so clearly legal narratives are normative. But if the tools of narrative construction and critical reflection do not guide that normative content, what does?

We suggest that effective lawyering is guided by client-centeredness; professionalism, including striving to do justice; and critical theory (all of which we are calling "normative theory"). We view the components of narrative theory, critical reflection, and normative theory as strands braided intentionally together into a unified double-helix spiral of effective lawyering. Picture a shape like the one at the start of this Essay. We imagine the two parallel strands that create the double helix as narrative theory and critical reflection. They form the contour of the representation, while the internal strands that braid the whole thing together are the normative theories that drive the content of the lawyering. All together, we imagine a new version of the the-

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<sup>14</sup> See Part I *infra*.

<sup>15</sup> GROSE & JOHNSON, *supra* note 13, at 30-35 (discussing constructing narratives and the interplay of narrative theory, normative theory, and lawyering); *id.* at 37-47 (explaining and applying critical reflection to lawyering situations); *id.* at 95-103 (steps for constructing a case or project theory).

ory-[driven] practice spiral.<sup>16</sup>

To understand this notion of the braiding of strands, this Essay proceeds in three parts. Part I analyzes narrative and the process of constructing narratives. Part II discusses critical reflection and its important role in assessing the representativeness of constructed narratives. Part III examines the normative theor(ies) that guides the direction of the constructed narrative. Finally, Part IV articulates the braiding process as a dialectic process using narrative theory, critical reflection, and normative theory to lawyer on behalf of clients.

## I. NARRATIVE

The first strand of the braided spiral is narrative. Lawyers use narrative every day on behalf of their clients: to listen effectively in an interview, to construct a closing argument, to counsel a client, and to draft a contract.<sup>17</sup> To use narrative intentionally requires an understanding of narrative components and construction to further a client's goals. Narrative theory tells us that a "story" is *what* happened, the events that occurred.<sup>18</sup> And "narrative" is "*how* the story is transmitted."<sup>19</sup> Jerome Bruner describes the construction and conveying of narratives (often called storytelling) as "so instinctive, so intuitive, as to render an explanation of how we do it close to impossible: 'We stumble when we try to explain, to ourselves or to some dubious other, what makes something a story rather than, say, an argument or a recipe.'"<sup>20</sup> And yet, if we are to be effective lawyers intentionally utilizing narrative construction to advocate or problem-solve on behalf of clients, we must be able to articulate and practice the process of narrative construction.

In *Lawyers, Clients & Narrative*, we identify and describe six elements of narrative: character (including traits); events (including setting and timeline); causation; normalization; masterplot; and closure. The first two elements — characters and events — are foundational to the narrative.<sup>21</sup> Characters are "human-like . . . with agency, motivations, emotions and beliefs."<sup>22</sup> They cause "events" to happen, and events are the action or plot of the narrative.<sup>23</sup>

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<sup>16</sup> See generally Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991).

<sup>17</sup> GROSE & JOHNSON, *supra* note 13, at xvii-xxi.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* (emphasis added).

<sup>20</sup> *Id.* at 27 (citing JEROME BRUNER, *MAKING STORIES: LAW, LITERATURE, LIFE* 3-4 (2003)).

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

The next four elements — causation, normalization, masterplot and closure — further the narrative’s rhetorical, persuasion, and communication goals.<sup>24</sup> To be believable, compelling and relatable, a narrative must explain the cause and effect of events or characters’ motivations, for example. It must be *internally* consistent from beginning to end and *externally* consistent with how the world works (normalization). It must provide moral or value-laden wind that propels the narrative, containing stories consistent with values, fears and wishes that resonate with and move the audience (masterplots). Finally, the narrative must lead to closure, in which the character seeks and finds resolution to a problem that disrupted the character’s normal life or status quo.<sup>25</sup>

Lawyers with clients provide content to each of these distinct and identifiable elements through choices made – consciously or not – during the course of narrative construction and revision. Because all stories have these elements, when lawyers construct narratives with their client, they need to make intentional choices about how to construct each element. Which characters will be included? Which events? In what order? What masterplots will they focus on and which will we need to anticipate from others and argue against?

Narrative theory leads to an understanding that lawyers with their clients are constructors of narratives, and, as such, need to make intentional choices about that construction. To figure out what narrative to tell and how to tell it, the lawyer with her client weighs three substantive factors, the same factors that make up the theory of the case - the law, the facts, and the client’s goals. In addition, of course, the lawyer with her client considers contextual factors, such as the audience, the forum, availability of resources, time constraints, personality of the client, and potential supporting or detracting characters in the narrative.

We are not suggesting that lawyers do not already use narrative elements to construct their stories. On the contrary: this is how stories are constructed, by lawyers and non-lawyers alike. All narratives contain these elements. Being guided by narrative theory, then, simply means harnessing what lawyers are already doing in a systematic and intentional way. If as lawyers listen to their clients, something does not make sense, or they wonder about the absence or presence of a particular character, or they imagine how they might feel in a similar situation, a narrative approach suggests that they recognize those reactions as important clues to help guide their ongoing pursuit of the client’s narrative. A narrative approach urges lawyers to use these

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<sup>24</sup> *Id.* at 14.

<sup>25</sup> *Id.* at 14-20.

clues to work with their clients to construct a narrative that will engage the decision maker's curiosity and compassion without triggering his disbelief or dismissal.

It is not news to suggest that lawyers and clients create narratives in the context of addressing legal issues. Let's pay attention to what that means, though. Each one of the narratives consists of distinct and identifiable elements; and each one of these elements is the product of choices made – consciously or not – by the narrative's constructors. Thus, when we use narrative intentionally, we become better practitioners.

## II. CRITICAL REFLECTION

Which brings us to the second strand in our braided spiral: critical reflection. We use the term critical reflection to describe the “method that guides our extraction of theory from practice, and the application of practice to theory.”<sup>26</sup> Critical reflection means asking questions and looking for answers, specifically, but not exclusively, in relation to power. By asking the “reporter” questions of Who, What, Where, When, Why, How, we surface assumptions we may hold about ourselves, our clients, our colleagues, etc. When we engage in that questioning routinely and regularly, we begin to see patterns and extract theories from the specific practices in which we engage. Thus, our practical lawyering is both theory-driven and theory-building.

Through critical reflection, “the lawyer self-consciously situates herself within the particular context in which she is operating. Specifically, she recognizes that she, as a lawyer, is someone with (relative) power in the legal system.”<sup>27</sup> By interrogating the context of a given situation, the lawyer is also able to situate her own power relative to the “stock” characters involved in the legal system –judges, clerks, bailiffs, jurors, defendants, plaintiffs, prosecutors, defense attorneys, government bureaucrats, legislators, media, and members of the public. Moreover, she is able to take that contextual awareness of her ability – or lack of ability – to move freely among these characters into the specific set of facts and concerns her client presents. In so doing, she can more accurately predict success or failure of particular strategies, ideas, and theories, and, therefore, more effectively counsel and represent her client.

As she is situating herself and appraising the context, critical reflection helps her surface what Carolyn calls her default “goggles.” These goggles are her reflexive critical worldview, through which she

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<sup>26</sup> *Id.* at 37.

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

filters information and constructs narratives. Critical reflection then provides the opportunity for her to change her goggles to make room for other intentional choices about perspectives and other worldviews to aid her narrative construction.

Narrative theory and critical reflection reinforce each other in a double-helix spiral. They operate parallel to one another, bound together by the normative theory strands described in the next section. Where narrative theory describes the surface elements of a story – the character, the events, the causal connection, the normalization, the masterplot, and the closure – critical reflection interrogates each of those elements to plumb its depths.

Consider the task of a lawyer identifying potential witnesses for her client's case. The narrative element of character would guide the lawyer to gather information about and from any significant people in her client's life. The lawyer's client tells the lawyer to talk to members of his family and a couple of his employees, and mentions another two or three people. Great — there's the lawyer's list. But wait — critical reflection guides the lawyer to ask *why* he has identified these people. His family, his employees, okay that makes sense — but what about the other two or three people? Who are they? Why has he identified them as significant? Does understanding more about their connection to him lead to greater insight into the case, and/or other potential witnesses?

So, on a practical, specific level, interrogating this client's choice to identify a particular person as significant might lead to concrete action and results specific to the case. As the lawyer continues to practice asking *why* and the other questions, though, the lawyer might come to learn something about the kinds of people her client identifies as "significant." The lawyer might come to understand in a deeper way the different reasons that someone might identify a particular character that way. Based on this extraction of theory from practice, lawyers might adapt their interview topics, questions, and language accordingly.

As we describe in *Lawyers, Clients & Narrative*, critical reflection "without narrative theory is a deep, narrow dive into your client's situation and your lawyering"<sup>28</sup> and narrative theory without critical reflection "is a wide, shallow dive into your client's situation and your lawyering. Put together, you have a chance at both depth and width of information and connection with your client and a greater understanding of your lawyering."<sup>29</sup>

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<sup>28</sup> *Id.* at 47.

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



### III. GUIDING THE NARRATIVE CONSTRUCTION: NORMATIVE THEORIES

The third strand in the braided spiral is normative theories. Narrative theory identifies choices that a storyteller makes about how to infuse the structural elements of narrative with content. The practice of critical reflection invites us to ask “why,” and to interrogate “what is” by using, among other tools, the narrative elements. But neither critical reflection nor narrative theory tell us *how* to make those choices: they identify and analyze the elements of a story, but do not tell us what the story *is*.

We all know – from our experience of the world and our own self-reflection – that narratives are inherently normative. Whether we mean to do so or not, we tell stories full of moral codes, value judgments and assumptions about people and the world. This approach is baked into the elemental structure of narrative. The masterplot element of narrative, while not dictating which norms should be included, requires the constructor to include normative-filled content. Masterplots are “‘stories that we tell over and over in myriad forms and that connect vitally with our deepest values, wishes, and fears.’”<sup>30</sup> For a masterplot to be effective, therefore, it *must* be based on a specific community’s particular values, wishes, and concerns. It is up to the narrative constructor, therefore, to decide what kind of masterplot to include.

The “Rashomon Effect” is perhaps the most famous example of the reality that narrative construction is a choice and not solely dictated by the events that took place.<sup>31</sup> In director Akira Kurosawa’s film, the events are constructed in several very different narratives because each storyteller — narrative constructor — had a different perspective on the rape and murder that occurred.<sup>32</sup> We understand the “Rashomon Effect” to describe not false narratives, but rather different versions of truth.

Knowing this phenomenon, how do constructors make the choices about which norms to highlight or counter in constructing the elements of a narrative? As we discussed in Part II, one driver that influences the choice is the constructor’s own value judgments and assumptions. To ensure that the constructed narrative is intentionally and not reflexively constructed, we suggest the practice of critical reflection to surface the constructor’s inherent value judgments and as-

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<sup>30</sup> GROSE & JOHNSON, *supra* note 13, at 17.

<sup>31</sup> DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXT FOR LAW SCHOOL CLINICS 43 (2002); *Rashomon* (Film 1950) (based on RYUNOSUKEA KUTAGAWA, IN A GROVE (1922)).

<sup>32</sup> *Rashomon* (Film 1950).

sumptions and to decide which to include and which to excise. And as we discussed in Part I, other drivers include facts and client goals, the relevant legal system and law, the particular audience, and the broader context of the narrative.

Beyond that, and the focus of this Part, is normative theory. As we said in the Introduction, normative theory is the strand that binds narrative theory and critical reflection together. In this Part, we discuss the three components of the normative theory strand: client-centered lawyering, justice and professionalism, and the norms embedded in critical legal theory.<sup>33</sup>

### A. *Client-Centered Lawyering*

The client provides the most important guidance and instruction to lawyers in constructing legal narratives as the narratives are the retelling of the client's life and contain her perspective and goals. Thus, an important normative theory that guides clinical teachers and practitioners is client-centered lawyering.<sup>34</sup> As Elliott Milstein explains:

Client-centered lawyering . . . is the idea that lawyers represent clients and must do it in a way that ensures the autonomy of the client as the primary decision-maker over the life of a case. It assumes that all important decisions involved in solving a legal problem involve value choices and that a primary job of a lawyer is to help a client make those decisions in a way that is consistent with the client's values.<sup>35</sup>

A narrative is guided by client-centered lawyering in the following example.<sup>36</sup> Student attorneys represent a client subjected to domestic violence by her boyfriend. She is seeking a civil protective order that offers a menu of remedies. From the menu, the client seeks a protective order that will order the boyfriend to no longer abuse her, but she does not seek to have a stay-away order that would require him to keep a set distance away from her. The student attorneys at

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<sup>33</sup> GROSE & JOHNSON, *supra* note 13, at 22-23, 25-36, 100-101. The client, whose past life and hopes and dreams for the future are at the center of the representation, is the critical decision maker for masterplots in the narrative, as they should accurately reflect the client's values. In addition, justice and professionalism are norms infusing social justice and other lawyering. Finally, those norms outlined by critical theories like feminist legal theory, critical race theory, and poverty law theory that grapple with notions of anti-subordination, agency, equality, and empowerment are also important guides for normative content.

<sup>34</sup> *Id.* at 30-36.

<sup>35</sup> Elliott Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 378 (2001).

<sup>36</sup> This example is an amalgamation of student attorneys who have represented persons subjected to domestic violence that Margaret has supervised.

first struggle with this decision because it seems inconsistent with their assumptions that the client's goal is physical safety and that keeping the boyfriend away will decrease opportunities for him to be physically violent with her.

As client-centered lawyers, they ask questions to learn information about the client's goals for their representation and reasons behind her decisions. They respect her agency to make decisions but do not shirk from their duty to probe and test nonjudgmentally her decisions if seemingly inconsistent with her goals in order to facilitate her decision making. In interviewing the client, they learn that the client is concerned about physical violence and wants to use the order to decrease its likelihood in the future. So, they confirm their first assumption, which was about the client's objectives.

They then proceed to probe the client's decision that the stay-away would not help the client achieve her physical safety goal. They learn from the client that if the boyfriend is ordered to be physically away from the client, he will most likely increase his abuse of her. Here they learn that physical separation may not increase their client's safety. They ask her more questions to probe her position and learn that in the past when she has suggested that he be physically separate from her, he has threatened to increase the level and intensity of his violence.

The students decide to learn more about what the client is relaying from her experiences and decide to research this issue.<sup>37</sup> They learn that domestic violence research shows that the client's concerns have been documented by other women and even has a name - "separation assault." They learn that separating can increase the violence and can be dangerous for some women.<sup>38</sup> They also learn that women are very good predictors of their future risk of physical harm.<sup>39</sup>

The student attorneys therefore craft the client's narrative to emphasize her goal of physical safety and to explain that a stay-away

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<sup>37</sup> The student attorneys' work on normative narrative construction was aided by the inclusion of critical legal theory in the seminar itself as well as supervision meetings focused on fact gathering, domestic violence research, and counseling structures. For more discussion of seminar and supervision pedagogy, see generally Johnson, *Integrating Critical Theory*, *supra* note 8, and Ann Shalleck, *Clinical Contexts: Theory and Practice in Law & Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993-94).

<sup>38</sup> See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 66 (1991); Sondra Burman, *Cognitive Problem-Solving Therapy and Stages of Change That Facilitate and Sustain Battered Women's Leaving*, in BATTERED WOMEN AND THEIR FAMILIES 33, 44 (Albert R. Roberts ed., 3d ed. 2007); Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 B.Y.U. L. REV. 1, 45-46 (2014).

<sup>39</sup> Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 559-60 (2010) (citing numerous studies to this effect).

order would undermine that goal.

### B. Justice and Professionalism

Another source for the normative strand to be braided into legal narratives is professionalism and justice. Without too much thought, any student lawyer could recite that her professional obligation includes a duty to her client of confidentiality and zealous advocacy and a duty to the tribunal of candor. Those are contained in the Rules of Professional Conduct for lawyers. In addition to these basics, though, we have come to understand that *being* a lawyer involves some commitment to justice. Indeed, the MacCrate Report identified as a “value” that lawyers should possess, “striving to promote justice, fairness and morality.”<sup>40</sup>

But what does that mean in practice to construct your narrative through a lens of justice and professionalism?

The Editors of Volume 4, Issue 1 of the Clinical Law Review were no strangers to the interweaving of pedagogies of justice and narrative theory. In that volume, Carolyn’s *A Field Trip to Benetton* — her first venture into narrative<sup>41</sup> — was followed by Jane Aiken’s, *Striving to Teach ‘Justice, Fairness, and Morality,’*<sup>42</sup> in which she explores what it means to teach justice as a professional value.<sup>43</sup> Using adult learning theory, Aiken exhorts clinical teachers to create “disorienting moments” for our students as “opportunities for learners to use their own sense of justice.”<sup>44</sup>

Indeed, there is a whole school of scholars who propose that the lawyer’s ethical obligations be “analyzed with a paramount focus on achieving justice.”<sup>45</sup> In considering an attorney’s professional obliga-

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<sup>40</sup> AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992) (commonly known as the “MacCrate Report”).

<sup>41</sup> Grose, *Benetton*, *supra* note 2.

<sup>42</sup> Jane Harris Aiken, *Striving to Teach ‘Justice, Fairness, and Morality,’* 4 CLIN. L. REV. 1, 30-46, 47-63 (2007) (hereinafter Aiken, *Striving to Teach*).

<sup>43</sup> In a perfect illustration of the importance of CLR, contained in this very volume is Jane Aiken’s revisiting of her “disorienting moments” pedagogy, wherein she digs deeper into what compels us as humans to take action in response to a disorienting moment. She seeks to identify tools to further mine such moments in our own lives as and in our teaching of Provocateurs for Justice. See Jane H. Aiken, *Beyond the Disorienting Moment*, 26 CLIN. L. REV. 37 (2019).

<sup>44</sup> Aiken, *Striving to Teach*, *supra* note 42, at 50.

<sup>45</sup> Susan D. Carle, *Power as a Factor in Lawyers’ Ethical Deliberations*, 35 HOFSTRA L. REV. 115, 116 (2006) (describing different theories of ethical regulation). For more detailed analyses of the justice-centered theory, see generally LAWYERS’ ETHICS AND THE PURSUIT OF SOCIAL JUSTICE (Susan D. Carle ed., 2005); Katherine R. Kruse, *Lawyers, Justice and the Challenge of Moral Pluralism*, 90 MINN. L. REV. 389, 393-94, 441-58 (2005). See generally Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refine-*

tions, for example, Susan Carle looks to the parties' respective power.<sup>46</sup> Carle explains that "[i]n the context of representing powerful clients, lawyers' incentive is to do too much for their clients; in the context of clients lacking substantial resources, lawyers' incentive is to do too little."<sup>47</sup> She proposes then that lawyers might contextually apply ethical rules in consideration of the relative power of the situation-involved individuals or entities.<sup>48</sup>

While similar to client-centered lawyering, using a justice lens explicitly requires the lawyer to think *systemically* about how a particular client's story fits in to our obligations to strive toward justice, fairness, and morality. When viewing our professional obligations through that lens, lawyers consider each client's story as both unique and particular, *and* part of a bigger system in which power operates unequally, often without fairness and morality. With that understanding, the lawyer is better able to engage in meaningful dialogue with her client about her particular context, and also the ways in which that context is informed by the unequal operation of power. The resulting narrative is likely to be richer and more effective as a result.

### C. Critical Theory(ies)

Finally, normative narrative construction is guided by critical theories. By "critical theories," in general, we mean theories of thought and argument that critique current systems, structures, and practices through various lenses, such as anti-subordination, agency, equality, and justice. For instance, feminist legal theories grapple with such issues as formal equality, substantive equality, anti-subordination, cultural feminism, intersectionality with race and class, and agency.<sup>49</sup> Many clients in a social justice practice like a law clinic are grappling with these same issues of oppression, empowerment, and equity. Accordingly, using critical theories that themselves were born out of others' experiences with oppression, empowerment, and equity can be helpful in framing issues and constructing narratives that promote the client's goals. Even if a lawyer's client is not a traditional "outsider," we suggest that the most effective and authentic lawyering includes a

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ment, 32 ARIZ. L. REV. 501 (1990), and Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369 (2006).

<sup>46</sup> GROSE & JOHNSON, *supra* note 13, at 33.

<sup>47</sup> Carle, *supra* note 45, at 119.

<sup>48</sup> *Id.*

<sup>49</sup> See generally Berta Esperanza Hernández-Truyol, *Talking Back: From Feminist History and Theory to the Feminist Legal Methods and Judgments*, FEMINIST JUDGMENTS: REWRITTEN OPINIONS OF THE UNITED STATES SUPREME COURT (Kathryn M. Stanchi, Linda L. Berger, and Bridget J. Crawford eds., 2016); Katharine T. Bartlett, *Gender Law*, 1 DUKE J. GENDER L. AND POL'Y 1 (1994).

critical analysis of the power dynamics of the particular situation. It is even more essential when the client is not a member of the dominant class, and therefore not an “insider.”

Let’s go back to the example of the client seeking a protective order who did not want a stay-away order as part of it. After employing narrative theory to engage in excellent information gathering, and critical reflection to interrogate their assumptions about the client’s goals, the student attorneys turned to critical theory to help frame the content of their narrative.

They read domestic violence research and feminist analysis to understand “separation assault.” This theory included the retelling of stories from people subjected to domestic violence, including the choices they made to best address their own physical abuse. From their research, the student attorneys learned that the client’s voice and experience were valuable and that her ideas about what would make her physically safe should be respected. They then crafted a narrative with their client in which they argued that the best way to assure her safety was to grant the requested relief of a protective order that ordered no further abuse by her boyfriend but did not require him to stay away from her.

#### IV. BRAIDING THE THREADS

In an early chapter of *Lawyers, Clients & Narrative*, we remind our readers that

narrative theory is not the only technique lawyers need to master in order to be competent client-centered professionals devoted to justice. . . . When lawyers are guided by the normative theories of client-centeredness and a commitment to professionalism and justice . . . they are more likely to develop contextually rich narratives likely to achieve their clients’ complex and nuanced goals. Thus any practice of narrative theory must be accompanied by . . . normative theories and practices.<sup>50</sup>

As narrative theory guides us, human beings constantly seek to “normalize” the stories of those around us. We all pass stories through our own pre-existing screen of “knowledge” about how people act. Critical theory teaches us that the stories of those outside the dominant discourse often conflict with that pre-existing “knowledge,” resulting in the suppression of those “outsider” narratives.

As lawyers, we play a huge role in the construction of individual – and collective — legal narratives. As such, we need to be consciously and vigilantly aware of what we bring to our representation of clients,

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<sup>50</sup> GROSE & JOHNSON, *supra* note 13, at 30.

what the law is presenting as expected norms, and what guidance to seek from other sources of perspective outside of ourselves. We need to attend to the unstated values that underlie legal norms and rules, as well as our own personal norms.

We need to make explicit to ourselves the lenses we use to see the world, and how those lenses affect how we see our clients. If we don't engage in critical reflection, we risk letting our own values and judgment guide our lawyering, and we fail to recognize our own reactions to a client's story as just that: our own reactions. When we engage in critical reflection about our lawyering, we recognize the need to attend to the norms of client-centered lawyering, justice and professionalism, and critical theory to enhance our narrative construction with our clients.

So here is the whole braided spiral: Critical reflection and narrative theory work together to guide us to ask questions and broaden our perspectives in gathering information and constructing cases and projects. By intentionally adding in the strand of normative theory, comprising client-centeredness, justice and professionalism, and critical theory, we create a spiral of lawyering focused on the client, aware of power dynamics and attentive to structural forces, designed to achieve client's goals, and consistent with making the world a more just place.

#### CONCLUSION

Braiding narrative, critical reflection and normative theory is how we suggest lawyers with their clients create normative narratives that further their clients' goals and strive toward justice. This description of the braided, double-helix spiral reflects our understanding of what good lawyers already *do*, not what they could or should do. Rather than a prescription, therefore, these thoughts can better be described as our observations – on an increasingly micro level – of the practice of effective, justice-oriented lawyering. We endeavor always to use what we observe about the practice of law as tools to improve our theories of pedagogy and lawyering.

We appreciate that, for its entire twenty-five years, the Clinical Law Review has provided a forum for discussing these ideas. Through these opportunities, the CLR has been a space to brainstorm and hone our thoughts about lawyering, teaching, writing, and thinking. Indeed, CLR — and its penumbra — is itself a manifestation of this braided theory/practice spiral — of narrative and critical reflection; of theories of justice and client agency; and of our own sense of ourselves as authentic professionals who train others in this important work. We look forward to continuing to braid the spiral here and beyond.

