USING NARRATIVE THERAPY TO RE-AUTHOR THE DOMINANT LAW STUDENT NARRATIVE, FOSTER PROFESSIONAL IDENTITY DEVELOPMENT, AND RESTORE HOPE

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Clinical teaching during the pandemic provided a clear view of the adverse effects of significant gaps in the legal academy's education of law students, particularly in the area of professional identity. For 130 years, the academy has perpetuated a dominant law student narrative that "boxes" students into a restrictive vision of what it means to be a lawyer and to practice law. This narrow vision not only inhibits the development of law students as creative thinkers, possibility seers, innovative problem-solvers and positive change-makers, but also prevents them from developing a professional identity that harmonizes with their own values and beliefs, leading to feelings of uselessness, helplessness and hopelessness. This Article proposes that Narrative Therapy offers essential tools to free students from the "box" by exploring and deconstructing the dominant law student narrative; exposing the principal discourses of the academy that underlie this narrative; helping law students to envision the lawyer they want to be; and creating space for students to re-author what it means to be a lawyer and to practice law in a manner that fits with their own values and beliefs and the needs of the public, thereby fostering the development of a positive professional identity. In so doing, Narrative Therapy restores hope to, and for, law students and the legal profession.

INTRODUCTION

The year 2020 presented no shortage of extraordinary times.[1] We

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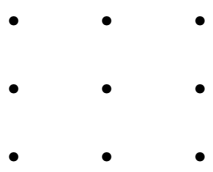
[1] I deliberately use the term "extraordinary times" instead of "disorienting moments" for, as in the words of Professor Jane Aiken, "[t]hese days, I find the world disorienting almost all of the time. . . . The issues we are addressing now are playing out on a massive scale" and "are bigger than a disorienting 'moment.'" *See* Jane H. Aiken, *Beyond the Disorienting Moment*, 26 CLIN. L. REV. 37, 40 (2019).

watched in shock as the world turned upside-down with the emergence of COVID-19. We watched in horror as police murdered George Floyd for being Black. And we watched in disbelief as a U.S. president propagated a toxic political climate that led to an insurrection on the democratic values and rule of law upon which this country was founded. Against this backdrop, and in particular the pandemic, 2020 provided me with a front row view of the adverse effects of major gaps in the legal academy's[2] preparation of law students, especially in the area of professional identity. The pandemic exposed how unprepared many of my students were and are to practice "non-traditional" lawyering, e.g. preventive lawyering, in less "traditional" legal and lawyering contexts, i.e. outside the courtroom, the boardroom, and legal services arenas. Students' inability to see the need for and relevance of their professional knowledge and skills to prevent and alleviate social and legal hardships of others left them feeling useless, helpless and, even worse, hopeless. I believe that what I witnessed was a professional identity crisis stemming directly from the limited view students have, and law schools perpetuate, of what it means to be a lawyer and practice law.

Students' restricted vision of lawyers and lawyering brings to mind the Nine Dot Problem.[3] In this lateral thinking exercise, one is given a set of nine dots arranged in a 3x3 grid and asked to connect all of the dots using no more than four straight lines and without lifting one's pencil or retracing any steps.[4]



If you have not done this exercise, before reading further, take a few moments and try it. Interestingly, when attempting to solve the problem, many erroneously perceive a border or box around the grid that does not exist, which limits options and prevents them from solving

[2] For purposes of this Article, I define the term "legal academy" as the totality of U.S. law schools engaged in the education of law students. I recognize that this definition necessarily results in generalizations, and fully acknowledge that there are some law schools across the country that have made great strides in improving legal education to address the concerns I raise. Despite their progress, however, the dominant law student narrative and underlying discourses that form the basis for this narrative, which I attribute to the legal academy, do persist.

[3] *History of the Nine Dot Problem*, ART OF PLAY (August 2, 2016), https://www.artofplay.com/blogs/articles/history-of-the-nine-dot-problem.

[4] *Id.*

it.[5] As soon as one eliminates the artificial restrictions and "think(s) outside the box," one sees that there are multiple solutions to this puzzle and, in fact, it can be solved using just three lines, and even one line depending upon how one defines the term "straight" or manipulates the paper.[6] The lesson to be learned from this exercise is that, in problem-solving, only when we stop imposing artificial limits and see the problem's parts and whole, i.e. both the trees and forest, will the broad field of possible solutions become visible and accessible.

As with the nine-dot exercise, law students, unknowingly, put themselves inside a "box" based on preconceived notions about lawyers and legal practice and also are placed inside the "box" by the legal academy and methods of teaching that date back well over a century. This "box" restricts students' thoughts, perceptions and understanding about what it means to be a lawyer and practice law, and impedes creativity and the ability to see possibility, which are key ingredients for hope. Despite the best efforts of some faculty to teach and expose students to less "traditional" law and law-related knowledge and skills, and to foster the development of a professional identity that harmonizes with students' own values and beliefs, these efforts are not sufficient to outweigh the force of the dominant, preexisting narrative that lives inside the "box." I believe the dominant narrative inhibits the development of students as creative thinkers, possibility seers, innovative problem-solvers, and positive changemakers. These missing competencies are essential to legal practice not only during extraordinary times like the ones we recently have experienced, but also during ordinary ones. Moreover, they are essential to students' professional identity development and to the overall health and well-being of those in the legal profession.

Since the late 19th century, reports by the American Bar Association and other organizations have criticized the legal academy for failing to prepare students properly for the profession of law, and these critiques persist today.[7] Legal scholars have written countless articles about incorporating more clinical and what some view to be essential yet "non-traditional" legal teachings into the academy. Examples include the work of Margaret Barry, Jon Dubin and Peter Joy promoting the use of clinical pedagogy throughout the law school curriculum as part of a "Third Wave" of clinical legal education;[8] of David Wexler

[5] *See id.*

[6] *Id.*

[7] *See generally* A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949 (2012) (reviewing the history of legal education in America, including the critiques).

[8] *See generally* Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000).

on Therapeutic Jurisprudence;[9] of Susan Brooks on Relational Lawyering;[10] of Gerald Lopez on Rebellious Lawyering;[11] and of Louis Brown and Edward Dauer on Preventive Law,[12] to name a few. More recently, legal scholarship on the importance of developing the professional identity of law students has proliferated.[13] While lauding these innovative ideas and the groundbreaking work at some institutions, many in the academy continue to teach in the same manner as always,[14] recalling the oft-quoted definition of insanity: "[D]oing the same thing over and over expecting different results."[15]

The past year's extraordinary times have placed the legal academy (and much of the rest of the world) inside a puzzle located at a crossroads unlike any most of us have experienced in our lifetimes. We can return to the pre-pandemic status quo, or we can use these experiences as the stimulus for change and create a new "normal." In my view, insanity is not an option. This Article posits that Narrative Therapy provides the necessary tools to free students from the "box" by (1) exploring and deconstructing the dominant law student narrative; (2) exposing the principal legal academy discourses that have formed and maintained this restrictive and disempowering narrative; (3) separating students from the dominant narrative so that they can envision the lawyer they want to be; and (4) creating space for students to re-take control over and re-author what it means to be a lawyer and to practice law in a manner that fits with their personal and professional values and beliefs and the needs of the public. By providing a path for law students to develop into lawyers who are creative thinkers who see and access possibility, Narrative Therapy restores hope to, and for, the profession.

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[9] *See generally* David B. Wexler, *Two Decades of Therapeutic Jurisprudence*, 24 TOURO L. REV. 17 (2008).

[10] *See generally* Susan L. Brooks, *Teaching Relational Lawyering*, 19 RICH. J.L. & PUB. INT. 401 (2016).

[11] *See generally* GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

[12] *See generally* LOUIS M. BROWN & EDWARD A. DAUER, PERSPECTIVES ON THE LAWYER AS PLANNER (1978).

[13] *See generally* Timothy W. Floyd, *Moral Vision, Moral Courage and the Formation of the Lawyer's Professional Identity*, 28 MISS. C. L. REV. 339 (2009); E. Scott Fitzgerald, *Developing Law Students' Professional Identities*, 37 U. LA VERNE L. REV. 1 (2015); Barbara Glesner Fines, *Picturing Professionals: The Emergence of a Lawyer's Identity*, 14 U. ST. THOMAS L.J. 437 (2018).

[14] *See, e.g.*, Gerald P. Lopez, *Transform—Don't Just Tinker With—Legal Education*, 23 CLIN. L. REV. 471, 471 (2017) ("Over the past ten years, most schools changed very little, and the small number that changed a fair amount . . . borrowed directly from what other law schools have been doing for decades.").

[15] This definition often is attributed incorrectly to Albert Einstein; however, the source remains unknown.

I recognize that, like the nine-dot puzzle, this proposal is "outside the box," but it must be if we want law students to have the opportunity to re-author their narrative. With this intent, I start with an overview of Narrative Therapy, including its approach, techniques, relationship with power, and social justice orientation. Then, I apply Narrative Therapy's multi-stage approach to the law student "box." This begins with a description of the context in which the "problem" arose, and is followed by an exploration, and the deconstruction, of this country's dominant law student narrative, including its origins in the legal academy and the adverse effects of the narrative on those who actively and passively adopt and live it. Through this process, the "problem" is further understood and externalized, creating space for re-authoring the narrative. To illustrate the incorporation of Narrative Therapy in law school teaching, I share examples from the clinical law setting during the pandemic and a prior service learning experience. I conclude with some thoughts on how to integrate Narrative Therapy into one's teaching across law school settings, and on the need to stimulate change from the ground - i.e. law students - up in order to achieve broad-scale and enduring narrative reform from the top - i.e. academy - down.

Before proceeding, it is important to acknowledge that, since the early 1990s, much has been written about storytelling and narrative in relation to clients and legal representation, and how best to educate law students in these areas. Legal scholars have shined a light on the importance of preserving client integrity and story by voicing client narratives in legal storytelling;[16] provided guidance on how to teach law students to root out assumptions and bias through critical reflection to reduce their impact on client representation;[17] offered cautionary examples illustrating the dangers and harms of coopting client narrative;[18] discussed ways in which legal systems and lawyers create and perpetuate narratives that further marginalize oppressed populations;[19] and opined on the ethics of sharing client narratives in scholarship without client involvement or approval.[20] More recently,

[16] *See, e.g.*, Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2119, 2133-2140 (1991).

[17] *See, e.g.*, Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287, 298-306 (2001); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyering*, 8 CLIN. L. REV. 33, 56, 64-67 (2001) (describing approach developed with Jean Koh Peters).

[18] *See generally* Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

[19] *See, e.g.*, Carolyn Grose, *A Persistent Critique: Constructing Clients' Stories*, 12 CLIN. L. REV. 329, 333-35 (2006).

[20] *See generally* Binny Miller, *Telling Stories about Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1 (2000).

Professors Carolyn Grose and Margaret Johnson developed a model for effective lawyering that interweaves narrative theory, critical reflection and normative theory (including client-centered-ness, professionalism and justice, and critical theory) to advance client goals and strive to attain justice.[21] Even when combining the literature on law student professional identity development with that on narrative and critical theory, I struggled to find any scholarship examining the application of Narrative Therapy to law students, lawyers or the legal academy. With Narrative Therapy, the present Article seeks to bridge formative clinical pedagogy on narrative theory and critical reflection with that of professional identity development. In so doing, my goal is to show how we, as educators, can and should open students' minds to the myriad possibilities that exist in law and lawyering and guide law students to become the lawyers they *want to be* as opposed to the lawyers the legal academy teaches them, explicitly and implicitly, they *must be*.

I. NARRATIVE THERAPY

> "'All too often, the stories we believe about ourselves have been written by others.' In passively buying into and repeating narrow and negative narratives we unnecessarily restrict our life possibilities."[22]

Social workers Michael White and David Epston first introduced Narrative Therapy in the 1980s as a therapeutic approach for use in counseling and community work.[23] According to Narrative Therapy, the lives of individuals (and communities) are multi-storied; these stories form through the connecting of experiences of events sequentially over time.[24] Our lives and relationships are shaped and described by these stories.[25] We interpret the stories, i.e. ascribe meaning to them, creating a narrative.[26] Narratives, in essence, give us a way to make sense of our experiences; they are "a fundamental structure of human

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[21] *See generally* Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLIN. L. REV. 203 (2019).

[22] Daniel D. Hutto & Shaun Gallagher, *Re-Authoring Narrative Therapy: Improving Our Self-Management Tools*, 24 PHILOS. PSYCHIATR. & PSYCHOL. 157, 158 (2017) (citing DAVID DENBOROUGH, RETELLING THE STORIES OF OUR LIVES 8 (2014)).

[23] *See* C. Christian Beels, *Some Historical Conditions of Narrative Work*, 48 FAM. PROCESS 363, 366-67 (2009).

[24] ALICE MORGAN, WHAT IS NARRATIVE THERAPY? AN EASY-TO-READ INTRODUCTION 5 (2000).

[25] David Nylund & Debora A. Nylund, *Narrative Therapy as a Counter-Hegemonic Practice*, 5 MEN MASC. 386, 388 (2003).

[26] MORGAN, *supra* note 24, at 5.

meaning making."[27] Every person is both the "main character" and the "author" or "narrator" of their story.[28]

Rooted in postmodern and post-structuralist thought, Narrative Therapy posits that meaning is socially constructed and not objectively real.[29] Individual narratives do not result solely from how people interpret and give meaning to their own stories.[30] To the contrary, each of us is storied by both self and other; "other" may include family members, friends, membership in groups and communities, as well as social, cultural and political forces.[31] For some, one's own interpretation of events becomes the principal narrative whereas for others, the narrative derives from the interpretation by "other."[32] Notably, the meaning we give events grows out of our assumptions and biases that derive directly from the experiences we have had and the cultural, social and political contexts in which we live.[33]

Each of us has a narrative that is "foregrounded," i.e. dominant, although other potential narratives exist: "[T]here are many different events in our lives, but only some of them get formed into the storylines of our identities."[34] The dominant narrative pushes out other narratives, including "events, feelings, intentions, thought and actions" associated with those narratives if it cannot accommodate them.[35] In many cases, the dominant story may be false, limited or partial, or hide alternate important storylines.[36]

As part of one's narrative, problems, and the ways one experiences them, are socially constructed.[37] They arise when the dominant

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[27] Ted Fleming, *Narrative Means to Transformative Ends: Towards a Narrative Language for Transformation*, *in* TRANSFORMATIVE LEARNING IN ACTION: BUILDING BRIDGES ACROSS CONTEXTS AND DISCIPLINES 179 (Colleen Aalsburg Wiessner, Susan R. Meyer, Nancy Lloyd Pfhal & Peter G. Neaman, eds., 2003).

[28] *Id.*

[29] *See* Nylund & Nylund, *supra* note 25, at 388.

[30] *See* Gene Combs & Jill Freedman, *Narrative, Poststructuralism, and Social Justice: Current Practices in Narrative Therapy*, 40 COUNS. PSYCHOL. 1033, 1036 (2012).

[31] *See id.*

[32] *See* MORGAN, *supra* note 24, at 8 (describing how lives are storied not only by oneself but also by other's interpretations of events in one's life); *see also* Fleming, *supra* note 27, at 181 (discussing the effects of sociocultural context and power on constructed "truths" that shape one's life and relationships).

[33] *See* Fleming, *supra* note 27, at 180; *see also* Linda G. Mills, *Hope for Law: Narrative Therapy and Intimate Abuse Practic*e, 16 BEHAV. SCI. LAW 525, 527 (1998) (reviewing NARRATIVE THERAPY IN PRACTICE: THE ARCHAEOLOGY OF HOPE (Gerald Monk, John Winslade, Kathie Crocket & David Epston, eds., 1997)).

[34] Hutto & Gallagher, *supra* note 22, at 159 (citing David Denborough, Carolyn Koolmatrie, Djapirri Mununggirritj, Djuwalpi Marika, Wayne Dhurrkay & Margaret Yunupingu, *Linking Stories and Initiatives: A Narrative Approach to Working with Skills and Knowledge of Communities*, 2006 *Int'l J. Narrative Ther. & Cmty. Work* 6).

[35] Fleming, *supra* note 27, at 180.

[36] Hutto & Gallagher, *supra* note 22, at 159.

[37] *See* Combs & Freedman, *supra* note 30, at 1036.

narrative is comprised of "oppressive stories which dominate the person's life. . . [and do] not significantly fit with their lived experience."[38] Problems "survive and thrive when they are supported and backed up by particular ideas, beliefs and principles" that are internalized, both consciously and unconsciously; this includes the internalization of oppressive and harmful narratives that circulate in society and culture (e.g. white supremacy).[39] Narrative Therapy posits that people are not one with their problems; problems are separate from one's identity.[40] By putting distance between people and their problems, space is created for possibility.[41] In this manner, one's relationship to problems changes, revealing new interpretations and options for transformation.[42]

Narrative Therapy shifts power from the "expert professional therapist" to the beneficiary of the therapeutic process, centering clients as the "experts" on their own lives.[43] As both the writer and story-teller, the client becomes the change agent who decides what the story is and will be and has the power to rewrite it so that it aligns with the client's preferred interpretation of events and lived experiences.[44] The therapist takes on the role of guide or collaborator, who helps and supports the client through the therapeutic process.[45] The goal of therapy is to help the client to deconstruct the problematic narrative and develop and author a preferred story that better matches the client's experiences of events and wishes and desires for the present and future.[46] "Narratives constitute identities, lives and problems;"[47] therefore, by providing opportunities to re-author personal narratives through reinterpretation, one can change identities, lives and problems. The process creates possibilities and "expand[s] the individual's or group's 'options in self-formation'" that could not have been conceived otherwise.[48]

Narrative Therapy involves a multi-stage approach to help people retake control of their storied lives. It starts with the exploration of

[38] Alan Carr, *Michael White's Narrative Therapy*, 20 CONTEMP. FAM. THER. 485, 486 (1998).

[39] *See* Nylund & Nylund, *supra* note 25, at 387; *see also* MORGAN, supra note 24 at 45.

[40] *See* Combs & Freedman, *supra* note 30, at 1039; *see also* Carr, *supra* note 38, at 491.

[41] *See* MORGAN, *supra* note 24, at 24.

[42] *See id.* at 28.

[43] *See* Beels, *supra* note 23, at 364.

[44] *See* Combs & Freedman, *supra* note 30, at 1042; *see also* Fleming, *supra* note 27, at 179, 181.

[45] Carr, *supra* note 38, at 487.

[46] *See* Hutto & Gallagher, *supra* note 22, at 158-59.

[47] Carr, *supra* note 38, at 486.

[48] Hutto & Gallagher, *supra* note 22, at 157 (citing Michael White, *Folk Psychology and Narrative Practices*, *in* THE HANDBOOK OF NARRATIVE AND PSYCHOTHERAPY 43 (Lynne Angus & John McLeod, eds. 2004)).

discourses, defined as "stories which embody cultural norms and which reveal, when examined closely, the power dynamics in both intimate and social relations"[49] and "habitual ways of thinking and assuming, with resultant language habits, that are common currency within particular social groupings."[50] These discourses "position" people in relation to others and dictate "where we are situated in a given story line."[51] Discourses can be positive or negative and are explored to gain an understanding of the narrative.[52] "Persistent and genuine curiosity," i.e. questioning, reveals much about a person's suffering, strengths and resilience.[53]

Exploration leads directly into Deconstruction, which involves breaking down one's narrative into smaller parts to pinpoint the assumptions on which different dynamics are based.[54] "No human activity can exist outside the medium of social structures," thus one must examine the social structures that lie behind individual action and understanding.[55] Deconstruction "pull[s] the curtain away" so that power relations underlying the discourse, one's position within the discourse, and the beliefs and assumptions one passively has accepted and/or taken for granted as "truths" are revealed and "mapped."[56]

During the Exploration and Deconstruction processes, the client's problems are externalized.[57] The creation of distance between people and their problems enables people to understand that problems are separate from their identities, making it easier for them to believe and accept that change is possible.[58] This discovery fosters personal agency to confront the problem and reduce its effects and influence.[59] As a result, one's relationship with one's problems is redefined and rewritten.[60] Externalization also creates space for clients to

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49 Mills, *supra* note 33, at 528.

50 Fleming, *supra* note 27, at 182.

51 Mills, *supra* note 33, at 528.

52 *See id.*

53 *See id.* at 531-32.

54 *Id.* at 528.

55 Karen Dawn Roscoe, Alexander M. Carson & Iolo Madoc-Jones, *Narrative Social Work: Conversations between Theory and Practice*, 25 J. SOC. WORK PRACT. 47, 55 (2011) (citing JONATHAN JOSEPH, HEGEMONY: A REALIST ANALYSIS 9 (2002)).

56 *See* Mills, *supra* note 33, at 528; *see also* MORGAN, *supra* note 24, at 45; Carr, *supra* note 38, at 492 (defining "mapping" as identifying "the influence of the problem on [the person's] li[fe] and relationships, and. . . the influence [the person] exert[s] on the problem").

57 *See* MORGAN, *supra* note 24, at 18 (defining externalization as separating people from their problems).

58 *See* Carr, *supra* note 38, at 491-92.

59 *See id.*

60 Hutto & Gallagher, *supra* note 22, at 159 (citing Michael White, *Folk Psychology and Narrative Practices*, *in* THE HANDBOOK OF NARRATIVE AND PSYCHOTHERAPY 32 (Lynne Angus & John McLeod, eds. 2004)).

identify and share alternative narratives of their lives, including "unique outcomes," which are experiences and events where the client avoids being oppressed by the problem or stops the problem from having a negative influence.[61] In other words, "unique outcomes" are examples of one's resilience, strength and resistance, and "challenge the problem story."[62] The more one identifies and pays attention to "unique outcomes," the more these alternate narratives become foregrounded and "thickened,"[63] and the more resourced one becomes in dealing with problems or pushing them to the side.[64] These steps pave the way for the final step, Re-Authoring.

The stages described thus far create space for reflection, possibility and opportunity.[65] Narrative Therapy acknowledges that the facts of the past cannot be changed; what can change is the meaning and interpretation ascribed to those facts by and for the individual.[66] In essence, we have agency and power to change, or Re-Author, our narratives.[67] This Re-Authoring process "allows the client to reject the cultural and social norms and other assumptions embedded in the discourse she has unwittingly adopted and enables her deliberately to reposition herself in ways that are constructive and fulfilling" so that she can write the narrative she prefers.[68] During Re-Authoring, one must remember that, "although structure has power over individuals, the structure is only reproduced by the individual;" thus, as "conscious agents," individuals have the ability to "re-interpret their situation and consider new forms of actions,'"[69] leading to alternate endings and new beginnings. The ultimate goal of the Re-Authoring process is "increased 'response-ability'– enabling people to become more able to respond."[70] New response abilities enrich and solidify the new narrative and allow "expanded possibilities for action . . . [to] take root and flourish."[71] Thus, Narrative Therapy provides a pathway for peo-

61 *See* Carr, *supra* note 38, at 493.

62 *See* Nylund & Nylund, *supra* note 25, at 389.

63 *See* MORGAN, *supra* note 24, at 74-75 (describing "thickening" as the process of finding additional evidence (e.g. intentions, beliefs, desires and experiences/events) that supports the alternate narrative and creates a "richer description" of the preferred story, enabling the client to stay more connected to that story).

64 *See* Hutto & Gallagher, *supra* note 22, at 159.

65 *See* Mills, *supra* note 33, at 528.

66 *See* Hutto & Gallagher, *supra* note 22, at 160.

67 *See* Combs & Freedman, *supra* note 30, at 1042; *see also* Fleming, *supra* note 27, at 179, 181.

68 Mills, *supra* note 33, at 528.

69 Roscoe, *supra* note 55, at 55 (citing ANTHONY KING, THE STRUCTURE OF SOCIAL THEORY 71 (2004)).

70 Hutto & Gallagher, *supra* note 22, at 159 (citing DAVID DENBOROUGH, RETELLING THE STORIES OF OUR LIVES 36 (2014)).

71 *Id.* at 159.

ple to move from a position of helplessness and resignation to one of hope.

One cannot talk about Narrative Therapy without addressing its relationship with power, privilege, and social justice. Narrative Therapy builds upon the work of French post-structural theorist Michel Foucault regarding modern power and social control.[72] Individual and community narratives occur in "the social and cultural location of the teller," thus "[a]ll narratives situate themselves in social and political contexts."[73] Foucault believed that "socially imposed truths. . . have the power to subjugate and marginalize persons through the adherence to society's normalizing standards."[74] Society, culture and the politics of race, ethnicity, class, gender and gender identification, religion, (dis)ability, and more, create and perpetuate "dominant stories that disqualify, limit or disempower" some individuals, groups and populations while privileging others.[75] Those with more privilege in society have greater influence on the stories told.[76] The stories are conveyed and become internalized through discourses that exert cultural, social and political control at the local level, governing people's lives.[77] The discourses come in many forms, such as the news we read, the curricula we study, and the products we see in stores.[78] We compare ourselves to and judge ourselves against the dominant discourses;[79] in this manner, our lives and relationships are shaped,[80] and the ways in which we understand ourselves and our world are influenced.[81] Foucault believed that the discourses persist because they are hidden: "[T]he success of this subjugation relies on the ability of modern power to mask its own operation. . . [when] rendered transparent, persons are able to stand against the oppressive effects of this modern power in how it shapes their lives and their identities."[82]

Narrative Therapy adopts Foucault's view that society implicitly requires people to comply with societal and cultural norms that are

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[72] Sarah Z. Kahn & Gerald Monk, *Narrative Supervision as a Social Justice Practice*, 36 J. SYST. THER. 7, 9 (2017).

[73] Roscoe, *supra* note 55, at 50.

[74] Kahn & Monk, *supra* note 72, at 9 (citing MICHEL FOUCAULT, DISCIPLINE AND PUNISHMENT: THE BIRTH OF THE PRISON (1979) and MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS (1980)).

[75] Nylund & Nylund, *supra* note 25, at 388.

[76] Combs & Freedman, *supra* note 30, at 1038.

[77] Kahn & Monk, *supra* note 72, at 9.

[78] Combs & Freedman, *supra* note 30, at 1038.

[79] *Id.*

[80] *See* Fleming, *supra* note 27, at 181.

[81] *See* Nylund & Nylund, *supra* note 25, at 388.

[82] Kahn & Monk, *supra* note 72, at 9 (citing MICHEL FOUCAULT, DISCIPLINE AND PUNISHMENT: THE BIRTH OF THE PRISON (1979) and MICHEL FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS (1980)).

passively "accepted" as desirable and proper.[83] Problems emerge when one is unable to satisfy these expectations or one's experiences and values conflict with these normative "truths."[84] Resistance also is a central element of Narrative Therapy.[85] Unlike other forms of psychotherapy, which center patient resistance to expert assistance as the "problem" to target, narrative therapists work collaboratively with clients to "find[ ] a narrative space essentially free of resistance to change, but. . . based in a different resistance, *a refusal to be dominated by the problem*."[86] Narrative Therapy provides the opportunity to unearth, deconstruct, and challenge the "imbalance between society's expectations and the reality of the client's experiences," which can oppress and disempower individuals, communities and populations.[87] This includes the "taken-for-granted assumptions and values of the group, family, community, society and culture," which unknowingly are incorporated into our interpretative lens.[88] Narrative Therapy's focus on unmasking and resisting power differentials is rooted in the belief that we all must work to counter inequity; if we do not, we sustain an unjust status quo.[89] "Injustice is understood to be the direct result of modern power's covert manifestation at the local level [and] the therapeutic encounter can be seen as a site for creating social change."[90]

Several tenets of Narrative Therapy relate to theories of teaching and practice used in clinical pedagogy. For example, clinical faculty frequently educate students on the importance of using narrative theory to draw out and listen to the client's story from the client's perspective so that the problem is properly defined and the client's goals of representation are advanced.[91] Students learn that there are multiple narratives for any one story,[92] and that "lawyers with their clients are constructors of narratives, and, as such, need to make intentional choices about that construction" for purposes of representation.[93] Critical reflection in clinical pedagogy urges lawyers to examine client

[83] *See* Herbert C. Biggs & Anton D. Hinton-Bayre, *Telling Tales to End Wails: Narrative Therapy Techniques and Rehabilitation Counseling*, 14 AUST. J. REHABIL. COUNS. 16, 19 (2008).

[84] *See id.*

[85] *See* Beels, *supra* note 23, at 367-68.

[86] *Id.* at 368.

[87] *See* Biggs & Hinton-Bayre, *supra* note 83, at 18.

[88] *See* Fleming, *supra* note 27, at 181.

[89] *See* Combs & Freedman, *supra* note 30, at 1054.

[90] Kahn & Monk, *supra* note 72, at 10.

[91] *See* CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS 6-8 (2017).

[92] *Id.* at 5.

[93] Grose & Johnson, *supra* note 21, at 208.

narratives through different lenses to identify and mitigate the adverse effects of lawyers' own assumptions and biases in relation to the client and the client's story,[94] and to surface and counter, where possible, systemic and structural assumptions, biases and power;[95] this "make[s] room for other intentional choices about perspectives and other worldviews to aid [the] narrative construction" of the client's story.[96] Client-centered lawyering recognizes that the client is, "'. . . the primary decision-maker over the life of a case . . . 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.'"[97] Thus, in many respects, narrative theory, critical reflection and client-centered lawyering parallel the exploration and deconstruction processes of Narrative Therapy and its principal tenet that clients are the experts in their own lives, respectively. Further, Narrative Therapy's adoption of Foucault's theories on modern power and social change directly relate to social justice orientation and practices.[98] This includes Foucault's sociopolitical conception of problems, use of resistance to challenge dominant and oppressive power structures and narratives, emphasis on foregrounding subjugated knowledge, and promotion of personal agency to stand against the oppressive and dominant discourses that influence people's lives and identities. Based on these parallels, using Narrative Therapy to re-author the dominant law student narrative is a natural fit.

II. THE "BOX," I.E. THE DOMINANT LAW STUDENT NARRATIVE

"People are trapped in history and history is trapped in them."[99]

During the pandemic, Narrative Therapy provided students with needed tools and perspective to counter feelings of hopelessness. When the State of New Jersey shut down in mid-March, 2020, so, too, did much of Rutgers Law School's Education and Health Law Clinic's day-to-day work. At the time, approximately 75-80% of our clients were facing special education issues and the rest were experiencing issues in various public benefit areas (e.g., health insurance appeals for certain medical equipment, internal agency appeals of food stamp

94 *See* GROSE & JOHNSON, *supra* note 91, at 39 ("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.").

95 *See id.* at 37-8.

96 Grose & Johnson, *supra* note 21, at 210.

97 *Id.* at 212 (citing Elliott Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 378 (2001)).

98 *See generally* Kahn & Monk, *supra* note 72.

99 JAMES BALDWIN, *A Stranger in the Village*, *in* NOTES OF A NATIVE SON 163, 167 (1955).

reductions, etc.). Most client-related meetings, mediations and court dates were deferred until further notice; and for those limited matters that could proceed as planned, client priorities had shifted overnight, with special education needs falling to the bottom of the list and replaced with more urgent food, shelter, employment, and basic health concerns.

The swift onset of the pandemic and resultant closure of "traditional" lawyering contexts left some students at a loss as to how to function. Some responded by trying to keep doing what they always did in the Clinic in the same manner and form, while others experienced a form of paralysis that prevented them from acting at all. For many students, the pandemic suddenly and powerfully shook their confidence in their career choice. Why were they in law school? Will their profession matter in post-pandemic life? Does the law really benefit people or hurt them and keep them down? What good can they do if, in extraordinary times, their chosen career path is neither relevant nor helpful? Remote case rounds and individual supervision with second- and third-year law students in the Clinic overwhelmingly became filled with expressions of despair, fatigue, anger, sadness, frustration, dark humor, fatalism, and fear. What most concerned me was students' universal expression that, from what they had learned in law school and about the profession to date, they could not envision possibilities for action in which they could engage to make a difference for the clients and communities we serve. For many students, the study and practice of law were irrelevant to the current context.

Sadly, this did not surprise me. Over the last two decades, I often have worked with students individually and in groups to overcome feelings of futility and dissatisfaction in relation to their law school experiences, and the adverse effects of these experiences on their personal mindsets, professional identity development, and motivation to act. But the weight of the uselessness and helplessness students felt this time was different. Never had I witnessed such an extensive and pervasive inability of law students to see beyond the confines of the "box" in which they had been placed and placed themselves. They saw no way out.

III. Exploring and Deconstructing the "Box"

> "Look at your looking in order to see the nature and consequences of your seeing."[100]

Before exploring and deconstructing the dominant law student

[100] Tapio Malinen, *The Extraordinary in the Ordinary: A Conversation with Jill Freedman*, 30 J. Syst. Ther. 73, 77 (2011).

narrative of today, I must explain what I mean by "dominant narrative." As discussed above at Section I, according to Narrative Therapy, each individual has a dominant personal story that is layered with socially-constructed interpretation and meaning. For purposes of this Article, I deliberately have chosen not to apply Narrative Therapy to the personal narratives of individual law students, although there is much to be explored and written on this topic.[101] Rather, here, I use the term "dominant law student narrative" to refer to the common shared narrative that is lived by many, if not most, American law students by virtue of being law students. This narrative derives directly from, and is inherently intertwined with, the predominant discourses of the legal academy.

A. A Brief Historical Overview of Legal Education

A brief overview of the history and evolution of the legal academy is instructive in understanding the dominant American law student narrative. Initially, legal education in America was based on the English apprenticeship model, whereby students learned the practice of law under the tutelage of practicing attorneys.[102] Over time, however, the apprenticeship model was subject to criticism for focusing on "lawyering as a craft" as opposed to the formal, i.e. academic, study of law and legal analysis.[103] In response to this critique, during the late 18th and early 19th centuries, academic professorships in law began to appear in universities, followed by the opening of university-based law schools at Harvard and Yale.[104] Despite the growing presence of law in academia, the practicing bar continued to require only an apprenticeship for admission.[105]

With the establishment of law schools in universities, academic instruction in law became a prerequisite to apprenticeship training, serving as "a foundation for . . . further education" and "*not a substitute* for training to become a practicing lawyer."[106] Together, academic instruction and apprenticeship provided law students with the knowledge, skills, and formalities of the profession; they formed a tacit partnership in that each was integral to preparing qualified lawyers and neither trod on the subject matter of the other in so doing.[107] The

[101] For example, I believe that Narrative Therapy can have a beneficial impact on individual law students' professional identity formation and plan to explore this subject in a future article.

[102] *See* Spencer, *supra* note 7, at 1961.

[103] *See id.* at 1964.

[104] *See id.* at 1964-65, 68-69.

[105] *See id.* at 1966.

[106] *Id.* (emphasis added).

[107] *See id.* at 1972.

partnership continued until the late 19th century, at which time the American Bar Association (ABA) determined that an apprenticeship no longer was required, and concluded law school was an acceptable stand-in for law office training.[108] This act made academic instruction and apprenticeship "interchangeable" as opposed to "indispensable,"[109] and fundamentally transformed the nature of legal education.

As the formal study of law took root in academia, Christopher Langdell, Professor and Dean at Harvard Law School in the late 1800s, developed law school teaching methods that constitute the legal academy's "signature pedagogy."[110] Langdell considered law an inductive science and, as such, concluded that students best learn legal doctrine by studying and mastering the "source" of law, i.e. written judicial appellate opinions.[111] This mode of study became known as the "case method."[112] Langdell also developed the Socratic or "case dialogue" method whereby professors use questioning about cases to help students "discover[ ] legal principles from their sources" and thereby learn the skills of "legal reasoning, analysis and synthesis."[113] Together, the case and case dialogue methods became the primary modes of law school teaching.

Fast forward to the present day and the legal academy's signature teaching methods have changed little; Langdell's methods remain the predominant pedagogical approaches in most American law schools.[114] Since the late 1800s, national reports by the ABA and other organizations such as the Carnegie Foundation have faulted the academy for over-relying on Langdell's methods at the expense of other essential knowledge and competencies needed for the practice of law.[115] Even with innovative teaching and legal education reform

108 *See id*. at 1993.

109 *Id.*

110 *See id*. at 2012-2013 (citing WILLIAM M. SULLIVAN, ANN COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 3, 25 (Carnegie Foundation for the Advancement of Teaching 2007) [hereinafter Carnegie Report] and adding that overuse of the case-dialogue method coupled with insufficient integration of skills and professionalism in the curriculum are the academy's greatest weaknesses today).

111 *Id.* at 1974.

112 *See id.* at 1973.

113 *Id.* at 1977.

114 *See e.g.*, ABA TASK FORCE ON THE FUTURE OF LEGAL EDUC., REPORT AND RECOMMENDATIONS 3 (2014) [hereinafter ABA TASK FORCE REPORT 2014] (calling for the academy to pay more attention to practice competencies and professionalism because the curricular balance still tilts towards doctrinal instruction); Benjamin V. Madison, III & Larry O. Natt Gantt, II, *The Emperor Has No Clothes, But Does Anyone Really Care? How Law Schools Are Failing to Develop Students' Professional Identity and Practical Judgment*, 27 REGENT U. L. REV. 339, 356 (2014-15) (stating, "[l]aw school curricula remain heavily weighted toward doctrinal courses").

115 *See generally* Spencer, *supra* note 7 (providing a thorough review of national reports

occurring at some law schools, recent reports and studies have found that law graduates and legal employers believe students are not graduating with the competencies needed for modern practice,[116] and that many of the legal needs of the public continue to go unmet due to failings by the legal academy to properly educate students.[117] Despite more than 130 years of persistent critique, the academy has resisted calls for global reform with limited exception, e.g. clinical legal education.[118] The academy's history, together with the critiques, shed bright light on the influential legal education discourses that largely have dictated the dominant law student narrative.

B. Exploration of Legal Education Discourses forming the Dominant Law Student Narrative

> "Look to your left, look to your right. One of you won't be here next year."[119]

Depending upon the decade you attended law school, you may have heard this quote, or something like it, during orientation. Although it is highly unlikely that any law professor or administrator today would utter these words other than in jest, the legal academy continues to deliver the same message, silently, and it is a fundamental component of the dominant law student narrative. "The years spent in

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and studies criticizing the academy for failing to achieve the proper balance in educating law students in legal knowledge, skills and professional identity development).

116 *See* ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT REPORT 1, 4 (2016) (noting fewer than 25% of legal practitioners believe recent graduates have the skills needed to practice law (citing The BARBRI Group, State of the Legal Field Survey 6 (2015), http://www.thebarbrigroup.com/files/whitepapers/220173_bar_research-summary_1502_v09.pdf)); *see also id.* (noting 95% of hiring partners and associates believe new law graduates do not have key practical skills when hired, citing LEXIS NEXIS, HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE 1 (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf).

117 *See* ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES, REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 1, 11, 14, 17 (2016), http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf (finding the legal needs of many living in poverty, low and moderate income go unmet and that the profession's resistance to change results in barriers to innovation); *see also* ABA TASK FORCE REPORT 2014, *supra* note 114, at 3 ("The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard . . . Yet, there is need to do much more. The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver service to clients.").

118 *See, e.g.*, Madison & Natt Gantt, *supra* note 114, at 356-57 (noting that there has been much progress since the Carnegie Report in educating students in practical lawyering skills but education in professional identity development is still sorely lacking).

119 This quote often is attributed incorrectly to Harvard Law Professor Charles Kingsfield in the movie, "The Paper Chase." The exact source of the quote is unknown.

legal education are a powerful time of transformation for students; students learn not just skills and knowledge, but also receive a number of messages about the appropriate roles and expectations of lawyers. . ."[120] The dominant law student narrative derives directly from five powerful discourses that originated with Langdell and have been sustained by the legal academy: 1) Legal knowledge outweighs professional skills, identity, and other essential competencies; 2) There is only one "right" way to "think like a lawyer;" 3) The law is neutral (e.g. value-, race-, gender-, and context-neutral); 4) The practice of law is competitive and adversarial; and 5) Autonomous self-interest outweighs public interest and civic duty. While some law schools have made significant strides in reforming not only what they teach but also how, these discourses persist;[121] they exist mainly in the shadows of the academy yet are part and parcel of legal education. These discourses exert power and control over law students, shaping their lives and relationships and influencing the ways in which they understand themselves, their roles, and the world of law. Collectively, they have created and perpetuate the dominant law student narrative.

Discourse #1: Legal Knowledge Outweighs Practical Skills, Identity Development, and Other Essential Competencies

Nearly all first-year law school courses and many upper level electives implement Langdell's case method, i.e. the study of legal theory and principles.[122] Commonly referred to as the knowledge or cognitive apprenticeship, this is the "first" of three apprenticeships in legal education; the "second" apprenticeship is comprised of skills and practice, and the "third," professional identity and purpose.[123] Although all three apprenticeships are equally integral to the study and practice of law, "[f]or many students, neither practical skills nor reflection on professional responsibility figure significantly in their legal education. The academic setting clearly tilts the balance toward the cognitive and intellectual."[124] Thus, law students tacitly are taught that

120 Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 HAMLINE L. REV. 555, 556 (2007).

121 *See, e.g.*, Gerald P. Lopez, *supra* note 14, at 472, 508 (arguing that despite claims of triumph in legal education reform, most institutions have merely tinkered with their programs and tried to pass off what is old as new again); *see id.* at 508 (noting that most law schools laud thinking like a lawyer, i.e. the first apprenticeship, and adhere to offering courses using the case method not only in first year, but in later years as well).

122 *See* Spencer, *supra* note 7, at 2020-23, 26-27 (stating modern day law school curricula are "dominated by legal doctrine" and "transmission of substantive knowledge" that is taught "mostly via a traditional or modified case-dialogue approach").

123 *See* Carnegie Report, *supra* note 110, at 27-29.

124 *Id.* at 79; *see also* Madison & Natt Gantt, *supra* note 114, at 365 (reciting results of the authors' 2014-2015 Survey of Law School Associate Deans for Academic Affairs, in which 28 law schools revealed that the percentage of efforts and resources they devote to

the mastery of legal doctrine and principles, along with the study of legal analysis, are the top priority.

Most law schools do not offer students instruction in skills other than legal research and writing during the first year and, in the second and third years, many schools segregate instruction in substantive legal knowledge from skills.[125] Moreover and significantly,

> "[t]he pervasive curriculum, pedagogy and environment of legal education includes very little attention to relationships. . . send[ing] messages that diminish the importance of relationships to the lawyer's professional identity. Few classes focus on relationships or interpersonal communication and those that do come after the first year, which is a critical time for the formation of professional identity."[126]

As a result, the academy conveys a poorly hidden message that lawyering skills, moral discernment and professional purpose are, at best, less important than legal knowledge and analysis and, at worst, not important at all.

The legal academy instills in students this unidimensional focus on legal knowledge in other ways as well. For example, discussions about "the client" frequently are absent in first-year curricula except where a judge includes in a court opinion facts about the client that the judge has deemed legally relevant.[127] In addition, the case method creates a false understanding in students that law concerns the application of well-developed rules to pre-distilled sets of facts when, in reality, "the practice of law involves large numbers of interconnected and often times moving variables and considerations."[128] These curricular practices disconnect law from humanity[129] and place the former in the position of primacy.

Further, the academy's emphasis on learning legal theory, principles and analysis through the retrospective study of legal cases imbues

developing students' analytical skills (first apprenticeship), lawyering skills (second apprenticeship), and professional identity (third apprenticeship) were 55.6%, 29.6% and 14.8%, respectively).

125 *See* Eli Wald, *Formation without Identity: Avoiding a Wrong Turn in the Professionalism Movement*, 89 UMKC L. Rev. 685, 689 (2021); *see also* Spencer, *supra* note 7, at 2013. While there is an increasing number of law schools that offer a first-year course on lawyering skills, differences in how these courses are graded at some schools, e.g. pass/fail, sends a message to students that the course is less important than the rest of the first-year curriculum.

126 Floyd, *supra* note 120, at 560.

127 *See id.*

128 Steven M. Virgil, *The Role of Experiential Learning on a Law Student's Sense of Professional Identity*, 51 Wake Forest L. Rev. 325, 336 (2016).

129 Eli Wald & Russel G. Pearce, *Making Good Lawyers*, 9 U. St. Thomas L.J. 403, 404 (2012) (describing the case method as "too theoretical and too detached from legal profession, and offering a dehumanizing and alienating educational experience").

in students the fallacy that a lawyer has just one function—to solve preexisting legal problems; just one approach—litigation; and just one discipline for so doing—law.[130] The centering of knowledge of substantive law and subordination of all else deprives students of the opportunity to explore the many roles that lawyers play, including advisor, counselor, mediator, and preventer of legal problems.[131] This positioning hinders students from developing competencies essential for today's legal practice, including preventive law, interdisciplinary collaboration, and community engagement.[132] Legal education's predominant focus on knowledge of law, coupled with the explicit and implicit subordination of professional skills, identity, relationships and other necessary competencies, sends a powerful message to law students regarding what matters, and what does not, in the legal profession.

Discourse #2: There is Only One "Right" Way to "Think Like a Lawyer"

Langdell's case dialogue method continues to be considered "*the* way" to teach law at many American law schools.[133] Most first-year courses and many upper-level electives rely predominantly, and sometimes exclusively, upon the Socratic method.[134] As such, students quickly learn that "thinking like a lawyer" is synonymous with using one's legal analysis skills to dissect cases and formulate and respond to legal arguments.[135] Although the exercise of judgment is an essential component of "thinking like a lawyer,"[136] judgment frequently is excluded from the academy's signature pedagogy because it concerns ethics, morals, values, and context, which students often are taught to dissociate from the legal issue.[137] At many schools, students learn that, to "think like a lawyer," they must segregate "legal knowledge. . .

130 *See* Beverley Balos, *The Bounds of Professionalism: Challenging Our Students; Challenging Ourselves*, 4 CLIN. L. REV. 129, 140-41 (1997); *see also* Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 740 (2011) (concluding that despite historical and contemporary critiques of legal education, it "has not changed fundamentally in the last quarter century").

131 *See* Jennifer Rosen Valverde, *Preparing Tomorrow's Lawyers to Tackle Twenty-First Century Health and Social Justice Issues*, 95 DENVER L. REV. 539, 550-56 (2018).

132 *See id.* at 567-68.

133 *See* Spencer, *supra* note 7, at 2026.

134 *See id.* at 2020-23, 2026-27 (stating modern day law school curricula are "dominated by legal doctrine" and "transmission of substantive knowledge" that is taught "mostly via a traditional or modified case-dialogue approach"); *see also* Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562, 563 (2015) (noting that use of the Socratic method "persists in core first-year and bar exam lecture hall classes" and law schools "continue to deliver a large portion of legal education in this format").

135 *See* Wald & Pearce, *supra* note 129, at 417.

136 *See id.*

137 *See id.* at 417-18.

from professional values and [the] relational experience of law practice"[138] as well as context. Consequently, students come to believe that the lawyer's role is to "attack, criticize and manipulate the law" on behalf of clients, ignore the potential consequences of their actions, and dismiss "the spirit of the law and its meaning within context."[139]

While there is no question that legal analysis is an essential lawyering skill, the academy's predominant emphasis on it, "withholds the development of other qualities necessary for morally responsible use of that tool."[140] The singular focus on legal analysis "devalues emotional and ethical matters, including students' personal values, individual sense of justice, and the sense of purpose that brought many students to the study of law."[141] It can lead students to believe their role is purely cognitive and their own ethical values are irrelevant or improper to consider, and result in "cognitive dissonance"[142] between students' personal and professional identities. Further, such a unidimensional focus "create[s] lawyers who learn to compartmentalize their professional and personal lives" and "who are incomplete as professionals."[143]

The Socratic method fosters a hierarchy in the classroom whereby the professor is the "all-knowing" expert who possesses the knowledge and controls its dissemination to students.[144] The hierarchical power structure created and fostered by the Socratic method hinders critical pedagogy, and thereby discourages students from questioning and challenging the professor and the content that is conveyed.[145] In the process, agency and self-determination, both of which are critical

138 *Id.* at 415, 418.

139 *Id.* at 417-18.

140 Floyd, *supra* note 120, at 558.

141 *Id.*

142 Richard C. Reuben, *Beyond Stress Reduction: Mindfulness as a Skill for Developing Authentic Professional Identity*, 89 UMKC L. Rev. 669, 675-77 (2021) (defining cognitive dissonance as "the state of mind that occurs when one tries to hold two contradictory ideas, beliefs, or, critically, values in their mind at the same time" and adding that empirical research has found that "holding contradictory perceptions at the same time creates psychological distress that the mind seeks to eliminate").

143 *See* Floyd, *supra* note 120, at 558.

144 *See* Balos, *supra* note 130, at 140; *see also* Wald & Pearce, *supra* note 129, at 425.

145 See Anibal Rosario-Lebron, *If these Blackboards Could Talk: The Crit Classrom, A Battlefield*, 9 Charleston L. Rev. 305, 312-14 (2015) (positing that the voices of students "have been silenced by the hegemonic practices of *traditional* legal education" and that law schools must create "horizontal classroom[s]" to allow for critical pedagogy, defined as an educational philosophy that, "intends to transform [professor-student] relationships of power by recognizing professors and students as co-creators of knowledge, unmasking the political and oppressive contents society imposes upon learners and teachers through hegemonic didactic practices, and formulating and incorporating more equitable methods of teaching" to counter this).

to student self-efficacy[146] and the practice of law, are inhibited.

Additionally, the academy's overarching focus on legal analysis hinders students' development of other problem-solving skills.[147] When looking through a legal analysis lens, one defines problems only as legal, and problem-solving approaches are restricted to those found in law; this view "stymies the development of the 'legal imagination' needed to develop solutions to legal problems prospectively."[148] As with the academy's over-emphasis on knowledge of the law, its over-emphasis on legal analysis restricts students' vision of the myriad roles of lawyer other than litigator, and forecloses students' ability to see the broader field of alternative problem definitions and solutions that are available.

Discourse #3: The Law is Neutral

As explained above, Langdell believed that the law is a science to be studied objectively.[149] Thus, it is no surprise that many law schools, having adopted Langdell's case and Socratic methods, present legal issues abstractly and disconnected from their social, political and historical milieu.[150] These methods encourage law students to "strip[ ] disputes from their context . . . emphasiz[ing] formal and procedural issues over other moral or personal factors" that may affect the outcome,[151] and simultaneously create an expectation that law students "divorce their personal values from professional ones," disconnecting the law from the rest of their lives.[152] Such disconnection can ad-

146 *See* Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MD. L. REV. 649, 677-78 (2018) ("In order for students to optimize their learning experience, they need the psychological constructs of hope, perceived academic control, curiosity and positive perspective. Hope has two components: agency, which is the motivation and willpower to pursue a goal; and pathways, which involve the capacity to craft multiple strategies for achieving the goal."); *see also* Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007) (finding that research results suggest, "to maximize the learning and emotional adjustment of its graduates, law schools need to focus on enhancing their students' feelings of autonomy").

147 *See* Spencer, *supra* note 7, at 2029.

148 *Id.* at 2038.

149 *Id.* at 1974.

150 *See* Balos, *supra* note 130, at 141; *but see* Spencer, *supra* note 7, at 2025 (recognizing that many law schools "seem to be making moves" in the direction of teaching the law in context more in doctrinal courses rather than just through the case method but adding that the effects of this and other changes "remain to be seen").

151 Spencer, *supra* note 7, at 2036; *see also* L. Danielle Tully, *Professional Identity Formation as a Power Skill*, 1 PROCEEDINGS 1, 1-2 (2020) (stating "first-year podium courses flatten the law and, as Lucy Jewel notes, 'privilege[ ] technical form and levels of legal authority over social contexts and moral issues' ") (citing Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1144, 1196 n.226 (2008)).

152 Balos, *supra* note 130, at 141; *see also* Susan Sturm & Lani Guinier, *The Law School*

versely affect students' professional identity development.[153]

The assumption that law and justice are neutral, i.e. race-free, gender-free, value-free and context-free, or in any way unbiased could not be further from the truth. Yet, some law schools and professors "continue[ ] to. . .perpetuate a false narrative that law—not to mention the study of it—is neutral.[154] By taking the position that values should not be taught in the academy to ensure that it "appear[s] neutral,[155] these schools communicate to law students, albeit incorrectly, that issues of race and racism, gender, values, culture, history and context do not matter.[156] This message comes in the form of a shadow curriculum, i.e. lessons that are taught tacitly through the exclusion of certain content from the curriculum rather than explicitly,[157] with chilling adverse effects.

One need not look far for an example of the harm to law students resulting from the academy's value-neutral position.[158] "'The law' is inherently and deeply—indeed insidiously—race-normed as 'White,'" and this results in the "steady, yet implicit, indoctrination of a particular racial norm in the construction of legal professional identity. . .[that] elides any consideration of the role race and racism plays in reproducing the system in which that identity is intimately bound."[159] The academy's ongoing treatment of whiteness as neutral sends the message that issues of racism and race belong to people of color only.[160] Its failure to acknowledge the presence and role of race and racism in the law leaves some students "disconnected from their

Matrix: Reforming Legal Education in a Culture of Competition and Conformity, 60 VAND. L. REV. 515, 535 (2007) ("Students detach their personal and professional commitments from their academic learning, encouraged by classroom inquiry that deemphasizes the importance of context and the relevance of personal reactions and goals.").

153 *See, e.g.*, Eduardo R.C. Capulong, Andrew King-Ries & Monte Mills, *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L.J. 3, 5 (2021) (arguing that legal education's "[professional identity] movement has given insufficient attention to the fundamental and constitutive role of race and racism in legal practice"); *see also* Sturm & Guinier, *supra* note 152, at 535 ("the formation of students' professional identities, as well as their personal values and goals, is. . .disaggregated from the [law school] academic process.. . . The environment does not regularly provide students with significant out-of-class opportunities for connecting their academic learning with the process of forming a professional direction."); Austin, *supra* note 146, at 653 ("Neuroscience and psychology research demonstrates that the collective effects of training to become a lawyer. . .may weaken law student learning capacity and undermine professional identity development.").

154 Tully, *supra* note 151, at 1.

155 *See* Wald & Pearce, *supra* note 129, at 405, 418-19; *see also* Balos, *supra* note 130, at 140-41.

156 *See* Madison & Natt Gantt, *supra* note 114, at 372.

157 *See* Wald & Pearce, *supra* note 129, at 414, 420.

158 There are equally adverse effects on client representation but these are not the subject of this article.

159 Capulong, et al., *supra* note 153, at 6.

160 *See id.* at 12-13.

own racial identities or personal commitment to racial justice" and places a burden on law students, particularly students of color, to make sense of this without needed education, guidance and support.[161]

The academy's perpetuation of value-neutrality in legal education also sends the contradictory message that one can bifurcate one's personal values and professional behavior.[162] Such mixed messages can have lasting, detrimental consequences for students, and later lawyers, in terms of their career satisfaction and overall well-being and result in increased rates of substance use and abuse, depression, and anxiety that are cause for significant concern.[163]

Discourse #4: The Practice of Law is Competitive and Adversarial

The academy promotes competition and adversarialism in multiple ways, leading law students to believe that they must adopt these characteristics and behaviors to succeed in the legal profession. From the outset of their first year, students observe that "competition, legal acumen and how well one answers a professor's questions" matter.[164] They often receive tacit messages about competition from the legal academy's assessment practices: For example, using one summative

[161] *See id.* at 5.

[162] John Bliss, *Divided Selves: Professional Role Distancing Among Law Students and New Lawyers in a Period of Market Crisis*, 42 LAW & SOC. INQUIRY 855, 892 (2017).

[163] *See* Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success,* 83 GEO. WASH. L. REV. 554, 560 (2015) (concluding "current data show that the *psychological factors seen to erode during law school are the very factors most important for the well-being of lawyers*" and "the data reported here also indicate that the *factors most emphasized in law schools – grades, honors and potential career income, have nil to modest bearing on lawyer well-being*")[hereinafter, "Krieger & Sheldon 2015"]; *see also* Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 275, 283 (2004) (finding that law students experienced a decline in happiness and well-being during their first law school year, and that "the law-school experience was associated with troubling increases in extrinsic values and declines in self-determined motivation"); NANCY LEVIT & DOUGLAS O. LINDER, THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW 3-7 (2010) (reviewing data on lawyer career satisfaction, mental health concerns and substance use and abuse); Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 144-45 (2016) (finding that "the current culture of law school at many law schools appears to foster a variety of challenges for students" including with respect to alcohol use, illegal street drug and prescription drug use, moderate to severe anxiety, and depression, and that in the last 25 years "the substance use and mental health issues facing law students have not decreased").

[164] Madison & Natt Gantt, *supra* note 114, at 372; *see also* Sturm & Guinier, *supra* note 152, at 523-24 (2007) (defining success or "getting it" in law school as both learning to "think like a lawyer" and conforming to "one-size-fits-all metrics of success" of "good grades (on exams), good reviews (on classroom performance) and the good opinions (she's smart) of one's peers and professors," and adding that "'getting it' is the currency of a [law school] culture that prizes competition and cultivates conformity").

exam at the end of the semester disincentivizes collaboration among students; curving classes pits students against each other; and requiring students to be in in the top 10-20% in order to get lucrative first-year summer positions encourages competition.[165] Law school career placement offices frequently stress on-campus interviewing with large firms, and prestige is attached where one succeeds in getting an offer in the private corporate sector.[166] Competition for grades, law review, moot court and job offers, and conformity with these external metrics of success, are embedded in law school culture.[167]

Meanwhile, students are exposed and expected to engage in the Socratic method of study, the "epitome" of legal education, which "relies on adversarial relationship between professor and student . . . [,] fosters an understanding of law professors as hierarchical superiors rather than as mentors, and promotes arm's length instruction rather than professional community and collaboration."[168] In many classes, professors actively and passively urge students to forsake subjective personal preferences, values and instincts in order to objectively "think like a lawyer."[169] As a result, students, often unwittingly, abandon their own beliefs, morals, and values, i.e. intrinsic motivators, in favor of external indicia of success such as grades, accolades, money, and position, i.e. external motivators.[170] The academy "demands of its students a new way of thinking which typically encourages—either tacitly or explicitly—the rejection of previously held values, preferences for cooperation or mutuality, and other socializing factors" while fostering stress, anxiety, and insecurity that diminish satisfaction and well-being.[171]

Finally, the academy's curricular focus on the study of litigated cases (case method) communicates that litigation is the principal means for resolving disputes, making "winning . . . the mark[ ] of the

165 *See* Wald & Pearce, *supra* note 129, at 424-25.

166 Balos, *supra* note 130, at 143.

167 *See* Sturm & Guinier, *supra* note 152, at 523-24; *see also* Austin, *supra* note 146, at 685-86 ("Law schools traditionally define student success in terms of grades, GPA, journal participation, and class rank . . ." and "the hypercompetitive grading system . . . creates a toxic classroom environment, and teaches students that life is a zero-sum game where for one person to be successful, another person must fail).

168 Wald & Pearce, *supra* note 129, at 424-25.

169 Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 125 (2002); *see also* Sturm & Guinier, *supra* note 152, at 535 (noting that students detach their personal values and goals from academic learning "encouraged by classroom inquiry that deemphasizes the importance of context and the relevance of personal reactions and goals," resulting in their failure to connect and understand "what they are learning in relation to their values, histories and personal qualities").

170 *See* Krieger, *supra* note 169, at 121-22.

171 *Id.*

successful lawyer."[172] Law students experience the academy as a binary environment in which legal education and practice can only be understood as adversarial zero-sum competitions in which one either wins or loses, and the goal is to win at all costs.[173]

Discourse #5: Autonomous Self-Interest Matters Most

Law schools' adoption and reliance upon the case and Socratic methods, and sanctioning of competition and adversarialism, lead many students to believe that they should pursue client interests aggressively and without regard to the consequences for others.[174] The academy's predominant teaching methods and culture tacitly urge students to ignore, or at least subordinate, lawyers' public and civic duties "[to] seek improvement of law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession."[175] Further, many law schools' resistance to inculcating in students professional values (outside of clinical programs) in order to appear neutral fosters the creation of a "value vacuum" whereby students receive "powerful tools of lawyering without guidance and direction and then [are] thrown into the competitive practice of law in which they encounter significant pressures to employ their skills exclusively on behalf of the autonomous self-interest of clients."[176]

In this manner, the academy advances and perpetuates the legitimacy and desirability of autonomous self-interest as the dominant professional culture of lawyers.[177] "There is no denying the dominant culture, in and outside of legal education, of the pursuit of self-interest, commercialism, instrumentalism, egotism, and of individualistic ethos."[178] Importantly, the academy largely fails to offer students adequate, if any, "meaningful alternatives" to the self-interest paradigm.[179]

The legal academy's five dominant discourses originated with

172 Balos, *supra* note 130, at 140; *see also* Sturm & Guinier, *supra* note 152, at 526 (explaining that in the typical law school classroom, "*adversarial conflict* provides the underlying framework of interaction, knowledge generation, and problem solving. As presented in most law school classes, law addresses conflict in highly formal settings aimed at determining winners and losers" (emphasis added)).

173 *See* Wald & Pearce, *supra* note 129, at 416; *see also* Austin, *supra* note 146, at 687 ("The shift from the education objectives of learning to think and building character, to the grade or class rank, has trained generations of students to care only about the external reward, no matter what behavior it takes to get it.").

174 *See* Wald & Pearce, *supra* note 129, at 418.

175 MODEL RULES OF PRO. CONDUCT Preamble § 6 (AM. BAR ASS'N 2020).

176 Wald & Pearce, *supra* note 129, 418-19.

177 *Id.* at 419.

178 Wald, *supra* note 125, at 710.

179 *See id.* at 711.

Langdell and have been perpetuated overtly, through teaching approaches, curricula, and priorities of the academy, and covertly, through "shadow" law school culture and curricula, for more than 130 years. Together, these discourses have created and maintained the walls and floor of the law student narrative "box."

C. Deconstructing the Law Student Narrative

> "People are unconsciously recruited into the subjugation of their own lives by power practices that involve continual isolation, evaluation, and comparison. Eventually [they] internalize ludicrous societal standards yet believe that in doing so they are justifiably aspiring to valued ideals of fulfillment and excellence."[180]

Pulling back the curtain on the legal academy reveals its influential discourses and the power dynamics underlying those discourses and exposes the dominant law student narrative. Many law students passively accept as "truths" and take for granted these discourses; in so doing, they climb into the law student narrative "box" and seal the lid. Wittingly and unwittingly, students judge themselves against these discourses and tacitly permit the discourses to influence and even dictate their understanding of the law and lawyering, their positioning, their relationships, and, for some, their overall well-being. The dominant narrative is comprised of layers of meaning that the academy has placed upon the law student experience and students have adopted through socialization into the profession. Thus, "[t]he seeds of . . . maladjustment begin in law school . . . ."[181]

Adoption of the dominant law school narrative can cause significant harm internally for students and externally in the students' professional development and performance as lawyers. Internally, for example, the academy's curriculum and primary methods of teaching promote students' emotional detachment and lack of self-reflection,[182] which are essential for self-directed learning.[183] For some students, emphasis on competition, winning, and autonomous self-interest leads to "hypersensitive paranoia" and a loss of self-confidence,[184] and "diminishes or eliminates [law students'] ability to form and sustain relationships that they possess when they begin in law school" because such relationships distract from the perception of what one must be to succeed in law school.[185] The "environment of isolation" may cause

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[180] Carr, *supra* note 38, at 489.

[181] Madison & Natt Gantt, *supra* note 114, at 351.

[182] *See* Capulong, et al., *supra* note 153, at 14.

[183] *See* Christine Cerniglia Brown, *Professional Identity Formation: Working Backwards to Move the Profession Forward*, 61 LOY. L. REV. 313, 317 (2015).

[184] *Id.* at 316.

[185] Floyd, *supra* note 120, at 560.

students to feel inadequate, anxious or fearful about making mistakes, resulting in self-doubt that must stay hidden out of the "belief that the profession does not tolerate mistakes," leading to a "pattern of failing to acknowledge mistakes and deal with them appropriately."[186] The academy's "law is neutral" posture immerses students "in myths of color-blindness and individual merit that simultaneously obscure race and exceptionalize racism into an adversarial system of individual rights and abilities."[187] Its emphasis on rational, logical and analytical skills without regard to ethical and moral considerations may disconnect students from their "sense of purpose," including participating in work that has both value and meaning.[188] The culture of law school also removes agency,[189] which is essential to self-directed learning, motivation, and hope.[190] In sum, at many schools, legal education "changes student values; unmoor[s] . . . the self; marginalizes fairness, justice, morality, emotional life, and caring for others; and exclusively emphasizes competitive processes to the extent that they become the only goal."[191] As one scholar put it, thinking like a lawyer "entails a fundamentally negative and dehumanizing world view."[192]

The dominant narrative also can have deleterious external effects on students' professional development and practice. For instance, emotional detachment and poor self-reflection skills can affect students' ability to empathize with, relate to, and understand their clients' situations, needs and concerns.[193] Acceptance of the false narrative that the law is neutral hinders students from exploring and seeing the effects of context, race, gender, ethics and morals on the law, the world of practice, and professional identity development.[194] Further, the emphasis on competition and winning prevents students from seeing the forest and the trees and engaging in creative and collaborative thinking and problem-solving.[195]

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186 *Id.* at 562.

187 Capulong, et al., *supra* note 153, at 14.

188 Floyd, *supra* note 120, at 564.

189 *See* Austin, *supra* note 146, 685-90.

190 *See* Nylund & Nylund, *supra* note 25, at 389; *see also* Austin, *supra* note 146, 677-78.

191 Krieger & Sheldon 2015, *supra* note 163, at 568 (citing ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" 1, 6, 10, 77, 82-83, 95, 100-01, 120, 126-27, 137 (2007)).

192 Krieger, *supra* note 169, at 127.

193 *See., e.g.*, Theresa Glennon, *Empathy's Promise and Limits for Those Disproportionately Harmed by the COVID-19 Pandemic*, 27 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 441, 462-72 (2021) (noting that deficits in empathy arise where one is or feels disconnected from the context of another, e.g. where one must cross racial or class divides); *see also* Bryant, *supra* note 17, at 63 (discussing the importance of self-reflection to cultural competency).

194 *See generally, e.g.*, Capulong et al., *supra* note 153.

195 *See* Floyd, *supra* note 120, at 562-63.

For many law students, the dominant narrative does not match their personal values and experiences, resulting in significant implications for their professional identity development and overall health and well-being.[196] The disconnect between personal and professional values and beliefs can cause cognitive dissonance that is, at best, challenging to reconcile, and at worst, results in anxiety, depression and substance use/abuse.[197] Studies have revealed that law students are no less happy and emotionally adjusted than graduate students of other disciplines when they commence law school, yet their mental health and well-being decline at higher rates as they progress through their first year.[198] The decline coincides with a shift in students' "moral motivation" away from intrinsic motivators, which reflect one's convictions and values and "are correlated with enhanced well-being, increased meaning, and increased personal and social integration," to extrinsic motivators, whereby one acts "for reasons outside of oneself, such as to relieve guilt or anxiety, please others or gain rewards."[199] As discussed above, the principal motivators in law school are extrinsic—grades, class rank, money and position: "These inherently competitive goals, values and motives [can] promote tension and insecurity. . . At the same time, this cycle of inherently unfulfilling activity supplants the intrinsic drive for growth, actualization, intimacy and community, thereby exacerbating the negative effects on well-being."[200] Students' lack of internal satisfaction can lead to depression and anxiety as well as alcohol and substance use and abuse.[201] Signifi-

196 *See* Krieger & Sheldon 2015, *supra* note 163, at 559; Sheldon & Krieger, *supra* note 163, at 283; LEVIT &. LINDER, *supra* note 163, at 3-7; Organ et al., *supra* note 163, at 144-45.

197 *See* Reuben, *supra* note 142, at 675-76 (stating that cognitive dissonance "can help explain much of the distress and destructive behaviors that plague the [legal] profession" and that "[a]ll too often lawyers choose unhelpful strategies for resolving this cognitive dissonance, like alcohol and substance abuse").

198 *See* Krieger, *supra* note 169, at 123 (finding students arrived in law school demonstrating healthy well-being, values and motives but "[w]ithin six months . . . the law students experienced marked decreases in well-being and life satisfaction and marked increases in depression, negative affect, and physical symptoms").

199 *Id.* at 121; *see also* Reuben, *supra* note 142, at 676 (stating, "the reorientation of law student motivation away from intrinsic values and toward extrinsic reward-based values creates cognitive dissonance each time the tension between them is triggered . . . [and] [t]he more frequently this dissonance is triggered . . . the greater the magnitude of the dissonance").

200 Krieger, *supra* note 169, at 122; see also Krieger & Sheldon 2015, *supra* note 163, at 592 ("These data consistently indicate that a happy life as a lawyer is much less about grades, affluence, and prestige, than about finding work that is interesting, engaging, personally meaningful, and focused on providing needed help to others.").

201 *See* Organ, et al., *supra* note 163, at 144-45 (2016) (finding, in a 2014 study of students at 15 law schools, that nearly 25% of respondents reporting binge drinking two or more times in the last two weeks, 32% of respondents reported having used marijuana or cocaine or prescription drugs without a prescription in the prior year, over 33% of respon-

cantly, the rates of depression, substance abuse and emotional maladjustment are much higher in lawyers than the average population and these numbers are not diminishing.[202] "The data consistently indicate that a happy life as a lawyer is much less about grades, affluence, and prestige than about finding work that is interesting, engaging, personally meaningful and focused on providing needed help to others."[203] Thus, one's success in the law school paradigm does not equate with internal satisfaction.

Looking through a Narrative Therapy lens, one clearly can see that law students themselves are not the problem—the academy's harmful and oppressive discourses and students' conscious and unconscious adoption and internalization of them are the problem.[204] These powerful discourses hinder students' development of a positive professional identity by dictating for them the lawyer they must strive to be. By exploring and deconstructing these root issues and externalizing them from the law students who are living them, distance is created, which gives space for reflection and possibility. In that space, students can begin to identify and share alternative narratives that better match and are more integrative of their preferred experiences, values and desires. This opens the door to re-authoring and rediscovery of hope.

IV. Breaking Free from the "Box" and Re-Authoring the Dominant Law Student Narrative

> "We can alter the possibilities for living a life by narrating that life differently."[205]

Now that we have unearthed the legal academy's oppressive dis-

dents screened positive for moderate or severe anxiety, over 16% screening positive for depression with many receiving a diagnosis after the start of law school, and the majority of those most in need of assistance reported being unlikely to seek help, and concluding that the study "should be a wakeup call to law schools and those involved with legal education and admission to the legal profession"); *see also* Austin, *supra* note 146, at 650-51 (stating that 23% of attorneys who are licensed and employed identify as problem drinkers, 28% have depression and 18% experience anxiety (citing Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. Addictive Med. 46, 46-52 (2016)).

202 *See* Madison & Natt Gantt, *supra* note 114, at 350; *see also* Organ, et al., *supra* note 163, at 145 ("Law students appear to be drinking more now than they were twenty years ago."); Janet Thompson Jackson, *Legal Education Needs a Wellness Reckoning*, U.S. Law Week, April 7, 2021, https://news.bloomberglaw.com/us-law-week/legal-education-needs-a-wellness-reckoning ("Lawyers have the dubious distinction of being among the most depressed professionals in the U.S., and the legal profession ranks among the highest in incidence of suicide by occupation.").

203 Krieger & Sheldon 2015, *supra* note 163, at 592.

204 *See* Nylund & Nylund, *supra* note 25, at 387.

205 Hutto & Gallagher, *supra* note 22, at 160.

courses that created and perpetuate the dominant law student narrative, the narrative can be broken into smaller parts to identify the assumptions and values that underlie different "problems." By mapping out the assumptions and connecting the dots between the assumptions and the discourses supporting them, students can begin to question and challenge beliefs and ideas that sustain the problem. In this space, students also start to see possibility in the form of "unique outcomes" or "sparkling moments;" these are events and stories that do not "fit" with the dominant story where the problem did not have, or was prevented from having, a negative influence.[206] The space allows for the creation of new "unique outcomes" as well.[207] The more of these outcomes students have, the more their successful resistance to the dominant narrative is foregrounded, pushing the dominant narrative to the side and permitting alternative narratives to emerge.[208] This enables students to "take back their storytelling rights"[209] and reauthor a new preferred narrative that better matches their experiences, values and desires, restoring hope.

A. Breaking Law Students Free from the "Box"

As one example of my use of Narrative Therapy in the clinical setting, I return to the remote case rounds following the pandemic's emergence where students were expressing feelings of uselessness and helplessness regarding their chosen profession. After giving them time to vent, I redirected the conversation and asked if any had heard of Narrative Therapy. They shook their heads. I gave a brief description that ended with telling them that as narrators of our own lives, as long as we remain alive and well during the pandemic, what happens now or next need not be an end; we all hold the power to extend or rewrite the ending or transform it into a new beginning.

To illustrate, I shared with them my 2012 international "service learning" exchange experience during which eight law Rutgers Law Students and I spent three days and nights in makeshift bomb shelters, building stairwells, and "safe rooms" while under heavy rocket fire in Beer Sheva, Israel.[210] I told them about the collective trauma we had

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206 *See* MORGAN, *supra* note 24, at 51-52; *see also* Nylund & Nylund, *supra* note 25, at 389.

207 See Combs & Freedman, *supra* note 30, at 1048 ("As people's preferred stories become more deeply rooted in the past, they are able to envision, expect, and plan toward more hopeful futures.").

208 *See id.* at 1045.

209 Hutto & Gallagher, *supra* note 22, at 158.

210 *See generally* Jennifer Rosen Valverde, *Hindsight is 20/20: Finding Teachable Moments in the Extraordinary and Applying Them to the Ordinary*, 20 CLIN. L. REV. 267 (2013) (describing my personal exploration of and reflections on an extraordinary interna-

experienced and the challenges we faced in returning to "normal" life when we came home.[211] Rather than accept their return home as the "end" of the experience, Rutgers students put together and held a formal presentation for their peers, faculty, alumni and local donors, and then engaged in a several months-long fundraising effort that resulted in raising sufficient funds to fully cover the cost of airfare and housing/food for four of their Beer Sheva partners to come to Newark the following fall so they could participate in a similar exchange program. In this manner, students extended and rewrote the ending of their/our individual and collective stories so that the end was positive and hopeful.[212]

To encourage the process of reframing in case rounds, I invited my current students to think of one *positive* thing they had done that week that they could attribute to a reaction to, or result of, the pandemic[213]—something we would continue to do weekly throughout the Spring 2020 semester. Answers included taking time to do YouTube yoga, meditating, taking long walks with a new pet, playing board games with family, returning to long-lost hobbies like puzzles and baking, catching up with old friends (by phone or Facetime), and more. Each student shared one "sparkling moment" in which they successfully resisted feelings of despair caused by the pandemic. As the hour came to a close, I reminded them that they are the narrators of their own stories and how they define and interpret this story is their choice to make. This became a weekly Narrative Therapy reframing activity.

The following week, I asked students to explore options for helping Clinic clients and their communities. I told them that there were countless possibilities, but to see and do something about them, one must be flexible and willing to pivot away from "traditional" notions of law and lawyering and use less traditional legal competencies taught in the Clinic but seldom are taught by the academy, such as: 1) Preventive Law—the active process of identifying and addressing social problems before they become legal problems, and legal problems before they become litigation problems; 2) Interdisciplinary Collaboration—the development of partnerships outside the discipline of law to broaden the problem-solving lens; and 3) Community Engage-

tional service-learning experience and the use of clinical pedagogy to translate the teaching moments that occurred in the extraordinary to more ordinary clinical experiences).

211 *See id.*

212 *See id.* at 282-83.

213 This is akin to Habit 3, or Parallel Universes, of The Five Habits by Sue Bryant and Jean Koh Peters. As with parallel universes, I invited students "to look for multiple interpretations" to reframe a situation, particularly at times where students were assessing the situation negatively. For more information about the Five Habits, *see generally* Byrant, *supra* note 17.

ment—the collaboration with clients and the community to identify and define problems, and develop and implement solutions that empower clients and communities as the drivers of social change.[214] I informed students they had a choice for the remainder of Clinic: We could hunker down and wait for a legal need to arise with which we could possibly assist—in other words, keep doing what the academy typically teaches students to do in the same manner and form—or we could pivot and be proactive, by contacting clients to identify any new needs and finding ways to help address them. Despite their anxieties and fears, students unanimously opted to pivot.

Students called their clients, all of whom were parents or caregivers of children with disabilities ranging from learning and behavioral disabilities, to Autism, Down Syndrome and Cerebral Palsy, to the medically fragile whose susceptibility to illness easily could result in death. With each client, students performed a social needs screening to assess child and family need in areas such as housing, food/nutrition, health, education, employment, finances, transportation, and safety. More than half of our client families identified one urgent issue—food insecurity, i.e. hunger. Clients' household incomes ranged from 50% to 200% of the federal poverty level. This translated to annual incomes between $13,100 and $52,400, respectively, for a family of four in 2020,[215] whereas the "real" cost of living, defined as having a "modest yet adequate standard of living," was approximately $94,000 for a four-person family residing in Newark, NJ.[216] Nearly all clients, except those without legal status, received food stamps, and all their school-age children, regardless of legal status, were eligible for and had received school breakfast and lunch five days per week.

Due to pandemic-related school closures and before the creation and distribution of pandemic food stamps (which increased the total amount of food stamps awarded and provided financial reimbursement to parents for the loss of school breakfast and lunch for children), families suddenly had to include the cost of their children's breakfasts and lunches in their budgets, an expense many could not afford. While some food pantries and towns began offering drive-thru food pick-ups, those persons without a car were out of luck, as walk-ins were excluded due to restrictions on in-person contact. On top of budgetary and transportation issues, many families were unable to get

214 *See generally* Rosen Valverde, *supra* note 131 (discussing these three competencies and their relevance to 21st century law practice).

215 Asst. Sec'y for Plan. & Eval., 2020 Federal Poverty Guidelines, U.S. DEPT. HEALTH & HUM. SERVS., https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2020-poverty-guidelines.

216 Family Budget Calculator, ECON. POL'Y INST., https://www.epi.org/resources/budget/.

to the supermarket, let alone a pantry, because the nature and extent of their children's disabilities and lack of childcare (or funds for childcare) required them to stay at home. This led to the birth of the Clinic's *Food for Families* program in early April 2020.

The Clinic collaborated with a local interfaith network of food pantries and a car service that provides free, non-emergency medical transportation to patients with Medicaid and certain private health insurance plans who require transportation assistance to medical appointments. The interfaith network had food pantry items available and, due to the sudden decrease in non-emergency medical appointments caused by COVID-19, the car service had vehicles and drivers with time. Through this partnership, Clinic families began receiving biweekly home delivery of one box of non-perishable food items (e.g. beans, rice, pasta, cereal and canned vegetables).

Unfortunately, one box of food lasted a mere 1-4 days depending upon family size. To supplement the pantry donations, the Clinic solicited commitments from colleagues, neighbors and friends to purchase $100-$150 worth of groceries for a family on a biweekly basis for a minimum of six weeks. Students obtained grocery lists of staple food items from each family along with a few preferred "treats." A donating partner then either purchased the food and delivered it to a central location for Saturday morning deliveries by local area volunteers, delivered the food themselves, or arranged for purchase and delivery with a grocery service. The program was such a success that we invited other clinics to refer their client families in need. Although the program was not sustainable for the long-term (some donating family members became ill with the virus, or lost their own jobs, affecting their finances), all client families in need received adequate food supply through early August 2020. By that time, distribution of pandemic food stamps and reimbursement for school breakfast and lunches had commenced, stores had restocked and reopened for business, and mask-wearing had become a new protective norm.

B. Re-Authoring the Dominant Law Student Narrative

The Food for Families program is just one example of several activities in which Clinic students engaged over the last year to accommodate the changing needs of clients and the community.[217] It is a

[217] Examples include helping families apply for unemployment and public benefits (e.g. Medicaid, NJ SNAP, telephone and utility assistance) by phone and online, surmounting obstacles to the application processes, and ensuring families received appropriate amounts of retroactive pay when so owed, a feat that often took hours and days; navigating the State's COVID testing maze for clients and, later, the State's vaccination maze; obtaining technology and internet access for students to participate in remote schooling; and collaborating with the Greater Newark Healthcare Coalition on a vaccination public awareness

prime example of innovative thinking and problem-solving. Relevant here, the program's creation served as a vehicle for exposing and deconstructing the legal academy's oppressive discourses that confine students to the "box." Moreover, its implementation was a "sparkling moment" that evidenced students' successful resistance to the dominant law student narrative and helped to "thicken" a new preferred narrative that better matched their values and desires. In essence, the program became a source for re-authoring the law student narrative and helped to restore hope.

The Food for Families program did not develop without questioning and some degree of passive resistance arising directly from the academy's principal discourses regarding legal education, law and lawyering. When discussing whether to address clients' food insecurity and brainstorming possible solutions, some students struggled to understand the relationship of the issue to the practice of law. They asked: What does this have to do with law? How do we fix this if the courts are not open? I know we are helping people and I want to do this, but how is this relevant to learning practical lawyering skills? Should we just give them a list of food pantries? And they commented: There is nothing we can file on because there is no legal issue; filing a lawsuit will take years; we can't change the law because politics are so polarized and the legislative process is too slow; and this is just another example of structural racism that has existed for centuries and is not going anywhere. In these questions and statements, I heard the legal academy's oppressive discourses loud and clear.

To "think outside the box" and act, law students had to challenge the dominant narrative of "this is not law so there is nothing we can or should do." They had to pull back the curtain on the assumptions and biases that lay beneath their questions and opinions to identify their root causes and to create space for creative thought and action. Taking on the role of guide, I countered their questions and statements with more questions. In response to, "what does this have to do with law?" I asked: How is this not law? How do you define what "having to do with law" means? When does a problem involve law? How do you determine this? What have you learned substantively about the meaning of law in school? How has this knowledge impacted your definition of "having to do with law"? How are you taught in law school? How do the teaching methods in law school influence your definition of "having to do with law"? Similarly, upon hearing a student express that since there is no legal issue there is nothing we can do, I asked:

campaign to get thousands of Essex County children, who were off-cycle in receiving routine vaccinations for illnesses such as measles and polio due to the pandemic, back on track.

How do you define a legal issue? Must something be a legal issue to qualify for legal help? Why or why not? What have you learned about the role of a lawyer thus far? Who decides what the role is? Why? What are the sources of your knowledge on this topic? Is there a role for lawyers to help prevent problems from becoming legal problems? Or to prevent legal problems from becoming litigation problems? In this manner, students explored the judgments underlying their questions and comments, and connected them to dominant discourses laden with assumptions and biases about the law and lawyering that they, unknowingly, passively had accepted. This opened the door to challenging the dominant law student narrative.

Students' research on and development of the Food for Families program provided further opportunity to explore and confront the academy's discourses. For example, their research on food stamps revealed that access largely is based on whether one meets a particular percentage of the federal definition of poverty and that the formula used to determine the amount of food stamps awarded dates back decades.[218] Thus, food insecurity is a problem created by law. They next examined the adverse effects of food insecurity on those afflicted and discovered that these effects frequently require *future legal involvement* due to links between nutrition and physical health, nutrition and child development/education, nutrition and disability, and more. In examining the history of food stamps and the federal definition of poverty, students observed how the law serves as a gatekeeper that protects the status quo and locks certain groups of people out of receiving aid and restricts their ability for advancement. They observed the effects of this gatekeeping function first-hand with their Black and Brown and low-income clients who were disparately affected by the pandemic due to pervasive historical and structural racism, evidencing that the law is far from neutral. Some students also experienced first-hand or witnessed this gatekeeping function in their own lives and with family members and friends, respectively. Students heard (and/or witnessed and experienced) in real time the agonizing "choices" that families must make between paying for food, rent, medication, diapers, hygiene products, and transportation, highlighting the ways in which the law and those in power create the conditions for suffering,[219] demonstrating that context does matter. Further, in brain-

[218] Notably, the Biden administration changed the SNAP formula in August 2021 for the first time in over 45 years. *See* Jason DeParle, *Biden Administration Prompts Largest Permanent Increase in Food Stamps*, N.Y. TIMES, August 15, 2021, https://www.nytimes.com/2021/08/15/us/politics/biden-food-stamps.html.

[219] *See, e.g.,* Sarah Buhler, *Painful Injustices: Clinical Legal Education and the Pedagogy of Suffering*, 19 CLIN. L REV. 405, 408 (2013) (identifying human suffering as "a signifier of political and systemic injustice").

storming how to address the problem, students learned that if they only searched for solutions in law, there may be none, but if they expanded their search to include potential solutions outside of law, they could find many.

While working on this program, students dissected and debunked many of the academy's oppressive discourses. They learned that knowledge of the law is not enough; that there are many ways to think like and *be* a lawyer; that lawyers are not restricted to the litigation toolkit when problem-solving; that not all limitations created by law must translate into limitations on the practice of lawyering; that a legal problem may not appear legal on its face; that the law is not race-, value-, or context-neutral; that the lawyer's civic and public duties do matter; that not all legal problems have solutions in law and, even if they do, law may not be the right solution; and that injustice can be fought in many forms. Debunking and disempowering these discourses paved the path for students to re-author their narrative.

Finally, the Food for Families program served as a "sparkling moment" for law students that reinforced the re-authoring of a new narrative. In implementing the program, students applied lessons they had learned in root cause analysis to live clients and communities. They used their knowledge of preventive law to interrupt the process of social problems becoming legal problems and litigation problems. They also exercised their collaboration and communication training and skills to partner with each other, with those of other disciplines, and with clients and community organizations on problem-definition and the development and implementation of interventions. In so doing, students discovered they not only could effect change, they did effect change once they stepped outside the traditional lawyering "box." This "sparkling moment" provided a valuable lesson for students that there is humanity in the law, there are "helping" and "loving" roles of lawyer,[220] and the law, when practiced expansively and creatively, does matter in extraordinary times. The moment helped to restore hope for law students, and the profession.

IV. Final Thoughts

> "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has."[221]

We know that traditional law school curriculum, teaching methods and the culture of the academy together construct boundaries that

[220] *See* Steven H. Leleiko, *Love, Professional Responsibility, the Role of Law and Clinical Legal Education*, 29 Clev. St. L. Rev. 641, 642 (1980).

[221] This quote is attributed to Margaret Mead; however, the exact source of the quote is unknown.

serve to perpetuate the status quo, i.e. the "box." Thus, the question becomes how do students break free from the "box" and create a new law student narrative when the academy does not want to change? To date, top-down universal legal education reform has had limited success, despite national reports critiquing the academy and changes to the ABA Rules to address some of the critiques. Foucault believed that the oppressive effects of modern power exist within the local sites of culture.[222] As a result, "efforts to address societal inequities need to be advocated for at the local level, championed from the bottom up, as the mechanisms of social control are dependent on people's active participation."[223] In line with Foucault, I believe that if law students want to re-author the dominant narrative, they must create, demand, and lead a cultural shift from the ground-up.

Many legal scholars consider clinical legal education the most significant large-scale reform to have taken root in the legal academy since its inception in the late 1800s.[224] When I think of the history of clinical legal education at Rutgers, I think of the Black law students' indictment of the law school's curriculum and practices due to race- and class-based inequities and social irrelevance on the heels of the Newark riots.[225] Students' activism, followed by Professor and Civil Rights Attorney Arthur Kinoy's pioneering article that lay the groundwork for clinical legal education,[226] led to the creation of Rutgers Law School's very robust Clinical Law Program.

A similar, though far larger, social and cultural movement is needed here. If law students refuse to get into the box, the dominant narrative eventually will lose power. The challenge, however, lies in how to expose law students to the academy's hidden oppressive discourses before students passively internalize the academy's norms and assumptions about the profession, i.e., how do we prevent students from getting boxed in? The onus falls upon us as teachers to reveal the existence of the "box" for all to see, by placing it on the learning agenda and facilitating students' exploration of it. This must take place not only in the clinical or service-learning settings, but across the legal academy. Although I provide examples here of using Narrative

222 *See* Kahn & Monk, *supra* note 72, at 9.

223 *Id*.

224 *See* Douglas Colbert, *Clinical Professors' Professional Responsibility: Preparing Law Students to Embrace Pro Bono*, 18 GEO. J. POVERTY L. & POL'Y 309, 323 (2011) (noting that legal scholars regard clinical legal education as the "most significant reform in American legal education since Langdell's case method approach").

225 *See generally The Rutgers Report: The White Law School and the Black Liberation Struggle*, *in* LAW AGAINST THE PEOPLE: ESSAYS TO DEMYSTIFY LAW, ORDER AND THE COURTS 1, 232 (Robert Lefcourt, ed., 1971).

226 *See generally* Arthur Kinoy, The Present Crisis in American Legal Education, 24 RUTGERS L. REV. 1 (1969).

Therapy in the service-learning and clinical law contexts, these examples in no way should be interpreted as a limitation on using Narrative Therapy in other law school settings, including, and perhaps most importantly, doctrinal classes. This would require faculty to adopt Narrative Therapy as an additional lens or theory to incorporate in their teaching. For example, in the fall of 2021, I will co-teach with a Rutgers colleague a first-year law and inequality course on race, bias and professional identity development that incorporates the Narrative Therapy lens and toolkit to help students begin to develop a positive professional identity. The techniques of exploration, deconstruction and re-authoring similarly can be used in other courses, such as contracts, torts and property, not only for purposes of countering the dominant law student narrative as I have done in this Article, but also to expose the dominant discourses that underlie the narratives of those respective areas of law and to chart a course with students for re-authoring them, e.g. where they perpetuate harm to certain groups or populations or fail to respond to societal needs of today, by brainstorming future advocacy possibilities. Just as with the nine-dot exercise at the start of this Article, the only limits on the use of Narrative Therapy in legal education come from the boxes in which we, as faculty and administrators, are placed and place ourselves.

I will close with an exercise. Over the first few weeks of each new semester, I ask students to write their answers to several questions: Why did you choose to study law? What does it mean to be a lawyer? What knowledge, skills and values must a lawyer have to be "good"? What have you learned in law school about "good" lawyering? How do you define success in the career of law? What motivates you? What do you want colleagues to say about you at your retirement? What do you want friends and family to say about you at your memorial? How do they compare? We discuss their responses individually and in case rounds. Then, I ask for a copy of their responses and urge them to put another copy in a safe place so they can look back on it—in one month, at the end of the semester, at graduation, after their first year of practice, and so forth.

Students' answers are insights into their personal and professional identities, including who they are and want to be as a person, and who they want to be or think they should be as a lawyer. Examining their retirement and memorial statements side-by-side, for some students, reveals a disconnect between their own norms and values and those they have internalized regarding the profession. Others find a disconnect when comparing their retirement and memorial statements with what law school teaches them about being a "good" lawyer and what it means to practice law. Exercises and opportunities for dis-

cussion and reflection such as this are essential to shine a light for students on the academy's universal, normative "truths" regarding the law and lawyering. Only when these "truths" are exposed will students have the opportunity, *should they so choose*, to challenge and resist them, and author a new narrative.

For those faculty reading this article, even if you have done this exercise already, take a moment and do it again. How do you want to be remembered as a person? How do you want to be remembered as a lawyer? And most importantly here, how do you want to be remembered as a teacher? With respect to the last question and this Article, the answer for me is clear: I want students to remember me as honest, straightforward, committed, caring, thought-provoking, determined, supportive, resilient, persistent, encouraging and inspiring. Most of all, I want students to recall that I did all in my power to expose what the dominant discourses say the law *is* and to open students' minds to all the law *can be*, and that I supported them in their individual paths of choosing and becoming the lawyers they *want to be*.