

NARRATIVE UNDERSTANDING: REVISITING THE STORIES OF *LAY LAWYERING*

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ABSTRACT

This article examines the tentative beginnings of Gerald López's decades-long project of using storytelling as a method to describe, understand, and analyze the work of lawyers. It evaluates his 1984 article, Lay Lawyering, for its contributions to the development of narrative as a descriptive, explanatory, and critical device for comprehending the complex and fraught work of lawyers. It begins with a detailed critique of the four parts of Lay Lawyering. In the article, López first identifies problem solving and stock stories as the key concepts defining the work of the lawyer and then tells three stories from three perspectives about the efforts of a son to get a cab for his mother so she can seize the opportunity to attend a concert at Carnegie Hall. The article offers three critiques of this early work. First, the narratives of Lay Lawyering obscure the client. Second, the abstracted, decontextualized quality of all the stories creates the sense that problem solving is abstracted, too. Third, the narrative about lay lawyering emphasizes the internal process of thinking about how stock stories are implicated in the son's process of solving his mother's problem. Without depicting action and its results, the accounts are incomplete and distorted, offering no analysis of the role of acting in challenging stock stories and in generating new ways to solve problems. The article then places Lay Lawyering in the trajectory of López's work up to REBELLIOUS LAWYERING and within the broader development of narrative theory of law

Stories are essential to REBELLIOUS LAWYERING.¹ From the Introduction through the Epilogue, López tells stories. By the time he published this influential text in 1992, for almost a decade he had been casting his legal scholarship in the telling of stories. He tells stories about lawyers who tell and, perhaps more importantly, listen to stories. He tells stories about people who become clients. He tells stories about the relationships between lawyers and clients. He tells

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¹ GERALD P. LÓPEZ, REBELLIOUS LAWYERING (1992).

stories about the communities in which clients live and lawyers work and maybe live, too. He tells stories about the relationship of all these stories to creating change. He tells stories about why and how he tells stories about clients, lawyers, and communities. He tells stories about teaching people to be lawyers. He tells stories about how he understands his role as the narrator of these stories. Narrative is constitutive of López's project.

During the critical period surrounding *REBELLIOUS LAWYERING*—late 1980s and early 1990s—other scholars, too, were using narrative as a device to produce new understanding of law and generate complex and compelling accounts of clients, lawyers, communities, and the relationships among them.² Perhaps no one else, however, demonstrated such unswerving commitment to narrative as a method for describing, knowing, and analyzing the work of lawyers. As López began this endeavor years earlier in *Lay Lawyering*, he proceeded as a pioneer, without structure or framework.³ He used and adapted concepts from the literature about narrative in other disciplines, while drawing upon and contributing to the burgeoning clinical scholarship about lawyering. His stories provided the material through which he communicated and advanced his thinking. Theory uniting narrative and lawyering, however, was still to come.

In the twenty-five years since the publication of *REBELLIOUS LAWYERING*, scholarship about narrative theory and narrative techniques in law continues to flourish, deepening our understanding of law and lawyering.⁴ Most notably, Anthony Amsterdam and Jerome

² See generally Anthony V. Alfieri, *Speaking out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS 619 (1990-1991) (discussing “the rationality and discourse of lawyer storytelling” while providing the story of Josephine V. as an example to emphasize “contradictions” in the work of well-intentioned poverty lawyers representing subordinated individuals); Clark D. Cunningham, *A Tale of Two Clients: Thinking about Law as a Language*, 87 MICH. L. REV. 2459 (1988-1989) (finding that the use of stories helps us to understand and convey what an individual “means”); Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1991-1992) (recounting two clinic students’ experience representing “Mrs. Smith,” who was willing to risk jail to tell “her story”); Lucie E. White, *Subordination, Rhetorical Survival Skills, & Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFFALO L. REV. 1 (1990) (illustrating the use of narrative through the story of “‘Mrs. G.,’ a woman subordinated by race, gender, and class, [as she] attempts to make herself heard in [a welfare] hearing”).

³ Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984).

⁴ See generally Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 CLINICAL L. REV. 41 (1994) (retelling multiple stories as examples of using stories to help clinical students “to hear the common call and make sense of everyday experience within the sanitized atmosphere of the law”); Carolyn Grose, *Flies on the Wall or in the Ointment – Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews*, 14 CLINICAL L. REV. 415 (2007-2008) (retelling one of Professor Grose’s first experiences as a clinic supervisor as a means of discussing a supervisor’s role in client interviews); Margaret E. Johnson, *An Experiment in Integrating Critical Theory and*

Bruner in *MINDING THE LAW* bring to bear their vast knowledge of narrative theory to explain how understanding narrative helps us decipher how lawyers persuade courts, how courts construct their understanding of law, and how these stories shape our collective lives.⁵ As narrative has become a critical feature of scholarship about law and lawyering, we learn different ways that it has the potential to produce insight and understanding, as well as to distort.⁶ This symposium, *REBELLIOUS LAWYERING AT 25*, exploring the impact of López's work⁷ presents the opportunity to examine how he, as a practitioner of narrative, has employed narrative in explicating lawyering, understanding lawyering, and creating his vision of rebellious lawyering. Through this retrospective, we can detect the trajectory of his use of storytelling and identify those dimensions of his narrative project not fully realized.

Lay Lawyering,⁸ published eight years before *REBELLIOUS LAWYERING*, is López's first piece structured around and grounded in the use of narrative as a descriptive, explanatory, and critical device for comprehending the complex and fraught work of lawyers.⁹ Until this retrospective, I had read *Lay Lawyering* as fitting easily into López's method for grasping and communicating his views about what he

Clinical Education, 13 AM. U. J. GENDER SOC. POL'Y & L. 161 (2005) (utilizing a hypothetical story as a means of explaining the role of critical theory to clinic students); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994-1995) (telling "the story of a criminal case in which the issue of race played a key role in [] clinic students' development of the case theory").

⁵ ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW: HOW COURTS RELY ON STORYTELLING, AND HOW THEIR STORIES CHANGE THE WAYS WE UNDERSTAND THE LAW – AND OURSELVES* (2000).

⁶ See Carolyn Grose & Margaret E. Johnson, *LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS* (2017). See also Flora Di Donato, *Constructing Legal Narratives: Client-lawyers' Stories*, in *EXPLORING COURTROOM DISCOURSE* (Anne Wagner & Le Cheng eds., 2011), https://www.researchgate.net/publication/256496363_Constructing_Legal_Narratives_Client-lawyers%27_Stories (providing insights on developing narrative that includes an emotional perspective intertwined in legal facts). My work on narrative in the lawyer-client relationship seeks to demonstrate how narrative theory can yield narrative practices that help lawyers develop better understanding of their clients' lives and their clients' desires in seeking help through lawyers. Stephen Ellmann, Robert D. Dinerstein, Isabelle R. Gunning, Katherine R. Kruse, & Ann C. Shalleck, *Narrative Theory and Narrative Practices*, in *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* (2009).

⁷ 23 CLINICAL L. REV. 1 (2016); 23 CLINICAL L. REV. 471 (2017).

⁸ López, *supra* note 3, at 2.

⁹ In an early article, *Latinos in the Law: Meeting the Challenge*, López identified the challenge he would undertake: In the "drama" in which Latinos seek to define "where we are and where we should be going," he declared that "whether we like it or not and for better or worse, lawyers are central to this drama. . . . We must . . . begin to understand what our representatives do and what might account for our feelings about their place in our lives." Gerald P. López, *Latinos In the Law: Meeting the Challenge*, 6 CHICANO L. REV. 1, 1-2 (1983).

came to call in later work *rebellious* lawyering. Here, as elsewhere in his scholarly work, he deploys stories. While he may have inhabited the role of legal academic as storyteller fully for the first time in this piece, however, the story López tells in *Lay Lawyering* and the way he tells it anticipate, but also differ from, how he uses stories in his later work. By exploring some of the key features of this early piece, I examine how López's storytelling in *Lay Lawyering* reveals a tentative, partial, aspirational beginning, beset by problems, to a project that he continues to revise and expand in new directions.

At this beginning of López's project, we can observe how the choices he makes in framing and recounting stories about lawyering reflect his view about those aspects of lawyering fundamental to his emerging endeavor. Seeing his decisions can help others who draw upon narrative in framing their own stories about law and lawyering comprehend how narrative devices both reflect and shape our descriptive and critical projects. The stories we choose to tell, how we tell them, and for what purposes depict our struggles, our aspirations and fears, our understanding of how best to do the work of lawyering, and our beliefs about how lawyering matters to lawyers, to the people who look to lawyers for help, and to possibilities for justice. Perhaps most importantly, our stories have the potential to help us in those moments when we act, seeking to realize our and our clients' hopes, while sensing our limitations.

Lay Lawyering begins with abstraction, an approach that seems starkly dissonant in a piece propelled forward through the telling of multiple stories by different storytellers. In his brief Introduction to the piece, López as academic provides abstract definitions of the two major concepts that he, as narrator of the entire story, will seek to explicate through the accounts that follow. While his bold, authoritative, abstract assertions about the meaning of lawyering perhaps express López's reliance on a dominant form of academic discourse, they also highlight austere his search for concepts that may prove useful in hypothesizing a different way to comprehend lawyering. First, López defines lawyering: "Lawyering means problem-solving," which often requires "trying to persuade others."¹⁰ Second, he imports a key concept from narrative theory to analyze lawyering. "We see and understand the world through 'stock stories,'" a concept he leaves vague and formless, spelled out only in a footnote as "'scripts,' 'schemas,' 'frames,' and 'nuclear scenes,'" concepts used in "[t]he substantial literature about thinking in story form [that] ranges across disciplines."¹¹

¹⁰ López, *supra* note 3, at 2.

¹¹ *Id.* at 3.

López's goal in using these two concepts is to show that the activity known as lawyering is actually what all people do—whether or not they are lawyers. “We can see lawyers’ problem-solving simply as an instance of human problem-solving,”¹² hence the title. For López, to solve problems requires that lay lawyers understand and manipulate stock stories. Knowledge of this lawyering activity rests in “daily living,” in deciphering the “concrete, mundane moments of problem-solving.”¹³ He makes these abstract propositions about lawyering accessible and compelling through the story that follows—a story of a son seeking to get a cab for his mother.

López declares his reasons for using a story to explain the role of problem solving and stock stories in lawyering: a story serves as an “empirical statement,” explaining “how the world actually may operate” and it functions as “a metaphor,” giving the reader a basis to “test the ‘truth’ of [his] version of human problem-solving activity.”¹⁴ López wants us to look to the narratives he uses to understand his vision of lawyering as a legal subset of human problem solving. There is also a deeper link between the two concepts that López chooses. If lawyering is the art and practice of solving a problem, for López, deciphering the power of stories—and particularly the central role of stock stories in shaping understanding and interpretation of a problem—is a way to manage a problem, or more accurately to manage knowledge of the problem.

Along with understanding and interpretation, however, action is central to solving problems in everyday living. Yet López's two abstract definitions in the Introduction provide little direction about whether and how he connects problem solving and stock stories to action. If he means to convey that managing knowledge of a problem is part of acting to solve the problem, he offers us no other concepts to elucidate how storytelling works in deciding what to do and how to act to get to solution of a problem or how taking action can reshape understanding of the problem.

The first story, “New York, New York: A Friday Evening,” is an account of a frantic effort of a son to get a cab for his mother, who has never ventured beyond California or Arizona, and wants to seize an unexpected opportunity to attend a concert at Carnegie Hall. This performance promises to be a highlight of her first trip to Manhattan and to cap off an already exciting introductory day in the city. The son and mother are staying in a fancy apartment of the son's friend on the Upper East Side of Manhattan and the son's mission is daunting.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *Id.*

Even on Park Avenue, the competition for cabs at this time and place is fierce. The son must act quickly and skillfully to get his mom to her destination before the concert hall doors close. Like the Introduction, this story told by an unidentified narrator, which consumes much of the rest of the piece, is constructed largely with abstractions. The few seemingly orienting details serve largely as abstract markers of familiar aspects of the world, meant to trigger in the reader stereotypical associations about the nature of the problem facing the son.¹⁵

The narrator introduces two characters at the beginning of the story, Son and Mom, visitors to Manhattan from L.A., staying for “free” at the “posh” Park Avenue apartment of a friend of Son, on a mission of “sightseeing and shopping.”¹⁶ Son is first and foremost identified as the “lay lawyer,” signaling to us that he will embody López’s goal of explicating the concept of lay lawyering. Mom has no role other than mom, identified only in relationship to Son. While López asserts that they are both “particular persons,” as well as “types,”¹⁷ he places us in an abstracted story, inhabited principally by Son and Mom, about whom we have little information from which to ascertain their particularity. Rather than our seeking their particularity, López expects and wants us to “impute to them concerns and values.”¹⁸

The other major characters in the story are Man, who is hailing a cab on Park Avenue in Manhattan—a cab that Son wants to secure to take Mom on the last-minute trip to Carnegie Hall to hear Pavarotti perform—and Cabbie who is driving the cab that Son wants. The narrator gives us even fewer details about Man and Cabbie than about Son and Mom. They are only types, also with no particularity in this story. Part of Son’s predicament is having no particular information about Man or Cabbie in making decisions about how to get the cab for Mom.

Unlike the characters, the setting is depicted with some specificity, at least as to place and time: 7:42 on a Friday night on the corner of Park Avenue and 86th Street. However, the characters have a transitory relationship to this setting. They are not in their home or their community. They are clearly of another place, visitors with ties through friends who live in Manhattan. They have no stake in understanding or mastering the skills of getting a cab in Manhattan beyond

¹⁵ The transformation of taxi service into car transportation services constructed around computer platforms and mobile apps heightens the contemporary reader’s awareness of the stereotypical associations that are necessary for understanding the problem.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ *Id.*

this one encounter. The setting matters only in the ways that the place and time provide information about the nature of the task at hand: getting a cab quickly when another person, Man, well-dressed and well-coiffed, with suitcases and briefcase in tow, is poised to secure the available taxi. The Carnegie Hall, Pavarotti concert destination, while attractive to Mom as a New York-type event, does not appear to be of much distinctive importance in her life and matters to Son principally as a way to make sure he “pleased” Mom.

The narrator describes the obstacles to getting a cab¹⁹ with specificity, but the setting and the circumstance of the brief visit signal that this is an idiosyncratic event, detached from Son and Mom’s regular activity. The details about securing the cab, which appear in contrast to the schematic rendering of the characters, heighten the sense of the disconnect between the specific problem and any larger story about Son and Mom, who they are and what their lives are like. López’s story of getting a cab, told through a narrator, feels abstracted from any context in the lives of the characters. Rather, Son’s process of confronting the task at hand, a mundane, commonplace assignment with a small complicating twist, emerges as the center of attention. Thus, López constructs a story about a lay person, identified as a lay lawyer, seeking to solve a problem as a representative of another, a problem that appears mundane, but in practice requires much insight and analysis and the use of many skills. From the perspective of Son and Mom’s lives, the problem could be any problem.

In the narrator’s story, told from the perspective of Son as representative of Mom, Son seeks to understand the problem and the persuasion necessary for solving the problem. First, Son thinks that comprehending the stock stories implicated in his circumstance is key to his mission. Son considers as part of the stock story that a rule of “‘first-in-time’ priority” prevails.²⁰ Second, Son considers two routes to a solution, each of which requires convincing a different audience for whom overlapping but somewhat different stock stories apply. One segment of the story involves considering approaching Man to induce him to relinquish his seemingly superior claim to the cab under the priority rule. In the next segment, Son considers appealing to Cabbie, identified as “the intervenor,” to adjudicate the dispute over the cab in favor of Mom.²¹ These two segments of the story correspond to/present metaphors of deploying stock stories in different

¹⁹ Within Amsterdam and Bruner’s narrative theory, this aspect of the story would most commonly be known as “the trouble.” See AMSTERDAM & BRUNER, *supra* note 4, at 129-31.

²⁰ López, *supra* note 3, at 4.

²¹ *Id.* at 37.

sorts of lawyering activity. The activity of convincing the man to relinquish his claim to the cab involves persuading another person outside a formal legal forum to agree to some desired result. In lawyering, this activity could occur in different legal contexts. It may occur in the context of persuading an opposing party in a negotiation to relinquish some claim or as part of an informal plea to an employee of a government agency (such as a housing authority) or a private institution (such as a hospital or a bank) to take some discretionary action that benefits a client. The activity of convincing the cabbie to decide between Mom and Man (or at least to arrive at a result that meets the needs of both Mom and Man) could occur in any informal or formal adjudicatory or mediation setting.

López uses these two segments about Son's commonplace efforts to secure the cab to depict "lawyers' problem-solving simply as an instance of human problem-solving,"²² not to depict how these efforts relate to the lives or experiences of Son and Mom. The meaning of the task of securing the cab rests in its representativeness of lawyering activity. The account of the activity necessary to secure the cab matters for what it reveals about the activities of lawyers as they solve problems and the capacity of lay people to do what lawyers do, not for what it reveals about Son or Mom or about their trip to New York City.

Following the story entitled "New York, New York: A Friday Evening," López presents a different version of the story, with different characters—there's no Man or Cabbie—and with a focus not on the act of getting a cab but on Son's planning with Mom for the trip to New York. In this relatively brief portion of the article, López abandons the narrator as the storyteller, announcing the shift of that role first to Son and then to Son's friend. Son, in his account, entitled "Storytelling According to Son," relates all he has done to prepare for what has appeared in the narrator's account as an unanticipated opportunity for Mom to go to a Pavarotti performance requiring Son to respond immediately.²³ In Son's story, Mom now appears as a person with needs, desires, preferences, and values. Son's story is filled with details, about Mom—the significance of the vacation, the values guiding Mom's desires for this time in New York, friends in New York, transportation needs throughout the trip, Son's role in the vacation, Son's efforts to respond to and further Mom's interests, all the contingencies and alternatives considered as Mom and Son planned for the trip—and Son's views about Mom's decisions.

Mom sees being able to grasp unanticipated opportunities as an

²² *Id.* at 2.

²³ *Id.* at 55.

exciting part of the trip. “She knew that certain of my friends might have theatre, concert or game tickets available at the last second, and she wanted to take advantage of all there was to do in New York.”²⁴ Mom also knew that getting a cab at the last minute might require convincing others to respond to her need. Son and Mom, as well as a network of New York friends, emerge as particular individuals, not just types, and the Manhattan setting now seems connected to who these people are and what this vacation means to them. The problem of getting the cab now has a context, with the predicament facing Son placed within the larger meaning of this particular circumstance in Son and Mom’s lives and relationships.

As in the narrator’s story, this portion of the story invokes lawyering activities—this time, strategic planning and client counseling. However, it does so from within the mind and in the voice of one of the participants in that activity—Son as lay lawyer seeking to create the trip to Manhattan that Mom wants. He tells the story of planning with Mom for the vacation in New York, particularly for uncertainties about transportation, including her decisions about what to do in anticipation of possible problems. López proclaims the shift from the third-person omniscient voice to the first-person narrative voice: “Son now represents Mom from within his own version of the lay lawyering conception this essay has developed”²⁵

This shift in storyteller signals the importance of understanding lawyering not just through the eyes of an omniscient observer or commentator, but as the lawyer experiences it. The situated understanding of the lawyer rooted in the experience of lawyering, not just the outside observations of others about lawyering, emerges in this story as fundamental to building full and accurate understanding of what comprises lawyering. Son begins his account by objecting to the narrator’s implicit characterization of him as “unprepared.”²⁶ He says, “That image is fiction, at least as a description of me, and unbecoming to boot. I’m proud of the way I’ve thought through both how to resolve and how to avoid conflict; what others apparently perceive almost pejoratively as good intuitive thinking is the product of particularly self-conscious and disciplined work.”²⁷ Son asserts that the story of lay lawyering told without including the experience of the lay lawyer fails to capture all that goes into effective representation. The cab story told by the narrator is incomplete and, therefore, false without including what Son has done to prepare with Mom for this

²⁴ *Id.* at 57.

²⁵ *Id.* at 56.

²⁶ *Id.*

²⁷ *Id.*

moment.

Critical parts of lay lawyering, as with any lawyering, are invisible to an outside observer and, thus, the observer is unable to understand the concerns and questions that underlie observable lawyering activities—here, convincing Man or Cabbie to give Mom the cab. The time frame of the story also must shift. The narrator can begin the story at 7:30 when the phone rings with the offer of Pavarotti tickets because the problem of quickly getting a cab seems to start with this event. The Son, however, insists that the story of getting the cab must begin when he and Mom began planning the trip and must include the dynamic of anticipating contingencies and deciding what to do about them. The predicament Son faces at 7:33, when he must start to respond effectively to this opportunity “to take advantage of” one of the anticipated possibilities for “theatre, concert or game tickets available at the last minute,” only makes sense to him as lay lawyer when understood as flowing from all the decisions he and Mom made while preparing for the trip.²⁸ He represented her then, too. While the immediate goal might be getting Mom to Carnegie Hall before 8:00 and the immediate problem is getting a cab under difficult circumstances, the longer-term goal has been to create the vacation that Mom wants, including handling transportation in New York City. The trouble of getting a cab in these circumstances means something different in light of the overall trajectory of the story.

It is not surprising that López shifts to the Son’s voice when it comes to telling a story about planning with Mom or helping Mom make decisions about what and how to plan; those aspects of lawyering that happen within the lawyer-client relationship are easily obscured from the understanding of an observer. The move away from abstraction in the narrator’s story toward specificity and particularity in Son’s story is also not surprising. While Son could tell a story that presented himself and Mom as abstracted figures disconnected from the context in which the event of hailing the cab occurs, that story would not serve Son’s purposes in offering his account of his role in Mom’s planning. He wants to give a convincing account of his genuine and thorough efforts to help Mom, as she wanted to be helped. It’s not just that he is “proud” of the job he has done; he declares, “I take my job of helping Mom . . . seriously.”²⁹ He realizes that others’ inclination “to treat lightly” and therefore underestimate the value of all that he does in “representing Mom” could work to his advantage in convincing Man or Cabbie to take Mom. Nonetheless, the lack of recognition for the complexity of the work or his commitment to its suc-

²⁸ *Id.* at 57.

²⁹ *Id.* at 56.

cess galls him.³⁰

Explaining himself convincingly, if only to the reader, requires context and specificity about arranging the vacation. It would not have been enough to include in his story only the abstract account of what he did:

Once Mom agreed to take me up on my offer to vacation in Manhattan, I tried to help her sort out her needs and her wishes. . . . I then described for Mom the choices available to assist her in achieving her goals while avoiding conflict or at least minimizing the chance of unsuccessful outcomes to conflicts. Like all good planners, I explained to her what we might do at and from that time either to avoid having to deal with future audiences or to increase our chances of persuading future audiences.³¹

This abstract, conclusory pronouncement by itself would appear self-serving and unpersuasive. To contest the narrator's account convincingly, Son relates in great detail the specifics of planning with Mom for transportation, including all the decision making related to the risks of getting a cab in Manhattan.

His story includes details of what questions he raised, what alternatives he offered, what investigation he did, what efforts he made, and what discussions he had. He describes Mom's responses and his understanding of her values and preferences in making particular choices. He expresses his confidence that the planning decisions fulfilled her wishes. Describing his role, Son says, "[A] lay lawyer must deal with . . . not only what stories someone like Mom is willing to have told about her, but what stories she is willing to live into the future."³² Mom had excluded alternative arrangements for responding to the sort of experience that the Pavarotti tickets presented: "She had decided that what best suited her needs was not to tie things down, but rather to be prepared to tell the most compelling story to any number of relevant audiences in the event that she had to get somewhere in Manhattan on a moment's notice."³³ Mom knew that she "may be disappointed" but she understood "this was a risk."³⁴ Son's immediate predicament, whatever the risks of failure it presents, is, according to Son, in furtherance of Mom's goals.

If the point of the narrator's abstract story about Son's efforts to get a cab is to validate the capacity of lay people to do what skilled, effective lawyers do in negotiations or in advocating before a decision maker, the point of Son's story is to demonstrate that lay people un-

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 58.

³³ *Id.*

³⁴ *Id.* at 59-60.

derstand the complexity of the lawyer-client relationship that fosters effective representation, even before advocacy to an outside audience. Achieving the apparently successful outcome of getting Mom to Carnegie Hall in time may not be most important in the Son-Mom relationship. In lawyering language, Son presents himself in his narrative as a skilled, responsible, committed Mom-centered lay lawyer.

To end his portrait of lay lawyering, López turns to a final narrator, Son's friend. Not just any friend, this friend appears as one "bothered by" Son's account.³⁵ Through the friend, López invokes the voice of a seemingly friendly critic, but with a return to abstraction. There is no indication of how Son's friend is connected to any of the stories recounted so far. Various friends of Son appear in the narrator's story and Son's story, but there is no indication if this friend is among them. We know nothing of the nature of Friend's connection to the setting, although he makes a claim to be of Manhattan. We know that he considers himself a part of Manhattan because he chides Son for his failure to "grasp" Manhattan.³⁶ In Friend's account, Son, Mom, and Friend are all skeletal figures, present only in their roles. They have no encounters with each other, only the lecture Friend gives to Son. Their relationships are without history or distinctive features that create particularity. As to the events of getting the cab or planning to get the cab, Friend appears only as a reader of the narrator's and Son's accounts. His connection to the story comes from his claimed entitlement to judge Son. He seems assured that Son will listen to him, will care about his misgivings, will respond to his entreaties.

Friend's attack is harsh, unsympathetic to Son's work to be an effective lay lawyer for Mom, either as an advocate to Man or Cabbie, or as a counselor to Mom. He derides Son's attitude as "cocksure" and questions his portrayal of himself.³⁷ "Are you so wise? So clever?"³⁸ Perhaps to establish his own moral superiority, Friend claims an alliance with Mom, suggesting that Son has done harm to her. "Your know-how orders her world. But this order may do violence to Mom's experience of life."³⁹ Without giving any justification for his adopted role of rescuing Mom from Son or providing any history of his own knowledge of or connection to Son or Mom, Friend asserts, based on the stories, that "whether or not Mom's voice has

³⁵ *Id.* at 60.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

been heard is hardly obvious.”⁴⁰ Demanding access to Mom’s account of events (“I want to hear Mom”), Friend acknowledges but dismisses the danger that he “too will monopolize conversation with her.”⁴¹ He grounds his privilege to intrude, uninvited—on Mom, on Son and Mom’s relationship, and perhaps on Mom’s view of her trip—in friendship. “I’d be no friend not to disturb her understanding as well as your self-satisfaction.”⁴²

While Son’s friend invokes danger to Mom as the basis for his incursion, his strongest complaint about Son’s version seems to attach to Son’s view of Manhattan, which Friend claims as his own domain, if not his home. He accuses Son of translating “what we are and what we do into morally acceptable and technically useful information.”⁴³ Friend claims that Son, in asserting technical know-how, has “lost something in the process.”⁴⁴ Son has “accepted [Manhattan] on its own terms”⁴⁵ in order to get things done. While Friend associates himself with Son’s acceptance of a standard view of Manhattan, recognizing he does the same, the alliance is nebulous. Friend claims that he, Son, and Mom are all “outsiders” to this understanding of Manhattan as Manhattan presents itself.⁴⁶ To accomplish his goal of getting a cab for Mom, Son has grasped only the “easy knowledge” about Manhattan.⁴⁷ He has “abandon[ed]” any quest for more complex understanding.⁴⁸ Friend believes that this flight from the knowledge that is harder to achieve results in “denying” who Son, Mom, and Friend are, a process they must stop, “Right here. Right now.”⁴⁹

The meaning of Friend’s critique remains cryptic, particularly since Son and Mom, who are tourists on a vacation, seem to adopt, even embrace, their outsider status. Nonetheless, Friend seems to be asserting that Son, by obscuring other, less easily knowable, stories about this place and the events that occur there, may have done some unspecified harm to “who we are.”⁵⁰ Friend ends with a judgment about lay lawyering. He declares that “[w]hat you’ve learned about lay lawyering is certainly better than nothing.” It is a “place to begin” as it “opens up some space.”⁵¹ But, it is “not right.”⁵²

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The narrator's story and Son's story elucidate lay lawyering from two perspectives — one of observers of lawyering and the other of lawyers who participate in lawyering. Both stories work to validate different aspects of lay lawyering—those visible to observers and those hidden from all but persons within the representational relationship. This final story told by Son's friend questions, once again abstractly, the whole project of lay lawyering. Lawyering, lay or otherwise, presents the danger of “denying who we are.”⁵³ Mom, the represented, can get hurt; Son, the lay lawyer, can get hurt; an unspecified “we” can get hurt, too. According to Friend, the stories about lay lawyering have done nothing more than create a space for further dialogue. Friend ends his story and the article with a plea to Son, and presumably to all readers: “[L]et's talk.”⁵⁴

Concluding with Friend's story, López makes his ambivalence about the project of understanding lawyering, whether professional or lay lawyering, an essential part of his lawyering story. If the point of the narrator's abstract story about Son's efforts to get a cab is to validate the capacity of lay people to do what skilled, effective lawyers do in negotiations or informal advocacy or in advocating before a decision maker and the point of Son's story is to demonstrate that lay people understand the complexity of lawyer-client relationships that foster effective representation, even before advocacy to an outside audience, then the point of Friend's story is to destabilize the project of validating lawyering activity, even lay lawyering. Danger lurks in the representational role.

Friend's warning operates as the conclusion to López's story. Friend's incipient and inchoate critique returns to the abstraction that characterized the Introduction. In the Introduction, López as academic confidently presents lawyering as valuable. It is about problem solving, the most fundamental of human endeavors.

Problem solving involves perceiving that the world we would like varies from the world as it is and trying to move the world in the desired direction. Solving human problems sometimes requires changing the physical world or overcoming ourselves, but it also can involve trying to persuade others to act in ways that will change the world into something closer to what we desire.⁵⁵

Lawyers, lay and professional, do this work. The critic, who appears as Friend in the conclusion, unsettles the confident tone of the Introduction and challenges, equally confidently, the value of lawyering as

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 2.

problem solving, but with only the kind of abstract generalities that characterize the Introduction. Those who assume the role of lawyer risk undermining those whose problems they seek to solve. They may do so by distorting “an aspect of what we are and what we do,” by “monopoliz[ing] conversation,” or by “[s]earching only for easy knowledge.”⁵⁶ These dangers of problem solving remain ungrounded in any particular relationship to the stories told by the narrator and Son that have come before. The audience, the reader, is left to contemplate the stories and the abstract confident claims of the Introduction and Friend simultaneously.

We can see in the layered stories López tells in *Lay Lawyering* the beginnings of his use of narrative as his method for explicating and understanding lawyering. Familiar with the culmination of that project (for the purposes of this symposium) in REBELLIOUS LAWYERING, we recognize important features of the later stories that are not present here or appear in different form. In order to analyze the beginning of López’s project of articulating through narrative a vision of REBELLIOUS LAWYERING, I identify three aspects of the stories in *Lay Lawyering* that López later revises. The narrative choices he made in *Lay Lawyering* place in relief the ways that narrative eventually comes to function in making “One Chicano’s Vision of Progressive Law Practice” an important text for those interested in or committed to realizing the meaning of that vision.

Perhaps most notably, in the narratives of *Lay Lawyering*, the client is obscured. Mom’s identity appears as a shadow, although her desires, whether for a cab to get to the concert or for a good vacation, are the different but related goals of the representation depicted in the piece. As a character in the narrator’s story, she appears only in her connection to Son’s actions. Son is the protagonist in all the events. In “Storytelling According to Son,” she emerges more fully but refracted through Son’s understanding of her. In Friend’s critique, she is an abstract weapon used against Son, a tool to announce Son’s failures. While *Lay Lawyering* is at one level three stories of Son’s representation of Mom, López is only at the beginning of making Mom a significant character, in the narrator’s, Son’s, or Friend’s story. Son’s challenges in representing Mom never become a vibrant, compelling part of the story because Mom never emerges as a real character with any capacity to affect or shape the story. Through the stories in *Lay Lawyering*, López announces the importance of representing Mom well, as Mom wants to be represented or as Mom wants to appear in the world, but in the stories he creates, he gives us little mate-

⁵⁶ *Id.* at 60.

rial from which to engage with Mom. The particularized accounts that might illuminate Mom are missing. While he seems to endorse the centrality of the client in representation and the need for the lawyer always to reference and engage with the needs, situation, and skills of the client, López, through the stories of the narrator, Son, and Friend, does not present the client as a fully developed character in his account of lawyering.

In 1989, in *The Work We Know So Little About*, López begins to change direction.⁵⁷ He tells the story of Maria Elena, a woman who lives with her two children in the Mission District of San Francisco, works as a housekeeper, mother, tutor, seamstress, and cook, and participates in various grassroots efforts with other people in her community to change conditions in their lives. The evolving story of Maria Elena is a critical element in López's presentation of a critique of legal education. In *REBELLIOUS LAWYERING*, the stories of lawyers working in different sorts of legal practices all include detailed, contextual, richly textured accounts of clients, presented through different narrative formats, such as transcripts of events, diaries, or documents from practice. In the narratives through which López presents his vision of lawyering, the client becomes central.

Second, the setting of the stories in *Lay Lawyering* is strikingly different than the settings of López's later work. In *Lay Lawyering*, Son and Mom are not situated in or identified as part of a community. They are travelers on a vacation presented with a problem that appears in the stories as a problem that is an element of the vacation. Son's efforts in undertaking to help Mom plan for or solve this Manhattan problem seem primarily connected to helping her function in the foreign territory of Manhattan. If there are other ramifications of Son's efforts in his relationship with Mom, we, the readers, can only imagine or speculate about what they are. Only Friend seems to have any connection to the setting beyond its being the site of Mom and Son's vacation. Friend seems to have a stake in how Son views Manhattan in his ruminations about how to solve the problem of getting the cab. We get little insight into why López chooses to situate his characters in this way in explicating lay lawyering. Making the lawyering task of problem solving seem abstract or generic, disconnected from context, is part of the point. Wherever a problem occurs, even in a strange place, the lawyer, lay or professional, using stock stories, undertakes the process of solving the problem at hand.

Only later in *REBELLIOUS LAWYERING* does López provide insight into his earlier choice of setting. As part of understanding how

⁵⁷ Gerald López, *The Work We Know So Little About*, 42 *STAN. L. REV.* 1 (1989).

lawyers and clients from different communities can work together in different settings, he discusses the difficulties of operating across cultures that exist in different communities.

While lawyering is generally a shared skill, solving a particular problem always demands specific knowledge regarding the relevant audiences, stories, and storytelling practices. Training people to adapt their culturally specific problem solving knowledge to unfamiliar audiences and stories requires, at a minimum, that they be exposed to a new set of potential audiences and stories, and helped to identify and craft those stories the audience will find most persuasive. . . .

. . . Even highly trained and adept problem-solvers can find themselves baffled by a completely foreign situation. High-powered lawyers, for instance, can feel staggered when trying to figure out the public transportation system in a new city.⁵⁸

López almost seems to be looking back at his earlier work to explain the setting he chose at the beginning. Ironically, the point he identifies later in *REBELLIOUS LAWYERING* is opposite to the one that seems to flow from the abstracted stories of *Lay Lawyering*. The decontextualized, abstracted quality of all the stories in *Lay Lawyering* creates the sense that problem solving is abstracted, too. Learned in one context, it can be transposed and adapted easily to a new one. Instead, López tells and portrays for us in *REBELLIOUS LAWYERING* that an unfamiliar setting matters in understanding the character of problem solving. The characters must learn the stock stories of and about a community, understand the multiple audiences for those stories, and become familiar with the varied story-telling practices of that setting.

From the later vantage, we can see that the outsiders in *Lay Lawyering*, Son and Mom, in their ignorance of the local, situated practices of Manhattan, magnify for the reader how unwritten, even unspoken, rules that exist as part of Manhattan's particular cultural practices operate within that setting. Solving problems in unfamiliar settings requires deciphering the contextual practices within which rules operate. Thus, rather than abstracted and generic, problem solving to be effective must proceed within the specificity of a particular context, even when conducted by people with different problem-solving practices. Each of the stories in *REBELLIOUS LAWYERING* places lawyers and clients and others connected to their activities in a particular community, solving problems within the context of that community. To do that, they need to decipher, based partly on local knowledge, the practices surrounding problem solving both in that

⁵⁸ LÓPEZ, *supra* note 1.

community and in the legal system.

Third, the arc of all the narratives in *Lay Lawyering* is truncated. In whatever ways the problem of getting a cab is the trouble or part of the trouble portrayed in the various stories, no one takes any actions (or decides not to take action) to solve the problem. We see no consequences that flow from the actions that a character decides to take. None of the characters gains any knowledge or insight from how this part of the plot develops. Son identifies how stock stories surround the purported rule of first-in-time right to a cab, either stock stories that could affect how Man might respond to relinquishing his seemingly superior claim to the cab or ones that might influence Cabbie to transport Mom instead of or in addition to Man. But we never learn what stories Son decides to use (with or without the involvement of Mom), how those stories relate to, modify, deviate from, or reject the stock stories he has identified, why he picks those particular stories, how and when he uses them, and how others respond to his telling or his other actions.

The action never moves beyond the inside of Son's head although the overall narrative about lay lawyering appears to be about more than the internal process of thinking about what stock stories might be implicated in the process of problem solving. Thinking about and appreciating the power of stock stories, while a part of problem solving, stop the action far too early. This limited account creates the impression that only stock stories matter, not the efforts of lawyers or clients, or lawyers and clients working together, to reimagine or reshape stories they tell to convince a particular audience within particular situations to do something. Taking action is essential to the process of coming to understand how stories that deviate from, oppose, or even reject stock stories can operate in the world. Without these action-filled parts of the stories included in the article, López's overall narrative explicating *Lay Lawyering* is incomplete and distorted. We have no way to analyze how stories matter or can be changed in solving the problem of getting the cab because we have no stories depicting any results.

As with character and setting, the later stories López constructs in *Rebellious Lawyering* are about actions that lawyers and clients think about, talk about, and take. López calls these actions "practical moments."⁵⁹ While understanding stock stories continues to be important, creating alternative stories in different relationships to the stock stories and trying out those stories in particular situations, as part of particular efforts to achieve specific results, become part of

⁵⁹ *Id.* at 62.

López's overall narrative of what constitutes rebellious lawyering. Rebellious lawyers "do their stuff from *within* the action,"⁶⁰ which includes "rearrangements in stock stories," the "relaxation or reinstatement of notions about what's taboo in stock arguments."⁶¹ Importantly, lawyers and clients act in order to learn what these stories can be. "[E]very activity" creates a moment for developing shared understanding that is part of problem solving.⁶² "[I]deas get put into action," an ongoing project that is essential to "educat[ing] themselves and others."⁶³ López describes his vision of the importance of action in building an understanding of lawyering.

[W]hat these lawyers learn through reflective thought and talk they almost immediately put into action with clients. The best available theories inform strategies that they calculate will have some desired effect on particular situations. If a strategy fails to bring about the desired change, they immediately assess what happened and use what they learned to revise the existing stock of theories and strategies.⁶⁴

From these three aspects of the *Lay Lawyering* narrative, we can see how López's early use of stories began only partially and inadequately to realize his project of using narrative to explicate, understand, and analyze progressive lawyering. The stories in *Lay Lawyering* work to validate the activity of lay lawyering. They present accounts of how a lay person can engage in problem solving as a professional lawyer would. The stories are effective in this regard at least partially because they make Son's work appear and feel like the work of a lawyer. The reader can easily identify analogous, recognizable parts of familiar lawyering activities. Thus, the accounts of *Lay Lawyering* effectively challenge the dichotomy in much lawyering literature between the legal and non-legal spheres.⁶⁵ Lay lawyering as presented in the stories seems familiar as regular lawyering. This erosion of the dichotomy also serves to challenge claims to lawyer dominance. If lay people can engage in the essential lawyering work of problem solving, the stories make the narrative argument that lay people can engage in other sorts of legal work.

While López's narratives in *Lay Lawyering* elevate lay knowledge, they only haltingly present the story of progressive lawyering that he arrives at in *REBELLIOUS LAWYERING*. The absence of clients

⁶⁰ *Id.* at 65.

⁶¹ *Id.* at 68.

⁶² *Id.* at 70.

⁶³ *Id.*

⁶⁴ *Id.* at 66.

⁶⁵ DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2012).

as real characters, the use of a setting presented with no relationship to people who come from delineated communities that have specific cultural practices different than those depicted in the stories, and the truncated plots stripped of action together highlight critical features of the rebellious lawyering that López comes to only later. Understanding *Lay Lawyering's* failure to portray in its stories these fundamental aspects of the activity of lay lawyers helps us see the missing possibilities of narrative, ones that have the potential to reframe our understanding of how lawyers can tell stories to solve problems with and for clients.