

Book Review

Philip N. Meyer, *Storytelling for Lawyers*, New York: Oxford University Press, 2014, pp. 256, \$99 (cloth), \$19.95 (paper).

Reviewed by Marshall Goldberg

In my first case as a lawyer, I was asking for an injunction from a federal district court judge in San Francisco, Spenser Williams. My client was a Navy JAG lawyer who had successfully represented the first sailor charged with desertion during the Vietnam War—so successfully, that the Navy ordered my client shipped off to Vietnam for two years. I was trying to stop them. I had clerked down the hall from Judge Williams’ office and knew him in passing. He liked me, I liked him. For the first ten minutes of my oral argument, I answered his questions as if they had been placed on a batting tee. I clobbered them, one after the other. Finally Judge Williams shook his head, leaned over and said, “I know you’re right on the law but I’m not ruling in your favor.”

That line—“I know you’re right on the law but I’m not ruling in your favor”—was more instructive than anything I ever learned in law school. Legal analysis, Judge Williams taught me that day, only takes you so far. No matter what works in a civil procedure class or on a bluebook exam, judges don’t like issuing rulings that make them uncomfortable. Why wasn’t I told?

That was in the early-1970’s, when “clinical legal education” meant volunteering at a Legal Aid Society five or ten miles from law school, to assist overworked lawyers on an unsupervised basis. I left law practice not long after that, to become a professional TV and film writer, and when I returned a few years ago to teach law school . . . my, how things had changed. Many law schools now have 10 or 12 clinics, ranging from Animal Rights clinics to Non-Profit Advisory clinics to Innocence Projects to just about everything in between—all for credit, and all with supervision.¹ To me, this is nothing short of marvelous. Clients are so much better-served by younger attorneys

Marshall Goldberg has written for television and film and is a novelist and Adjunct Professor at Stanford Law School and Michigan Law School.

1. For an excellent history of clinical legal education, read Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1 (2000).

nowadays, and younger attorneys spend much less time flailing about in the dark. Law graduates of my generation are beyond envious—we verge on self-pity. It is safe to say that one no longer hears judges saying to most younger lawyers, “I know you are right on the law but I’m not ruling in your favor.”

But as I talk to students and teachers, and read about law school clinics, I see one area of clinical education that still comes up a bit short: teaching students to tell a riveting story. Judge Williams showed me forty years ago that judges and juries need to feel at ease with their decisions, and the best way to do that, I believe, is to sweep them along with a compelling narrative.

Experienced trial and appellate lawyers understand storytelling in their bones, but it is a difficult subject to teach. You need to talk about narrative drive, plot, beginning middle and end, character, texture, voice, pace, openings, and exposition in a clear and manageable way—and that’s just for starters. Many clinical programs do spend time on “story,” and every year there are storytelling conferences for clinical law professors, but very few clinicians approach storytelling in a methodical way. I do not mean to disparage anyone by saying this. I say it in the context of genuine admiration for clinical programs and teachers. But storytelling is tough to convey; even when authored by professional writers, the number of useful books can be counted on one hand. And as the legal situations get more complicated, even the most experienced litigators need a method to cut through the thicket, rather than relying purely on gut instinct or experience.

Most of the initial articles about storytelling and the law came from academics. Perhaps clinical programs were struggling for academic legitimacy, or clinical teachers were focused on other skills, but suddenly the field of “narratology” came into existence. A flurry of papers hit the law journal world offering academic analysis of stories. As a professional writer—30 years in television, film, and novels—the narratology literature struck me like scientists expounding on the curve ball. You can write treatises on aerodynamics and vertical drop speed and optical acuity, but none of that really helps a batter hit a major league curveball. Batters need to hear from someone who has actually hit curveballs and can set out some helpful techniques in words. Because clinical legal education was still part of academia, with regard to storytelling that someone had to be a sophisticated practitioner and a respected scholar. One man fit that description perfectly, and then some: Anthony Amsterdam.

As the principal appellate advocate for the NAACP Legal Defense Fund and the ACLU, Amsterdam had argued some of the most important civil rights and civil liberties cases of the 1970’s and 1980’s. As a scholar, he was a MacArthur Foundation grantee who had published groundbreaking legal articles before he even finished law school. In both realms his bona fides were beyond question. Amsterdam helped set up superb clinical programs at NYU Law School, but he wanted to do more than provide students with practical experience; he wanted to teach them to be successful advocates. That led to the “Lawyering Theory Colloquium” at NYU, but eventually even that was

not enough. He aimed to present his insights to a broader audience, and the result was his seminal work with Jerome Bruner, *Minding the Law*.²

In *Minding the Law*, Amsterdam and Bruner take the reader into advocacy beyond traditional legal discourse. Much of the early part of the book is spent convincing the reader to approach legal persuasion on a narrative level, giving example after example of how judges actually operate—whether they realize it or not. The book’s latter part shows the depths one must plumb in order to be an effective advocate. It is a masterful work and should be read, with different-colored pens, underlines, asterisks, and notes in the margins, by anyone who wants to do right by his or her clients.

Although the book is 400 pages, *Minding the Law* feels like an overview. This is not to say it is shallow or simplistic—it is quite the opposite. Rather, it feels like someone writing about a newly discovered land, to readers hearing about it for the first time. Later explorers would need to provide more detail. And that brings us to *Storytelling for Lawyers*, by Philip N. Meyer.

Meyer was an instructor under Amsterdam at the Lawyering Program at NYU, became Coordinator of the program, and is now a professor at Vermont Law School while continuing to work on death penalty and post-conviction cases. He has a long-held fascination with writing, especially film writing, and in *Storytelling for Lawyers* he takes his observations of the world of writing and applies them to legal situations.

Meyer spends the first half of his book discussing the two fundamental components of story—plot and character. He devotes two chapters to plot: the first offers up the most basic plot form (“things are fine, trouble arrives, identifiable forces fight back, life either returns to normal or is transformed”), and the second looks in depth at Gerry Spence’s closing argument in the Karen Silkwood wrongful death case. In the earlier chapter, Meyer gets the reader to think in terms of story fundamentals by discussing two movies: *Jaws*³ and *High Noon*⁴—*Jaws*, for its good v. evil quality akin to classic melodrama, and *High Noon*, because of its transformative rather than return-to-normal ending. Both movies demonstrate his plot points clearly and bypass the brain for the gut—which is, after all, the point with good stories—like paintings with dazzling colors.

His next two chapters deal with character, the first looking at two character-driven works (*High Noon* in greater depth and *This Boy’s Life* by Tobias Wolff⁵), the second showing how those insights are used by attorney Jeremiah Donovan in his closing argument in what seems to be an open-and-shut criminal case against his client. Again, in his choice of examples, Meyer does his best to move

2. ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* (2002).
3. *JAWS* (Universal Pictures 1975).
4. *HIGH NOON* (United Artists 1952).
5. TOBIAS WOLFF, *THIS BOY’S LIFE* (1989).

from a purely reasoned approach to having the reader think in emotionally effective terms.

Both choices of closing arguments serve him well. *Silkwood*,⁶ a well-known case, lends itself to the good v. evil melodrama Meyer suggests for most tort and criminal cases. And, since *Silkwood* was a situation of strict liability, it allows for a simple, graspable storyline: “if the lion gets away, the defendant must pay” (taken from an English case where, despite all precautions by the owner, a lion escapes a circus and kills several people). *Silkwood* also demonstrates an important strategic level in Meyer’s approach: making the jury an active participant in the rendition. In traditional storytelling the audience is passive, but in a courtroom the advocate should ask the judge or jury to “complete the story,” as Amsterdam puts it. Spence asks the jury to tell the world that Karen Silkwood did not die in vain, that she was a prophet done away by evil villains. That will be their mission: they must be the ones to complete the story. Meyer’s second example involves a mobster accused of arranging the murder of his daughter’s ex-boyfriend (and father of his grandson). Donovan, the attorney, disarmingly asks the jury to look at his client not as a cold-blooded killer but as an inept coward stalling for time from vicious Mafioso out to kill the father of his grandson. Given the overwhelming amount of evidence against his client, Donovan’s approach seems far-fetched at first, but by employing lessons of character development from movies—revealing choices, telling anecdotes, pitch-perfect dialogue, rooting for a character we come to like—he weaves a mesmerizing and ultimately sympathetic picture of a man willing to do anything, even come off as a total coward in the macho world of New York mobsters, to save the father of his grandchild. In the end, as with Spence in the *Silkwood* case, the jury completes Donovan’s story exactly where he inevitably led them.

As a writer I didn’t always agree with Meyer’s principles. He treats as a maxim that “writers should start at the end and work backwards,” but most writers I know don’t work that way, especially in character-driven pieces. For those writers, narrative is a process of discovery, as it is for their readers, and that kind of discovery can best come with writing forward, not backward. I realize that lawyers might feel constrained in regard to an ending—defense lawyers don’t argue for conviction, after all—but in true storytelling, the idea is to engage the audience at every moment, and if the tale feels too predictable, the teller is no longer weaving a tale but delivering a lecture. And lectures risk disengaging the audience, which undermines the purpose of using storytelling techniques in the first place.

Meyer also urges his storytellers to develop their theme or story drive *after* the plot is set out, but many writers, including myself, think that plot should *follow* story drive rather than the other way around. I also worry that his techniques work best with “underdogs”—plaintiffs in personal injury cases or criminal defendants or post-conviction petitioners. There is not much to take

6. *Silkwood v. Kerr-McGee Corp.*, 485 F. Supp. 566 (W.D. Okla. 1979).

away for unsympathetic clients who nevertheless seek justice, and whom a lot of lawyers out there represent.

These objections, however, are essentially minor in light of Meyer's basic contribution: convincing his reader to approach a case or a closing argument by thinking in terms of a compelling story, with plot and character and a dynamic structure. Any criticisms I have are akin to the old joke about the man who takes the talking dog into a bar—the point is not so much how he says to go about it, but that he's getting the reader to think in the right terms at all. For that he absolutely should be commended.

It is in the second half of the book, when Meyer goes into more specific writing techniques, that the book really shines. He talks about the importance of “style” and “voice” in presenting a case, with plenty of useful examples. He discusses the use of language, and when to employ summary (“discussion”) and when to employ scene (“action” with “dialogue”). He examines point-of-view, and place, and sequence, all vitally important concepts to a writer and to an advocate, and when writing about them, Meyer sounds like a writer, not an academic—that is, one providing first-hand lessons based on experience rather than offering analysis at some distance. In short, it is when he shows how virtually every major strategic decision has to be approached taking emotions and psychology into account that Meyer is at his strongest.

I have my own biases in this area. In my courses I teach students to think like storytellers and then employ that mindset to legal situations. Meyer more or less stays within the legal realm and suggests ways to bring in storytelling concepts. Both approaches can work. I prefer mine—I think an advocate is more likely to end up with a compelling narrative that way—but that is beside the point. Meyer has provided a valuable tool for legal practitioners—a series of steps to go through when putting together a brief, or going before a judge or jury, or preparing law students for what comes next. Anyone undertaking those tasks should read this book closely. They will be far more effective for it.

After all, better to have a judge or jury rule in your favor than to be right on the law.