

OUR STUDENTS, OUR SELVES: THE MIRROR REFLECTS BACK

MICHAEL A. MOGILL*

I. INTRODUCTION

Curiosity can be a double-edged trait. It can open the door to unknown treasure, yet at the same time can lead to unperceived peril. Harry Potter was always driven by his eagerness to discover things, a desire to be informed. During the first book in the series,¹ Harry's quest for the titular Sorcerer's Stone led him on many adventures, one of which resulted in his entering a room in the mythical School of Hogwarts that contained "a magnificent mirror, as high as the ceiling, with an ornate gold frame, standing on two clawed feet."² The inscription on its top read, "Erised stra ehru oyt ube cafru oyt on wohsi."³ As Harry was to learn, this was the "Mirror of Erised," which "shows us what we want . . . whatever we want."⁴

Students enter law school with their own wants, one of which is an initial seemingly boundless eagerness to learn and know. Over their three years of indoctrination into the process of "thinking like a lawyer," a good portion of that enthusiasm diminishes. Much of that change can be observed in the frustrated comments of students who just want to "know the answer" to the questions spun out during the classroom dialogue. One of my colleagues has suggested that the much-used Socratic dialogue offers up "a game that only one can play;"⁵ many students experience frustration when each of their questions is met with the rejoinder of yet another question.

Copyright © 2003, Michael A. Mogill.

* Professor of Law and Associate Dean for Student Affairs, The Dickinson School of Law of The Pennsylvania State University; B.A., University of Illinois, Champaign-Urbana; J.D., Northwestern University School of Law; LL.M, Temple University School of Law. The author wishes to express his appreciation to his children, Adam and Sarah, for sharing their *Harry Potter* series and helping him to appreciate the subtleties of the magical world, to Sherry Miller for typing this manuscript, and to his students, whose shared comments over the years have spurred the reflections in this Article.

¹ J.K. Rowling, *Harry Potter and the Sorcerer's Stone* (Scholastic Press 1997).

² *Id.* at 207.

³ *Id.*

⁴ *Id.* at 213.

⁵ As borrowed from the Torts Syllabus of Robert Ackerman, who attributes this comment to Ralph Nader.

Students also enter law school with their own fears of the unknown path ahead. As Chair of our school's Orientation Committee, I have made note of many of the comments provided in a survey completed by the incoming 1Ls at the end of our multi-day orientation program. Among these have been the following:

- "I think law school will be very stressful";
- "I am glad you tried to make this seem a little less nerve-wracking";
- "My mind is more at ease";
- "I still have some tension of the first day";
- "I hope I will start feeling more relaxed";
- "Should I still feel lost?";
- "You helped to alleviate many of my fears, my misconceptions, my overwhelming feelings";
- "You calmed me of some of the fear of ridicule in the classroom";
- "Most of my feelings of apprehension were wiped out";
- "It made me feel confident for the first time all summer about my law school decision";
- "It made me feel welcome in law school";
- "I felt very good coming out of Orientation"; and
- "I know that my comfortable feeling will pass as soon as classes get going but it was a comfortable feeling to have."

The question presented (i.e., the "issue") is how to enhance the curiosity of our students while assuaging their fears and possible alienation from the learning process. The "holding" is not simply stated but may best be found by making use of an either untapped or underutilized resource—the students themselves.

Consider for a moment the means we as teachers employ in our quest to train budding lawyers: books, tapes, documents, computerized learning aides, smart boards, chat rooms, and whatever else technology will introduce by the next day's class time. We share our own histories, our war stories, and sometimes we augment these with stories of the attorneys and litigants involved in the cases we have read.⁶ This use of storytelling acknowledges that "lawyers are storytellers, using stories as a means of solving problems for clients."⁷ It recognizes the limitations posed by case analysis, as casebooks tend to often omit human elements, instead focusing on the identity and analysis of rules, thereby becoming quite "mechanical"

⁶ See Michael A. Mogill, *Dialing for Discourse: The Search for the "Ever After,"* 36 WILLAMETTE L. REV. 1 (2000).

⁷ Sandra Craig McKenzie, *Storytelling: A Different Voice for Legal Education*, 41 U. KAN. L. REV. 251 (1992).

in the process.⁸ In contrast, storytelling allows us to use the “raw material” of personal experiences, thus describing accounts of actual happenings, with stories helping to construct a broader theme or meaning in the form of a narrative.⁹ Indeed, in recent years, whole courses have been taught in “storytelling.”¹⁰ Nor are the lessons of storytelling lost on the practicing bar, whose members have taken storytelling classes after the culmination of their days in the ivory tower, perhaps as “an antidote to the harmful side effects of a law school education.”¹¹

Perhaps it is our own shortcoming as teachers that has led us to fail to note an invaluable resource to the learning process—our very own students. Through years of service on our Admissions Committee, my colleagues and I have perused the personal statements of applicants, going beyond the mere numbers provided by LSAT scores and GPAs to select students whose vocational, experiential, and academic backgrounds will add to a more diversified and enlightened class of matriculants. But once the students arrive and settle in our seating charts, many of us have failed to use this very human resource as an aid in the learning process. We reflect questions back to our classes (“What do you think?”; “How would you suggest this be resolved?”; and, of course, the ever-popular “Why/why not?”). Yet, as that “mirror” of students responds to these inquiries, we tend to forget that these lawyers-in-waiting have brought with them experiences which can serve to make the law “real”¹² for them as individuals, for their colleagues, and for their teachers. And so the question remains how we can best strive to utilize this untapped resource. Perhaps, as with the Mirror of Erised, our students can “show us what we want . . . whatever we want.”¹³

This Article represents the author’s attempt to forge a method to engage his students in the classroom dialogue through the use of each student’s life experiences. It was conceived from a simple classroom

⁸ *Id.* at 261. Indeed, the method of case analysis used in the legal academy is not a “case study” as employed in other parts of academia. It does not indicate an appreciation for the story or narrating but instead focuses on the discrete elements of facts, issue, holding, and rationale. *Id.* at 260-61.

⁹ Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1 (2000).

¹⁰ See Philip N. Meyer, *Convicts, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 J. LEGAL EDUC. 129 (1992) (describing his course entitled “Law and Popular Storytelling”). Moreover, whole volumes have been devoted to the subject of storytelling. See Symposium, *Pedagogy of Narrating*, 40 J. LEGAL EDUC. 1-250 (1990).

¹¹ Tom Galbraith, *Storytelling: The Anecdotal Antidote*, 28 LITIGATION 17, 18 (Spring 2002).

¹² To borrow a term of true enlightenment from MARGERY WILLIAMS, *THE VELVETEEN RABBIT* (Doubleday & Co., Inc. 1976).

¹³ Rowling, *supra* note 1, at 207.

incident which was not only instructive to that day's materials, but which even more fortunately led to students sharing their own events, enhancing the dialogue among and between students and me. Part II of this Article describes the method for the use of the students' life experiences in the classroom environment. Part III discusses specific examples of the use of this technique, in addition to suggesting how it assists in learning the course materials, accrediting students, fostering relationships, and enhancing the student's professional experience. Part IV reveals student response to this technique, indicating how this technique aids the student's law school education and development as a budding professional. In essence, this article differs from traditional storytelling. It is not told from the perspective of the teacher, nor from that of the lawyers, litigants, and other participants in the legal process. Instead, we look here at stories as told by those who are the problem-solvers to be, the students themselves. These "voices," new to the academy, can be most instructive to the classroom dialogue. They are as broad as human experience and the imagination allow. This extra taste of "reality," from the student perspective, has been sorely missing from the academy. It is long past time to listen to the stories that the mirror reflects back.

II. THE METHOD: "CARD BLANCHE" PREVAILS

One of the courses that I teach is Torts. The casebook that I use stresses both the "personal accountability and social responsibility for injury," even using the phrase in its title.¹⁴ It was the fall semester, 1998, and the day's assignment addressed the affirmative defense of assumption of risk, specifically the express assumption by the injured plaintiff. We were discussing a case in which the plaintiff was injured in a fall near the edge of the defendant's swimming pool at the defendant's gym.¹⁵ The defendant was ultimately granted its motion for summary judgment on the negligence claim, the court finding that the plaintiff had agreed in its membership contract to assume complete responsibility even for injuries caused by the gym's negligence.¹⁶ I raised the possibility that the case was wrongly decided in giving such weight to an exculpatory clause, suggesting that this result would detract from a defendant's incentive to act "reasonably"; I further noted that the state legislature apparently "agreed" with me, as it subsequently passed a statute providing that agreements exempting, among others, the owner of a pool or gym from that owner's negligence were void if the owner was compensated for the facility's use.¹⁷

¹⁴ Dan B. Dobbs & Paul T. Hayden, *Torts and Compensation: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY* (West 2001).

¹⁵ *Ciofala v. Vic Tanney Gyms*, 177 N.E.2d 925 (N.Y. 1961).

¹⁶ *Id.*

¹⁷ See N.Y. CONSOL. LAW. § 5-326 (McKinney 2001) (General Obligations Law).

I immediately noticed a student to my left shaking her head and whispering to her classmate in an urgent manner. I turned to that student and suggested that she seemed disturbed by either the case holding or my attempt to criticize it. The student seemed to hesitate for a brief moment, and then she launched into a diatribe against persons who would sue for an injury at a recreational facility after signing a contract limiting their right to do so. In doing so, she emphasized the “recreational,” not the compensatory, nature of the act. I was taken aback, as this was a “quiet” student, one whose responses throughout the semester had been brief and unemotional. I then asked why she was so troubled by the fact that the injury was in a recreational setting. At this mention, the floodgates of personal experience opened wide. She related that for years she had been (and still was) an aerobics instructor, how a gym that employed her had been sued when an aerobics participant slipped on some liquid coming off a “step” during a particular exercise, and how the gym had settled even though it too had an exculpatory clause in its contract. She went on to stress that contracts should be relied upon and how “victims” should not turn to others for recompense in such situations.

This student’s discussion led to animated dialogue among the students, as others recounted similar experiences, evoking considerable disagreement about whether liability should be found. And that “quiet” student, who from that point on was jokingly reminded by her colleagues of her comment that “I am an aerobics instructor and I like the court’s opinion,” had sparked an idea. Why not learn more about *all* of the students in advance of our study of the materials? And why not make use of that information to direct our discussion of the law of torts?

Accordingly, for the past three years, I have begun the semester in my Torts class by handing out a three-by-five inch file card to each student. I ask them to provide certain information on the card, having advised them that this will allow me to get to know them better and possibly assist us in learning the materials. I ask for the following: name, undergraduate and graduate degrees, vocational experience, experience with the legal system, hobbies, and most memorable experience. There is no particular magic to these categories. My goal is to use a common sense approach to elicit information that could later shed light on the cases we will discuss. Torts, after all, involves injuries; it is probably the “easiest” of law school courses for the incoming student to relate to, the stuff of everyday occurrences and newspaper articles. Indeed, I often joke when introducing myself to 1Ls that I teach “Driver’s Ed” and “Shop,” which they will more fully understand once they begin reading about the auto accidents and product mishaps involved in the course assignments.

After the cards are completed, I collect them and study them. I am looking for information that will relate to the facts of cases we will study. Perhaps there will be someone who has been employed as a server or lifeguard (or aerobics instructor!), who has been a skydiver or rides horses

as a hobby, who has a degree in economics or criminal justice, or who has been involved or assisted in a legal dispute. I do not tell the students in detail why I have asked for this information, fearful that they will not be as forthcoming if they had “full” disclosure. But from past years I know the path that we will cover during the semester, the facts of the cases that we will discuss. I do not collect the information to embarrass students.¹⁸ But I review the information on each card prior to each class to determine which cards to “pull” and use.¹⁹ And as the semester progresses, the students learn that there are many “teachers” in the classroom, only one of whom is standing behind the podium.

III. THROUGH THE LOOKING GLASS

I realize that I am approaching the unknown. While I have information on the cards that have been completed by my students, I cannot be certain how useful their experiences will be during our classroom discussion. While I have confidence that each has the ability to determine the issues and holdings and rationales of the cases, we will be covering new ground each time I try to connect the information they have provided on the file card to our dialogue. The unknown is challenging, yet the risk of providing a different perspective remains seductive. The ultimate goal is to provide a challenging classroom environment, one that will enable students to better learn the materials, to allow students to hear their own voices, to foster relationships among them, and to enhance their professional experience. The images provided by the stories of the students serve to further these goals.

A. *Enhancing the Learning Process*

The coverage of the claim for negligence quickly embroils the class into a discussion of “risks.” During our discussion of the elements of the prima facie claim for negligence, several students inquire about situations in which the plaintiff seems to be the risk taker. I remind them that, for the moment, we are viewing the claim through the eyes of the plaintiff, but encourage them not to forget those thoughts while in the same instance promising that we will return to the concept of risk when we address affirmative defenses.

¹⁸ One student this past year commented on her card that she had been a defendant in a torts suit, another that she had fallen down stairs at a party and was injured. I did not use this information without first speaking to each student in advance to seek details, on a voluntary basis, that would allow me to include the student in class discussion in a manner where she would not feel self-conscious or ill at ease.

¹⁹ It is said that imitation is the greatest form of flattery. One of my colleagues has adopted the practice of soliciting information on file cards but his use is based on shuffling the cards and picking one at random out of the deck for class use.

We ultimately view the defense of assumption of risk by discussing *Jones v. Dressel*,²⁰ a case involving a written contract for skydiving services. The contract provided the plaintiff the use of the defendant's facilities for skydiving, including the plane which was used for the jump itself.²¹ However, the plane crashed soon after takeoff, seriously injuring the plaintiff.²² He sued for both negligence and wanton and willful conduct.²³ The contract contained an exculpatory clause exempting the defendant from *all* liability from injuries "while upon the premises or aircraft of the Corporation or while participating in any of the activities contemplated by this Agreement, whether such loss, damage, or injury results from the negligence of the Corporation."²⁴ Based on this clause, defendant was granted its motion for summary judgment on the negligence claim, the court finding that both the contract and clause were binding.²⁵ The opinion reasoned that the contract was not one of adhesion, because there was no indication of a disparity of bargaining power nor of the unavailability to obtain the services elsewhere.²⁶ While acknowledging that the clause would not protect against wanton and willful conduct, the court indicated it could serve as a defense against an ordinary negligence claim, depending on several factors, including the impact upon the public interest, the clarity of the language, and the procedural fairness underlying the contracting process.²⁷ Accordingly, the plaintiff was left to pursue only its claim for wanton and willful conduct.²⁸

I was fortunate to have three students in class who had experienced skydiving. The dialogue with them began by establishing the premise that the defense of assumption of risk depends on the plaintiff's voluntary consent to confront a known and appreciated risk. I then asked each in turn if their experience in skydiving shed any light on the court's decision in *Jones* and whether, in their view, the decision was appropriate from a public policy perspective. The responses varied, one student suggesting the court ignored the fact that all the skydiving companies he had dealt with placed nearly identical language in their contracts, so plaintiff in fact had little bargaining power—there was really no other place to take his business. A second was bothered by what he saw as an ambiguity. He had thought that the skydiving company could avoid legal responsibility for its negligence involving the skydiving equipment itself, but he never

²⁰ 623 P.2d 370 (Colo. 1981).

²¹ *Id.* at 372.

²² *Id.* at 373.

²³ *Id.* at 372.

²⁴ *Id.*

²⁵ *Id.* at 378.

²⁶ *Id.* at 375.

²⁷ *Id.* at 376.

²⁸ *Id.*

contemplated this could be interpreted to include the crash of an airplane. A third indicated that he was barely given the opportunity to review the contract he had signed, that he did not remember any particular exculpatory language, but as a non-law student he probably would not have recognized it nor given it much thought even if he did spot it. While each acknowledged that he did not want to limit the freedom to contract between parties or the ability to transfer risks, they suggested that exculpatory language should be placed in a conspicuous place in the contract, put in “simple English” (e.g., “we are not responsible for injuries caused by a plane crash”), or even allow a potential skydiver to pay a “premium rate” to be covered for possible negligence by the company. However, based on our discussion, each student had considerable reservations about how “voluntary” the consent was and if *all* the risks were really “known” and “appreciated.”

The case of *Thompson v. County of Alameda*²⁹ provided another example of using student experiences to enhance the learning process. In that case, the defendant county released a “juvenile offender” to his mother’s custody on a temporary basis, despite knowledge of his propensities to harm young children and the likelihood that he would do so.³⁰ The defendant county did not provide any warning to the police or families of this release.³¹ The juvenile offender then murdered a two-year-old child within twenty-four hours of his placement into that temporary custody.³² The litigation involved a wrongful death action that the child’s parents subsequently filed against the county.

The focus of our class discussion was on the court’s holding that the county had no duty to provide any warning to the police or community of the release of the offender, absent a “clearly foreseeable danger” to a “specific plaintiff.”³³ One student in the class had been employed for several years as the Assistant Director of the Department of Corrections in two separate states. He provided background information about the factors considered in releasing both adults and juveniles into society, particularly noting for juveniles the need to reintegrate them into a supportive home environment. He suggested that “society” should be hesitant to broadcast wide-scale information about the presence of the individual in the community, because this could harm his rehabilitation by “branding” him in the eyes of the populace and even lead to possible threats or violent acts against that individual. The discussion eventually turned to the proliferation of the so-called Megan’s Laws that have been enacted

²⁹ 614 P.2d 728 (Cal. 1980).

³⁰ *Id.* at 730.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 738.

throughout the country in response to the 1994 rape and murder of a seven-year-old New Jersey girl by a convicted sex offender who was living in her neighborhood. These laws, bearing the namesake of that victim, require the released offender to register with the police and law enforcement agencies to notify the public when certain offenders move into a neighborhood. The details of when and how to notify the public vary state-to-state based on the likelihood of a potential attack. The student suggested those laws made sense as a means to assist law enforcement to better protect the citizenry, particularly children. He believed the statutes allowed society to protect itself while not unduly restricting the released offender's freedom of movement or re-integration into society, noting that it is the community's "private choice" whether it will accept the released offender, a choice not coerced by government action.

As fate would have it, the following day another student brought into class a letter he had received the previous evening. The letter, signed by the Chief of Police and personally delivered to the student by a police officer going door-to-door, served as a "community notification of [an] out-of-state sexual offender residing in the Borough of Carlisle."³⁴ It stated that the notification was provided pursuant to state law (i.e., the state Megan's Law), and indicated that it was provided to neighbors within a certain radius or range of the offender's residence, the director of the county children and youth services agency, the superintendent of the school district, the directors of licensed day care centers and licensed preschool programs, and the president of any college or university within a particular distance from the offender's residence. Attached to that notice was a "Community Notification Flyer" containing the name, address, and picture of the offender, along with a description of his out-of-state offense.³⁵ The discussion that followed was a lively one, with many students appreciative of information that could be used to protect themselves, while some were clearly shaken by the presence of that offender within walking distance of the law school. Ultimately, we returned to some thoughts from our one-time Assistant Director of the Department of Corrections, who urged the necessity for continuing programs to re-integrate offenders into the community while allowing for appropriate community notification. Both he and I also counseled his classmates that they should refrain from illegal acts towards that released offender.

The experiences related by these students served to enhance the learning process for all. The stories shared by their colleagues viscerally captured the attention of the class, bringing to bear the human dimension that is all too often forgotten when reading pages from a text. Indeed,

³⁴ Letter of Stephen L. Margeson, Chief of Police, Borough of Carlisle (Nov. 9, 2001) (on file with author).

³⁵ "Community Notification Flyer" on file with author.

storytelling helps to preserve and transfer information; we are accustomed to listen to stories from an early age, the words “tell me a story” providing a sense of comfort and information.³⁶ Stories tell us about ourselves and each other, serving to “inform the law and make it understandable.”³⁷ These stories can provide a valuable insight to help students focus through dense material by applying the experiences they share.

The use of information shared by students from their prior experiences creates a learning environment in which the students are more deeply engaged. The students are more interested in the materials when they are viewed as “real”; the stories shared in class are life itself, more particularly their *own* lives. This allows for a very practical application of amorphous legal concepts to everyday situations in which they themselves have been involved. The cases that we read may be seen only as abstract models, involving “others” who have suffered some misfortune. By contrast, the experiences related by their colleagues have a sense of reality. This can help students relate to the material through their classmate’s eyes, aiding their understanding of what could otherwise be viewed as sterile, distant reading assignments.

Students are aided in understanding course materials by being involved actively in the learning process. They soon learn that the information they have supplied on the file cards is ripe for discussion. Moreover, they will assuredly be prepared and offered a ready means for classroom participation. The stories told by students are from their own perspective but with an eye towards emphasizing lessons learned from the cases which they are studying. This broadens discussions and fosters an additional, practical manner to view and analyze the materials. The student can put herself more readily into the situation described by her classmate, assisting her learning process. The presentation of her own pertinent life histories allows the opportunity to understand the law from the perspective of the student’s own “world and life events.”

Much of the existing scholarship concerning storytelling involves those who speak in a “different voice,” having different life experiences from those of white males and those of other groups; this allows for a different view of the law.³⁸ We can now add our law students to that “different voice” through the life experiences that they share with us.

³⁶ Benjamin Reid, *The Trial Lawyer as Storyteller, Reviving and Ancient Way*, LITIGATION 24, No. 3, at 8 (Spring 1998).

³⁷ Richard A. Matasar, *Storytelling and Legal Scholarship*, 68 CHI.-KENT L. REV. 353, 361 (1992).

³⁸ Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 809 (1993). See also Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994).

There is more to being a lawyer than being a skilled tactician. Indeed, part of being an effective lawyer is having “human experience.”³⁹ As our students share their experiences, they will become more comfortable with the issues with which they will inevitably struggle with during and after law school. They will fully understand the humanistic implications that the law has on their clients and use their stories to help resolve problems in the best interest of those clients.

As an additional benefit, the teacher himself will also gain from hearing of his students’ experiences. Just as the class roster changes, so will the stories that are related from year to year, constantly refreshing the old with the new. We as teachers should never forget that good teaching can be “fun” and that fun will serve to motivate our students⁴⁰ to contribute even more greatly in the classroom and enhance their educations. Not only will students be able to relate everyday life to the law, but they will, as a mirror reflects, relate the law to everyday life.

B. *Accrediting Students*

Law students bring an abundance of prior vocations to the classroom. The fifty-nine students in my fall, 2002 torts class provided responses on the file cards they submitted indicating the following range of prior employment: nursing home counselor, furniture mover, paralegal, public relations consultant, political intern, sales management, computer technician, accountant, server, victim/witness assistance program counselor, athletic tutor, bank teller, juvenile counselor, daycare manager, health care consultant, landscaper, food services manager, wrestling coach, publisher’s assistant, buildings manager, teacher, fitness center manager, babysitter, landscape construction, industrial engineer, manufacturer’s consultant, legislative consultant, photographer, mortgage corporation compliance consultant, guest services manager, lifeguard, production worker, musician, product tester, fashion designer, cook, government press secretary, stockbroker, legal secretary, military research diver, financial planner, business owner, Assistant Director Department of Corrections, insurance claims investigator, chemist, construction worker, security guard, and various positions in the military. Having received this information, it was incumbent on me to use it during our classroom discourse.

The case of *Bexiga v. Havir Manufacturing Corp.*⁴¹ involves a products liability claim based on a severe hand injury the plaintiff suffered

³⁹ James A. Elkins, *A Human Perspective in Legal Education*, 62 NEB. L. REV. 494, 518 (1983).

⁴⁰ R. Lawrence Dessem, *All We Really Need to Know About Teaching We Learned in Kindergarten*, 62 TENN. L. REV. 1073, 1077 (1995).

⁴¹ 290 A.2d 281 (N.J. 1972).

while operating a power punch press.⁴² The process followed by the plaintiff in using the machine required him to place metal discs by hand on top of the machine die, then cause the ram to descend and punch holes in the discs by his depressing a foot pedal to activate the machine.⁴³ Once the ram ascended, the discs would be removed by equipment on the machine and the next cycle was ready to begin.⁴⁴ Each cycle took approximately ten seconds to complete.⁴⁵ At the time of the injury, the plaintiff had worked on the machine for forty minutes, completing about two hundred seventy cycles.⁴⁶ He then noticed a piece of metal on the press that was out of place and, unfortunately, reached to correct it while at the same time mistakenly depressing the pedal.⁴⁷ The ram descended and the plaintiff's hand was horribly injured.⁴⁸ Plaintiff alleged the lack of protective safety devices on the machine supported his claim, while defendant raised the issue of contributory negligence.⁴⁹ The court ultimately held that the defense of contributory negligence could not be used to deny the claim, even though the plaintiff had placed his hand under the ram while simultaneously depressing the pedal, noting that this result is appropriate "where considerations of policy and justice dictate."⁵⁰ It further elaborated that the defendant's duty to install safety devices should not be obviated when the plaintiff's injury is "the very eventuality the safety devices were designed to guard against."⁵¹

In essence, the *Bexiga* court placed an obligation on the manufacturer to guard against the worker's own carelessness.⁵² Was it really a just result to protect a worker against his own apparent breach of the duty to protect himself? Two students from my class had been employed as production workers prior to coming to law school. I asked them to describe their experiences, particularly the machines on which they had worked. Each operated a machine similar to the one in *Bexiga*, involving the use of foot pedals and a descending punch press; fortunately, their machines had a protective gate preventing the ram from descending if the worker's hand was placed under the ram and an additional button that needed to be pushed in unison with the pedal to depress the ram. While they had not

⁴² *Id.*

⁴³ *Id.* at 282-83.

⁴⁴ *Id.* at 283.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 286.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 285.

suffered injuries during their employment, they well remembered what they described as the “monotony” of the machine cycle, time after time, minute after minute, hour after hour, day after day. As they recounted their experiences, I asked if they had something in common with the machine they were operating. They acknowledged that they themselves had become machines, hopelessly caught up in the recurring brief cycles. When pushed further, they commented that this repetitive nature of the job led them to “zone out” and become machine-like in their operation of the machine. In essence, they became “mind-numbed.” The risk of this became self-evident to their classmates; as their very consciousness was deadened by their work, they became more prone to commit error, or in legal terms, to be “negligent.” It clarified why the *Bexiga* court had used the magic words of “policy and justice” to protect the careless plaintiff from the consequences of his employment.⁵³

The study of tort law has many recurring themes and references to other disciplines, not the least of which is “insurance.” We learn about the impact of insurance early in the course, when students recognize that plaintiffs often proceed against the tortfeasor’s “deep pocket” (i.e., insurance carrier). We see it arise when we discuss no-fault systems of compensation such as workers’ compensation and social security disability benefits. We discuss the benefits of self-insurance for the injured plaintiff who is unsuccessful in her claim against the alleged tortfeasor. We note its impact on the rationale of distributing justice, with payment by an insurance company on its policy having a potential financial impact not only on the policyholder’s premium but also on the premiums of other insureds.

Yet the workings of the insurance system and its practical impact on tort claimants can be mysterious to the first-year student. This past fall, I benefited from the knowledge shared by one particular student who in his previous life had served as an insurance claims investigator. In our study of negligence, the concept of breach necessarily involves the determination and assessment of “risk” in order to determine what the proverbial reasonable person would do under the circumstances. The case which we were studying, *Indiana Consolidated Insurance Co. v. Mathew*,⁵⁴ involved a suit filed by the insurance company to recover money paid out under an insurance claim for premises insured under a homeowner policy. The insurance company sought to exercise its subrogation rights based on the actions of the defendant for his alleged negligence in filling the gas tank of a riding lawnmower, starting it within a garage and failing to push the

⁵³ I also share with students my own pre-law school employment. For example, while discussing *Bexiga*, I relate my brief work as a production worker operating a similar machine, which served me well in understanding how a “zoned-out” worker can be highly susceptible to grievous injuries.

⁵⁴ 402 N.E.2d 1000 (Ind. Ct. App. 1980).

resultant flaming mower out of the garage. The appellate court ultimately affirmed the trial court's judgment for the defendant, finding that he acted reasonably based on the risks involved.⁵⁵

Our erstwhile insurance employee explained to his classmates how insurance is based on the appraisal of risks associated with various activities. The greater the risk, the more likely the individual will value insurance. However, as the risks increase, so does the amount that will be charged by the insurance company. Fundamentally, the prospective insured needs to determine how much he is willing to pay to have someone else (i.e., the insurance company) take over the financial risk of injury to others or their property; by contrast, the insurance company's determination is based on the reflection in that same mirror, deciding how much it will charge to relieve the insured of that risk. He added that risk assessment is not an exact science, but is based on previous instances regarding similarly situated persons and property. In the case at hand, the insurance company had obviously determined it was beneficial, for a price, to assume the risk of damage to the property in question. When asked if the insurance company would take on all risks of the property burning, the student noted it would not, giving as an example an act of arson committed by the insured. When queried why the difference between covering risk for a negligently-set fire but not for an intentionally-set fire, he explained how insurance generally protects against inadvertent acts, not purposeful conduct. The class was able to relate this to an earlier discussion in which I had asked about the benefits of pursuing a negligence claim as opposed to a claim for an intentional tort. Suddenly, the concept of a "deep pocket" had a limitation, one that would encourage the insured party to have its claim sound in negligence, with its risks covered by insurance, rather than as a purposeful act.

As a teacher, it is incumbent to encourage student involvement in the learning process. One way to do so is to accredit the student for his contribution to the learning process itself. There are several resources available to educators, including texts, videos, and various technology-related tools, including discs, smart boards, and chat rooms. Yet students themselves have remained an untapped resource. As the student comments I have read assessing Orientation suggest, entering students have a high level of stress and tension. They are concerned about feeling lost and seek some relief from the apprehension of the law school experience.

The use of storytelling by students serves as a means to welcome them to the profession. It provides the students with a forum to share their personal histories in a manner that relates to course materials. The utilization of the information contained in the file cards allows students to use what they *do* know, not to be frustrated by what they do *not* yet

⁵⁵ *Id.* at 1003.

understand. Students are acknowledged for their very personal contributions as they hear the strength of their own voices. They learn that they do indeed bring in certain experiences and insights which will help them acclimate to their new endeavor. Moreover, students relate to the personal perspective. The class will learn who its “experts” are, allowing all to apply their own experiences to the course materials.

All students have some story to share, albeit some being more pertinent than others. But knowing that their history will aid them in their studies serves as an initiative for their active participation in the classroom dialogue, compelling the student to become more involved and adding to his knowledge. The inclusion of those experiences helps to give the law a very personal and human face, to place the materials in practical perspective. Students relate their lives to the cases, realizing that what they bring to law school bears on their study and on the application of the law. In doing so, the student begins to create his own self-image as a budding attorney, in addition to modeling positive behavior for her fellow classmates.

Stories continue to play a big role in the legal process, as each party at trial relates a story,⁵⁶ put in the contour of their “real story” in forms authorized by law. The jury, in effect, then selects the “story” it likes better.⁵⁷ We can create this educational opportunity in the classroom and invite students to participate in developing those skills. The linkage created between the experiences of the student to the law itself will enhance her professional development and sensitize her to the experiences of her future clients. Students believe that it is important for their teacher to know something about their lives and aspirations; they feel especially valued if teachers invite them to share their real life experiences in the classroom.⁵⁸ When we as teachers encourage the sharing of the student’s life knowledge, he will share a further step in becoming the “real person who makes a life of the work we call lawyering.”⁵⁹ We will thus reflect to our students the image of the professional-in-waiting.

C. *Fostering Relationships*

Law students are not alone in their feelings of self-doubt and anxiety as they begin their studies. The comments that I have reviewed by 1Ls from Orientation make multiple references to feeling stressed, tense, lost, and having a fear of ridicule in the classroom once they become part of the daily discourse. Many express the desire to find a comfort level, a sense that their minds will be at ease. The information provided by students on

⁵⁶ Richard A. Posner, *Legal Narratology*, 64 U. CHI. L. REV. 737, 738 (1997).

⁵⁷ *Id.*

⁵⁸ Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U. S.F. L. REV. 941, 953, 957 (1997).

⁵⁹ Elkins, *supra* note 39, at 525.

their file cards, when shared during our classroom discussions, can assist students in reaching that “comfort zone” by helping foster relationships with their colleagues.

The case of *Brigance v. Velvet Dove Restaurant, Inc.*⁶⁰ is one that brings several voices into the dialogue.⁶¹ There, the defendant restaurant served intoxicating drinks to a group of minors, knowing that one member had driven the group to the restaurant.⁶² Plaintiff was subsequently injured in a one-car accident in which he was a passenger in the car driven by one of those minors.⁶³ He sought recovery against the restaurant based on allegations that it had served alcohol to this driver, thereby causing or increasing his intoxication, which led to the accident.⁶⁴ The Oklahoma Supreme Court ultimately held that the plaintiff had stated a cause of action, specifically “that one who sells intoxicating beverages for on the premises consumption ha[d] a duty to exercise reasonable care not to sell liquor to a noticeably intoxicated person.”⁶⁵ In doing so, the court noted that this overruled the common law view that the tavern owner was not the “proximate cause” of the injury.⁶⁶ Nonetheless, the court was influenced by public policy concerns involving the increasing harms caused by drunk drivers, especially with the growth in use of automobiles.⁶⁷ Accordingly, the restaurant was found to have a duty to protect the plaintiff from the acts of a third party, i.e., the drinker himself.⁶⁸

Many students who had previously been employed as servers quickly jumped into the fray. They began as one voice in asserting that the obligation the court placed upon the defendant was unduly burdensome, particularly the aspect prohibiting sales to a “noticeably intoxicated person.” It was suggested that servers were not experts in making determinations of who was “noticeably intoxicated” and that it would be too difficult to keep track of possible inebriation in a particular establishment. They expressed a fear that the employee server himself could be liable and that a future court would even find joint liability against the server who sold the alcohol to a colleague of that “noticeably intoxicated person” who then shared that drink with that person. One student, the owner of a tavern, was irate that the court seemed to disregard the fault of the drinker himself.

⁶⁰ 725 P.2d 300 (Okla. Sup. 1986).

⁶¹ Hopefully based on their past vocations, not participation in the drinking itself.

⁶² *Brigance*, 725 P.2d at 302.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 304.

⁶⁶ *Id.* at 305.

⁶⁷ *Id.* at 304.

⁶⁸ *Id.* at 305.

It was at this point that other students entered the discussion, sharing stories of those they knew who were injured by drunk drivers. These students noted that the lack of liability on the part of the server would not create any incentive to act responsibly in dispensing alcohol. They suggested that the drinker may bear some fault, but that the establishment itself should not escape its share of responsibility, because injury that occurs from the drunk driving is part of the foreseeable risk created by the server's culpability in dispensing the intoxicating beverages. Having noted that the decision established a duty upon the server, further discussion found students disagreeing about what would constitute "reasonable care" by the server; indeed, it was suggested that those very differences would leave this as a jury issue.

Finally, we turned to whether liability should also be visited upon the so-called "social host." This time there was little disagreement, especially among those who had been "social hosts" themselves at one point. One student, a past server who enjoyed the hobby of "beer brewing,"⁶⁹ suggested this would interfere with social functions, noting that the court in *Brigance* limited liability to "one who sells" the alcohol.⁷⁰ But what of the public policy concerns regarding the ever escalating harms caused by drunk drivers? Or the view towards creating an incentive on the server to be responsible in providing alcohol to his guests? Students commented that they "understood my point," but that such liability would interfere with the private lives of people seeking to benefit socially, not monetarily. In essence, those who had disagreed with each other on the issue of the business server having a duty united in their opposition to my suggestion that the social server should share in that obligation.

The Federal Torts Claims Act offered a further chance to use the students' life experiences to cultivate a bond between classmates. In particular, our class discussion focused on the *Feres* doctrine, based on a case where the Supreme Court went beyond the exception to the FTCA which excluded "claims arising out of combatant activities of the military or naval forces, or the Coast Guard, during time of war."⁷¹ In *Feres*, the Court barred three separate plaintiffs from recovering for their *non-combatant* injuries based on the view that they were "incident to service," a term not specifically enumerated in the exceptions to the FTCA.⁷² The *Feres* Court indicated its decision was based on the singular position of the government, which had no private law analogue, the fear of subjecting the unique government-to-soldier relationship to differing state laws, and the availability of pensions, which could function as an "exclusive remedy"

⁶⁹ Who, incidentally, offered to give me a bottle of his home-brewed blackberry wine, an offer that was not accepted until all grades were handed in.

⁷⁰ *Brigance*, 725 P.2d at 305.

⁷¹ *Feres v. United States*, 340 U.S. 135, 138 (1950).

⁷² *Id.* at 138.

similar to workers compensation.⁷³ Further post-*Feres* readings indicated an additional rationale to not impose a duty for injuries “incident to service,” because such a duty would interfere with military discipline.⁷⁴ Three students in particular had been exposed to military service. One had been an infantryman who had served as a team leader of a rapid deployment combat scout platoon charged with gathering intelligence on opposing forces; he also had trained newly-indoctrinated soldiers on team operations and standards. A second was recently retired from the military, having spent his career flying fighter jets for the Navy. The third had served as an infantryman in the Army, listing on his card as his most memorable experience “military basic training.”

This was an instance in which the class seemed to listen even more closely to the views of their “expert” colleagues, perhaps the result of the horrors of September 11 being all too fresh in their minds. Two of these “authorities” expressed support for the *Feres* doctrine. They both emphasized what they viewed as the “practical” position taken by the Supreme Court. They contended that the military has a culture based on following commands and not second-guessing military decisions, particularly from a civilian, judicial perspective. In their view, the need for obedience to orders, for loyalty and commitment to service and to country would be undermined by allowing suits against the government for service-connected injuries. Those two students believed that a serviceperson’s allegiance and deference to the military and to his country included forfeiting the right to sue the government even for activities which injured him.

The third voice of experience differed significantly, taking what some may term a “lawyerly” approach. He noted that Congress had enacted the FTCA and its exceptions and nowhere within those exceptions was one addressing injuries “incident to service.” Nor had Congress provided that a military pension was an “exclusive” remedy for the injured service member. Moreover, Congress affirmatively provided in the FTCA that the tort law to govern the litigation was that of the state where the injury occurred, regardless of possible varying consequences of such application. This third student was particularly concerned with the “practical” need to provide a “check” on the military for non-combatant activities, many of which are similar to acts performed by private parties. He gave as an example the injuries suffered by military personnel from medical malpractice by Army doctors. He suggested that the military is a magnet for problem doctors, some who have either had their licenses revoked or suspended while previously in private practice, who had lost their medical

⁷³ *Id.* at 145.

⁷⁴ *See, e.g.,* United States v. Johnson, 481 U.S. 681 (1987); United States v. Stanley, 483 U.S. 669 (1987).

malpractice insurance, or who failed board exams. He noted that doctors do not need to maintain malpractice insurance, nor do they need to be licensed in every state in which they serve the military. He added that doctors in the military frequently transferred, making it difficult to keep track of those with problem records. In essence, he viewed the government as having an obligation, or duty, to protect those who serve it regarding non-combat activities.

The exchange between our three "experts" captured the attention of their classmates, who for several minutes sat mutely as the three, in turn, responded to each other's arguments. And, when I polled the remainder of their class on their view regarding whether they would uphold the ongoing validity of the *Feres* doctrine, the group was evenly divided. Whether this was the result of preconceived notions or the carefully articulated positions of their colleagues is unknown. But clearly this was an area in which reasonable people could and did differ.

The sharing by the students of their life experiences during the learning process promotes relationships between them and their teacher. Some have commented that the "impersonality" of law school is seen in the treatment of students by their professors, who are seen as distant and not as supportive as necessary.⁷⁵ The seeking of background information by the teacher and subsequent sharing of it in class allows fellow classmates and teacher alike to break down the discomfort and anonymity of the law school process. Each student is given individual emphasis; she is not just another proverbial cog in the machine. He is no longer a name or picture on the seating chart asked to respond to questions regarding issues and holdings, rationales and hypotheticals. He is a "whole" person; the teacher has demonstrated an interest in his students by taking time to learn something about their lives and possible aspirations. As the student feels valued as an individual, as he understands what he can add to the classroom discourse, his anxieties and fears may well dissipate. Both his teacher and his classmates have gotten to know him as an individual. A new meaning has been given to his life experiences and social existence, this time in the guise of his legal education.

I have noticed this bond form between students as they tell stories about themselves which inform our discussions of the law and allow students to be enlightened about their colleagues' life events as "witnesses" to the law itself. In the three years that I have employed the file cards, I have seen students seek each other out as class ends and overheard conversations suggesting that the experiences they have shared have led a classmate to pursue his acquaintanceship or even more in-depth information of that revealed episode. I have known some of those contacts to lead to the formation of study groups. In their own way, the stories told

⁷⁵ Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65, 70 (1985).

by the students make them “real” to each other and encourage their relatedness to one another. The emphasis placed on the diverse background experiences of the students draws them to one another.

Moreover, the student soon learns that there are many “teachers” in the room, the person behind the podium being but one of them. Clearly, the teacher has his legal experience and own life history to share. Yet he is only one of the many different voices which should enter the dialogue. As students share their practical insights, they in turn serve as role models to each other. They offer very practical, everyday insights which will help in enhancing problem solving for their future clients. And they will reveal information which will serve to foster both personal and professional relationships with their fellow students who come to see them as worth knowing as individuals and possible colleagues throughout the law school journey. Having looked in the mirror, they value its image.

D. *The Excitement of the Unknown*

The fear of the unknown awaits both the entering law students *and* their teachers. For the students, it is the fear of “The Paper Chase,”⁷⁶ the perceived torture rack of the Socratic method, lengthy assignments, and competing against “brilliant” colleagues. For the teacher, it is the occasion to face new and challenging minds, while responding to the tensions that are inherent in adapting to her students’ professional quest. Yet the experience can be exhilarating for all concerned, especially as they share their narratives in the classroom.

The “no duty to act” rule is guaranteed to prompt considerable discussion. For example, in *Yania v. Bigan*,⁷⁷ the decedent’s widow filed a wrongful death action based on the decedent having drowned after jumping into a water-filled trench.⁷⁸ She alleged that the defendant had cajoled the decedent to jump through verbal taunts and then failed to attempt to rescue him from the water.⁷⁹ The court held the defendant had no duty to act.⁸⁰ It reasoned that the decedent himself had made the choice to jump and that there was no legal duty to go to his rescue since the defendant had not placed decedent in a “dangerous position.”⁸¹

Among the students to whose life activities I turn are those who had previous positions as “rescuers,” among them lifeguards and ski patrollers. These students are sympathetic to the widow’s claim in *Yania*, suggesting that the defendant’s taunts led the defendant to jump. I then ask, what if

⁷⁶ The Paper Chase (Twentieth Century Fox 1973).

⁷⁷ 155 A.2d 343 (Pa. 1959).

⁷⁸ *Id.* at 344.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

the student himself, having played no part in the victim jumping, saw that person in peril and could come to his rescue without any danger to himself—should the student have a *legal* duty to act? Those who previously had been employed as “rescuers” were evenly divided on this point. Those who believed they had an obligation stressed ideas of public policy based on “fundamental human decency,” basic thoughtfulness, and ideas of moral responsibility. They said they would not be able to find it in their conscience to avoid the plight of the victim. However, others just as strongly maintained it was their right to not get involved, based on their own freedom of choice. While those latter students agreed that it was appropriate to require them to act if they were “on the job,” they distinguished that situation as involving the victim’s apparent reliance on the rescuer performing his job. In effect, the rescuer and the victim in such instances had gone beyond anonymity—they had a “relationship,” based on the rescuer’s vocation, which required action.

I then noted that there has been little legislative activity in the United States imposing a duty to act, as contrasted to several European nations that require such conduct. I shared with the class Vermont’s “Duty to Aid the Endangered Act,” which makes it an offense, entailing a small fine, to fail to assist another who is “exposed to grave physical harm” provided the defendant can provide aid “without danger or peril to himself or without interference with important duties owed to others.”⁸² I suggested that while a small fine may not provide an incentive to act, perhaps the violation of the statute would allow an injured plaintiff to argue that the defendant was negligent as a matter of law, i.e., negligent per se. Many more students now vocalized their discomfort with requiring any action on their part if they had not been responsible for placing the victim in peril. While each believed that he “would” help, they did not like being forced to do so as a matter of law. By contrast, those who supported the duty to act saw no reason strong enough to refrain from legislating in favor of what they saw as “good morality.” The discussion on just what is “good morality” continued amongst the students as they filed out after the class hour ended.

The case of *Lisa M. v. Henry Mayo Newhall Memorial Hospital*⁸³ provided a further instance in which students’ backgrounds facilitated the classroom experience.⁸⁴ In that case, the plaintiff, a pregnant teenager, sought medical treatment after a fall.⁸⁵ When treated in the emergency room, an ultrasound technician, acting on the pretense that he was doing necessary testing, improperly placed an ultrasound wand and his fingers in

⁸² VT. STAT. ANN. tit. 12, § 519(a) (1968).

⁸³ 907 P.2d 358 (Cal. 1995).

⁸⁴ *Id.*

⁸⁵ *Id.* at 359.

the plaintiff's vaginal area.⁸⁶ Plaintiff sued both the technician and his employer, the hospital.⁸⁷ The California Supreme Court held that the hospital was not liable for such actions under respondeat superior because a sexual assault on a patient was "not a risk predictably created by or fairly attributed to the nature of the technician's employment."⁸⁸ The court further noted that the technician's personal motivations were "not generated by or an outgrowth of workplace responsibilities, conditions or events."⁸⁹

Curiously, two of the students who most strongly disagreed with the decision had previously managed their own businesses. One had managed a Domino's Pizza franchise. He recalled how Domino's had been held responsible for the vehicular accidents caused by its drivers; he did not see how the intentional acts of the ultrasound technician in *Lisa M.* were any less a risk "predictably created by or fairly attributed to the nature of . . . employment" than his own driver's negligence.⁹⁰ When I then questioned whether this would necessarily lead to Domino's being liable for an employee's sexual assault (to borrow the facts in *Lisa M.*), he responded those facts would be taking the doctrine of respondeat superior too far—such actions are strictly personally motivated and have nothing to do with the act of delivering pizza. By contrast, he said, the conduct in *Lisa M.* could only have been the "outgrowth of workplace responsibilities, conditions or events,"⁹¹ because the job responsibilities gave the technician the very particular chance to misbehave given the intimate contact inherent in the employment. The second student, the previous owner and manager of a daycare facility, also disagreed with the decision. He shared that when he served as manager, he took great care in hiring his employees, employing only those with strong references and background checks. He believed that the job of the child care workers put them in a position of trust with a vulnerable population (i.e., children), much like the technician had a position of trust as a medical provider and the plaintiff was in a vulnerable position in being examined. This student noted that during his tenure as a manger, there had been no complaints of sexual abuse. He attributed this to his attention to both hiring and supervision, suggesting that the threat of vicarious liability served as an incentive for him to "control" his workers and provide the safest environment possible for the care of the children. Even when I suggested that he was perhaps being a bit harsh on himself, offering up the possibility that the child care worker

⁸⁶ *Id.* at 360.

⁸⁷ *Id.*

⁸⁸ *Id.* at 367.

⁸⁹ *Id.* at 364.

⁹⁰ *Id.* at 367.

⁹¹ *Id.* at 364.

could have heretofore unknown proclivities to abuse one of his charges, the student responded that such actions would in all likelihood be generated by the employment itself. A fellow student then jumped into the discussion, offering to “represent” the manager and cautioning him to possibly limit his concessions of liability by reminding him of courts’ unwillingness to impose liability under the similar facts in *Lisa M.*

The narratives offered by students vary from year to year, as each student brings his own unique history into the classroom. Admittedly, I do not know in advance how the given class hour will proceed. I have information on the student’s file card indicating his educational, vocational, and personal history, yet I am uncertain how clearly I can connect this information to the course materials. However, each year brings in new students with new stories to tell, thereby allowing me to utilize their backgrounds as most appropriate. This year it was lifeguards and ski patrollers, managers of a pizza restaurant and a day care center. This allowed me to bring their experiences to light in discussing the “duty to act” and “respondeat superior.” Next year I may have medical providers or police officers, leading to the personalized application of their experiences as we study the duties owed by professionals and the firefighter’s rule.

The invitation to share the unknown serves both to energize the students and results in my teaching a “different” Torts class each year. While the concepts of negligence, intentional torts, and strict liability never waiver, their presentation invariably does. The course can never become dry and esoteric, because the narratives presented by the students will not allow this to occur. I will read and re-read each file card several times during the semester, looking for something to draw from each student so that all voices can be heard. As a result, I can rely on the students to do their share of the “heavy lifting,” much as this is unbeknownst to them when they first fill out the cards. Yet, as the semester progresses, I find that most are eager to share their life events in the context of the materials we are studying. Many have approached and asked to supplement information on their cards once they have seen how integral this information is to the educational process.

The feedback provided by students to the use of the information contained in the file cards has been very positive.⁹² The revelations of students, both of their life events and of their view of the law, can at times be surprising and provocative. The comments add a spark which would otherwise be lacking because of the absence of personal perspectives. They can bring out strongly-held opinions, which the student is then “forced” to justify. They can aid others in visualizing events more clearly while demonstrating a world that exists outside their colleagues’ own experience, revealing how particular jobs or companies actually operate in

⁹² See *infra* Section IV.

the real world. In the end, the mirror represented by the life stories of students reflects the ideals and blemishes which are society and the law itself.

IV. THE MIRROR'S TRUE REFLECTIONS: STUDENT COMMENTS

Law school professors are no different than other teachers in having the capacity to receive student feedback. The normal process at Penn State-Dickinson is to have the faculty distribute in class, through selected students, evaluation forms to be completed by their classmates and returned to those selected students for delivery to the administration. The evaluations are anonymous and are conducted towards the end of the semester. Faculty can review them only when grades have been submitted.

In both the fall of 1999 and 2000, the first two times that I utilized the student file cards, I received scattered comments on the student evaluations concerning the advantages and disadvantages of their use. As the third cycle approached its conclusion, I decided a more thorough response would help me decide the efficacy of this pedagogy. I therefore submitted to the students on "evaluation day" an additional form to be completed, this one dedicated to the use of the cards. On that form, I reminded the students of the categories of information that I had asked them to supply on that first day of the semester and asked them six questions.⁹³ I had fifty-nine students in my Torts class in fall 2001; all but one was present to do the evaluation forms. The responses to each of the questions follow below, the parenthetical indicating the number of students who expressed the same or similar comment. It should be noted that not every student responded to each question.

1. What was the most valuable aspect of the cards? Why?
 - Got to know about other classmates' real-life examples of the law. (13)
 - Let us know who the "experts" were, helped us apply our experiences to course materials. (5)
 - Vocational experience. (4)
 - Hobbies: It allowed you to relate the cases to our past experiences. (3)
 - The fact that you were able to relate personal experiences to what we were learning. (2)
 - The volunteers have knowledge on topics we are covering in class and they get to share this with the rest of the class. (2)
 - Hearing real stories: more interesting than cases from book.

⁹³ A copy of the form is attached as Appendix A.

- They were an effective tool for creating “real life” examples from the class.
- Sometimes found “experts.”
- Work experience: very often could provide valuable insight from my cohorts, as easiest and best way to learn this dense material was through application and experience.
- Added something that other classes lacked by getting the class involved in personal discussions.
- People who were familiar with certain topics added interesting input to the discussions.
- Gave students individual emphasis; I didn’t feel like another cog in the machine.
- Background experiences because it allowed individuals to contribute their own personal knowledge to what was being studied.
- I think they were valuable because it brought real life into the classroom, but I don’t think my card was ever used.
- They added to class participation and made the class feel more involved and knowledgeable.
- Made it easier to relate to students.
- It opened up discussions so that class “experts” in certain areas could contribute their knowledge.
- They were a good way to include “volunteers” in class and people feel less “put on the spot” when they can talk about their actual experiences.
- I remembered what I wrote so when a topic related to my experience came up I knew I would be called on.
- Allowed people to talk about subjects they know and let people get to know things about other people.
- We had expert witnesses in class because their employment informed us of everyone’s areas of knowledge.
- Being able to relate the cases and materials to real-life situations.
- Your uncanny ability to seem as though you are telepathic. I thought this was very valuable to the class because it seems to demonstrate a sincere interest in the students.
- It forced participation.
- He took the time to get to know his students.
- It allowed you to call on people who may have some background information that could add to the discussion.
- Personal perspective allows people to relate.
- Getting the class involved.
- Made materials more true to life.
- Incorporating personal information of class members into teaching materials.
- I like having people with a background on specific topics.

- Good to know how particular jobs, industries, etc. really operate in the real world.
- The cards helped us relate law to everyday life.

Those comments reveal that the students valued their colleagues' experience. They viewed them as offering important insights which enhanced their learning of the materials. Students were able to apply their experiences to classroom discussions, making the class "real" in a manner that allowed the law to be related to daily life. As students were made class "experts," they seemed to appreciate the individual accreditation they received. It was perceived that the class became more readily involved in the dialogue, found the materials to be more interesting, and gained a greater knowledge of tort law. Curiously, though students presented the opportunity for being called upon based on the information contained on their cards, they also felt less "put on the spot" in using actual experience, possibly the result of relying upon the familiarity of their personal experiences. Moreover, they had prior "notice" that they would be involved in that day's discussion based on the data that they had shared on their cards. Students also recognized that the use of this life knowledge allowed them to get to know their classmates and thus relate to them more readily. They further acknowledged that I had shown a sincere interest in them by taking the time to learn about them as individuals and engage them in discussion, albeit for the one student shoes card I apparently did not use. Nonetheless, the students clearly valued the information presented from the cards.

2. Should particular categories of information be added, modified or deleted? Why? Please be specific in listing the particular areas you would add/modify/delete.
 - Fine the way they are. (13)
 - Perhaps add what area of law we feel we would like to get involved in. (3)
 - Most memorable experience served no purpose. (2)
 - I think you should encourage people to include more detail. I filled out the card rather generically so as not to bore you; but during the semester, a few cases applied to me but I had never included it.
 - I think they were well organized.
 - Modify most memorable experience maybe with just an interesting fact.
 - The only category where I might not find particular relevance would be most memorable experience, but then again, that category serves the purpose of letting you get to know us better.

- Ask students to identify where they are from; it could be interesting to see if regional differences affect opinions.
- The information on the cards now seems adequate.
- I would not change cards, but I would notify people that they will be used in this manner.
- I would clarify that employment listed need not be legal in nature: Since it was the first day of law school when we filled out the cards, I assumed you only wanted to know if we had legal experience and didn't share my areas of expertise as a result.
- I don't know that the "most memorable experience" category was helpful.
- Maybe include number of years in different professions.
- Might want to add a category about injuries or accidents.
- While hobbies was a good category for everyone else, it wasn't for me. I don't have any technical "hobbies."
- I would modify vocational "experience." That led me to believe that you only wanted our previous or our most important, not several.
- I'm not sure experience with the legal system added anything to the course; perhaps it could be deleted.

This question was prompted by my desire to get specific constructive criticism. The class was not of a single mind in their responses, some expressing satisfaction with the status quo, others suggesting that categories should be added or excluded. Admittedly, the category of "most memorable experience" can be a reach; it may or may not supply me with information valuable for our learning, but it does allow me to get to know the students better. This in itself can serve the valuable purpose of assuring the individual student that we as teachers care and that she is not just another name or picture on the seating chart. I also apparently need to provide more encouragement to students to become involved in the dialogue even when they have not put detailed information on their cards.

Conversely, I have consciously decided *not* to tell students specifically how the cards will be used, partially because I do not want to chance that some will be less than forthcoming, but also because I cannot be precise given the uncertainties of how the classroom discourse will unfold on any given day. Yet, I must not assume too much, since there is some indication that students limited their vocational information solely to that which was "legal in nature," or did not disclose their complete vocational background. The students have provided me their input and perceptions. I will certainly consider whether to implement them before tendering file cards to future year's incoming 1Ls.

3. Did the information contained on the cards as presented through your colleagues' classroom participation assist in your learning process? If so, how?
 - Yes. (3)
 - Yes—Added real-life experiences to the law. (8)
 - Yes—Let us know who the “experts” were; helped us apply our experiences to course materials. (5)
 - Yes—It developed class discussion through personal experiences. (4)
 - Yes—More interesting and pertained to assignments. (3)
 - Yes—It makes things “real” when you can apply legal principles to your personal life.
 - Yes—It gave a reasonable person’s view of the experience.
 - Yes—Because it related the material to every day life experiences.
 - Yes—This placed emphasis on our diverse experiences.
 - Yes—Very much so. Ziegler’s experience with insurance or Mr. Parycki(sp?) skydiving helped me relate to the material, because it is easier to see through my classmates’ eyes than the eyes of Dobbs/Hayden.
 - Yes—You would know that when you read a topic you had a connection with which you would be called on.
 - Yes—Because it provided practical experiences on what appeared somewhat distant in the reading.
 - Yes—Especially in the cases where people had actual experience in the specific situations we discussed. It added a new and good perspective, one you can’t get from a textbook.
 - Yes—It seemed to expand the discussion by recognizing and discussing different points of view on legal theories.
 - Yes—Vocational experience.
 - Yes—Helped bring out strong opinions people had that needed to be considered.
 - Yes—It helped demonstrate that a world exists outside the student’s own.
 - Yes—I could visualize the events better.
 - Yes—It was a great way to have the cases explained.
 - Yes—It kept people without knowledge from speaking.
 - Yes—We got to hear some examples of concepts we were discussing.

- Yes—Many of them had valuable life experiences that aided our learning in certain areas; we probably would not have known about them if not for the cards.
- Yes—Because it was easier to understand by putting yourself in the situation.
- Yes—They added additional information that I thought was useful, either as background or to supplement the subject matter.
- Yes—Helped give true life perspective to the information.
- Yes—It gave me more of an “insider” view of the experience.
- Sometimes—Useful insights.
- Sometimes—Listening to other people’s stories sometimes got boring.
- Only if they knew a great deal about what they were talking about.
- Somewhat—It allowed for first-hand accounts.
- Sort of. (2)
- Significant amount better than Socratic method. Adds to value of the discussion.

Students tended to view the actual life experiences shared by their colleagues as providing perspective in addition to aiding development of the classroom discussion. This expanded discourse helped to tie otherwise “remote” readings to the practical experiences of the class, which served as a positive means to have the cases explained. In essence, the students tended to have a better understanding of the materials by visualizing the events which led to the injuries we discussed and by placing themselves in particular situations. Accordingly, students were able to relate to the course materials better than through the text alone, possibly even applying the point of view of the “reasonable person” to their daily activities.

Moreover, students tended to appreciate the comments of their colleagues, which provided an eye to the world outside that which existed for many in the class. Indeed, certain reference was made to the comments by specific students regarding insurance and skydiving. While it may be true that it “sometimes got boring,” there may have been a better chance that the word “sometimes” would be deleted if the students had listened to my stories alone. And even if the use of the cards may have kept people without knowledge from speaking, this might not be a negative from the view of those listening. In particular, it was my hope to find something on each person’s card which would enable him to become a storyteller during some part of the course. Interestingly, the use of the cards was seen as being “better than the Socratic method”; I myself saw it as adapting the Socratic technique to draw out the students’ life experience. In essence, the information contributed positively to our dialogue.

4. Should the use of these cards be continued? Why?
- Yes. (6)
 - Yes—Because they added real-life experiences to the law. (16)
 - Yes—Good way to initiate student discussion. (8)
 - Yes—It is very helpful in the learning process. (6)
 - Yes—Adds an interesting dynamic to class discussions. (5)
 - Yes—Let us know who the “experts” were: helped us apply our experiences to course materials. (4)
 - Yes—It made the class fun. (2)
 - Yes—Because their benefit is greater than their risk!!
 - Yes—When I was called on it was easier to answer the questions because I felt comfortable with the topic.
 - Yes—It created an unexplainable congenial atmosphere.
 - Yes—Helpful to discussion of material.
 - Yes—It makes people be prepared.
 - Yes—Vocational experience.
 - Yes—Gives us background on subjects discussed and offers a way for us to participate by relating it to our experiences.
 - Yes—Nice personal touch.
 - Yes—If anything, it helps you become better acquainted with your students.
 - Yes—They made class more interesting; I can’t remember anyone being embarrassed so there is no reason to discontinue.
 - Yes—They are a great way for you to get to know us and for us to know each other.
 - I think they were fairly helpful for discussion, but class discussion won’t be made or broken by their presence or absence.
 - Yes—Note cards are a great idea. A very good system.
 - Yes—Use of personal experience in explaining concepts was very helpful.
 - Yes— Being able to use the students’ lives as examples was fun.
 - Yes—I really liked the use of everyone’s experience in class, makes it interesting.
 - Yes—Liked use of note cards as a way of learning about my classmates’ experiences.

All of the students indicated that the use of the file cards should be continued. They mentioned several ways in which the narratives shared from the cards served to enhance their learning—by revealing real life experiences of the law, by providing students the opportunity to participate

by relating to materials, and by adding an interesting dynamic to the discussion. Students were credited for their prior history, as the class learned who may have an “expertise” to relate, which experience could then be applied to the course materials. The “personal touch” emblematic in the use of the file cards created an “unexplainable congenial atmosphere,” where students took comfort in discussing various topics. Indeed, it was noted that no one had been embarrassed by the sharing of the narratives; the use of the life experiences made the class “fun,” not a term normally associated with law school pedagogy, but one that may encourage more students to share in the classroom dialogue.

Students appreciated that the use of the cards helped me to get better acquainted with them. Moreover, they also recognized that this information served to stimulate their own relationships by serving to introduce them to each other as individual budding professionals. The cards served an additional benefit of causing students to be better prepared, presumably because people recalled information that they had provided on the card and were ready to participate on those topics. This benefits both the class and teacher in assuring for a vibrant atmosphere. As one student rightly noted, making a heretofore unknown use of Judge Learned Hand’s classic formula, “the benefit is greater than the risk.”

5. If the use of cards is continued, what suggestions do you have to improve upon them?
 - None: They were great! (5)
 - Explain at the beginning why the cards are being used. (3)
 - If some students felt embarrassed, perhaps tell students the purpose of the cards before they fill them out. Ask them if they would mind if they were used in class. (2)
 - Eliminate most memorable experience; I have many that could qualify under that category but none of which I think you are looking for.
 - I really found them beneficial! I think that they could be relied on even more for class discussions.
 - Use them more often to call on a wider range of people.
 - Don’t reach too far to find an “expert.”
 - Not sure.
 - Nothing, really.
 - I can’t think of any suggestions at this time.
 - Let us take the cards home the first night. There wasn’t a lot of time to fill them out.
 - Use more witnesses from cards.
6. Other comments concerning the cards or their usage:

- Good idea and teaching method. (2)
- I am amazed that you remembered all the info. (2)
- Tell students in the beginning what you will use them for; it will lead to more valuable information.
- It was a great system! Especially since you kind of knew when you could be called on.
- Allow more class time to fill them out; I didn't get a chance to complete my card.
- I enjoyed feeling as though I contributed to the class merely through my experience.
- Keep it up!

The course evaluation system employed by Penn State-Dickinson allows teachers to receive “constructive criticism” from our students. To some extent, I was disappointed that I did not receive a greater number of suggestions on the supplemental form I used to obtain student input on the use of the file card system. Indeed, my use of the “catchall” category in question six was an additional effort to secure feedback.

The students tended to approve the pedagogy exemplified by use of the index cards. Some students did not have any suggestions to offer. Others commented on means which I can employ to more effectively implement the system as it existed, including using the cards even more, calling on a wider range of people, and not extending my search too remotely for a class “expert” on a particular topic. Perhaps further explanation of the use of this information at the time that I initially distribute the cards will result in receiving broader input. However, I do not want people to refrain from providing what could be useful tidbits of their past because they “fear” they will present themselves as a “target” for selection during our dialogue. Do I allow the students to take the cards home overnight to have more time to complete them? Will this allow them the opportunity to talk amongst each other and start sharing experiences and developing supportive relationships or instead to seek “cover” by securing the advice of upperclass students from my Torts section who may recommend they limit the information they provide? Given the positive response from the students to the use of the cards, I gravitate towards allowing them more time to complete the cards. I hope that this will further the bond that forms between the students themselves and additionally with me as they contribute to class by sharing their life stories.

V. CONCLUSION: FINAL REFLECTION

It remains incumbent on teachers to engage their students in a meaningful classroom dialogue. My use of the file cards is an additional technique which serves to combine the purely academic model with the real world. In encouraging students to share their life experiences, those

narratives enhance the learning of course materials. They provide teachers with the opportunity to accredit their students, while fostering relationships between the students and with the teacher herself. And as each year passes, a new class enters, bringing in its own unique personal histories and turning the discourse in a different direction, further stimulating the discussion that follows. Thus, the everyday lives of our students will help them explain and inform themselves of the law as they begin the process of “thinking like a lawyer.”

I admit that there is no magic in the categories that I have selected to obtain information from the students. While the Mirror of Erised shows us the “deepest, most desperate desire of our hearts,” but “will give us neither knowledge or truth,”⁹⁴ by contrast the reflections of our students provide a meaningful insight into their understanding of the law and a means to assist them in the journey through law school. As Harry Potter learns, a glance at the Mirror of Erised does not allow him to know “if what it shows is real or even possible.”⁹⁵ Yet the mirror through which our students reflect their narratives in the classroom provides a sense of reality to the law. It provides both personal knowledge and actual stories to their colleagues and teachers that places a human face on the law. At the same time, the students gain confidence in their abilities to achieve the “possible,” to learn and understand the implications of the law on their lives and the lives of their future clients. Let us recall the words inscribed on top of the Mirror of Erised: “Erised stra ehru oyt ube cafru oyt on wohsi.”⁹⁶ When they reflect back, the mirror reveals itself to be “The Mirror of Desire” one that related, “I show not your face but your heart’s desire.”⁹⁷ Our students bring their own curiosities and desire to learn that broad area of knowledge we term the “law.” As we encourage them to share their stories, their search for an understanding of the legal process will serve as a benefit to all those involved in the dialogue, providing the most meaningful reflection of all.

⁹⁴ Rowling, *supra* note 1, at 213.

⁹⁵ Rowling, *supra* note 1, at 213.

⁹⁶ Rowling, *supra* note 1, at 207.

⁹⁷ Rowling, *supra* note 1, at 213.

APPENDIX A

TO: Torts Students, section 3
FROM: Professor Michael Mogill
DATE: December 5, 2001
RE: Use of student file card information

You may recall that I had you fill out a file card the first day of class, on which I asked you to provide the following information:

- name;
- undergraduate and graduate degrees;
- vocational experience;
- experience with the legal system;
- hobbies; and
- most memorable experience.

My reason for having you do so was not only to get to know a little bit about your background but to make use of this information as appropriate in class to have those with particular histories serve as class “experts” or “consultants” on issues that we have discussed. It has not been my intent to embarrass anyone through the disclosure of any such information but to instead allow each of you to contribute your own “stories” during our learning process. In order to assist me in evaluating the usefulness of this information, I would appreciate your responses to the following questions; thank you for your input!

1. What was the most valuable aspect of the cards? Why?
2. Should particular categories of information be added, modified or deleted? Why? Please be specific in listing the particular areas you would add/modify/delete.
3. Did the information contained on the cards as presented through your colleagues’ classroom participation assist in your learning process? If so, how?
4. Should the use of these cards be continued? Why?
5. If the use of the cards is continued, what suggestions do you have to improve upon them?
6. Other comments concerning the cards or their usage: