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#MeToo: Rethinking Law and Literature to Define Narrative Justice

Abstract	490
Introduction	491
I. From Law and Literature to Narrative Justice	496
A. Historical Background	496
B. Telling Stories in Courts	501
II. Modern Application of Narrative Justice: The #MeToo Movement	507
A. The Formation and Building of the #MeToo Movement	508
B. First-Person Narratives in the #MeToo Movement	510
C. Denial and Suppression of #MeToo Narratives: Brett Kavanaugh and Christine Blasey Ford	511
1. Implicit and Explicit Suppression: The Challenges Women in the #MeToo Movement Face—Getting People to Believe Their Story	513
2. Threats and Societal Structures That Suppress #MeToo Narratives	514

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D.	Alternative Narratives: Community Reaction to #MeToo Narratives and Backlash.....	516
1.	Positive and Negative Community Reactions.....	516
a.	Virginia City and Stowe	516
b.	Celebrities: How #MeToo Narratives Interact with the Public Eye.....	517
2.	Alternative Narrative and Backlash: <i>Depp v. Heard</i>	518
a.	Community Reaction to <i>Depp v. Heard</i>	520
E.	Social Media and Access to #MeToo Narratives.....	520
III.	Institutional Application of Community Narratives	522
A.	Cities as Storytellers	522
B.	Expanding on the Idea of Storytelling	531
C.	International Narratives in Law and Policy: Qatar	532
IV.	Narrative Justice for Corporate Social Responsibility	534
A.	Narratives in Contract Law	534
B.	Narratives for Environmental, Social, and Governance Investing and Legal Advisory Groups	538
C.	The Need for Narrative in Corporate Law	542
	Conclusion	543

ABSTRACT

The law and literature movement is transforming into something new. This Article will discuss what that newness is, how it came about, and the different shapes it takes to provide the legal community with a platform to contribute to a working definition for a term I created in 2019, narrative justice. Creatively, technologically, and economically, public institutions and legal culture are rethinking the value of voice and story. With concrete examples of innovations and social movements, this Article will demonstrate how both action and inaction have propelled us as a society toward urgency in defining and claiming narrative justice. The Introduction canvasses U.S. case law to discuss patterns of narrative incorporation—or the concerning lack thereof. Recently, we have seen a new growth in this field: an emphasis by activists, artists, and academics, among others internationally, on applying voice, story, and journey to present conflicts and problems. The next Part discusses the critical points where public and private institutions, as well as individual citizens, have catalyzed to birth a new field of narrative justice. Specifically, I discuss the #MeToo movement, as well as cities' work, community, individual empowerment, recent interdisciplinary legal scholarship, and teaching models, which are

all analyzed for their inclusion of narrative. City government “storytellers” and the action of the #MeToo movement are two rich examples of law and literature’s expansion to activism through narrative justice. Finally, in Part IV, I dissect the lack of narrative presently in corporate law and the growing legal field of environmental, social, and governance advising, which should include the concept of narrative justice. This Article concludes with a proposal for a working definition and function of narrative justice, based on the examples reviewed herein as they relate to each other, the precipitating field of law and literature, and the need for updated terminology and pedagogy to further advance the practice of law as a moral, ethical, and just profession.

INTRODUCTION

It is not of small note that I first began writing this Article, and the thoughts within, amid a global crisis. My children were home from school indefinitely. I was working from home indefinitely. The law school was closed indefinitely. Each day, I was increasingly anxious, knowing the number of unemployed was rising, the markets were volatile, access to mental health support was limited, and loved ones were dying devastating, unfathomable deaths. We are all still trying to climb out from the states of profound grief.

The law, and its purpose and functions, must change to better prepare for crises like what we now face—to accommodate new viewpoints, different outlooks, and the suffering, illness, and disability that is far too easy to discuss but then brush aside to look the other way. In these days of physical isolation, I have been wondering—was it shame that caused this global COVID-19 pandemic? Shame as individual cities, states, or nations struggled to admit suffering and illness, particularly in connection to governmental administrations’ resistance to offering accessible testing for the virus? Creating a new acceptance in law and business, to include narratives, voice, story, and acknowledgment of difficulties and challenges we face as human beings, will create a more humanistic and productive world, though I know how naïve this sentence sounds. Nevertheless, if I do not put the idea out there, it will not be out there. Thus, it is the law’s reformed understanding of the need for people willing to divulge their experiences and thoughts derived therefrom that compels us to examine and define the field of narrative justice. Society demands our voices to change the law.

The law and literature movement is transforming into something new. This Article will discuss what that newness is, how it came about, and the different shapes it takes. It will also provide the legal community and other interconnected interdisciplinary scholars, artists, and activists with a platform to collaborate in building the term “narrative justice” and applying it in practices intersecting with law and policy. So, what is narrative justice? I created the term “narrative justice” in 2019, in conjunction with the Narrative Justice Project, which I am the founding director.¹ In my mind, narrative justice is the study and application of voices, stories, and journeys, both individually and communally, as they relate to law and justice. Creatively, technologically, and economically, public institutions and legal culture are rethinking the value of voice and story. With concrete examples of innovations and social movements, this Article will demonstrate how both action and inaction have propelled society toward urgency to define and claim narrative justice. Different change agents, including law and literature scholars, activists, news media outlets, and local governments, have all contributed to the growth of this new field of law.

Moreover, scholarship in law, literature, and medicine has increasingly used the term “narrative” to analyze how voice engages with law, health, and social justice.² Law, prelaw, and writing programs offer new courses such as Writing Social Justice and oral storytelling opportunities.³ For example, Columbia University offers a Narrative

¹ *Our Purpose*, NARRATIVE JUST. PROJECT, <https://narrativejusticeproject.org> [<https://perma.cc/E3G6-CXK8>].

² See, e.g., Anne E. Ralph, *Narrative-Erasing Procedure*, 18 NEV. L.J. 573 (2018).

³ Columbia University’s Master of Science in Narrative Medicine aims to improve outcomes for patients and caregivers by teaching health professionals and writers about narratives. *Master of Science in Narrative Medicine*, NARRATIVE MEDICINE, <https://sps.columbia.edu/academics/masters/narrative-medicine/master-science> [<https://perma.cc/GSD8-4AMC>]. By focusing on narrative medicine, the program aspires to “enable[] patients and caregivers to voice their experience, to be heard, to be recognized, and to be valued, improving the delivery of healthcare.” *Online Certification of Professional Achievement in Narrative Medicine*, NARRATIVE MEDICINE, <https://sps.columbia.edu/academics/masters/narrative-medicine/certification-professional-achievement> [<https://perma.cc/AZ6A-RMHD>]. Columbia University also offers a Master of Arts in Oral History, training students in method and theory. *About the Program*, COLUM. ORAL HIST. MASTER OF ARTS, <http://oralhistory.columbia.edu/why-ohma> [<https://perma.cc/QKV5-K93E>]. The program focuses on strengthening the first-person narrative and securing its preservation for future generations to enjoy by focusing on creating, archiving, and analyzing individual, community, and institutional histories. *Id.* Through the creation, archiving and analysis of individual, community and institutional histories, this program amplifies the critical first-person narratives that constitute memory for generations to come. *Id.* Additionally, Boston University has a Power of Narrative annual conference every year. *Roxane Gay Speaks at*

Medicine Master of Science degree, as well as a Master of Arts in Oral History. Several law schools, such as UCLA Law School and the University of Pittsburgh School of Law, also provide courses that concentrate on applying client narratives in one's legal practice.⁴ In a variety of professional practices, including law and politics, economics, and medicine, the value of narrative is being not only recognized but applied to conflicts and their potential resolutions. City governments are hiring "storytellers" to publicize issues and

the 2018 Power of Narrative Conference, BOS. UNIV. COLL. OF COMMUN (Apr. 18, 2018), <https://www.bu.edu/com/2018/04/18/the-power-of-narrative-2018/> [<https://perma.cc/FE6P-UTPJ>]. The University of Florida "offers workshops in oral history practice, methodology and fieldwork for community groups, academic institutions, and other organizations interested in beginning oral history projects." *Samuel Proctor Oral History Program*, UNIV. OF FLA. LIBERAL ARTS & SCI., <https://oral.history.ufl.edu/research/tutorials/> [<https://perma.cc/YHA9-Q66H>]. The University of Southern California offers a Narrative Studies major. *Narrative Studies Major*, UNIV. OF S. CAL. DORNSIFE, <https://dornsife.usc.edu/engl/narrative-studies-major/> [<https://perma.cc/YTQ3-UH3E>]. The program is meant to prepare students for a broad range of professional opportunities, including in literature and the performing arts. *Id.* As part of major requirements, students are required to take courses "in the history of narrative, cross-cultural and contemporary models" as well as how narrative appears in popular culture. *Id.* In 2019, Cornell College offered a Literature and Social Justice course, which taught students about the history of writing and activism in Chicago. *Chicago Course Examines Literature and Social Justice*, CORNELL COLL. NEWS CTR. (Sept. 16, 2019), <https://news.cornellcollege.edu/2019/09/chicago-course-examines-literature-social-justice/> [<https://perma.cc/795J-FWSX>]. The course exposed students to how they could work as writers and activists as well. The "Chicago course examine[d] literature and social justice." *Id.*

⁴ The University of Pittsburgh School of Law offers Persuasive Narrative as a course. *Persuasive Narrative*, UNIV. OF PITT. SCH. OF L., <https://www.law.pitt.edu/academics/courses/catalog/5805> [<https://perma.cc/3CTR-KGUA>]. As part of the class, students write short stories, and it is "intended to expose students to a higher quality of writing than that typically found in legal authorit[y]." *Id.* Through this exposure, the course aims to teach students how to effectively tell a story from their client's point of view. *Id.* UCLA Law also offers a course on storytelling titled, "Heroes and Villains: The Lawyer's Narrative in Fact and Fiction." *Law 925 – Heroes and Villains: The Lawyer's Narrative in Fact and Fiction*, UCLA L., <https://curriculum.law.ucla.edu/Guide/Course/6465> [<https://perma.cc/GH5D-JP3K>]. This course teaches aspiring lawyers how to apply narratives in their careers. *Id.* As part of the class, students are asked to "screen, analyze, and discuss a law-related fictional work, focusing on the rhetorical elements of the narrative and particular problems of legal ethics, the practice of law, issues of substantive law and public policy." *Id.* Additionally, Brigham Young University Law School has the BYU Legal Storytelling Project, which aspires to teach law students the theory and practice of great storytelling. *BYU Legal Storytelling Project*, BYU L., <https://lawstories.byu.edu/2021-event/> [<https://perma.cc/4HVG-ZC3Q>]. The three core elements of the project are LawReads, Proximate Cause, and Law Stories on the Mainstage. *Id.* The LawReads portion focuses on having law students reflect "on the role of law in human affairs." *Id.* Students share short narratives on how law school has enabled them to effect social change through the Proximate Cause component. *Id.* Finally, students have the opportunity to combine law, personal experience, and the art of storytelling in written and oral forms through the LawStories on the Mainstage portion of the project. *Id.*

perspectives within communities.⁵ The #MeToo movement,⁶ as well, is a strong example of law and literature's expansion to activism through narrative.⁷

The existence of academic programs involving narrative is a sign of excitement and curiosity for the undefined. As a society, we are practicing our work—litigation, speech, protest, negotiation, medical care, investment, and so on—with narrative every day. All these developments culminate in a need for a definition of this law and literature catalyst, defined herein as narrative justice.

As I've explained above, narrative justice is the concept and application of voice and stories as they relate to law and justice. These narratives can be expressed orally or in different forms of writing or expressionistic art. Differentially, law and literature explore connections between law and the written word. The empirical basis for creating a separate field from law and literature stems not only from my observed changes within our legal system but also from the verifiable stories, accounts, and actions of people across the globe, calling for a new way to examine law and possibilities for change.

The theoretical framework for narrative justice will provide a conceptual model to establish a structure for continued research and exploration of this field, starting with the rationale for this research, as evidenced by the empirical findings discussed herein. Both in the United States and internationally, narrative justice is grounded in the theory that the law and literature movement has carried us into a new world, along with society's demands. The tremendous advantages of defining narrative justice and immersing it within our law schools and our public and private institutions are clear—narrative justice promotes ethical thinking, compassion, honesty, accountability, and trust.

⁵ See, e.g., Bloomberg Cities, *How Detroit's 'Chief Storyteller' Is Crafting a New Narrative for His City*, MEDIUM (Apr. 25, 2018), <https://medium.com/@Bloomberg-Cities/how-detroits-chief-storyteller-is-crafting-a-new-narrative-for-his-city-3c14d0fa559c> [<https://perma.cc/7LE5-6F7R>].

⁶ See Margaret E. Johnson, *Feminist Judgments & #MeToo*, 94 NOTRE DAME L. REV. ONLINE 51 (2018).

⁷ See, e.g., Susan L. Brody, *Law, Literature, and the Legacy of Virginia Woolf: Stories and Lessons in Feminist Legal Theory*, 21 TEX. J. WOMEN & L. 1 (2011) (discussing the relation between law, culture, literature, and storytelling as a mechanism for sharing the lives of the marginalized); John M. DeStefano II, *On Literature as Legal Authority*, 49 ARIZ. L. REV. 521 (2007); Susan Tiefenbrun, *Transnational Narratives: The Failure of the International Laws of War and the Role of Art and Story-Telling as a Self-Help Remedy for Restorative Justice*, 12 TEX. WESLEYAN L. REV. 91 (2005). These arguments will be discussed in further detail in the following Parts.

This Article provides a brief timeline of the law and literature movement in Part I. If I may boldly declare, there is enormous value in examining literature—novels, stories, poetry, creative nonfiction—in relation to issues of law and justice, and this has been adopted as an agreed upon conviction by a significantly increasing segment of the legal community.⁸ Part I canvasses U.S. case law to discuss patterns of inclusion of narrative—or the concerning lack thereof. Recently, we have seen a new growth in this field: an emphasis by activists, artists, and academics, among others internationally, on applying voice, story, and journey to present conflicts and problems. Judges are citing memoirs and poems as a rationale for their decisions.⁹ One example of narrative justice in practice: Justice Sotomayor wrote in her dissent in *Utah v. Strieff*, “For generations, black and brown parents have given their children ‘the talk’—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them.”¹⁰

Part II discusses the #MeToo movement as a case study of law and literature’s expansion to activism through narrative justice.¹¹ The #MeToo movement and its brave narratives are a rich example of how one person’s voice can bring a community to action and how these collective narratives can create lasting change in law and policy.

Part III outlines local government’s contributions to defining narrative justice: hiring “storytellers” to publicize issues and perspectives within communities, whereas Part IV dissects the current lack of narrative in corporate law and the growing legal field of environmental, social, and governance advising, which should include the concept of narrative justice to meet diversity, equity, and inclusion goals. Finally, in the Conclusion, this Article proposes a working definition and functioning of narrative justice, based on the evidence

⁸ See, e.g., *Utah v. Strieff*, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting); Lucia A. Silecchia, *Things Are Seldom What They Seem: Judges and Lawyers in the Tales of Mark Twain*, 35 CONN. L. REV. 559 (2003); Teresa Godwin Phelps, *The Criminal as Hero in American Fiction*, 1983 WIS. L. REV. 1427 (1983).

⁹ E.g., *Strieff*, 579 U.S. at 254 (Sotomayor, J., dissenting) (citing two prominent African American literary writers).

¹⁰ *Id.* (citing W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* (1903); JAMES BALDWIN, *THE FIRE NEXT TIME* (1963); TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* (2015)).

¹¹ Brody, *supra* note 7 (discussing the relation between law, culture, literature, and storytelling as a mechanism for sharing the lives of the marginalized); DeStefano II, *supra* note 7; Tiefenbrun, *supra* note 7. These arguments will be discussed in further detail in the following Parts.

reviewed in Parts II through IV as they relate to each other, the precipitating field of law and literature, and the need for updated terminology and pedagogy to further advance the practice of law as a moral, ethical, and just profession.

I

FROM LAW AND LITERATURE TO NARRATIVE JUSTICE

“[F]iction [is] integral to [a] lawyer’s skill[]”¹²

A. Historical Background

Part I provides an overview of the law and literature movement to assist in understanding where narrative justice originated. Our thoughts and ideas in society are constantly expanding, and it is important to pause to not only acknowledge but also to comprehend the magnitude of the revolution that came before contemporary cultural movements.

In 1908, John Henry Wigmore ignited the field of law and literature with his bibliography, *A List of Legal Novels*.¹³ He “declared that every lawyer ‘ought’ to read [Western literature’s most famous novels] the better to comprehend the human condition”¹⁴ and further emphasized that reading fiction ought not be a hobby, but rather a “lifelong professional duty.”¹⁵

In Victorian literature there lies an emphasis on specific legal themes.¹⁶ Texts involve trial scenes, preliminary investigations, pretrial depositions, and lawyers as central protagonists, with statutes playing a central structuring role in the plot. In turn, Victorian literature is one of the earliest modern examples of fiction testing the relationship of individual conflicts to the law, inducing a logical next step, to connect those works to the actual practice of law and justice.

In 1925, Benjamin Cardozo’s *Law and Literature*¹⁷ article emphasized the stylistic aspects of judicial decision-making, highlighting literary discipline as useful to law.¹⁸ Cardozo wrote that

¹² Richard H. Weisberg, *Wigmore and the Law and Literature Movement*, 21 L. & LITERATURE 129, 130 (2009).

¹³ John H. Wigmore, *A List of Legal Novels*, 2 ILL. L. REV. 574 (1908).

¹⁴ Michael Pantazakos, *Ad Humanitatem Pertinent: A Personal Reflection on the History and Purpose of the Law and Literature Movement*, 7 CARDOZO STUD. L. & LITERATURE 31, 38 (1995).

¹⁵ Weisberg, *supra* note 12.

¹⁶ *Id.* at 131.

¹⁷ Benjamin N. Cardozo, *Law and Literature*, 14 YALE REV. 699 (1925).

¹⁸ Weisberg, *supra* note 12.

“the spirit in which judge or advocate is to look upon his task[, is as if] . . . [h]e is expounding a science, or a body of truth . . . in the process of exposition he is practicing an art.”¹⁹ *Law and Literature* is “unquestionably the first great statement of the reasoning behind and necessity for the movement,”²⁰ and yet this prolific text alludes to a new divide in the movement’s purpose, one group studying law *in* literature and the other, as Cardozo suggests, focusing on law *as* literature.²¹ In 1960, Ephraim London further clarified this division with *The World of Law*, a two-volume seminal anthology of literary and legal text, one entitled *The Law in Literature* and the other *The Law as Literature*, while also stressing the need for the movement’s continuation.²² For example, in the second volume, contributor Felix Frankfurter wrote that “the cultivation of the imaginative faculties by reading poetry” is essential for lawyers.²³

In 1973, James Boyd White penned *The Legal Imagination*, which is generally credited as having initiated the law and literature movement and is “essentially a law school textbook [in which] White declared the primary tenet of the movement, . . . that ‘law is not a science—at least not the “social science” some would call it—but an art’ After the appearance of *The Legal Imagination* . . . the scattered advocates of law and literature finally began to coalesce into an actual jurisprudential movement.”²⁴

In 1976, Richard H. Weisberg expanded upon Wigmore’s *Legal Novels*, wanting to “bring Wigmore’s list again to the attention of lawyers and judges.”²⁵ Included are “legal novels,” theatrical works,²⁶ and interdisciplinary theory,²⁷ which reopened the case for the “law and literature” movement.²⁸ Of narrative’s purpose in relation to law, Weisberg wrote that it is “to reawaken in the legal reader the attachment

¹⁹ Cardozo, *supra* note 17, at 718.

²⁰ Pantazakos, *supra* note 14.

²¹ *Id.* at 39.

²² THE WORLD OF LAW (Ephraim London ed. 1960).

²³ Felix Frankfurter, *Advice to a Young Man Interested in Going into Law*, in 2 THE WORLD OF LAW: A TREASURY OF GREAT WRITING ABOUT AND IN THE LAW, SHORT STORIES, PLAYS, ESSAYS, ACCOUNTS, LETTERS, OPINIONS, PLEAS, TRANSCRIPTS OF TESTIMONY; FROM BIBLICAL TIMES TO THE PRESENT 725 (Ephraim London ed. 1960) (cited in Viviana I. Vasiliu, *Law and Poetry: A Fresh Perspective on Training Today’s Law Students, Tomorrow’s Advocates*, 54 GONZ. L. REV. 1, 5 (2019)).

²⁴ Pantazakos, *supra* note 14, at 39.

²⁵ Weisberg, *supra* note 12, at 131.

²⁶ *Id.* at 132.

²⁷ *Id.* at 131.

²⁸ *Id.* at 131–32.

to democratic values conveyed by literature through its acute awareness of human needs and the failure of great institutions to serve them.”²⁹

Also, from 1976 to 1978, the Modern Language Association,³⁰ with Richard Weisberg as chairman, held three conferences centered on law and literature, “thus convening for the first time in a general assembly scholars who had been pursuing comparative studies in law and letters independently.”³¹ These sessions also served to create the Law and Humanities Institute (LHI) to “further both the academic and professional aspects of the law and literature movement.”³² LHI contains over 400 members globally—with chapters across the United States and internationally—and has encouraged law and literature symposia and informal meetings, as well as a journal concentrating on discussions of law and literature, the other journal being the Yale Journal of Law and the Humanities.³³

During this same time, a “canon”³⁴ developed, with numerous books and articles attempting to theorize the field, accompanied by a rise in law and literature courses offered in law schools and other educational institutions affiliated with law, policy, and justice. As an example, Stanley Fish published the famous *Is There a Text in This Class? The Authority of Interpretive Communities*,³⁵ which argues that “texts are essentially empty vessels filled with whatever meaning a controlling community imparts.”³⁶ And Ronald Dworkin, in *Law’s Empire*,³⁷ argued that “law is an ‘interpretive concept’ and legal interpretation is a creative, not reproductive operation, similar to that of a work of art.”³⁸

²⁹ *Id.* at 129.

³⁰ MOD. LANGUAGE ASS’N, <https://www.mla.org> [<https://perma.cc/4FPQ-TPHC>].

³¹ Pantazakos, *supra* note 14, at 39.

³² *Id.*

³³ *Id.* at 39–40. See generally YALE J.L. & HUMAN., <https://yaleconnect.yale.edu/yjlh/home/> [<https://perma.cc/B2V4-GG7X>].

³⁴ Weisberg, *supra* note 12, at 132.

³⁵ STANLEY FISH, *IS THERE A TEXT IN THIS CLASS? THE AUTHORITY OF INTERPRETIVE COMMUNITIES* (1980).

³⁶ Pantazakos, *supra* note 14, at 42.

³⁷ RONALD DWORKIN, *LAW’S EMPIRE* (1986).

³⁸ Christian Biet & Lissa Lincoln, *Introduction: Law and Literature*, 5 L. & HUMAN. vii, vii (2011) (footnote omitted). There are other great works from this time. See, e.g., BROOK THOMAS, *CROSS-EXAMINATIONS OF LAW AND LITERATURE: COOPER, HAWTHORNE, STOWE, AND MELVILLE* (1987); RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1st ed. 1988). Posner’s book undertakes an analysis of influential characters and stories. See, e.g., HERMAN MELVILLE, *BILLY BUDD, SAILOR* (1924); WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE*; CHARLES DICKENS, *BLEAK HOUSE* (Norman Page ed., Penguin Books 1971) (1852); CHARLES DICKENS, *GREAT*

During the eighties, feminist and critical race scholars brought innovative, interdisciplinary ideas to the legal community.³⁹ “a proliferation of ‘-isms’—including such vaguely defined concepts as poststructuralism, deconstructionism, antifoundationalism, and neopragmatism—imported from critical social theory, and a new focus on the shared form of hermeneutics between law and literature, an event often labelled as the movement’s ‘interpretive turn.’”⁴⁰ Historically marginalized groups should take credit for this “interpretive turn,” which supported the immersion of narrative in law.⁴¹

One example of contribution is the difficult work of divulging our own stories to help shape the law for the better. In *Diary of a Mad Law Professor*, Patricia Williams recounts her concerns within the legal community and how these concerns directly relate to her experiences as an African American female law professor.⁴² Robert Williams, in *Vampires Anonymous and Critical Race Practice*, also recounts his challenges as a young law professor contemplating how to tackle research related to Native American communities:

“Look at me,” I said one day to myself in the mirror, except of course, that since I was a Vampire, there was no me to look at. Since I hadn’t really done anything for anybody else, I was basically invisible. I was a resume with a two-page list of fancy critical race theory law review articles, books, and “Other Publications,” but not much else. . . . “Self,” I said, “you’re one of its most privileged beneficiaries, and all you’ve done for the past decade is consume yourself in marginal intellectual diversions and antic, ineffectual posturings at law school faculty meetings. You actually believe that somewhere Dr. King or Gandhi or someone like that once wrote that all God’s children, red, yellow, black, and white, had the right to publish articles in the Harvard Law Review and make \$100K a year with three months off

EXPECTATIONS (Margaret Cardwell ed., Oxford: Clarendon Press 1993) (1861); ALBERT CAMUS, *THE STRANGER* (Matthew Ward trans., New York: Vintage International 1989) (1942); ALBERT CAMUS, *THE FALL* (Robin Buss trans., Penguin Classics 2006) (1956).

³⁹ Critical Race Theory, a powerful analytical framework made popular by Kimberlé Crenshaw and Derrick Bell in the 1980s, was part of the movement toward multifaceted and intersectional approaches to studying the law, history, and social movements. See Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253 (2011).

⁴⁰ Pantazakos, *supra* note 14, at 40.

⁴¹ See, e.g., Patricia Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 MICH. L. REV. 2128 (1989); Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law’s Response to Racism*, 42 U. MIA. L. REV. 127 (1987).

⁴² Patricia J. Williams, *Diary of a Mad Law Professor*, NATION, <https://www.thenation.com/content/diary-of-a-mad-law-professor/> [https://perma.cc/5965-9C2F].

during the summer, and that your responsibility in life was to raise the ‘color’ issue now and then at faculty meetings.”⁴³

In the 1990s, the law and literature movement became “one of the major movements in twentieth-century legal thought”⁴⁴ with scholars offering “descriptive accounts of the Law and Literature movement, both in the United States and abroad.”⁴⁵ Gary Minda’s *Postmodern Legal Movements*⁴⁶ “remains authoritative”⁴⁷ and draws a distinction between literary jurisprudence and narrative jurisprudence.⁴⁸ Additional key examples include John Fischer’s, *Reading Literature/Reading Law: Is There a Literary Jurisprudence?*⁴⁹ and Elizabeth V. Gemmette’s survey of one-hundred law and literature courses in the United States and Canada.⁵⁰

In 2005, Francois Ost was named a successor of Wigmore, Cardozo, and Posner by Gilles Lhuilier,⁵¹ for his publication of *Sade and the Law*, which reintegrates law into the field of social sciences and makes it the object of an original philosophical examination.⁵² In 2007, Justice Evelyn Keyes published *The Literary Judge: The Judge as Novelist and Critic*⁵³ stating, “[O]ne can never become ‘a great judge without a thorough grounding in what the humanities, including literature, as well as the law itself, really do have to teach us.’”⁵⁴ Of course, this is only a snapshot of some of the great scholarship over the past century to show that law and literature is real, it is not simply a lofty pedagogical term. Scholars across time have intuitively been compelled to declare

⁴³ Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741, 757–58 (1997).

⁴⁴ Weisberg, *supra* note 12, at 134.

⁴⁵ Richard Weisberg, *What Remains “Real” About the Law and Literature Movement?: A Global Appraisal*, 66 J. LEGAL EDUC. 37, 38 (2016).

⁴⁶ GARY MINDA, *POSTMODERN LEGAL MOVEMENTS* (1995).

⁴⁷ Weisberg, *supra* note 45, at 39.

⁴⁸ *Id.*

⁴⁹ John Fischer, *Reading Literature/Reading Law: Is There a Literary Jurisprudence?*, 72 TEX. L. REV. 135 (1993).

⁵⁰ Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. L. REV. 665, 665–66 (1995).

⁵¹ Gilles Lhuilier, *Law & Literature (as an Epistemological Break in Legal Theory)*, 5 L. & HUMAN. 3, 4 (2011).

⁵² *Id.*

⁵³ Evelyn Keyes, *The Literary Judge: The Judge as Novelist and Critic*, 44 HOUS. L. REV. 679 (2007).

⁵⁴ James L. Robertson, *Practical Benefits of Literature in Law, and Their Limits*, 35 MISS. COLL. L. REV. 266, 266 (2016) (alteration in original) (quoting Evelyn Keyes, *The Literary Judge: The Judge as Novelist and Critic*, 44 HOUS. L. REV. 679 (2007)).

the crucial need for the law and lawyers to breathe literature into their work.

Presently, this movement still indeed exists, but I argue that it is expanding to include the concept of narrative justice. Nationwide, courses taught on the subject include Law, Literature, and Pop Culture; Law, Literature, and Justice; and Hip Hop and the Law. Scholars such as André Douglas Pond Cummings, Peter Goodrich, Lenora Ledwin, Michael Malloy, Ann Ralph, Robin West, Patricia Williams, and others champion the concept, and the term “narrative” is now immersed in the study of law, though it has not yet been made a required course or even offered as an elective course at most schools nationwide. Legal conferences are entirely devoted to narrative, with the Applied Legal Storytelling Conference, in its eighth year, as an example of the different ways legal scholars weave narrative into a wide range of legal issues.⁵⁵

B. Telling Stories in Courts

Courts have long used literature to express the emotion behind legal reasoning. This term “emotion” could also be replaced with “humanity” or “narrative.” In other words, *courts have long used literature to express humanity as a form of legal reasoning*. I point out this distinction in word choice to demonstrate the analytical aspect of narrative, which rises further to the surface by an alternative word. The word “emotion” tends to be dismissed within the law, whereas terms such as “humanity” or “narrative” remain acknowledged as tangential because of our pursuit of justice. This concept of narrative justice will be examined through the below judicial opinions. I ask us to also consider how the literature cited by these courts touches upon emotion through the stories’ narrative arcs. The below cases are compiled to understand and appreciate that while the law’s eye must be blind and objective, and we approach our work with this intent and belief, it is impossible for a human with their own internal subjectivities to apply a uniform standard of objectivity. For example, as Justice Sonia

⁵⁵ *Eighth Biennial Applied Legal Storytelling Conference*, MERCER UNIV. SCH. OF L., <https://guides.law.mercer.edu/appliedlegalstorytelling2021> [<https://perma.cc/DT6Y-DHB2>]. The conference, featuring works by legal scholars, practitioners, and judges, examines storytelling and narrative in the practice of law and legal education. *Id.* The eighth conference, held from July 14–16, 2021, focused on interrogating the United States’ racial history through stories of the law and injustice, and how telling these stories can effectuate positive change. *Conference Program & Schedule*, MERCER UNIV. SCH. OF L., <https://guides.law.mercer.edu/c.php?g=1153196&p=8416353> [<https://perma.cc/X8D8-LBXJ>].

Sotomayor famously commented in 2001, “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.”⁵⁶

Literature has historically been applied in legal cases involving criminal justice, privacy issues, and children’s rights. In *Lesley v. Oklahoma*, a criminal case involving a teenager who accepted forty years in prison for armed robbery without legal advice, Justice Marvin Jones in his concurring opinion, used a scene in Victor Hugo’s *Les Misérables* to show that the facts of a case and the punishment do not always align.⁵⁷ The court used a scene where Jean Valjean is sentenced to five years in the galleys for stealing a loaf of bread to feed his sister’s children, to bring to light the fact that justice requires “all facts and circumstances [to] be examined before just conclusions are reached.”⁵⁸

In *In re Carlos P.*,⁵⁹ a juvenile delinquency case, the court quoted Ralph Ellison’s *Invisible Man* to demonstrate how the juvenile was ignored and dehumanized by the bureaucracy of the juvenile delinquent system:

I am [sic] invisible man. No, I am not a spook like those who haunted Edgar Allan Poe . . . I am invisible, understand, simply because people refuse to see me . . . When they approach me they see only my surroundings, themselves, or figments of their imagination . . . anything except me. It is . . . often . . . wearing on the nerves . . . you doubt if you really exist . . . It’s when you feel like this that . . . you ache with the need to convince yourself that you do exist in the real world . . . and you strike out with your fists, you curse, and you swear to make them recognize you. And, alas, it’s seldom successful.⁶⁰

More recently, in *Utah v. Strieff*,⁶¹ a criminal case originating in an unlawful stop, Judge Sotomayor’s dissent looked to W.E.B. Du Bois’s

⁵⁶ Sonia Sotomayor, *A Latina Judge’s Voice*, 13 BERKELEY LA RAZA L.J. 87, 92 (2002).

⁵⁷ *Lesley v. Oklahoma*, 407 F.2d 543, 547 (10th Cir. 1969) (Jones, J., concurring); see DeStefano II, *supra* note 7, at 521.

⁵⁸ *Lesley*, 407 F.2d at 547.

⁵⁹ *In re Carlos P.*, 358 N.Y.S.2d 608 (N.Y. Fam. Ct. 1974).

⁶⁰ *Id.* at 609; see also *Florida v. Riley*, 488 U.S. 445, 466 (1989) (Brennan, J., dissenting) (a criminal case where police flew over the defendant’s greenhouse in a helicopter and saw marijuana). Justice Brennan’s dissent expressed concern that his colleagues were sanctioning the disturbing scenes of George Orwell’s *Nineteen Eighty-Four* to become reality. *Riley*, 488 U.S. at 466. Use of this novel in the opinion showed that police’s surveillance undermined citizens’ privacy interests. *Id.* at 466–67.

⁶¹ *Utah v. Strieff*, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting) (citing W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* (1903); JAMES BALDWIN, *THE FIRE NEXT TIME* (1963); TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* (2015)); see also Ralph, *supra* note 2.

The Souls of Black Folk, James Baldwin's *The Fire Next Time*, and Tanehisi Coates' *Between the World and Me* to express that there is an institutional problem wherein people of color are disproportionately subjected to unconstitutional searches by police: "For generations, black and brown parents have given their children 'the talk'—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them."⁶²

Literature can be found in civil decisions as well. In *Summers v. Stubblefield*,⁶³ a property dispute between two neighbors, the court cited poet Robert Frost to explain that some boundaries between neighbors would be beneficial: "good fences make good neighbors."⁶⁴ The court's application of this verse demonstrates judicial inclination toward literature to address legal issues.⁶⁵

In *Stewart v. Damron*,⁶⁶ a property case involving the estate of a parent's deceased child, the court cited Lord Alfred Tennyson, a prominent English poet from the 1800s, to explain that a mother's love for her child can be a consideration for the adult-child's decision to provide monetary or other gifts to her.⁶⁷ The court's application of poetry to support its ruling is an early form of narrative justice—telling the story of the parent's relationship with their child to explain why the adult-child provided monetary support for improvements to a property with the intention of one day gifting the property to that parent.⁶⁸

In *Stern v. Marshall*,⁶⁹ a case regarding the estate of a wealthy individual, the Court used language from Charles Dickens's *Bleak House* to vividly convey how lengthy and complicated the suit had become: "This 'suit has, in course of time, become so complicated, that . . . no two . . . lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable

⁶² *Strieff*, 579 U.S. at 254.

⁶³ *Summers v. Stubblefield*, No. M2014-00425-COA-R3-CV, 2015 WL 1275401 (Tenn. Ct. App. Mar. 17, 2015).

⁶⁴ *Id.* at *1 n.2 (quoting Robert Frost, *Mending Wall*, NORTH OF BOSTON (1914)).

⁶⁵ See DeStefano II, *supra* note 7.

⁶⁶ *Stewart v. Damron*, 160 P.2d 321 (Ariz. 1945).

⁶⁷ *Id.* at 325 (quoting Alfred Lord Tennyson: "Happy he / With such a mother; Faith in womankind / Beats with his blood, and trust in all things high / Comes easy to him, and though he trip and fall / He shall not blind his soul with clay."); see also DeStefano II, *supra* note 7, at 523.

⁶⁸ See generally *Damron*, 160 P.2d 321 (Ariz. 1945).

⁶⁹ *Stern v. Marshall*, 564 U.S. 462 (2011).

children have been born into the cause: innumerable young people have married into it;’ and, sadly, the original parties ‘have died out of it.’ A ‘long procession of [judges] has come in and gone out’ during that time, and still the suit ‘drags its weary length before the Court.’”⁷⁰ This text, excerpted from the novel, is intended to convey in the beginning of the judicial opinion the complexity of the facts that have led to this point of render.

In *United Steelworkers of America v. Weber*,⁷¹ a case regarding employment rights, Supreme Court Justice Rehnquist, in his dissent, used George Orwell’s book *1984* to remark that the majority’s decision is “ahead of its time,” therein referencing a speaker’s remarks in the novel as both convincing and maddening.⁷² That both Justice Rehnquist and Justice Sotomayor, in distinct dissenting opinions, draw on literature to support their opinions, is further evidence that society is being primed for a shift from law and literature to a movement of narrative justice—for stories and first-person accounts to shape our consideration of facts in relation to legal rule and application.

In *Lieberman v. Riverside Mem’l Chapel, Inc.*,⁷³ a case involving disputed medical treatment during an autopsy, the court cited Walt Whitman’s poem “I Sing the Body Electric” from the collection *Leaves of Grass*, in its position: “[M]ost persons, believers or non-believers, will not countenance disrespectful treatment of the body.”⁷⁴

In *Metz v. Transit Mix, Inc.*,⁷⁵ an employment case wherein an older employee was replaced by a younger, less costly employee, the court quotes Arthur Miller’s *Death of a Salesman*: “You can’t eat the orange and throw the peel away—a man is not a piece of fruit!”⁷⁶ The court used this quote to demonstrate that older workers should be protected and not discriminated against.⁷⁷

In *Califano v. Goldfarb*,⁷⁸ a case about a survivor’s retirement benefits, the Court looked to Charles Dickens’ *The Adventures of*

⁷⁰ *Id.* at 468 (quoting CHARLES DICKENS, *Bleak House*, 1 WORKS OF CHARLES DICKENS 4–5 (1891)).

⁷¹ See *United Steelworkers of Am. v. Weber*, 443 U.S. 193 (1979).

⁷² *Id.* at 219–20 (Rehnquist, J., dissenting) (citing GEORGE ORWELL, *1984* 181–82 (1949)); see DeStefano II, *supra* note 7, at 523.

⁷³ *Lieberman v. Riverside Mem’l Chapel, Inc.*, 650 N.Y.S.2d 194 (N.Y. App. Div. 1996).

⁷⁴ *Lieberman*, 650 N.Y.S.2d at 196 (citing WALT WHITMAN, *LEAVES OF GRASS* (1855)); see DeStefano II, *supra* note 7, at 527.

⁷⁵ *Metz v. Transit Mix, Inc.*, 828 F.2d 1202 (7th Cir. 1987).

⁷⁶ *Id.* at 1205 n.6 (quoting ARTHUR MILLER, *DEATH OF A SALESMAN* 82 (1949)).

⁷⁷ *Id.*

⁷⁸ *Califano v. Goldfarb*, 430 U.S. 199 (1977).

Oliver Twist to explain that the law was ill-advised when it came to the treatment of men versus women.⁷⁹ In a footnote, the Court referred to a scene in a Dickens' novel in which one of the characters stated, "the law supposes that [a] wife acts under [a husband's] direction."⁸⁰ In reply, another character stated that the law is an "idiot."⁸¹ This scene portrayed the second character's analysis of law as a feeling or emotion: that both the law's and society's disparate treatment of men versus women was "idiot[ic]."

In *Milkovich v. Lorain Journal Co.*,⁸² a case involving a former coach's defamation claim, the Court cited William Shakespeare's *Othello*: "But he that filches from me my good name // Robs me of that which not enriches him, // And makes me poor indeed," to exemplify the policy and purpose behind defamation law "as a means of allowing an individual to vindicate his good name, but also for the purpose of obtaining redress for harm caused by such statements."⁸³ This use of narrative parses out a subject that may be difficult for some to understand.

In *Keith v. Murfreesboro Livestock Market, Inc.*,⁸⁴ a case involving allegations of fraud regarding the type of livestock sold, the court looked to Dante Alighieri "to show that fraud takes many forms" and wrote, "In his fictional account of his journey through hell, Dante Alighieri personified fraud as Geryon, a mythological beast who had the tail of a scorpion, a whelped body like a reptile, hair covered arms and shoulders, and the face of a just and honest man."⁸⁵ Use of narrative here provided a visual to explain how deception and fraud can occur.

In *Deus v. Allstate Ins. Co.*,⁸⁶ an employment dispute, the court uses Arthur Miller's *Death of a Salesman* to show that salesmen, like the plaintiff in this case, sometimes are compelled to tolerate management pressures that others would find intolerable.⁸⁷ Here, only reference to the play is given, no direct language is provided in the decision.

⁷⁹ *Id.* at 223 n.10 (Stevens, J. concurring) (quoting CHARLES DICKENS, *THE ADVENTURES OF OLIVER TWIST* ch. 51 (1838)).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

⁸³ *Id.* at 12 (quoting WILLIAM SHAKESPEARE, *OTHELLO* act 3, sc. 3, l. 156–61).

⁸⁴ *Keith v. Murfreesboro Livestock Mkt., Inc.*, 780 S.W.2d 751 (Tenn. Ct. App. 1989).

⁸⁵ DeStefano II, *supra* note 7, at 527; *Keith*, 780 S.W.2d at 754 n.2 (citing DANTE ALIGHIERI, *THE DIVINE COMEDY, Cantica I: The Inferno*, Canto 17, l. 7–27).

⁸⁶ *Deus v. Allstate Ins. Co.*, 15 F.3d 506 (5th Cir. 1994).

⁸⁷ *Id.* at 514 (citing ARTHUR MILLER, *THE DEATH OF A SALESMAN* (1949)).

Additionally, one of the most popular literary works applied by the United States judiciary is Joseph Heller's novel, *Catch-22*, which has been used to demonstrate the hypocrisy and lack of logic in many legal disputes. Heller coined the phrase "Catch-22" to describe a type of paradox, where potentially either of two choices leads to the same undesirable result.

In *Tolbert v. Southgate Timber Co.*,⁸⁸ examining standing to file a claim in an estate proceeding, the court used *Catch-22* to demonstrate that "nonexistent choices are the only ones offered."⁸⁹ In *Stuard v. Stewart*, a constitutional rights case, the appellant, Stuart, argued that his right to a speedy trial and his right to fully prepared counsel inherently resulted in a *Catch-22*.⁹⁰ In *Rhodes v. Robinson*, a case where an inmate alleged that correctional officers retaliated against him for filing prison grievances, the court used *Catch-22* to question whether a prisoner's First Amendment rights were violated if he was in fact utilizing the First Amendment to seek remedy from the alleged violation of his rights.⁹¹ In *Roberts v. BJC Health System*, a case about the standing of the parties to bring the suit, the courts used the phrase *Catch-22* to recognize the potential dilemma that the court's holding created for the parties.⁹² In all the above examples, the court used excerpts from a popular novel and its author coined phrase to make the law more tangible and accessible.

These cases demonstrate the judiciary's understanding that the written word, created by an artist, can effectively be applied to factual analysis in legal disputes to explain a ruling not only in cold terms but with imagery and empathy. These applications of stories and poems are a form of narrative justice, applying a voice to a case in order to better address why the law has been pushed in one direction or another.

Courts' application of fiction, nonfiction, and poetry to explain reasoning for decisions or dissents is a form of legal storytelling. At least one judge determined in the previous cases that the facts and law of the case alone would not be enough to properly explain the ruling and chose to insert a narrative. Interestingly, the literature selection here reflects the impact of our earliest teachers and scholars, with

⁸⁸ *Tolbert v. Southgate Timber Co.*, 943 So. 2d 90 (Miss. Ct. App. 2006).

⁸⁹ *Id.* at 99 (citing JOSEPH HELLER, *CATCH-22* (1961)).

⁹⁰ *Stuard v. Stewart*, 401 F.3d 1064, 1069 (9th Cir. 2005).

⁹¹ *Rhodes v. Robinson*, 408 F.3d 559, 566-67 (9th Cir. 2005) (quoting JOSEPH HELLER, *CATCH-22* 47 (6th ed. 1976)).

⁹² *Roberts v. BJC Health Sys.*, 452 F.3d 737, 739 n.3 (8th Cir. 2006) (quoting JOSEPH HELLER, *CATCH-22* (1961)).

several of these novels, plays, and poetry collections being assigned in high school English classes across the United States for decades.

As an additional example of narrative justice in practice, in *Summers v. Stubblefield*, the court ruled on a property dispute when it cited poet Robert Frost for the decision that a neighbors' dispute over property line would have benefited from a "more-definite boundary: 'good fences make good neighbors.'" ⁹³ The court used this phrase both in rule and sarcasm, alluding to the fact that fences, walls, or other man-made divisions often create resentment or other forms of disgruntlement between neighbors. To understand and articulate the different parties' narratives, the court chose poetry to express these viewpoints or arguments. "Good fences make good neighbors" justifies the decision for a more definite boundary by both showing the positive benefits of this action, and the negative effects of its absence.

One will be pressed to find written evidence of any negative commentary referencing literature as a matter of a lawyer or judge's aesthetic choice or elite *avant-garde* style. The belief that any connection between law and literature is fluff is certainly an undertone for some members of the legal academy, which, like racism, bias, or other notions, will not be spoken, and yet, must be addressed in legal theory and practice. Nevertheless, the opinions in this Part are evidence that this narrow mindset has worn thin. Literature can be a medicine, educational tool, or philosophical offering for clarity and reason in decision-making. The judges who incorporated narratives into the decisions cited herein serve as models for practitioners and policy leaders to consider adapting to their work and the narratives to be expressed. More importantly, the law and literature movement has paved the way for first-person narrative to affect law and policy. The next Part will discuss this shift from literature in case law to narrative in practice, through a discussion of the #MeToo movement and the litigation that continues.

II

MODERN APPLICATION OF NARRATIVE JUSTICE: THE #METOO MOVEMENT

This Part will discuss how the #MeToo movement has served as an example of narrative justice. The first part will introduce a foundation of the movement, the second and third parts will introduce narratives

⁹³ *Summers v. Stubblefield*, No. M2014-00425-COA-R3-CV, 2015 WL 1275401, at *1 n.2 (Tenn. Ct. App. Mar. 17, 2015).

and narrative suppression within the movement, and the final part will touch upon the social media and accessibility aspects of the movement.

A. The Formation and Building of the #MeToo Movement

The #MeToo movement has contributed to the building of narrative justice as a field of practice and study, and it is an example of how individual narratives have compelled change in law and policy. The initial catapult for the movement was “[a]nyone who has been sexually harassed or assaulted and wants to participate need only post the hashtag #MeToo on social media.”⁹⁴ The movement’s founder, Tarana Burke, coined the phrase “me too” in 1997 after listening to a thirteen-year-old girl divulge the trauma of being sexually abused. Burke explained that the experience left her speechless and wished she could tell the girl that she was not alone.⁹⁵ In the years after this experience, Burke formed a nonprofit organization titled Just Be Inc., devoted to supporting sexual harassment and assault victims and survivors, with the movement’s name continuing on as “Me Too.”⁹⁶

However, “Me Too” did not gain its full momentum until 2017, when actress Alyssa Milano wrote on Twitter, “encouraging those who have been sexually harassed or assaulted to reply to her tweet with the words ‘me too.’”⁹⁷ Twitter and other social media forms “became flooded with posts related to #MeToo. It is estimated that within twenty-four hours of Milano’s tweet, there were over twelve million posts, comments, and reactions on Facebook and within forty-eight hours, #MeToo was posted nearly a million times on Twitter.”⁹⁸ Hashtag Me Too (#MeToo) has become not only a phrase visually recognized and associated with experiencing sexual assault or abuse, but it has also become a phrase recognized in wider society, with many calling this movement the “MeToo Movement,” instead of the “#MeToo Movement” with the hashtag symbol in the front of the term remaining silent. This distinction demonstrates the power of not only narrative but also social media’s acquisition of narrative to propel justice, or alternatively, to oppose and victimize individuals and groups that use social media as a tool to assert their rights.

⁹⁴ Ann Nenoff, *#MeToo: A Look at the Influence and Limits of “Hashtag Activism” to Effectuate Legal Change*, 2020 U. ILL. L. REV. 1327, 1328 (2020).

⁹⁵ *Id.* at 1335.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

In the early stages of this movement, Jodi Kantor of the New York Times interviewed actress Rose McGowan, who provided one of the first startling accounts of Harvey Weinstein's assaults: "on the way out, Weinstein pulled her into a room . . . forced his face 'I was just feeling massive shock, I was going into survival mode.'"⁹⁹ McGowan's further, vivid, detailed account of what she endured opened the floodgates for people hiding in fear of exposing the humiliation, embarrassment, and shame they, too, suffered from similar violations.

While the #MeToo movement initially showed "no signs of losing steam,"¹⁰⁰ recent litigation, such as the exceptionally publicized defamation suit brought by celebrity Johnny Depp against his ex-wife, Amber Heard, has demonstrated the severe backlash people may face when expressing their feelings or sharing their personal history. This backlash is exactly what the #MeToo movement hopes to lessen; by increasing awareness of crimes such as those done by Harvey Weinstein, the movement legitimizes and gives a voice to victims of such crimes. However, awareness is not the sole goal of the movement. "#MeToo also aims to change the culture and laws dealing with sexual harassment and assault."¹⁰¹ One way that the movement has served this goal is through the widening of Title VII's scope, regarding lawsuits that can be leveled through it.

Historically, Title VII of the Civil Rights Act of 1964 has been the primary legal mechanism for voicing personal violations of sexual harassment. Hemel and Lund note the inadequacies of Title VII and that the #MeToo movement has broadened the legal implications of inappropriate conduct with shareholder lawsuits. While Title VII cases are similar in form to standard contract or tort claims, cases for misrepresentation or fraud are now being brought by company shareholders for a corporation's failure to disclose any Title VII violations. These suits, brought under federal securities laws, demonstrate society's keen interest in narrative justice, that individuals are voicing their stories and concerns to shape law and policy for the better.

#MeToo's social and legal implications come as a direct result of narratives that formed from within the movement. #MeToo narratives

⁹⁹ JODI KANTOR & MEGAN TWOHEY, SHE SAID: BREAKING THE SEXUAL HARASSMENT STORY THAT HELPED IGNITE A MOVEMENT 11 (2019).

¹⁰⁰ Daniel Hemel & Dorothy S. Lund, *Sexual Harassment and Corporate Law*, 118 COLUM. L. REV. 1583, 1585 (2018).

¹⁰¹ Nenoff, *supra* note 94, at 1329.

increase awareness of sexual harassment and assault and serve to broaden legal power in #MeToo cases. This is all done by adding a first-person perspective, a voice and identity to express the narrative and a face to represent it.

B. First-Person Narratives in the #MeToo Movement

Social media has been a driving platform for the #MeToo movement, as seen with Alyssa Milano's viral tweet and the massive response to the hashtag #MeToo. Social media's power to enhance #MeToo narratives is in large part due to the fact that it serves to put a face to the movement and consolidate public support. By allowing for easier access to a group of people that care about the issue one is struggling with, social media has been effective in organizing "rights-based movements in the twenty-first century."¹⁰² Posting on one's social media creates a narrative from a first-person perspective. These first-person narratives are powerful; they create a community that cares about the same issue. No longer are these crimes looked at solely based on statistics; the power of the movement comes from the actual human beings fighting for awareness and support. According to an article by Jamillah Bowman Williams et al., "[t]he hashtag #MeToo has served as a sign of empowerment for victims who may have feared they were alone, who thought they would not be believed, or who simply did not think justice was a possibility."¹⁰³ By using social media, people are ensured that their voice is heard and that they are not alone.

Social media has been a great weapon in the #MeToo movement's fight. It allows for first-person narratives to come to the forefront and creates a community that is focused on the same thing. However, first-person narratives do not solely come from social media. Celebrity activism has also served to add a face to the movement. In 2017, Time Magazine named 'The Silence Breakers' Person of the Year, adding a photograph of five different high-profile women who were working to support the #MeToo narrative and expose sexual assault and harassment in different fields.

[These] five women are actress Ashley Judd, who was one of the first to come forward with allegations against Weinstein; singer Taylor Swift, who won a high-profile lawsuit seeking only \$1 from a former radio DJ after he groped her; Uber engineer Susan Fowler, who wrote a blog post exposing Uber's culture of sexual harassment; corporate

¹⁰² Jamillah Bowman Williams et al., *#MeToo as Catalyst: A Glimpse into 21st Century Activism*, 2019 U. CHI. LEGAL F. 371, 375 (2019).

¹⁰³ *Id.* at 374–75.

lobbyist Adama Iwu, who organized a campaign to expose sexual harassment in the California government; and agricultural worker Isabel Pascual, using a pseudonym to protect herself and her family, who was sexually harassed, stalked, and was one [of] the thousands of farmworkers who marched to show solidarity with the Hollywood stars.¹⁰⁴

Also pictured on the cover of the magazine is the arm of a sixth person, representative of the people who have been unable to speak out about sexual assault or harassment that they have been a victim of. The magazine cover, and the additional activism of these five women and so many others like them, adds familiar and prolific first-person perspectives to #MeToo narratives. Linking celebrities and other notable personalities to the movement and using social media to amplify #MeToo narratives has increased the movement's ability to reach and impact people, which in turn pressurizes change to law and policy.

The amplification of #MeToo narratives is the foundation of the #MeToo movement, whether that amplification be through social media, celebrity support, or high-profile cases that expose sexual assault or harassment. However, the amplification of these narratives is not something that accused people and the powers that they serve want. Because of this, suppression of #MeToo narratives is the focus of many powerful people, and longstanding legal structures often support this oppression. This suppression, whether it is implicit in a power structure or explicit in a legal argument, is a hurdle that the #MeToo movement must face in creating and supporting narratives that expose sexual assault and harassment.

*C. Denial and Suppression of #MeToo Narratives:
Brett Kavanaugh and Christine Blasey Ford*

The nomination of Brett Kavanaugh to the Supreme Court and the ensuing Senate Judiciary Committee's hearings exposed systemic issues in how we deal with cases of sexual assault and harassment. Kavanaugh's ability to flat out deny the accusations that were leveled against him, and succeed in convincing the Committee of his innocence, or at least his nonguilt, showed flaws in the legal and political system that #MeToo narratives hope to combat.

¹⁰⁴ Nenoff, *supra* note 94, at 1336–37.

In 2019, Dr. Christine Blasey Ford accused Supreme Court Nominee Brett Kavanaugh of sexually assaulting her in high school. What follows is a brief description of her testimony:

At the hearing, Blasey Ford's trembling voice and respectful demeanor softened the bite of the substance conveyed: she was 100 percent sure that she had been sexually assaulted and that Brett Kavanaugh was the attacker. Blasey Ford's occasional lapse into technical explanations using psychological terms established her competence. The combination of vulnerability and competence led to the widespread belief that Blasey Ford's testimony was credible.¹⁰⁵

In response to her testimony, Kavanaugh did not challenge the fact that Blasey Ford had experienced sexual assault. Instead, Kavanaugh denied that it was he who had perpetrated the assault and claimed that Blasey Ford had mistaken her attacker's identity. This denial did not outright claim that Blasey Ford was lying, and did not serve to attack her character, but instead simply claimed that Kavanaugh was not her attacker.

Blasey Ford's formation of her narrative and credibility did not help her face Kavanaugh's staunch denial of the accused crimes. However, Kavanaugh's denial as his sole defense was unsatisfactory to the general public. Kavanaugh's narrative, in clashing with Dr. Blasey Ford's, was not sufficient to reject Blasey Ford's accusation as a mere mistaken identity. Regardless of this, Kavanaugh was not punished for these alleged crimes, and is currently one of the most powerful men in the American judicial system. Ann McGinley wrote about this idea: "In the #MeToo era, the utter failure of Blasey Ford's testimony to rock the pre-established conclusion that powerful gendered, classed, and raced interests would prevail may be disappointing."¹⁰⁶ This disappointing result of Blasey Ford's narrative is indicative of the struggles that #MeToo narratives have in the face of established legal structures. The acceptance of narrative justice seems to change based on who is involved in the alleged assault or harassment. In regard to the political landscape and how it affected Kavanaugh and Blasey Ford, McGinley says, "Democrats, in light of #MeToo, have castigated their own, but the Republicans have failed to follow suit."¹⁰⁷

The support of powerful people in enhancing and being the face of #MeToo narratives is one of the strongest weapons for the movement;

¹⁰⁵ Ann C. McGinley, *The Masculinity Mandate: #MeToo, Brett Kavanaugh, and Christine Blasey Ford*, 23 EMP. RTS. & EMP. POL'Y J. 59, 59 (2019).

¹⁰⁶ *Id.* at 82.

¹⁰⁷ *Id.*

however, the effect of powerful people in opposing #MeToo narratives is just as strong. Powerful people oppose these narratives, in cases like Kavanaugh's, through denial, but also through suppression, whether that suppression is implicit in an existent structure or explicitly stated. Nevertheless, Kavanaugh's testimony adds to the concept of narrative justice, as there was an opportunity for him to tell his story and affect a legal outcome.

1. Implicit and Explicit Suppression: The Challenges Women in the #MeToo Movement Face—Getting People to Believe Their Story

Suppression of #MeToo narratives is not wholly due to accusations against powerful people. Examining the responses to #MeToo allegations shows that people often suppress these narratives.

The most common response by an accused person is a defense, which occurs forty-six percent of the time and “tends not to deny the facts, but instead argues about definitions and interpretation, or raises another type of defense that could justify or excuse the conduct. Here, we consider both legally cognizable defenses and other types of justifications and explanations that the speakers raise.”¹⁰⁸ These defenses vary in their purpose; many, like Kavanaugh, claim that the accuser's recollection of the events differs from the reality of the situation, while some defenses question the credibility of the accuser in making the accusation. All these explicit attempts at suppressing #MeToo narratives represent the challenge of the #MeToo movement in having women have their voices heard.

Denial of credibility is a common attack on #MeToo accusers. By destroying overall credibility, accused men can deny a woman's ability to accuse them of any misconduct. Catharine MacKinnon claims that these credibility attacks shift the burden of proof onto the accuser, writing that “[i]n campus settings, in my observation, it typically took three to four women testifying that they had been violated by the same man in the same way to even begin to make a dent in his denial. That made a woman, for credibility purposes, one quarter of a person.”¹⁰⁹ However, despite the attacks on women's credibility, MacKinnon believes that the #MeToo movement has the potential to change societal perception of credibility. By rejecting the dehumanization of

¹⁰⁸ Charlotte S. Alexander, *Sorry (Not Sorry): Decoding #MeToo Defenses*, 99 TEX. L. REV. 341, 355 (2020).

¹⁰⁹ Catharine A. MacKinnon, *Where #MeToo Came From, and Where It's Going*, ATLANTIC (Mar. 24, 2019), <https://www.theatlantic.com/ideas/archive/2019/03/catharine-mackinnon-what-metoo-has-changed/585313/> [<https://perma.cc/ZFY9-N6RP>].

sexual assault and harassment accusers, #MeToo has placed focus on the narratives that the accusers form. Instead of demeaning accusers with questions of credibility and ulterior motive, #MeToo focuses on the narrative that the accusers bring forward. Explicit suppression focuses on the denial of credibility and defense of behavior that should not be defended. Implicit suppression focuses on power structures in society, especially as they relate to gender.

2. Threats and Societal Structures That Suppress #MeToo Narratives

Implicit suppression of #MeToo narratives happens both through legal mechanisms, such as defenses, and through systems of power that have persevered despite progress within the law. Themes of gender come through in these instances of implicit suppression; as seen earlier, men attempt to deny the credibility of women, who struggle to be heard when sexual abuse or harassment occurs. Our society's willingness to listen to men instead of women is something that is ingrained in the patriarchal structure of society. The feminist philosopher Kate Manne claims that this implicit suppression happens because women are "denied the epistemic status of *knowers*, in a way that is explained by their subordinate group membership."¹¹⁰ This grouping, which is inherent in the gender structure of our society, lessens the impact of women's narratives. This causes #MeToo narratives to struggle to gain footing when women level accusations at men. Without explicitly defending themselves, accused men benefit from the misogyny of the system, lessening the impact of #MeToo narratives before they are even given the opportunity to be heard.

Power structures based on gender are not the only harm that implicitly suppresses #MeToo narratives. According to Bowman Williams, "Workplace harassment is also a common issue, with [thirty-eight] percent of women experiencing harassment in their workplace."¹¹¹ With this high percentage of women who have experienced harassment, the amount of unreported harassment is high: "76% did not officially report."¹¹² This rate of unreported sexual harassment is indicative of the implicit suppression that women experience. When they are harassed by superiors in the workplace, many believe that nothing will be resolved even if they report, and that they will be retaliated against for reporting. Without doing anything,

¹¹⁰ KATE MANNE, *DOWN GIRL: THE LOGIC OF MISOGYNY* 186 (2018).

¹¹¹ Bowman Williams et al., *supra* note 102, at 372.

¹¹² *Id.* at 373.

male perpetrators of sexual assault and harassment are defended by the power structures in their workplace. This implicit suppression of #MeToo narratives prevents women from coming forward about sexual assault or harassment. Further implicit suppression comes from how communities react to #MeToo narratives, causing women to either be ignored when they come forward or never say anything about the harassment or assault in the first place.

A case of sexual harassment in Stowe, Vermont, shows the implicit suppression of #MeToo narratives in close-knit communities. Lisa Senecal, a local resident, declared in 2018 that she was sexually harassed while seeking employment at the online travel reservations firm, Inntopia, based in Stowe.¹¹³ Senecal violated a nondisclosure agreement made with Inntopia in coming forward with her story.¹¹⁴ She is not the only person to accuse Inntopia of sexual harassment: the company also settled a lawsuit against it and its CEO for sexual harassment in 2019.¹¹⁵ While Senecal did come out, the response that she received shows why many women do not. Senecal now faces the pressure of living in a small community of around 4,000 residents that know her business and will all, in their private conversations, decide between her story and the company's.¹¹⁶ The clashing narratives presented by Senecal and Inntopia present a choice for the community; they all know what each side claims and they get to choose which narrative they are going to accept.

One resident said of Senecal's allegation, "For better or for worse, everybody knows everything . . . That's great when you want to know your kid was riding his bike without a helmet. It's a little more difficult in situations of sexual harassment."¹¹⁷ Small quaint towns, such as Stowe, are not immune to sexual and domestic violence, and there is a need for survivor services and support.¹¹⁸ In the wake of #MeToo narratives, the fear of damaging community relationships and employment options, especially in such small communities where

¹¹³ Elizabeth Murray, *#MeToo in Vermont: Stowe Woman Speaks About What Going Public Is Like in a Small Town*, BURLINGTON FREE PRESS (June 7, 2018, 4:43 PM), <https://www.burlingtonfreepress.com/story/news/local/2018/06/07/metoo-what-its-like-allege-harassment-small-town-vermont/670794002/> [https://perma.cc/8ZJW-LEUP].

¹¹⁴ *Id.*

¹¹⁵ *Id.*; see also *Lisa Shelkrot Obtains Significant Settlement in Sexual Harassment Suit*, Langrock, Sperry, & Wool (Jan. 16, 2019), <https://langrock.com/lisa-shelkrot-obtains-significant-settlement-in-sexual-harassment-suit/> [https://perma.cc/JHA5-F9R2].

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

everyone knows each other, still exists. The community reaction to Senecal's #MeToo narrative is one that many face, or fear facing. Fear is wrapped up in the implicit suppression that #MeToo narratives are up against, and the stigma victims face from within their communities.

*D. Alternative Narratives:
Community Reaction to #MeToo Narratives and Backlash*

1. Positive and Negative Community Reactions

a. Virginia City and Stowe

The case of Lisa Senecal in Stowe is a prime example of how community reaction can be positive and negative when dealing with #MeToo narratives. Senecal had to deal with everyone in her small town knowing about what she had been through and their judgments about her coming forward. Her #MeToo narrative led to fear of a negative community reaction, but the #MeToo movement aims to use narrative to change community reaction. Despite negative community reactions, the narrative movement has emboldened and empowered survivors.¹¹⁹ The power of these stories will transform how communities, big and small, develop. Furthermore, the #MeToo movement's success acted as an impetus for businesses to care about sexual harassment cases. Before this movement, that type of "socially desirable corporate activity was often neglected."¹²⁰

The community reaction to #MeToo narratives is also prevalent in the case of Melanie Keener. In 2016, as the second-most powerful person in law enforcement for the Virginia City, Nevada community, Keener reported that her supervisor, Sheriff Gerald Antinoro, sexually harassed her.¹²¹ After coming forward, Keener was transferred from her position to a desk job.¹²² Antinoro had numerous complaints filed against him for sexual harassment, yet still maintained his position in local government.¹²³ Nevertheless, in #MeToo's shadow, the Nevada Women's Lobby group is vying for legislation that will allow

¹¹⁹ *See id.*

¹²⁰ Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2632 (2021).

¹²¹ Leila Fadel, 'Coming Forward Has Broke Me': #MeToo Movement Comes to Rural Nevada, NAT'L PUB. RADIO (Feb. 27, 2019, 5:01 AM), <https://www.npr.org/2019/02/27/695230044/coming-forward-has-broke-me-#MeToo-movement-comes-to-rural-nevada> [<https://perma.cc/3HDN-9CPC>].

¹²² *Id.*

¹²³ *Id.*

“provision of impeachment or removal” for an elected county official found to have violated sexual harassment policies multiple times.¹²⁴ Recently, various news sources published articles highlighting Antinoro’s alleged sexual harassment and assault. Investors in the city began doubting whether they should invest in Virginia City.¹²⁵ It is this single narrative that has altered the conversation within this city to value rights against sexual harassment.

The cases in both Stowe and Virginia City show how the #MeToo movement serves to amplify narratives and increase support and awareness for victims of sexual assault and harassment. While both Keener and Senecal did encounter some negative backlash because of #MeToo narratives, they also both benefited from their communities focusing on #MeToo narratives. #MeToo narratives exist in the public eye, especially when they involve celebrities. Public consumption of #MeToo narratives can benefit those narratives, insofar as they spread them to a larger audience; however, #MeToo narratives that involve celebrities, especially revered celebrities, can negatively affect the narratives and the victims of those celebrities.

b. Celebrities: How #MeToo Narratives Interact with the Public Eye

One of the most common occurrences when a celebrity—especially a male celebrity—is accused of sexual assault or harassment is that they are given advantages in the public eye. These advantages often lead to these celebrities being given leeway for their actions. “Famous men—athletes, actors, musicians, politicians—get to be that way partly because they represent what other men aspire to be.”¹²⁶ This admiration that is attributed to male celebrities allows them to act in a manner that often does not, in the public eye, warrant punishment or reprehension. This inherent advantage is obviously unfair, but the advantages that men have when faced with #MeToo narratives goes further.

Discussion of narrative justice and the #MeToo movement almost goes hand in hand with discussions about “wokeness” and “cancel culture.” In regard to famous men committing sexual assault or harassment, A.O. Scott states these men “do what they want, including to women. Anyone who objects is guilty of wokeness, or gender

¹²⁴ *Id.*

¹²⁵ *See id.*

¹²⁶ A.O. Scott, *The Actual Malice of the Johnny Depp Trial*, N.Y. TIMES (June 2, 2022), <https://www.nytimes.com/2022/06/02/arts/depp-heard-trial-malice.html> [<https://perma.cc/PF6J-6GAW>].

treason, or actual malice.”¹²⁷ Meting out punishment on men is commonly seen as “going too far” or not understanding the nuance of social interaction. Swarms of people will leap to the defense of their favorite celebrity when they are accused of sexual harassment or assault, defending their idol and attacking their accuser based solely on who is being accused. Discussions of cancel culture being an overly aggressive response to crimes that have been committed serve to actively dilute and suppress #MeToo narratives. Any criticism leveled against a powerful person regarding racial insensitivity, sexual misbehavior, or controversial opinions is labeled as an irrational cancellation of that person. These criticisms dilute #MeToo narratives by juxtaposing sexual assault and mere controversial opinions, claiming that the reaction is similarly hysterical or excessive. The issue of celebrity and its ability to suppress or even destroy #MeToo narratives was at the forefront of the recent defamation trial between Amber Heard and Johnny Depp.

2. *Alternative Narrative and Backlash: Depp v. Heard*

The extremely public defamation trial between Johnny Depp and Amber Heard is one of the more prevalent examples of narrative justice in action. Both Heard and Depp formed narratives about each other; each of these narratives focused on the other, with Depp and Heard both claiming that the other was falsely expressing a narrative about the other in an effort to defame each other. Their narrative clash was on full display during the trial, with both parties adamant that their narrative was closer to the truth than the other. The trial shows the potential neutrality narrative justice offers; while #MeToo narratives benefit from recent focus on narrative, any individual has the right to tell their story in the pursuit of justice. The clashing narratives of Amber Heard and Johnny Depp also show how reactions to #MeToo narratives are perceived by the general public, especially when social media is brought into the equation.

The defamation case between Depp and Heard occurred after an op-ed that Heard had published in the *Washington Post*. In the op-ed, Heard stated that she had been a victim of domestic violence and discussed her experience with the public reaction to coming out about sexual assault and harassment. As a result of the op-ed, Depp filed a defamation suit, claiming that Heard’s op-ed damaged his career and made it more difficult to land movie roles. Depp filed the suit in

¹²⁷ *Id.*

Virginia, as that is where the Washington Post is published, seeking fifty-million dollars in compensatory damages and \$350 thousand in punitive damages. As Heard and Depp resided and worked in California, Heard attempted to declare forum non conveniens, but the motion was denied.

Even though the op-ed referred to events that occurred while Depp and Heard lived and worked in California and Depp did not own any property in Virginia, his legal team strategically filed the suit in Virginia. This was done to avoid California's strong anti-SLAPP (Strategic Lawsuit Against Public Participation) laws, which are "intended to prevent people from using lawsuits, such as defamation suits, to intimidate people who are exercising their First Amendment rights."¹²⁸ Heard's motion for forum non conveniens was rejected, keeping the case from being tried in California. As a result, California's anti-SLAPP laws were bypassed, preventing Heard from gaining any protection from Depp's defamation suit. The court's rejection of Heard's motion is key to demonstrating the legal structures an individual is up against when they speak out about sexual assault and harassment. This is further seen in the fact that typically, editorial or op-ed columns are not actionable, as they represent personal opinions and thoughts.¹²⁹ Despite this, Virginia recognizes that "a defamatory charge may be made by inference, implication or insinuation."¹³⁰

The stacking of the various discrepancies between California and Virginia law—and the Virginia court's allowance of Depp's maneuvering to use these discrepancies—is another example of the legal structure and its clear bias in regard to #MeToo narratives. Ultimately, the only way toward resolution for either party was application of their personal narrative.

¹²⁸ *Why Is Johnny Depp Suing Ex-Wife Amber Heard in Virginia Where Neither of Them Live or Work?*, REEVES L. GRP.: NEWS & BLOG, <https://www.robertreeveslaw.com/blog/johnny-depp-suing-virginia/> [<https://perma.cc/7ZSZ-QMS5>].

¹²⁹ *Opinion and Fair Comment Privileges*, DIGITAL MEDIA L. PROJECT (Sept. 10, 2023), <https://www.dmlp.org/legal-guide/opinion-and-fair-comment-privileges> [<https://perma.cc/L2WG-6PM8>].

¹³⁰ *Carwile v. Richmond Newspapers*, 82 S.E.2d 588, 592 (Va. 1954); see also *Johnny Depp Helps to Provide Guidance on What Defamatory Statements Are "Actionable" in Virginia*, GEN. COUNS. PC (Apr. 29, 2020), <https://www.generalcounsellaw.com/depp-case-actionable-defamatory-statements-in-virginia/> [<https://perma.cc/Z2KZ-JRZF>] ("The court here found three of four statements actionable, even though Depp wasn't mentioned by name, since the court will find statements actionable, even if the charge is only made by inference, implication, or insinuation.").

a. Community Reaction to Depp v. Heard

The case between Heard and Depp demonstrates some of the serious risks of social media in devaluing and undermining victims' testimony in court.¹³¹ It is one of the leading cases demonstrating the purse's power—wealthy and powerful men using the law as a strong-arm against narrative, but also, in this case, formulating a compelling opposing narrative and social media backing to cancel out the other side's story. The *Depp v. Heard* case created a chilling ripple effect on the #MeToo movement due to the social media explosion of commenters taunting Heard for speaking up: “women will imagine having to endure what Heard endured following the publication of her op-ed and . . . will think twice before opening their mouths or laptops.”¹³²

This case further demonstrates how difficult it still is today for an individual to speak honestly and openly about injustice for fear of backlash, job loss, or other forms of safety and security. If we are to believe Amber Heard's statements in her op-ed article, then the case should not have gotten to a point where a jury awarded Depp millions of dollars. Social media has extremely dangerous consequences for victims and survivors of abuse. The case between Heard and Depp almost completely encapsulates the entire discussion of narrative justice in the preceding Part; Heard formulated and put out her #MeToo narrative, but Depp denied the claims she made while social media helped to amplify Depp's narrative and suppress Heard's.

The discussion of #MeToo narratives cannot be completed without a discussion of the impact that social media has on narrative justice. That impact can be positive or negative on a case-by-case basis, but there are overarching positive and negative impacts that social media has on narrative justice and the #MeToo movement.

E. Social Media and Access to #MeToo Narratives

The general public's access to #MeToo narratives is one of the most important aspects of the movement. Social media helps to increase access to these narratives, allowing for large groups of people to hear and interact with accusations and reports of sexual assault and harassment. However, social media also has downsides in its ability to

¹³¹ Aron Solomon, *Is Amber Heard's Narrative Dangerous?*, TEX. LAW. (May 6, 2022, 6:12 PM), <https://www.law.com/texaslawyer/2022/05/06/is-amber-heards-narrative-dangerous/?slreturn=20230026164219> [<https://perma.cc/K6G6-8BPY>].

¹³² *Id.*

increase access to #MeToo narratives. As evidenced by society's mockery of Amber Heard, people's opinions about the accuser and the accused can affect how #MeToo narratives are reacted to. Instead of Amber Heard and Johnny Depp's case staying between them, their lawyers, the judge, and the jury, the public was also very involved. Jessica Winter, a writer for the *New Yorker*, noted that "Heard has 'felt the full force of our culture's wrath,' a quick glance at Facebook, Instagram, TikTok, Twitter, YouTube, and other platforms, where she is cast as the Medusa of Sunset Boulevard."¹³³ Not only did Amber Heard have to take part in this very public trial, but she was also deemed guilty in the court of public opinion, based mainly on Depp's stardom and inherent misogyny in our society.

Heard's experience in forming her #MeToo narrative and having the world interact with it is not universal, however. Social media can and is used as a tool for the #MeToo movement. Sharing something as personal and traumatic as a #MeToo narrative can be difficult, but social media allows women to personalize how their narrative comes into the world and who interacts with it. With this modicum of control, more and more women can feel safe coming out with their stories, creating a safe space on social media where #MeToo narratives can be engaged with and supported.

Social media is great for diversity in the #MeToo movement as well. Social media lessens the divide between people, whether those divides are based on race, class, or gender. In bringing people of all backgrounds together, everyone can have their #MeToo narrative expressed and supported through social media. Critics of the #MeToo movement in general said that the movement mostly focused on "wealthy, white women and exclud[es] people of color and poorer people from the narrative, even though it is black women and female employees of 'blue-collar workplaces' that face the most sexual harassment and abuse."¹³⁴ Social media helps to cut through this, creating a community that does not have as many divides and that cares about a similar issue. The narratives that the #MeToo movement has and will produce are strengthened by these aspects of social media, forcing us to engage with these narratives as members of society.

¹³³ Jessica Winter, *The Johnny Depp-Amber Heard Trial Is Not as Complicated as You Think*, NEW YORKER (May 23, 2022), <https://www.newyorker.com/culture/cultural-comment/the-johnny-depp-amber-heard-trial-is-not-as-complicated-as-you-may-think> [<https://web.archive.org/web/20230826224525/https://www.newyorker.com/culture/cultural-comment/the-johnny-depp-amber-heard-trial-is-not-as-complicated-as-you-may-think>].

¹³⁴ Nenoff, *supra* note 94, at 1337.

However, there are still some criticisms of how social media interacts with the #MeToo movement.

Amber Heard's case demonstrated the negativity of increased access to #MeToo narratives through social media. Some criticize social media for allowing increased access to #MeToo narratives as they think it lessens or cheapens the engagement with those narratives. These critics argue that social media allows for "slacktivism." Slacktivists are able to engage with and claim to support the #MeToo movement, but all they really do is click a few buttons with "minimal costs to participants."¹³⁵ Slacktivism makes supporting #MeToo narratives easy, requiring little engagement with the movement to make one feel as if they did the right thing. This criticism, however, seems to fall flat. While slacktivism may not be the best thing in the world, not everyone can be a militant supporter of every social movement. Slacktivism, while easy, still serves to increase support of #MeToo narratives, and many who may start out as slacktivists can become more entrenched in the movement. While increased awareness can have its pitfalls, social media does seem to be a net positive for the #MeToo movement that it itself helped to birth.

III

INSTITUTIONAL APPLICATION OF COMMUNITY NARRATIVES

Storytelling is a form of narrative that can help build and change communities. In the past decade, local governments have started hiring "storytellers" to highlight city residents' voices and to recognize narratives that traditional media may have failed to promote. This Part discusses three U.S. cities, Detroit, Atlanta, and Denver, which hired professional storytellers. Additionally, this Part examines Qatar, as an international example, as well as the #MeToo movement. In connection, the lack of space available for narratives in corporate institutions will be analyzed, and the way it would build social responsibility and equity will be considered.

A. Cities as Storytellers

In March 2017, Mayor Mike Duggan of Detroit hired what was considered the United States' first official "Chief Storyteller," Aaron

¹³⁵ Bowman Williams et al., *supra* note 102, at 378.

Foley.¹³⁶ The purpose of the position was to create “meaningful and impactful ways to give Detroiters and their neighborhoods a stronger voice.”¹³⁷ Besides that goal, Foley described the need for prioritizing news coverage of race, religion, sexual orientation, business, and culture from the often skewed media narratives of Detroit.¹³⁸ To support this, Foley described the imbalance of media attention on businesses in Detroit between white and black businesses.¹³⁹ While in the Storyteller position, Foley set up a website titled The Neighborhoods.¹⁴⁰ “The Neighborhoods’ story grid is primarily comprised of features on local businesses, notices on city services, and ‘things-to-do’ listicles that include some neighborhood happenings.”¹⁴¹ He also launched a channel on local television to share community residents’ stories.¹⁴²

After two years in the position, Foley announced that he would be stepping down for a fellowship at Stanford.¹⁴³ In announcing his resignation, Foley said the following about his next position: “I’ll be researching what I do now with the City: the intersection between municipalities and journalism, and whether the two can co-exist . . . I’ll be looking to see if the model built here at the City can be taken further.”¹⁴⁴ The Detroit’s Storytelling Department [hereinafter “Department”] maintained that it is editorially independent, with Foley consistently stating, “The mayor does not approve or reject pieces prior

¹³⁶ *Detroit’s Chief Storyteller: Author Tapped for Newly Created City Gig*, WXYZ DETROIT (Mar. 30, 2017, 4:41 PM), <https://www.wxyz.com/news/region/detroit/detroits-chief-storyteller-author-tapped-for-newly-created-city-gig> [https://perma.cc/D7ZF-PANN].

¹³⁷ Edward Helmore, *Detroit Redefined: City Hires America’s First Official ‘Chief Storyteller’*, GUARDIAN (Sept. 5, 2017, 7:00 AM), <https://www.theguardian.com/cities/2017/sep/05/detroit-redefined-america-first-official-chief-storyteller> [https://perma.cc/C5UL-CUF3].

¹³⁸ Aaron Foley, *Detroit’s First ‘Chief Storyteller’ on Why His City Needs an In-House Journalist*, COLUM. JOURNALISM REV. (Oct. 11, 2017), https://www.cjr.org/united_states_project/detroit-chief-storyteller-journalism.php [https://perma.cc/8B2X-G45W].

¹³⁹ *Id.*

¹⁴⁰ THE NEIGHBORHOODS, <http://theneighborhoods.org/home> [https://perma.cc/39BY-6MRA].

¹⁴¹ Violet Ikonomova, *Get To Know the City of Detroit’s Propaganda Arm*, DETROIT METRO TIMES (Jan. 31, 2018, 1:00 AM), <https://www.metrotimes.com/detroit/get-to-know-the-city-of-detroits-propaganda-arm/Content?oid=8910656> [https://perma.cc/H9F7-8B2M].

¹⁴² Eric Thomas, *It’s Time for Detroiters to Own Their Story*, THE NEIGHBORHOODS, <https://theneighborhoods.org/story/new-chief-storyteller> [https://perma.cc/VUU7-EX37].

¹⁴³ Violet Ikonomova, *Duggan’s ‘Chief Storyteller’ Is Leaving Detroit*, DEADLINE DETROIT (May 1, 2019, 3:06 PM), http://www.deadlinedetroit.com/articles/22247/duggan_s_chief_storyteller_is_leaving_detroit [https://perma.cc/J77Q-Y4EN].

¹⁴⁴ *Id.*

to publication.”¹⁴⁵ However, in establishing the position, Foley noted that he was no longer a journalist because, in his own words, “journalists do not work for the government.”¹⁴⁶ This drastic move calls into question the independence of city storyteller positions, whether city residents can truly have a say in what narratives are promoted, or if the government will strategically frame what is told.

In 2021, Eric Thomas took over from Aaron Foley as Detroit’s Chief Storyteller. “Thomas said he plans to use his new position to do what he always has done: give Detroiters a greater voice by offering them a platform to speak their truth and to connect them to programs and opportunities that can uplift them.”¹⁴⁷ Thomas gained notoriety in 2016 for writing an “infamous” LinkedIn post titled “Why I Hate Detroit.” He writes that he plans to use his platform as Chief Storyteller to create space for the city’s individuals and communities to be truly seen and heard.¹⁴⁸ Before becoming Detroit’s Chief Storyteller, Thomas was the founding partner of In The Black Suites, a coworking space for small businesses and entrepreneurs, and the Senior Partner at Saga MKTG, a full-service marketing agency. Thomas obtained his degree in graphic design in 2008 from Henry Ford Community College.¹⁴⁹ On his website, he lists publications, his social media following, and his speaking circuit. Mr. Thomas describes himself as “an entrepreneur, storyteller, social commentator, brand strategist, artist, and self-taught designer.”¹⁵⁰ Thomas’s diverse range of experience serves tremendous value in a role that requires the ability to understand and address differing perspectives and issues.

However, in the few years of the Department’s existence, its role has not appeared to actively move the government toward changes specifically requested by community members. In criticism, *Detroit Metro Times* cited the posting of an article on The Neighborhoods that backed Mayor Duggan’s Project Green Light as proof that the Department was simply a propaganda wing.¹⁵¹ Project Green Light is

¹⁴⁵ Foley, *supra* note 138.

¹⁴⁶ *Id.*

¹⁴⁷ *Eric Thomas Joins the City of Detroit as Chief Storyteller*, MICH. CHRON. (Jan. 29, 2020), <https://michiganchronicle.com/2020/01/29/eric-thomas-joins-the-city-of-detroit-as-chief-storyteller-city-of-detroit/> [<https://perma.cc/63GB-A64F>] [hereinafter *Eric Thomas*].

¹⁴⁸ Thomas, *supra* note 142.

¹⁴⁹ Eric S. Thomas, LINKEDIN, <https://www.linkedin.com/in/ericstomas/>.

¹⁵⁰ *About*, ERICSTHOMAS.COM, <https://www.ericstomas.com/eric> [<https://perma.cc/6G48-U9KK>].

¹⁵¹ See Chad Livengood, *Detroit Aims to Mandate Project Green Light Crime-Monitoring Surveillance for Late-Night Businesses*, CRAIN’S DETROIT BUS. (Jan. 3, 2019,

a crime-fighting initiative where local businesses pay city government to have real-time cameras stream to the Detroit Police Department headquarters.¹⁵² While the Department's publicized role is to tell city stories, there is no evidence that it uses these stories as catapults for change in law and policy. Conducting a simple search on The Neighborhoods under the category "government" brings up just one article, while the category "culture" holds seven pages worth of articles.¹⁵³ Detroit's Storytelling Department may be less about sharing stories than it is about connecting residents to services. Thomas stated he intends to use the position to offer a platform for Detroiters to "speak their truth" and "connect them to . . . opportunities that can uplift them."¹⁵⁴

Nevertheless, even if this application of narrative justice is not directly changing law and policy, this role can and should be used as a form of local citizen activism, awareness, and community building. Foley has emphatically said of the Department, "We don't cover City Hall."¹⁵⁵ The Department has also declared its purpose to publish stories for Detroit citizens to learn more about each other across both geographic and cultural boundaries.¹⁵⁶ While I am reluctant to believe Detroit's Storytelling Department has successfully applied narrative to further community-sought changes in law and policy, it is at the least an achievement that the city attempted to implement a mechanism for community voice.

7:37 PM), <https://www.crainsdetroit.com/article/20180104/news/649206/detroit-aims-to-mandate-project-green-light-crime-monitoring> [<https://web.archive.org/web/20230517205953/https://www.crainsdetroit.com/article/20180104/news/649206/detroit-aims-to-mandate-project-green-light-crime-monitoring>].

¹⁵² *Id.*

¹⁵³ "Here at TheNeighborhoods.org, you can learn more about the city's 200-plus neighborhoods (yes, there are that many) in the city, events and happenings, resources for families, information about block clubs, neighborhood organizations and volunteer opportunities, and the people and business that make Detroit home. We're also live on Comcast Channel 21, a City of Detroit cable channel, and MyDetroitCable, the City's YouTube channel." *About, THE NEIGHBORHOODS*, <https://theneighborhoods.org/about> [<https://perma.cc/GH88-JDWN>] [hereinafter *About*].

¹⁵⁴ *Eric Thomas, supra* note 147.

¹⁵⁵ Joseph P. Williams, 'Chief Storytellers': The Newest City Trend?, U.S. NEWS (May 14, 2019, 10:30 AM), <https://www.usnews.com/news/cities/articles/2019-05-14/denver-atlanta-and-detroit-hire-chief-storytellers-to-shape-city-narratives> [<https://web.archive.org/web/20230508223941/https://www.usnews.com/news/cities/articles/2019-05-14/denver-atlanta-and-detroit-hire-chief-storytellers-to-shape-city-narratives>] [hereinafter J.P. Williams].

¹⁵⁶ *About, supra* note 153.

Denver and Atlanta also hired Chief Storytellers Rowena Alegría and Keith Whitney, respectively. However, not enough time has passed in the development of either to find any evidence that they will differ from Detroit in purpose or effect.¹⁵⁷ Denver cited Humans of New York as a guide for their department's establishment of the I am Denver page,¹⁵⁸ and Rowena Alegría said she hopes her office's #IAMDenver project will raise the voices "of the people who make Denver the place where we are proud to raise our children and build our lives."¹⁵⁹ Alegría further stated that

[a] first of its kind communitywide storytelling project, I Am Denver recognizes the individuals who have made this city. In the same way that historic preservation efforts honor and protect buildings, we honor and protect Denver's history, culture and vision by recording and archiving in video, audio and photo the faces and voices of the people who make Denver the place where we are proud to raise our children and build our lives.¹⁶⁰

There are currently two "Neighborhood Stories" profiling buildings, services, and stories of Whittier and Five Points. According to the City and County of Denver, "The Office of Storytelling used to host Storytelling Labs to engage community around story. [The] team would record these stories in video, audio and photo and later shared them on [their] website and the City and County of Denver's social media channels."¹⁶¹ Since March 2019, over 300 residents have participated in Storytelling Labs with I Am Denver, and I Am Denver has over thirty partner organizations.¹⁶²

The list of partners includes local groups like the Denver Public School, Denver Center for the Performing Arts, and the Denver-based Urban Land Conservancy, as well as larger organizations such as

¹⁵⁷ See generally Weisberg, *supra* note 12.

¹⁵⁸ Kyle Harris, *Denver Launches an Office of Storytelling. Here's the Backstory*, WESTWORD (Mar. 25, 2019), <https://www.westword.com/arts/denver-hires-chief-storyteller-rowena-alegria-to-lead-office-of-storytelling-11280536> [<https://perma.cc/Y27E-58W6>].

¹⁵⁹ #IAMDenver, ROWENAALLEGRIA.COM, <https://rowenaalegria.com/i-am-denver/>.

¹⁶⁰ *Id.*

¹⁶¹ *Storytelling Labs*, DENVER.GOV, <https://www.denvergov.org/Neighborhood/I-Am-Denver/Storytelling-Labs> [<https://perma.cc/V47M-G4EH>].

¹⁶² For example, I Am Denver has partnered with the Western History Collection at the Denver Public Library to digitally archive stories for future generations. See CPSE Excellence 2020 Keynote Speaker – Denver's Chief Storyteller, CTR. FOR PUB. SAFETY EXCELLENCE (Apr. 22, 2020), <https://www.cpse.org/2020/04/22/excellence-2020-keynote-speaker/> [<https://perma.cc/R5JK-Z77J>].

Rocky Mountain PBS.¹⁶³ Notably, the involvement of partners may make Denver’s narrative model less biased than Detroit’s, because it inherently contains checks and balances, as well as a broad range of leadership sources.

Speaking about the structure of I Am Denver, Rowena Alegria said,

We set up the Office of Storytelling, and I took the title of Chief Storyteller. I have three other storytellers who work with me, all of whom are multimedia journalists who have worked in everything from social media to newspapers to TV news to filmmaking. We’re full-time city employees, and have a budget of \$300,000.¹⁶⁴

Atlanta’s Mayor Keisha Lance Bottoms says its Chief Content Officer “will be responsible for delivering real-time updates to our constituents in a manner that is accessible and relatable so that all of Atlanta’s stakeholders can play a more informed and engaged role in building a city that works for everyone.”¹⁶⁵ Atlanta’s Chief Content Officer, Keith Whitney, stated he plans to use his storytelling platform to disseminate information directly to residents. This highlights the storytellers’ desires to not only collect narratives but also to relay information and stories to residents as well. No official webpage has been created for Atlanta yet, though video content created a stir on the city’s local television channels. Whitney has stated,

Atlanta is a city full of stories, and we should not have to rely on the news media alone to tell them We can—and we will—break our own news. As the new Chief Content Officer, I will make sure we disseminate those stories directly to our residents, across all of our platforms, with unprecedented speed, depth and accuracy. We have a team of award-winning journalists on staff with decades of experience and credibility. Mayor Bottoms, a former journalist herself, understands the importance of keeping the residents of our city informed.¹⁶⁶

The literary backgrounds of these “Chief Storytellers” are also notable as an indicator of public institutions’ increasing inclusion of professionals with experience in creative and artistic fields of study,

¹⁶³ *Office of Storytelling: About Us*, DENVER.GOV, <https://www.denvergov.org/content/denvergov/en/i-am-denver/about.html> [<https://perma.cc/EWY3-5MAT>].

¹⁶⁴ Bloomberg Cities, *What Denver’s ‘Chief Storyteller’ Can Teach You About Listening*, MEDIUM (May 9, 2019), <https://bloombergcities.medium.com/what-denvers-chief-storyteller-can-teach-you-about-listening-b15214d05541> [<https://perma.cc/78FL-D4W8>] [hereinafter *Denver’s Chief Storyteller*].

¹⁶⁵ Pamela Miller, *Atlanta Has First-Ever Chief Content Officer*, ATLANTA J.-CONST. (Oct. 10, 2018), <https://www.ajc.com/news/local/atlanta-has-first-ever-chief-content-officer/QDRMeIX6uuWgli5L2hl8rI/> [<https://perma.cc/CP47-W4TC>].

¹⁶⁶ *Id.*

not only with law degrees and master's degrees in policy.¹⁶⁷ Aaron Foley received his BA in journalism from Michigan State University in 2007.¹⁶⁸ He then went on to become a writer and editor for the Lansing State Journal, MLive, and, in 2015, the editor of Black Life, Arts, & Culture (BLAC) Detroit Magazine.¹⁶⁹ BLAC is a “lifestyle magazine for African Americans in and around” Detroit.¹⁷⁰ Under Foley's direction, BLAC transitioned from a feature-focused magazine to “a nimble daily player that breaks news online.”¹⁷¹ In 2015, Foley also published the book *How to Live in Detroit Without Being a Jackass*.¹⁷²

Rowena Alegria holds an MFA in Fiction from the Institute of American Indian Arts.¹⁷³ She worked almost eighteen years for the *Denver Post* in different roles including over five years as the publisher and editor for *Viva Colorado*, the largest Spanish-language publication in the state.¹⁷⁴ After her time as a journalist, Alegria worked for Denver's Mayor for six years in various capacities.¹⁷⁵ As a senior advisor, Alegria focused her work on multilingual outreach to try to better serve underrepresented and disconnected populations.¹⁷⁶ In September 2018, Alegria was then appointed by the mayor of Denver as Chief Storyteller.¹⁷⁷ Denver's Office of Storytelling is staffed by three additional storytellers, “all of whom are multimedia journalists

¹⁶⁷ Other public figures with backgrounds in creative writing include Professor Susan J. Abraham, an appellate advocacy professor at New York Law School; Professor Cathren Page, a legal writing professor at Mercer Law; Emily Bazelon, the Senior Research Scholar in Law and Truman Capote Fellow at Yale Law School, successful journalist, and author. *Susan J. Abraham*, N.Y. L. SCH., <https://www.nyls.edu/faculty/susan-j-abraham/> [<https://perma.cc/46UA-DFX3>]; *Cathren Page*, MERCER L. FAC., <https://guides.law.mercer.edu/page> [<https://perma.cc/LM94-PH4C>]; *Emily Bazelon*, YALE L. SCH., <https://law.yale.edu/emily-bazelon> [<https://perma.cc/6Y99-HZYY>].

¹⁶⁸ Aaron Foley, LINKEDIN, <https://www.linkedin.com/in/aaronkfoley> (last visited Nov. 29, 2023).

¹⁶⁹ *Id.*

¹⁷⁰ BLAC DETROIT, <https://www.blacdetroit.com> [<https://perma.cc/G8QG-E5KY>].

¹⁷¹ Alan Stamm, *Update: Aaron Foley Joins Duggan Staff in New Position After Shaking up BLAC Detroit*, DEADLINE DETROIT (Mar. 25, 2017, 2:49 PM), https://www.deadlinedetroit.com/articles/17110/update_aaron_foley_joins_duggan_staff_in_new_position_after_shaking_up_blac_detroit [<https://perma.cc/LNN5-RZ4Z>].

¹⁷² AARON FOLEY, *HOW TO LIVE IN DETROIT WITHOUT BEING A JACKASS* (2015).

¹⁷³ *Rowena Alegria*, ROWENA ALEGRIA.COM, <https://rowenaalegria.com> [<https://perma.cc/PP59-LFGA>].

¹⁷⁴ Rowena Alegria, LINKEDIN, <https://www.linkedin.com/in/rowena-alegria-9630767> (last visited Nov. 29, 2023).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

who have worked in everything from social media to newspapers to TV news to filmmaking.”¹⁷⁸

Keith Whitney received a BA in journalism from Penn State after which he spent ten years working as an on-air reporter and then news anchor for ABC11 Eyewitness News in North Carolina.¹⁷⁹ He then spent twenty-two years working for WXIA-TV in Atlanta as a lead story reporter and weekend news anchor before moving to CBS46 Atlanta for a year as the lead story reporter and anchor.¹⁸⁰ During this time, Whitney won several local Emmys and became a member of NATAS’s Silver Circle.¹⁸¹ Whitney was then hired as the Communication Director for the City of Atlanta where he worked for five months advising, implementing, and coordinating the city’s core messaging across its media presence.¹⁸² In October 2018, Whitney was appointed Chief Content Officer for the City of Atlanta, creating videos and articles focused on personalizing policy.¹⁸³ Whitney himself was interested in making clear the Content Officer’s office is staffed by “award-winning journalists . . . with decades of experience and credibility.”¹⁸⁴

One frank problem instigated by the role of storytellers is a question of intention. All three hires hold backgrounds in journalism, though, as Aaron Foley points out in an essay about the role of a Chief Storyteller, “[you] can’t call [yourself] a journalist, of course, because journalists do not work for the government.”¹⁸⁵ Should the government be active in creating and maintaining its own media department? Can people who work in such a department be called journalists? The fear that these departments are nothing more than a government propaganda machine may be extreme but not necessarily unearned. How critical these departments are in assessing the local government plays a part in how accountable the local governments are to their cities. Ultimately, it

¹⁷⁸ *Denver’s Chief Storyteller*, *supra* note 164.

¹⁷⁹ Keith Whitney, LINKEDIN, <https://www.linkedin.com/in/keith-whitney-34863910> (last visited Nov. 29, 2023).

¹⁸⁰ *Id.*

¹⁸¹ *About*, KEITHWHITNEY.COM, <https://www.keithwhitney.com/about> [<https://perma.cc/WYN6-W7A7>].

¹⁸² Rodney Ho, *Keith Whitney Adjusts to City of Atlanta Communications Director Job*, ATLANTA J.-CONST. (July 6, 2018), <https://www.ajc.com/blog/radiotv/talk/keith-whitney-adjusts-city-atlanta-communications-director-job/5Ij9XLbtFKEeNc9Oh9e8JN/> [<https://perma.cc/N68P-FPJ9>].

¹⁸³ Keith Whitney, LINKEDIN, <https://www.linkedin.com/in/keith-whitney-34863910> (last visited Nov. 29, 2023).

¹⁸⁴ J.P. Williams, *supra* note 155.

¹⁸⁵ Foley, *supra* note 138.

appears that these storytelling departments play a prominent role in sharing community values, stories, and culture, but little to no role in shaping how these community narratives can affect urban law and policy.

Historically, the parallel to a city storyteller was a town crier. The role of each is to deliver news and information directly to neighborhoods. The difference between a city storyteller and a town crier, however, lies in the nuances of what each shares. A city storyteller shares news on race, religion, sexual orientation, business, and culture of a city, which goes largely unreported by national media. A town crier, on the other hand, commonly announced city proclamations, laws, and events. The role of a town crier was born out of the lack of literacy in communities, while the storyteller role seems to be born out of a community's desire to reach people directly instead of through conventional media. The history of the town crier originates in ancient Greece, where "heralds" would announce the severing of relationships, often leading to an official proclamation of war.¹⁸⁶ In medieval Europe, town criers communicated proclamations, local bylaws, and other announcements to the public.¹⁸⁷ The role was vital because literacy was not widespread, and, therefore, this person was used as a means of communication between the state and the people.¹⁸⁸ The role of the town crier became unnecessary over time as literacy spread.¹⁸⁹ The movement toward city storytelling is another indication of law and literature's transition to include the field of narrative justice. These city storytellers present a powerful argument for an urban governmental model in which the theory of law and literature can be transformed to practice by application of narrative justice.¹⁹⁰

¹⁸⁶ *Town Crier*, DEAD MEDIA ARCHIVE: NYU DEP'T OF MEDIA, CULTURE & COMMUNICATION, http://cultureandcommunication.org/deadmedia/index.php/Town_Crier [<https://perma.cc/96NC-WTVM>].

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ In face of the coronavirus pandemic, city storytelling has become an additional resource and outlet for residents. Citing the pandemic as a catalyst for updating the way Detroit disseminated information to its residents, Thomas posted a blog on Detroit's new project called "Opportunity Rising." See Eric Thomas, *Where the Hell Has Eric Been?*, THE NEIGHBORHOODS, <https://theneighborhoods.org/story/where-hell-has-eric-been> [<https://perma.cc/4GPC-ECQ7>]. The post included pictures of the site's new layout and colors, as well as the kind of user interface it will have. *Id.*

In Atlanta, Whitney's office also published blurbs and video narratives related to the pandemic. See *Moms Step Up to Help Families in Need at SE Denver School*, DENVER.GOV, <https://www.denvergov.org/Neighborhood/I-Am-Denver/Featured-Stories/Thomas-Jefferson-High-School-Food-Bank-Parent-Organizers> [<https://perma.cc/E5K7-VP4N>].

B. Expanding on the Idea of Storytelling

When looking at the role storytellers could have in creating authentic space for narratives in law and policy, storytellers need to be adopted as integral resources for government leaders. If these roles are more interconnected within the different agencies of city government, the opportunity for awareness and use of neighborhood storytelling will increase, and in turn community narratives shall have a greater influence on law and policy. To date, the roles and departments have not been consistently used as a catalyst for change in law and policy. They have instead been used as information or content to enhance government-funded websites. Additionally, these departments have focused on stories that do not fully analyze issues communities are necessarily concerned about, as issues are addressed primarily with a positive spin.

For example, in reporting on rent, The Neighborhoods highlighted a positive relationship between Governor Whitmer and the City's Department of Housing & Revitalization (CDHR), including a quote from the head of CDHR: "Our partners at the state level have put their trust in Detroit with these awards and we can't wait to get to work."¹⁹¹ They further announced a substantial \$100 million housing investment in Detroit to create and maintain 536 units of affordable housing.¹⁹² According to the article, "The funding comes from six competitive Low-Income Housing Tax Credit awards which will fund five affordable housing developments in Detroit."¹⁹³ However, The Neighborhoods had not addressed concerns regarding city residents' housing crises with an alternative narrative perspective: affordable rent is declining in Michigan, especially Detroit, and decreased low-income

(telling the story about a group of parent volunteers at Thomas Jefferson High School that organized a food bank for local residents that quadrupled in size during the pandemic); see also *A Single Mother's Battle with Covid-19*, DENVER.GOV, <https://www.denvergov.org/Neighborhood/I-Am-Denver/More-Stories/Covid-19-Survivor> [<https://perma.cc/TJ7K-55X8>] (telling the story of Josette Vigil, a single mother who survived a terrible battle with Covid-19 and how her children got through her illness).

¹⁹¹ The Neighborhoods Staff, *\$100 Million Funding Announced for Five Affordable Housing Projects in Detroit*, THE NEIGHBORHOODS, <https://theneighborhoods.org/story/100-million-funding-announced-five-affordable-housing-projects-detroit> [<https://perma.cc/JC5A-XP2M>].

¹⁹² *Id.*

¹⁹³ *Id.*

housing tax credits have affected resident's abilities to find and finance affordable housing.¹⁹⁴

Perhaps highlighting alternative narratives may benefit from examination through the lens of communication infrastructure theory's two basic components: (1) the neighborhood storytelling network made up of residents, community organizations, and geo-ethnic media; and (2) the communication environment in which storytelling occurs.¹⁹⁵ One example of how a communication environment and a storytelling network intersect is street safety. According to research conducted by the University of Southern California, Annenberg School for Communication:

When the streets and public spaces are or are perceived to be unsafe, residents are not likely to frequently and freely meet and greet each other and this means they are not likely to participate in neighborhood storytelling. When the streets and public spaces are safe and welcoming, residents are likely to be out and about [in] their communities where they can meet and greet each other and develop conversations about their neighborhood.¹⁹⁶

C. International Narratives in Law and Policy: Qatar

Qatar does not have a storytelling department. However, investigative journalism has recently applied narrative as a catalyst for change in this nation's international human rights law and policy. Qatar is a Persian Gulf, Middle-Eastern peninsular nation physically connected only to Saudi Arabia. The political system of Qatar is "[a] constitutional emirate with one advisory body[.] Qatar is ruled by a hereditary emir from the Āl Thānī. Members of the ruling family hold almost all the major ministerial posts, which are appointed by the emir."¹⁹⁷ Over time,

The emir has . . . cautiously expanded political participation, allowing the first municipal elections to take place in 1999, with an electorate that included both female and male Qataris. Under a provisional constitution enacted in 1972, the emir ruled in

¹⁹⁴ Jack Nissen, *Affordable Rent Is Disappearing in Michigan*, FOX 2 DETROIT (Nov. 5, 2019, 6:15 AM), <https://www.fox2detroit.com/news/affordable-rent-is-disappearing-in-michigan> [<https://perma.cc/8KE9-7E8Q>].

¹⁹⁵ *Metamorphosis Project: Theory*, UNIV. OF S. CAL. ANNENBERG SCH. FOR COMM'N., <http://www.metamorph.org/research/theory/> [<https://perma.cc/YMU6-7KW8>].

¹⁹⁶ *Id.*

¹⁹⁷ *Qatar*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Qatar/Government-and-society> [<https://perma.cc/WBE5-3WHS>].

consultation with a Council of Ministers (Majlis al-Wuzarā') and an appointed Advisory Council (Majlis al-Shūrā).¹⁹⁸

According to the Encyclopedia Britannica, “Islam is the official religion, and Qataris are largely Sunni Muslims The non-Qatari population has a more diverse religious makeup, with Muslims, Christians, and Hindus constituting the largest religious groups.”¹⁹⁹ The population of Qatar is 2.695 Million, as of 2022.²⁰⁰

In 2013, the *Guardian* published a piece on the country’s exploitation of migrant workers amidst Qatar’s successful World Cup bid, as part of the *Guardian*’s Modern-Day Slavery in Focus project. The *Guardian* article stated that after the story’s release, FIFA President Sepp Blatter addressed the issue with the Emir of Qatar. Qatar promised to reform its labor laws. In March 2016, the United Nations issued a warning to Qatar to end migrant worker slavery.²⁰¹ Amnesty International reported that the Qatari government committed to stop labor exploitation a few years thereafter.²⁰²

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Population, Total – Qatar*, THE WORLD BANK, <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=QA> [<https://perma.cc/3TNV-VGQN>].

²⁰¹ Nicholas McGeehan, Opinion, ‘*Modern-Day Slavery*’ in *Qatar: There’s Bad and Good News*, GUARDIAN (Sept. 27, 2013, 8:58 AM), <https://www.theguardian.com/commentisfree/2013/sep/27/qatar-modern-day-slavery-world-cup-2022> [<https://perma.cc/PM6S-MZET>]. The *Guardian*’s assigned research team for the Qatar project was known as the “Modern-day Slavery team.” Ella Saltmarshe, *Telling the Difference: Using Story to Change Systems*, GULBENKIAN, https://gulbenkian.pt/uk-branch/wp-content/uploads/sites/18/2018/02/TELLING-THE-DIFFERENCE_Digital_.pdf [<https://perma.cc/UBD8-33PW>]. Human Rights Watch also refers to the team in this way. See *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, AM. C.L. UNION (May 31, 2007), <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states> [<https://perma.cc/JX9P-7FW4>]; *What Is Modern Slavery?*, U.S. DEP’T OF STATE: OFF. TO MONITOR & COMBAT TRAFFICKING IN PERS., <https://www.state.gov/what-is-modern-slavery/> [<https://perma.cc/3QWF-NH7Y>]. The ACLU uses the term “Human Trafficking” as a subsection of “modern slavery,” which may be a more culturally sensitive choice of terminology for not only the goals of the project but also a respectful acknowledgement of the pain that is the factual basis for this work. *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, AM. C.L. UNION (May 31, 2007), <https://www.aclu.org/documents/human-trafficking-modern-enslavement-immigrant-women-united-states> [<https://perma.cc/4CTF-B42D>]. The U.S. State Department uses the terms “modern slavery,” “trafficking in persons,” and “human trafficking” interchangeably, which further indicates that as a society, we are still searching for the appropriate, respectful terminology to address the historical pain and suffering of slavery and human rights violations globally. *What Is Modern Slavery?*, *supra*.

²⁰² *Qatar: Labour Reform Unfinished and Compensation Still Owed as World Cup Looms*, AMNESTY INT’L (Oct. 20, 2022), <https://www.amnesty.org/en/latest/news/2022/10/qatar-labour-reform-unfinished-and-compensation-still-owed-as-world-cup-looms/#:~:text=>

Investigative journalism, such as the *Guardian*'s series, is a form of narrative that may motivate systematic change. Highlighting an individual's story within a community can cause changes in the present, to better not only that individual's life but an entire community as well. It focuses on three necessary narratives: "the 'story of self,' the 'story of us,' and the 'story of now.'"²⁰³ As civic engagement has grown globally, so too have the opportunities for people to share their experiences, and the emphasis has been on the power of story.²⁰⁴ However, while narratives such as this are typically not authored by a country's government, genuine facilitation of narrative has grown.

In the United States at least, the space for narratives to be directly heard by politicians is during the public comment period of an open government meeting.²⁰⁵ The court in *White v. City of Norwalk* ruled that "[c]itizens have an enormous first amendment interest in directing speech about public issues to those who govern their city."²⁰⁶ Many states also have separate Open Meetings acts as well. This is an example of one space that allows for direct stories from citizens to contribute to change in law and policy.

IV

NARRATIVE JUSTICE FOR CORPORATE SOCIAL RESPONSIBILITY

A. Narratives in Contract Law

Narrative is seen throughout cases in contract law, as story is how contracts are formed and broken. Yet, in the cases often historically assigned for first-year contract law courses, narrative is not presently discussed. Rather, the narratives are often historically assumed by the courts, with adoption of the narrative the court chooses to apply for its decision brought to the fore, and the narrative of those that do not quite fit within a decision left behind.

=Reforms%20enacted%20by%20Qatar%20since,wages%2C%20and%20a%20minimum%20wage [https://perma.cc/8D25-KNAM].

²⁰³ W.K. KELLOGG FOUND., CREATING SPACES FOR CHANGE: WORKING TOWARD A "STORY OF NOW" IN CIVIC ENGAGEMENT 1 (2009), <https://www.nps.gov/civic/resources/Creating%20Spaces%20for%20Change.pdf> [https://perma.cc/E58T-BURH].

²⁰⁴ *Id.* at 6.

²⁰⁵ David L. Hudson, Jr., *Speaking at Public Meetings*, FREEDOM F. INST., <https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/personal-public-expression-overview/speaking-at-public-meetings/> [https://web.archive.org/web/20230128181347/https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-speech-2/personal-public-expression-overview/speaking-at-public-meetings/] (last updated Jan. 2013).

²⁰⁶ *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

The famous contract law case, taught in almost every law student's first year, *Lucy v. Zehmer*,²⁰⁷ sets a tone that marginalized narratives are unlikely to be addressed in contract and business law. The central issue defined by the court in *Lucy* was whether Zehmer's offer of his farm to Lucy was made in jest. The court applied the following rule: a contract is enforceable so long as a reasonable person, upon hearing the other party's assent, believes that said party actually assented.²⁰⁸ In support, the court noted that "[t]he mental assent of the parties is not requisite for the formation of a contract."²⁰⁹ The court went on to explain that "[i]f [a party's] words and acts, judged by a reasonable standard, manifest an intention to agree, it is immaterial what may be the real but unexpressed state of his mind."²¹⁰ Interestingly, the defendants' counsel did contend, as recognized by the court, that "even though a contract was made, equity should decline to enforce it under the circumstances."²¹¹ Rather, the defendant failed to address the lack of clear assent by Mrs. Zehmer regarding the sale of the couple's farm.

The fact highlighted is the "drinking by the two [men] but not to an extent that they were unable to understand fully what they were doing."²¹² Based on this, the court determined,

There was no fraud, no misrepresentation, no sharp practice and no dealing between unequal parties. The farm had been bought for \$11,000 and was assessed for taxation at \$6,300. The purchase price was \$50,000. Zehmer admitted that it was a good price. There is in fact present in this case none of the grounds usually urged against specific performance.²¹³

Based on the above, the court concluded the contract for sale of the couple's farm, despite the wife's lack of knowledge regarding the transaction, was enforceable. This case is an example of how the history of contract law lacks space or insight regarding the importance of narrative.

The reasonable person standard is one of the foundations of contract formation analysis. Lucy Jewel, in her article *Does the Reasonable Man Have Obsessive Compulsive Disorder?*, discusses the titular

²⁰⁷ *Lucy v. Zehmer*, 82 S.E.2d 516 (Va. 1954).

²⁰⁸ *Id.* at 522.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

question.²¹⁴ She dissects how, truly, the reasonable person in the legal context is portrayed through the eyes of a Caucasian man: “white, Anglo-Saxon, and Protestant” (WASP). As a WASP, he enjoys racial, religious, and class privilege. He is also reasonable, believing that rationality promotes both order and liberty.”²¹⁵ She bases her analysis on the fact that WASP males were predominantly in positions of power for a long period of time. Jewel indicates concerns with this reasonable man standard, stating: “The reasonable man may also operate as a monster. As a being who resides within the judge’s psyche, the reasonable man fastidiously organizes and categorizes; this sometimes results in a hierarchical order that ignores the rights, experiences, and dreams of the people who do not fit into his paradigm.”²¹⁶

Also, in contract law, the doctrine of unconscionability “has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party.”²¹⁷ This doctrine is one example of how the law already inevitably brings narrative into account for legal analysis, reasoning, and decision-making. In *Williams v. Walker-Thomas Furniture Co.*, the terms of the contract unreasonably favored the company, and key portions of the contract were “hidden in a maze of fine print and minimized by deceptive sales practices.”²¹⁸ The court held that the consumer had been ultimately left with an absence of any meaningful choice, and due to this inequality in decision-making power, the contract should not be enforced.²¹⁹ This case is an example of how a historically marginalized individual’s narrative is applied as a form or mechanism for the infusion of empathy into judicial precedent. Robin West writes in *The Anti-Empathic Turn*, “To decide that a contract is unconscionable requires empathic engagement with the situation of both parties and a dollop of situation sense as well.”²²⁰ Furthermore, “[a]t least on the traditional understanding of good judging, the judge must embrace, not shy away

²¹⁴ Lucy Jewel, *Does the Reasonable Man Have Obsessive Compulsive Disorder?*, 54 WAKE FOREST L. REV. 1049 (2019).

²¹⁵ *Id.* at 1060.

²¹⁶ *Id.*

²¹⁷ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C. Cir. 1965).

²¹⁸ *Id.*

²¹⁹ *Id.* at 449–50.

²²⁰ Robin West, *The Anti-Empathic Turn*, 53 NOMOS: AM. SOC’Y POL. LEGAL PHIL. 243, 269 (2013).

from, his capacity for empathetic and sympathetic engagement with the parties before him.”²²¹

Scholar Nim Razook further elaborates on contract and business law’s present lack of space by indicating there are two worlds in business, World A and World B.²²² Razook states: “Contracting, especially that involving consumers, rarely squares with the underpinnings of World A and its idealized notions of autonomous consent, relatively equal bargaining power, and the presence of meaningful choices for the parties involved.”²²³ In World A, contracts are the typical “bargained-for-exchange.”²²⁴ Each party’s voluntary and informed consent is fundamental to such exchanges.²²⁵ In World B, contracts are one-sided and presented as a “take it or leave it deal.”²²⁶ World B contracts “include end-user licenses used for most software purchases . . . arbitration clauses in employment contracts and product purchases, limitation of liability clauses, and exculpatory agreements.”²²⁷ These contracts often lack voluntary consent. They also contain a lot of boilerplate language.

Historically, contracts involving consumers have fallen into the World B category. Creating systems for communication between the consumer and corporation would be one avenue toward inclusion of the consumer’s narrative to achieve the optimal contract result with minimal likelihood of litigation.

Furthermore, corporate law impacts society in a multitude of ways, but it is a less frequently discussed truth that society’s narratives also shape corporate goals and, in turn, the structure of the law. Professor Mae Kuykendall argues persuasively that “corporate law is an area of the law that filters out narrative as a source of knowledge, a criterion of relevance, or a standard of justification.”²²⁸ Mae Kuykendall and David Westbrook note that “[c]orporation law thus fails to achieve what might be thought, if perhaps with a determined naiveté, to be the basic requirement of law in any republic; that is, to explain matters of

²²¹ *Id.* at 270.

²²² Nim Razook, *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law*, 32 J. LEGAL STUD. EDUC. 345 (2015).

²²³ *Id.* at 361.

²²⁴ *Id.* at 347.

²²⁵ *Id.*

²²⁶ *Id.* at 348.

²²⁷ *Id.*

²²⁸ Mae Kuykendall, *No Imagination: The Marginal Role of Narrative in Corporate Law*, 55 BUFF. L. REV. 537, 540 (2007).

social importance in publicly cognizable fashion.”²²⁹ Many theorists and critics, however, go further than Professor Kuykendall, arguing that literature is by its very nature inimical to business, not because “business is dull” but because literature speaks to the human needs that remain unsatisfied under capitalism, no matter how prosperous society may become. The appropriate response to this negativity is surely not to call for the destruction of capitalist society, but rather to consider ways to heed the voices of literature, and to understand “that literature is the authoritative voice of the human spirit.”²³⁰ There is urgent need for revision in how we think about the law, its study, practice, and application.

B. Narratives for Environmental, Social, and Governance Investing and Legal Advisory Groups

The term “Environmental, Social, and Governance” (ESG) was first raised by Georg Kell, present chairman of a sustainable finance company, Arabesque, in the study “Who Cares Wins.”²³¹ Corporate social responsibility, which ESG originates from, is commonly emphasized as a “firm’s considerations of, and response to, issues beyond the narrow economic, technical, and legal requirements of the firm to accomplish social [and environmental] benefits along with the traditional economic gains which the firm seeks.”²³² The “Who Cares Wins” article “made the case that integrating ESG factors into corporate and investor decision-making was critical for the security of investments, prosperity, and growing markets.”²³³

From an economic standpoint, forty-six percent of investors consider ESG when making investment decisions. Environmental, social, and corporate governance changes—such as creating systems

²²⁹ Mae Kuykendall & David Westbrook, *Introduction: Unsettling Questions, Disquieting Stories*, 2009 MICH. ST. L. REV. 817, 817 (2009).

²³⁰ James Seaton, *Essay: Literature and Business: Hostility and Dullness*, 2009 MICH. ST. L. REV. 885, 896 (2009).

²³¹ Georg Kell, *The Remarkable Rise of ESG*, FORBES (July 11, 2018, 10:09 AM), <https://www.forbes.com/sites/georgkell/2018/07/11/the-remarkable-rise-of-esg/?sh=6d1c823f1695> [<https://perma.cc/3ZJ4-K7DB>]. Kell also founded UN Global Compact in 2000. Tellus Institute, *Georg Kell*, GREAT TRANSITION INITIATIVE, <https://greattransition.org/contributor/georg-kell> [<https://perma.cc/CX43-736M>].

²³² Ruth V. Aguilera et al., *Putting the S Back in Corporate Social Responsibility: A Multilevel Theory of Social Change in Organizations*, 32 ACAD. MGMT. REV. 836, 836–37 (2007) (quoting Keith Davis, *The Case for and Against Business Assumption of Social Responsibilities*, 16 ACAD. MGMT. REV. 312, 312 (1973)).

²³³ Lund & Pollman, *supra* note 120, at 2613. ESG investing is estimated at over twenty-trillion dollars. *See* Kell, *supra* note 231.

for vocalization of the process for placing more women and minorities on corporate boards, or for the process of building locally conscious community programs—equal a better reputation for the corporation and, in turn, greater investment potential.²³⁴

The term ESG is rooted in the philosophies of corporate social responsibility, corporate philanthropy, and the social contract.²³⁵ In the 1970s, the ‘social contract’ concept became popular. The social contract outlines three responsibilities: “[p]rovide jobs and economic growth through well run businesses; [r]un the business fairly and honestly regarding employees and customers; [and b]ecome more broadly involved in improving the conditions of the community and environment in which it operates.”²³⁶ In this vein, the Cleveland Foundation, the first community foundation, established in 1914 by Frederick Goff, launched collaborative corporate philanthropy through social impact investing, though the terminology had not yet shifted to today’s narrative of ESG investing.²³⁷

The literature on ESG presently does not address narrative, and yet it is clear that narrative has been woven into the intention of this type of investing and legal advising. Even in its introductory background section, while the Securities and Exchange Commission discusses narrative briefly, indicating that “advisers are required to provide information about their advisory services in narrative format,” definitions or guidelines for how to execute narrative or what narrative might look like are absent.²³⁸ There is a much more significant need for narratives in analyzing whether social impact or fair governance is occurring within the corporate sphere. Philip Chang highlights the

²³⁴ Stephen Bear et al., *The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation*, 97 J. BUS. ETHICS 207, 208 (2010).

²³⁵ In 1953, Howard Bowen, an American economist, published *Social Responsibilities of a Businessman* which advocated for business ethics. *Corporate Social Responsibility: A Brief History*, ASS’N OF CORP. CITIZENSHIP PROS., <https://accp.org/resources/csr-resources/accp-insights-blog/corporate-social-responsibility-brief-history/> [<https://perma.cc/U6TN-KNGE>] [hereinafter *Corporate Social Responsibility*]; see also Mauricio Andrés Latapí Agudelo, et al., *A Literature Review of the History and Evolution of Corporate Social Responsibility*, 4 INT’L J. CORP. SOC. RESP. 1, 3 (2019) (noting origins of social responsibility trace back as far back as ancient Roman laws).

²³⁶ *Corporate Social Responsibility*, *supra* note 235.

²³⁷ *Id.*

²³⁸ SEC. & EXCH. COMM’N, ENHANCED DISCLOSURES BY CERTAIN INVESTMENT ADVISERS AND INVESTMENT COMPANIES ABOUT ENVIRONMENTAL, SOCIAL, AND GOVERNANCE INVESTMENT PRACTICES, RELEASE NO. IA-6034; IC-34594 (May 25, 2022), <https://www.sec.gov/rules/proposed/2022/ia-6034.pdf> [<https://web.archive.org/web/20231021222727/https://www.sec.gov/rules/proposed/2022/ia-6034.pdf>].

work law firms need to do: first, advise their clients on ESG disclosure requirements, and second, “mirror[] their clients’ concerns” through publicly accessible ESG statements.²³⁹ Chang further notes that many law firms can simply “reorganize the information that they already have available into a published ESG statement.”²⁴⁰ This type of attitude toward ESG lacks the passion, empathy, and listening required for its purpose to be genuinely fulfilled. The sentiment and intention behind ESG disclosures are earnest, but in order for these disclosures to provide substance, first-person and community narrative accounts of the ESG achievements must be included. Why can a statement from a lawyer, executive, or employee who volunteered for climate justice or facilitated an LGBTQ program or other action not be mandated too? Why can a mechanism not be developed for interviews with local community members affected by a corporation’s initiatives?

An analysis of ESG statements for three leading corporations demonstrates the present lack of narrative in this important business model. Apple’s report focuses on what Apple does but not how they do it. For example, the report mentions a blind surfer who enjoys the independence that Apple’s features provide.²⁴¹ However, only one sentence discussed this topic. No indication of how Apple’s features actually provide independence is listed, nor how the features have increased his quality of life. There is a section in the report regarding accessibility, where the features intended to aid disabled persons are listed. This would have been a key place for immersion of narrative to demonstrate just how beneficial these programs have been to the disabled community.

Tesla’s ESG report contains seemingly zero narrative despite the infinite potential for narratives regarding the environmental impact of these vehicles.²⁴² Pfizer’s 2021 ESG report had a lot of potential to intertwine stories within it. For example, on one page of the report,

²³⁹ Philip Chang, *Why ESG Matters for Big Law Firms*, USC GOULD’S BUS. L. DIG. (Dec. 29, 2021), <https://lawforbusiness.usc.edu/why-esg-matters-for-big-law-firms/> [<https://perma.cc/GA8K-JZBF>].

²⁴⁰ *Id.*

²⁴¹ APPLE, ENVIRONMENTAL SOCIAL GOVERNANCE REPORT 25 (2021), https://s2.q4cdn.com/470004039/files/doc_downloads/2021/08/2021_Apple_ESG_Report.pdf [<https://perma.cc/5RL9-NDWC>].

²⁴² See TESLA, IMPACT REPORT (2021), https://www.tesla.com/ns_videos/2021-tesla-impact-report.pdf [https://web.archive.org/web/20231111213046/https://www.tesla.com/ns_videos/2021-tesla-impact-report.pdf].

clinical trials were discussed.²⁴³ However, there was no story from a patient in a clinical trial or a doctor performing the trial discussing the process and results. Throughout the report, there were insets that elaborated on timelines and provided snapshots of issues, but these were the closest to any form of narrative.²⁴⁴ Narratives would have helped make the report more vivid and understandable.

Corporate governance is another critical area where narrative would result in authentic advancement of equity—moving ESG statements toward their goals. Gender composition has a positive impact on corporate social responsibility and social capital. Women bring increased sensitivity to a board, and increased gender diversity enhances decision-making.²⁴⁵ It is difficult, however, to find U.S. corporate boards that provide, for example, female narratives on their sites. Instead, narratives of female corporate leaders related to gender equity and diversity are highlighted in news and social media. Anne Erni, Audible’s Chief People Officer, stated in an interview: “I actually tend to stay away from using the term ‘diversity,’ as it’s often associated with just meeting compliance requirements. . . . It’s not enough to just meet traditional EEO standards, it’s crucial that companies build and sustain workplaces that celebrate all of our differences.”²⁴⁶ Sharon Thorne, Deloitte’s Global Board Chair, stated in another interview:

In my experience, possibly due to unconscious or systemic bias, we tend to see more men being trained in these key roles [operation, finance, and production]. Women are more likely to develop deep expertise in areas such as marketing or talent, and move up the ranks boxed into these roles. We need more female role models—you can’t be what you can’t see. . . . The pandemic has exacerbated existing inequalities and injustices, and for women it has had a devastating and disproportionate impact.²⁴⁷

²⁴³ PFIZER, EMOTIONAL, SOCIAL, AND GOVERNANCE REPORT 1, 47 (2021), https://www.pfizer.com/sites/default/files/investors/financial_reports/annual_reports/2021/files/Pfizer_ESG_Report.pdf [https://web.archive.org/web/20230603014852/https://www.pfizer.com/sites/default/files/investors/financial_reports/annual_reports/2021/files/Pfizer_ESG_Report.pdf].

²⁴⁴ *Id.* at 24, 25, 30, 35, 36.

²⁴⁵ Bear et al., *supra* note 234, at 210.

²⁴⁶ Diana Coker, *How Anne Erni Is Taking D&I to the Next Level*, THE HR DIG. (Nov. 10, 2021), <https://www.thehrdigest.com/how-anne-erni-is-taking-di-to-the-next-level/> [<https://perma.cc/3NAW-2LA7>].

²⁴⁷ Sally Percy, *Deloitte Chair Sharon Thorne: “We Need More Female Role Models—You Can’t Be What You Can’t See,”* FORBES (Mar. 8, 2022, 4:00 AM), <https://www.forbes.com/sites/sallypercy/2022/03/08/deloitte-chair-sharon-thorne-we-need-more-female-role>

Both these statements are a form of narrative and should be addressed in the corporation's ESG statement. The solution to the dilemma Anne Erni raised is not to stop using a term as powerful as "diversity" but rather to push business law out of its comfort zone to understand what "diversity" authentically means and should be for their client corporations. Without open and publicly accessible communication, the systemic change ESG advising is geared toward is not possible.

C. The Need for Narrative in Corporate Law

There is a critical need for adoption of understanding that narratives aid ability to solve problems and promote effective development within corporate law and the corporate client's world.

Corporate narratives tend to seep into mainstream coverage, which influences the public's opinion of a certain topic. For example, "the media generally focuses on short-term stock market movements . . . as evidence . . . of the health of the overall economy."²⁴⁸ Also, corporate executives, as demonstrated by the few above-quoted corporate giants, more readily provide commentary on global issues to social media platforms, rather than internally, at their place of employment. The internal corporate narratives will allow the business to transform more efficiently and effectively toward positive change. The legal materials that currently govern corporate law reinforce the idea that there is no room for narrative.²⁴⁹ Corporate law scholar Mae Kuykendall defines "[n]arrative, in basic terms, [a]s an account of what recognizable characters say and do, with a time sequence that lends support to depictions of cause and effect, motives and consequences."²⁵⁰ She further explains that strong narratives hold emplotments,²⁵¹ using bankruptcy law as an example:

While bankruptcy as a legal subject is regarded as dry and technical, the story of bankruptcy is nonetheless a human story about the needs and emotions of people, the peril of financial dislocation and moral condemnation, and the ebb and flow of narratives and counter-narratives used to influence bankruptcy policy.²⁵²

-models-you-cant-be-what-you-cant-see/?sh=4bc0c12741c3 [https://perma.cc/XX82-BHCW].

²⁴⁸ Lund & Pollman, *supra* note 120, at 2605.

²⁴⁹ Kuykendall, *supra* note 228, at 611–12.

²⁵⁰ *Id.* at 542.

²⁵¹ *Id.* at 543.

²⁵² *Id.* at 546–47.

In legal scholarship, narrative is frequently defined as “outsider” stories that “disrupt[] a dominant discourse.”²⁵³

Kuykendall also noted that “narrative is a source of insight and knowledge about the content and derivation of law.”²⁵⁴ Many people find that legal reading is missing the things that make it interesting, such as cultural context and human motivation. This leads to the conclusion by many students that corporate law is either uninteresting or too difficult.²⁵⁵ Kuykendall writes that “[c]orporate life and governance are human interactions.”²⁵⁶ I disagree with the historical mindset that gender does not typically appear in corporate cases because it does not add “usable conceptual materials to corporate law.”²⁵⁷ Incorporating gender equity and other inclusivity considerations in corporate decision-making can greatly benefit businesses, both from an economic standpoint and from an ethical and social responsibility perspective. If narrative is established in corporate law, it will be useful in providing a “richer human context for the corporation.”²⁵⁸

In my contract and business law classes, I incorporate discussion of the parties’ unsung narratives and how they can affect corporate social responsibility moving forward. One student wrote to me after the semester:

I sat in the back for your Contracts II section on Tuesday and Thursday afternoons. Contracts I was a huge challenge for me. I was scared . . . I started to enjoy and have confidence in the subject matter to the point that I applied for a business/contracts position for the fall, and I got the position. During the interview, I was calling on information from your class and talking about how much I enjoyed your class and . . . Business Organizations . . . I’m getting a chance at an opportunity I thought I wasn’t “smart” enough for before²⁵⁹

CONCLUSION

We are at a monumental point in our country and in our world. Seeing how the disparities in wealth and equity manifest in times of

²⁵³ *Id.* at 547.

²⁵⁴ *Id.* at 548–49.

²⁵⁵ *Id.* at 561.

²⁵⁶ *Id.* at 571.

²⁵⁷ *Id.* at 581.

²⁵⁸ *Id.* at 588–89.

²⁵⁹ E-mail from anonymous student to Geeta Tewari, Assistant Professor, Del. L. Sch. (June 7, 2022) (on file with author).

dire crisis, we cannot sit idle with eyes closed to the pain, unfairness, and injustice. It is a moment where, with reason and heart, we can change what matters.

In his 2016 essay, *What Remains “Real” About the Law and Literature Movement?: A Global Appraisal*, Weisberg applied the term “narrative jurisprudence,” which, he wrote, “unpacks the importance of writing not as ornament but as central to the determination of a text’s value, its rightness or wrongness.”²⁶⁰ Narrative jurisprudence—the historical inclusion of literature in judicial opinions in order to support legal analysis in relation to the facts of the case—is perhaps one of the strongest early components of narrative justice, guiding the practice of narrative justice for advocates, practitioners, and policy leaders. While this practice of narrative justice has developed to include city storytellers, other community forms of experience, and corporate leaders’ statements across social media platforms, in recent years, it has not yet been affirmatively established within the legal community as a field of study or specialization. This must change.

Everyone these days is using the word narrative. The Oxford American Dictionary defines the noun “narrative” as “a spoken or written account of connected events” and the adjective “narrative” as “in the form of or concerned with narration.”²⁶¹ The Merriam-Webster Dictionary defines narrative as “a way of presenting or understanding a situation or series of events that reflects and promotes a particular point of view or set of values.”²⁶² To me, narrative is a spoken or written account of what has happened in an individual or community’s life. Art, in some forms, such as painting, photography, or sculpture, can also be a form of narrative. Ultimately, narrative can be best described as a story or voice that ties an individual or community’s experience to the unfolding issue. The purpose and function of narrative justice is to expand equity within the sphere of law and policy to account for perspectives that legal doctrines or policies, such as the reasonable person standard in contract law, traditionally would not have accounted for.

Narrative as a form of communication begins early. The Student Narratives Lab, affiliated with the Pathways Lab at Stanford University, was founded by Stanford University Ph.D. Candidate AJ

²⁶⁰ Weisberg, *supra* note 45, at 39.

²⁶¹ *Narrative*, NEW OXFORD AMERICAN DICTIONARY (3d ed. 2010).

²⁶² *Narrative*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003).

Alvero.²⁶³ The Narratives Lab released a working paper about the effects of social class on college applicants' topics for personal essays. Prompted to discuss a challenge they had to overcome, applicants from the lowest third of the wealth distribution chain listed abuse, domestic instability, and economic and material instability, whereas the top third in this chain listed time scheduling, failure, and sports.²⁶⁴ While the study pointed out the discrepancies in the quality of the essays, given students from the wealthier brackets likely had a private tutor or family member assist with their essays, it is equally critical to examine how the narratives differ: even before students enter college, they are marked by their unique experiences, writing for instance about abuse or economic injustice versus time scheduling or sports. It is these types of differences that need to be considered when we think about the law, how we structure federal laws related to college admissions decisions, education financing, and promotion of colleges to different high schools across the country. How we tell stories about where we live and the lives we lead reflects the range of possibilities for innovation in law and policy.

Narrative can be especially useful as a tool to explain complex legal matters. It is critical that the concept of narrative justice be introduced in law school, as it will not only further future lawyers' ability to empathize with and articulate the facts behind the cases, but the concept will inherently be embedded in their strategic approach to lawyering in any area of specialization.²⁶⁵ Defining narrative justice as a term entails the inherent inclusion of narrative in legal analysis and reasoning. It is a critical pedagogy for law schools to adopt. Narrative justice is a term found within other fields as well, like medicine and economics, as it focuses on the power of voice and story to achieve justice.

I propose for law schools to adopt a clinical model focused on application of narrative justice within their local communities, as well as inclusion of subject-specific seminars devoted to the narratives

²⁶³ AJ Alvero, *Student Narratives Lab*, AJALVERO.COM, <https://ajalvero.com/student-narratives-lab/> [https://perma.cc/MD2U-BLG5].

²⁶⁴ Arvind Ashok, *The Persistent Grip of Social Class on College Admissions*, THE UPSHOT: N.Y. TIMES (May 26, 2021), <https://www.nytimes.com/2021/05/26/upshot/college-admissions-essay-sat.html?action=click&module=In%20Other%20News&pgtype=Homepage> [https://perma.cc/N6HH-JXWW]; AJ Alvero et al., *Essay Content and Style Are Strongly Related to Household Income and SAT Scores: Evidence from 60,000 Undergraduate Applications*, SCI. ADVANCES (Oct. 15, 2021), <https://www.science.org/doi/10.1126/sciadv.abi9031> [https://web.archive.org/web/20231013055155/https://www.science.org/doi/10.1126/sciadv.abi9031].

²⁶⁵ Lund & Pollman, *supra* note 120, at 2603–05.

within different areas of the law, such as corporate and contract law. It is often difficult for first-year courses tested on the bar exam to devote significant time to conversations surrounding the cases students read, but some space must be allotted for greater impact. Taking the time and effort to develop syllabi further, incorporating narrative justice discussions, will provide for greater inclusivity and confidence in areas of the law, such as corporate law, especially where marginalized groups have historically been underrepresented. The positive effect will inevitably tumble into the practice of law and business with more inclusive leadership models and corporate strategies that include ethics and social responsibility.

Additionally, law schools should require the incorporation of narrative into at least one section of each first-year course. For example, I apply narrative in my classes covering the doctrine of unconscionability and other defenses in contract law to address parties' unequal bargaining power. We presently use terms such as storytelling, oral history, or narrative without a consistent term for the purpose or meaning of these terms. We need to embrace this concept of narrative justice and push against the traditional norm that only one area of law can apply to an issue. The #MeToo movement has shown how narrative justice can help us move away from this traditional concept that, for example, only employment law applies to a workplace violation. For major companies, as the #MeToo movement and narrative justice have shown, federal securities law is also applicable. I invite other interdisciplinary legal scholars to join me in creating this narrative justice pedagogy for the future of law.