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## LEARNING FROM LAW STUDENTS: A SOCRATIC APPROACH TO LAW AND LITERATURE?

*Clark D. Cunningham\**

I begin by introducing six former students from my seminar, "Law as Language, Law as Literature." The words are their own, taken from the opening paragraphs of their final seminar papers.

Nancy Leonard, from "Claiming a Label":

Through sixteen years of my life I existed without a label which society could use to define me. I was a white, middle-class female from a nice family in a nice suburb. I grew up with all of the advantages of my whiteness and all of the disadvantages of my gender without realizing the impact of either.

The most pervasive problem in my life the summer I was 16 was whether the boy in the cabin next to mine at the camp where we both were counselors would notice me. Each counselor at the camp got one day off during the three week job. I took my day off with Mike, the boy in the cabin next door, and Patrick, a mutual friend. We left for town early in the morning and planned to return to camp early that afternoon to go sailing. On a small rural highway heading back to camp, our car hit the gravel on the shoulder of the road, flipped three times, and landed in a ditch. The driver of the car had a bruised foot. Mike died at 12:03 that afternoon.

Immediately after the accident, the extent of my injuries wasn't clear. Only after I was transported by helicopter to a trauma center 200 miles away were the doctors able to ascertain that my spinal cord had been crushed and paralysis had resulted.

The car accident didn't result in "Nancy, who happens to use a wheelchair." The thirty minute ride back from town after lunch ended my existence as an individual accepted by the mainstream and made me something other than "normal." The accident transformed me into any one of the many labels society uses to categorize people with disabilities and took away my identity as an individual.<sup>1</sup>

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1. Nancy Leonard, Claiming a Label (Dec. 5, 1991) (unpublished manuscript, on file with Professor Cunningham).

Javonna L. Anderson, from "Farming, Land, and What's Real Property":

Although I was raised on a farm, it is very hard for me to explain what property means to me. I have tried, for the benefit of my friends and my husband, but usually the conversations end with polite nods from my guests and an adjournment to the supper table. With one or two notable exceptions, the kindest comments that I have received about my home are that it is "dull" or "really flat," or that I am "truly amazing" for being able to find my way home when "everything here looks the same." My husband even called it "boring."

My parents, both approaching fifty, farm almost 997 acres, of which we currently own 637 acres. This is considered a medium-sized farm where I live, and it grows smaller daily as more and more family farms are purchased by giant "corporate" farms. Our land is not debt free, of course, but we "own" our ground, just like all our neighbors do.

My definition of property, before I really thought about it, was just that, the bottom forty after rain, when it clings to your feet and creeps up your leg, or the point rows by the tracks where the sunflowers and smart weeds threaten to choke out the beans. Our property is who I am, our right to freedom and to make our living.<sup>2</sup>

H. Pack "Hank" Willimon, Jr., from "Submarine Talk":

From the grade of Midshipman to Captain, over a span of thirty-one years, I had the enviable opportunity directly to work closely with all the branches and to serve within two warfare communities of the United States Navy. For most of my career, I was an Engineering Duty Officer (EDO). The EDO Community consists of approximately 1200 officers who have graduate engineering degrees and spend their careers overseeing the design, construction, procurement, overhaul, conversion, maintenance, and logistic support of naval ships and warfare systems. Formerly called Naval Constructors, from the early days until now an EDO has held the privilege and duty in the modern context of the Naval Service of the ancient freemason—by necessity, freedom of passage through and acceptance within dispersed fiefdoms. Just as the stone mason had to communicate in dialects with his various clients, I had to converse in the particular language of my brothers and sisters of different operational specialties in the present instant.

In my twelfth year of commissioned service, after having coordinated several major depot-level submarine maintenance projects, I was selected to be the first EDO to participate in a pilot program

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2. Javonna L. Anderson, *Farming, Land, and What's Real Property* (Dec. 14, 1992) (unpublished manuscript, on file with Professor Cunningham).

during which EDOs would actually qualify in submarines. The program required attending submarine school and thence assignment to a Fleet Ballistic Submarine for a full patrol cycle. During the ship-board assignment, the EDO was expected to complete the standard officer qualification program. Ultimately I earned my gold dolphins. As a more senior and experienced officer, I was able to view with some detachment the process during which I made the transition from an accepted outsider to a submariner.<sup>3</sup>

Barbara Judith Cigarroa, from "Out of Silence":

Listening to a mother talking to her infant is to hear the language of feeling. The cadences of her voice and the responding incantation of coos from the infant communicate the intimacy between them long before words express the profound relationship between mother and child. The majority of mothers universally use "baby talk" and naturally speak to an infant appropriately, rhythmically and simply. The use of this special language of accentuated inflection changes only as the infant grows and matures.

When a mother is told that her infant is deaf, the "baby talk" is silenced from the first moment of her full awareness of the impairment. Knowledge that her baby does not respond to the notes of her voice, that her lullabies go unheard, that her words of comfort to her infant's cries are unconsoling, that her baby will never coo like other babies is devastating. In many cases, the mother-infant bond is severely strained as a mother grasps for other ways to express intimacy. The unnatural process of finding another language as a substitute for "baby talk" is a desperate one when it is the world of silence that must be bridged whose boundaries increase in distance as her child grows.<sup>4</sup>

Deborah Putnam Kivett, from "Christine, Nartsloniat, and Pepperoni Pizza":

I had thought of myself as a fairly competent student in college, and had enjoyed each of my liberal arts classes, feeling only slightly intimidated by the course material. But when I came to law school, I was suddenly at a total loss to comprehend my classes. It was easy to start believing that I wasn't as intelligent as I had previously thought; maybe I was even stupid. One saving factor during that first semester of law school was that group of law school friends close enough to me to admit their own fears of sudden inadequacy, making me realize that I was not alone in my difficulties. We came to law school from a great variety of educational and cultural backgrounds, but none of us

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3. H. Pack Willimon, *Submarine Talk* (Dec. 3, 1991) (unpublished manuscript, on file with Professor Cunningham).

4. Judith Cigarroa, *Out of Silence* (Dec. 4, 1991) (unpublished manuscript, on file with Professor Cunningham).

seemed adequately prepared to understand the cases we were assigned, as proven in each class session.

The reason for my immense initial frustration with law school has eluded me, and yet in a teaching experience I had several years ago, upon which I have had much time to reflect, I have now found parallels which seem to make sense of my own learning experiences in law school.

During the summer before my junior year in college, I decided to tutor for Literacy Volunteers. My student's name was Christine. She was nineteen, black, a high school dropout, pregnant, from a large family of high school dropouts and pregnant sisters, living in the "wrong" part of town. I was twenty, white, a junior in college, with one older brother, from an educated family, living in the "right" part of town.<sup>5</sup>

Jay D. Fisk, from "From Limp Wrist to Clenched Fist: One Queer's Journey":

A few weeks ago, I presented a draft of this paper to my colleagues in this Law as Language Seminar. While I was generally pleased with their acceptance and level of interest in my topic, I was also troubled. Several of the students felt comfortable enough to begin their comments with the statement, "I am really glad you are not angry or bitter." Although I had consciously lightened the tone of that first paper to make it more acceptable to the class, I was surprised at the intensity of their comments. Are my classmates' mailboxes overflowing with guilt-inducing diatribes written by militant queers to the point that a "reader-friendly" paper is seen as a refreshing change of pace? I was also surprised, and a little bit amused, by their belief that the expression, "You're not angry or bitter," is a compliment. Imagine a black activist at the height of the civil rights movement being congratulated on his lack of anger or bitterness. One might as well have said, "We are glad you know your place, Uncle Tom. You can shuffle on home now." But I was not offended. I am used to such comments. Instead of offending me, my colleagues' remarks affirmed for me the importance of defining myself as "queer." For, of all the terms I have used to define myself throughout my life, "queer" is the one with which I am most comfortable.<sup>6</sup>

## I. SHOULD WE CALL LAW TEACHING "SOCRATIC"?

The lead article in this symposium issue is a reading by James Boyd

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5. Deborah P. Kivett, Christine, Nartsloniat, and Pepperoni Pizza (Dec. 4, 1991) (unpublished manuscript, on file with Professor Cunningham).

6. Jay D. Fisk, *From Limp Wrist to Clenched Fist: One Queer's Journey* (Dec. 5, 1991) (unpublished manuscript, on file with Professor Cunningham).

White of Plato's Socratic dialogue, the *Crito*.<sup>7</sup> In a footnote, White mentions that Plato said of himself that his "real philosophy" was to be found, not in his writing, but in his teaching—"in the living engagement of mind with mind."<sup>8</sup> Plato's self-description reminds us that Socrates himself is not known at all as an author, but only as a teacher.<sup>9</sup> White asks us to read the *Crito*, not as an exposition of philosophy, but as a literary recreation of a highly dramatic moment of teaching, in which Socrates' acceptance of his death sentence becomes the occasion for educating his friend, Crito, who came not for a lesson but to plan a jail break.<sup>10</sup>

Law students have a special feeling for the phrase "Socratic teaching" because it is the label frequently given to the most distinctive type of law school teaching: the persistent interrogation of students by the teacher, as opposed to the format found elsewhere in the university where the teacher lectures and students occasionally ask questions of her. The most popular, albeit extreme, example of this approach is found in the teaching of the fictional Professor Kingsfield in the movie and television versions of the novel *Paper Chase*,<sup>11</sup> and for convenience, I shall refer to this kind of teaching as the "Kingsfield method."<sup>12</sup> The Kingsfield method bears superficial resemblance to what White describes as the dialectic method used by Socrates: "[I]n the dialectical conversation, . . . there are only the two parties to the process; they proceed by question and answer, not by making speeches; each promises to tell the truth as he sees it; each, knowing that his own knowledge is defective, actively seeks refutation from the other . . ."<sup>13</sup> However, as White reads the *Crito*, this particular dialogue is not a good example of dialectical conversation because "Crito is simply not up to the demands of that kind of conversation."<sup>14</sup> He sees Crito portrayed by Plato as kind and courageous, but not very bright: "a person

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7. James B. White, *Plato's Crito: The Authority of Law and Philosophy*, 63 U. CIN. L. REV. 11 (1994).

8. *Id.* at 16 n.15.

9. W.H.D. Rouse, *Preface to PLATO, GREAT DIALOGUES OF PLATO* at viii-ix (Eric H. Warmington & Philip G. Rouse eds. & W.H.D. Rouse trans., 1956). "Socrates wrote nothing himself." *Id.* at viii.

10. See White, *supra* note 7.

11. JOHN J. OSBORNE, *PAPER CHASE* (1971).

12. By using the Kingsfield example, which borders on parody, I want to avoid the implication that all types of law school teaching that use an interrogative method share the features discussed here. For a very thoughtful justification of interrogative law teaching, see Professor Thomas Eisele's contribution to this symposium, Thomas D. Eisele, *The Poverty of Socratic Questioning: Asking and Answering in the Meno*, 63 U. CIN. L. REV. 221 (1994).

13. White, *supra* note 7, at 45.

14. *Id.*

of limited capacity.”<sup>15</sup> Therefore, Socrates is forced to proceed by a different method, the “anagogic, leading Crito as it were by the hand from one position to another.”<sup>16</sup> This reading explains for White the logical and ethical deficiencies of the various arguments that Socrates presents to Crito in the voice of the personalized “Laws” of Athens; their defects and simplicities mirror Crito’s own inadequate insights.<sup>17</sup>

Socrates’ dialogue with Crito, ironically, may be a better metaphor for the Kingsfield method than the dialectical conversations of other Socratic dialogues. In this dialogue, there is no sense that Socrates really believes that his own knowledge is defective and then actively seeks refutation from Crito. Socrates may teach Crito, but he does not learn from him, and the most notable feature of this conversation is that Crito becomes increasingly silenced. Once Socrates commences his line of argumentation, Crito is quickly reduced to one line responses, like “Truly said” and “We must indeed.”<sup>18</sup> Consider the final exchange:

*Socrates:* . . . This, I assure you . . . is what I seem to hear. . . . As far as I can see, you may be sure that whatever you say contrary to this, you will say in vain. However, if you think you can do any good, speak.

*Crito:* But, my dear Socrates, I have nothing to say.<sup>19</sup>

I suspect that many law students have felt like Crito at the end of a Kingsfieldian interrogation. Certainly, the Kingsfield method does not indicate to the student that the professor expects to learn something new from the student or to have her own understanding effectively refuted. Indeed, there seems to be a fundamental epistemological difference between Socrates’ dialectical approach and the Kingsfield method. Students who enter a Kingsfield classroom are given the message implicitly—and sometimes explicitly—that their minds are to be wiped clean of whatever knowledge and methods of thinking they had acquired before law school. Learning to “think like a lawyer” is a whole new mode of thought, and an important part of the teacher’s task is to show students the deficiencies of their previous forms of analysis and discourse. Like Crito, the first-year law student is a person of “limited capacity,” who must be led by hand from simple-minded ar-

15. *Id.* at 46.

16. *Id.*

17. *See id.*

18. PLATO, *Crito*, in GREAT DIALOGUES OF PLATO, *supra* note 9, at 524, 527. The interchange between Socrates and Crito looks rather like a cross-examination, *see id.* at 517-29, and as all trial lawyers know, the usual purpose of cross-examination is not to discover information from the witness, but to force him to agree with the lawyer’s own interpretation of events.

19. *Id.* at 529.

guments to ascend slowly the steps of sophisticated legal reasoning. The purpose of Kingsfield's questioning is not a sincere effort by the teacher to learn more information from the student, but rather a rhetorical device to expose the inadequacies of the previous answer.

In contrast, Socrates' dialectic method is founded on the belief that the conversational partner is a source of fundamental knowledge and, indeed, that true education is a process of recalling what one already knows at a deeper level.<sup>20</sup> Socrates described his role as that of a midwife, bringing other men's thoughts to birth, stimulating them to think, not "instructing" them.<sup>21</sup>

The "law and literature" movement, particularly as identified with the works of James Boyd White,<sup>22</sup> can be seen as a potential corrective to the Kingsfield method of teaching law. White's first book, *The Legal Imagination*,<sup>23</sup> was published as a law school textbook and arose from experimental teaching that he did as an untenured law professor at the University of Colorado. The book was not presented as a book about "law and literature." In the preface, White explains, almost off-handedly, why so many readings in this legal textbook are drawn from literature:

[M]y purpose . . . is to establish a way of looking at the law from the outside, a way of comparing it with other forms of literary and intellectual activity, a way of defining the legal imagination by comparing it with others. . . . The aim is not to make a systematic comparison between law and literature . . . but to bring to life by the contrast a set of loosely related questions about language and imagination, to open up diverse and competing lines of thought. . . . The activity which I mean to encourage . . . is an enterprise of the independent intelligence and imagination.<sup>24</sup>

In a later essay answering the question "What Can a Lawyer Learn from Literature?"<sup>25</sup> White contrasts the kind of discourse of which the

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20. See PLATO, *Meno*, in GREAT DIALOGUES OF PLATO, *supra* note 9, at 29, 41-57.

21. Rouse, *supra* note 9, at ix. However, Socrates extends the midwife metaphor in a distinctive way, saying that he also tests the newborn child for its character, perhaps implying a degree of "instruction," as explicated in Thomas Eisele's essay in this issue. See Eisele, *supra* note 12. (I owe this point to Professor Timothy Mahoney, Department of Philosophy, University of Texas, Arlington.)

22. For an overview of the law and literature movement and White's role in that movement, see Robin West, *Communities, Texts and Law: Reflections on the Law and Literature Movement*, 1 YALE J.L. & HUMAN. 129 (1988).

23. JAMES B. WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (1973).

24. *Id.* at xx; see also James B. White, *Teaching Law and Literature*, 27 MOSAIC (1994).

25. James B. White, *What Can a Lawyer Learn from Literature?*, 102 HARV. L. REV. 2014 (1989) (book review).



Kingsfield method is an example with the reading of literary texts:

This [first] kind of discourse is structurally coercive, in the sense that the writer seeks to prove something even to an unwilling reader who resists with all his might until forced by factual or logical demonstration to yield. . . .

. . . .  
But when we turn our attention to literary . . . texts[, we find that they] . . . are not coercive of their reader, but invitational: they offer an experience, not a message, and an experience that will not merely add to one's stock of information, but change one's way of seeing and being, of talking and acting.<sup>26</sup>

I have taught my seminar, "Law as Language, Law as Literature," four times, each time using *The Legal Imagination* as the core textbook. My experience has been that the relation between law teacher and student (and among students) can change when we sit down to read literary texts together. The Kingsfieldian teacher is always suspected of "hiding the ball": she knows the right answer already and is just waiting until the interrogative process either narrows the options to that answer or exhausts student imagination, at which point the teacher pulls the answer out of a hat. But even law professors are not expected to know all of the answers to how to interpret a Shakespearean sonnet or an essay by Proust. More importantly, the conventions of discourse are different. Students know that they can draw upon their pre-law-school knowledge and experience and their own good sense.

As fellow literary critics, my seminar students teach me; but my most exciting learning experience is when the students become authors in their own right. The invitational approach of White's textbook encourages students to venture their own experiences and insights; and since the third time that I taught the seminar, I have given students the option of writing their final paper based on personal experience. The quality and power of many of these papers has left me deeply impressed and moved. I am struck by the tragic loss in law school when students are treated as blank slates. Not only do law students bring to the school a variety and depth of life experiences (and academic training), necessarily well beyond the range represented among their teachers, but their very state of mind in law school is an invaluable resource. They are aware of something that their teachers have forgotten, of the opacity of legal language: what is visible to them (indeed the subject of intense observation) has become transparent to law-school

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26. *Id.* at 2017, 2018.

graduates. Their capacity for thoughtful critique and dialogue may, therefore, exceed in important ways what can be found in the faculty lunchroom and at academic conferences. A mode of teaching that makes possible learning from law students, then, seems more truly Socratic than the approach that widely bears the name.

Therefore, I now gladly relinquish the role of author and teacher to share with you some of what I have learned from law students.

## II. LAW STUDENTS AS AUTHORS

My seminar is titled "Law as Language, Law as Literature"—rather than "Law and Language, Law and Literature"—to indicate that the intended focus throughout is on law. We study language and literature as potential models for thinking about the nature of law. (Therefore, unlike some "law and literature" courses, mine does not study literature about legal events, e.g., *Billy Budd*, *To Kill a Mockingbird*.) Language and literature—as a specialized use of language—are both ways in which the mind constructs an imagined world of its own, one that interacts in complex ways with the experienced world.<sup>27</sup> Thinking first about language, and then about literature, I hope, opens up new ways for students to think about law.

The first words that students read about the seminar (other than the catalogue description) are in the following introduction to the course requirements:

This course might be titled: "Studying and Practicing Law as if Words Matter." The unifying theme for both the content and teaching methods of this course is that words *do* matter, that the way we talk and write about people and events affects the way we and others think about them and thus ultimately shapes the world we experience. My goal is to increase your awareness of the languages you use, which are normally as invisible to you as the air you breath. The readings, writing assignments, and class discussions are designed to work together to make language visible to you, so that you can examine it, take it apart, and ultimately reshape it. This is an experiential course; you must be active and engaged.

At the beginning of the first class, I expand upon this statement to pose the following three sets of questions as central to the entire

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27. Of course, the kind of dichotomy between an internal mental world and an external empirical world implied by this sentence is, at best, a gross simplification and, for many readers, might be taken as evidence that the writer is ignorant of basic epistemology. For an effort to explicate this difference with greater care, see Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459, 2473-75 (1989).

course: (1) What is distinctive about the way that lawyers talk and write? Can law be thought of as a kind of separate language? (2) Does the way that lawyers talk affect their thinking and action? Generally, what is the relationship between language and the mind? (3) If the distinctive way that lawyers talk affects the way that they think and act, what are the consequences? What is gained or lost in talking this way?<sup>28</sup> These questions are Socratic in a dialogic way. I am profoundly interested in these questions. I do not already know the answers and expect to be edified by the students' efforts to answer the questions, particularly as the answers draw upon the students' own personal experiences.

The six students whom I introduced at the beginning of this essay all ventured to answer one or more of these questions by examining and explicating their own pre-law-school experiences. I now offer edited versions of those answers, which, of course, are to be read as invitations to further dialogue—not as closing the discussion.<sup>29</sup>

#### A. *A World Ordered by Language*

In asking whether law can be thought of as a kind of separate language, I encourage students who have engaged in other careers before law school to consider whether they have already acquired some kind of occupationally specific language.<sup>30</sup> Recreating for the rest of the

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28. White begins *The Legal Imagination* with similar questions, see WHITE, *supra* note 23, at 4-5, and the entire book rings variations on these themes.

29. All six students provided written permission to use their papers in this essay and had the opportunity to review the ways in which the papers have been edited.

30. The first writing assignment in White's *Legal Imagination* asks the student to write three paragraphs, describing the same event, but using a different "language system" in each paragraph. WHITE, *supra* note 23, at 34-35. White deliberately refuses to define in advance what he means by a language system, but he does indicate that such a system can be defined by the occupation of the speaker. *Id.* The student must then write a fourth paragraph, explaining what defines and distinguishes the language system used in each of the first three paragraphs.

When I used this exercise the first two times that I taught the seminar, I had an experience similar to that reported by White:

My original thought was that the students would activate, against their lawyerly selves, aspects of their mind and experience that worked in very different ways, aspects that were rich, vital, and authentic. . . . [B]ut often when students are called upon to speak about the rest of life, at least in the context of a paper assignment, they turn out to have no satisfactory voice in which to do this. The social form we call "the course" activates in them a kind of student personality, speaking in a student voice that is often as dead and empty as the worst lawyer voice. . . . The issue at the heart of the course thus becomes more complex than I had originally imagined . . . [and] the student finds herself/himself using two voices, both of which are unsatisfactory, and not only to me but to the student.

White, *supra* note 24, at 2-3. I thus experimented with a variation on a different exercise in

class what is distinctive about the language used by members of that occupational community, analyzing its features, relating them to the definitive activities of that community—this exercise in making a language visible to one familiar with it and comprehensible to those who find it alien has provided both a foundation and a wealth of provocative comparisons to the study of law as a language system.<sup>31</sup>

A significant number of my students have engaged in another occupation before law school,<sup>32</sup> and for some of them, the challenge of thinking about that prior life as a distinct way of talking leads to their final papers. Perhaps the most sustained and imposing example was Hank Willimon's essay on submarine talk—an essay that is not only richly evocative of a world shaped by language, but that, I find, offers fascinating comparisons and contrasts to the world of legal language.<sup>33</sup>

### Submarine Talk

Except for the most casual or personal matters, most of each submariner's life consists of performing acts which he was told to do in submarine talk, in a strict sequence, in verbatim compliance with

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*The Legal Imagination*, using a case involving the petition of a hospital for an order to administer a blood transfusion to a critically ill Jehovah's Witness. Application of the President & Directors of Georgetown College, 331 F.2d 1000 (D.C. Cir.), cert. denied, 377 U.S. 978 (1964) (discussed in WHITE, *supra* note 23, at 84-89). Students could select from among the following roles: the patient's husband, the patient's minister, the attending physician, the attorney for the patient's husband, and the attorney for the hospital. In advance of class, the students wrote out what the person in their chosen role might have said to the judge during an extraordinary hearing in the hospital room. See *Georgetown College*, 331 F.2d at 1007. Students sharing the same role then met at the beginning of class to compare their statements and to compose a common statement, taking what was best from each student's work. The eloquence and force of persons playing the non-attorney roles, particularly the husband and the minister, were striking and put the attorney voices in a new perspective. For example, the minister spoke to the judge as a peer and could directly challenge basic assumptions about the meaning of "law," "life," and "death." This exercise helped students to recognize the value of their own "pre-law" voices and laid the foundation for the experiential papers reprinted here.

31. Assigned readings for the seminar include the following examples and discussions of occupational language: Norman Mailer, *Of a Fire on the Moon*, in WHITE, *supra* note 23, at 19 (astronauts); Janice Norton, *The Treatment of a Dying Patient*, in WHITE, *supra* note 23, at 174 (a psychiatrist); Susan U. Philips, *The Language Socialization of Lawyers: Acquiring the "Cant"*, in *DOING THE ETHNOGRAPHY OF SCHOOLING* 176 (George Spindler ed., 1982) (law students); Ann C. Scales, *Surviving Legal De-education: An Outsider's Guide*, 15 VT. L. REV. 139, 144 (1990) (lawyers compared to military strategists); Mark Twain, *Life on Mississippi*, in WHITE, *supra* note 23, at 10 (riverboat pilots).

32. Examples of some student writers' prior occupations include financial consultant, journalist, paratrooper, engineer, rabbi, and school teacher.

33. One can, for example, consider any or all of the following characterizations of law while immersing oneself in the submariner's world: law as command; law as an isolated, self-contained community; law as intensely functional; law as hierarchical; law as precise; and law as a system for self-correcting feedback.

verbal or written submarine talk. Conventional wisdom holds that submariners are cavalier by nature and fast and loose with their speech. Such is not the case. Submarine talk is the most formal and structured communication I have observed. There are internal and external communication procedures in all parts of the military, in fact in most work environments in the private sector also. However, the submarine force is intolerant of informality; any deviation from the prescribed form is rejected and clarification is required. In fact, each Fleet's submarine force has its own publication, the Internal Communications (IC) Manual, which tells its officers and men (1) how to talk, (2) what words may be used, and (3) how to write the words (often differing from the spoken version). The IC Manual is a source document that cannot be modified by lower command echelons. Each boat promulgates its own internal communications instructions, which are adjuncts to the Force manual in the case of installed ship-specific equipment . . . not covered by the latter.

Strict compliance with the IC Manual and its supplements minimizes ambiguity, promotes efficiency, ensures consistency, and expedites operations. Even during instruction and discussions, when conformance to a specified sequence of verbal communication is not necessary, the submariner uses the words that are specified by the written document(s), lest he forfeit his efficacy by standing out as an outsider whose status is in question.

In the examples that follow, conformance with IC written specifications or conventions of the submarine force is implicit. As best as length constraints will allow, I will explain how the submarine talk is conducted and demonstrate the nature of the talk in selected scenarios. The *why* will follow. Appreciation or rejection of the symphony is left to the reader.

**COMMANDS:** A command for our purposes is a verbal direction to cause something to happen within a short time. "Left full rudder" is a command. "Lay below and get some rest" is less defined temporally and is an order. An order requires a specific end result; but its completion is not contemporaneous.

**TITLES:** The submarine service dispenses with most honorific title baggage. Each officer and key enlisted person is addressed, both up and down the line, by his billet title. There is no Lieutenant Commander Gish, sir; he is addressed Engineer, DCA (Damage Control Assistant), Supply, etc. When he is on watch, he is addressed by his watch station. For example, Master Chief Gish, who is Chief of the Boat, is addressed "COB." If he is on watch at the Ballast Control Panel, he is addressed "Chief of the Watch."

**ACCURACY:** Submarine talk's precision requires another vital component—accuracy. Additionally, its accuracy far exceeds other communication environments that I have observed. Accuracy is a subset of precision. A tight pattern of shots into a bull's eye target is a precise result. However, if the pattern is displaced from the center, the

result is not accurate. A precise, accurate result is a tight pattern with its geographical center of rotation within the bull's eye. "Open AHP-45" has a precise meaning—cause the high pressure air valve's (the only such valve to have that designation on the ship) seat to be positioned in such a manner to pressurize downstream sections. How should this be done? Remotely by electro/hydraulic means? Manually? By other combinations? Assume the submariner giving the order wants it opened by hand in a manner such that the air initially will be throttled through the valve chamber so as not to shock the system. For most sailors the command would be "Crack open AHP-45." For a submariner such a command would provide inadequate control over the accuracy of the desired result. A more accurate method might be to open the valve in increments of 1/6th of a full turn of the valve hand wheel; however, sector discrimination within a circle is difficult, especially with backlash present in a mechanical system; also "one sixth of a turn" is neither short nor crisp face to face or over a sound circuit. The submarine command is "Manually open AHP-45 one flat." Typically, a hex nut (a nut with six flat outer sides) attaches the hand wheel to a valve stem. Positioning the wheel so that the next flat has the same relation in space as did the initial flat . . . is understood and easy to do accurately.

**THE NEED FOR SUBMARINE TALK:** Substantial submarine operations is a relatively new naval capability. The evolution of submarine talk as a language organic to submarining was driven by need and not tradition. I premise that many of the needs were both recognized and unrecognized—conscious and unconscious—direct and indirect.

**DIRECT:** Submarining is a dangerous business. When operational criteria such as tonnage sunk or successful IBM deterrent patrols per man are considered, the submarine is an effective warfare system. However, the personnel casualty rate is high. . . . Submarine incidents generally are swift and spectacular. Accordingly, the need to make every aspect of submarine operation error free, unambiguous, and crisp is self evident.

Submarining is complex. Conventional wisdom holds that operating a submarine is analogous to flying a big aircraft through the water. Such a notion is far short of the mark. The simple maintenance of course, speed, and depth requires hundreds of concurrent actions; the misapplication of any of these actions could result in extreme excursions from the expected norm. Rigging the ship for dive takes hours, followed by verification of each of the hundreds of steps. Going up to periscope depth, say for a satellite pass, and returning to the patrol environment, under normal conditions, can take over an hour. . . . In fact, even during the most routine patrol periods, much of the time is spent with the boat in a transient state. The crew is "flying" a five to seventeen thousand ton vehicle from one operating condition to another, taking care to maintain the correct posture in

transition, all the while anticipating the requirements necessary to establish hot, straight, and normal operation in the next phase. In addition to the other attributes, submarine talk's efficiency and brevity permit communication flow to keep abreast of the tactical situation. . . .

INDIRECT: During a protracted patrol, most submariners go through several mood phases. Typically, one starts out with resigned enthusiasm; then follow increasing degrees of withdrawal which reverse into a giddy, off the wall attitude. There are times when one only wants to eat and then retreat by himself into his own space and have little to do with his shipmates. Submarine talk is independent of mood. One can be effective without having to enter into a temporary personal relationship with those to whom he communicates. Many terms are unique; the form is invariant; the structure is functional. By its nature, it is impersonal. This impersonality filters human emotional excursions.<sup>34</sup>

I conclude presentation of this edited description of "submarine talk" with two revealing anecdotes recounted by Willimon:

Admiral Rickover was testifying before a Congressional Committee. One Member incredulously asked him why he got away with virtually zero regulatory oversight of his naval reactors. What was the difference? The Admiral replied: "The difference, sir, is that I guarantee verbatim compliance." Signs (unauthorized, but not undesired) reading **VERBATIM COMPLIANCE** sprang out in submarine Forces' engineering spaces throughout the fleet.<sup>35</sup>

I once speculated to a senior submariner that submarine talk's structure seemed to stifle the expression of a highly intellectual group. He replied that the system was designed to evoke consistent response regardless of the situation or state of mind and "no matter what your feelings are, you shouldn't have to think how to snap your fingers."<sup>36</sup>

### B. *A World Without Language*

The question of whether the way that lawyers talk affects their thinking and action implicates the larger question of the relationship between language and the mind.<sup>37</sup> Barbara Cigarroa drew upon her

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34. Willimon, *supra* note 3 (emphasis added).

35. *Id.*

36. *Id.*

37. In addition to pervasive discussion by White in *The Legal Imagination*, seminar readings on the topic included the following: GEORGE LAKOFF, *WOMEN, FIRE, AND DANGEROUS THINGS: WHAT CATEGORIES REVEAL ABOUT THE MIND* 91-96 (1987) (discussing radial categories); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 146-65 (1991) (chapter

experience as the mother of a hearing-impaired child to offer this answer to whether language affects thought and action.

### Out of Silence

When my daughter was two years old, she was becoming increasingly withdrawn as a result of her language delay. I decided to place her in a play group with six hearing children to see if this would stimulate socialization skills in her. All the mothers cordially welcomed us into their circle and informed me that my only obligation was to host the gathering in my home every seventh time we met.

The play group proved to be enjoyable for both my daughter and myself. The only strain involved was apparently for the mother who hosted the group. She inevitably faced the arduous task of getting her child share possessions. No manner of coaxing, bribing, or rationalizing will help the child share. "Mine!" the toddler would frantically exclaim as six children simultaneously took different toys. "But you never play with that . . ." or "You need to learn to share . . ." would never work. "It's mine! It's mine! It's mine!" The chant was relentless. Every mother expected even the quietest of children to turn into a greedy tyrant when it was that child's home everyone was playing in.

When it was our turn to have the clan over, mothers were astounded with my daughter. She didn't seem to mind in the least that others were playing with her toys. The only thing that interested her was the object she was playing with at the moment. If anyone attempted to take the thing in hand away, she merely tightened her grip, and that settled the problem. The play group went unusually smoothly, and no one could quite believe it. Only I understood that a probable reason my daughter didn't protest to sharing is that she did not possess the powerful word "mine"; perhaps her concept of possession did not extend beyond that which she was holding.<sup>38</sup>

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entitled "The Pain of Word Bondage"); Cunningham, *supra* note 27; Beth Horning, *Language Busters: Is Human Language Innate?*, 94 *TECH. REV.* 50 (1991); Philips, *supra* note 31; Scales, *supra* note 31.

38. Cigarroa, *supra* note 4. For her final paper, Cigarroa explored the potential significance of this episode by interviewing a researcher at the Central Institute for the Deaf in St. Louis (who confirmed that deaf children seem to understand "mine" differently than hearing children) and by researching variations across cultures about concepts of property and possession. (Her daughter's apparent meaning of "mine," as "what I am holding," made an interesting comparison to a report that the language of Andean natives—often incorrectly referred to as "Incas"—likewise had no possessive pronoun comparable to "mine." In that language, "my house" is "the house I am with," a concept consistent with their pre-Columbian culture, which had a communal economy without individual property rights. See RONALD WRIGHT, *CUT STONES AND CROSSROADS: A JOURNEY IN THE TWO WORLDS OF PERU 95-96* (1984).) Her final step was to conduct a tape-recorded interview with her daughter, then eight years old, that



*C. Re-Ordering the World Through Language*

Jay Fisk answered the question of whether language affects thought and action by telling the story of how he has used language to shape and reshape his own sense of identity and his relation with the rest of the world.

“From Limp Wrist to Clenched Fist: One Queer’s Journey”

As a teenager, before I publicly acknowledged my sexual orientation, I had a limited vocabulary with which to define myself. The words available were the pejorative labels of the school hallways, the guilt-inducing, all-encompassing term “sinner,” which I learned at church, or the medical terms, which I read about in psychology textbooks in dark corners of the public library. Unable to face the thought of eternal damnation or, even worse, the taunts of pimply-faced pubescent boys in the locker room, I defined myself by scanning indexes in medical texts.

I learned that the term “homosexual,” a term invented by Benkert, a Hungarian physician during the Victorian era, defined me. That’s what I was. I read with hope that my “sickness” might just be an adolescent phase, somehow normal. At least the medical model told me that I was not the only one, and to a suicidal fat kid who thought he was all alone, that was important. As time passed, however, the medical definition became a curse. There was something wrong with me. The medical world felt I was just as much of an outcast as the religious world did.

I disliked this medical definition, and although I carried it with me through college, carefully hidden, I never became comfortable with it. The word “homosexual” seemed to be inextricably linked with sex. But I wasn’t defined by my sexual experiences; I wasn’t having any sexual experiences. How could a word so closely associated with sex acts describe me? Nowadays, I get the same reaction from heterosexuals when I jokingly refer to them as “breeders.” No one likes to be defined only by his or her sexual practices.

I was twenty-one and a virgin, so I decided that, if I was going to be defined by what I did in bed, I had better start doing something or find a new definition. It was with these two goals that I first entered the gay community. For me, as for most homosexuals, this meant entering a bar. I had no idea what I would find there. What expectations I had were formed from reading pornography. I thought a gay

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revealed how her concept of “mine” had changed since the early episode to resemble more closely the meaning used by hearing children; Cigarroa replayed and discussed that conversation as part of her presentation to the class.

bar would be some surreal combination of leather and ferns with burly men waiting to rape or arrest me. My fears were only slightly lessened when I realized that this bar looked like any other bar, with a slightly different clientele. I sat at the bar and ordered club soda. An unusual looking person sat down next to me. I watched him in the mirror behind the bar. He was everyone's stereotype of a homosexual: bleached hair, vaguely feminine-looking clothes, and too much Polo cologne. He turned to me and, with wrists and elbows askew, growled, "Don't be afraid, honey. We're just a bunch of old queers. We won't hurt you." Although, looking back, I am sure his intentions were good, he couldn't have said anything more frightening. His appearance, his use of the word "queer," his blatant otherness, these characteristics were not what I was looking for. I practically ran from the bar.

Despite this disappointing beginning, I continued sneaking off to bars in the next city, and in time I found one where I felt more comfortable. In time I also had sex. Each encounter confirmed that I was a homosexual. I was a man who had sex with men. That's what a homosexual is. That is all that a "homosexual" is. Although I was a success in my career and had many straight friends, I did not feel successful. My definition of myself, the medical one, was as a flawed, sick person, abnormal.

As I began to meet other gay men, I entered into a transitional period. I became friends with men who were like me, straight-appearing men who would never dream of calling themselves "queer." But I wasn't sleeping with these men, I was networking with them. Over time, my definition, which had been based on the religious/medical/sexual model, no longer defined who I was. I had to re-define myself.

When I began to see that I could be defined by something other than what I did in bed, that is, when I began to reject the stereotypes, my self-oppression was replaced by pride. I joined a new community of men. We were open, yet discreet. The word we used to define ourselves was a word which had first gained popularity in the early 1970s when liberation groups were popular. We were "gay."

The gay community was ours. We could create our own culture. We did not wear rings to show we were unavailable; we wore keys and handkerchiefs to signify our availability. Even our language was inventive, filled with puns and slang. I believe I am particularly aware of language because I spent years talking about "someone" and "somebody," neutering pronouns so no one would know my secret. I learned the slang: "Mary," "queen," and "girl." We called each other "queer" and "faggot," words we would have never accepted from heterosexuals. But these words weren't insults anymore. They were jokes.

But then something happened. My friends began to die. . . . AIDS had been around for a while; it just hadn't killed anyone in my circle yet. When it did, the "joyous," "airy" word, "gay," became even more ironic. Not only was I sad, but I was angry. I am angry. AIDS has been killing people for over 10 years, and some people, particularly politicians, seemed not to notice until Magic Johnson tested positive. Suddenly, the headlines suggested "AIDS: It's Not Just For Faggots Anymore." The "live and let live" attitude became "live and let die."

I noticed that many of the people who said that they supported my efforts to be an openly gay man did not exhibit that support. . . . I have come to realize that many people don't mind that I'm gay, as long as I act straight. My sexuality is acceptable, as long as it doesn't make them feel uncomfortable. It is this attitude which allows people to compliment me for not being angry or bitter.<sup>39</sup>

In my attempt to combat that attitude, I have chosen to redefine myself once again. "Gay" does not adequately reflect the life I am trying to lead. "Gay" is too exclusive; it ignores lesbians and bisexuals. "Gay" is too subservient, too weak. It gives in; it kowtows to heterosexual society. Most importantly, "gay" fails to describe the militant anger of those people, like me, who are seeking great social change.

To be "gay" was to fit in; to be "queer" is to stand out. "Queer" is much more definitive and descriptive of who I am and who I want to be. Although of unknown origin, the word's earliest meaning was "an eccentric person." Later meanings include "strange," "odd," and "homosexual" ("Queer"). These definitions define me better than "gay" ever did.

By calling myself "queer," I unite with thousands of others, male and female, throughout the world. The word "queer" incorporates men and women, bisexuals, transvestites, transsexuals, and anyone else outside the sexual norm. It is a more accepting, inclusive name for us all. By defining myself as "queer" I can invert society's definitions, redefine them, and add new layers of meaning. It is this same process of inversion which is used by blacks when they refer to each other as "nigger."

Grace Sims Holt, in her article, "Inversion in Black Communication," says that the phenomenon of inversion is a practical necessity for people in subordinate positions. Blacks co-opted the white man's language, inverting meanings, taking pride in words whites used pejoratively in describing blacks. The whites were not aware of this word play, so it became a way in which blacks could covertly assert

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39. For a discussion of Fisk's reaction to the "compliment" of not being angry or bitter, see *supra* text accompanying note 6.

themselves without being punished. The result was the black's maintenance of a sense of dignity and group cohesion. It is this same sense of dignity and group cohesion that the effeminate man at the bar was attempting to create by saying, "We're just a bunch of old queers."<sup>40</sup>

#### D. *What the Law Leaves Out*

If law is imagined as a kind of language, and changes in language affect both thought and action, then what is lost, and what is gained, when we talk like lawyers? Javonna Anderson offered this meditation on what is lost when the law talks about "property."<sup>41</sup>

##### "Farming, Land and What's Real Property"

At home, the other farmers said "property" as often as "land." Pickups and grain trucks and tractors are "equipment" or "implements," and your animals are your "livestock," but your ground is your "property." We look at each other's property to glean information about personality: Are the fence rows mowed, or are they lazy? Are the in-field creeks and ditches neatly terraced, or are they behind the times? How clean are the beans on the back eighty this year, or didn't they get walked again?

The fields and their harvests are at the mercy of the weather, and so were we. Everything we had was growing out there on our property. It did not seem unusual to me until a friend from Chicago

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40. Fisk, *supra* note 6.

41. For the first class, my seminar students read in *The Legal Imagination* how LaSalle arrogantly claimed French ownership of the entire Mississippi watershed as the "first" explorer of that river, Francis Parkman, *La Salle and the Discovery of the Great West* (1879), reprinted in WHITE, *supra* note 23, at 15-16, and how Huck Finn struggled with guilt over depriving Miss Watson of her rightful property by helping her slave, Jim, to run away, Mark Twain, *Huck Finn* (1884), reprinted in WHITE, *supra* note 23, at 21-25. These readings are combined with viewing and discussing an excerpt of a television episode—"The Measure of a Man" from the television series *Star Trek: The Next Generation*—that depicts a trial to determine whether Commander Data, the android officer of the Starship Enterprise, is property of Star Fleet and thus can be disassembled for analysis against his wishes.

The class returns to these themes in the sixth week when they read Patricia Williams' essay, "The Pain of Word Bondage," which begins by analyzing from the fox's point of view the familiar first year property case of *Pierson v. Post*, 3 Cai. R. 175 (N.Y. 1805) (determining who owns a wild animal captured in a chase). Williams then moves to imagining how she could have argued for the freedom of her slave great-grandmother using the legal vocabulary of that era. WILLIAMS, *supra* note 37.

Javonna Anderson, who took the seminar in the fall of 1992, also had the benefit of reading Barbara Cigarroa's paper, with its discussion of property concepts among Native Americans in both North and South America. See *supra* note 38. Cigarroa and the other four student authors presented here took the seminar in the fall of 1991; all gave permission for me to reproduce and distribute their papers to students in 1992 as optional readings.

pointed out that many families do not spend their time alternately cursing and begging an inanimate object to "come through." I had never thought of our property as inanimate. Property was the land you worked throughout the year as you tried desperately to earn enough money to buy more; it was the friendly enemy you were willing to fight to protect, and that you put "No Trespassing" signs all around. Property was more than part of the family, it was what made a family, and as it passed through the generations, it even acquired the family name. It is not unusual to see three generations of a family out working on the family property.

None of the "legal" definitions of property, its past, and what rights it entails were enough to explain all that I wanted to say and understand. They did not contain *why* our property is so important. It isn't just land. My parents are not poorly educated people. My father graduated from college with high grades and a degree in engineering, and my mother attended college until she had to earn the money for Dad's degree. They could move and do other things as my brother and I probably will. My friends wonder why we remain on our property, work the hours that we do, and endure the stress that we do when the rains don't come or come too often. No one word can give them my life. I have never been able to explain to them why all of the farmers that they see are old, or why even my grandmother comes out to help plow. We call it "the land," or "our ground," or "the farm," sometimes, but when someone asks me, I usually say, yes, we own that property.

While I was home over Thanksgiving break, I learned that my grandmother wants to sell her portion of the farm. The land is hilly, and not too productive, she said, and the neighbor has offered to buy it at a fair enough price. It isn't that many acres, she added, and we would save all that wear on the equipment by not having to truck it eight miles to Auburn all the time just for her little dab of clay.

My father is against the sale, even though he spent nearly all of Friday explaining to me that it probably was a good deal. The ground isn't worth too much, and it doesn't produce well, he said. It is marshy. It is full of weeds.

It is also his home, where he grew up. He hunted out back. He ran his beagles after rabbits there. He helped his father farm it for as long as he can remember. He took my brother and me walking in the timber there looking for morels and other wonders. We found a shard of pottery there, maybe from Indians. When his father had a heart attack, my father put off going to school because someone had to take care of the land.

The neighbor plans to subdivide the entire area. Already he owns the former farm across the road, and the land in back. If he buys it this year, or his children buy it sometime in the next few decades, it

seems destined to sport pastel, single-family dwellings with neat one-car garages and . . . strategically located picture windows to center . . . Christmas trees. Great First Homes, the brochures say, or Fine Family Living in a Small Town Atmosphere. In the meantime, the family providers drive to and from work across the dust of Indians and my father's childhood, and I wonder when it will happen to the land that I know that well. Black's Law Dictionary said that land

[i]n the most general sense, comprehends any ground, soil, or earth whatsoever; including fields, meadows, pastures, woods, moors, waters, marshes, and rock. . . . The land is one thing, and the estate in land is another thing, for an estate in land is a time in land or land for a time.<sup>42</sup>

At least it will always be our land for that time.<sup>43</sup>

### E. What the Law Can Add

Each time I teach the seminar, when I ask "what is gained, and what is lost" when law's language is used, the students' natural tendency is to focus on what is lost. Law seems barren, unemotional, hollow, repressive. This critique is supported by assigned readings that focus on how law operates by placing labels on people.<sup>44</sup> Nancy Leonard, whose story of becoming paralyzed at age sixteen begins this essay, was not initially among those students who planned to base their final paper on personal experience. But she was encouraged by Fisk's presentation of his paper—telling of his rejection and return to the name "queer"—to rethink and ultimately write about how, after long resistance, she has come to claim the legal power of being labelled handicapped.<sup>45</sup>

### "Claiming a Label"

After coming home from the hospital, my first reaction to being

42. BLACK'S LAW DICTIONARY 877 (6th ed. 1990).

43. Anderson, *supra* note 2.

44. This topic is addressed explicitly during the fourth and fifth weeks of the seminar as we focus on the discussion in *The Legal Imagination* about "Talking About People in a Language of Labels: The Insanity Defense." See WHITE, *supra* note 23, at 317-61. Also during the second week, as we discuss the blood transfusion case, see *supra* note 30, I analyze the way that the court order in that case did not operate on the parties by using their names, but rather by placing them into categories ("the patient" and "the hospital").

45. The reading from Patricia Williams also explores how a repressed people—in her case, African-Americans—can use the labels created by the dominant culture to claim legal power. See WILLIAMS, *supra* note 37.

labelled as "handicapped" or "disabled" was to reject the word and instead use a word which even very few people without disabilities would use. At some point during that period, I wanted to have "crip" or "gimp" on the license plates of my new car. At the time, I thought that it was an expression of my acceptance of my disability. It was probably also an effort to horrify my parents; I quite successfully accomplished that objective. Over seven years later, I understand that I tried to embrace the most crude and degrading of terms in an effort to show everyone that I was coping successfully with my situation.

As I began to accept and use such labels, I also began to realize that the label left something out. I was defining myself and being defined by others as an object with certain attributes. The terms "crip" and "gimp" defined me only by my impaired physical mobility. The fact that I was an individual with other attributes was nowhere in the meaning of the word. I had lost my identity as an individual.

When I began my senior year of high school, I made an attempt to redefine myself as an individual again. As I rejected words which labelled me by the way I moved around, I also rejected those people who may have also been labelled as such. Since I wanted no part of the labelling process, I wanted no part of the people who were also labelled. I didn't attend spinal cord injury support groups or participate in activities for people with disabilities. In essence, I rejected people as a class, and as a label, instead of accepting or rejecting those people as individuals. I did the very thing for which I was criticizing others.

I was successful in disassociating myself from just about everything which led to my being labelled as disabled or any of the other words commonly used to label someone with a physical or mental difference. That is, of course, the disassociation was complete in my mind. I attempted to ignore the fact that every individual first meeting me failed to see Nancy, but instead saw only the chair.

As I began college, I was forced to confront the necessity of my classification as someone with a disability. In order to receive financial assistance from Vocational Rehabilitation, I had to be qualified as handicapped. Doing so meant admitting that I belonged to a group which historically was disadvantaged and needed the assistance of such a federal program to equalize its status in society. I wanted to take out loans to pay for college instead of accepting the Vocational Rehabilitation money. My parents encouraged me to question the possibility of choosing that option. I believe that was the first time I allowed myself the "benefit" of being labelled "handicapped."

The practical necessity of accepting being labelled by others continued when I tried to find a place to live on the university's campus. I had to go through the University's Access Office in order to find an accessible dormitory with a cafeteria in which I could actually eat and a restroom into which a wheelchair could actually fit. Next, I

had to schedule classes so that I had time to find one of the very few accessible restrooms between classes. In order to get any assistance in accomplishing these goals, I had to declare myself "disabled."

College also introduced me to the necessity of using labels and categorizations in order to make the transition from a moral to a more compelling legal appeal for equality. When I found out during my junior year that my graduation ceremony was to be conducted so that steps were placed on either end of the stage and the students were to cross from one end to the other, I asked how students who happened to use wheelchairs or who couldn't climb the steps were going to receive the diplomas. I was told by the organizer of the event that "wheelchair people" would not cross the stage, but would instead meet someone down below the stage in order to receive the diploma. When I expressed my dissatisfaction with this arrangement (not even confronting the terminology used), I was told that it would cost too much money to do otherwise. I was also informed that having the President of the university come down and hand me my diploma was indeed an honor and I should feel gratitude at the magnanimous gesture.

My appeal to the basic "wrongness" of making a differentiation based on the fact that I couldn't walk failed. I could not convince the administration that such an arrangement was simply not fair. Since it would cost more money to install ramps instead of steps, the university was unwilling to do what was morally called for. This incident began my search for a way to use my legal definition of "disabled," under the Vocational Rehabilitation Act of 1973, to my advantage.

I was eventually able to argue that denying me the right to participate in the graduation program was discrimination on the basis of my disability; an alternative, relatively inexpensive means of accessing the stage existed. Although I may not have won such a case in court, by using a legal appeal and thereby accepting the label necessary to protect me from the discrimination which I perceived, I was better able to convey to the administration the effect of such differentiation. I crossed the stage and received my diploma from the President of the university just like each of the other 500 students.

I recognize the loss inherent in accepting the label of "disabled" or "handicapped." The alternative is to deny this significant aspect of my existence and also deny myself the opportunities to which I am entitled. As a group, people with disabilities have been disadvantaged and subordinated by a society that highly values physical integrity. In order to stop this from continuing, I can admit and accept my disability as an aspect of my existence, but I need not define myself by it.

I came to law school to change the physical structure of society so that I could physically have access to areas which the mainstream able-bodied majority constructs for its own physical definition. I now know that in order to do that, I will have to address the attitudinal



barriers as well.<sup>46</sup>

### F. *Pausing on the Bridge Between Worlds*

A law student need not be a former submariner, the parent of a deaf child, paralyzed, or even the last of a dying breed of family farmers in order to enrich others from a store of personal experience. The final excerpt, about teaching a fellow adult to read, for me draws together many of the important themes of the seminar in a thoughtful and moving way, founded on a life experience that any student (at least one as caring as Deborah Kivett) could have acquired.

#### “Christine, Nartsloniat, and Pepperoni Pizza”

One day, I brought in an old wooden puzzle of the United States to teach states and directions to Christine. I remembered that I had learned a great deal from working the puzzle myself as a child. Beginning by locating our home state of Kansas, we worked our way out through the midwest to the coasts. Christine memorized the names of some states, but didn't seem to make much progress. As we were talking on one of these occasions, I learned that she had never been out of the city (Wichita), much less out of Kansas, and had no concept of the United States map.

The next day, I brought in a map of the city, and we first learned directions by tracing a route from her home to the library where we met. Then we branched out, tracing paths from her house to anywhere she might want to go. Using the legend, we learned what the symbols on the map stood for and related the distances of inches on the map to distances within the city. On that day, I began to look at my teaching assignment from the point of view of her world. I learned that the ability to read was necessary to go anywhere without being frightened of being alone and lost. Street names, shop signs, bus schedules, or just taking the test to get a driver's license all required the ability to read. I had read in the teacher's manual that reading was a survival skill, but I did not really acknowledge the fact until that day. Much like the fact that the states outside of Kansas were not open to Christine, I had come to the realization that the printed language was not automatically open to everyone, and that reading it had very different meanings for both of us. I was forced to see reading not as largely effortless enjoyment, but as a survival skill and as a hard-earned tool to work toward a better life.

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46. Leonard, *supra* note 1.

Like Christine looking at a map of our nation, I had no concept of the parol evidence rule the first time I encountered it in a case. And even though it was explained to me in a definition, I had nothing in my experience to relate it to. It was like Christine trying to understand the concept of different states and their locations, and the use of a map, while having no personal experience with different states or a map, and never having learned about them vicariously. Where do you file such new knowledge in your brain when there is nothing to connect it with? The fact that South Dakota is north of Nebraska is meaningless when one has no concept of what a state really is or where it is located.

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I can no longer remember any of the exact words Christine stumbled over, but we would take them one at a time, something like this: She learned "child," but when she came to something like "children," we would stop and sound out the syllables of the new word—"child" then "ren," "child" then "ren," then "children," over and over until it sounded just right in her ear. Then the recognition would come to her face and she would say, "Oh! children!" Then we would go back and read the whole sentence, fitting "children" into the context.

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Imagine the frustration of looking at a word and not recognizing it instead of the instant recognition in a glance that you have reading these words right now. The fact that Christine could know the word "child," but not the word "children" is difficult for us to grasp, because one is simply the plural of the other. I can only guess from my time with Christine that she saw each word as a series of symbols, needing to be translated; changing the symbols even slightly created a whole new problem.

To Christine, this printed page may look like the second word of the title of this paper looks to you. What is nartsloniat? You may have sounded out the syllables in different ways, only to come to the conclusion that it still made no sense. But nartsloniat is merely the word "translation" with the letters changed around. With this translation, the title now hopefully begins to make sense. "Translation" is familiar to us, but scrambling the letters causes a frustrating new group of letters that is meaningless to us, until it is explained. Perhaps this example gives us some insight into how Christine could recognize "child," but not "children." To Christine, they were not essentially the same word, but one short and one long grouping of different symbols.

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The fact that I don't remember a world without the written word makes me wonder if, after law school, I will be able to remember what it was like to think without using or being affected by the language of law. Certainly, there are differences between the two situa-

tions. It's difficult to remember much of anything from the time when I was three or four, and everything I learned at a young age seems natural. Perhaps if I could remember my own process of learning to read, especially if I had been older at the time, and had the experience of what it is like to be illiterate in a literate society, I could have understood Christine better and, consequently, better helped her learn to read.

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I left that first teaching experience feeling quite frustrated with myself for not being more successful in helping Christine learn to read. Now, in the middle of my own struggle to learn the language of the law, I find myself with the conscious understanding and the words to express what I was unconsciously trying to define and understand several years ago.

I see now that even when we used the same word, we used it with all the meaning of our separate experiences and concepts. We grew up in the same city, not more than five miles apart, yet we grew up in different worlds. To help Christine learn to read, it was necessary to get a grasp of her world, so that I could understand what she meant when she said "reading" and so that I could help in ways that made sense to her.

Likewise, in my study of the language of law, I could read dictionary definitions for hours, and they would make no real sense to me. It was only after months of intense study and discussions that I began to really understand words and cases in a way that made sense to me. And when I did finally start to understand those words and cases, my previous views of the law, and of the world around me, began to change also.

The challenge Christine was really trying to overcome in learning to read was a gap between written and spoken English that made painstaking translation necessary to understand every printed word. Likewise, in my struggle to make sense of the pages of cases thrown at me each day, I can now look back and see that it has been a slow process of bridging a gap, from translating each new word and idea to fluency in this specialized language of the law.

In learning the language of the law, I am slowly crossing a bridge to a new world of concepts, but I do not wish to be cut off from the thinking and memories of past years and my "old self"—after all, bridges should allow for travel in both directions. As I stand in the middle of this bridge, with a view of both ends, my goal is that, by working to understand and appreciate this learning process, I might keep this bridge from crumbling behind me as I cross.<sup>47</sup>

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47. Kivett, *supra* note 5.