

LibRA

To: Professor Erika Wilson

From: LibRA – Faculty Research Service

Date: January 8, 2019

Subject: Ethics of Using Client Stories in Legal Scholarship

1. **Description of Request:**

Professor Wilson requested a bibliography of scholarship exploring the ethics of using client stories in legal scholarship and writing. She is particularly interested in scholarship on this topic from the last 30 years.

1. **Summary of Research Strategies:**

LibRA conducted its research in Google Scholar, HeinOnline, and Westlaw. We ran a variety of searches in each database, and the following is an example of a successful search string we used to obtain general results: (ethic! /s client /s (story OR stories) AND scholarship). We ran multiple natural language searches in Google Scholar in an attempt to identify any other related articles that might have been missed by our Boolean searches. Finally, we followed the citation trails for each of the main articles that we identified to ensure that more recent scholarship was also included in this bibliography.

It appears that the discussion about the use of client stories in legal scholarship coincided with two general scholarly trends in the 1990s: (1) the discussion of the use of narrative and storytelling (along with debates about “law and literature”) and whether this type of content was “academic” or “scholarly” enough for inclusion in journals and (2) the growth of clinical programs at law schools and the publishing of clinical scholarship that often incorporated client stories. We were only able to identify a handful of articles that directly addressed the ethics of using client stories in legal scholarship, as the majority of discussion in these areas dealt with unrelated issues. For example, a larger body of scholarship addressed the use of client stories as a teaching tool in clinics. These types of articles were not included in this bibliography, but we would be happy to follow up with additional research on scholarship exploring other uses of client stories.

1. **Research & Conclusions:**

Nancy Levit, *Reshaping the Narrative Debate*, 34 Seattle U. L. Rev. 751 (2011).

* **Brief Summary**: This article describes the debate about narrative (or storytelling) in legal scholarship. The article reviews the history of this debate and provides an overview of the growth of the use of stories inside the legal academy. While not directly focused on ethics, this article does provide a useful background on the emergence of storytelling in legal scholarship during the last 20 years.

Binny Miller, *Telling Stories about Cases and Clients: The Ethics of Narrative*, 14 Geo. J. Legal Ethics 1 (2000).

* **Brief Summary**: The author notes that lawyering theory relies most heavily on the use of client stories in legal scholarship and highlights the rise in the use of client stories through clinical scholarship. The author recounts the “explosive growth” in the telling of stories about cases and clients in law review articles, discusses the ethical concerns raised by recounting stories of real clients, and advocates for more collaboration between legal scholars and the clients whose stories are being told.

Abbe Smith, *“No Older N’ Seventeen”: Defending in Dylan Country*, 38 Fordham Urb. L.J. 1471 (2011).

* **Brief Summary**: This article is an example of the use of client stories in legal scholarship. The author is a professor and the director of the Criminal Defense & Prisoner Advocacy Clinic at Georgetown University Law Center. She recounts her experience defending a teenager in juvenile and adult criminal court, and she notes that “[i]n order to protect the young man’s privacy, I will not divulge the actual time period of the case. Likewise, I have altered details about his life and the charges he was facing and changed his name.” *Id*. at 1472-73.

Ria A. Tabacco, Note, *Defensible Ethics: A Proposal to Revise the ABA Model Rules for Criminal Lawyer-Authors*, 83 N.Y.U. L. Rev. 568 (2008).

* **Brief Summary**: This student note explores the ethical issues raised when criminal defense lawyers write nonfiction books about their clients. The proposed solutions and issues identified in this discussion, however, are relatable to the discussion of the ethical use of client stories in legal scholarship. For example, the author proposes instituting a “waiting period” that must be observed before an author can write about a specific client’s story.

Nina Tarr, *Clients’ and Students’ Stories: Avoiding Exploitation and Complying with the Law to Produce Scholarship with Integrity*, 5 Clinical L. Rev. 271 (1998).

* **Brief Summary**: This article questions the ethics of using client and student stories in legal scholarship. For example, she outlines federal laws and regulations on human subject research and observes that few legal scholars obtain institutional review board permission to use client and student stories in their scholarship. She also explores the issue of informed consent under the Model Rules of Professional Conduct.

Allan W. Vestal, *Former Client Censorship of Academic Scholarship*, 43 Syracuse L. Rev. 1247 (1992).

* **Brief Summary**: This article recounts a different kind of experience related to the use of client stories in legal scholarship. The author writes about his personal experience of having a client push for censorship of an article that addressed a legal topic for which the author represented the client. At one point, the author notes that the client’s current counsel suggested that the publication of the article would amount to a violation of the Model Code of Professional Responsibility. In this article, the author outlines four points to argue against what he characterizes as “censorship of academic freedom.” This article is interesting, in that it outlines how a client with financial means might object to the use of client stories in legal scholarship.