MAKING ROOM FOR IGNORED CITIZEN NARRATIVES OF POLICE ENCOUNTERS

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"*Not everything that is faced can be changed,*
but nothing can be changed until it is faced."[1]

I began to write this essay in August 2020 after returning home from Black Lives Matter Plaza in Washington, D.C. While there, I took in colorful images painted on boarded up windows of familiar buildings, photographs tacked on the high gate that has taken up residence outside of Lafayette Park, and bold yellow letters inscribed on the very street itself.[2] This mournful art tells the stories of mothers losing children, children losing fathers, and other profound loss. It demonstrates unimaginable pain and a cry for a response that reflects empathy and acknowledges our shared humanity.

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[1] *See* Charmaine Li, *Confronting History: James Baldwin*, KINFOLK (July 3, 2017), https://www.kinfolk.com/confronting-history-james-baldwin/.

[2] *See* Fenit Nirappil, Julie Zauzmer & Rachel Chason, "*Black Lives Matter": In Giant Yellow Letters, D.C. Mayor Sends Message To Trump*, WASH. POST, (June 5, 2020), https://www.washingtonpost.com/local/dc-politics/bowser-black-lives-matter-street/2020/06/05/eb44ff4a-a733-11ea-bb20-ebf0921f3bbd_story.html.

This summer exposed in vivid detail the all too frequent stories of black citizens who have lost their lives at the hands of police.[3] While black people are disproportionately killed by police officers even when unarmed, justice is rarely pursued, much less achieved.[4] The senseless nature of so many of these acts has drawn the attention of the public, as has the lack of accountability. After the killings of Michael Brown, Eric Garner, and many other unarmed black people received significant media attention, but grand juries failed to indict the responsible police officers, the Black Lives Matter movement gained traction, raising awareness of the issues of police brutality and racial injustice.[5]

These stories seemed to resonate on a deeper level and with a broader audience, however, after the killing of George Floyd, a black man whose agonizing death, captured on video and shared widely, offered a grim snapshot of systemic racism.[6] To the horror of bystanders, the police officer who took Mr. Floyd's life kneeled on his

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[3] While I have chosen to use the terms "citizens" and "police," it is important to keep in mind that police are also citizens. In using the term "citizens," I also mean to include all people in the United States regardless of whether they have citizenship or not.

[4] Cody T. Ross, *A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States 2011–2014,* PLOS ONE, (Nov. 5, 2015), at 5–6 (finding armed black people are 2.94 times more likely to be shot by police than armed white people, and unarmed black people are 3.49 times more likely to be shot than unarmed white people); *see* Gabriel L. Schwartz and Jaquelyn L. Jahn, *Mapping Fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities*, 2013–2017, PLOS ONE, (June 24, 2020), at 5 (finding black people were 3.23 times more likely to be killed by police than white people); *see also* Kirsten Weir, *Policing in Black & White,* 47 AM. PSYCH. ASS'N MONITOR ON PSYCH., (Dec. 2016), at 36, https://www.apa.org/monitor/2016/12/cover-policing (discussing various studies finding inequality in policing practices including increased use of force against black people).

[5] *See* Jonathan Capehart, *From Trayvon Martin to "Black Lives Matter,"* WASH. POST: POST PARTISAN (Feb. 27, 2015, 11:39 AM CST), https://www.washingtonpost.com/blogs/post-partisan/wp/2015/02/27/from-trayvon-martin-to-black-lives-matter/.

[6] *See* Toluse Olorunnipa & Griff Witte, *Born With Two Strikes*, WASH. POST, (Oct. 8, 2020), https://www.washingtonpost.com/graphics/2020/national/george-floyd-america/systemic-racism/; Robert Samuels, *Racism's Hidden Toll*, WASH. POST, (Oct. 22, 2020), https://www.washingtonpost.com/graphics/2020/national/george-floyd-america/health-care/.

neck for approximately eight minutes and forty-six seconds, all the while with his hands rested casually in his pockets.[7] Meanwhile, his fellow officers, took no action to help Mr. Floyd, ignoring Mr. Floyd's desperate pleas and those of the crowd.[8]

As conversations about police brutality have found their way to dinner tables and coffee shops, the public outcry in response to these stories has also reached new dimensions. In recent years, police killings and assaults on black people, often recorded on smartphones and streamed to huge audiences on social media, have ignited sizable and extended protests.[9] But this summer's protests took place in more cities across the United States and in more countries around the world; protests were larger and sustained for longer periods of time, with words of support expressed by institutions that had previously remained silent.[10] And the government's harsh response to protestors seemed only to increase the collective resolve, making the problem of police brutality more personal.[11] Indeed, from these massive protests, a panoply of videos of police officers assaulting peaceful protestors emerged, casting a broader lens on the problem of police violence.[12]

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[7] *See* Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES, May 31, 2020 (updated Nov. 5, 2020), https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html; Holly Bailey, *In New Filing, Derek Chauvin's Lawyer Previews His Defense But Also Seeks Dismissal of Charges*, WASH. POST, (Aug. 29, 2020), https://www.washingtonpost.com/politics/in-new-filing-derek-chauvins-lawyer-previews-his-defense/2020/08/29/22f1038a-ea28-11ea-970a-64c73a1c2392_story.html (describing interview in which Minneapolis police chief talked about a "lack of 'humanity'" he witnessed from the officer's action of holding his knee on Floyd's neck "'with his hands in his pocket'" while Floyd cried for help).

[8] *See George Floyd, What Happened in the Final Moments of His Life*, BBC NEWS, (July 16, 2020), https://www.bbc.com/news/world-us-canada-52861726.

[9] *See* Helier Cheung, *George Floyd Death: Why US Protests Are So Powerful This Time,* BBC News, (June 8, 2020), https://www.bbc.com/ news/world-us-canada-52969905; Elaine Godfrey, *The Enormous Scale of This Movement,* THE ATLANTIC*,* (June 7, 2020)*,* http://www.theatlantic.com/politics/archive/2020/06/protest-dc-george-floyd-police-reform/612748/.

[10] *See* Alex Altman, *Why the Killing of George Floyd Sparked an American Uprising*, TIME (June 4, 2020, 6:49 AM EDT), https://time.com/5847967/george-floyd-protests-trump/.

[11] *See* Cheung, *supra* note 9.

[12] *See* Kimberly Kindy, Shayna Jacobs & David A. Fahrenthold, *In Protests Against Police Brutality, Videos Capture More Alleged Police Brutality*,

While some have chosen to ignore the reasons behind these widespread protests, their purpose, printed on handmade signs and shouted through bullhorns, seems abundantly clear. In the face of inconceivable loss, people are crying out not only to express their immense sadness, anger, and grief; they are crying out for justice. They are asking the government to address their pain and loss. They are seeking a meaningful response to their stories.

This season has led me to consider how the law is treating this harm. How are the courts addressing these citizens' stories? And even more, how are we as members of the legal academy training our next generation of lawyers to better address these concerns and work toward the goal of a more just and fair legal system?

In pondering these questions, I think back to conversations that I have had with other legal academics about whether teaching students about "justice" is the role of the law professor. Some professors worry that the term means different things to different people. Others contemplate whether professors are crossing a line when they introduce critical perspectives or challenge the legitimacy of laws in foundational courses. They fear that they will be accused of being overly political or attempting to indoctrinate students, encouraging them to accept the professor's way of thinking.[13] Yet in law schools when we teach students about the law without offering meaningful critique, we are doing students a disservice. When we treat the law as if it is impartial rather than acknowledge its history and the choices that led to its making, we signal to students that this context is unimportant. And if we ignore stories that have not been prioritized in the law, we unwittingly communicate our acceptance of their diminishment and absence. If we teach the law without pointing out

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WASH. POST, (June 5, 2020), https://www.washingtonpost.com/national/protests-police-brutality-video/2020/06/05/a9e66568-a768-11ea-b473-04905b1af82b_story.html.

[13] *See* Julie D. Lawton, *Teaching Social Justice in Law Schools: Whose Morality Is It?* 50 IND. L. REV. 813 ,840 (2017) (discussing the danger of *"imparting* morality rather than teaching students to contemplate and analyze morality"); Pamela Edwards & Sheilah Vance, *Teaching Social Justice Through Legal Writing,* 7 J. Legal Writing Inst. 63, 75 (2001) (discussing issues that may arise in teaching social justice including that "students may feel that the professor is trying to instill her values into the students") (citing Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 42 (1995)).

its rhetorical nature, we are not teaching in a neutral way; we are promoting the *status quo* and normalizing existing inequities.[14]

In saying this, I recognize that I too have failed to discuss sufficiently and in direct enough terms the law's varied treatment of different actors—how it elevates the voices of some while it suppresses the voices of others. However, the summer of 2020, and the years that led up to it, have convinced me that I need to do more.

Like most legal writing professors, my primary goal has been to teach students to advocate within our American legal system. One of my secondary goals, however, has been to expose students to areas in which there is inequity in the law. As a program director, one of my responsibilities was to develop the hypothetical legal problems that first-year law students used to write adversarial briefs in their spring persuasive legal writing course. The law school where I taught was in Baltimore, a big city that saw its share of unrest following the death of Freddie Gray, a black man who died after riding in the back of a police van while shackled and in police custody.[15] Criminal procedure was not on the law school's required menu of courses. So, in an effort to introduce students to laws that are important to all citizens, but perhaps even more to those in predominantly black communities like the one surrounding the law school, I made it a practice to select legal problems with Fourth Amendment issues involving interactions between citizens and the police. These legal problems proved to be excellent pedagogical tools as they offered students appropriate academic challenge and engagement but also introduced students to important laws that matter in the daily lives of everyday people.

At the start of the persuasive legal writing course, students were assigned to represent a side in a case before the trial court. Later, the students would switch sides and represent the opposing party on appeal. The Fourth Amendment legal problems afforded an opportunity for students to immerse themselves in the legal authority for an important subject area. The writing assignments also offered students the unique opportunity to approach the law from the perspectives of both the prosecution and the defense.

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[14] *See* Kathyrn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 9–10 (1998).

[15] *See* Justin Fenton & Kevin Rector, *Freddie Gray: The Death That Shook the City,* BALT. SUN, (Dec. 27, 2015), https://www.baltimoresun.com/maryland/bs-md-yir-freddie-gray-20151224-story.html; *Freddie Gray's Death in Police Custody-What We Know,* BBC NEWS, (May 23, 2016), https://www.bbc.com/news/world-us-canada-32400497.

As one might expect, we started our work by exploring the language of the Fourth Amendment to the United States Constitution. The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and asserts that this right "shall not be violated."[16] Actions brought pursuant to the Fourth Amendment can include citizen claims of police excessive force. The Fourth Amendment can also form a basis for citizens' challenges to police stops, searches, or arrests. Yet while the plain language of this constitutional provision focuses squarely on the people's rights and security and omits any reference to government actors, this focus is not borne out in the case law. Ironically, the courts' imposed legal standards leave little room for consideration of citizens' stories, while giving significant attention to the perspectives and experiences of police officers.[17]

In writing their briefs, the students easily recognized the imbalance in how the law treated each side's story. In representing the defense, students found it difficult to identify a space to tell their client's story. The students' legal writing textbooks encouraged them to write statements of fact from the client's perspective and point of view, painting their client in a positive light.[18] However, they were also taught that the facts included in their statements should be legally significant and thus relevant to the outcome of the case. As the students drafted their statements of fact for the defendant, they found it challenging to follow this seemingly competing advice where their client's story was not invoked by the legal standard.[19] The law requires judges to consider police encounters with citizens from police officers' perspectives and to give deference to police officers' experiences.[20]

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[16] U.S. CONST. amend. IV.

[17] *See* Linda H. Edwards, *The Convergence of Analogical and Dialectic Imaginations in Legal Discourse*, 20 LEGAL STUD. F. 7, 42 (1996) (describing legal rules as "codifications of a particular narrative perspective").

[18] *See* Helena Whalen-Bridge, *Negative Narrative: Reconsidering Client Portrayals*, 16 LEGAL COMM. & RHETORIC 151, 152–156 (2019) (discussing advice from advocacy literature that includes presenting facts from the client's point of view and in a positive light).

[19] *See* Anne E. Ralph, *Narrative-Erasing Procedure,* 18 Nev. L. J. 573, 600 (2018) (acknowledging "that rules constrain or enlarge the kinds of stories that can be told and the points at which those stories can be given voice").

[20] For example, in establishing the standard for reasonable suspicion, the Supreme Court framed the relevant legal question as: "[W]ould the facts available to the officer at the moment of the seizure . . . 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?"

Moreover, the focus on citizens as potentially suspicious and dangerous placed their clients in an unappealing frame that they had little opportunity to challenge. Arguments of racial bias and profiling have been deemed irrelevant in the Fourth Amendment context.[21] In fact, arguments that a citizen was not engaged in criminal activity when approached by police can be of limited importance as well.[22] It is the facts as described by the police, too often ambiguous while treated as not, that matter to the court in this context.[23]

Terry v. Ohio, 392 U.S. 1, 21–22 (1968) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)). The Supreme Court has relied on police officers' training and experience in analyzing probable cause and reasonable suspicion. *See* Kit Kinports, *Veteran Police Officers and Three-Dollar Steaks: The Subjective/Objective Dimensions of Probable Cause and Reasonable Suspicion,* 12 J. CONST. L. 751, 754–56, n.18 (2010) (noting that the Supreme Court has consistently looked to police officers' training and experience to support probable cause and reasonable suspicion and that lower courts have followed suit); *see, e.g.*, *United States v. Perkins*, 363 F.3d 317, 321 (4th Cir. 2004) ("[I]n assessing reasonable suspicion, courts must 'consider the totality of the circumstances' and 'give due weight to common sense judgments reached by officers in light of their experience and training.'").

[21] *Whren v. United States*, 517 U.S. 806, 813 (1996) (holding that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis" and that prior "cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved").

[22] Legal analysis in the Fourth Amendment context is focused on the reasonableness of the police officers' actions, not on whether the defendant actually was engaged in illegal activity or dangerous. *See Riley v. California,* 573 U.S. 373, 381 (2014) ("[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'") (internal citations omitted); *Brinegar v. United States,* 338 U.S. 160, 176 (1949) (noting that "because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part" but "mistakes must be those of reasonable men acting on facts leading sensibly to their conclusions of probability."); *see also* David A. Harris, *Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked*, 69 IND. L.J. 659, 669 (1994) (concluding that the evidence required for reasonable suspicion "has shifted, slowly but inexorably, to the point that a few innocent activities grouped together, *or even no suspicious activities at all*, can be enough").

[23] *See* Sherri Lee Keene, *Stories That Swim Upstream: Uncovering the Influence of Stereotypes and Stock Stories in Fourth Amendment Reasonable Suspicion Analysis*, 76 MD. L. REV. 747, 761–67 (2017) (discussing how embedded knowledge structures, such as racial stereotypes

As the students drafted their statements of fact, they would often ask telling questions like, "How do I write my statement from the defendant's perspective if the law doesn't care about it?" Or "How do I talk about the defendant's experience if the legally relevant facts are those offered by police officers to justify their actions?" And, at times, "*Is there someplace I can address other possible reasons for the police stop?*" Or "*Do we have to pretend police officers are never biased or bad actors?*" In response to these questions, we would often look to briefs in real cases for examples of how the facts were handled there. But these forays into attorneys' briefs only validated the students' raised concerns. Many defense attorneys did their best to tell their client's story and assert their client's facts in arguments despite the legal standard. But, too often, defendants' briefs, even those in cases before the Supreme Court, included statements of fact that easily could be mistaken for those of the prosecution.[24]

The students further demonstrated their recognition of this imbalance when they imagined themselves in the role of the hypothetical judges who would read their briefs and decide their cases. After the students completed their first drafts, we would engage in an exercise where they would remove their advocate hats and put themselves in the shoes of the decision-maker. In this exercise, students easily recognized that police had a distinct advantage even when they had weak case facts. Through their writing, students had come to appreciate the implications of a legal standard that considers the facts from police officers' perspectives and through their lenses while ignoring citizens' stories.

Some students would also comment on the courts' lack of rigor in evaluating police officers' assertions of facts. Courts are to credit police officers' training and experience as to what is suspicious and dangerous, and in this way, courts are excused from critically questioning police officers' leaps in logic when assessing a defendant's

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and stock stories, can operate in the background as police officers evaluate defendants' ambiguous behaviors but yet not be exposed by the courts); Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 983–91 (1999) (arguing that race inevitably plays a role in police officers' assessments of probable cause and reasonable suspicion).

[24] *See, e.g.*, Brief for Petitioner at 3, *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (No. 16-402), 2017 WL 3575179, at *3 (beginning Statement of the Case with "[t]his case concerns governmental acquisition of personal location records, known as cell site location information ('CSLI'), to identify Petitioner Timothy Carpenter's whereabouts over more than four months").

conduct.[25] Where police officers' experiences are credited but defendants' stories are ignored, stereotypes can easily be mistaken for reason. Too often, the courts treat the facts in the same way that the prosecution does in its briefs, with what appears to be a lack of concern for whether what has been labeled as fact is anything more than an assumption potentially rooted in bias.[26] While claims of suspicion and threat must be specific to the citizen against whom a police officer is acting,[27] courts rarely challenge the prosecution's use of proxies for race or loaded word choices (i.e., "suspect," "evasive," "high-crime area") used to justify police actions, but instead make use of this language as well in judicial opinions.[28]

Admittedly, I felt a sense of accomplishment in introducing students to the law applied in these matters and drawing their attention to how courts approach the review of police and citizen encounters. I was pleased that students had experienced firsthand the inherent advantages and disadvantages afforded to each party by representing both parties over the course of the semester. But recent events have made me realize that my efforts have been too small.

In hindsight, I recognize that while I used legal problems to introduce students to Fourth Amendment jurisprudence and gave them an opportunity to grapple with it as advocates, I took few steps to truly prepare students to question and challenge the law. In teaching law, we are so often backward-looking, perhaps a by-product of the tradition of following case precedent in accordance with the doctrine of *stare decisis*—what has been sets the stage for what will be. Legal opinions frame the issues, having the potential to confine the conversation on a topic to what is within their four corners. Moreover, as legal writing professors, an important aspect of our role

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[25] Keene, *supra* note 23, at 766.

[26] *See* Helen A. Anderson, *Police Stories*, 111 NW. U. L. REV. ONLINE 19, 38 (2016), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1236&context=nulr_online (noting that context supporting the police narrative is "rarely questioned," including "that the area where [an] incident occurred is a high crime area . . . or other general facts about suspected criminals that officers have learned through 'training and experience'").

[27] *See United States v. Cortez,* 449 U.S. 411, 411–12 (1981) ("Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.").

[28] *See* Harris, *supra* note 22, at 669–74 (discussing the courts' heavy reliance on location and purportedly evasive conduct in establishing reasonable suspicion); *id.* at n. 134 (providing examples of cases that use the terminology "high crime area" or "area of high drug activity").

is to introduce students to legal discourse and teach them the practices and conventions of this genre. Upon reflection, I now recognize that while I introduced students to laws that contain deep inequities, I had few conversations with my students about why the law was the way it was or who might be harmed, or served, by the courts' approach. I had urged students to begin to think critically about the law, but also encouraged them to color inside the lines, signaling that conformity was required for them to become respected legal professionals.

In following the lead of the courts and focusing on what had been written in legal opinions, I too had neglected citizens' stories by not bringing them fully into the classroom. And in teaching the norms of legal practice, I placed too little focus on challenging students to consider how they might push the boundaries of the law to bring their clients' stories into their advocacy. I now understand that I must move beyond the confines of legal opinions and modify my approach to teaching if I want to help students become leaders in the legal field—to look forward and seek change, rather than just look back at what has been established and accepted in the law.

Going forward, I plan to talk to students more openly about how the law they are studying connects to the stories they are not only reading about in court decisions, but also hearing about in the news. It is important to discuss the attitudes and experiences that exist across our society and to have students reflect on their own attitudes and experiences as well. Contrary to the images most often depicted in Fourth Amendment case law of non-threatening police and dangerous and suspicious citizens, this summer has brought to light alternative images of citizens as victims and police as aggressors. While all these realities exist, the law routinely recognizes some while ignoring others.

While it is important to introduce students to strategies for how they can still tell a story on their clients' behalf in the statement of facts when that story is not the focal point of the legal analysis, it is also important to discuss the broader implications of a legal process that marginalizes citizens' voices. Professors can encourage students to imagine the full breadth of stories that can arise in police and citizen encounters and consider how these diverse stories are treated under the law. Fourth Amendment case law provides that the court is to balance the interests of police and those of citizens in determining

the reasonableness of searches and seizures.[29] Before students dive into the case law and read how the courts have struck that balance, the professor might encourage them to think independently about the perspectives of police and citizens. Students can take a moment to contemplate how *they* might describe each side's competing needs. As they look at the situation from a position that is outside of the courts' limiting framework, students can be prompted to consider their experiences and those of people they know. Professors can also invite students to think about stories they have heard that do not reflect their own experiences.

As they read legal opinions for their writing assignment, students also can be encouraged to pause to reflect on which perspectives are discussed in the courts' legal analysis and which are not. It is important to take the time to discuss *how* legal rules can work to a party's advantage by promoting one party's stories while ignoring the other's. For example, what stories are invited into the courtroom when the court is told to rely on police officers' testimony of what happened as told from their perspectives? And what stories are overlooked when courts are told to defer to police officers' experiences when police officers make logical leaps that cannot be fully explained? Fourth Amendment law embeds a stock story of a proverbial police officer, who acts based on clear, objective evidence, and is not subject to the influence of racial bias.[30] Students might consider how legal standards that tap into existing knowledge structures such as this can mask the need for discussions of citizens' counter-stories of racial discrimination or police aggression.[31]

It is also important for students to understand the relationship between storytelling and legal decision-making so that they can

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[29] *Terry,* 392 U.S. at 20–21 ("[T]here is 'no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails).'") (internal citation omitted).

[30] Ironically, the law acknowledges that police may act based on racial motivations, *see Whren*, 517 U.S. at 813, but expresses that this does not need to be discussed—wrongly concluding that a clear line exists between police assessments based on objective evidence and those that are influenced by racial bias.

[31] *See* J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEG. WRITING: J. LEG. WRITING INST. 53, 66 (2008) (discussing that in determining what happened in a new circumstance, individuals can unconsciously make reference to "a store of background knowledge about these kinds of narratives—to a set of stock stories").

become more effective advocates. When clients' stories are marginalized, advocates can lose a valuable persuasive tool. Stories not only share defendants' experiences with those who are unfamiliar with them, but also counter negative images. Where defendants' stories are diminished, other stories about people like the defendant, including racial stereotypes, can fill in the void. For example, while the defendant's story is deemed legally irrelevant, stories told *about* defendants are front and center in Fourth Amendment analysis. While the defendant's story is minimized, the defendant is a central character in police officers' storytelling. Moreover, as the court invokes a reasonableness standard, police are called upon not to establish what the citizen was doing, but rather what they judged the citizen's actions to mean. This focus on police officers' perceptions of citizens' behavior can be particularly troubling where citizens' actions are ambiguous and subject to interpretation.[32] In this space, implicit bias can play a role, filling in logical gaps with widespread stereotypes associating black people with criminality.[33] The telling of counter-stories can begin to disrupt deeply entrenched biases such as those about black criminality.

My hope is that students will leave my course with a greater ability to read the law critically and see what stories are validated in legal opinions and what stories go unnoticed. Having given thought to the range of stories that can be invoked in police and citizen encounters, students should be prepared to make their own assessments about the relationship between courts' story selection, persuasion, and the development of the law. What meaning has the court given to a citizen's perceived nervousness? To a citizen's efforts to move away from police? To the fact that a citizen lives in a given neighborhood?

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[32] *See* Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. PERSONALITY & SOC. PSYCH. 590, 595 (1976) (finding in research study that when a black individual shoved a white man, seventy-five percent thought the shove was violent, compared to seventeen percent when the race of the individuals was reversed); *see also* L. Song Richardson, *Cognitive Bias, Police Character, and the Fourth Amendment*, 44 ARIZ. ST. L.J. 267, 272–73 (2012) (discussing study).

[33] *See* Jennifer L. Eberhardt, Phillip Atiba Goff, Valerie J. Purdie & Paul G. Davies, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 889 (2004) (finding strong associational links between black Americans and crime and noting other studies that also support this finding); *see also* Richardson, *supra* note 32, at 281 (discussing Eberhardt's study and the ready association between black people and crime).

Whose experiences does the court credit? Whose experiences does the court ignore? Students will no doubt read many opinions that fail to consider citizens' experiences, even as citizens' stories and the alternative realities that they represent become better known. To help students see what is missing in these legal opinions, the professor can point out the exceptional opinions, including dissents, that acknowledge these perspectives and bring them into the broader discourse of the law.[34]

This summer has shown us some of the shortcomings of our American legal system—where the law falls short of its stated ideals. In teaching students, we can do more by encouraging students to think not only about how the law currently works, but also where it falters and how it can work better. It is important for students to recognize where our legal system has blind spots, but even more important to help students figure out how they might be addressed. We can teach students how to tell their client's story, even when there is no space afforded by the law. But even more, we can help empower them to work toward a future where their clients' stories, and their own stories, matter.

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[34] *See, e.g.*, *Utah v. Strieff,* 136 S. Ct. 2056, 1069–71 (2016) (J. Sotomayor, dissenting) (addressing the degrading aspect of police stops for citizens where police are looking for more in discussion of whether stops can be justified by an outstanding warrant); *Jamison v. McClendon*, No. 3:16-CV-595-CWR-LRA, ___ F. Supp. 3d ___, 2020 WL 4497723, at *21–23 (S.D. Miss. Aug. 4, 2020) (considering racial context in an analysis of whether a suspect voluntarily consented to a police search of his car); *Commonwealth v. Warren,* 58 N.E. 3d 333, 342 (Mass. 2016) (discussing the context of racial profiling in reasonable suspicion analysis); *see also Anderson, supra* note 26, at 31–39 (pointing out judicial opinions that "humanize" the private citizen and tell the story from private citizens' point of view rather than from police officers' perspective).