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Arthur M. Wolfson

United States Department of Labor

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Book Review

The Lessons of Narrative: A Review of *How Lawyers Lose Their Way: A Profession Fails its Creative Minds* by Jean Stefancic and Richard Delgado

Arthur M. Wolfson*

I. INTRODUCTION

Narrative has many uses in legal scholarship. It has been used to show how the perspective of women and minorities is systemically excluded from the law and legal commentary.¹ It has been used to shed light on the voices behind complicated Supreme

* Law clerk, The Honorable Richard A. Morgan, Office of Administrative Law Judges, United States Department of Labor. J.D., University of Pittsburgh School of Law (2005); B.A., College of William & Mary (1999). I would like to thank Matthew Mannix and the Editorial Staff of the Roger Williams University Law Review for their assistance in bringing this project to completion.

1. See, e.g., Ana Garza, Note, *The Voice of Color and Its Value in Legal Storytelling*, 1 TEX. HISP. J.L. & POL'Y 105 (1994).

Court cases.² In their new book published by Duke University Press, *How Lawyers Lose Their Way: A Profession Fails its Creative Minds*, Jean Stefancic and Richard Delgado put narrative theory to another use: to demonstrate and explain the pervasive unhappiness in the lives of many lawyers.³

As many as twenty percent of lawyers are reported to be "extremely dissatisfied with their jobs."⁴ Forty thousand leave the profession each year.⁵ A recent study found that only half of its respondents would become lawyers, if they had it to do over again.⁶ One career counselor who works with young lawyers reported that "[a]t any given time, at least a third of the people I'm dealing with would walk out of the law tomorrow if they could."⁷ The rampant dissatisfaction among members of the legal profession is well documented.⁸ Thus, the concern Stefancic and Delgado present is not novel.

Yet it is not Stefancic and Delgado's call for happier lawyers that makes this book unique; rather, it is the technique they use that makes it most meaningful. Stefancic and Delgado have pioneered the use of narrative in legal scholarship.⁹ In doing so,

2. See, e.g., Thomas Ross, *The Richmond Narratives*, 68 TEX. L. REV. 381 (1989).

3. JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* (2005) [hereinafter STEFANCIC & DELGADO, *HOW LAWYERS LOSE THEIR WAY*].

4. James M. Cooper, *Towards a New Architecture: Creative Problem Solving and the Evolution of Law*, 34 CAL. W. L. REV. 297, 303 (1998).

5. Diana Nelson Jones, *Legally Unhappy: Experts Worry About Growing Tide of Lawyers Abandoning Careers*, PITTSBURGH POST-GAZETTE, May 4, 2005 at E-1.

6. Thomas D. Morgan, *Creating a Life as a Lawyer*, 38 VAL. U. L. REV. 37, 38 (2003).

7. Jones, *supra* note 5.

8. See STEFANCIC & DELGADO, *HOW LAWYERS LOSE THEIR WAY*, *supra* note 3 (citing WALTER BENNET, *THE LAWYER'S MYTH: REVIVING IDEAL FOR THE LEGAL PROFESSION* (2001); DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* (2000); MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993)).

9. See, e.g., Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989) [hereinafter Delgado, *Plea for Narrative*]; Richard Delgado, *On Telling Stories in School: A Reply to Farber & Sherry*, 46 VAND. L. REV. 665 (1993) [hereinafter Delgado, *Reply*]; Richard Delgado, *Rodrigo's Final Chronicle: Cultural Power, the Law Reviews, and the Attack on Narrative Jurisprudence*, 68 S. CAL. L.

they have crafted a paradigm by which they challenge prevailing notions on complex social issues and offer the possibility of future change.¹⁰ While *How Lawyers Lose Their Way* is not written in narrative form, it employs the narrative paradigm in discussing works that are and, accordingly, offers similar lessons about the condition it considers.

When viewing *How Lawyers Lose Their Way* through the lens of the narrative paradigm, the book is divided into two distinct parts. First, Stefancic and Delgado use the Introduction and first three chapters to present their primary thesis: that the root of what plagues the legal profession is a pervasive mode of thought they call formalism. They present this argument by relying on the narrative paradigm and discuss specific lessons it produces. Second, in Chapters four through seven, the authors apply these lessons to explain the hardships that exist in the lives of many lawyers. The authors conclude this second part with their own observations, as well as suggestions aimed at moving toward a happier legal profession.

This Book Review focuses on Stefancic and Delgado's use of the narrative paradigm, the lessons they derive from it, and the application of those lessons to the lives of lawyers. Part II outlines the narrative paradigm and demonstrates how Stefancic and Delgado apply it in *How Lawyers Lose Their Way*. Specifically, Part II describes how the authors use the majoritarian tale and the counterstory, with formalism accounting for the former and the story of a famous soul-searching lawyer constituting the latter. Part II also details the specific lessons derived from the authors' use of the narrative paradigm. Part III recounts how Stefancic and Delgado relate these lessons to the modern day tribulations of many lawyers. Part IV then considers whether Stefancic and Delgado's position is overly conceptual, thus discounting a proper consideration of the economic realities

REV. 545 (1995) [hereinafter Delgado, *Rodrigo's Final Chronicle*]; Richard Delgado & Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929 (1991), Richard Delgado & Jean Stefancic, *Imposition*, 35 WM. & MARY L. REV. 1025 (1994).

10. I will hereinafter refer to this structural use of narrative as the "narrative paradigm." As discussed fully in Part II, *infra*, the narrative paradigm consists of two distinct stories - the majoritarian tale and counterstory - which compete for attention in a given context.

of legal practice. Part IV ends by illustrating how the lessons derived from the authors' use of the narrative paradigm ultimately prove relevant for these concerns as well. This Review concludes that the lessons derived from the narrative paradigm provide hope for a happier and more fulfilling practice of law.

II. THE NARRATIVE PARADIGM: FORMALISM AND THE POUND-MACLEISH RELATIONSHIP

Stefancic and Delgado have long been leaders in advocating the use of narrative in law and legal scholarship.¹¹ Their use of narrative exists as a paradigm of two competing stories: the majoritarian tale and the counterstory.¹² In a given context, each exists as a story told by a group with a clearly defined set of experiences and interests.¹³ Upon repeated telling, the story itself becomes a constructed reality for the storyteller.¹⁴ The competing story, accordingly, exists as a constructed reality for its storyteller. When one story is socially adopted over another, the reality it purports gains acceptance by society at large.

The majoritarian tale is the story told, in any given context, by the dominant group.¹⁵ Because of its dominant position, that group often views its tale as unqualified truth.¹⁶ Accordingly, these tales often acquire the status of societal norms, conventions, and understandings that, over time, seem natural.¹⁷ Indeed, because they originate in the majoritarian tale, these norms are often left unquestioned.¹⁸ However, one of the most essential tenets of the narrative paradigm is that the majoritarian tale is not truth, but indeed just another competing story.

11. See *supra* note 9 (citing examples of Delgado's and Stefancic's narrative works).

12. Delgado, *Plea for Narrative*, *supra* note 9, at 2418.

13. Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 263-64 (1994) ("[S]torytelling relies and builds on background assumptions that are the products of a (mostly) shared culture. . . . Assumptions and expectations, whether experiential or ideological in origin, are necessary to organize the information we receive; they structure thought. Background assumptions determine, in great measure, whether a particular account will be heard as a story at all. . . .").

14. Delgado, *Plea for Narrative*, *supra* note 9, at 2416-17.

15. *Id.* at 2412.

16. Delgado, *Rodrigo's Final Chronicle*, *supra* note 9, at 553.

17. Delgado, *Reply*, *supra* note 9, at 666.

18. Delgado, *Rodrigo's Final Chronicle*, *supra* note 9, at 553.

The second part of the narrative paradigm is the counterstory. The counterstory is a different account of the same set of facts the majoritarian tale uses. However, it often highlights different facts, or sequences of facts, and is told with a different tone than the majoritarian tale.¹⁹ These stories are indeed “counter” as they are told with the purpose of challenging the assumed truth of the majoritarian tale.²⁰ To that end, the counterstory seeks to jar the foundation on which the majoritarian tale rests.²¹ In doing so, the counterstory serves two purposes: it (1) unmask[s] the majoritarian tale as merely a story, and not unqualified truth; and (2) shows that if the common assumptions of a given context are susceptible to question, change within that context is possible.²²

In legal scholarship, the context in which the narrative paradigm appears most is race.²³ In that setting, the majoritarian tale generally consists of the stories of white people.²⁴ When these stories circulate unchallenged, the point of reference for discussing race in legal scholarship is affixed at the white perspective.²⁵ The white perspective, accordingly, becomes the presumed truth.²⁶ The counterstory, then, does not so much seek to tell stories from a perspective of people of color, but rather serves to jar the presumed truth of the white perspective.²⁷ In doing so, the counterstory shows that relying solely on the white majoritarian

19. Delgado, *Plea for Narrative*, *supra* note 9, at 2425.

20. Delgado, *Reply*, *supra* note 9, at 671; Richard Delgado & Jean Stefancic, *Hateful Speech, Loving Communities: Why Our Notion of “A Just Balance” Changes So Slowly*, 82 CAL. L. REV. 851, 867 (1994) [hereinafter Delgado & Stefancic, *Hateful Speech*].

21. Delgado, *Reply*, *supra* note 9, at 671; Delgado & Stefancic, *Hateful Speech*, *supra* note 20, at 867.

22. Baron, *supra* note 13, at 269; Delgado, *Plea for Narrative*, *supra* note 9, at 2314-15.

23. Delgado, *Reply*, *supra* note 9, at 670 (“[M]any [Critical Race Theory] writers employ the ‘counterstory’ . . .”); Nancy L. Cook, *Outside the Tradition: Literature as Legal Scholarship*, 63 U. CIN. L. REV. 95, 102 (1994).

24. Cook, *supra* note 23, at 105.

25. *Id.* at 106.

26. In their various articles, Delgado and Stefancic describe several examples of such presumed truths based on the white perspective. See, e.g., Delgado & Stefancic, *Hateful Speech*, *supra* note 20, at 867 (describing the prevailing notion of the innocent white male and the idea that racial discrimination does not exist without intent); Delgado, *Rodrigo’s Final Chronicle*, *supra* note 9, at 552 (describing the idea that the free market will drive out discrimination).

27. Delgado, *Reply*, *supra* note 9, at 670-71.

tale leaves us with an incomplete understanding of race and the law. By challenging the assumption that the white perspective is truth, we are more able to construct our discourse on race upon fairer and richer premises.²⁸

Race, however, is not the exclusive setting in which the narrative paradigm may operate.²⁹ Indeed, the paradigm is relevant to the examination of any situation in which a defined majoritarian tale has evolved into presumed truth. The counterstory may then be used to impeach the notion that the majoritarian “way” is the only “way.” In doing so, the counterstory does a great service - it shows that something different - and likely better - is possible.³⁰

In *How Lawyers Lose Their Way*, Stefancic and Delgado expand the use of the narrative paradigm beyond the familiar context of race to shed light on the lives of lawyers. They define the majoritarian tale as a life characterized by formalism. Formalism is a pattern of thought that emphasizes rigid rules and systems at the expense of creativity. In contrast, the counterstory - and indeed the centerpiece of the book - is the relationship forged between Ezra Pound and Archibald MacLeish. That relationship reveals the life of a lawyer who seeks, and eventually finds, personal fulfillment in his work despite the obstacles of professional rigidity he encounters along the way. In presenting both the majoritarian tale and the counterstory in this fashion, Stefancic and Delgado fulfill the two purposes of the narrative paradigm: they show that the accepted condition of formalism is not inevitable and, concurrently, they offer hope that change toward a happier and more fulfilled legal profession is indeed possible.

Though they never describe it in such terms, Stefancic and Delgado’s account of formalism represents the majoritarian tale in describing the lives of lawyers.³¹ Indeed, much like a story told

28. *Id.* at 671; Delgado, *Plea for Narrative*, *supra* note 9, at 2415.

29. See Delgado & Stefancic, *Imposition*, *supra* note 9, at 1029 (“Th[e] ‘counterstorytelling’ approach examines majoritarian stories in order to understand their structure and function, especially in relation to social justice.”).

30. Baron, *supra* note 13, at 269.

31. Stefancic and Delgado do, however write that their depiction of formalism is akin to “a story or narrative.” See STEFANCIC & DELGADO, *HOW LAWYERS LOSE THEIR WAY*, *supra* note 3, at 33.

from the perspective of a dominant group, Stefancic and Delgado show how formalism characterizes both the thinking and lifestyle of many lawyers. The condition has become so pervasive that, like any majoritarian tale, formalism has become accepted as inevitable in a life in law.

Detailing the concept in both the Introduction and Chapter three, Stefancic and Delgado define the concept of formalism as “a habit of a mind and a type of social organization that attempts perversely to narrow one’s focus beyond that which a situation requires to render justice to it.”³² Stefancic and Delgado present several examples of how formalism exists as a pattern of thought and defines the lives of many lawyers. It begins in law school, where the curriculum focuses on doctrines and cases at the expense of interdisciplinary study.³³ This translates into a mode of reasoning driven by inward-looking rules and precedent rather than social policy and external effect.³⁴ This, in turn, has led to a practice of law characterized as “disciplined, routinized, compartmentalized, and result-driven.”³⁵ It has also led to court decisions focused on rules and principles but devoid of an interest in the lives they affect.³⁶

These elements of formalism combine to offer lawyers professional lives of systemic rigidity. Lawyers often lack the flexibility to use their skills expansively, creatively, or for pursuits with personal meaning. This rigidity exists systemically as the profession’s internally created rules and standards exist to perpetuate its existence. This condition exists as a majoritarian tale.³⁷ Aspiring lawyers follow a familiar track: they learn to manipulate cases and doctrines in law school in an attempt to prove worthy of entrance into a law firm.³⁸ Then, they traverse its

32. *Id.* at xi. Stefancic and Delgado reformulate this definition elsewhere in the book. For example, they later describe it as the “regimentation of thought and reasoning” whose adherents are “satisfied with, [and do] not even question, narrowly defined views of life and knowledge.” *Id.*

33. *Id.* at 35.

34. *Id.* at 34-35.

35. *Id.* at 39.

36. *Id.* at 40. Delgado and Stefancic also catalog how formalism has played a role in many major twentieth century cases. *See id.* at 40-44.

37. *See id.* at 44 (“[F]ormalism remains the dominant self-understanding of law schools and the practicing bar.”).

38. *Id.* at 39.

hierarchical structure in pursuit of a lucrative partnership.³⁹ Consistent with the majoritarian tale, the track towards law firm success appears as the presumed norm for a life in law, and attempts to forge a different path are often deemed abnormal and lesser.⁴⁰

Sandwiched in between the two accounts of formalism is the counterstory. Stefancic and Delgado present this part of the paradigm by recounting the relationship of Ezra Pound and Archibald MacLeish. Their examination reveals the story of MacLeish's rejection of formalism and often turbulent quest for creativity in his life as a lawyer. In doing so, Stefancic and Delgado show that formalism need not inevitably define a lawyer's life and, concurrently, offer insights for those seeking more fulfillment from a life in law.

Brief biographies of Pound and MacLeish reveal men who led very different lives, yet similarly strove to find meaning and purpose. From his youngest days, Pound's life centered around his quest to find and express his literary voice. Born and educated in the United States, Pound emigrated to Europe in 1908, shortly after he graduated from college.⁴¹ He became a fixture in the literary circles of London and later Paris, and was known for his outlandish attire and leadership in the literary community.⁴² His poetry was widely acclaimed and he became known as the "acknowledged architect of modern poetry."⁴³ His work marked the transition from ornate and traditional Victorian poetry to verse characterized by "sharp images [] [and] precise words."⁴⁴ Against the backdrop of post-World War I Europe, Pound moved to Italy and became an ardent follower of Mussolini.⁴⁵ After the stock market crash of 1929, Pound voiced strong criticism of the United States in written publications and on radio broadcasts.⁴⁶

39. *Id.* at 46.

40. *See* Jones, *supra* note 5 (quoting a law school dean who states that the legal profession "has certain standards and approaches" and a "mentality that you're a loser if you don't go to a big firm").

41. STEFANCIC & DELGADO, HOW LAWYERS LOSE THEIR WAY, *supra* note 3, at 6.

42. *Id.* at 7.

43. *Id.*

44. *Id.*

45. *Id.* at 8-9.

46. *Id.* at 9-11.

When Mussolini's government fell, Pound was arrested and returned to the United States to stand trial for treason.⁴⁷ A jury found him to be of unsound mind and he was committed indefinitely to the St. Elizabeth's Hospital for the Criminally Insane.⁴⁸ Even during his confinement, however, Pound continued to publish literature that received wide acclaim.⁴⁹

MacLeish also found meaning in literary expression. Whereas Pound's writing constituted his life's work, however, MacLeish turned intermittently to literature in reaction to the lack of fulfillment he found both in law and his blue-blooded world.⁵⁰ MacLeish's early adulthood followed a track that all but guaranteed professional achievement, monetary success, and social standing. He moved effortlessly from Hotchkiss to Yale to Harvard Law School to a position at a prominent Boston law firm.⁵¹ Yet from the outset, it was a path he traversed with trepidation. Indeed, as early as his Yale years, MacLeish had designs on becoming a writer; Stefancic and Delgado note that his decision to pursue a career in law was a "compromise."⁵² Despite his success as a lawyer, MacLeish found the work to be of little social consequence and the rewards superficial.⁵³ He contemplated leaving the law over several years, and eventually did so to pursue the writing career that continued to beckon.⁵⁴ He emigrated to France and joined the literary community of which Pound was then a member.⁵⁵ However, he found little lasting success as a writer; the literary community never fully accepted MacLeish into its midst, seemingly doubting his authenticity.⁵⁶ He returned to the United States, finding work first with a national magazine and then the federal government.⁵⁷

MacLeish and Pound had known of each other since MacLeish's years in France. Indeed, MacLeish greatly admired

47. *Id.* at 11.

48. *Id.*

49. *Id.*

50. *Id.* at 13-15.

51. *Id.* at 12-14.

52. *Id.* at 13.

53. *Id.* at 15.

54. *Id.*

55. *Id.*

56. *Id.* at 16.

57. *Id.* at 17-21.

Pound's writing and, though he actively sought Pound's approval, the admiration was not reciprocated.⁵⁸ Years later, their paths crossed in a more lasting manner. In 1949, while he was committed at St. Elizabeth's, Pound received the prestigious Bollingen Prize for poetry from the Fellows of American Letters of the Library of Congress for his *Pisan Cantos*.⁵⁹ Because the work was rife with Pound's anti-American and pro-fascist beliefs, the award was wildly controversial.⁶⁰ MacLeish, who at this point was teaching rhetoric at Harvard, published a spirited defense of the award. Though he personally disagreed with Pound's views, he defended the value of the work to promote free artistic expression in a democratic society.⁶¹ MacLeish's defense of Pound drew the ire of political and academic leaders; yet as Stefancic and Delgado posit, it "proved a turning point in [his] life."⁶²

Much later, MacLeish provided an even more valuable service to Pound when he took up the cause of securing his release. Over several years, MacLeish gathered the support of literary figures and government officials.⁶³ Eventually, Pound received a new hearing and, after ten years of incarceration, was released.⁶⁴

It is against this backdrop that Stefancic and Delgado offer the linchpin of the book - their analysis of MacLeish's motivation for coming to Pound's aid. Stefancic and Delgado consider both MacLeish's sympathy for a fallen hero and his sense of public duty; however, at the heart of their analysis is what the writers call MacLeish's own "vicarious satisfaction."⁶⁵ Indeed, MacLeish's efforts on behalf of Pound represented the climax in his ongoing quest for personal and professional fulfillment in the law.⁶⁶

MacLeish often questioned the social usefulness of legal practice; he found most cases to be about little more than

58. *Id.* at 17.

59. *Id.* at 23.

60. *Id.* at 10-11.

61. *Id.* at 24.

62. *Id.*

63. *Id.* at 25.

64. *Id.* at 26.

65. *Id.* at 27.

66. *Id.* Stefancic and Delgado write that, "In rescuing Pound, MacLeish rescued himself, attaining psychological and personal integration and a sense of closure." *Id.*

“whether \$900,000 belonged this way or that.”⁶⁷ He also found the personal rewards of the aforementioned career track to be unsatisfying, commenting that he was ““attracted to the law by considerations the most superficial imaginable.””⁶⁸ Now, however, he was able to base his legal work on passion and experience. Indeed, it was because of his affinity for Pound’s poetry and the artistic freedom it represented that MacLeish labored successfully on his behalf.⁶⁹ It was through these efforts that, as Stefancic and Delgado note, MacLeish satisfied “his longings for richness and texture” in law.⁷⁰

Here, Stefancic and Delgado present the counterstory. MacLeish’s rejection of his patterned career track was also a rejection of formalism. He discarded the dominant mode of thought and affirmatively sought something else. Though he found more failure than success in the quest, his eventual work on behalf of Pound marked the climax in his search for meaning as a lawyer.

Stefancic and Delgado’s use of the narrative paradigm offers three important lessons regarding the lives of lawyers. First, it reveals the pervasiveness of formalism in the legal profession. As with any majoritarian tale, it operates as the presumed truth in its given context. In the context of the legal profession, formalism traps many unhappy lawyers in mundane and unfulfilling professional lives.

The second lesson, which is somewhat paradoxical, is that of the counterstory. MacLeish’s ultimate attainment of meaningful legal work shows that while formalism pervades, it need not control. Because the constraints of formalism are systemic, the task of displacing it is indeed challenging; it is possible, however, for the individual lawyer, like MacLeish, to find a sense of purpose. In a most poignant line, Stefancic and Delgado sum up this lesson by writing, “if you allow yourself to think of what you do in crabbed terms, you are apt to find yourself working in a crabbed workplace as well.”⁷¹ Thus, despite seemingly

67. *Id.* at 15.

68. *Id.*

69. *Id.* at 27.

70. *Id.* at 29.

71. *Id.* at 77. See also Steven Keeva, *Keeva on Life and Practice*, 91 A.B.A. J. 80, 80 (2005) (noting in a review of *How Lawyers Lose Their Way*

overwhelming forces, it is up to the individual in the end to accept formalism or reject it and forge a meaningful life in law.⁷²

The third lesson, consistent with any successful presentation of the narrative paradigm is that if the majoritarian tale need not dominate, then change is indeed possible. In this context, because Stefancic and Delgado have shown that a lawyer's life of formalism is not inevitable, there is indeed hope that members of the profession may find happier lives in the future.

III. APPLICATION TO THE LIVES OF LAWYERS

Stefancic and Delgado apply the lessons from the narrative paradigm to the lives of lawyers in Chapters four through seven. They do so in two interconnected parts. First, they describe, in some detail, the lifestyle that many lawyers lead. This life is all too often unfulfilled professionally and unhappy personally. Second, interspersed in this description, is the application of the narrative lessons. Stefancic and Delgado explain how formalism is at the root of many of these problems and, accordingly, how the counterstory of MacLeish proves to be most applicable.

Stefancic and Delgado offer a wealth of information regarding the unsatisfying life of many lawyers by offering insights into three of its elements: (1) legal education; (2) professional life; and, (3) personal life. The common thread that runs through each is a dominating formalistic pattern of thought.

A lawyer's discontent, the authors assert in Chapter five, begins in law school. Even the casual observer can easily notice the tense environment that exists at many of the nation's law schools. The classes are large, the students are competitive, and student-faculty interaction is at a minimum.⁷³ But Stefancic and Delgado focus less on the outwardly apparent elements of law school and more on those developed internally within students. Students are taught from the outset that law is a system of tightly crafted rules and standards. Thus the focus of the law student is to arrive at "an objective 'right answer.'"⁷⁴ Law students become

that this particular line, "stopped [him] cold").

72. See Keeva, *supra* note 71, at 80 (commenting that the power to find a personal sense of meaning as a lawyer "lies with the individual").

73. STEFANCIC & DELGADO, HOW LAWYERS LOSE THEIR WAY, *supra* note 3, at 62.

74. *Id.* at 63.

overly cautious in their thinking and creativity, accordingly, is discouraged.⁷⁵ Moreover, law students learn that correctness comes only through this rigid process. Thus, Stefancic and Delgado show how the seeds of majoritarian formalism sprout early in one's legal career.

This mode of thinking dovetails into a lawyer's professional life. Stefancic and Delgado describe, with disfavor, the professional lives of lawyers working in top law firms.⁷⁶ They point to high billable hour requirements, repetitive work, stress, and inherent competition.⁷⁷ Lawyers accept these realities because the culture of law firm life dictates that they do.⁷⁸ It is here that Stefancic and Delgado succeed in showing the practical application of formalism: the insular patterns that drive how lawyers think also drive how they work. Moreover, formalism dominates this context, as many lawyers live this way despite a desire for something different.⁷⁹

This pattern of formalism transfers into the personal lives of many lawyers. Because the billable hour system has become the norm for many lawyers at work, it drives their personal lives as well. Stefancic and Delgado give this point primacy, placing it at the beginning of their discussion of lawyers' personal lives.⁸⁰ Consistent with a life driven by billable hours is constant stress and pressure, factors that account for many of the negative trends seen within the legal system: deterioration of physical and mental health, substance abuse, a high divorce rate, depression, and even suicide.⁸¹ Accordingly, Stefancic and Delgado ultimately attribute these ill effects of legal practice to the forced and patterned mindset of formalism.

It is counter to this overwhelming dominance of formalism that the story of MacLeish offers hope. To be sure, Stefancic and

75. *Id.*

76. *Id.* at 62-71. The focus of Stefancic and Delgado's examination of lawyers' lives is on those practicing in large law firms. They do, however, offer a comparison with the lifestyle found in a small law firm, which they conclude is scarcely different. *See id.* at 71.

77. *See id.* at 51-56.

78. *Id.* at 55.

79. *See id.* at 60-61 (describing how many lawyers frequently entertain thoughts of leaving the profession).

80. *See id.* at 65.

81. *See id.* at 65-68.

Delgado neither present MacLeish as a superhero nor his story as a panacea. He struggled for decades in finding a remedy for his incessant dissatisfaction with legal practice. But his story represents a successful counterstory posited against the majoritarian tale of formalism for two reasons: (1) MacLeish refused to accept his unfulfilling life; and, (2) he ultimately found a purposeful use for his legal skills in his work for Pound. Therefore, by rejecting the presumed truth of formalism, MacLeish showed that a life in the law need not be defined by its constraints. This underscores Stefancic and Delgado's point that, despite the pervasiveness of formalism, the individual lawyer may reject it as a controlling mode of thought. It also furthers the point that, if formalism can be challenged, change in the legal profession is possible.

IV. FURTHER APPLICATIONS

Stefancic and Delgado's call for lawyers to challenge formalism as their dominant pattern of thought serves a logical antidote to the ills that plague the legal profession. But is their argument overly conceptual? That is, while esoteric theory permeates the law, legal practice is also a bottom-line business. Law school graduates commonly face nearly insurmountable debt and must make professional choices to maximize their earning potential.⁸² Law firms exist as for-profit enterprises in a highly competitive market; as such, they must act with sharp business acumen to succeed. Thus, while *How Lawyers Lose Their Way* presents a unique theoretical argument, would its resolution work in the real world? Indeed, in applying Stefancic and Delgado's conclusions to the economic realities of the legal industry, it is evident that it would.

The concept of formalism extends to the economics of legal practice. The billable hour approach is one example. In the second half of the twentieth century, billing hours became the most popular method for law firms to organize their businesses.⁸³

82. For a detailed account of the debt many law school graduates face, see Michael A. Olivas, *Paying for a Law Degree: Trends in Student Borrowing and the Ability to Repay Debt*, 49 J. LEGAL EDUC. 333 (1999).

83. Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239, 246 (2000).

The pervasiveness of that approach is self-perpetuating as billing hours is only most effective when the highest numbers of hours are billed. Accordingly, in the past few decades, billable hour requirements of many firms have increased dramatically.⁸⁴ Moreover, the billable hour requirement is no ancillary consideration but rather constitutes a dominant characteristic of legal practice for today's lawyers.⁸⁵

Law school debts create a reality that causes many new lawyers to feel compelled to accept the billable hours standard. In the latter decade of the twentieth century, it has become common for graduating law students to be saddled with huge educational debt.⁸⁶ Many students take high paying jobs in large law firms to pay off their debt.⁸⁷ Thus, the need to find the highest paying job becomes the primary concern for many law school graduates, providing another example of formalism in the economics of legal practice.

These two examples of formalism obviously work in concert. Pressure on graduates to pay off large law school debt provides firms with a constant source of eager young lawyers. And because firms maximize profits by increasing billable hours, they can offer jobs with exceedingly high salaries.⁸⁸ Thus, in the economic formalism of legal practice, debt-ridden young lawyers take high-paying jobs in large law firms and work tirelessly to meet high billable hour requirements.

This arrangement has been cited as a cause of much of what plagues the legal profession. Most notably, the drive to bill a maximum number of hours has resulted in what commentators call a "time famine."⁸⁹ Because more hours can always be billed,

84. Morgan, *supra* note 6, at 43 (stating that a 1400-1500 billable hour requirement was common thirty years ago but now such requirements frequently exceed 2000).

85. *Id.* (referring to the billable hours approach as the "greatest source of dissatisfaction among modern lawyers") (emphasis added).

86. Susan D. Carle, *Re-valuing Lawyering for Middle-Income Clients*, 70 *FORDHAM L. REV.* 719, 738 n.67 (2001) ("[B]etween 1987 and 1997 alone, the cost of law school tuitions more than doubled. . . . [T]he median amount of total loans for law students in the class of 1998 was almost \$70,000 . . .").

87. Martin E. P. Seligman, Paul R. Verkuil & Terry H. Kang, *Why Lawyers are Unhappy*, 23 *CARDOZO L. REV.* 33, 44 n.55 (2001) (stating that young lawyers leave law firms "when their loans are [re]paid").

88. Fortney, *supra* note 83, at 248-49.

89. *Id.* at 263-67.

many lawyers work with the constant belief that they must bill more. As one young associate stated, "No matter what I did, I felt like I should be in the office doing work, not doing specific client work, but racking up hours."⁹⁰ As a result, lawyers have less personal time and are never satisfied with the work they have completed.⁹¹ This economic arrangement has also been cited as responsible for a decrease in work quality and lapses in professional ethics.⁹² Finally, high billable hour requirements for young associates have been blamed for a high level of turnover, a business cost many firms incur.⁹³

But does it have to be this way? Are the circumstances of law school graduates so predetermined that they must sell their services to the highest bidder, no matter the personal or professional costs? And is maximizing billable hours the only way firms can operate as a business? Indeed, just as Stefancic and Delgado argue that formalist thinking need not exist as unqualified truth, such economic formalism need not be the dominant arrangement for the legal industry either.

First, while law school debt is very real for many graduates, at least one commentator has stated that the financial necessity of taking a big firm job is more perception than reality.⁹⁴ Moreover, alternate, and often untapped, markets exist for graduates to make a lucrative living. Susan Carle makes a compelling case for law school graduates to consider careers that serve middle income clients.⁹⁵ She notes that the market for lawyers representing such clients is stable enough to afford a young lawyer a living.⁹⁶ Yet it is still underserved such that it also affords opportunity.⁹⁷

90. *Id.* at 263.

91. *Id.* at 267.

92. *Id.* at 273, 278.

93. *Id.* at 283-84.

94. *Id.* at 287 (quoting a professor who states that, "the number of students whose economic circumstances compel them to take big firm jobs is still substantially smaller than the number of students who *claim* that their economic circumstances compel them to take big firm jobs").

95. *See generally* Carle, *supra* note 86.

96. *See id.* at 722 (stating that the percentage of lawyers who earn their living as solo practitioners or in small firms, which typically serve middle-income clients, is 74 percent, up from 68 percent in 1980).

97. *See id.* at 723-24 (quoting a recent study finding that "nearly two thirds of legal needs of moderate-income households were *not* taken into the civil justice system in 1992").

Furthermore, Carle argues that too few law school graduates consider jobs in this sector when, in reality, many jobs are there to be had.⁹⁸ Thus, by allowing themselves to consider a wider array of career options, young lawyers need not feel trapped by the dominant economic arrangement the legal profession presents.⁹⁹

Additionally, law firms beholden to the billable hours approach may also be forgoing opportunities for more effective business practices. As noted, many blame strict adherence to billable hour requirements for unhappy lawyers, substandard, even unethical work, and high lawyer turnover. Currently, law firm leaders give billable hours unquestioned primacy and choose to spend less time on the personal and professional development of their young associates. One commentator argues that treating hours spent mentoring and training young associates with the same importance as billable hours may improve work and decrease attrition.¹⁰⁰ Stressing mentorship represents a deviation from the dominant billable hours arrangement, but may be more economically beneficial.

Others suggest that lawyers would be more fulfilled if firms tailored work to a lawyer's strengths and interests. Firms could make a concerted effort to identify their associates' strengths and distribute assignments accordingly.¹⁰¹ Doing so would promote a sense of ownership over the work, which, in turn, would increase morale and stabilize the associate work force. Providing alternate work schedules for lawyers with varied career objectives would also personalize the law firm experience. Indeed, one study found that many associates would be willing to exchange compensation and advancement opportunities for having to work fewer hours.¹⁰² Providing such options, which also are contrary to the dominant economic arrangement, may also prove beneficial to the legal industry.

Therefore, the lessons Stefancic and Delgado offer regarding the dominant mode of thought exhibited by many lawyers also apply to the dominant economic arrangement of the industry.

98. *See id.* at 739.

99. For a discussion of the importance of client choice in a young lawyer's career, see Morgan, *supra* note 6, at 52-54.

100. Fortney, *supra* note 83, at 293-94.

101. Seligman, Verkuil, & Kang, *supra* note 87, at 45.

102. Fortney, *supra* note 83, at 294.

Specifically, Stefancic and Delgado identify formalism as the majoritarian way that lawyers think, and illustrate how a well-reasoned counterstory undermines its presumed truth. In doing so, they persuade that formalism need not pervade lawyers' thinking. Similarly, the economic arrangement in which law firms seek to maximize billable hours and new lawyers seek jobs similarly focused on this goal exists as the dominant economic arrangement for legal practice. But, as demonstrated, the dominance of this arrangement need not persist, especially when it has been linked to so many negative effects on lawyers. Most notable in this comparison, however, is that the same argumentative approach Stefancic and Delgado employ to attack formalist thought makes the same point when applied to the economics of legal practice. Thus, while it appears that their reliance on the narrative paradigm is a potential weakness because of its narrow focus on formalist thought, such reliance is indeed a strength when application of the narrative paradigm to other contexts proves to be relevant as well.

V. CONCLUSION

In *How Lawyers Lose Their Way: A Profession Fails its Creative Minds*, Jean Stefancic and Richard Delgado address a well-documented problem in a unique way. As they have previously done in other contexts, they employ the narrative paradigm to impeach the presumed truth of a majoritarian tale with a well-reasoned counterstory. By clearly defining and explaining formalism, they identify how, as a pattern of thought, it exists as a majoritarian tale. Then, by presenting the unique story of Ezra Pound and Archibald MacLeish, they offer a counterstory that impeaches formalism's majoritarian control of the life of a lawyer. In doing so, they show how formalism is at the heart of what plagues the legal profession and how difficult it is to challenge. But they also show that formalism need not exist inevitably, thereby providing hope for a happier, more fulfilled legal profession. Moreover, when applied not only to legal thought, but also to legal economics, lessons of the narrative paradigm prove similarly relevant in improving the legal profession. This further application strengthens the point that, while much plagues the legal profession, a brighter future is indeed possible.