

## CSLS MINISERIES IN EMPIRICAL RESEARCH METHODS

### Materials for "Doing Story-Based Research in Socio-Legal Studies"

Presented by Michael Musheno and Steven Maynard-Moody

Friday, November 6th, 2009

Seminar Room, 2240 Piedmont Ave

The presenters posed the questions on which the workshop is based to a number of socio-legal scholars around the country. Their responses are collected here.

### The Questions

1. Why do story-based research in socio-legal studies?
2. What are the defining features of your method or mode of story-based research?
3. What, if anything, distinguishes story-based research from other forms of thick inquiry?
4. For what questions and content, conceptual to problem-based, do you employ story-based research and why?

### Responses by Socio-Legal Scholars

1. Benjamin Fleury-Steiner, Sociology and Criminal Justice, University of Delaware
2. Steve Herbert, Geography, and Law, Societies and Justice Program, University of Washington
3. Mona Lynch, Criminology, Law and Society, University of California, Irvine
4. Calvin Morrill, Jurisprudence & Social Policy (Law) and Sociology, University of California, Berkeley
5. Shannon Portillo, Center for Justice, Law & Society, George Mason University
6. Susan Silbey, Sociology and Anthropology, Massachusetts Institute of Technology
7. Stewart Macaulay, Law School, University of Wisconsin, Madison

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#### 1. It's all in the "telling"

**Benjamin Fleury-Steiner**  
Sociology and Criminal Justice  
University of Delaware

Stories are exceptionally useful for getting at what people take for granted but they also force us to confront questions of "why" is this person telling this particular story the way they are telling it at this particular moment in history. Unpacking the

“telling” is endlessly fascinating to me. How do prevailing social, political, economic, and institutional conditions help to explain what is and is not said by the teller? The taken-for-granted wisdom that is so critical for understanding how unequal relations are maintained in and through law as it is manifest in dominant structural and institutional arrangements is of particular interest to me and narratives are, in my experience, the richest form of data for taking up this line of inquiry.

When considering the actual doing of story research, I’ve come to realize that the single most important job of the researcher is to listen and let the respondent TELL the story. Let them narrate it in whatever way or, for however long, they choose to respond. Perhaps more than any other method, story research requires patience on the part of the researcher and the wherewithal to create an environment that allows their respondents to feel comfortable to narrate without interruption.

It is fascinating to investigate later WHY respondents decided to tell the story the way they did—that is, what can seem irrelevant at the time of an interview is often extremely relevant once you begin to analyze the data.

I think, as has often been noted in the literature, that it is important to demystify the relationship between the interviewer-interviewee as much as possible. In my current project on homeless veterans I do not hide the fact that I am also a veteran and I believe that homelessness in general and homeless veterans in particular are an unjust state of affairs in the contemporary U.S. I tell them that up front as they are often very curious as to why I want to talk to them.

I want the respondent to know where I’m coming from. Not simply as a researcher, but as a former soldier and combat veteran. I especially want them to know that this is their time to be heard and it is my privilege to listen and, if they agree, make an audio record of their stories.

Finally, I think it is critical to have a strong set of theoretical expectations going into any research project, including, if not especially, one that involves the collecting of narratives. Theory is obviously vital for forming your research questions, creating specific questions or cues for generating story telling and, obviously, in the analysis of the narrative data itself. For example, in my analysis of the meaning of identity and punishment in the stories of capital jurors I found Erving Goffman’s classic theorizing on identities as a dynamic, multi-role social process as critical to my inquiry. Jurors were not simply “jurors,” they were also “mothers,” “former addicts,” etc. and these alternate identities were often critical for understanding why they told the story the way they did.

In the context of sociolegal research on law and inequality, I found the work of critical race scholars who have spent a good deal of time unpacking the meaning of identity in narratives of law and power to be very, very important. Most recently, in my ongoing study of homeless veterans in a temporary housing program, I have found work by scholars of political economy and Bourdieu’s classic work on social capital as very useful for thinking about the meaning of “homelessness” and the way an individual’s life

history is never just about any single individual's life. It is a much richer story of often problematic social networks, institutional instabilities, and prevailing sociopolitical and spatial arrangements that help to clarify what it means to not have a place of one's own to live in this day and age.

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**2. Steve Herbert**  
**Geography, and Law, Societies and Justice Program**  
**University of Washington**

As to your interest in learning more about how stories figure in the work I've done to date, I offer the following thoughts:

Most of the stories I've used in my writing were from my own ethnographic field notes, which have consisted primarily of observations of police practice. I recount my observations to illustrate and explicate my more general conclusions. In this sense, I am the author of my own stories, which come from my own experience. I think it important to provide extensive accounts from my field notes because these provide necessary background for my analysis. Each account was critical to my analysis, and I cannot make that plain to the reader unless I describe the incident. I also strongly suspect that the stories make my accounts more accessible and readable. Students suggest to me that this is the case.

I also rely heavily on interviews in my work, although I don't typically self-consciously solicit stories from my subjects. My interviews tend to be loosely structured, but there is a structure. In other words, I have targets in mind. For that reason, when I code the interviews, I typically isolate on smaller snippets, rarely longer than a paragraph. These are stories of a sort, but not really narratives in the usual sense of the term.

So, my principal reliance on stories is to provide descriptions of key events that I witnessed during ethnographic field research. I recount these stories for analytic purposes and to help ensure reader interest. I see these as definitely distinct from interview excerpts, at least as I deploy them. The stories I author are the best means I can imagine to help my readers understand how I arrived at conclusions from my fieldwork observations, especially when

I provide an account of my interpretation of the incidents I recount. I can think of no better means to make explicit my reasoning and to make the process of research come alive.

In short, I write stories because I do ethnography. I do ethnography because I'm interested in socio-legal processes on the ground. And I'm interested in socio-legal processes on the ground because I want to understand those processes in all of their messy and everyday complexity. At the same time, I hope to provide some analytic means to apprehend that complexity, and convey that to the reader. To do that, I need to describe and analyze the incidents I observed.

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**3. Story-based research: Comments**  
**by Mona Lynch**  
**Criminology, Law and Society**  
**University of California, Irvine**

I have never consciously been a “story-based” researcher, however when I reflect back on several of my research projects, I realize that I have indeed looked to stories as a way to understand, illustrate, and animate my research topics. Stories usually convey meanings for those who tell them that include both emotionality and cognition. In other words stories, better than “straight” factual accounts of a phenomenon, reveal how the teller thinks and feels about something, and usually do so in a much more engaging way. In writing up or verbally presenting research, examples of or from stories are especially useful for making a given phenomenon of interest understandable to a broader audience, and they bring research to life, fundamentally connecting the research endeavor to the social elements of what we study.

The primary way that I have gathered and made use of stories in my research is through using strategic questions in field settings. This may happen in more formal, semi-structured interview settings, or it may be in a very informal exchange where I ask someone in the field to help clarify or explain why things work the way they do. In research I did on parole agents who supervise those released from prison, one of my most fruitful set of questions to gain insight into how the agent viewed her/his job—its meanings, priorities, and challenges—was to ask for her/his personal best success story, followed by a question regarding her/his biggest disappointment or failure on the job. I use several of these stories to capture the bind that contemporary parole agents are in, in terms of providing rehabilitation with limited resources and conflicting role priorities (see Lynch, M. (2000). Rehabilitation as rhetoric: The ideal of reformation in contemporary parole discourses and practices. *Punishment and Society*, 2, 40-65).

I also find that I often tell stories in my write-ups as a way to share how I have made meaning of what I observe. There are several such instances of this in the parole article cited above. At the extreme end of this practice, I have one particular piece that primarily uses a single story as the narrative framework for illustrating my larger theoretical points.

That piece situates my observations and experience witnessing an execution into an analysis of contemporary penalty, and whether Feeley and Simon's (1992) argument for a "New Penology" can explain death penalty practices (see Lynch, M. (2000). The disposal of inmate #85271: Notes on a routine execution. *Studies in Law, Politics, and Society*, 20, 3-34).

Story based research probably fits most easily within sociolegal projects employing qualitative field methods, however this strategy can also be used in interesting ways in analyses of social artifacts—transcripts from various forms of legal proceedings can be a rich source of a specialized form of stories, for instance. I have used closing arguments from capital trials to see how attorneys construct a story about who the defendant is and why he deserves to live or die. Even experimental designs can incorporate story based research through the design of qualitative dependant measures. My colleague, Craig Haney and I are in the midst of analyzing a videotaped set of deliberations from a simulated capital penalty jury study. We are finding that our participants frequently use stories from their own experiences as a way to make points or persuade their fellow jurors on a particular issue.

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**4. Brief Reflections on Story-Based Research in My Work**  
**Calvin Morrill**  
**Jurisprudence & Social Policy (Law) and Sociology**  
**University of California, Berkeley**

From my perspective, the rationale for using story-based research is four-fold, involving the interplay between voice, social process, meaning, and empirical reach. To illustrate what I mean, let me tell you little story. In my first major research project – a field project on disputing among corporate executives in Fortune 500 firms – I had been in the field for only short time when I began to learn that conflict among managers unfolds in temporally and spatially jagged ways. A conflict may begin in a regional office and continue thousands of miles away in the corporate headquarters; a few months later it may reappear in committee meetings and chance encounters in a parking structure or a plane. The challenge was how to represent what I was learning. What was my unit of analysis? Should I focus on techniques of conflict management, such as mediation, avoidance, or confrontation? Should I focus on organizations or perhaps the managers I was interviewing and observing? As I struggled to analyze what I was learning in the field, I borrowed a strategy from the anthropology of law – the “trouble case” – and adapted it to the study of corporate executives. Trouble cases are stories about hitches, grievances, and problems that people experience in their everyday lives, how they make sense of them, and what they do about them over time. The trouble case seemed a wonderful device for representing the dynamic, temporal processes of conflict in large corporations. They also allowed me to go places I couldn't go, such into the history of a firm or conflict, or to spots I wasn't allowed (such as clandestine meetings between representatives of foreign governments and the firms where I did my research). More generally, much, if not all, of what we study in socio-legal research is about social processes and how people make sense of what's going on around them over time. Because stories have narrative structures they are processual and allow the researcher to

get a sense of time from the perspectives of participants. Moreover, stories enable us to get glimpses of how people, in their own voices, imagine and make sense of the problems and injustices they experience. At the same time, stories, because they are products of particular places and times, also enable us to think about the larger institutional contexts in which people are handling conflict – they give us empirical reach up and down levels of analysis.

I suppose there are several defining features of my story-based methods. First, I always use stories in conjunction with other methods. I've only published one piece that uses only stories (in the *Law and Society Review* with Michael Musheno and other colleagues; but even in that piece we allude to other data we collected). All of my other work combines stories with other methods, both qualitative (most often ethnographic observations, but also visual representations by participants) or quantitative (surveys and quasi-experimental methods). This means that I often use stories to help validate other sources of data and vice versa. Sometimes the stories reveal something not contained in other data; sometimes they only tell part of what's going on in a setting or even reveal discrepancies and paradoxes. Such disjunctions offer wonderful opportunities for delving more deeply into a setting, sometimes resulting in wholly unexpected findings. Such discrepancies and opportunities are an integral part of the field research regarding conflict and control policies in a multiethnic high school on which I'm currently collaborating with Michael Musheno.

In addition to using stories as part of a multi-method strategy, I've been attentive to and tried to take analytic advantage of two kinds of stories in my research. The first is what one might call a "story-in-action". These are stories told by participants to other participants during their course of their everyday interactions. One might overhear these kinds of stories or listen to them in a group context as participants interact with each other. In my work on corporate executives, for example, I was able to collect a lot of stories-in-action as part of my everyday observations. In another project I did on community mediators and social workers, I used to listen to the stories that mediators and social workers told each other about their problems adapting to policy changes. A second type of story I've collected is a "story-of-action," which refers to stories told by participants to researchers. Most of the stories collected in my youth conflict research with Michael Musheno and in my school rights project with Lauren Edelman, Richard Arum, and Karolyn Tyson are stories-of-action: Youth (and teachers and administrators) tell us, the researchers, stories about their schools, lives, brushes with authority and law, conflicts, etc. In some instances (with Musheno), we've asked youth to write down stories as part of a classroom-type assignment; in other instances my teams and I collect stories orally in the course of in-depth interviews. These two types of stories are important because they differ in context and audience, which may influence both their content and form. The continuities and discontinuities revealed between stories-in-action and stories-of-action can be key points of departure for learning about the paradoxes and often hidden aspects of conflict in social settings.

Since I most often use story-based research with other methods, it the distinctiveness of story-based research can blur with other forms data I collect. However, stories, more

than other forms of information are preeminently discursive and so give the researcher a sense of how participants use language, especially their conceptual vocabulary, and exercise their imaginations. Stories are also empowering for participants in that they are in charge. To be sure, when we ask youth to “tell us a story about a conflict you have experienced,” we prompted the story. But within that discursive space, participants are the primary guide and have authorial control over the representation of what they have experienced and imagined.

I’ve found story-based research particularly useful for representing social process over time from the vantage points of participants. Thus, for studying interpretive dynamics that one finds in conflict processes, it’s especially useful. Although I’ve never actually used stories in the service of quantitative research, I could imagine via content coding or other strategies that one could. As most of the examples above attest to, I typically do research about behind-the-scenes conflict that unfolds in organizations – private corporations, schools, community agencies. Although I’ve used every method under the sun to study these processes, I’ve found over the years, that conventional methods (e.g., surveys and experimental designs) are often constrained in getting at conflict dynamics in natural settings. Stories enable my analytic gaze to go where I can’t physically go – the participant takes me into her or his world, and allows me to see a little of that world as they do, using the words they use in a narrative way. Stories also enable me to see how participants connect the hidden recesses of their world with more public places they traverse – what happens, for example, when a private dispute between two youth becomes a spectacle for an entire school and rubs up against adult-created and mandated policies.

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## 5. Stories of Authority: Using Stories as Data in Researching the Exercise of Authority

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*Nothing direct, nothing overt, nothing in your face, but you could just, by their actions you can tell. I will give you a perfect example; my partner and I were sent to a domestic disturbance call. It was a family - a white family - very racist, and they wouldn't talk to me. I would try to ask the father a question or interject, you know, try to conduct my investigation, and if I would ask a question he would answer it to the white officer. And that is here in this city only two years ago [affluent Midwest suburb in 2006]. Oh and the children, well the children were in teenage years and they acted the same way. They were a little bit more cordial, but you could tell the father was definitely old school. And of course, you know, growing up as a minority you just learn to accept certain things, accept people the way they are. So you know, I would ask a question he would answer to the white officer, okay that is fine with me. **Was that a challenge? I think so. But, I don't know, it wasn't like he came out and said it. I don't know***

*what he was thinking, but that's what he did.* (Middle-aged Asian male police officer, Interview 30, Howard).

When I spoke with Howard, as with many of the public officials I interviewed for my project on authority and social status, he didn't quite come out and say that his authority had been challenged, but he provided an example of events and alluded to what he believed was the proper interpretation of the events. Many public officials focused on specific examples, stories that happened to them when asked about their authority. Public officials often shared stories to express what went without saying (Ewick and Silbey 2003). They often provided some of their own interpretation of the events, as Howard did at the end of this example, but their focus was often on events that they experienced and their framing of these events.

I focus on stories for research because they allow for context and details that are often missed in general statements or responses to interviews. Stories allow subjects to provide examples, when they are not quite sure that an event was a challenge, or discrimination or something else, as Howard did above. When a subject cannot quite articulate the box or category an event would fit into, but can provide details of the event, story based research works well. Interviewees can focus on an example, events and analyze as they discuss the event. Follow-up questions to initial stories build rapport, and flesh out details, analysis and context. The interaction with the interviewee is foundational in my story based analysis because follow-up questions are crucial for fleshing out story details and analysis. Because follow up questions are specific to each story, there is no overarching protocol for story collection.

When I utilize stories I use a form of semi-grounded theory. I go into the field focused on ideas of authority and how these ideas are framed by social identities, specifically social status based on race, ethnicity and gender. I focus on narratives when interacting with public officials because they provided rich context, allowed for additional conversation, justification and details. Focusing on a story or example of the exercise authority allows the conversation with the public official to move beyond broad generalizations and platitudes. Often as public officials share one story with me they develop into a string of narratives used to discuss their framing of authority and experiences with challenges to authority and mobilization of their own authority.

#### *Narrative Analysis: A Tool of Semi-Grounded Theory*

I enter the field with a semi-grounded theory approach. True grounded theory involves scholars engaged in simultaneous data collection and analysis with analytic codes and theory-building inductively emerging from the data (Glaser and Straus 1967). With my semi-grounded theory approach, I enter the field with loose expectations about how social status may influence the exercise of authority. Rather than testing a set of concrete hypothesis I conduct semi-structured interviews requesting stories that focus on the themes I am interested in instead of specific questions or hypothesis. This allows public officials to share what was most obvious to them. It allows me to see what emerges from the broad conversations. Throughout the project I regularly adjust my theory and methods based on the most recent data analysis. I simultaneously collect and analyze data throughout the research process.

This approach did yield interesting results. For a recent project, I entered the field with the expectation that race, ethnicity and gender would be important status categories



that influenced how public officials discussed and exercised their authority. After the first few interviews and stories, I quickly realized that age was an important aspect of status that I had not previously considered. After my first interviews, when age emerged as an important factor in the analysis, I focused on age as well race, ethnicity and gender in the remaining interviews. At the outset of the project age was not a factor under consideration, but early data collection demonstrated that it should be. The semi-grounded research approach allowed for constant development of the method and expectations while in the field and analyzing data.

#### *Narratives as Data*

The use of narratives and stories as data has become widely respected as a social-scientific method (Maynard-Moody and Musheno 2003; Ewick and Silbey 1995, 1998, 2003; Ladson-Billings 2003; Denzin and Lincoln 2003), and for good reason. Stories are a type of narrative that focuses on the movement of plot through the telling of actions. Narratives are especially helpful in revealing the identities of the participants who are sharing them (Patterson and Monroe 1998). Stories demonstrate the ways that identities continually are formed, re-formed and re-enforced. Especially in the cases of officials with conflicting identities, such as public officials with traditionally high official status but traditionally low social status, stories provide insight into how they see their identities forming, reforming and reconciling their disparate identities.

The narratives collected as part of my recent project demonstrated how nuanced are officials' conceptions of authority. Authority is not as simple as enforcing rules without regard to context. The use of authority has multiple, at times conflicting, structures working around it - including the social and official structures. The respondents' narratives often did not focus on social structures as their core concept, but these structures were often revealed in the details and patterns of their narratives.

I make no claim that the narratives represent "objective" descriptions of the interactions that form their basis. Instead, the narratives provide arguably the best measure of the participants' understanding and framing of the experience, and of its cultural and social context (Oberweis and Musheno 2001; Marshall and Rossman 1999). Regardless of how personal or specific a story is the story teller invokes public schemas using shared vocabularies and interpretive guides (Silberstein 1988). Stories are necessarily made public and developed engaging common schemas in language that is shared. Similar to Ewick and Silbey's (1995) argument, the narratives provide details and insights that would be overlooked with traditional social science methods. Collection of narratives from the interview participants provided for the collection of rich details about the institutions in which these experiences took place (Maynard-Moody and Musheno 2003). The stories that people share give insight into the organization of their social life (Maines 1993; Cohen and Rogers 1994). The narratives helped to connect the discussion of particularities and generalities of the social interactions and contexts (Ewick and Silbey 1995). The analysis of narratives provides for a descriptive understanding of how social schemas play out in day-to-day organizational life (Ewick and Silbey 2003).

Narratives may be biased toward the extreme. It is typically the extreme stories that people remember and tell. But, precisely because they remember and tell such stories, those stories likely play a larger role in officials' conceptions and identities. When telling a story an interview subject often does not just relay a series of events, but provides insight into the culture of an organization, profession or household. The person

telling the story lets you in on the norms and unwritten rules that guide the actions in a story. The most interesting and useful stories give you a glimpse of what happens when the structures and norms that guide interactions or events collide, and the interviewee can provide insight into how they handle the collision, even if they are just telling you what happened next or how they handled one particular situation.

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## 6. Queries on Story-based Research

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I am answering your questions by changing the order. I think #4 should be first and #1 to follow, going from the general to the specific. Having rearranged #1 and #4, I also thought that 3 was more general than 2. I also wrote more under some answers than I probably should have or you can use because I had already answered a similar question for other purposes and had the text available. Sorry.

### 4. For what questions and content, conceptual to problem-based, do you employ story-based research and why?

In "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative" (LSR 1995), Patty and I claimed that narrative or story appeared in social science research in

three forms: (1) as the object of inquiry (i.e. how do people construct narratives, what constitutes a narrative) as a sociology *of* narrative; (2) as data telling us about some other social phenomena of interest (i.e. divorces, family conflict, legal encounters, sexuality), narrative as the means of sociology, or sociology *through* narrative; (3) finally, narratives appear as the researchers account of a place, organization, process, people, set of events etc., sociology as narrative.

With this typology, there are no necessarily more or less appropriate topics, questions, content, or problems that are appropriate for narrative or story-based research. However, and this is a big however, if one engages in narrative or story-based research, one is focusing on a particular slice of the phenomena – the actors’ representational processes and/or interpretations of their experiences in whatever setting, institution, event you collect stories about. You can treat stories as empirical facts, but you will need to explain how you verify and validate those accounts. This can be done with a variety of methods – especially when doing fieldwork – through triangulation, verification by multiple participants etc. I do this when I conduct fieldwork.

In some of my previous research, most significantly the work with Patty Ewick that became *The Common Place of Law* and the two papers on narrative, we were not able, nor were we specifically interested in, validating the factual truth of stories. Although we collected data about how many problems people experienced, and what they did about them – a conventional method of assessing legal need, we were primarily interested in capturing citizens interpretive resources and frameworks rather than recording how many times they used or did not use the law. We wanted to know what law meant to them. We determined that by analyzing how they talked about law, when they talked about it, and when they did not but other could have and did. By synthesizing the various interpretive schema (which we produce throughout the book but summarize in chapter 7), we produced a model of how legal schema align with each other creating multiply valenced accounts of law that circulate in popular culture in the US. We used the stories as a means of doing sociology to analyze the representations of law deployed by ordinary citizens.

In sum, I do not think there are particular problems that are ripe for story-based research, but I believe that story based research is more appropriate when you are trying to gain access to actors’ interpretive repertoires and cultural schema, individually or aggregated as a system of signs (which is what we did in CPL).

## **1. Why do story-based research in socio-legal studies?**

Following the remarks above, I can see lots of reasons for doing story-based research in socio-legal studies. First, you can collect and analyze stories to identify, as we did, the circulating schema and representational practices related to law. This is interesting or important to the extent that citizen interpretations of law are relevant to its legitimacy and thus ultimately to its power and durability, ie to constitute a rule of law where people do the law’s bidding without the law exerting its ultimate coercive force. This is the work

that goes by the name of legal culture and consciousness exploring such questions such as : How do Americans live their law? When Americans talk about law, what are they referring to? What does the rule of law mean to ordinary Americans?

Second, you can collect and analyze stories not as a means of gaining access to legal culture and consciousness but to understand what constitutes an acceptable, powerful, legitimate (whatever valence you choose) legal story. This is akin to traditional doctrinal analysis but also includes analyses of testimony (e.g. see Bennett and Feldman, *Constructing Reality in the Courtroom*; also see references in Ewick and Silbey 1995, e.g. Natalie Zemon Davis's work; Carlo Ginzburg).

Doing socio-legal scholarship by collecting stories has a venerable lineage if we recall that in the second chapter of *The Cheyenne Way Culture*, Hoebell and Llewellyn (I believe Llewellyn actually wrote this chapter) described finding the law-stuff of a people by collecting and following stories of trouble, what they called trouble cases. (In some ways, I think, Hoebel and Llewellyn's instruction offered a method for capturing and accessing with Eugen Ehrlich called 'the living law,' that which may not be coincident with the law as enforced by courts (but see recent articles by David Nelken and Marc Hertogh concerned about misuses of Ehrlich). In their classic account of how to study the "law-stuff of a culture," Hoebel and Llewellyn laid out three investigatory paths to mapping "legal culture" or "legal consciousness." The first path was ideological and traced the extant rules of social control for channeling and controlling behavior. In this path, the scholar tries to map the official, formal norms of a society, those rules of right behavior for which individuals—as distinct from the official organs of the community—no longer retain agency or authority to define. This is the traditional task of the legal academic. The second path of legal inquiry "explore[d] the patterns according to which behavior actually occurs." This became the standard model of law and society research for several generations. Finally, Hoebel and Llewellyn urged a third path that looks at "instances of hitch, dispute, grievance, [and] trouble," ;" and inquires "what the trouble was and what was done about it."

My work, and much socio-legal scholarship that is story based, usually follows the third path, although it is obvious that in any complete investigation of legal culture the three paths are intertwined: "[I]t is rare in a . . . group or society that the "'norms'" which are felt or known as the proper ones to control behavior are not made in the image of at least some of the actually prevalent behavior; and it is rare, on the other hand, that [the norms] do not to some extent become active in their turn and aid in patterning behavior further." Norms build up over time with amazing emotional and material power, often attaching moral meanings to what may have originally been accident or convenience. Hoebel and Llewellyn explain that "[i]nstances of hitch and trouble, as both moments of deviation and as grounds for repair, lay bare a community's norms." What was latent is made manifest, and what appeared consensual is the subject of open, explicit contest. By following what, in a different register, Robert Cover and Judith Resnik call jurispotent conflicts, we may be able to trace the threads of legality that compose the rule of law.

Finally, I would be remiss if I did not suggest that you look at a marvelous article by

Erickson and Shearing (in *Culture as Figurative Action*, British Journal of Criminology) where they provide a recipe for how to collect stories in fieldwork and how stories can be analyzed to reveal actors' tacit knowledge and norms. (I will not take the time to repeat all that here - I have gone on too long already - but it is a paper I use in all my research methods classes. I recommend it highly.)

### **3. What, if anything, distinguishes story-based research from other forms of thick inquiry?**

Your question asks about “thick inquiry.” I assume you are referring to the data collection process as distinct from the data reporting that Geertz refers to as “thick description.” Together, the collection and representation is often, not always, called ethnography. Generally, ethnography is concerned with understanding social relations—both the patterned actions and the meaning systems that are constituted through social transactions—by collecting and reflexively analyzing qualitative data. That data is usually collected through fieldwork, “research conducted in natural social settings, in the actual contexts in which people pursue their daily lives. The fieldworker ventures into the worlds of others in order to learn first-hand how they live, how they talk and behave, what captivates and distresses them” (Emerson 2001:1). Ethnography is the written product of the fieldwork and a standard method for those who wish to describe the culture of a group or organization. As the written representation of a culture (or selected aspects of a culture), ethnography “carries quite serious intellectual and moral responsibilities, for the images of others inscribed in writing are most assuredly not neutral. Ethnographic writings can and do inform human conduct and judgment in innumerable ways by pointing to the choices and restrictions that reside at the very heart of social life” (Van Maanen 1988:1). In effect, as Van Maanen writes, “ethnographies join culture and fieldwork...[they] are documents that pose questions at the margins between two cultures. They necessarily decode one culture while recoding it for another” audience (Barthes, 1972).

Having described ethnography and fieldwork as the most common and familiar forms of thick inquiry and description, to answer your question, it is necessary to distinguish story based research, which does not map directly onto fieldwork or ethnography nor is it entirely distinct. From my experience, and the ways in which I teach about doing fieldwork, collecting stories is one mode of gaining access to lived experiences and meaning systems. One can collect stories while conducting participant observation-style fieldwork, but also through an interview only study that collects little or no observational data outside the interview setting. If one is trying to capture the interpretive resources and structures in use in a group (or cultural system), a good probe I frequently use and invite students to use is to say, for example, “Please tell me a story of a time when ...” “Can you tell me a story that illustrate (their last statement or something said earlier)?” Or, similar versions of asking for a story about when such and such happened? I am not sure I see story based research as a particular or unique mode of inquiry but as one of the modes of collecting data whether in the field or in semi-structured interviews.

Stories are valuable forms of data because they are the ways people often make sense of the world, employ vernacular language and symbols, and usually have a particular structure. That language and structure is what story-based research should analyze. Of course not everyone is a good story teller. In my family, it is a running joke that I cannot tell a joke or a story because I leave out critical pieces of information that make the joke work – the logic that is necessary to produce the reversal or inversion that humor usually requires. When one is conducting interviews and collecting stories, people will often not tell a complete or whole story with a full narrative arc, but asking for stories will more likely solicit such information than simply asking for factual information. It is a waste of everyone's time to ask for information in face to face interviews that could be gotten in a survey; and, interviews or surveys are not collections of facts but reports and ought to be analyzed as such – reports. As reports, we are interested in the processes of representation as much as what is represented (which we often cannot validate).

Thus, stories are valuable data if one is trying to access the signs and meaning system that is culture because the narrative structure, when present, usually includes an embedded account of actors' motives, a conflict or disruption that needed repair, as well as an account of why things happened as they did and worked out as they did. This narrative arc provides evidence of actor's tacit norms and expectations – what constitutes a disruption, what is a reasonable or valid motive etc. In this sense, stories are analogous to what Hoebel and Llewellyn called trouble cases – rupture in the fabric of social relations, as I mentioned in answer to question #1).

## **2. What are the defining features of your method or mode of story-based research?**

I very much welcome this question as I am not at all happy about what I see in some (much?) story based research in socio-legal studies and sociology more generally. Much of it does not make explicit the methods of analysis. Sometimes authors claim that they are using grounded theory but here I have two particular objections. One, simply using grounded theory leaves aside one of the most valuable resources in collecting stories: the narrative structure – the arc of conflict, resolution, and moral. Second, too many scholars claiming to use grounded theory conclude their analysis by creating categories of variation, that is, identifying a number of themes that differentiate the stories (or persons) in their data. The themes are too often not synthesized into a structure of variation. That is, the research provides us with some thematic differences but the themes are not theorized in relation to each other and within a larger framework. It is analogous to doing a factor analysis in a large quantitative data set and ending the analysis there. I have identified x factors that appear in this data set. But what do those factors or themes do? How are they related to each other. I rarely see this kind of analysis. Maybe I am being uncharitably harsh, reading too many student papers and listening to too many job talks of qualitative scholars and if so I do apologize.

So, in answer to your question, what I think is the defining feature of my method of story based research is often overlooked by most people who use and cite the work. It is as follows: Patty and I identified three common narratives about legal circulating in popular

culture. These stories have a double structure: each account is organized by what we call dimensions, or in other places can be understood as central features of narrative and sociological analysis (norm, constraint, capacity, time and space); and the three stories constitute variations on those dimensions or variables in a specific fashion: as ideal/normative accounts, a realist account, a critical account. They are not people but a system of signs about law.

So, if you ask what is the defining feature of my method, it is an insistence on the marriage of theory and data analysis and a respect for transparency (as much as possible) in presenting both your data and your analysis. The legitimacy and power of science derives from the aspiration to be transparent – to provide the audience as much access as possible to the information and methods the researcher used to reach her conclusions. Thus, we cannot hide the ball, bury the links between data and conclusion. I guess one could call this a consistent attention to reliability and validity, which may sound funny for an ethnographer who collects stories, but let me try to explain.

I often worry that in the well-founded critique of positivistic behaviorism, narrative and other qualitative scholars have too easily ignored collective and reasonable criteria for reliability and validity. In rejecting a correspondence theory of truth, we have left ourselves open to criticism and rebuke. Thus, although the use of qualitative research methods, including narrative analysis, has grown in recent decades and writing about narrative methods has also proliferated, there has been "no parallel proliferation of studies of the actual process of doing [this] research (Huberman and Miles 2002:x). The cause of this inattention to the process is over-determined, a product of ethnography's own history, the historic ownership of narrative by the humanities, the epistemological debates between different approaches within qualitative methods no less between qualitative and quantitative researchers, as well as the culture and science 'wars' of the post-structural turn in the social sciences. As a consequence, the processes of data collection and analysis, as well as the distinctions and connections between these, are not well understood, especially among non-practitioners. The publication of many new texts and handbooks does not seem to have helped. Often, one observes a general lack of credibility for the results of these kinds of story-telling research. When researchers "spend more pages explaining why they will not deploy particular methods than on describing their own conceptual and analytic moves, they leave behind too few footprints to allow others to judge the utility of the work, and to profit from it" (Huberman and Miles 2002:xi). Thus, it seems important that we begin to unpack the process and make it more transparent. This is as important for the collection of data as for the analysis, which in ethnographic fieldwork, and maybe in story-telling research as well, is always continuous and simultaneous with data collection.

One of the most frequently voiced concerns about story-based and ethnographic research is whether a different observer would have come away from the field, independent of the variations in the voice with which the account may be written, with the same basic account. In other words, how reliable is this description of the social world. In ethnographic research, however, reliability is closely connected and perhaps best understood as a form of validity and I suggest that the same holds true for story-telling

research as well (Hammersley 1992:79). Although these terms are normally reserved for quantitative and positivistic research, I use them to refer to the ability to produce similar data from multiple observers, and to produce consensually agreed upon, corroborated, accounts of a site, person, or process. They can be deployed for story-telling research with some modifications.

In a succinct account of these, Maxwell (1992) for example, proposes five types of validity that offers an advance on the usual discussions of reliability and validity.

(1) Descriptive validity refers to the factual accuracy of an account, that researchers “are not making up or distorting things they saw or heard” (1992:45). This is the basis for all other forms of validity. As Geertz (1973:17) put it, “behavior must be attended to, and with some exactness, because it is through the flow of behavior – or more precisely, social action – that cultural forms find articulation.” This “reportage” (Runciman 1983) refers to specific events and situations, as well as to objects and spaces. As Maxwell (1992:46) says, “no issue of generalizability or representativeness is involved. These are matters on which, in principle, intersubjective agreement could easily be achieved, given appropriate data.” This is the issue of the factual status of stories that I mentioned elsewhere which is relevant for fieldwork and ethnography but may not be relevant for some forms of story-based research.

The second form or level is where all story based research must begin, if it is not derived from fieldwork. (2) Interpretive validity refers to representations of what the described behaviors, events, and objects *mean to the actors observed*, one of the central goals of story based research, as I write elsewhere in this text. Interpretive validity seeks, in one conventional framing, to capture the participants’ perspective, description in emic terms. Interpretive validity “has no real counterpart in quantitative-experimental validity typologies... [It] is inherently a matter of inference from the words and actions of participants in the situations studied... grounded in the language of the people studied, [and] relying as much as possible on their own words and concepts” (Maxwell 1992:48). The goal of interpretation is to describe the actors’ “lay sociology” (Garfinkel 1964) or “theories-in-use” (Argyris and Schoen 1978). This criterion of interpretive validity distinguishes a form of accuracy that lies between the first form, descriptive validity, resting entirely on observable data and the more contestable interpretations of the third, theoretical validity, to which I will turn next. While there is “no in-principle access to data that would unequivocally address threats to [interpretive] validity,” the descriptive accounts serve as warrants, and consensus should be achievable within the relevant community of actors about “how to apply the concepts and terms of the account” (Maxwell 1992:49). The concepts and terms of both descriptive and interpretive validity are, in Geertz’s term, “experience-near,” the local language in use among the actors, although interpretive validity might also involve assessments of the accuracy of informants’ reports. “Accounts of participants’ meanings are never a matter of direct access, but are always constructed by the researcher(s) on the basis of the participants’ accounts and other evidence” (Maxwell 1992:49).

(3) Theoretical validity moves the researcher’s account further from the actors’ behavior, language, meanings, and interpretations to a more abstract account that



proposes to explain what has been observed. “Theoretical validity thus refers to an account’s validity as a theory of some phenomenon” (Maxwell 1992:51). Both the concepts used and the relationships proposed are independently assessed for what is conventionally called construct validity (Bernard 2000:50-51) and inferential or causal validity (Cook and Campbell 1979), although not all theories proposal to explain causes. The key distinction between these types of validity, in this schema, lies in the “presence or absence of agreement within the community of inquirers about the descriptive or interpretive terms used. Any challenge to the meaning of the terms, or appropriateness of their application to a given phenomenon, shifts the validity issues from descriptive or interpretive to theoretical” (Maxwell 1992:52). (4) Generalizability is refers to “the extent to which the particular situation is representative of a wider population” (Hammersley 1992:79). There is, however, a level of analysis issue here concerning generalizability that distinguishes internal from external validity. To what extent were the observed persons and activities representative of that particular group or organization? This “internal generalizability is far more important for most ethnographic researchers than is external generalizability because qualitative researchers rarely make explicit claims about the external generalizability of their accounts.” As Friedson (1975) writes in warranting qualitative research, “there is more to truth or validity than statistical representativeness.” Nonetheless, we need to be careful about the claims made, implicitly and explicitly, for generalizability, internal and external. Narrative researchers normally elide external generalizability by offering the particular case as an example from which to generate typologies and hypotheses rather than test theories. (5) Maxwell offers a final fifth form of evaluative validity, referring here to the normative assessment of that which has been described or explained. This category is perhaps most appropriate for policy studies and are not intrinsically different in qualitative, story based or quantitative studies.

## **7. Legal Archeology and Story Research**

**Stewart Macaulay**

**Law School, University of Wisconsin at Madison**

Musheno :( In a Note to Professors Macaulay and Whitford) Laurie Edelman forwarded a notice of a workshop that you are doing on “Legal Archeology” in which you discuss the importance of stories to teaching and researching appellate cases. I am writing primarily to ask you whether and how you see case research as related to or a form of story research and if so, how? I did notice that you are pushing the notion of “facts” to include transcript and field research related to the original complaints of a case. That intrigues me as many case-oriented scholars who pass through the lecture series at the Center mostly tell the story of published cases and invoke the idea of a case story as illustrative rather than explanatory, empirically or normatively, of a legal rule. It seems like you are pushing for something more than that with “legal archeology”? Here are the questions I put to a number of field-oriented socio-legal scholars as I am gathering voices to add to the workshop we will be giving here at the Center: 1. **Why do story-based research in socio-legal studies?**

Macaulay: One adds to and challenges conventional ideas/theories/ideologies about the rule of law and due process. For example, often you can show that the "facts" of the case are constructed, spun or created by skilled (or sometimes very unskilled) lawyers. Sometimes the party with few assets really cannot pay for fact creation through use of, for example, expert witnesses or extensive discovery, and often this matters.

## **2. What are the defining features of your method or mode of story-based research?**

Macaulay: First, find as complete a transcript of the trial and pretrial stages as you can. Some appellate courts require the parties to summarize the record, and this is one more distortion of the event. Second, attempt to contact the lawyers. Often this is hard because if any time has passed, the lawyers may not remember much about the case, and they may be unwilling to track down their files in storage to refresh their memories. Third, attempt to find the parties and ask them about their experience and the actual outcome of the case. So often appellate opinions are misleading. The case may be remanded for retrial, but one side may just drop it or the parties may reach a settlement. Fourth, read newspapers, histories or other accounts of what was happening in the society at the time of the case. Broader context can matter. Doing research on appellate cases pushes you into history. One of the traps is assuming that the world looked the same in, say, 1965 as it does today. One simple example is the sums claimed and awarded as damages. The value of money changes. I find that my students often fail to see this. Racial attitudes or attitudes about the role of women were very different in the early 1960s than they are today, etc.

## **3. What, if anything, distinguishes story-based research from other forms of thick inquiry?**

Macaulay: If the story is that of litigation or of a campaign to gain new legislation, the very legal institutional nature of the goal affects much of what goes on and how people understand it. If, for example, a plaintiff wins but is awarded very little in damages, his/her story about the case likely is very different than someone talking about, say, discrimination against women in general.

## **4. For what questions and content, conceptual to problem-based, do you employ story-based research and why?**

Macaulay: I would try to employ such research whenever I could get good evidence about the story. But I would also look at quantitative studies as well. I'm all for multiple methods because all methods are flawed (okay, I'll be more cautious -- all methods involve risks of being flawed). I want to answer questions that interest me as a law professor. I do not want to offer an example of the application of any particular research method. Maybe if I were a methodologist in a particular field, I'd want to show off my skill at method X. But I'm not.