

Law, Science, and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning

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I. Brain, Story, and Law Learning

Step back and imagine an internal cosmos: one hundred to two hundred billion cells. More brain cells than stars in the sky. Apex of our evolution. Maker of mind and essence of man. See projected before you its hologram in living red-blue-green: pulsating, glowing, humming, firing. All its forces, fields, and systems in action. Intuiter, analyser, creator, computer, projector. Step into this world: cells, axons, dendrites, synapses, neurotransmitters, atoms, molecules, waves, the spin of the cosmic whirl. Prepotent entity of being. How strange that we so rarely speak of it. Cases, statutes, holdings, policies, studies, research, tenure are continually on our tongues. Yet we teach the brain. The talking (or somnolent) heads on our human seating charts contain brains. A room full of brains! And the professor? The brain-in-charge!

So let us talk a little about that mind-maker brain—not in isolation but in relation to narrative as an essential medium in the making of the legal mind. We will explore such forms of legal narrative as the “master case” (using the legendary nautical horror story *Regina v. Dudley & Stephens*¹) and “cinematic jurisprudence” (using the film *Nuts*) and investigate what brain science and dream research tell us about learning from narrative. Let us turn to a tale of cannibalism at sea.

II. The Case of the Living Dead: A Primal Narrative

July 5, 1885: It is a raging sea. Heaven-reaching waves smashing the hull of the *Mignonette*. In the air the howling of Hell. The yacht takes blow after blow. Not a tempest. It is a cataclysm in the realm of Moby Dick. This vessel is going down. A time of terror. Four figures struggle to escape. The open boat is overboard! It disappears from sight. LOST. Walls of waves and nature’s scream. LOST. Man’s fate. Nature’s law. Only slowly does the storm withdraw. But there it floats—the open boat, with survivors: Thomas

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1. *Regina v. Dudley & Stephens*, L.R. 14 Q.B.D. 273 (1884).

Dudley, Edwin Stephens, and Mr. Brooks, able-bodied seamen from the yacht, and with them seventeen-year-old Richard Parker. Deep in the South Atlantic—they might as well be on the moon! Check your chart—nearly 2,000 miles to the Cape of Good Hope. Marionettes of fate, mariners without a return ticket, God's children so far from home. There they are—the castaways. No water! A handful of turnips. They eat. Now there is no food at all.

Day 1: Nausea. Day 2: The sun beats down. Day 3: Nothing in sight. Day 4: They catch a turtle, which lasts until Day 12. The boat drifts on through the zone of nothing/nowhere. Their brains are drying out. They are hallucinating, seeing islands in the stream. Conjuring up visions of rescue. Hoping for supernatural intervention. They come to and trap a little water in their oilskins. Cut to Day 18. They are not going to make it. Their bodies are withering, and their minds are all but gone. They are dying—so far from home—so far from God—so far from the embracing community of others.

Something must happen. Dudley and Stephens put it to Brooks: "If a ship doesn't come someone must be sacrificed." Brooks replies, "No." Parker, close to death is never consulted. July 24, 1885: Dudley proposes to Stephens and Brooks that they cast lots to select someone for sacrifice. Again Brooks says no. Parker again is not consulted. A terrible night—starving is a horror show. The dawn produces a new day, without hope. A decision is made by Dudley and Stephens. Thomas Dudley offers a prayer, asks for forgiveness, and picks up his knife. He goes to Parker (nearly starved to death), who is far too weak to resist. Dudley pushes back Parker's head and cuts his throat. The blood runs. "Thou Shalt Not . . . !" Thomas Dudley, Edwin Stephens, and Brooks "eat of the body" (starting with the heart). They vampirize Richard Parker's blood.

Four days later no *deus ex machina*—but a miracle. They are still alive, and here comes a ship, the *Moctezuma*. Helped aboard, put to bed for the journey home. Home again, home again.

But the men talk, and Thomas Dudley and Edwin Stephens, who have survived Trial by Nature, now undergo Trial by Law. Imagine the trial. It is Dracula out of Darwin. It is the jury's nightmare. Finally, they return a special verdict containing the facts. In its verdict the jury declares that if Dudley and Stephens had not fed on the body, they would not have survived to be rescued, and that Richard Parker would have in all likelihood died before them. But the jurors cannot decide whether the killing is murder. The case spirals up to the Queen's Bench. Lord Coleridge, C.J. (for the court), austere, reserved, authoritatively authoritarian, rejects the defense's position that the act was justified because the conduct arose out of "necessity." Lord Coleridge states that the law is clear: such a killing is willful murder. The facts do not give rise to a defense of legal justification. It is all quite clear. There is just no line of accepted authority that supports the defense's position. Men have a duty to die. Society requires it. Damn the utilitarians! For the Court, Lord Coleridge concludes it is murder most

foul; the penalty is death.²

There it is, a narrative drama of crime and punishment, a classic master case. LaFave and Scott call it a “famous” case.³ Distinguished British legal scholar A. W. Brian Simpson says that “leading cases are the very stuff of which the common law is made, and no leading case in the common law is better known than that of *Regina v. Dudley and Stephens*.”⁴ Law students who have read it never forget the case; years after graduating, they ask me if I still teach it. I used to assume that the case was so well remembered because of my Socratic touch, my superb hypotheticals, my creative acts of legal analysis, my learned development of the views of Grotius, Puffendorf, Lord Bacon, and Lord Hale as they related to the necessity issue, my familiarity with the McDougal-Lasswell policy paradigm, and, of course, the intellect of my talented students. That the Court’s opinion in *Regina v. Dudley* is hardly an instance of brilliant legal analysis seemed to support my belief.

In fact, Lord Coleridge’s opinion resembles the worst sort of expert testimony. It is all “labels,” bows to minor authorities, irrelevancies, inanities, leaps-in-logic, and it manifests a complete inability to view the facts in the light of law and public policy. Put straight: the opinion is all rigor mortis. Analytically speaking, it is a juridical corpse. My students and I made the headway we did burdened by a third-rate work product. It is now clear, however, that my pedagogical narcissism and my enthusiasm for my students’ endeavors were misleading. Although our intellectual effort was certainly of consequence, I now feel that the critical element in our learning experience was the narrative heart of this classic leading case.

Regina v. Dudley & Stephens is a leading case because it tells a story that is archetypal, fundamental, compelling, and magnetic (in a “physical” sense). The cases that impact most heavily upon us, that most strongly engage our intellectual and creative energies are those that contain a compelling narrative. A large number of these cases are called “famous,” “leading,” or “classic.”⁵

2. In the end the defendants were not executed; they served less than a year in prison.
3. Wayne R. LaFave & Austin W. Scott, Jr., *Criminal Law* 445, 2d ed. (St. Paul, Minn., 1986).
4. A. W. Brian Simpson, *Cannibalism and the Common Law* at ix (Chicago, 1984).
5. Everyone has her or his list of such cases. Mine includes *Painter v. Bannister*, 258 Iowa 1390, 140 N.W.2d 152 (1966) (biological father versus maternal grandparents in the great Iowa gothic custody battle for Mark Painter); *In re Marriage of Carney*, 24 Cal. 3d 725, 157 Cal. Rptr. 383, 598 P.2d 36 (1979) (a child custody case with quadriplegic, nurturing father versus a mother who ceded custody to the father years before the accident that produced his paralysis); *Patzschke v. Patzschke*, 249 Md. 53, 238 A.2d 119 (Md. App. 1968) (a divorce case involving adultery and other family drama); *Pierson v. Post*, 3 Cai R. 175 (N.Y. Sup. Ct. 1805) (the ultimate trespass on the case drama: Does pursuit of the fox through the chase give the hunter a property interest that will sustain a cause of action against an interloper/appropriator? See Aesop’s Fables and Grimm’s Fairy Tales for antecedents); *Ghen v. Rich*, 8 F. 159 (D. Mass. 1881) (customary law, the whale hunt, and property interests: Who owns the whale, the party who killed it or the party who finds it dead on the beach? A classic out of *Moby Dick*); *People v. Caruso*, 246 N.Y. 437, 159 N.E. 390 (1927) (an illiterate laborer, believing a doctor has malpracticed his six-year-old son Giovie to death, flies into an “altered state of consciousness” and kills the doctor. A prototypical case for debating the meaning of premeditation and malice aforethought).

These compelling master cases are remembered. In addition, the factual matrix of these cases keeps alive the memory of the analytical process, the juridical paradigm, and the play of policy arguments. Like *Regina v. Dudley & Stephens* they stay with us. What happens, pedagogically, when we use these master cases? Materials read in conjunction with a master case, in-class and out-of-class discussions related to it, and individual meditations on such a case fall within a resonance field created by the magnetic narrative of the case. Stimulated by the narrative force, we are impelled to do brain/mind work. Around such a case we set up a shimmering field (a brain-systems pattern) in which connections and disjunctions between and among cases, concepts, and community policies are arranged in an organic order that serves as a field containing our experience of understanding. Cases with an inadequate narrative charge do not and cannot produce this neurocortical experience. I use brain science to explain this phenomenon because it is the brain we teach, the brain that learns, and the brain that teaches. But before we turn to matters of brain science, a word about narrative-in-itself, for the narrative packet is what produces the brain arousal and emotive response critical to the learning experience.

We come to story early in life—long before we encounter legal storybooks (casebooks). In the deep of primal childhood, it is “tell me a story, Mommie.” Later on come the picture storybook, the fairytale, the electronic cartoons, children’s videos, children’s television programming, comic books, and the primers of elementary school. In the imperial realm of childhood, back in the territory of Freud,⁶ that great interpreter of everyone’s story, story comes alive. By the age of “four or five, narrative language has become the prime medium of play.”⁷ Story and brain/mind interlock. Imagination and cognition evolve in childhood as we listen, see, tell, imagine, play, and learn. Story prepares us to live; it leads us toward the world of action, interaction, crisis, conflict, harmony, struggle, success, failure, danger, safety, self, other, motive, love, death—the whole bloomin’ tapestry. When we move on through childhood and youth, story becomes fable, folktale, legend, myth, biography, miniseries, novel, movie, and the plots of our own lives. Educated human beings now, we do not ask our mothers to tell us a story; we speak of “narrative,” vaguely knowing what has returned us to such talk. It could not be otherwise, for our dance with story begins in the midst of Freud’s storied amnesia of origins. In fact, story is something we “know” primarily through the preconscious and the unconscious.

From storybook to casebook we follow the neurochemical braid of narrative. Always we get down to cases—to stories—to narrative. We are up to our lives in plot. By the time we enter the mythic realm of law school we come as characters in search of *our* plot. We are looking for the key to *our*

6. Sigmund Freud was, of course, the first scientific student of the relationship between psychological trauma early in the life cycle and resulting mental disorder in adult life. His case histories are memorable narratives. See, e.g., Little Hans and The Ratman, in Sigmund Freud, *Two Case Histories*, 10 Standard Edition of the Complete Psychological Works of Sigmund Freud 3–149, 153–308 (London, 1909).

7. Joseph Chilton Pearce, *Magical Child Matures* 203 n.7 (New York, 1985) (citing Howard Gardner, *The Making of a Storyteller*, *Psychology Today*, March 1982).

text.⁸ We want something to do with our lives; we need a story for our life cycle. We are questers who separate from the quotidian world, fall into the netherworld of professors, cases, briefs, exams, law review, clerking, and then emerge—reborn—degree (shaman's certificate) in hand to tell others the stories of the law. But back to narrative itself.

In truth, narrative opens up a distinctive way of knowing. In earlier times, narrative served as a memory matrix that structured both cognitive and affective knowledge. A reasonably careful reading of Homer's *Iliad*⁹ makes this clear. Homer's story teaches the Greek heroic outlook. He instructs his audience in the codes, conduct (ethical, civic, moral), and spiritual dimensions of a way of life. In addition, his narrative instructs in the emotional realm. Homer's portrayal of Achilles' narcissistic vulnerability and compulsion to rage anticipates the work of late twentieth-century psychoanalysts.¹⁰

Narrative is an imagination-fired pedagogical technology. Exposition tells; it gives us information. But narrative also belongs to a higher pedagogy; it demonstrates as it conveys human wisdom. In the hands of the teacher-scholar, narrative is open to interpretation, speculation, reflection, and analysis. Through intellect and imagination we expand the pedagogical effect of narrative.

Narrative in the classic form has a specific structure. Aristotle contends that a story ought to have a beginning, a middle, and an end.¹¹ Modern masters of narrative structure using more formal language would say the story should move from exposition to development to resolution.¹² They would also say that the story ought to contain a "hook" or plot point somewhere near the end of the exposition. The purpose of the plot point is to spin the story in another direction. The plot point creates tension and conflict and moves the story beyond the exposition. The exposition sets forth information; it gives us the *necessary* facts and introduces us to characters, setting, emotional tone, certain events, and a taste of theme. The plot point initiates the chain of cause and effect and moves the story forward.

Following the exposition is the development (Aristotle's "middle"). The development is replete with thickenings, complications, openings, twists, sidesteps, reversals. Things are not easily predicted. The outcome is in doubt. The protagonist must traverse this liminal dimension of existence, for life cannot be lived on the straight routes of a Baedeker map. The development is the heart of the story, and it instructs us in the way of life.

8. See Joseph Campbell, *Myths to Live By* 3–20 (New York, 1972) (an outstanding guidebook for all).
9. See Homer, *The Iliad*, trans. Robert Fitzgerald (Garden City, N.Y., 1974).
10. The best work on this subject is Heinz Kohut, *The Analysis of the Self* 3–9 (New York, 1971).
11. The classic work on traditional narrative is Aristotle's *Poetics* (trans. S. H. Butcher; New York, 1961).
12. Details on modern narrative structure can be found in Syd Field, *Screenplay: The Foundations of Screenwriting* (New York, 1979) and Richard Walter, *Screenwriting: The Art, Craft, and Business of Film and Television Writing* (New York, 1988).

Finally, the resolution gathers the lines and pulls in the net. It is the literary equivalent of the bottom line. The conflict (and issues) presented in the exposition and development are resolved. After we have said it all, *this* is the way it comes down. Resolution gives us completion, culmination.

Consider now the case method. The cases we use to teach our students legal analysis, reasoning by analogy, “differential diagnosis,” and policy analysis are styled *So-and-so v. So-and-so*. The case-name reveals the primary characters and makes it clear there is a conflict. At the movies it is *Kramer v. Kramer*, *CIA v. FBI*, *space invaders v. earthlings*. The critical element is conflict.

When we move into the body of a case, we encounter the facts. The facts parallel closely the exposition of a narrative. The exposition sets things up, and so do the facts. They tell us who the case players are and what the case is “about.” We get time, place, and critical events. The facts orient us. Then the case moves on. The drive propelling that motion is the Question. It is the jurisprudential plot point. We move next into the court’s analysis. Analysis is the analog of development. Things get complicated. There are twists, turns, surprises, reversals. The juridical outcome (for the student) is in doubt. Who will get the electric chair, the blue ox, the babe in the cradle, the “just award”? Then bang-bam-zap, the threads are deftly or perhaps heavy-handedly brought together. And there it is: “This court holds” Resolution. We have a tight little tale plotted for practical pedagogy.

Christopher Columbus Langdell, Harvard law professor and Daedalus of the case method, was definitely on to something. Langdell thought he had—through case study—created the precondition for making law a “science.” He was wrong about that, but he did leave us the law school casebook—Bible-like in size and weight—a collection of stories. It is narrative professionalized and enshrined as an essential in the birthing of the legal mind. In law school we circle back to the story world of childhood. We continue (as we must) the phylogenetic dance with narrative.

To return to the “master” cannibalism case, why does *Regina v. Dudley & Stephens* serve the instructional purpose so well? The answer is that it locks into critical neuroelectrochemical circuits of the human brain. Although we do not know exactly how this is achieved, we can set forth a useful working hypothesis, beginning with the metaphor of the split brain. Although the right-brain/left-brain model has become well known (though hardly understood), I suggest that the reader not become devotedly wedded to the laterality imagery of the model, for we shall do some revising and amending as we go along.

The split-brain metaphor informs us that the cerebral cortex is made up of two hemispheres united by the corpus callosum¹³ (a bundle of “pathways” that allows communication between the two hemispheres). The right hemisphere of the cortex controls operations on the left side of the body; the left hemisphere, operations on the right. Each hemisphere “houses” its

13. The Diagram Group, *The Brain: A User's Manual* 108–09 (New York, 1982).

own particular form of consciousness.¹⁴ The left hemisphere is specialized in the direction of verbal,¹⁵ logical, analytical, and linear operations. The right hemisphere is relational, synthesizing, holistic, simultaneous, visual, mythic, artistic, creative, and affective.¹⁶

Law school is a left-hemisphere world. We strive mightily to be analytical, logical, and linear, and we are nothing if not word focused. We are Cartesians¹⁷ to the last woman/man. Word is our razor. We are all surgeons of specific aptitude and refined skill. The brain, however, has its own way and its own evolution-determined wisdom. Beneath the level of left hemisphere "Cartesian consciousness," the enchanted loom weaves wonderworlds of alternative thought and imagination. The right hemisphere marches to the orders of a sovereign master—evolution. And in a very real, historical way, left-brain consciousness is but one channel of a 100-channel cable satellite network system. Most of the work of the brain goes on below the level of Cartesian consciousness, within the unconscious zones mapped by Freud and Jung. These non-Cartesian operations take place throughout the totality of the brain, not just in the right hemisphere.

The master case interlocks not only with left hemispheric consciousness but with the consciousness/unconsciousness of right-brain circuits. When we work with a master case more of our brain is "turned on." A master case produces increased neuroelectrical and neurochemical output, which is directed toward whole brain learning. The master-case experience produces not only a "Cartesian" effect but a holistic, affective, synthesizing, creativity-focused brain system response.

The affective aspect is particularly important. In legal education we have a strong bias against emotion. A brain constructed over the span of human evolutionary developmental time "sees" things another way. Affective matters such as life, death, injury, dominance, submission, conflict, loss, survival, separation, attachment, pleasure, pain, love, sex, despair, and joy strongly engage the interest of the human brain. And a master case in the course of its narrative "lights up" the affect-oriented structural and dynamic subsystems of the brain. In addition, a case such as *Regina v. Dudley & Stephens* brings about an alteration in brain chemistry. Centers below the cerebral cortex are stimulated to release increased amounts of the neurotransmitters norepinephrine, epinephrine, and dopamine.¹⁸ These neurotransmitters (the catecholamines) are important in facilitating whole-brain learning. The narrative of a master case may also activate the primitive brain, a system sited deep within the brain that neuroscientist Paul

14. Marilee Zdenek, *The Right-Brain Experience: An Intimate Program to Free the Powers of Your Imagination* 8–24 (New York, 1983).

15. Nancy C. Andreasen, *The Broken Brain: The Biological Revolution in Psychiatry* 112–13 (New York, 1984).

16. Judith Hooper & Dick Teresi, *The Three-Pound Universe* 223 (New York, 1986).

17. René Descartes is, of course, well known for refining "reason" into an intellectual razor. He is considered a major figure in the development of Western philosophy. See René Descartes, *Discourse on Method*, trans. F. E. Sutcliffe (Harmondsworth, England, 1968).

18. Floyd E. Bloom & Arlyne Lazerson, *Brain, Mind and Behavior* 44–45, 216–17, 228, 251, 2d ed. (New York, 1988).

MacLean calls the R-complex or reptilian brain,¹⁹ which houses, structures, and performs operations best described as reptilian (and lower mammalian). It is responsible for complex but prototypical patterns of action.

The R-complex is the repository of ancestral genetic memory, a product of our evolution through the Darwinian muck. It was laid down in lower life forms long before man came into being. The reptilian brain exists to deal with specimen and species protection: fight, flight, food, territory, and reproduction. It is "id" oriented.²⁰ It is run by instinct and is dedicated to survival, which is why the narrative of *Regina v. Dudley & Stephens* galvanizes the R-complex. The narrative hits upon archetypal themes. Without food and water, adrift on the cruel sea, victimized by sun, wind, storm and wave, are four men. It is the fight for life, the fear of death, and the instinct of survival.²¹ In sum, *Regina v. Dudley & Stephens* works neuroelectrochemically. First, it stimulates right-brain circuits.²² Our master case does far more to turn on the whole brain than does the treatise or the case bite (those intellectual shards glued together under such titles as Questions and Notes in casebooks). The master case has far more brain-system impact than the banal narratives of run-of-the-mill cases. *Regina v. Dudley & Stephens* lights up the circuits of the paleo/archetypic R-complex system. Although much more could be said about the way master cases animate brain systems, I move now into the realm of electronic narrative.

III. Steps Toward an Electronic Pedagogy

In the fifteenth century a brilliant German printer, Johann Gutenberg, gave us movable type, a gift that led to the mass production of books of all kinds, which in turn enabled (over time) millions of people to obtain something more than a parochial education. Information travelled the printed lines of the text, and facts and concepts flowed off the page into the brain of the reader. In a sense one mind (that of the author) passed into a multiplicity of other minds (those of readers). Many of the readers acted as "multipliers" because they talked to nonreaders about what the book contained—the word spread. Just think of what happened to collective consciousness!²³

The twentieth century has brought another revolution. Billions of us now live in the midst of an electric ether, in an interlock of energy particles and waves that inhabits all spaces. First, there is television, with MTV (rock), C-SPAN (public affairs), ABC-CBS-NBC (the usual), USA (entertainment), CBN (religion), CNN (news), ESPN (sports), BET (ethnic focus), Bravo (cinema), SIN (Spanish culture & entertainment), the Weather

19. See Richard M. Restak, *The Brain: The Last Frontier* 36 (New York, 1979).

20. "Id" is simply the psychoanalytic equivalent of instinct.

21. See also James Dickey, *Deliverance* (Boston, 1970) (a modern archetypal R-complex narrative).

22. The term "right-brain circuits" relates more to function than to a specific place in the brain. As a leading neuroscientist, Michael Gazzaniga, has suggested, "what is important is not so much where things are located, but that specific brain systems handle specific tasks." Michael S. Gazzaniga, *The Social Brain: Discovering the Networks of the Mind* 58 (New York, 1985).

23. For details, see Marshall McLuhan, *Understanding Media* (New York, 1964).

Channel, Disney (Mickey, etc.), PTL (religion), Nashville (music), Lifetime (medical, lifestyle), A&E (arts, travel, and entertainment), Discovery (comparative cultural experiences), TNT (sports and entertainment), QVC (shopping, education), the Movie Channel, Cinemax (movies), HBO (movies), and more to come. Cable. Dish. Transmitter. Transponder. Signals. Satellites (at least eighty) at 22,300 miles up/down/around the earth. Signals all over—coming at us from outer space—beaming information everywhere. The little blue planet rolls on through space, encapsulated in an “electronic maelstrom”—if it “could be made visible, our earth’s surface would appear as a dense and tightly interwoven network of communications channels, much as the surface of a baseball with its cover torn back.”²⁴

There are spook channels (spy-eyeing secrets), weather birds, NASA systems, Telestar (AT&T), Intersputnik (international), ARABSAT, ECRAN (Soviet), PALPA (Indonesia), Sirio (Italy), Symphonic (France/Germany). Transmissions. Transmissions. Transmissions. Everyone is playing: television, radio, press, telephone, finance, banking, agriculture, education, navigation, medicine, the courts, aviation, weather, entertainment. Every inch of the earth is covered, tuned in. Worldwide links of all kinds—teleconference, electronic mail, computer networks—whatever we can think of. Turn on your radio, the electric-auditory favorite of the developing world. Up-to-the-second news, leader speak, follower speak, politics, car repairs, ice hockey. “World Court rules . . . There she goes—it’s a launch! . . . Belli to represent survivors . . . The World Cup direct to you . . . Pan-Am 103 . . . terrorists . . . device . . . two triggers . . . Supreme Court takes abortion case. . . . Trade War . . . hormones in the beef . . . summit falls apart.” Radio: Plain old radio (AM-FM), reggae radio (Jamaica & Boston), country radio, 24-hour news radio, national public broadcasting, university radio, talk radio, attack radio, fanatic radio, “rational man” radio, rock and roll, easy listening, CB, new age, trucker radio, top 2000 oldies. A sea of signals. Do not forget the telephone. We have conferencing, international dialing, security service, funds transfer, catalog orders, mobile services, porno services, gambling information, call home, call work, call a therapist, dial the Bar Association, call the police, call a lawyer, call the poison center, call suicide prevention, call your broker, dial the FBI, the Secret Service, get the weather, get a plane ticket. Who could live without the little electronic voice projector? Where is our Walt Whitman to sing the media electric? Time/space/distance overcome. Here is there now. There is much more to say—of records, tapes, compact discs, computers, videotext—but enough. The electric has become the planet’s new dimension of existence.

We may have a feel for the electric whirl around us, but what is its significance? Let us begin with Marshall McLuhan and Quentin Fiore:

The medium, or process of our time—electric technology—is reshaping and restructuring patterns of social interdependence and every aspect of our personal life. It is forcing us to reconsider and re-evaluate practically every thought, every action, and every institution formerly taken for granted. Everything is changing—

24. Frederick Williams, *The Communications Revolution* 14, rev. ed. (New York, 1983).

you, your family, your neighborhood, your education, your job, your government, your relations to "the others." And they're changing dramatically.²⁵

It is time for legal education and the greater world of law administration and practice to take the McLuhan message seriously. The law sinks or swims in this electric ocean, for print is now overshadowed by electronic technology: "Only a tiny fraction of all communication takes place through print (the U.S. national average for book purchases is .3 book per year, and this represents an all-time high in Western culture)."²⁶ Print is a Platonic (ideal) technology that is overrated by educators. Yes, it is a technology of importance. But the learning field is wider than the cone of print. We live in a world of speaking, listening, emoting, gesturing, and seeing. What we see on the screens of the electronic media looks much more like the world we know as reality than does the print on a page. The visual task of reading is immeasurably different from the experience of viewing television, film, videocassette, videodisc, or everyday life. Mind/brain work with print is left-brain activity. The neuroelectrochemical focus is narrow. Print work does not engage the brain process modules that film or video calls into action. This reality is not something that the critics of electronic media understand. Film, television, videocassette, and videodisc transmit to the brain a field of frames made up of visual, auditory, tactile, affective, and kinetic signals. Electric technology has created a new sensory environment that dramatically engages the brain.

Our existential environment has been completely restructured by electronic media. In the American home television is turned on approximately six hours per day. Young people spend far more time with television and other electric technology than they do with their parents, their official teachers, and their friends. By age eighteen the average young person will have been exposed to about 20,000 hours of television, radio, records, discs, and films.²⁷ New media produce new minds. The evidence indicates that modern students are "scanners" who search the information field for patterns.²⁸ They do not simply focus on the "bits." Many educators, however, continue to work with virtually nothing but small-unit analysis, deductive left-brain-focused reasoning, and similar operations. This is a partialist pedagogy.²⁹

Modern law students come to us from the world of nontraditional electronic narratives. They are brain/mind/self fabricated within the whirl of the electric realm. They know, more or less, how to work with print. But

25. Marshall McLuhan & Quentin Fiore, *The Medium Is the Message* 8 (New York, 1967).

26. Tony Schwartz, *The Responsive Chord* 6 (Garden City, N.Y., 1973).

27. See Williams, *supra* note 24, at 15.

28. See Schwartz, *supra* note 26, at 110-11.

29. Edward H. Levi's *An Introduction to Legal Reasoning* (Chicago, 1948) is a classic that I revere. It reveals the "logic of the law" in statutory construction, case analysis, and the interpretation of the Constitution. It is our job to teach such texts. I stand, however, with Myres McDougal and the Yale School of Jurisprudence: we must also invent a new curriculum to supplement material that derives from the residues of the old pedagogy. See Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *Yale L.J.* 203 (1943). The traditional Cartesian method must be integrated into a new electronically informed pedagogy.

they are apt to be more intrigued when appropriate printed material (e.g., master cases, high-level exposition, comprehensive theory) is joined with electronic narratives.

Marshall McLuhan argued that participation is an important feature of electronic media. People are taken out of a limited self-surround and projected into new milieus in which they expand their fund of knowledge. In addition, through electronic media people live dramatically, mythically, and experience life in depth.³⁰ My own students are dramatically involved and transcend the plane they occupy when they work with film narratives. When electric images and narrative are combined with print material, the whole brain is switched on, and students are even more productive, imaginative, conceptually sophisticated, and operationally involved. The larger the number of brain systems involved, the higher the quality of the learning.

IV. Of Clinical Education, Higher Learning, and Electronic Narrative

I turn now to a particular example of electric information and its use in educating law students (and ourselves) to demonstrate how electronic narrative stimulates whole-brain learning. Electronic narrative is a total-brain-systems-operations enhancer that provides involvement that print can not duplicate.

Because electronic narrative is our concern, I begin with a film that has significant potential for law school teaching. *Nuts*, directed by Martin Ritt,³¹ is an excellent model because it is an artfully and realistically done film. It is educationally valuable because it can be used in criminal law courses (on

30. See McLuhan & Fiore, *supra* note 25, at 9.

31. Ritt has directed a number of high quality films: *The Front* (starring Woody Allen); *Hud* (with Paul Newman); *Conrack* (with Jon Voight); *Norma Rae* (with Sally Fields); and *Sounder* (with Cicely Tyson).

Besides *Nuts*, other films of interest to law teachers would include *Kramer v. Kramer* (child custody; Dustin Hoffman and Meryl Streep); *Suspect* (criminal case; Cher and Dennis Quaid); *Jagged Edge* (criminal case; woman lawyer (Glenn Close) and client (Jeff Bridges) caught in the web of transference/countertransference); *Wall Street* (insider trading corporate/responsibility, the sociopath and the Big Board, and the young lawyer as co-conspirator; directed by Oliver Stone; Michael Douglas as the corporate raider); *Salvador* (first-rate human rights film, directed by Oliver Stone; James Woods and James Belushi as journalists trapped in a rule-of-force inferno); *All The President's Men* (The Rule of Law under the Nixon administration; excellent film for those who are working in jurisprudence and critical legal studies; Robert Redford and Dustin Hoffman as Woodward and Bernstein); *Scarface* (directed by Brian De Palma; well-acted by Al Pacino; a view of the world of the drug kingpin and the "continuing criminal enterprise" contemplated by 21 U.S.C. 848); *Heaven's Gate* (directed by Michael Cimino; Kris Kristofferson as Harvard-educated law man who seeks to protect immigrant settlers from entrepreneurs who have no respect for the bill-of-rights view of life; outstanding on issues of property, ownership, social rights, due process; the great American social justice film); *In the Matter of Karen Quinlan* (at the interface of law and medicine; good on legal aspects of the right to die); *Who's Life Is It Anyway?* (Richard Dreyfuss as a paralyzed sculptor who battles for his right to privacy and to be left alone to die; excellent for law and medicine); *Inherit the Wind* (directed by Stanley Kramer; superb film dealing with the Scopes Monkey Trial; outstanding courtroom material—a must for litigation skills, constitutional law, and jurisprudence); *Missing* (directed by Costa-Gavras, starring Jack Lemmon and Sissy Spacek; the "disappeared" in Pinochet's Chile; outstanding for human rights courses and jurisprudence).

the competency-to-stand-trial issue), law and psychiatry (expert testimony), clinical education (interviewing and counseling), litigation skills, and jurisprudence. In sum, it is an electronic narrative of broad educational applicability.

Nuts is a brilliantly conceived and executed (mise-en-scène, lighting, photography) jural narrative. It is truly a law story: the client/defendant, the lawyer, the judge, the defendant's parents, and court personnel in action, in crisis, in conflict are the story. It is drama for classroom study. It makes *L.A. Law* look like a Disney oatbran special. Frame by frame *Nuts* is the stuff of action law. It is drama with verisimilitude.

Before our eyes is the filth, the crowding, the graffiti, the raw instincts without defenses—jail as it truly is. Call for court. Women prisoners are herded down a corridor lined with men's cells. The usual obscenities. The women are objects. Down by law. Down by the street. Women at the bottom. Up the steps, into the courtroom. On the wall the sign says, "In God We Trust." In front of the bench, it is "let's make a deal." Prosecutors, public defenders, private counsel, defendants—legal realism in action, on view. So much for the fantasy of neutral principles. John Dewey³² and Paulo Friere³³ take us to school—a functional education in the labyrinth of the authentic. Close-up: The defendant Claudia Draper (Barbra Streisand) and her attorney Clarence Middleton, who speaks: "It's all been arranged Claudia . . . The doctors agree . . . your mother and father agree, it's best if you're in a hospital rather than in a prison."³⁴

In your best interest, little woman. Best to avoid the embarrassment—let's have no publicity. No trial. Be a good girl. Settle down, honey. Let Mr. Middleton work it out. I'm your lawyer. I'm on your side. "But I'm not incompetent," Claudia says. She is having none of it. She is in a rage. He is in her face with his theory of the case. But Claudia is out of control. She hurls herself at him, crushes his glasses and kicks him. She slams Clarence Middleton (\$250 an hour) across the table. Now he is on the floor, papers everywhere.

Aaron Levinsky, legal aid lawyer, stands staring at Middleton. Amazing. He had never known that establishment lawyers were so vulnerable. And he had never seen a woman lose control so quickly. Close-up: Arthur and Rose Kirk, Claudia's parents (stepfather and mother), horrified. Insanity and melee reign. Finally, court officers subdue Claudia and remove her from the courtroom.

The camera shows us Aaron Levinsky—obviously a guy more than a little burned out (40+)—starting to leave the courtroom. "Levinsky where are you going?" It is Judge Box. "Your honor, I have another appearance." Grinning, Judge Box: "But I've caught you." Judge Box is the paragon of

32. Dewey is the great American philosopher of the functional approach to education. See, e.g., John Dewey, *Experience and Education* (New York, 1938).
33. Friere is a brilliant Brazilian critical thinker and educator. See Paulo Friere, *Pedagogy of the Oppressed* (New York, 1970), and *Education for Critical Consciousness* (New York, 1973).
34. The dialogue comes from the author's notes, which are based on multiple viewings of *Nuts*. The reconstruction of the narrative line is much condensed.

efficiency. He is going to keep things moving. The good traffic cop. Judge Box, "For the record, Mr. Middleton withdraws, and Mr. Levinsky is appointed for the defense." Levinsky asks, "What's the original charge?" "Manslaughter," says the prosecutor Franklin MacMillan. "The original charge is not the issue," says Judge Box. "Psychiatrist's report says she's unfit to stand trial. Let's have your motion," he says.

Levinsky ignores the judge, he's leafing through the psychiatric reports on Claudia.

"Let's have the motion. I don't have all day," says Judge Box. Levinsky stares at the judge. Judge Box stares back. It is a struggle of wills. *Les jeux sont faits*. Courtroom western.

Levinsky calmly, "I move to controvert." Judge Box is very, very displeased. Levinsky's position is that Claudia is competent to stand trial and that means a hearing. There goes the schedule. The judge reluctantly grants a continuance so that Aaron Levinsky can confer with the "obviously" mad woman who Mike-Tysoned Clarence Middleton right in all his mannered, sartorial splendor. A nut client and a hard-head legal aid lawyer. In the maw of the system. An electronic narrative of fundamental legal culture conflict—the brain/mind intrigued—action/drama/conflict.

Medium shot: Arthur Kirk, affluent businessman, tries to work on Aaron Levinsky. Why not go along with the psychiatrists' recommendation? The "girl" (she is in her thirties) cannot help it; the "girl" needs help. She clearly is not capable of "participating rationally" in her defense. The poor thing is "nuts." But Levinsky is not buying it. "No" is written all over his body. Aaron Levinsky knows he has a client. He is an advocate even if he is burned out, no matter how overworked and underpaid. He is going to interview that client. He wants to talk to her and see what kind of story she has to tell. Aaron Levinsky takes pride in what he does. He still believes in Earl Warren and Thomas Jefferson.

A series of long shots: The jail hospital. Close-up: Levinsky is repulsed by this architectural relic from the 1800s. Levinsky follows the red line to the psychiatric wing. Modern medicine in a modern setting. The age of psychiatry. Aaron Levinsky meets Dr. Morrison, Claudia's psychiatrist. Levinsky asks the stuffy doctor about Claudia's condition. "Is there going to be a hearing?" asks Dr. Morrison. Aaron says yes. "I'm not sure that it would be ethical to discuss her case," the doctor says, turning away in a calculating matter and strutting down the hall. A prince of this Laingian³⁵ bedlam. A shaman of the rites of thorazine.³⁶ Dr. Morrison, an angel of psychiatry, walks as though he chairs the department at Johns Hopkins.

The camera carries us through the halls of the hospital. A conference room: Levinsky seated. Claudia enters. She has just been unstrapped from her bed in the ward. Levinsky: "My name's Aaron Levinsky. I'm a lawyer. Would you like to discuss your case with me?" Claudia is glaring. Levinsky:

35. R. D. Laing, British psychiatrist, is one of the major figures in libertarian psychiatry and an intelligent chronicler of "madness" realms. See R. D. Laing, *Self and Others*, 2d ed. (Harmondsworth, England, 1969).

36. Thorazine is an antipsychotic drug that has some very negative side affects.

"Look, I don't know if you can follow this, but I gotta go to court tomorrow on your behalf, and tonight I gotta go home on the subway, which, by the way, scares the shit outta me. I'm tired, I feel a little sick, and it's been a long day."

Claudia takes a step forward; the hostile look has been replaced by something else. "I can follow that." Claudia can sense that Aaron is not like the psychiatrists. She is right—his world view has been built from the streets, not from the castle of DSM-III-R.³⁷ He knows that life is more than a little strange, and that losing control does not necessarily mean that a person is psychotic. Levinsky knows that normality is not a steady state. Levinsky has the ability to listen, to suspend judgment, to forget the abecedarian checklist, to establish a transference,³⁸ to be human-in-context with this person.

Not a smooth interview. Claudia slams her hand on the table. "How do I get to stand trial? That's what I want to know." More interview. "Maybe crazy?" wonders Aaron. But she is smart. Levinsky says, "Two psychiatrists say you're incompetent."

"Morrison and Arantes. Arantes can barely speak English, and Morrison's a very weird guy," answers Claudia. Aaron explains, "You'll have to have your own shrink. You'll have to convince him you're not incompetent." Claudia will not go for it. She has had enough shrinks.

"I'm my case. I get up, say my piece, prove I'm competent. I don't want any more quacks running around in my head, asking about my toilet training," says Claudia.

Levinsky listens. He is in the ego state that transactional analysis calls Adult.³⁹ Arthur and Rose Kirk are plugged into Parent. So are doctors Arantes and Morrison. They do not listen. They all want Claudia plugged into Adapted Child. But around them she transmits and receives as Rebellious Child. Levinsky is talking Adult to Adult no matter what she sends out. Levinsky is not playing "top dog" and "bottom dog." She is not a child.

Claudia wants her day in court. Levinsky believes in that. There is common ground. Levinsky focuses on Arthur and Rose. Claudia does not like to talk about them. "They think I'm an embarrassment," she says. Levinsky is trying to determine the context. Furthermore, he is trying to figure out what Claudia could say on the stand to overcome the testimony

37. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 3d ed. rev. (Washington, D.C., 1987). The DSM-III-R is the standard psychiatric diagnostic source book. It is widely used by experts who appear in court and by lawyers who must prepare direct and cross examinations.

38. For a useful counseling-oriented discussion of transference and countertransference, see Harry A. Wilmer, *Practical Jung: Nuts and Bolts of Jungian Psychotherapy* 28–53 (Wilmette, Ill., 1987); Thomas L. Shaffer & James R. Elkins, *Legal Interviewing and Counseling in a Nutshell* 105–17, 2d ed. (St. Paul, Minn., 1987). See also Andrew S. Watson, *Psychiatry for Lawyers* 1–35, rev. ed. (New York, 1978); Reuben Fine, *A History of Psychoanalysis* 517–28 (1979).

39. Transactional analysis is a nonmedical social psychiatry used by professionals and nonprofessionals. See Eric Berne, *What Do You Say After You Say Hello?* 11–27 (New York, 1972) (dealing with ego states and closely related matters).

of the two state psychiatrists. He is trying to think about her moods and understand what could be bringing out the sarcasm, the hostility, and the loss of control. He has to work this out.

Levinsky explains the possible outcomes, "If we win the hearing, you get a trial. If you lose the trial, you could go to jail for twenty-five years." Claudia understands. "I'll take the risk. If I don't, I could end up wearing this nightie until I collect social security." "All right . . . give me some background details," says Aaron. "Fine," she says, "just talk to me and pretend I'm sane." "Okay," says Aaron. Aaron is proving he really is a counselor-at-law. In our mind's eye, on our internal video screen, we compare Aaron to the fatuous, ineffectual Clarence Middleton.

Then the camera creates an incredible flood of proxemic patterns.⁴⁰ Images pile on images within the zone of constitutional privacy. It is a dance of death we see in Claudia's apartment. Allen Green (her client), dressed only in wine-colored jockey briefs, is going through Claudia's underwear drawer. He picks out a pair of black panties. "I'd like to see you in these," he says. "Next week," she says. "I don't want to go home," says Allen. "We had a good time . . . but now you have to go," says Claudia. She starts to dial her next trick (she's been a working girl for three years).

Allen says, "Let's take a nice, sexy bubble bath." (He is into baths.) He is in the bathroom looking for bathsalts.

Claudia politely, "Allen, be a good boy". "Don't give me that whore talk," says Allen. He starts toward her. "I like to bathe girls." It looks like a Mr. Goodbar. Claudia just wants autonomy. But he grabs her. She pulls away and runs away from him. She is headed for the door. He is about fifty, but in good shape—too fast for her. He catches her. Then he smashes his fist against her cheekbone. Dr. Jekyll has become Mr. Hyde. The "client" is a woman batterer. He is full of rage. The nice friendly businessman from Chicago is a psychopath. The camera follows the horror scene from room to room. A mirror breaks. Furniture breaks. Allen is choking Claudia. She slides to the floor. The light goes red, then brown. Claudia reaches out, grasps a large piece of glass and stabs Allen in the throat. It is a straight case of self-defense. But Claudia Draper, uppercrust escort for gratuity, is the only witness for the defense.

The camera pulls us forward into the realm of the law. Claudia dressed as a citizen,⁴¹ not a "psycho," comes into the court through the prisoner's entrance. She is carrying a law book that Levinsky has given her. She has a note pad. On the bench there is a new judge, the very conservative Stanley Murdoch. "All rise . . ." It is a hearing on Claudia's competency to stand trial on a first-degree manslaughter charge. People of the State of New York versus Claudia Draper. It is an adversary proceeding. And the first witness for the state is *her* doctor, Dr. Morrison. The compassionate healer is working for the state.

40. "Proxemic" is an anthropological term that refers to the relationship of human beings in cultural and geographic space.

41. The matter of presentation of a client in court is a subject worthy of a dissertation. Costume, of course, is a critical aspect of story-focused dramatic presentation.

Mr. MacMillan, representing the People: "Your honor, I'd like to call Dr. Herbert Morrison." Witness sworn. Here comes the direct. It is a classic, with visual and auditory verisimilitude. Questions to Doctor Morrison: "What is your current position? Your past experience? Did you do a psychiatric examination of the defendant?" "Yes." "What did it consist of?" "Questions and answers . . . usual flow of a psychiatric interview . . ." "What was the mental condition of defendant?" "Catatonic . . . withdraws . . . uncooperative . . . distrustful . . . a tendency toward inappropriate humor . . . can't participate rationally in her defense . . . dangerous to self and others . . . paranoid. . ." Claudia jumps to her feet: "Define 'dangerous' . . . define 'paranoid.'"

Levinsky pulls her down. "I'm sorry your honor." Camera closeup on Mr. MacMillan. "Define 'paranoid,' Doctor?" (MacMillan is doing his job.) "Patient believes that people are against her." "Can this patient be treated, Doctor?" "Yes . . . yes . . . yes." (Claudia has another outburst. Levinsky gets her under control.) "Do you have an opinion on her competency?" "She can't understand the charge . . . nor can she assist in her own defense." (Ultimate issue testimony.)

Mr. MacMillan is finished. "Thank you, doctor, no further questions," says Judge Murdoch. "Mr. Levinsky!" Medium Shot: Here comes Levinsky, nice suit, good tie, looking like an advocate. Living electronic transcript images. We are about to experience a cross-examination conducted by a lawyer who has honed his skills. "Dr. Morrison, you described the defendant as abusive, hostile, and deeply distrustful." "Yes." "Abusive and distrustful of whom, doctor?" "Well . . . the world in general." "But the world in general was not in the room with her, you were." "And . . . Dr. Arantes," says Morrison. "Doctor, did you ever see the defendant try to injure herself or anyone else?" "No, not personally." "Did you ever hear her threaten to hurt herself or anybody else?" Dr. Morrison sheepishly, "No." "Did *anybody* at the hospital ever see her hurt herself or anybody else or threaten to hurt herself or anybody else?" "There's no notation in the record. But it might not have been reported."

Face to face, person to person, the camera roams. The expressions and the body language tell the story. Doubt is building. Levinsky is turning Morrison. Morrison knows that his logic has sprung a leak. Morrison fights back, "Very clever . . . your legal tricks . . . depriving a girl of proper treatment . . . There is a wider context than the law . . . a bright upperclass girl . . . a homicidal rage." Levinsky objects. The judge puts up his hand to silence Levinsky. He wants to hear more. Judicial discretion: it is a hearing, not a jury trial. Morrison completes his soliloquy. More cross-examination. Dr. Morrison is coming across as overly concerned about Claudia's career as a "prostitute." He is class-biased, a binary thinker (good-bad; yes-no), less scientific than he pretends to be. The doctor has some kind of countertransference to Claudia. He is very involved with his "patient." The doctor steps down.

Mrs. Kirk to the stand for the People. Mother cannot understand it.⁴² Claudia as an adolescent—marijuana, sex, lying—mother has no idea what caused it. She seems confused. To the stand: stepfather, Arthur Kirk, a ramrod kind of guy, take charge, all business. Genus: mainstreamus americanus. “I was her champion, never spanked . . . I even took her to the office with me . . . good values . . . reinforced positively, fifty cents to clean her room . . . even bathed her . . . my child is ill . . . I will do everything to see that she gets better. . . .”

Cut to Aaron Levinsky. Right-brain/left-brain neurotransmitters afire—Levinsky is putting something together. He has been reading Claudia’s psychological test file. The pattern, the connections, the relationships are “locking” together.

MacMillan is finished. It is Aaron’s turn.

“Mr. Kirk, you said that among the many fatherly duties you assumed when Claudia entered your life was bathing her. You did say that, didn’t you?”

Arthur Kirk (looking uncomfortable), “Yes . . .” “How long did you practice that fatherly duty?” “I don’t remember.” “Well, did it stop when she was five or did it continue?”

“What are you suggesting?” asks Kirk. “You’re under oath, Mr. Kirk. Answer the question.” “It didn’t last long. Claudia liked me to do it.” “Do what?” asks Levinsky. Arthur Kirk turns toward Claudia, “It was nothing.” “How old was Claudia when she locked you out of the bathroom?” asks Levinsky. Flashback: Claudia naked in the bathroom, door locked. A fifty-dollar bill slides under the door. “How old Mr. Kirk? six? seven? thirteen? fourteen?” asks Aaron.

Arthur Kirk’s lips move. “I was sixteen,” screams Claudia. Silence muffles the courtroom. Flashback: Allen Green, the “client” in Claudia’s bathroom. Allen Green wanted to give Claudia a bath. Flashback: “Daddy” Kirk and Claudia. Daddy Kirk, “Does this feel good?” Levinsky has worked it out. There was a reason for Claudia’s “attitude.” There was a logic to her distrust. She had a reason to be angry. So much for the myth of the happy family. Now it is the etiology of sexual abuse.⁴³ Family secrets. Mommy Kirk dummied up; Claudia sacrificed for economic security. It is written all over Mommy Kirk’s face. Hearing adjourned.

Cut to interior (courtroom). It is the next day. Claudia is sworn. It is direct examination. “Do you understand the charge?” “Manslaughter.” “Can you define it?” “First-degree manslaughter . . . a class B felony.” “Have you conferred with counsel?” “Several times.” “Did you give me all the facts and details constituting your defense to the indictment?” “Yes.” “Can you explain the legal concept of justifiable force?” “If someone is beating your brains through the back of your head, you’re allowed to stop them any way you can.”

42. For some outstanding material on parents’ failure to see reality in relation to their children, see Alice Miller, *Thou Shalt Not Be Aware: Society’s Betrayal of the Child* (New York, 1984).

43. See generally Louise Armstrong, *The Home Front: Notes From the Family War Zone* (New York, 1983).

Cut to Judge Murdoch, who is almost smiling. "Claudia, can you tell us about the 730 process?" asks Levinsky. "If I lose today, I'm gone for a year. Sixty days before the year is up, the hospital can ask to keep me. If I lose again, I'm gone for another year. From then on, they can apply to hold me every two years until two-thirds of the maximum sentence is served. It works out to be sixteen, seventeen years. But there's more. If they do it right, those clowns can lock me up in a hospital for the criminally insane forever."

Camera to MacMillan, who jumps to his feet, "The witness is exaggerating." Claudia points at a legal treatise on the table, "Over there . . . the Criminal Law of New York, pages 287 to 298. Look it up." Judge Murdoch, "Mr. MacMillan, that is the statute, as you should know." Levinsky continues his examination of Claudia: "How long was Dr. Arantes' examination?" "Fifteen minutes . . . maybe twenty . . ." "How long did Dr. Morrison examine you?" "Fifty, fifty-five minutes." "Do you believe you're physically and mentally prepared to go on to trial?" "Yes, I do," responds Claudia, looking "solid" as a witness.

Mr. MacMillan stages a Hector-at-the bridge effort. He goes after Claudia on cross-examination. But it is just the truth: this is a competent client. She is entitled to her day in court. She is going to get it. The system can work as long as advocates exist, clients do their best, and judges are people of learning and good conscience. The judge rules for Claudia Draper. It is an Aristotelean resolution. The madwoman is not mad. Epilogue—white on black screen:

Claudia Draper, tried on the charge of manslaughter in the first-degree—acquitted. Dr. Herbert Morrison resigned from the staff of the prison hospital and is appointed commissioner of mental hygiene for the state of New York.

The End

Nuts can be used to instruct students on a number of important clinical and jurisprudential matters. I begin with a consideration of Claudia's lawyer and then take up matters of policy and philosophy.⁴⁴ The case portrayed in *Nuts* demonstrates graphically how conversation and narrative (story) are critical to the lawyer's understanding of the client.⁴⁵ Aaron Levinsky needs to know Claudia's story if he is to effectively represent her. He cannot prepare his trial story if he does not possess the relevant life narrative. Further, if client and lawyer are to have a working relationship that produces positive results, they must engage in an open conversation. If communication channels are jammed or disturbed by affective interfer-

44. In a sense, we begin with Jerome Frank and then move on to Thomas Szasz, Myres McDougal, and Harold Lasswell. Jerome Frank was, of course, the most well-known legal realist and a champion of a trial-court-oriented legal education. See Jerome Frank, *Courts on Trial: Myth and Reality in American Justice* (Princeton, N.J., 1949). Szasz, a psychiatrist, has produced an extensive jurisprudential literature focusing on the relationship between law and psychiatry. Thomas Szasz, *Law, Liberty and Psychiatry* (New York, 1963). See also Lasswell & McDougal, *supra* note 29.

45. Thomas Shaffer and James Elkins give a new perspective on legal interviewing and counseling by relating them to "conversation" and "narrative." Shaffer & Elkins, *supra* note 38, at 22–45 (the manual provides excellent backup material for teaching the wisdom of Aaron Levinsky); James R. Elkins, *On the Emergence of Narrative Jurisprudence: The Humanistic Perspective Finds a New Plan*, 9 *Legal Stud. F.* 123 (1985).

ence, the lawyer will not be able to work with the client to create a true best-interest result. The flow of communications between lawyer and client is a critical subject. All law students (and lawyers) who seek performance competence will find the matter worth studying. *Nuts* promotes understanding of conversation, communication, story, fact gathering, and witness preparation.

Claudia Draper projects herself as an angry, hostile, combative client. In fact, she might be taken as the prototype of the difficult client. When one sees Claudia Draper in action, the words "client control" spring quickly to mind. The basic question seems to be, How can we keep her bolted to her chair so that she will not destroy her own case? If we had to deal with her face-to-face, as does Levinsky, our reaction might well be grand pique or something stronger. Claudia "presents" as a pain in the cervical column.

A class discussion focusing on Claudia-the-client will make it clear that many of us have difficulty identifying with her. In fact, disidentification appears to be a more likely result. And it is exactly at this emotional point that valuable learning can take place. We can help our students to understand that legal problems exist in a dynamic arena than is more than intellectual/cognitive. Claudia, the difficult client, takes the lawyer into an authentic emotional underground.

Claudia's case provides a context within which students can be introduced to the concept of transference. Transference is best defined for law purposes as the emotional response of the client to the lawyer (and others important in her legal drama). Transference covers here-and-now emotional reactions as well as emotional reactions that derive from old psychological business. Reactions rooted in past relationships with important others often impair communication in the present (legal) problem context. Claudia in the earlier phases of the case relates to Aaron Levinsky by baiting him, testing him, complaining about lawyers, covering up important facts and playing "Uproar"⁴⁶ (resorting to emotional outbursts). "Uproar" (and the conflict it embraces) allows Claudia to work off her anger and to hold Levinsky at a distance (psychosexual and psychosocial). But more importantly "Uproar" makes Levinsky's job a series of Herculean labors. Behind the game, however, is a transference configuration that makes it very difficult for Claudia to react positively to men in authority. Claudia's capacity to trust⁴⁷ has been shackled by events that took place in her earlier life. The film makes it clear to us that distrust is from her point of view a rational response. Although Levinsky at the beginning of the case is not aware of what took place between Claudia and her father, the lawyer has learned to listen with what Theodore Reik has called "the third ear."⁴⁸ In conversation, Levinsky uses intuition (right-brain-circuit processes) to discover his client's story.

46. Eric Berne, *Games People Play* 130–31 (New York, 1964). "Uproar" is usually acted out between authoritarian fathers and adolescent daughters. The mother disappears into the backdrop.

47. On the psychology of trust, see Erik H. Erikson, *Identity: Youth and Crisis* 96–97, 103–04 (New York, 1968).

48. See Theodor Reik, *The Search Within: The Inner Experiences of a Psychoanalyst* (New York, 1974); originally published as *Listening With the Third Ear* (New York, 1948).

Claudia expects Aaron to be parental, authoritarian, and controlling, like her stepfather, Allen Green (her client), Clarence Middleton, Dr. Morrison, and Dr. Arantes. But Levinsky's voice is not that of the Authoritarian Parent. Levinsky does business Adult to Adult.⁴⁹ He treats Claudia as an adult woman. He speaks to her rational self. Levinsky does not seek to undercut her autonomy and exclude her from the decision-making process. His existential position is "I'm OK—you're OK." He encourages her participation. In fact, he allows her to experience her own power. Aaron has what I call an "ecological" style. He understands that what is important is person/process/context/system. He knows that a "relationship is a product of double description. . . . the double view is the relationship."⁵⁰ Aaron is a person who makes an effort to see and feel the other's point of view. In fact, he tries to sense, intuit, think, and feel his way into the other person's self.

Furthermore, Aaron Levinsky does not approach Claudia with clinical frigidity. He provides appropriate empathic responses to her words and acts. He neither rejects Claudia's appropriate human needs nor becomes an overly protective parent; rather, he gives her appropriate human-being-to-human-being support.⁵¹ Such an approach promotes rather than impairs the client's self-esteem.⁵² Promotion of client self-esteem helps one to overcome transference situations that disrupt the lawyer-client working alliance.

Aaron Levinsky succeeds with Claudia not only because he has a feel for transference but because he does not develop a working-alliance-impairing countertransference. Levinsky is able to avoid reactions to Claudia that would undercut their relationship. Law students need to explore this art. They need to understand that the counselor's countertransference can severely damage the ability to understand the client's story. Students should be asked why Aaron does not fail with Claudia when Doctors Morrison and Arantes commit communications hara-kiri. Students should be taught to audit themselves for signs of countertransference interference patterns. It is useful to frame a number of questions to use in testing for countertransference:

- Does this client irritate me?
- Does this client—in fact—make me angry?
- Am I too interested in this client?
- Who does this client make me think of?
- Am I acting in or out of character?
- Am I dragging my feet?
- Am I just walking through this?
- Am I forgetting to do things?
- Am I avoiding this client?

49. See Berne, *supra* note 39; see also Berne, *supra* note 46.

50. See Gregory Bateson, *Mind and Nature: A Necessary Unity* 132–33 (New York, 1979).

51. See Heinz Kohut, *The Restoration of the Self* (New York, 1977) (classic work on the empathic approach).

52. See Michael Franz Basch, *Understanding Psychotherapy: The Science Behind the Art* (New York, 1988) (relation between self-esteem and psychological health).

- Am I preaching to the client?
- Am I ordering the client around?
- What is going on in my life that might be affecting my work?
- Am I really doing my job?⁵³

In addition to facilitating learning about interviewing and counseling, *Nuts* extends the student's experience into the realm of law and psychiatry. Competency-to-stand-trial cases that students read in criminal law and in law and psychiatry courses can be related to and critiqued in the light of the hearing on Claudia's competency. The hearing portrayed in the film can also teach students much about the use of psychiatric experts (in all kinds of cases) and how to cope with them. Much of what can be learned from studying the psychiatric expert and lawyers in *Nuts* can be applied to cases involving issues of insanity, extreme emotional disturbance, diminished capacity, child custody, child neglect and abuse, personal injury (proof of psychiatric disorder after trauma), psychic injury resulting from unlawful discrimination, testamentary capacity, civil commitment, witness credibility, contractual capacity, and psychiatric-injury compensation eligibility.

When I teach the concept of competency through electronic narrative, I begin by stressing that competency is a legal and not a psychiatric issue. Incredibly, many lawyers and judges forget—and a great number of psychiatrists and psychologists refuse to accept—this fundamental proposition. Students need to see that competency is a due-process issue bound to the idea of a fair trial in a free society.

Dr. Morrison is a finished prototype of the psychiatrist who does not believe that competency is a legal issue. He holds that it is a matter to be decided by the psychiatrist-shaman. Aaron Levinsky stands for the rule of law. Their conflicting perspectives are revealed when Levinsky cross-examines Morrison. Dr. Morrison decides by diagnosis (psychiatric) and life-style preference. He confuses life style, morality, and attitude toward family with the functional inability to participate rationally in one's defense and to comprehend the charge. Aaron Levinsky emphasizes the defendant's functional role. This, of course, puts the focus where it is supposed to be.

Close study of MacMillan's direct examination of Dr. Morrison is also fruitful. By attending to Dr. Morrison's answers, the student can learn much about how "shaman" psychiatrists perform and can develop an approach to cross-examining them. When we listen carefully to Dr. Morrison, we learn that (1) he has very few facts; (2) his questions have been posed to a noncooperative defendant; (3) there is no reasoning from facts to a psychiatric diagnosis; (4) he offers almost nothing on Claudia's functional capacity to participate; (5) he uses pejorative labelling ("cata-tonic," "paranoid"); (6) his testimony is primarily conclusory; (7) he cannot build a logical bridge from relevant data to the ultimate issue opinion that Claudia is not competent to stand trial.

53. Students should also be invited to develop their own comprehensive set of questions. For suggestions, see Eugene Kennedy, *On Becoming a Counselor* 18–23 (New York, 1988).

Through careful analysis of Dr. Morrison's testimony, students find that Dr. Morrison's clinical examination has produced no data that shed light on Claudia's competency to stand trial. A traditional DSM-III-R-oriented diagnostic evaluation cannot produce quality information useful in determining whether the client is competent to stand trial. Furthermore, when an expert spends so little time in examining a person, it is highly unlikely that the expert will be able to formulate a valid opinion.

Aaron Levinsky surgically exploits the weakness of Dr. Morrison's professional evaluation. He challenges Dr. Morrison's labeling. The doctor has described Claudia as abusive and distrustful. Levinsky challenges the doctor to be specific. He asks for facts, and the doctor does not have them. Dr. Morrison can only answer that Claudia is abusive and distrustful to the world in general. Levinsky presses the doctor for evidence that Claudia tried to injure another person or herself. The doctor has none. There is nothing in the hospital record that suggests that Claudia is a danger to anyone. Levinsky has started to erode the image of Claudia as the Mad Princess. Students should be asked to explain why Levinsky's cross-examination is effective. They should develop their own cross-examination. The teacher might consider role-playing Dr. Morrison and allowing the students to conduct a cross-examination.⁵⁴ Students should be encouraged to question the status of psychiatry as a science by challenging the "objective" scientific validity of clinical examinations and psychological tests, as well as the expert's education and experience. The final truth is that the cross-examination of Dr. Morrison provides the teacher with an excellent opportunity to help students learn how expert opinions can be revealed for the amateur work they often really are.

Claudia's testimony is of a very different logical order from Dr. Morrison's "proof." Students should be asked how one ought to prepare a witness in such a case. They should be asked to imagine Aaron Levinsky's mental processes, for he has clearly given careful thought to how to demonstrate Claudia's competency. Why did he select the specific questions that he used? Classroom discussion will reveal to the students Levinsky's functional reality-focused approach. He concentrates on Claudia's operational role as defendant and shows that she understands the criminal charge. He demonstrates that she has a working relationship with counsel and that she has provided facts related to the charge. He elicits testimony that demonstrates that she understands the applicable defense to the charge. He proves that she understands exactly how the involuntary hospitalization law can operate to keep her institutionalized for the rest of her life. He also uses Claudia's testimony to reinforce his cross-examination by having her testify on defects in the criminal evaluations conducted by Drs. Morrison and Arantes. Step by step Levinsky proves that Claudia can participate rationally in her defense and that she truly does comprehend the legal sanctions.

Let us turn from questions of proof to matters of jurisprudence. Recall that the film ends with the statement that Dr. Morrison has been appointed

54. Many interesting ideas can be found in Jay Ziskin & David Faust, *Coping With Psychiatric and Psychological Testimony*, 4th ed. (Beverly Hills, Calif., 1988).

commissioner of mental health for the state. How could this be possible? How could this man, with his professional and human defects, be placed in such an important public policy position? Students find his appointment troubling because it is clear that Dr. Morrison does not think highly of the rule of law. This quickly leads us into an exploration of the crucial jurisprudential issues raised in Thomas Szasz's *Law, Liberty, and Psychiatry*,⁵⁵ Richard Arens's *Make Mad the Guilty*,⁵⁶ and Richard Arens and Harold D. Lasswell's *In Defense of Public Order*.⁵⁷ Szasz's treatment of liberty, due process, and rule of law in relation to public psychiatry provides a solid basis for an analysis of fundamental philosophical and policy issues. Szasz (a libertarian) and Arens and Lasswell (policy analysts) make a convincing case for the view that traditional public psychiatry cannot be considered an analog of private (for fee) individual psychotherapy. Students begin to distinguish true treatment processes from a sanctions system when they attempt to describe exactly what Dr. Morrison's brand of public psychiatry is existentially and ideologically. Using the law, science, and policy model,⁵⁸ we explore the values of public psychiatry. What are Dr. Morrison's values? What weight does he assign to well-being, respect, skill, enlightenment, wealth, power, affection, and rectitude? What are the values of such healers as Freud, Szasz, Harry Stack Sullivan, Heinz Kohut, Jung, R. D. Laing, and Alice Miller.⁵⁹ What are the preferred values of such jurists as Holmes, Brandeis, Robert Jackson, Jerome Frank, William Rehnquist, Thurgood Marshall, and Aaron Levinsky? How are such values related to the decision-making process and its results in *Nuts*?

But enough! It should be clear that *Nuts* is an electronic narrative that possesses considerable heuristic utility. I now turn again to the field of brain science to explain why electronic narrative of juridical significance stimulates learning.

V. The Triune Learning Process

Electronic narrative is a medium that differs radically from print. Unlike print, electronic narrative turns on all brain channels so that the whole brain is awash in stimuli. The massive impact of electronic narrative results from its interaction with what neuroscientist Paul MacLean calls "the triune brain."⁶⁰ MacLean describes three fundamental systems of the brain as three biological computers. Each biocomputer has its own form of intelligence, its own subjective sense, its own memory, its own sense of space/time. One of these biocomputers, the neomammalian brain, is the site of "higher" cerebral activity (language, logic, Cartesian analytical function). The second

55. See Szasz, *supra* note 44.

56. Richard Arens, *Make Mad the Guilty* (Springfield, Ill., 1969).

57. Richard Arens & Harold D. Lasswell, *In Defense of Public Order: The Emerging Field of Sanction Law* (New York, 1961).

58. See Lasswell & McDougal, *supra* note 29.

59. All are well-known psychotherapists.

60. See Restak, *supra* note 19, at 36. Carolyn Brown, associate editor of this journal, has pointed out to the author that stage drama has analogous perception/learning potential. She is correct. It is definitely true that the action/affect impact of stage drama produces central nervous system results paralleling those produced by electronic narrative.

biocomputer is the limbic (paleomammalian) brain, which is roughly equatable with the limbic system, a brain system dedicated to, among other things, important emotional functions. The third biocomputer, the reptilian brain, is responsible for relatively fixed response patterns aimed at species and specimen (individual) survival.

MacLean's model, along with the work of other neuroscientists, suggests that electronic narrative may activate the triune brain by neurobinding all three biological computers. Electronic narrative gets inside the total human mind/self. It floods all three brain systems. Electronic narrative is the ultimate neuroelectrochemical stimulator. It produces total engagement. The images, action, motion, light, color, sound, emotional expressiveness, human conflict, and dramatic twists and turns coalesce into a particular story with a mesmerizing verisimilitude. When my students view electronic narrative, their consciousness is altered. I would call what happens "triune participatory awareness."

Students learn from electronic narrative because it provides input that approximates life. The brain was designed to deal with the full field of life—the print medium is only an evolutionary nuance.⁶¹ Most learning has always taken place through immersion in the life field, which primarily teaches us about relationships, patterns, systems, affects, and interactions. Electronic narrative provides enormous amounts of information processed independently of verbal systems.

In my discussion of *Regina v. Dudley & Stephens* I dealt with the reptilian brain and its pretuning for survival. We should also consider the limbic brain, whose functions are not fully understood. Schematically represented in side view, the limbic brain sits beneath the neomammalian brain.⁶² Beneath the limbic brain is the reptilian brain. The limbic brain has numerous connections with the sensory and motor systems of the neomammalian brain (neocortex). Information from the sensory and motor systems influences neuroelectrochemical events within the limbic brain.⁶³

Electronic narrative has a strong impact on sensory and motor systems (visual, auditory, kinesthetic) and results in limbic system activity, which "contributes significantly to the learning process."⁶⁴ Electronic narrative affects the limbic circuits neuroelectrochemically to produce very high levels of triune alertness.⁶⁵ Changes in brain chemistry and related electrical impulses create a state of attentive involvement that can produce extraordinary learning. Put another way it is all quite simple: Story in electric form turns up brain power. Electronic narrative simply dials up the limbic "current."

61. Indeed, pictures and images of reality are more easily recalled than words. See Peter Russell, *The Brain Book 177* (New York, 1979). According to neuroscientist Michael S. Gazzaniga, "extensive information processing in the brain [goes] on independent of verbal processes." Gazzaniga, *supra* note 22, at 28.

62. See Carl Sagan, *Dragons of Eden: Speculations on the Evolution of Human Intelligence 56* (New York, 1977) (contains an excellent diagram of the triune brain).

63. See Robert A. McCleary & Robert Y. Moore, *Subcortical Mechanisms of Behavior* (New York, 1965).

64. Barbara Clark, *Growing Up Gifted 22*, 2d ed. (Columbus, Ohio, 1983).

65. Jonathan Winson, *Brain and Psyche: The Biology of the Unconscious 192-93* (New York, 1985).

In addition to its role in the production of participatory awareness, the limbic system plays an important part in creating a sense of self.⁶⁶ It helps us create an individual identity. It builds a bridge between our internal sense of being and the external world. The self is based primarily on a constellation of emotions and images in which our external life experience fuses with the internal processes and images of the limbic brain. In the past, most learning has occurred in relation to the full complex field of outside life. In contrast, electronic narrative—even though it is experienced as outside world—is viewed from inside the self. Because the self is built out of affective experience that follows from exposure to images, electronic narrative anchors itself in the emotional core of the limbic brain. The emotional weaving and bonding of images produces our students' sense of involvement with electric story. The self, rooted in emotion, is compelled to attend by the emotion-charged images that the narrative conveys.

The limbic brain is not only responsible for the sense of self; it also has jurisdiction over a broad range of emotional states.⁶⁷ Again, we find that *Nuts* (and all serious film) is limbic-loaded. *Nuts* deals with the failure of love between parents and child, the breaking of attachment, rage at the fear of loss of autonomy, fear of being victimized physically and psychologically in a mental hospital, empathy, human attachment between the client and lawyer, sexual feelings and activities, and the use of sublimated aggression (assertiveness) by the lawyer in defense of his client. *Nuts*, by confronting the limbic brain with a large quantum of critical emotional material, creates a strong interlocking effect on the viewer. Indeed, when we identify or disidentify with the characters, our responses come in large measure from limbic brain operations. Understanding depends heavily on the motivational mechanism contained in the limbic brain. Without the dynamic drive of the limbic system, little "higher level" learning would take place. It is the self of the limbic brain that keeps the neomammalian brain in business.

In sum, electronic narrative is a potent learning medium because it vigorously stimulates all three biocomputers. The cognitive and creative structures of the neomammalian brain are under intense bombardment, readied for analysis, synthesis, and the production of verbal operations.⁶⁸ Stimulation of the limbic brain introduces a critical affective component into the learning experience. In addition, the programs for species and specimen protection of the R-complex are galvanized into action. Thus, electronic narrative produces a whole-brain learning experience, while for

66. See Restak *supra* note 19, at 52.

67. Neuroscience has much to say about the limbic brain that supports any theory. Researchers have isolated a limbic inclusion called the "amygdala." The amygdala plays an important role in fear, aggression, and gradations of these states. Electrical stimulation of the amygdala can drive animals into a state of terror or rage, as well as less intense but related emotional states. Another limbic brain element, the hypothalamus, can be stimulated to produce sexual arousal and intense feelings of pleasure. Bonding and attachment are also limbic-system-driven emotional conditions. See Marilyn Ferguson, *The Brain Revolution* 57 (New York, 1975). The limbic brain is the central processor that unites emotion and memory. So-called higher brain operations are motivated by limbic emotional output.

68. In a very real sense left-brain operations are primarily "verbal" printouts of preconscious brain/mind operations.

most students print material of the expositional and non-master-case type does not. Master cases do much more to stimulate the triune brain than exposition and nonmaster cases and for this reason share with electronic narrative a high pedagogical valence.

Studies of the night journey we know as dreaming offer further evidence that the triune brain is hard-wired for narrative. Every night each of us enters the realm of the dream for about ninety minutes in all.⁶⁹ Those working in neuroscience call this dream time the "D-state." The D-state occurs about every ninety minutes, and each individual dream period varies in length from approximately five to forty minutes.⁷⁰ The D-state is not initiated by the higher centers of the brain but begins at lower evolutionary brain-system levels.⁷¹ In the D-state, however, modules throughout the whole triune brain are activated. The D-state is not to be confused with what we have traditionally considered to be sleep⁷²; rather, it is physiologically a high arousal state. Laboratory observation indicates the existence of rapid conjugate eye movements, variations in blood pressure, extreme changes in respiration, significant variations in pulse rate, periodic sexual arousal, increased metabolic rate, and high brain temperature.⁷³

If one is awakened during the D-state, the dreamer normally has the ability to recall the contents of the dream. The D-state is evolution's gift to us. It is not learned behavior; rather, the D-state probably developed over evolutionary time as a kind of neurological early-warning system.⁷⁴ During the night the cycle of multiple D-states produces a number of brain-ready states of near-waking consciousness in which the organism is ready to respond to threats from the environment. In addition, to its survival function, the D-state acts to produce a kind of periodic neurologic tuning during the body's sleep periods that insures high-level functioning during consciousness. The D-state may also play an important role in consolidating learning⁷⁵ and in problem solving and creative work.⁷⁶

The dream and its narrative content were studied seriously as early as the second century A.D.⁷⁷ The Greeks, who valued dreams highly, did not talk of "having a dream" but rather of "seeing"⁷⁸ dreams. The narrative content of dreams has for centuries received serious consideration in both Eastern and Western cultures.⁷⁹ Sigmund Freud put the dream on the

69. Gay Gaer Luce & Julius Segal, *Sleep* 191 (New York, 1966).

70. Richard M. Jones, *The New Psychology of Dreaming* 25 (New York, 1970).

71. *Id.*

72. *Id.* at 24.

73. *Id.* at 25.

74. See W. Gerald Drew & John Batt, A Contribution to the Evolutionary Theory of Dreaming: An Hypothesis on the Role of the Pineal in Species and Specimen Protection, 4 *Biological Psychiatry* 131 (1972).

75. J. Allan Hobson, *The Dreaming Brain* 295 (New York, 1988).

76. *Id.* at 295-97.

77. Liam Hudson, *Night Life: The Interpretation of Dreams* 6 (London, 1985).

78. *Id.*

79. Joseph Campbell, *The Mythic Image* 7-12 (Princeton, N.J., 1974).

modern scientific agenda.⁸⁰ Freud understood the narrative nature of the dream. Carl Jung, another dream-studies pioneer, linked dream to myth, folktale, drama, and other narrative forms.⁸¹ Dream story has always played an important role in human life.

In his monumental work, *The Dreaming Brain*,⁸² J. Allan Hobson, professor of psychiatry at Harvard Medical School, reaffirms the relationship between dream and narrative. Hobson's research work with his patients' dreams and his own dreams have led him to conclude that dreams make "narrative sense"⁸³ and have "narrative significance."⁸⁴ About one of his own dreams, Hobson writes:

That my brain, auto-activated during sleep, should cook up such a *story* is not hard to accept or to explain, since all the psychological issues and *conflicts* that are manifest in the dream are enduring, important, and even deep concerns of mine. And with such rich manifest content to work with, why delve deeper?⁸⁵

Hobson's research indicates that the narratives produced during D-state have a very real relationship to the person's waking life. He holds that it is the story itself, not the Freudian latent content, that is important. Because dreams reflect not only instinctual forces but serve imagination and creativity, they are important to the endeavors of science and art: "[T]he brain is actually creative during sleep. New ideas arise and new solutions to old problems may be consciously and unconsciously derived during sleep."⁸⁶ Hobson's research makes it clear that narrative is a "naturally" occurring brain/mind phenomenon. D-state narrative is a creative product of brain systems operations that can play an important role in solving human problems.

The brain modules that produce the internal D-state and dream narrative are the fundamental physical systems that hard wire the brain for narrative. There are variations in how the systems operate in D-state as opposed to other narrative states. When we view electronic narrative, we are experiencing a "waking" dream. The term "waking" should not be taken to indicate a hard line between the internally occurring dream and the externally derived, incoming electronic narrative.⁸⁷ Remember that the D-state is a period of high physiological arousal paralleling in many ways brain/body arousal in the active waking state. D-state, film viewing, and the individual's full-field interactions with "real" life are neurologically closely related. The brain state involved in reading print, however, is very different. Reading and writing do have the advantage of allowing us to "slow things down" and engage in complex and creative intellectual activities. In a neurologic sense, however, the reading state is—comparatively—a state of sensory deprivation. Nevertheless, with some

80. See Sigmund Freud, *The Interpretation of Dreams*, in 4 & 5 *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, ed. James Starchey (London, 1971).

81. See C. G. Jung, *Memories, Dreams, Reflections* (New York, 1965).

82. See Hobson, *supra* note 75.

83. *Id.* at 232.

84. *Id.* at 233.

85. *Id.* at 234.

86. *Id.* at 299.

87. For Hobson, dream narratives are "delightful home movies." *Id.* at 297.

print narrative the reader converts code into images that connect with the narrative modules of the brain. This is why master cases are pedagogically superior to exposition.

To understand the compelling nature of electronic narrative, we need to see the brain as a system that combines a complex technology—camera, editing machine, sound system, projector, and receiver—with an auteur module. The brain takes pictures, edits the visual and auditory images, manipulates sounds, projects images, receives images “created” within and received from without, and authors narrative (deciding the course of action and plot, shaping meaning). Images received from without are edited, recombined, melded with images from within, reworked by the self, and seen from the perspective of the self. Because brain operations and video technology are so much alike, there is every reason for the brain to have an affinity for electronic narrative.

VI. Final Thoughts

The pedagogical power of narrative has been very much underestimated. Master cases do significantly enhance learning, as does electronic narrative. The modern “bite”-oriented casebook does not serve us well; it does not make effective use of narrative materials, nor does it meet the needs of a mind/brain hard-wired for narrative.

Of course, narrative by itself is not enough. We need expository materials. Nevertheless, narrative (especially electronic narrative) is needed to give brain-stimulating life to exposition. Perhaps a useful approach would combine master cases, electronic narrative, high-quality fictional narratives, and carefully selected expository material from the clinical and policy sciences, traditional jurisprudence, and critical legal studies. Future scientific research is likely to demonstrate that narrative material produces levels of brain stimulation that nonnarrative materials cannot equal. Electronic narrative, because of its triune effects, stimulates extraordinary participating awareness and creative production.

Those of us in legal education must turn to brain science, the humanities, learning psychology, and education studies in order to improve our pedagogy. We need to understand that intelligence includes thinking, sensing, intuiting, and feeling. Intelligence is not simply linear and logical operations. We need to turn to modern models of creativity and learn from them. We need to understand the role of the emotional, image-producing and -receiving self in learning and how learning is rooted in brain-systems processes. We need to understand story and conversation. Other disciplines have produced a treasure store of information that we can use to improve our praxis. If we do not begin to build a new pedagogy based on new knowledge, we will become an old and perhaps irrelevant *story*.