Junk Tales: Incorporating Drug Addicts' Narratives in Law School Courses

Sara Schotland
Georgetown University

Follow this and additional works at: https://digitalcommons.wcl.american.edu/clp

Part of the Criminal Law Commons, and the Legal Education Commons

Recommended Citation
Available at: https://digitalcommons.wcl.american.edu/clp/vol4/iss6/4

This Article is brought to you for free and open access by Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Criminal Law Practitioner by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.
JUNK TALES: INCORPORATING DRUG ADDICTS’ NARRATIVES IN LAW SCHOOL COURSES

Sara Schotland

This essay argues that our criminal law curricula should be enriched and expanded by inclusion of “junk tales”—the stories of junkies that explain the course of their addiction and their interactions with criminal law. The contents of leading criminal law casebooks largely consist of court cases and statutes; narratives about the lived experience of drug addicts are conspicuously absent. This article proposes that both traditional criminal law courses and more specialized courses in regulation of narcotic drugs or “vice crimes” be expanded to include narratives relating the experience of addicted criminals.

I urge the inclusion of “junk tales,” which I define to include both true accounts and realistic fiction, on two principal grounds. These narratives offer readers vicarious identification with the lived experience of addiction—the back stories underlying the individuals’ dependency and involvement in crime, and the impact of the incarceration on the individuals and their families. While true accounts offer authenticity, well-crafted, realistic fiction is equally valuable; fiction packs a wallop and is therefore likely to engage the reader’s empathy.

Second, junk tales enable consideration of key choices in punishing drug addicts. According to the U.S. Department of Justice, 58% of state prisoners and 63% of sentenced jail inmates meet the criteria for drug dependence of abuse, as against approximately 5% of the general population. More female prisoners used drugs in the month before the current offense than men. In New York, 91% of women sentenced to prison for drug crimes are women of color although they make up just 32% of the state’s female population. In a rare moment of bipartisan consensus, Congress passed The First Step Act on December 18, 2018, with the objective of reducing mass incarceration. However, this makes only minimal changes in the regime for punishment of addicts. While the Act does reduce some mandatory sentencing minimums, long periods of default sentences and sentencing enhancements remain.

---

3 Id.
6 Among other reforms, relative to sentencing for drug offenses the new law: (1) reduces a mandatory minimum sentence for second felony drug offenders from twenty years to fifteen years; (2) revises a “three strikes rule” so that individuals with three or more felony convictions including drug offenses face an automatic maximum sentence of twenty-five years instead of life imprisonment; (3) expands the safety valve allowing judges to impose a sentence below the statutory minimum for certain non-violent low-level drug offenders; (4) prevents “stacking” for drug offenses committed with a firearm, so that first-time offenders do not receive the twenty-five year mandatory minimum intended for repeat offenders; (5) retroactively applies the Fair Sentencing Act
Part I of this essay discusses the role of “outsider narratives,” and argues for the inclusion of junk tales in criminal law and vice crime courses. Part II illustrates how junk tales can inform important pending policy issues, including the justification for imposing criminal responsibility and prison sentences on confirmed addicts, the vulnerability of women peripherally involved in drug conspiracies to heavy prison sentences, and the termination of parental rights when women are convicted of drug offenses.

I. VALUE OF OUTSIDER NARRATIVES AND SPECIAL CONTRIBUTION OF PEN WRITING

Junk tales—both true accounts and fiction—usefully supplement criminal law syllabi that ordinarily rely primarily on case law, public policy, and economics materials. Narratives personalize while social science data often generalizes. Addict narratives convey—in a way that statistics cannot—the domination of the addict’s life by the constant demand to feel narcotic need, the psychological effect of incarceration, the impact of loss of family connection, or the struggle for effective treatment and recovery. Nonfiction accounts provide oral histories of individuals who are otherwise anonymous and powerless. They have the obvious benefit of authenticity.

Fictional accounts, as Marijane Camilleri has written, enable the reader to be “a creative participant in the inner experience of the protagonist, gaining intimate knowledge about the protagonist’s history, joys, frustrations, agonies, reasons, and irrationalities.” A primary goal of the law and literature movement is to illustrate the effect of law on subpopulations; fiction has a value in stirring empathy.

Outsider narratives correct a myopic tendency to see the world through middle class lenses and bring to students’ attention the effect of law on “the poor, the undereducated, unrepresented, and the physically, mentally, linguistically, and psychologically disadvantaged.” As Leslie Espinoza has observed, outsider narratives are essential to convey socio-political realities and the impact of oppression in the lives of individuals dominated on the basis of gender or race.

The professor who decides to teach junk tales confronts the question of what type of materials to assign or suggest for term papers or presentations. At least the following may be in play: true accounts/oral histories of addict prisoners; fiction by addict prisoners; fiction by professional authors; documentaries, Hollywood films, or television series (e.g., programs such as The Wire). Another threshold question

---

relates to what types of addiction and abuse to address. I focus my students on narratives related to “hard drug” addiction (such as cocaine, heroin, and OxyContin) given the strength of the addiction and the relationship to incarceration. Professors may assign junk tales as required reading or alternatively propose such narratives as optional topics for written assignments or oral presentations (especially suited for film). Another option is to require or permit submission of original fiction in which students write their own “junk tales.”

A very rich resource is available for incorporating junk tales. PEN America, an umbrella organization that encourages emerging writers to protect free expression, has created a prison writing project. PEN America provides mentors and resources to facilitate writing by prisoners; their web site includes selected essays, short stories, poems, and plays from prisoners whose writing has won awards. I have found that students are very interested in and moved by reading prisoners’ work.

I also assign writings by professional authors who have acknowledged a personal history of addiction. William Burroughs famously says in his classic 1953 novel Junky: The Definitive Text of “Junk”, “[l]ife telescopes down to junk, one fix and looking forward to the next.” Like a bullet, heroin claims its victims regardless of class. “All of a sudden the addict looks in the mirror and does not recognize himself.” In his novel, “Junk” virtually personifies drug addiction: “in the junk-junkie relationship only junk retains human attributes.” Junk in effect has control and agency, taking possession of a “grotesque consumer whose needs and desires have all been replaced by one simple and overpowering bodily need.”

However, prisoner addict narratives differ from Burroughs’s writing in several respects. Most prisoner addict narratives begin with autobiographical detail exposing a dysfunctional upbringing, a parent or parents addicted to alcohol or drugs, physical and/or sexual abuse. Unlike the majority of incarcerated addicts, Burroughs comes from a wealthy background and was not abused as a child. Further, Burroughs’s telling of the addict’s experience comes across as sardonic and witty. In contrast, in prisoners’ addict narratives, often there is a tone of apology and confession, regret for the impact of addiction on one’s parents and children. Poverty runs as a leitmotif; selling drugs promises a profitable livelihood. Female drug users are generally initiated by men and as many become addicted prostitution becomes the only means to pay for their habit. Many

12 See Dorthoy J. Henderson, Drug Abuse and Incarcerated Women, 15 J. Substance Abuse Treatment 579, 581 (1998) (stating that women who use hard drugs are more frequently incarcerated).
14 Id.
15 WILLIAM S. BURROUGHS, JUNKY 19 (50th Anniversary Ed. 2003).
16 Id. at 18–19.
18 Id.
21 See Johnson, supra note 19.
22 See, e.g., Johnson, supra note 19, at 96–106, 195–97; NATASHA DU ROSE, THE GOVERNANCE OF FEMALE DRUG USERS:
narratives read as tales of redemption, often catalyzed by religious engagement.\textsuperscript{23}

While some professors will choose to focus on true accounts, I argue that no literature background is required for a professor who wishes to introduce fiction into the curriculum.\textsuperscript{24} For purposes of criminal law courses, it is the thematic component of a story that is of greatest importance. Moreover, as the \textit{Pen Fiction} entries illustrate, the line between true account and fiction is very tenuous since most addict authors base their narratives on personal experience.

\section*{II. EXAMPLES INCORPORATING JUNK NARRATIVES INTO CRIMINAL LAW CURRICULA}

Below I illustrate how junk tales can enable more informed consideration of drug policy questions related to the criminal responsibility of addicts in general and policy issues related to women addicts. In each case I will offer an illustration from a true account, followed by short fiction.

\subsection*{A. CONSIDERING THE CRIMINAL RESPONSIBILITY OF CONFIRMED ADDICTS}

How should the law address the question of criminal responsibility for addicts? Is the compulsion such that conviction is unjustified? A user of crack cocaine describes what motivated her to steal in Natasha DuRose’s collection of oral histories of female drug users:

\begin{quote}
Yeah, and smoking crack done that. Do you know what I mean? Crack done that. That’s not me. I wouldn’t go and rob someone’s house normal. It controls your life unless you take the control back, which I have done now. It controls you, any which way. It controls what you eat. It controls when you sleep. It controls what you do with your money. Cause all you’re thinking about is crack, crack, crack, crack. It controls everything, every aspect of your life. It controls whether you have a bath in the morning. . . . My sister wouldn’t lend me a tenner. I just smashed the flat up, just switched. I wasn’t like that before, you know what I mean? I was never like that.\textsuperscript{25}
\end{quote}

Courts have routinely held that while the status of being an addict is not punishable,\textsuperscript{26} the conviction of an addict for an offense does not violate the Eighth Amendment’s “cruel and unusual punishment” clause.\textsuperscript{27} For example, in \textit{United States v. Moore}\textsuperscript{28}, a defendant argued that as a result of his long and intense addiction to

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} \textit{Women’s Experience of Drug Policy} 29–36 (Policy Press).
\item \textsuperscript{24} See, e.g., \textit{Johnson}, supra note 19, at 173–74.
\item \textsuperscript{25} DuRose, \textit{supra} note 22, at 187–88.
\item \textsuperscript{26} In \textit{Robinson v. California}, 370 U.S. 660 (1962), the Supreme Court held that drug addiction was a disease and declared unconstitutional a California law that criminalized the mere “status” of being an addict in the absence of any requirement of \textit{actus reus}. The Court held that criminalizing a “disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.” 370 U.S. at 666–67.
\item \textsuperscript{27} See \textit{Powell v. Texas}, 392 U.S. 516, 535 (1968) (ruling an addicted defendant unsuccessfully challenged his conviction for violating a public drunkenness law on the basis that his appearance in public while drunk was essentially involuntary). The Court distinguished Robinson because Powell had committed an act, a behavior “which society has an interest in preventing.” \textit{Id.} at 533.
\item \textsuperscript{28} 486 F.2d 1140 (D.C. Cir. 1973).
\end{itemize}
\end{footnotesize}
heroin, he had lost self-control over its use and thus should be exculpated from a possession charge. Via multiple opinions, the court upheld the conviction on the grounds that the initial choice to use heroin was voluntary and that the choice to possess was difficult but not involuntary.

Addicts’ compulsion to commit drug-related crimes does not give rise to an insanity defense either in those jurisdictions that apply the rule in M’Naghten (requiring that the mental disease render the defendant incapable of distinguishing right from wrong), or in states that follow the Model Penal Code (“MPC”) (requiring a showing that as a result of mental disease the defendant lacks “substantial capacity” to “conform his conduct to the requirements of law”). As the Fifth Circuit stated in declining to apply the MPC to drug addicts, “[t]here is an element of reasoned choice when an addict knowingly acquires and uses drugs; he could instead have participated in an addiction treatment program. A person is not to be excused for offending simply because he wanted to very, very badly.” However, in occasional cases, courts have found that some addicted defendants exhibit atypical “settled insanity” from drug use which renders the defendant incapable of distinguishing right from wrong.

Legal scholarship has addressed the topic whether criminal punishment of addicts is appropriate. Stephen Morse argues that opioid addicts do have a meaningful choice about whether to use: “Almost all addicts have lucid, rational intervals between episodes of use during which they could act on the good reasons to seek help quitting or otherwise take steps to avoid engaging in harmful drug related behavior.” However, as difficult as it is to quit using, drug addicts are not like Parkinson’s patients who will continue to shake even if you threaten to kill them if they don’t stop. Epileptics are found responsible if they get behind the wheel of a car because they know that they can cause an accident if they have a blackout while driving. Morse argues that most addicts are not so mentally disabled that they cannot be criminally responsible, excepting a few who may have developed “settled insanity.” Sentencing judges may apply mitigation, but addicts should not be excused from criminal responsibility. Medical treatment services should be available in the community and possession should be decriminalized.

---

29 See id. at 1144.
30 The decision in Moore also reflects concern that if addiction were recognized as an affirmative defense to possession it could also be recognized as a defense to any crime related to the addict’s need to acquire the drug. Id. at 1206 (Robb, J., concurring).
33 United States v. Lyons, 731 F.2d 243, 245 (1984) (citing Moore, 486 F.2d at 1183 and Bailey v. United States, 386 F.2d 1, 4 (5th Cir. 1967)); see CAL. PENAL CODE § 29.8 (2017) (“In any criminal proceeding in which a plea of not guilty by reason of insanity is entered, this defense shall not be found by the trier of fact solely on the basis of . . . an addiction to, or abuse of, intoxicating substances.”).
37 See Morse, supra note 35.
38 Id.
39 Id.
40 Patrick Murray proposes the creation of a verdict of “not guilty but responsible” because it forces the addict to take responsibility for addiction and obligates him or her to a treatment program but not to prison. Patrick E. Murray, In Need of a Fix: Reforming Criminal Law in Light of a Contemporary Understanding of Drug Addiction, 60 U.C.L.A. L. REV. 1006.
Haley Teget’s “Junk Menagerie” illustrates the constancy of the junkie’s need for heroin. While submitted on the *Pen America* website as fiction, it is autobiographical in that Haley Teget was herself arrested for drug trafficking at age twenty-two in Boise; she is eight years into a twenty-two-year sentence and first eligible for parole in 2020. The story is yet more powerful to students because details such as the identity of her companion can be confirmed through the public record.

In Teget’s story, a junkie describes the road trips she takes with her boyfriend in their ceaseless quest for heroin. The first part of the story is told through the perspective of a first-person narrator, but the reader is engaged by several strategies, including the use of second-person address. Teget compares her craving for a whole lot of heroin to “your” craving for a whole bag of potato chips when you, the reader, are starving. The road trip that she takes with Matt evokes the reader’s own experience with road trips but the trope is altered (in literary terms, defamiliarized) so that we see the incidents of travel in a new way. Their destinations are driven not by social, economic, or touristic interests but solely by drug availability. Charlotte and Matt bribe drivers with booze and drugs; when hitching a ride becomes problematic they take a Greyhound bus because junkies can get high without fear that they or their gear will be searched. The story dramatizes the couple’s inability to manage their consumption. Charlotte is unable to defer a shot she planned to take when they are halfway to Portland; she takes risks in her preparation by letting the heroin boil, by drawing water in a needle from a puddle.

The second part of the story consists of a police report relating that Charlotte and Matt have been arrested in their motel room and taken into custody for selling heroin. The matter of fact detail describing the arrest illustrates bureaucratic indifference. These individuals have no personality or back story because that is irrelevant to their arrest; they are simply itemized and catalogued for the police system.

In the third part of the story, Charlotte is in jail. She describes in graphic detail the process of withdrawal as you vomit and expel from every cavity of your body. There is no help from the prison staff, no medication for relief of symptoms or insomnia.

You don’t sleep, only hallucinate. And the deeper your withdrawal, the worse your cravings—the number one reason you’ve never been able to kick in the first place. You’ve long since stopped

---

1006 (2013). Murray addresses a principal argument against more leniency for addicts, which is the choice to consume. He argues that “the choice to become an addict is often far removed from the criminal behavior, and its connection with the criminal behavior is considerably attenuated. . . . An individual who chooses to use drugs recreationally does not choose to become an addict.” *Id.* at 1032. Mirko Bagaric & Sandeep Gopalan argue that substance abuse should have no effect on the sentencing calculus. A murder victim is dead regardless of whether the shooter was sober or substance impaired. The focus should be on treatment, whether through drug treatment courts or rehabilitation. Mirko Bagaric & Sandeep Gopalan, *A Sober Assessment of the Link Between Substance Abuse and Crime—Eliminating Drug and Alcohol Abuse from the Sentencing Calculus*, 56 Santa Clara L. Rev. 243, 277 (2016).

42 See *id*.
44 See Teget, *supra* note 41.
45 See *id*.
46 See *id*.
47 See *id*.
48 See *id*.
49 See *id*.
50 See *id*.
looking for the high—it’s about the not-getting-sick. The maintain. The stave. All those euphoric highs you experienced in the early days? Welcome to the other side.\textsuperscript{51}

Charlotte hopes in vain for lenient treatment; her prison sentence may extend to ten to fifteen years.\textsuperscript{52} As she struggles with confinement, and the pain of disappointing her mother, she wishes she had died.\textsuperscript{53} And the story ends with Charlotte not knowing who she really is:

I need to remember who I really am. Who will I be when I finally get out? Do I want to change? Who is the real Charlotte? As a heroin junkie, with Matt, who was I? Who am I without heroin, without Matt—who am I alone? Tell me who I am because I’ve lost myself and I just don’t know.\textsuperscript{54}

I ask my students to evaluate this story in terms of the voluntariness issue. Criminal punishment may be justified on the basis that the addict’s decision to consume drugs was voluntary. However, that decision may have occurred during adolescence (as in “Junk Menagerie”). The Supreme Court has ruled that the death penalty and sentences of life without parole are unconstitutional as applied to individuals under eighteen.\textsuperscript{55} Writing for the majority in Miller v. Alabama, Justice Kagan stated:

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.\textsuperscript{56}

“Junk Menagerie” exposes the complexity of the addict’s life and the difficulty of concluding that she is not criminally responsible.\textsuperscript{57} Charlotte has a continuing compulsion to inject heroin that is not controllable but she and her boyfriend connive and conspire to acquire drugs with considerable premeditation.\textsuperscript{58} The couple are capable of executive functioning: they know which substance (even down to the type of alcohol) will appeal to the drivers whom they “hire”; they change from driving themselves to hiring drivers to riding buses to manage risk.\textsuperscript{59} They calculate where to buy and sell heroin by taking into account differences in local sales prices.\textsuperscript{60} Why didn’t Charlotte during a period of lucidity exercise agency and abandon drugs? Teget suggests that the reason for Charlotte’s persistence is the pain of withdrawal.\textsuperscript{61}

Yasmina Katsulis and Kim Blankenship, who have conducted life history interviews

\textsuperscript{51} Id.
\textsuperscript{52} See id.
\textsuperscript{53} See id.
\textsuperscript{54} Id.
\textsuperscript{56} Miller, 567 U.S. at 477..
\textsuperscript{57} See Teget, supra note 41 (noting how “Junk Menagerie” departs from many similar narratives as the narrator does not suggest abuse in her background; and indeed, she has family support at the court hearing and a close relationship with her mother).
\textsuperscript{58} See id.
\textsuperscript{59} See id.
\textsuperscript{60} See id.
\textsuperscript{61} See id.
with drug addicted female sex workers, address the question of agency among drug addicts. Their example addict, “Mary,” takes pride in her well-honed strategy for acquiring money to buy drugs. Mary establishes a network of fellow addicts, pooled cash to buy their drugs, and kept some of the profits for herself. Similarly, in Teget’s story, Charlotte and Matt are proud of their cunning and competence. Kat-
sulis and Blankenship observe that the women whom they have interviewed can change their behavior; the process of recovery involves a new self-fashioning where the addict learns to “distinguish between her past (as an addicted, emotionally unhealthy person), and her current or future potential.”

In response to mass incarceration, drug treatment courts were created to offer certain offenders participation in court-supervised treatment as an alternative to incarceration. Where the offender successfully completes the program, charges may be dismissed or a no-time sentence may be entered. Drug treatment courts typically are limited to low-level, non-violent drug offenders, excluding individuals who used a weapon in commission of an offense, were involved in high-level trafficking, or have been convicted of a crime of violence. As a result, the majority of drug offenders are excluded from the purview of drug treatment courts when they are incarcerated.

I invite my students to see that while there is considerable disagreement among legal scholars about the type of sentence that should be imposed when confirmed addicts commit crimes, there is a consensus that addicts need to be treated not merely incarcerated. Unfortunately our prisons do not achieve that objective.

David Lebowitz argues that under the Eighth Amendment there should be a constitutional right to prison-based drug treatment as there is for other diseases; prisons have been required to treat prisoners for numerous illnesses such as lung cancer and diabetes to which the individual contributed through voluntary behavior. Under the doctrine of *Estelle v. Gamble,* Deliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain,” proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors

---

63 See id. at 95.
64 See id. at 96.
65 See Teget, supra note 41.
66 See Katsulis, supra note 62, at 98.
70 See id. at 604–05.
in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action under § 1983.74

Lebowitz contests that because the choice to use drugs is voluntary, self-harm precludes a right to treatment, noting the obligation of prison officials to treat diabetes, hypertension, and lung cancer.75

The National Institute on Drug Abuse recognizes addiction as “an intense and, at times, uncontrollable drug craving, along with compulsive drug seeking and use that persist even in the face of devastating consequences.” The Institute recommends that medications be administered to prisoners along with behavioral therapy, including methadone, buprenorphine, and naltrexone for individuals addicted to heroin or other opioids.76 Yet the Justice Department reports that among inmates who met the DSM-IV criteria for drug dependence or abuse, 28% of prisoners and 22% of jail inmates received drug treatment or participated in a program since admission to the current facility.77

Rhode Island is the only state to screen all inmates in the correctional system for drug abuse and to offer not only drug counseling but methadone, buprenorphine, and naltrexone as part of a comprehensive attack on opioid addiction.78 Moreover, individuals who leave the system walk out with medications and can continue treatment after release thereby reducing the risk of overdose.79 Rikers Island in New York also offers a model methadone program; instances of diversion of methadone for improper use have been rare.80

Providing treatment partially addressed concerns over imposing criminal responsibility on those whose inability to conform their conduct to law is driven by uncontrollable addiction. Treatment offers hope to the addict, serves rehabilitative goals, may reduce recidivism, and may enable those prisoners who are released a better prospect for reintegrating into society.81

B. REFORM OF CONSPIRACY AND SENTENCING LAWS TO ADDRESS PERIPHERALLY INVOLVED “WOMEN OF CIRCUMSTANCE”

As the Sentencing Project has observed, women who are incarcerated for drug offenses are more likely to serve longer sentences than their male partners, even if the male is the more culpable party:

... [S]ince the only means of avoiding a mandatory penalty is generally to cooperate with the prosecution by providing infor-

corresponding figures for jail inmates were 8%, 6%, and 0.9%.

74 Id. 429 U.S. at 104–05.
77 Id. at 6.
78 Id. at 13. Among state prisoners, 10% were placed in a residential facility or unit, 6% received drug-related counseling by a professional, and 0.4% received a maintenance drug.
79 Michael Linden et al., supra note 72, at 253.
80 Id.
81 Id. at 259.
mation on higher-ups in the drug trade, women who have a partner who is a drug seller may be aiding that seller, but have relatively little information to trade in exchange for a more lenient sentence. In contrast, the “boyfriend” drug seller is likely to be in a better position to offer information, and so may receive less prison time for his offense than does the less culpable woman.83

True accounts and case histories illustrate how women become caught up in the drug trade by controlling and often abusive male partners. They further illustrate the draconian sentencing that results from the interplay of mandatory sentencing and conspiracy law.84

Ramona Brant’s case is illustrative. A first time drug offender, she was given a mandatory life sentence without the possibility of parole for conspiracy to possess and distribute heroin.85 Ramona was aware that her abusive husband, the father of their two children, was a drug dealer.86 Although she wasn’t a dealer and never bought or sold drugs, “there were times I would accompany him when he picked up cocaine or I’d help him deliver messages over the phone.”87 When Ramona tried to leave, Donald Barber threatened her or her children.88 When Barber was arrested, Ramona was found legally responsible for the entire amount of drugs sold by Barber, the ring leader, despite her peripheral involvement.89

At sentencing, my lawyer tried to introduce evidence that I had been abused, including police reports, but it wasn’t allowed. It seemed like nobody was concerned that I was in this abusive relationship or that I was always under his control. I felt helpless. The only thing the jury heard was testimony from others who received lesser sentences and they weren’t aware that I was facing a life sentence. I want to believe that had they known this, as well as the abuse I endured, they would have decided differently.90

Even the judge expressed dismay that he was required to impose a life sentence.91

Anna Vanderford’s “Double Time/Borrowed Time/Time’s Up” is a triptych tale that illustrates how a young woman can become embroiled in the drug trade.92 The first section

84 Phyllis Goldfarb, Counting the Drug War’s Female Casualties, 6 J. OF GENDER RACE & JUST. 277, 294 (2002); see Amanda E. Smallhorn, Excusing “Women of Circumstance”: Redefining Conspiracy Law to Hold Culpable Offenders Accountable, 36 QUINNIPAC L. REV. 409, 421 (2018) (discussing the need for “women-only” excuses addressing the reality of coercion by husband).
86 Id. at 2.
87 Id.
88 Id.
89 Id. at 3.
90 Id. at 4.
91 See Smallhorn, supra note 84, at 417 (noting the judge felt the sentence imposed, based on the sentencing guidelines, was “entirely too harsh”).
92 Anna Vanderford, Double Time/Borrowed Time/Time’s Up, PEN AMERICA (Aug. 6, 2018), https://pen.org/double-time-borrowed-time-times-up. According to the web site, Vanderford is a fifty-year-old lifer who has served thirty-one years. Id.
describes how the first person narrator became a drug hustler for her boyfriend; the second part describes the daily routine for a prisoner serving a life sentence; the conclusion tells of the final days of the narrator's friend, a woman who is moved to "the Cage" for execution. In "Double Time," the narrator describes the events that led her to become a criminal. At the age of twelve or thirteen she is seduced by her mother's boyfriend and kicked out of the house when her mother discovers the relationship. The homeless teenager lives off of locating "good trash," and she competes with cats for edible garbage. She encounters a young man who offers the narrator food and a clean place to sleep but she must compensate him by hustling to supply his heroin habit. She becomes his drug "gopher," getting drugs for Scott and stretching or re-selling the drugs as needed. Eventually they are busted; Scott saves himself and lets her take the fall. It does not come as a surprise to the narrator that she shoulders all the blame: "I never really held it against Scott for blaming me when he was interrogated"; "when it comes to being busted it seems it is 'every man for himself.'" It does come as a surprise that without committing murder she is sentenced to life for having committed a felony in the commission of another felony.

Amanda Smallhorn recommends changes in conspiracy law to mitigate the "culpability gap" for "women of circumstance":

By ignoring the context of the domestic relationship during sentencing, the legal system ignores the possibility that a particular woman of circumstance had limited options and was only acting out of fear for her own safety, or the safety of her family. Often times, a woman of circumstance has drug and alcohol addiction problems of her own, has endured physical and sexual abuse, and is dependent upon her abuser, but her overarching need to keep the family together above all else outweighs her own safety concerns.

Under conspiracy law, conspirators are liable for all of the reasonably foreseeable crimes committed by co-conspirators; further, drug conspirators can receive the mandatory minimum sentence for the full amount of drugs charged in the conspiracy regardless of individual culpability. The "woman of circumstance" may not be able to accomplish a withdrawal from a conspiracy that insulates her from her partner's actions especially where his drug business is centered in the home. Smallhorn recommends:

When domestic partners are charged as co-conspirators in a larger conspiracy involving third parties, the jury should be required to find that the less-involved domestic partner was actively initiating and encouraging the criminal scheme, not just acquiescing in isolated acts of aiding and abetting under the influence of the more-involved domestic partner. . . . Excusing a woman of

---

93 Id.
94 Id.
95 Id.
96 Id.
97 Id.
98 Id.
99 Smallhorn, supra note 84, at 428.
100 See Pinkerton v. United States, 328 U.S. 640, 647 (1946); see also the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988) (having the practical effect of holding conspirators to the same level of responsibility as more significant dealers, regardless of individual culpability).
circumstance from the mandatory minimums tied to conspiracy means that the government can only try her for the actual crimes she is alleged to have committed rather than saddling her with the punishments of the entire conspiracy. . . . [T]he streets are no safer with a nonviolent, peripherally involved woman of circumstance behind bars.\textsuperscript{101}

The current parameters of a duress defense require that a woman show that she had a well-grounded belief that she would be subject to “an immediate threat of serious bodily injury.”\textsuperscript{102} Smallhorn proposes that “a woman of circumstance should be allowed to raise a duress defense if she can demonstrate that she would have lost her home, her job, or custody of children because of her dependence upon the principal drug dealer.”\textsuperscript{103} Smallhorn argues that adjusting the duress defense “is not singling out women as the inferior sex” but rather reflecting the particular pressures involved in these relationships.\textsuperscript{104}

The suggestion that women qua women require special legal protection in drug sentencing provokes lively debate in the law school classroom. In effect a “women of circumstance defense,” like a defense based on battered woman syndrome, challenges certain feminist perceptions of gender equality and arguably portrays women as the weaker gender, unable to exercise autonomy. Contra are the realities that an unintended aspect of plea bargaining, and drug sentencing policy is the perverse effect that less culpable parties are sentenced longer.

Moreover, to the extent that women in the drug trade are disproportionately minorities or poor or otherwise marginalized, there may be real power gaps where patriarchal abuse requires reform. As Stephanie Covington writes, where sexism and/or racism are prevalent, terms such as “gender neutral” or “race neutral” obscure gender discrimination.\textsuperscript{105}

I assign Adam Fout’s, “A Beautiful Death,” as a corrective to the assumption that males are inevitably in the driver’s seat in drug crime.\textsuperscript{106} In Fout’s story, an unnamed middle-class young woman is driven to crime to secure the always escalating amount of OxyContin that her body craves.\textsuperscript{107} Family dynamics are important here: the protagonist’s addiction is related to the death of her soldier brother and her mother is also opioid dependent.\textsuperscript{108} The story begins with the protagonist’s belting a male acquaintance with OxyContin so that she can rob him to fund her drug habit.\textsuperscript{109} Tyler is a “beautiful boy” whom she did not mean to kill, but she delivered a knock-out dose that proves fatal.\textsuperscript{110} The young woman then leads another vulnerable student, Dereck, on a desperate search for pills.\textsuperscript{111} When she cannot obtain pills from her preferred pusher, the protagonist leads Dereck to the house of a dangerous drug dealer, known as “The Mountain.”\textsuperscript{112}

Fout provides two endings: in one the girl survives while Dereck dies of an embolism

\textsuperscript{101} Smallhorn, supra note 84, at 440–41.
\textsuperscript{102} Id. at 442.
\textsuperscript{103} Id. at 443.
\textsuperscript{104} Id.
\textsuperscript{105} Stephanie Covington, A Woman’s Journey: Challenges for Female Offenders, in Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities (Jeremy Travis & Michelle Waul 2003).
\textsuperscript{107} Id.
\textsuperscript{108} Id.
\textsuperscript{109} See id.
\textsuperscript{110} See id.
\textsuperscript{111} See id.
\textsuperscript{112} See id.
three days after they go to The Mountain. The young woman does not die until fifteen years later when she contracts cancer associated with OxyContin use. The protagonist and her mother have kicked the habit and they die in a state of grace. In the alternate ending, Dereck leaves the house safely but detectives who arrive at the Mountain’s house find the young woman in the throes of death. Her last word is “beautiful.”

There is much irony to this story; the young woman calls Dereck “idiot” repeatedly but ultimately it is the protagonist who must confront her own lack of rationality driven by her addiction. Fout’s story evokes the well-known passage in which Macbeth famously refers to life as a “tale told by an idiot, full of sound and fury, signifying nothing.” Tyler’s life and the protagonist’s life are meaningless as a result of drug and death by OxyContin is not in any way “beautiful.”

C. EVALUATING REMEDIAL LEGISLATION TERMINATING PARENTAL RIGHTS OF DRUG ADDICTS

Drug addiction can lead to child neglect serious enough to require that the child be removed from the home. Two thirds of women in state prisons are mothers, and while women imprisoned for drug offenses are often portrayed as indifferent to their children’s welfare, prisoners’ narratives reflect that one of the most significant concerns relates to anxiety about the fate of their children. In her first person account, Donna Spearman describes the concern that African American women have when they are separated from their children, who are often raised by grandmothers or relegated to foster homes. Spearman complains that the women prisoners often do not know where their children are for extended periods of time. We are seen as these breeders. We have all these babies, but we’re not prepared to take care of them. We’re not capable of taking care of them. When we go to prison and have to deal with being separated from our children, no matter how good a mother we were, it’s perceived very differently when we start saying, “I want my kids back. I want to be a mother again.” I felt very much like I was on a plantation many times when I was talking in a prison system to my counselors and others about being a mother again and about taking responsibility for my children. I did not see White women having that kind of problem when they wanted to make a phone call or to see about their kids. For us it was, “Well, they’re better off without you, anyway.” More often you heard Black women being told,

113 See id.
114 See id.
115 See id.
116 See id.
117 Id.
118 See Id.
121 According to a Bureau of Justice Statistics study, 64% of women incarcerated in state prisons lived with a minor child in the month before arrest or immediately before incarceration. L. Glaze & L. Maruschak, Parents in Prison and Their Minor Children (2010), https://www.bjs.gov/content/pub/pdf/ppimc.pdf.
122 Covington, supra note 105, at 8.
123 See generally, Johnson, supra note 19.
“Don’t you think you ought to consider adoption, since you have such a long period of time to do?”
White women weren’t told that.124

The question arises under what circumstances parental rights should be reinstated.125 The Adoption & Safe Families Act of 1997 (ASFA) requires a child welfare agency to commence termination of parental rights (TPR) proceedings in cases where children have been in foster care for fifteen out of twenty-two months.126 TPR is a drastic statute that not only ends a parent’s physical custody, but also severs legal ties and the parent’s rights to visit, communicate with, or regain custody of the child.127 ASFA’s stringent timetable is the leading reason for termination of parental rights. A significant omission in ASFA is the lack of a provision exempting parents in prisons from the stringent time line or addressing those in residential treatment programs. Given long drug sen-
tences parents may not have completed their prison sentences or achieved sobriety prior to deadlines imposed under ASFA. Allison Korn offers several recommendations for reform, including altering the stringent requirement of reunification within fifteen months where substance treatment is under way, as well as allowing some leeway for occasional relapse as part of the recovery process.128

Madison Bell’s “Customs of the Country” presents an excellent vehicle for considering the termination of parental rights.129 The story is told from the perspective of an unnamed mother, as first person narrator, who has lost custody of her child.130 The mother has served her sentence, insofar as we know is no longer using, works a steady job as a waitress, and maintains a clean house.131 Initially we sympathize with her desire to reclaim her child who has been placed in the care of a foster family. She blames the injury she caused to Davey, one significant enough that he was hospitalized, on her addiction to Dilaudid; her mind “wasn’t working right just then.”132 Like so many women, she was introduced to the mind altering pills through Davey’s father.133 Davey’s mother broke her son’s leg on a day when she had ingested her last Dilaudid pill and was in throbbing pain.134 Davey has been placed in foster care; the Bakers are responsible and attentive to the child’s needs.135 This is a positive foster care scenario as Davey is well cared for and she can occasionally visit her child; yet the fact that he is so well placed dooms her chances of re-

124 See id. at 219–20.
125 Kerry E. West, Shame, in The Cocaine Chronicles 127–38 (Gary Phillips & Jervey Tvalon eds. 2005) (explaining compelling junk tales about the effect of parental addiction on minor children). In Kerry West’s “Shame,” a twelve-year-old girl is in charge of her two smaller siblings; she keeps them locked in a playpen because her crack-addicted mother is totally unable to cope. In Detrice Jones’s Just Surviving Another Day, a starving teenager tries to get lunch money; far from supporting her, the teenager’s crack-addicted parents steal from her to feed their habit. Detrice Jones, “Just Surviving Another Day”: A Teen’s Struggle, NPR (Apr. 27, 2005), https://www.npr.org/templates/story/story.php?storyId=4621072.
126 Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1998). Exceptions are provided to initiation of termination where the child is in kinship foster care, the state demonstrates a compelling reason why termination is not in the child’s best interest, or the state has been unable to provide services which its own case plan deems necessary for safe return of the child to the home.
128 Korn, supra note 127, at 310.
130 See id.
131 Id. at 40.
132 Id. at 51.
133 Id. at 46.
134 Id. at 51.
135 Id. at 43.

https://digitalcommons.wcl.american.edu/clp/vol4/iss6/4
Washington College of Law Spring 2019 52
gaining custody.136 Right after learning the bad news that she is unlikely to regain custody of Davey, the mother gets into an argument with her employer.137 She drives home in “a poison mood” in which she is “ripe to get killed or kill somebody.”138 Shortly thereafter she goes to her neighbor’s home and beats a man who has been abusing his wife by hitting the abuser over the head with a skillet.139 Perhaps the loud noise made by the husband’s beating of her neighbor next door reactivated the trigger for her injury to Davey; she broke his leg while he was banging loud pots and pans.140 Do we admire her courage or doubt her judgment in failing to notify the police? Is she bravely coming to the defense of another woman in need or does she have an anger management problem that confirms the wisdom of terminating her parental rights?

The termination of parental rights is a vexing problem in drug policy. Children can be victimized while they live in a home where they are abused or neglected; when they are “farmed out” to relatives or foster parents who may be indifferent or incapable of providing adequate care and nurture; when they are unable to visit parents who have been imprisoned in remote locations; and when as a result of long sentences parental rights are terminated. Hope of regaining custody can encourage the rehabilitation of incarcerated women.

CONCLUSION

This essay has offered illustrations of ways in which criminal law instruction can be enhanced by letting students read and hear from true accounts or realistic junk tales. While I have emphasized the incorporation of addict narratives in criminal law and vice crime courses, I also urge that law and literature courses incorporate junk tales, as I do in my own teaching. The goal of this essay is to stimulate discussion about creative approaches to incorporate the lived experience of addicts in course material with a view of stimulating fresh thinking about criminal policy and sentencing reform.
ABOUT THE AUTHOR

Sara Deutch Schotland teaches Law and Literature at Georgetown University Law Center and the University of Maryland Honors College. She is Senior Counsel at Cleary Gottlieb Steen & Hamilton LLP and has authored several articles on criminal law policy.