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Review: *Voices of American Law*. US Supreme Court Cases Meet the 21st Century

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Voices of American Law. US Supreme Court Cases Meet the 21st Century

BY LAUREN COLLINS

Christopher Columbus Langdell, former dean of Harvard Law School, is credited with popularizing the case method of teaching law at the end of the 19th century. One hundred years from now, *Voices of American Law* will be named among the initiatives that brought the case method into the 21st century and extended the relevance of this learning tool beyond legal education into legal practice.

At various times in history, teaching the law through the analysis of legal opinions has been given boundless praise and equal criticism. Once again, the arguments regarding the credibility of the case method have picked up recently as the literature regarding human learning styles increasingly shows that people, especially those brought up in the eras of television, personal computers, and the Internet, learn better when multiple senses are stimulated. Rather than argue about its strengths or weaknesses, a project undertaken at the Duke University School of Law expands upon the case method to bring cases alive in a way that would likely soothe objectors at the same time as it supports the belief that a legal opinion can provide a thorough understanding of the law behind the decision. It's all in the presentation.

Voices of American Law provides innovative educational materials to assist those who study the law in their understanding of the Supreme Court and its role in American society. The project was originally conceived as a way to make the case method easier for international students to grasp, introducing American Constitutional Law in a way that was more accessible to those who were newly exposed to the American legal system. Led by Professor Thomas Metzloff and producer Sarah Wood, the series is made up of 12 20-

minute documentary depictions of critical cases, with five more to be completed in the coming year. Each documentary includes interviews with the parties and lawyers who shaped the case. They tell the stories of the real people behind the Court's opinions, making the cases feel more authentic to students learning the law from their analysis of the cases. They can do the same for practitioners using the precedential value of the cases to shape local law and policy.

Gaining a better understanding of the significance of the Court's decisions.

The *Voices* documentaries, which serve as

an extension of the case method, are meant to "get students ready to understand the significance of court decisions," Metzloff says. Several of the cases that have been examined for the *Voices* project are those that Professor Metzloff has taught for years as a Civil Procedure professor, but the documentaries provide something additional. By learning more about the background of a case, Metzloff says, "I came to understand the legal arguments and how they fit together, and what was actually at stake in the case. I figured that if I'm learning something having taught the case 20 times, there's something to it."

Every day, Thomas Van Orden passed a granite monument carved with the Ten Commandments on the grounds of the Texas State Capitol in Austin. Believing that a religious text on government property violated the First Amendment, he sued the state of Texas to have it removed. Through interviews with the people involved, the documentary explores the history and context of the monument, and the story of Van Orden's journey to the US Supreme Court.



Through the project, students have reported gaining a better understanding of the reasons a lawyer takes a case and the commitment a party makes when she decides to fight for a cause. For example, Casey Dwyer, a recent Duke Law grad, was struck by her interaction with David Baugh, an African-American attorney who defended the right of Barry Black, a Virginia Klansman, to burn crosses in *Virginia v. Black*, 538 U.S. 343 (2003).

"My experience on the project has taught me to keep in mind that every case has at least two, and often times many more, sides," says Dwyer. She has carried this realization into her work with a major law firm. "The video's focus on the human elements of the cases has helped remind me that my work as a lawyer has real consequences on real people's lives." Her work on *Voices* has influenced her decision to make pro bono cases a significant part of her work as an attorney.

Marla Zimmerman, also a recent Duke grad, learned first hand about the level of commitment clients challenging what they deem to be personal rights violations have through her interaction with a teen who challenged school drug testing in *Board of Education v. Earls*, 536 U.S. 822 (2002). The encounter has had an impact on her work. "My experience with the *Voices of American Law* project continues to influence my legal career. As a practicing lawyer, I make it a practice to analyze and discover the story behind a legal dispute. I believe that understanding the personal backgrounds and motivations of those involved in a case is just as important as understanding the legal arguments."

Shortly after work on the series began, Professor Metzloff integrated the documentary about *BMW v. Gore*, 517 U.S. 559 (1996) into his Civil Procedure course. As a test of the impact of the project, half of the class viewed the video while the other half did not and the entire class was quizzed. The results were that those who had viewed the video showed a significantly better understanding of the facts of the case and were less swayed by the persuasive stance that the author of the opinion had taken. This indicates *Voices* enhances students' learning of the practical skill of assessing factual situations and applying the law to them. This is an intended goal of Professor Metzloff who believes that "law school is about lawyering." To this end, *Voices* "[gives students an] inde-



Pharmaceutical company, Pfizer, was at the center of the planned redevelopment in Kelo v. New London, which sparked the city of New London's actions to exercise its power of eminent domain. Above are the modern offices of Pfizer's headquarters. Kelo's home is on the back side.

pendent basis to assess the Court's logic and rationale." What attorney preparing to attack unfavorable law could not benefit from that?

Voices of American Law benefits those in practice, too.

But *Voices* does not only benefit law professors and the students they teach. Practicing attorneys with limited time and large case loads can take advantage of the level of analysis given to key Supreme Court cases through the documentary series. Rather than researching news articles and broadcasts from scratch, in addition to reading briefs and pleadings, attorneys can get a better feel for a case and its players through *Voices*. The documentaries reveal the interaction between the lawyers and clients in the cases, says Metzloff. This is most certainly instructive to members of the practicing bar dealing with similar issues and clients.

Having collected additional, candid information about the case, the documentarians present it in a form that is engaging, both in its content and format. *Voices* responds to the current research that overwhelmingly finds people learn better when multiple senses are stimulated. "Most people learn better when they have multiple sources of information," says Wood. "You read the case and you get something out of that. You see the case, and you get something out of that. Because of the way that people learn, you get something visually that you don't get from reading."

Each *Voices of American Law* documen-

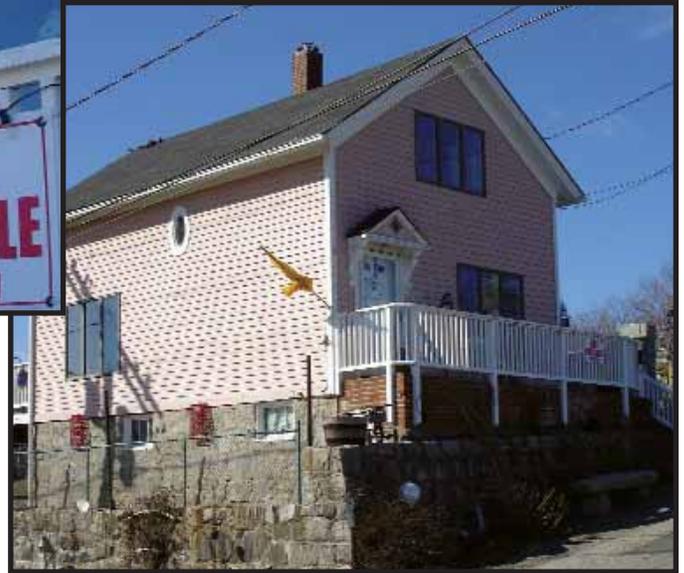
tary includes the litigation and a journey through the events leading up to it as well as personal interviews with many of the people involved. As an added bonus, the *Voices* website, www.voicesofamericanlaw.org, includes various documents from each case including pleadings, transcripts, amicus briefs, news articles, and evidence raised in the cases being explored. Thus, the series presents the case in many dimensions.

Examined cases can be important to state litigation or extend beyond daily practice to the creation of policy change.

Though each clip is about a Supreme Court case examining constitutional and federal law issues, the documentaries are often directly relevant to issues likely to arise even in a practice limited to state law. One such example is the issue of takings and eminent domain, examined through a greater look at the decision in *Kelo v. New London*, 545 U.S. 469 (2005). The decision in *Kelo*, in which the Supreme Court upheld economic development takings of unblighted, residential property as an extension of the idea of "public use," caused immediate reactions in states across the country, including North Carolina. A review of the opinion might make it easy for the practitioner to intuit the logic and legal position of a homeowner afraid of losing her land or a government official wishing to sustain a small municipality, but falls short of helping one fully understand the extent of the emotions



Susette Kelo's home.



involved on either side of the controversy.

Beginning shortly after the Court's ruling, and as recently as August 2007, editorials and news stories expressing concern in North Carolina demonstrate that the issues raised in *Kelo* have consistently remained on the agenda of the citizenry and state and local governments beyond the boundaries of New London. A call for legislation protecting North Carolina citizens from eminent domain abuse was made after *Kelo* was decided and news accounts that the General Assembly planned to consider the issue were reported in September of 2005, just months after the Supreme Court released its opinion. Thus, litigation on this issue may be ahead of some North Carolina practitioners, giving rise to a need for better understanding of the Court's decision.

Though the reader knows from the opinion that the city had been declared a "distressed municipality" under state guidelines, mightn't it mean more to a practitioner representing a similar client to know that the city of New London is only one mile by six and was fully developed before the economic development plan considered by the Supreme Court was presented? The opinion clearly points out that increased tax revenue was a goal of the plan but fails to include the fact that property tax was the prime method of raising funds for municipality functions and, before the plan, 56% of the land base in the city was non-taxable.

For one representing a property owner, an attorney may wish to understand the life factors that make one staunchly stand up for her

right to retain her property. Perhaps it makes a difference in asking yourself whether you would have taken Susette

Kelo's case to know that she was recently divorced, returning to the town where she grew up, and that the house she fought so fervently to save was one that she watched sit empty for more than two years before she was able to purchase it and fix it up as her own. One might care to know that Kelo's other neighbors who decided to fight for their homes were older, in their 70s and 80s, and depended on Kelo, as the younger and stronger resident, to help them wage their fight. It might also matter that Kelo was present when one of her neighbors was physically removed from his home, which had been condemned and was subsequently torn down. From her account, one might imagine the responsibility she felt and recall it when a client facing a similar challenge walks through the door.

For those who became lawyers to change the world, consider documentaries about one of the many cases that, according to Wood, were specifically selected to provide insight into the use of litigation to affect policy. These have been cases that involved prominent institutions like the University of Michigan in *Grutter v. Bollinger*, 539 U.S. 982 (2003), and significant legal interest groups like the ACLU in *Earls*. The documentaries study the means by which these institutions position themselves to challenge and change law. No matter

the incentive for sustaining a legal career, *Voices* has a case that will be relevant to one's goals and practice.

The reason that students have as much to gain from the *Voices of American Law* series is clear for Metzloff:

Even the most ardent supporters of the case method recognize that after many months (or years) of the same type of analysis, students can easily become bored or angry with the case method. If the power of the case method can be extended so that the richness of actual disputes can be explored more fully, certainly that is a worthy goal. Documentaries on the "master cases" offer that possibility.

This idea is easily extended to the practicing attorney. It is not a stretch to imagine that practitioners, having studied cases over many years, can become frustrated with the traditional review of case law and are able to benefit from more information and detail to help them understand, embrace, and use legal opinions as precedent in their arguments. That frustration is no longer an obstacle, at least with regard to the 17 pivotal US Supreme Court cases that can now be studied in vivid detail through the *Voices of American Law* series. ■

CONTINUED ON PAGE 38

me often, and now she is thoroughly used to large crowds of people. So far, she has visited seven courthouses.

What do you feed her?

I give her a varied diet: mice, squirrel, rabbit, chicken necks, dove breasts, goose meat, pheasant, and venison are among the meats she enjoys. The meat doesn't have to be live, but it must be fresh. I keep a freezer full of dead critters and thaw them out one at a time. Now that she's actively hunting, she gets to eat the squirrels she catches. I have to be careful not to let her eat too much or else her weight balloons to the point that she won't respond to me and I can't fly her. With a full craw, she would likely ignore me and fly off, never to return!

How often do you hunt with her?

During falconry's hunting season (October 15 - February 28), I try to average around three times per week, but this varies depending on my schedule and the weather. During the 2006 Christmas holidays, we were lucky enough to fly almost every day.

If you can't hunt on Sundays and you're holding court during the week, how can you average three times per week?

Lawyers and DA's don't like me to hold court after 3:00 on Friday afternoons. Then there's all day Saturday. And why do you think we don't open superior court until 10:00 on Monday mornings? It's a vestige of the old days, when all superior court judges had hawks or falcons on their wrists as they "rode the circuit" from courthouse to courthouse. Don't be so nosy.

What has she caught and killed?

So far, she's tallied ten squirrels and a rabbit. She's capable of taking quail and pheasant, and even ducks, while geese or turkeys would probably be too large and heavy to subdue. Cats and small dogs often pique her curiosity, and so I have to be careful in that regard. Infants and small children do not interest her.

Isn't falconry a blood sport like cock-fighting or dog fighting?

No. While it does involve the capture and killing of small animals, I am merely opening a window and entering the natural world of the hawk, where killing for food is essential for survival. Fiona would be catching rabbits, squirrels, and other rodents on her own in the wild, and she has come to view me as a trusted partner who helps her find prey. The so-called "blood sports" pit animals of the same species against each other in fights to the death while people place bets on the combatants; falconry isn't about competition or winning, and it certainly doesn't involve "hawk vs. hawk" fights. It's about building an intimate relationship with a wild animal, which allows me to experience the thrill of observing and assisting one of the most beautiful and deadly aerial creatures as it flies about in search of prey.

How long do Redtail hawks live and will you eventually breed her?

In captivity, they can live 15 to 20 years. In the wild, it would be unusual for a Redtail to live more than five to seven years. Although Redtails have few natural predators, it's a tough life out there: poor hunting or flying ability, damage to feathers while hunting, injuries, disease, a natural decline in the available food population, extreme weather conditions, loss of habitat, collisions with cars, and electrocutions from transformers all take their toll. A surprising but well-documented statistic on Redtail mortality is that 75% of first-year hawks do not make it to their first birthday. So in a very real sense, I'm granting Fiona a reprieve by removing her from this grim statistical scenario.

I do not plan to breed her because the regulations make it tough to attempt this with wild Redtails; besides, they're so plentiful that it's much easier just to go out and trap another rather than putting oneself through the time-consuming ordeal of breeding and raising raptors, with no assurance of success.

Do you plan to keep her after the hunting season, and if so, how long?

After February 28, when the falconry

hunting season officially ends, the birds are traditionally put up in their mews and fed back up to their original "trapped weight" to ensure sufficient nutrition for them to shed and re-grow their feathers successfully ("the molt"). Throughout mid-spring to late summer of 2007, Fiona gradually shed all of her old feathers and new ones grew in. I reacquainted her with the routines of hunting and slowly brought her weight back down to around her "flying weight" of 41 ounces so that she was ready to hunt again by early November 2007. At virtually any time, I have the option of feeding her a big meal, taking off her leather gauntlets and jesses, and setting her free. She'll go right back to being a wild hawk, but as a much-improved hunter for squirrels and rabbits. Since they are so readily available as menu items, she'll never go hungry. Such an option nearly became a necessity when I broke my leg on December 17, 2007, during an outing with Fiona. Fortunately, Larry agreed to keep her until I recovered.

As a result of our abbreviated 2007-08 hunting season, I'll probably "redshirt" her, keeping her through the molt and hunting with her at least one more season this autumn; but a large part of the fun of this sport is training a wild juvenile hawk to let you be her hunting companion. I'll most likely let her go and trap another young Redtail in 2009, beginning the process all over again.

How long do you plan to be a falconer?

Fiona has captured my heart to such an extent that my wife Kari calls her "The Other Woman." As long as Kari will let me, and as long as I'm physically able to run around in the dense woods and briar thickets, I intend to stay involved in this captivating pastime. Got a patch of mature hardwoods or some overgrown fields in the Piedmont? Give me a call between October and February, and let's go hawkin'! ■

Judge Craig is the resident superior court judge for District 18-B, Guilford County, in High Point. He was in private practice for 20 years before being elected to the bench in 2002.

American Voices (cont.)

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Services at Duke University Law Library. She received a Master of Science in Information from the University of Michigan in 2003 and her JD from the University of North Carolina in

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