Symposium on Legal Education

Law and Literature: Joining the Class Action

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LAW AND LITERATURE: JOINING THE CLASS ACTION

ELIZABETH VILLIERS GEMMETTE

When once the itch of literature comes over a man, nothing can cure it but the scratching of a pen.1
Samuel Lover

I. INTRODUCTION: THE WHERE, WHAT, AND WHY OF LAW AND LITERATURE

When my first article on law and literature was published in 1989,2 it did not occur to me that I would once again undertake another survey related to the same topic, although I had noted that “the itch of literature” was upon many law professors’ minds and that there was much “scratching of [the] pen.”3 Yet, when I was asked by several law school professors and one liberal arts college professor whether I would consider updating my earlier work, I must confess that I found myself wondering whether the pen-scratching spiders were now revealing their “curious” wares to more flies and whether they were making the parlour a more “habitable” place.4

In an attempt to determine which law schools offered some version of a law and literature course within the law school curriculum in 1987, questionnaires were sent to 175 American Bar Association accredited institutions, and the

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1. SAMUEL LOVER, HANDY ANDY: A TALE OF IRISH LIFE 376 (1842).
3. See, e.g., infra Appendix C, which identifies many of the recent books and articles written on the topic of law and literature.
results were published in the 1989 article referred to above.\textsuperscript{5} One hundred and thirty-five law schools responded to that questionnaire, and of those 135 schools, thirty-eight reported offering a course which could be classified, however loosely, under the general heading of a "Law and Literature" course.\textsuperscript{6}

In order to update that earlier work, questionnaires were sent out at the end of 1993 to 199 law schools listed in The AALS Directory of Law Teachers for 1993-94.\textsuperscript{7} Unlike the 1987 survey, this second survey was sent to all of the North American law schools in the AALS Directory, including those in Canada. Of the 199 schools surveyed, eighty-four reported offering some variation of a law and literature course, 111 reported that they do not offer such a course, one reported that the course has been approved but not yet taught,\textsuperscript{8} and three schools did not respond to either mail or telephone enquiries.\textsuperscript{9} The results of this most recent survey are gathered in the appendices following this Article. Appendix A lists all of the responses received from all of the 199 schools in the order of The AALS Directory of Law Teachers for 1993-1994. Appendix B is a cumulative bibliography of fiction either being taught in, or recommended for use in, law and literature law school courses. Appendix C is a cumulative bibliography of the non-fiction either being taught in, or recommended for its usefulness in teaching, law and literature law school courses.\textsuperscript{10}

We can see from Appendix A where law and literature is now being taught, and we can note from this latest survey that eighty-four law schools now offer such a course, as compared to the thirty-eight identified in the earlier survey. Although one might conclude that the higher number of current offerings is due to the increased number of questionnaires sent out this time and to the greater number of responding schools, a better way to compare the difference would be to compare the percentages of those schools reported to be offering the course with the number of schools responding to each survey. Using this analysis, the percentage for the first survey would be twenty-eight percent and the percentage for this second survey would be forty-three percent. It should also be kept in mind that, of the forty schools that did not respond to the first survey, it is impossible to tell whether they did not participate because they did not offer the course or because the questionnaire did not find its way to the right desk. Although I have been told by a few respondents to the later survey that they

\textsuperscript{5} See Gemmette, supra note 2.
\textsuperscript{6} Id. at 268.
\textsuperscript{7} THE AALS DIRECTORY OF LAW TEACHERS (Foundation Press ed. 1994). This book is printed and distributed to law teachers as a public service by West Publishing Co. and Foundation Press, Inc.
\textsuperscript{8} See infra Appendix A—Drake University.
\textsuperscript{9} See infra Appendix A—Loyola Law School, Washington University, and Washburn University.
\textsuperscript{10} See infra appendices A, B, and C.
were sorry they missed the first one, the new responses indicate that many professors and schools have offered the course, or are offering the course, for the first time in 1994 or in 1995.11 This suggests that most of the non-responding schools in the earlier survey did not offer the course, which results in a percentage of less than twenty-eight percent. Yet, even this primitive statistical analysis of the comparison between the responses to both surveys indicates that law and literature is a burgeoning class.

There were some flaws with the most recent survey as it was presented to the participants. There were decisions to be made, questions to be asked, and questions to be answered. One consideration centered around making the questionnaire short enough to solicit a response, yet complete enough to gather valuable data. The questions asked were as follows:

Do you offer a course in Law and Literature?
Course title?
Enrollment?
Professor?
What primary works are presently on your reading list?
What primary works have you previously taught?
What other works would you recommend as primary texts?
Please list any articles or books that you have published relative to this field.
Please list any articles or books by others which you feel are important secondary sources.
Please list all secondary sources that you have assigned.
What is your objective in teaching this course?
Other comments?
Would you kindly attach your syllabus?
Would you be interested in writing annotations for a small number of works to be included in a master law and literature annotated bibliography?12

11. See, e.g., infra Appendix A—University of Arkansas, Fayetteville; California Western; DePaul University; University of Detroit Mercy; Drake University (Approved); University of Georgia; University of Louisville; Rutgers, The State University of New Jersey, S.I. Newhouse Center for Law & Justice; Suffolk University; University of Tulsa; Wake Forest University.

12. Many people have expressed an interest in participating in this next project, and some of them have asked what their involvement would entail. As I perceive it at the moment, I will put together a master list of law-related plays and novels from the works included in Appendix B attached hereto and also from works appearing on other law and literature bibliographies. Once the list is completed, I will be asking each participant to write short annotations for inclusion in an annotated bibliography of law-related works. An attempt will be made to match the interests of each participant to the works for which they are asked to write such annotations. Finally, a topic grid will be created to show the reader which works would be useful for various topics dealt with in law and literature courses. The more volunteers that we have, the easier this project will become. Anyone wishing to participate in this annotated bibliography of law-related works can contact me.
The main problem with the wording of the questions was the use of the words “primary” and “secondary” texts. Professor Morawetz of the University of Connecticut School of Law addresses the problem thus: “I have no idea what you mean by a ‘primary work.’ If one conceives the course as being on hermeneutics, primary works are academic books and essays on interpretation. If one conceives the course as primarily about law-oriented works of fiction, then the primary works are literary. However, if one conceives the course as involving the First Amendment and literature, primary works are likely to be cases.”

The responses to the questionnaires are presented in Appendix A attached, the inclusion of works in the “primary” or “secondary” rubrics being dictated mostly by the way in which the respondents answered the survey questions.

At the time of my earlier article, most of the courses being taught fell into three sub-categories of Law and Literature: Law in Literature, Literature in Law, and the Legal Imagination. The following titles appear in the entries presented in Appendix A: Applying Literature to Law; Feminist Theory: Law and Literature; Idea of Law in Western Culture; Images of Nurses, Doctors, and Lawyers in Literature; Jurisprudence (Representations of Law in Literature); Language and the Law; Law and American Literature; Law and Humanities; Law and Language; Law and Literature; Law and

at Gemmette & Gemmette, 19 Front Street, Schenectady, New York 12305.

13. See infra Appendix A—The University of Connecticut.
14. See Gemmette, supra note 2, at 267-68.
15. See infra Appendix A—University of Georgia.
16. See infra Appendix A—University of Kansas.
17. See infra Appendix A—University of Maryland.
18. See infra Appendix A—Queen’s University—also offers a course entitled “The Legal Imagination.”
19. See infra Appendix A—University of Alberta.
20. See infra Appendix A—University of Puget Sound.
21. See infra Appendix A—Catholic University of America and College of William and Mary.
23. See infra Appendix A—Washington and Lee University.
24. See infra Appendix A—Albany—two different courses offered with the same title; University of Arkansas, Fayetteville; University of California at Berkeley; California Western; University of Chicago; University of Connecticut; DePaul University; University of Detroit, Mercy; Duke University; Emory University; Florida State University; Hamline University; Hofstra University; University of Houston; Indiana University, Bloomington—“Law and Literature: Topic: Formalism and its Discontents;” Indiana University, Indianapolis—also offers a course entitled “Legal Process;” Loyola University, Chicago; University of Minnesota (Taught by James Boyd White—may be a course entitled “The Legal Imagination” or “Rhetoric, Law, and Culture.” See the entry for the University of Michigan); Mississippi; William Mitchell; State University of New York at Buffalo—two titles, “Law and Literature” and “Law and Literature: Legal Anthropology;” University of North Carolina; Ohio Northern University; St. John’s University; Saint Louis
Literature: Representations of Women; Law and Popular Storytelling Seminar; Law in Literature; Law, Language, and Literature; Law, Literature, and Culture; Law, Values, and Professional Identity; Lawyers and Literature; The Legal Imagination; Legal Process; Linguistic and Literary Approaches to Law; Literature and Law; Modern Approaches to Jurisprudence: Law and Literature; Rhetoric, Law, and Culture; Women in Law and Literature. Law and Literature appeared thirty-eight times, Law and American Literature two times, Law in Literature two times, the Legal Imagination two times, and Legal Process two times. The remaining titles appeared only once. Course titles are unknown for twenty-five entries in Appendix A. The most notable changes from the titles in the earlier survey

University; University of San Diego; University of South Carolina; Southwestern University; Stetson University; Suffolk University; University of Tennessee; The University of Tulsa; University of Utah; Washburn University; University of Wisconsin—also uses literature in courses entitled "Legal Process" and "Jurisprudence;" Yeshiva University; Touro; University of Manitoba.

25. See infra Appendix A—West Virginia University—also offers a course entitled "Lawyers and Literature."
26. See infra Appendix A—Vermont.
27. See infra Appendix A—The University of Alabama; Thomas M. Cooley Law School.
28. See infra Appendix A—University of Miami.
29. See infra Appendix A—Wake Forest University.
30. See infra Appendix A—Boston College.
31. See infra Appendix A—West Virginia University—also offers a course entitled "Law and Literature Seminar: Representations of Women."
32. See infra Appendix A—University of Michigan—also offers a course entitled "Rhetoric, Law, and Culture;" Queen's University—also offers a course entitled "Images of Nurses, Doctors, and Lawyers in Literature."
33. See infra Appendix A—Indiana University, Indianapolis—also offers a course in "Law and Literature;" University of Wisconsin—also uses literature in courses entitled "Law and Literature" and "Jurisprudence."
34. See infra Appendix A—McGill University.
35. See infra Appendix A—University of Pittsburgh.
36. See infra Appendix A—Seton Hall University.
37. See infra Appendix A—University of Michigan—also offers a course entitled "The Legal Imagination."
38. See infra Appendix A—University of Colorado.
39. See infra Appendix A—American University; University of Arizona; Arizona State University; Brigham Young University; Brooklyn; University of California, Hastings; Georgetown University; Golden Gate University; Harvard University; University of Iowa; University of Louisville; University of Missouri, Kansas City; New York; Notre Dame; Nova University; University of Puerto Rico; St. Mary's University; Santa Clara University; University of Toledo; Tulane University; Valparaiso University; University of Washington; Western New England; Yale; and New England. At least eight of the professors of these courses for which no description or course title is included called by telephone and expressed both an interest in the survey and a desire to participate. Unfortunately, their responses were not received in time to be included in this survey.
relate to courses dealing exclusively with women and the law, none of which were reported in the earlier survey—a change which is also evident in the changing canon, a topic to be dealt with later.

Despite the variety of titles given to the many courses now offered in law and literature, a closer look at what is being taught in those courses reveals that eighteen courses utilize fiction only (Law in Literature), thirty-seven courses utilize both fiction and critical works (often, but not always, having some variant of "Law and Literature" in the title), two courses are structured around James Boyd White's Book The Legal Imagination, one course stresses hermeneutics and utilizes, among other texts, a hermeneutic reader, and one course utilizes a reader on storytelling. The courses still fit within the three categories identified in the earlier survey: Law in Literature, Literature in Law, and the Legal Imagination, but it is now more difficult to pigeon-hole each course in one of the three rubrics. Certainly, the courses utilizing only fiction can be called "Law in Literature" courses, and courses with the title "The Legal Imagination" need no further identification. The course in storytelling is a new category not present in the earlier survey and deserves further reflection later in this Article. The course in hermeneutics is entitled "Modern Approaches to Jurisprudence: Law and Literature," and it is in the placement of courses like this one, often subtitled "Law and Literature," where the most difficulties in identification occur. What we do find, however, is that many professors are now introducing students to varying levels of hermeneutics, often utilizing the tools of literary criticism for that purpose. This is vastly changed from the earlier survey and evidences the fact that the professors in the thirty-seven law schools offering "Law and Literature" now show a greater propensity to "recognize that the flies deserve more than a passing reference to the Plain Meaning Rule, the Mischief Rule, and the Golden Rule in some obscure legal research and writing class." They are indeed revealing their "curious" wares


42. See infra Appendix A—Seton Hall University, for a course utilizing SANFORD LEVINSON & STEVEN MAILLOUX, INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER (1988).


44. See Gemmette supra note 2, at 267-68.

45. Id. at 302.
to the flies, and they are making the parlour a more "habitable" place.\textsuperscript{46}

Both surveys asked the participants to list their objective(s) in teaching some variant of a law and literature course—the "why" of the project. Four main reasons emerged from the first survey: (1) to expose students to grand literary style; (2) to become better critical readers; (3) to prepare students for

\textsuperscript{46} See supra text accompanying note 4. Appendix C gives complete citations for all of the non-fiction works assigned or recommended by those participating in this survey. The works mentioned three times or more are as follows:

(13) Richard Posner, Law and Literature: A Misunderstood Relation;
(8) Henry D. Thoreau, On the Duty of Civil Disobedience;
(6) Richard Weissberg, Poetics and Other Strategies of Law and Literature;
(6) Richard Weissberg, The Failure of the Word: The Protagonist as Lawyer in Modern Fiction;
(6) James Boyd White, Heracles' Bow: Essays on the Rhetoric and Poetics of the Law;
(5) Robert M. Cover, Justice Accused: Antislavery and the Judicial Process;
(5) Martin L. King, Jr., "Letter from Birmingham Jail";
(5) Patricia J. Williams, The Alchemy of Race and Rights;
(4) Sanford Levinson & Steven Mailloux, Interpreting Law and Literature: A Hermeneutic Reader;
(4) Richard A. Posner, "Law and Literature: A Relation Rearranged";
(4) Thomas Brook, Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe, and Melville;
(3) Jack Henry Abbott, In the Belly of the Beast: Letters From Prison;
(3) Robert Coles, The Call of Stories: Teaching and the Moral Imagination;
(3) Robert M. Cover, The Folktales of Justice: Tales of Jurisdiction;
(3) Robert A. Ferguson, Law and Letters in American Culture;
(3) Stanley Eugene Fish, Is There a Text in This Class?: The Authority of Interpretive Communities;
(3) David R. Papke, Discharge as Denouement: Appreciating the Storytelling of Appellate Opinions;
(3) Richard A. Posner, "Cardozo's Judicial Technique";
(3) James Boyd White, "What Can a Lawyer Learn from Literature?";
(3) James Boyd White, When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character and Community;
(3) W. Wimsatt Jr. & M. Beardsley, "The Affective Fallacy and The Intentional Fallacy."

This list shows that Posner, Weissberg, and White are still the most read writers in the law and literature field. The Levinson and Mailloux reader on Hermeneutics is mentioned only four times, but the following articles which are included in that work are often mentioned and cited to their original publication in various law review articles. See E.D. Hirsch, Jr., Counterfactuals in Interpretation; Michael Hancher, Dead Letters: Wills and Poems; Kenneth S. Abraham, Statutory Interpretation and Literary Theory: Some Common Concerns of An Unlikely Pair; Sanford Levinson, Law as Literature; Gerald Graff, Keep Off the Grass, Drop Dead, and Other Indeterminacies: A Response to Sanford Levinson; David Couzens Hoy, Interpreting the Law: Hermeneutical and Poststructuralist Perspectives (see App. C for full citations to these articles). Note the increasing number of articles dealing with "storytelling," a topic which is dealt with later on in this article.
the contemplation of the human condition; and (4) to strengthen the Humanities in the law school curriculum.\footnote{See Gemmette, supra note 2, at 290-93.} The responses to the "objective in teaching the course" question on the latest survey fall into the following general groupings: (1) to present legal issues through literature, e.g.: Finding the Truth, Obedience to the Law, Equality, Theories of Punishment, Justice, etc.; (2) to study law in dystopian and utopian fiction; (3) to contemplate the role, power, moral and ethical responsibility of judges and lawyers;\footnote{William T. Braithwaite tells us that "Judges should study poetry for the same reason all of us should—because from it we can learn what it really means to be human." See William T. Braithwaite, Why, and How, Judges Should Study Poetry, 19 LOY. U. CHI. L.J. 809, 825 (1988).} (4) to contemplate the human condition and human relations by supplying that which is left out of judicial opinions; (5) to consider the role of the lawyer as an artist; (6) to address the lack of skills in law school students by exposing them to literature that will foster their ability to read a text carefully, to develop oratorical skills and to communicate better through the written and oral word; (7) to teach the students to interpret complex legal and literary texts by addressing the inherent difficulties in the language of both law and literature; (8) to produce fully-dimensional and well-read lawyers; (9) to expose students to grand literary style; (10) to have fun in law school; (11) to consider rebels both inside and outside of literature and to ask ourselves whether we feel differently about fictional rebels than we do about real-life rebels; (12) to consider authorship in all of its forms; (13) to teach feminist jurisprudence and reflect on the experience of and discrimination against women in and outside of the law; and (14) to develop storytelling techniques to aid the lawyer in framing a client's case in narrative terms.

The objectives for teaching law and literature listed above lead to a discussion of the major changes which have taken place in the Law and Literature Movement since the first survey was completed. Those changes center primarily around the following topics: Pedagogy, Storytelling, and the Law and Literature Canon. Each of these topics will now be addressed—Pedagogy and Storytelling briefly, the Law and Literature Canon in more detail—paying attention to how the changes in these areas reflect the efforts of those within the Law and Literature Movement to meet some of the objectives mentioned above.
II. Pedagogy: The Case of the Irate Student

Ego sum rex Romanus, et supra grammaticam
(I am the Roman King, and am above grammar). 49
Sigismund

The students were allowed to take some poetic license with their final papers in the law and literature class. One of those options was to attempt to write in the style of one of the authors that we had read that semester. One student chose to write in the style of George Eliot, but became irate when the grade was not what she had expected. After praising the student for many parts of the paper, I pointed out that there were problems with grammar, fragments, and run-on sentences which needed to be addressed, suggesting that she could sit down with me and review the work for help in rewriting the paper. She responded, in part, as follows: "When I decided to write this paper I specifically asked your permission to write a modern day Silas Marner, in my attempt, I also chose to write in the style of George Eliot. This is not my own style. I would never write such run-on sentences or utilize the passive voice so flagrantly. However, this paper was not supposed to be written by [me], but by George Eliot." My sympathies were with the student for the obvious frustration she felt, for myself that I had not been able to avoid the trap of criticizing and grading a paper which had reflected the student’s attempt to satisfy the requirements of the course, but most of all for poor George Eliot—especially as I finally told the student that I would review Silas Marner and would readjust the student’s grade if I could find a single fragment in that text!

One of the reported objectives of those teaching Law and Literature in law school is to facilitate the student’s ability to communicate better through the written word and to develop the student’s oratorical skills—skills not adequately addressed in high school or undergraduate school. Responses to this latest survey show that there is an emerging collective pedagogy evolving from law and literature courses, and here I refer not to what the students are asked to read, not to how they are asked to read those texts, not to why they are asked to read those particular texts, but, rather, to how they are asked to fulfill course requirements in addition to the reading assignments. That collective pedagogy shows how some law school professors are intentionally, or coincidentally, handling remediation skills in the law school classroom.

Although many of the law and literature courses require students to write the usual research paper of twenty-five to thirty pages, there is a move toward changing that aspect of some of the courses. Students are being asked to write

several short papers, to engage in the revision process, to take quizzes, to expect non-graded written assignments, to participate in Peter Elbow-type workshops, to give oral presentations, to satisfy the paper requirements by writing on unusual topics—such as writing a short story, a jury summation, or a Kafkaesque nightmare, and to keep journals or to do short reflective pieces. And just as the students are being asked to be reflective, introspective, and subjective, so the professors of many law and literature courses are becoming reflective on the activity of teaching Law and Literature.

50. See infra Appendix A—California Western University (one four to five page group paper; four other papers); Florida State (one essay of approximately 1000 to 1500 words for each book); Hofstra University (thirteen three-page papers); University of Maryland (three to five essays, 750-1000 words each); William Mitchell (three three-to-five page papers); University of North Carolina (one one-page paper, five two-page papers, and one 15-20 page research paper); University of Puget Sound (position paper, seminar paper, and three response papers); University of West Virginia (Respondent B—weekly reaction papers as well as a research paper or a short story); College of William and Mary (four papers).

51. See infra Appendix A—University of Colorado (a "publishable-quality paper, which will undergo at least one revision"); DePaul University (outline, first draft, and final draft); West Virginia (Respondent B—final draft of 24-page paper).

52. See infra Appendix A—Stetson University.


54. See Peter Elbow, Writing with Power: Techniques for Mastering the Writing Process (1981); Peter Elbow, Embracing Contraries: Explorations in Learning and Teaching (1986). See also infra Appendix A—DePaul University (oral presentation of draft papers distributed to class members who are expected to comment on the papers in class discussion).

55. See infra Appendix A—DePaul University (oral presentation of the student's draft paper followed by the student leading the class discussion for another fifteen minutes); Ohio Northern University; Saint Louis University (lead the discussion for one seminar meeting); University of Utah; Vermont; and University of Manitoba.

56. See infra Appendix A—University of Arkansas, Fayetteville; University of Utah; and West Virginia, Respondent B.

57. See infra Appendix A—Touro.

58. Id.

59. See infra Appendix A—Stetson University; University of Maryland (encouraged); Touro. See also Philip N. Meyer, Visual Literacy and the Legal Culture: Reading Film As Text in the Law School Setting, 17 LEG. STUD. F. 73 (1993) (a useful look at a course in popular storytelling which uses both film and student's journal entries).

60. See Scales-Trent, supra note 53, at 90-97 (containing a wonderful look at a "run away class" in which the students in a course designed to address "legal and policy issues affecting women of color," produced heart-wrenching stories of their own lives out of an assignmemnt to produce “Reflection” papers).

61. See, e.g., Teree E. Foster, But Is It Law? Using Literature to Penevrate Societal Representations of Women, 43 J. LEGAL EDUC. 133 (1993); Philip N. Meyer, Visual Literacy and the Legal Culture: Reading Film As Text in the Law School Setting, 17 LEGAL STUD. F. 73 (1993); Philip N. Meyer, Law Students Go to the Movies, 24 CONN. L. REV. 893 (1992); Philip N. Meyer, Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling, 42 J. LEGAL ED. 129 (1992); Scales-Trent, supra note 53; Richard Weisberg, Learning to Trust Your Own Mind and
It is difficult to tell from this survey just how much attention is really being paid to addressing the objective of improving the law school student’s written and oral skills through exposure to law and literature courses. Many of the respondents did not include a syllabus from which the course requirements in relation to such written and oral assignments could be determined. Many law and literature professors still rely on the standard research paper, and it was impossible to determine whether students receive feedback on drafts of those papers. What is evident is that some law and literature professors are now recognizing and addressing the need to teach communication skills to law school students. Yet, valiant as they are, those efforts are not sufficient to correct the problem. The responses to this survey show that over half of the law schools still do not offer Law and Literature. The course is never required. The schools that do offer the course usually offer it only once a year or once every other year. The course is usually a seminar with limited enrollment and is often oversubscribed.

Law and Literature professors can, and are, addressing many aspects of legal education, but they cannot single-handedly correct the lack of oral and written skills exhibited by many law school students—students who must leave the academe and rely on those skills to secure and maintain positions within the legal profession. Our students are not “above grammar,” and law school administrators must address this aspect of legal education. Perhaps as well as taking on the important task of helping students with their written and oral skills, law and literature professors now need to encourage a change within the law school curricula to facilitate and create more opportunities for students to write more often, to receive more feedback from both professors and peers, to experience the activity of writing in a non-graded, non-threatening environment, and to learn the necessity of revision. We need to adopt an across the curriculum stance to legal education, and we need to consider the implementation of writing centers where students can access tutorial services at their bidding. In the meantime, we are in the untenable position of grading papers for content only or of grading the student on content and form and style, having taught only content in the course. Many law school students are in the unfortunate position of being measured on skills which they have never been taught while, at the same time, receiving feedback on those skills only in the form of a final grade. This is like asking them to take the bar examination based on the knowledge they have received while watching L.A. Law! To turn away from the problem by offering more content-measuring examinations—multiple-choice, fill-in-the blank, and true or false questions—is to shirk our educational responsibility to produce lawyers and judges who are both literate and articulate.

III. STORYTELLING: THE CASE OF "OOKA AND THE STOLEN SMELL"62

Of all my verse, like not a single line;
But like my title, for it is not mine.
That title from a better man I stole;
Ah, how much better, had I stol'n the whole!63

Robert Louis Stevenson

There is a story I like to tell both at the beginning of my law and literature course and to lay people whom I address on the subject of Law and Literature. It is a story that was passed to me from a woman who was learning English as a second language. She remembered the title of "Ooka and the Stolen Smell," but the rest she paraphrased. The story as told to me has been changed during my various retellings of the tale—not intentional changes, just the revisions that take place as the memory sorts, refines, and organizes the stories we hear and repeat. The story goes something like this:

There was a poor Japanese boy who lived over the top of a fish restaurant. One day his friend came to visit, and the friend said: "I am so tired of eating plain rice every day." The little boy replied: "It's not so bad for me. Every day as I eat my rice, the smell of fried fish comes up the stairs. I close my eyes and pretend that I am eating fried fish in my rice, and it tastes much better." Now the restaurant owner who was a wealthy, but greedy, man, heard the conversation and became incensed. He went to the local judge who was said to be of the belief that every man should have his day in court. "This young man has stolen my smell," he told the judge. "I wish to be paid." The judge heard the case and decided that the young boy had indeed been stealing the restaurant owner's smell. Then he declared the case closed. "But, Your Honor," the restaurant owner retorted, "I haven't been paid." The judge looked at the little boy and asked: "How much money do you have?" The boy put his hands in both pockets and produced a few coins. "That is all I have, Your Honor. If you take my money away, I won't have enough to pay for my rent or to buy my meager rice." But the judge had found him guilty of stealing the restaurant owner's smell and, for that, a price had to be exacted.

After telling this story, I like to ask the audience to think about what might be an appropriate penalty for the judge to impose on the boy. This way, I get them to think about the role of storytelling in relation to the law. How does the way the story is told affect the way the judge decides the case? What is the

63. ROBERT LOUIS STEVENSON, Foreward to UNDERWOODS (1887) reprinted in ROBERT LOUIS STEVENSON, POEMS AND BALLADS 94 (1901).
judge's role in adjudication? Should the judge be totally subjective? If not, how much discretion should judges be allowed? After audience members suggest ways in which the case might be decided, I tell them how the judge resolved the issue. To the poor boy, the judge said: "Pass those coins from hand to hand," which the poor boy did. Then the judge again declared the case closed. "But, Your Honor," the restaurant owner protested, "I still haven't been paid." To which the judge replied: "Yes, you have. You see, the penalty for stealing smell is the sound of money."

The usefulness of the role of storytelling in law and literature classes is undisputed. Obviously, all of the works of fiction assigned in law and literature classes deal with narrative and storytelling and open up the discussion to the multiple layers of meaning behind those stories, to the ambiguity within those texts, to the need for lessons in hermeneutics, to the importance of careful reading, and to the necessity of attentive listening to better understand the human condition with all of its complexities and its universal aspects. However, there is a move afoot which aims to extend the role of storytelling and narrative. It is spawning symposia—\n

65. Philip N. Meyer, Introduction: Will You Please Be Quiet, Please? Lawyers Listening to the Call of Stories, in VERMONT SYMPOSIUM, supra note 64, at 567.


69. Philip N. Meyer, "Desperate for Love": Cinematic Influences upon a Defendant's Closing Argument to a Jury, in VERMONT SYMPOSIUM, supra note 64, at 721.

70. Jeremiah Donovan, Some Off-the-Cuff Remarks About Lawyers as Storytellers, in VERMONT SYMPOSIUM, supra note 64, at 751.

divided into Law in Literature, Literature in Law, and the Legal Imagination, along comes this narrative group, telling their numerous and different stories and exposing the “movement” to more criticism of being even more unfocused than it was in the past.


There is a presumption that to justify inclusion in law and literature courses, works must address either “law in literature” or “literature in law,” and, while there are essays within the narrative field which fall into those two

72. These works are all listed in alphabetical order by author and are taken from infra Appendix C, where the complete citations can be found.

categories, there are others which have no relationship to literature at all. If we were to eliminate from Appendix C all of the references to narrative supplied by Elkins, Meyer, and Papke, then Appendix C would contain very few storytelling articles which are outside of the interests of the law and literature movement.

Turning to Elkins' course entitled "Lawyers and Literature," we see that it is structured like the traditional law in literature course utilizing mostly fiction, and we notice that secondary works are not usually assigned. Elkins included with his response to this survey, a very useful piece entitled "The Narrative Perspective in Legal Education: A Guide to Recommended Reading," which reviews what he terms the "emerging narrative jurisprudence movement," and it is from that piece that most of the narrative articles included in Appendix C were culled. Yet, although Elkins's interest in narrative manifests itself in "A Guide to Recommended Reading," rather than being the focus of his course, Meyer's course entitled "Law and Popular Storytelling" includes both traditional works of literature and just as many articles dealing with law-as-story, and Papke's course entitled "Legal Process" is centered around his reader, Narrative and the Legal Discourse: A Reader in Storytelling and the Law as a primary text and does not appear to include literary works as required texts. There is then a range of interests in storytelling which manifests itself in various ways within the law school classroom—sometimes there is an academic interest in the subject on the part of the professor of a law and literature course, sometimes there is the inclusion of storytelling articles in the traditional law and literature course, and then there is Papke's course which seems to break with the tradition of earlier law and literature courses by using storytelling "to survey and scrutinize four critical elements in American legal culture: legal education, legal doctrine and reasoning, law practice, and law-related ideology."  


76. See infra Appendix A—West Virginia University.
77. See infra Appendix A—Vermont.
78. See infra Appendix A—Indiana University, Indianapolis.
79. See supra note 76.
80. See supra note 77.
81. See supra note 78.
82. See supra note 71.
83. See infra Appendix A—Indiana University, Indianapolis.
In attempting to capture the focus of the articles on storytelling included in Papke’s book *Narrative and the Legal Discourse: A Reader in Storytelling and the Law*, Jane B. Baron identifies three different subjects being written about by those writing under the rubric of storytelling or narrative: “[t]he place in legal education and doctrine of the personal stories of actual people; the stories that legal doctrines tell about the world, its problems and its potential; and the way in which stories are or can be used strategically as a method to enhance the quality of communication between actors in legal settings such as law offices and courtrooms.”

She then asks the pointed questions: “Are too many different positions vying for shelter and authority under the umbrella of ‘narrative?’ Are too many claims being made on behalf of ‘storytelling?’” Although Baron points out that those writing in the field have not, in fact, “styled themselves a ‘movement’ nor sought to coordinate their positions,” she concludes that there is no doubt that the essays in *Narrative and the Legal Discourse* belong in the law school classroom; but there are steps, she tells us, that must be taken if the “storytelling movement” is to avoid “becoming mired in utopianism.”

Prior to the publication of Baron’s article in 1991, there were other voices articulating the purpose and usefulness of storytelling. Kim Lane Scheppiele, in the “Foreword” to the Legal Storytelling Symposium, states:

> Listening to the stories of outsiders does even more than provide a necessary corrective to monolithic and domineering majority stories; it also provides a way for the courts to build into the structure of legal reasoning the pluralism that it is the business of the courts to protect and the respect for persons that it is the business of the courts to enforce.

James Elkins, the editor of the Pedagogy of Narrative Symposium offers quite a similar purpose:

> Some of the stories we tell about law are stories designed to keep law in its place, to articulate its limits, to show how it is ‘bound,’ and how, in its exuberance, it makes claims for a place in our culture that it does not deserve. Other stories speak of how we might, by taking the stories of law more seriously, make a more decent and humane

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85. Id. at 81.
86. Id. at 80.
87. Id. at 105.
88. Id.
world.\textsuperscript{90}

He adds:

We use legal narratives, as we use other stories, to give meaning to social existence, to ourselves as women and men, as people of color, as persons the culture welcomes or fears . . . . Law has become an increasingly active feature in any story that we might try to tell or live. So it is fitting that legal academics should rediscover the narrative perspective and recommence the telling of stories.\textsuperscript{91}

There is no mention of a storytelling "movement" by either Schepppele or Elkins. In his Introduction to the Vermont Law Review Symposium, Philip Meyer tells us that "[t]here are now discrete schools of interpretive practice in the law-as-story movement. First, there are the practitioners of hermeneutics . . . . [who believe that] the study of fiction may yield rules of interpretation that may profitably be used in writing and understanding constitutions, statutes, and judicial opinions."\textsuperscript{92} But he tells us that "[n]ew schools of interpretive practice in the law-as-story movement have moved away from the constraints of legal hermeneutics. Followers seek deeper, soulful interpretive practice to better understand and preserve the integrity of stories."\textsuperscript{93} Second, according to Meyer, "we listen to stories to learn how to act . . . . It makes us more moral. It makes us better people."\textsuperscript{94} And last, there is a new rubric of "Lawyering Theory," which is an interdisciplinary approach to the law and which examines stories from "cultural anthropology, cognitive theory, narrative theory, sociology, film theory, theater, semeiotics, and linguistics."\textsuperscript{95} According to Meyer: "[T]he commonality seems to be that the practitioners of this newly evolving practice view the law and the embodied stories of practice, and, concurrently, the law as embodying the power of stories in legal narratives."\textsuperscript{96} We see then that subsequent to Baron's work,\textsuperscript{97} at least one proponent of the law-as-story group is struggling to create yet another "movement." In doing so, Meyer informs us that "[t]his categorization varies and draws upon a previous attempt [by him] to describe the law-as-story movement, then called the 'law and literature movement.'"\textsuperscript{98} Is Meyer telling us that the whole of the law and

\textsuperscript{90} James R. Elkins, From the Symposium Editor, 40 J. LEGAL EDUC. 1, 1 (1990).
\textsuperscript{91} Id. at 2.
\textsuperscript{92} Philip N. Meyer, Introduction to Will You Please Be Quiet, Please? Lawyers Listening to the Call of Stories, 18 VT. L. REV. 567, 569 (1994).
\textsuperscript{93} Id. at 570.
\textsuperscript{94} Id.
\textsuperscript{95} Id. at 571.
\textsuperscript{96} Id.
\textsuperscript{97} Baron, supra note 84.
\textsuperscript{98} Meyer, supra note 92, at 569 n.9.
literature movement has now been renamed the law-as-story movement or that the law-as-story movement is separate and distinct from the law and literature movement?

Those writing on "law-as-story," "storytelling," or "narrative" have ambitious and diverse aims. Their messages are compelling and thought-provoking. Some of their works fall within the rubrics of Law and Literature and Literature as Law while others do not. There is now a push to unite a cacophony of voices for which a clear focus is lacking. Yet it is the lack of focus which may, in fact, harbor the strengths rather than the weaknesses of those writing within the field. It is to be hoped that the pioneering storytelling and narrative writers will recognize that the usefulness of their collective voices lies in the diversity of their messages—their differences, not their similarities. They ought not to force focus to bring about unity, as such forced focus leads to vague and ambiguous statements. It is also hoped that in telling their stories, the narrators will follow the dictates of the early pioneers of the law and literature movement—a movement founded in part as a response to the ambiguous and inaccessible texts of the Critical Legal Studies "movement." Make the prose accessible, avoid ambiguity, tell a simple story, for we do not want the spiders to become "casual flocks of pigeons."

"Deer walk upon the mountains, and the quail
Whistle about us their spontaneous cries
Sweet berries ripen in the wilderness
And, in the isolation of the sky
At evening, casual flocks of pigeons make
Ambiguous undulations as they sink
Downward to darkness, on extended wings." 99

IV. THE LAW AND LITERATURE CANON: THE CASE FOR AND AGAINST THE "GREAT BOOKS" MODEL

No one has the authority to tell us what the Western Canon is, certainly not from about 1800 to the present day. It is not, cannot be, precisely the list I give, or that anyone else might give. If it were, that would make such a list a mere fetish, just another commodity. 100

Harold Bloom

We had been discussing Susan Glaspell's "A Jury of Her Peers." It was


surprising to see how divided the class was along gender lines. The female students took the approach that Mrs. Hale and Mrs. Peters did the right thing in acting as judge and jury of Minnie Foster. The male students disagreed. What did the battered wives' syndrome have to do with this case—murder is murder is murder! One young man, one of the brightest students in the class, took a very hard line. He pointed out that the women had altered the evidence by undoing and restitching the sewing that had gone awry, that they had removed the evidence of the dead bird, and that they had kept silent when their voices would have helped to convict Minnie Foster. It was pointed out that the women knew that the male jurors and judge would have used the bird with the broken neck as evidence of motivation, not as evidence of mitigation. The student was adamant. Minnie Foster should have been tried and hung for murder. The following week, the young man gave a presentation on Tolstoy's *The Death of Ivan Ilyitch*. It was one of those rare moments in teaching. He stood up and began:

I was wrong last week. I have read *The Death of Ivan Ilyitch*, and I now realize that there should be a place for the subjective in adjudication, that the totally objective way I am being taught to think about the law is wrong, that 'A Jury of Her Peers' is more complicated than I had realized. I now understand what the women in that story were doing.

"A Jury of Her Peers" and *The Death of Ivan Ilyitch* were chosen for inclusion on my reading list for a law and literature course not only for the specific topics I wished to address that semester, but also to meet one of the objectives in teaching Law and Literature—to expose the students to grand literary style. Whether choosing those works involved me in canon formation or whether I was merely creating a list of required reading is a difficult question which needs some reflection. We need to ask just what the Law and Literature Canon is, or is likely to become, and who chooses and selects works for that list.

Of all the topics addressed by Richard Weisberg in his latest book on Law and Literature,101 the one most likely to receive criticism102 is the one relating to his proposed "canon" for Law and Literature. In Chapter Four entitled "The Self-Imploding Canon," Weisberg acknowledges his precarious position. After suggesting a syllabus for a prospective law and literature course consisting of Barth's *The Floating Opera*, Dickens' *Bleak House* and *Great Expectations*, Faulkner's *Intruder in the Dust* and *The Town*, Melville's *Billy

102. For criticism of many of the ideas represented in WEISBERG, supra note 101, see Thomas Morawetz, Ethics and Style: The Lessons of Literature for Law, 45 STANFORD L. REV. 497 (1993).
Budd, Sailor, Morrison's The Bluest Eye, and Shakespeare's Hamlet and The Merchant of Venice,\textsuperscript{103} and then further stating that a longer course might include the "continental novelists discussed in [his] book The Failure of the Word,"\textsuperscript{104} Weisberg states: "Although rich and varied, and including authors of different genders, tastes, and backgrounds, this syllabus could also form the basis of any 'Great Books' course in a core university curriculum; it thus runs the risk of being criticized for just that reason."\textsuperscript{105}

Criticism has already been levelled at the focus on "Great Books" in the Law and Literature Canon, and Weisberg addresses the concerns of Carolyn Heilbrun,\textsuperscript{106} who tells us: "Literature, as it has so far been discussed by lawyers in law journals, rarely is considered as a source by which readers may come to understand the sufferings of women."\textsuperscript{107} In the same article, Judith Resnik states: "[R]elatively little attention has been paid to the question of the canon—of who is given voice, who cited, quoted, repeated, and who marginalized, ignored, submerged. In general, the choice of texts had been unquestioned . . . . 'Our' great books, in which law plays an interesting part, appear as if by collective agreement on many reading lists."\textsuperscript{108} Weisberg also acknowledges that Jane Maslow Cohen seeks "a wider set of sources,"\textsuperscript{109} and that Milner Ball "now counsels the identification of works written 'from the bottom,'\textsuperscript{110} by which he means by those people whose disadvantaged status has kept them from gaining their legitimate recognition."\textsuperscript{111}

One might add to the list of dissenting voices acknowledged by Weisberg, the voices of Richard Delgado and Jean Stefancic,\textsuperscript{112} who perhaps raise the loudest voices for changing the canon to include not only feminist narratives but narratives of many other excluded groups—a change to include what they call "counter- or 'saving' narratives" in order to help judges avoid serious "judicial mistakes."\textsuperscript{113} Their thesis is that "most serious judicial mistakes result from the judge's inability to empathize with the litigants or their circumstances. In

\begin{itemize}
  \item[103.] Weisberg, supra note 101, at 117.
  \item[104.] Id. at 117-18. \textit{See also Richard Weisberg, The Failure of the Word: The Protagonist as Lawyer in Modern Fiction} (1984).
  \item[105.] Weisberg, supra note 101, at 118.
  \item[106.] Carol Heilbrun & Judith Resnik, Comment, Convergences: Law, Literature, and Feminism, 99 Yale L.J. 1913 (1990).
  \item[107.] Id. at 1927.
  \item[108.] Id. at 1936-37.
  \item[109.] Weisberg, supra note 101, at 118 (citing Jane Maslow Cohen, The Arrival of the Bee Box: Feminism, Law and Literature, 13 Hary. Women's L.J. 345 (1990)).
  \item[110.] Milner Ball, Confessions, 1 Cardozo Stud. in Law & Literature 185 (1990).
  \item[111.] For Weisberg's discussion on this criticism, see Weisberg, supra note 101, at 118.
  \item[113.] Id at 1952.
\end{itemize}
many cases, a counternarrative was close at hand. The judge might have read
the counternarrative, internalized its message, and written a wiser, or at least
more nuanced, opinion."114 "Yet, that doesn't happen because the anthologist
rarely includes the saving narratives as part of the canon."115 To stress the
absence of the "saving narratives," Delgado and Stefancic go on to analyze four
"lists of novels" published in the years 1957,116 1973,117 1977118 and
1989,119 to show that those lists include only two works by minority
writers—Invisible Man by Ralph Ellison and Native Son by Richard Wright—no
works by minority women, twenty-nine works by white women, and three-
hundred and thirteen works by white men.120 They then go on to recommend
additions to the canon, suggesting African-American, Asian-American, Mexican-
American, Native-American, Gay and Lesbian, and Women's Narratives.121
In a similar vein, C.R.B. Dunlop criticizes Weisberg for being "too quick to
discard entirely other writers who are more subtle and worthy of consideration
than his arbitrary framework will allow him to accept."122 He adds: "Law
and [l]iterature scholars and teachers should think about including in their books
and reading lists more gay, women, and minority writers, as well as hitherto
neglected writers from the established canon, such as Anthony Trollope. The
aim should be to include any work of fiction that treats the legal order in an
interesting way."123

Within English departments there are similar voices to those we hear in the
law and literature movement—voices urging the inclusion of more minority and
feminist writers in the Western Canon. Taking aim at these opponents of the
Western Canon, Bloom states: "You may idealize endlessly about replacing
aesthetic standards with ethnocentric and gender considerations, and your social
aims may indeed be admirable. Yet only strength can join itself to strength, as
Nietzsche perpetually testified."124 Both Bloom and Weisberg revere the
"great books" model in their canonical preferences, but in his Appendix D

114. Id.
115. Id. at 1953.
(1955); supplemented, William H. Davenport, Readings in Legal Literature: A Bibliographical
117. JAMES BOYD WHITE, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL
THOUGHT AND EXPRESSION (1973).
118. Richard Weisberg & Karen L. Kretschman, Wigmore's 'Legal Novels' Expanded: A
Collaborative Effort, 7 Md. L. F. 94 (June 1977).
119. Gemmette, supra note 2, at 322 (Appendix II, Cumulative Bibliography).
120. Delgado & Stefancic, supra note 112, at 1961-80.
121. Id. at 1980-83.
122. C. R. B. Dunlop, Literature Studies in Law Schools, 3 CARDOZO STUD. IN L. &
123. Id.
entitled "The Chaotic Age: A Canonical Prophecy,"125 Bloom goes further than Weisberg in predicting what the future Canon might look like, even though to him such prophecy is "mug’s game."126 He also says that works were not "excluded nor included on the basis of cultural politics of any sort. What [he has] omitted seem to [him] fated to become period pieces: even their 'multiculturalist' supporters will turn against them in another two generations or so, in order to clear space for better writings."127

Turning to Appendix B of this survey—dare I call it the emerging Law and Literature Canon—we can see what works of fiction the respondents to this latest survey have assigned or recommended for inclusion in law and literature courses. We can ask ourselves whether those choices—"A Jury of Her Peers," The Death of Ivan Ilyitch, or any of the other works listed—are to become canonical. Will the frequency with which these works are recommended or assigned influence and shape existing or future courses in Law and Literature, and, in turn, shape the Law and Literature Canon? No doubt it is due, in part, to voices like those raised by Carolyn Heilbrun, Judith Resnik, Jane Maslow Cohen, Milner Ball, Richard Delgado, Jean Stefancic, and C.R.B. Dunlop. Furthermore, this list looks very different from the list on which I reported in my earlier survey published in 1989.128 The most recommended works of fiction, and the frequency with which they appear on the list are as follows:

(30) MELVILLE, BILLY BUDD, FORETOPMAN
(23) SHAKESPEARE, MEASURE FOR MEASURE
(20) CAMUS, THE STRANGER
(20) SHAKESPEARE, THE MERCHANT OF VENICE
(20) SOPHOCLES, ANTIGONE
(17) KAFKA, THE TRIAL
(15) AESCHYLUS, ORESTEIA
(15) Glaspell, A Jury of Her Peers
(14) DICKENS, BLEAK HOUSE
(13) LEE, TO KILL A MOCKINGBIRD
(13) Melville, Barley the Scrivener
(12) PORTER, "NOON WINE": THE SOURCES
(9) WRIGHT, NATIVE SON
(8) ATWOOD, THE HANDMAID'S TALE
(8) DOSTOYEVSKY, CRIME AND PUNISHMENT

(8) Kafka, In the Penal Colony
(8) MILLER, THE CRUCIBLE
(8) TOLSTOY, THE DEATH OF IVAN ILYITCH
(7) HAWTHORNE, THE SCARLET LETTER
(7) SHAKESPEARE, KING LEAR
(7) TUROW, PRESUMED INNOCENT
(6) CAMUS, THE FALL
(6) MORRISON, BELIEVED
(5) Akutagawa, In a Grove
(5) COOPER, THE PIONEERS!
(5) DEXTER, PARIS TROUT
(5) DOSTOYEVSKY, THE BROTHERS KARAMAZOV
(5) DREISER, AN AMERICAN TRAGEDY
(5) ORWELL, 1984
(5) SHAKESPEARE, HAMLET
(5) SHAKESPEARE, JULIUS CAESAR
(5) STOWE, UNCLE TOM'S CABIN
(5) TWAIN, PUDD'NHEAD WILSON

125. Id. at 548-67.
126. Id. at 548.
127. Id.
128. See Gemmette, supra note 2, Appendix B.
(5) WOLFE, THE BONFIRE OF THE VANITIES
(4) BOLT, A MAN FOR ALL SEASONS
(4) CONRAD, HEART OF DARKNESS
(4) DOCTOROW, THE BOOK OF DANIEL
(4) FAULKNER, SANCTUARY
(4) GOLDFING, LORD OF THE FLIES
(4) GOLDMAN, EARTHLY JUSTICE
(4) IBSEN, A DOLL’S HOUSE
(4) KAFKA, BEFORE THE LAW
(4) KAFKA, THE PROBLEM OF OUR LAWS
(4) KOESTLER, DARKNESS AT NOON
(4) SOPHOCLES, OEDIPUS AT COLONUS
(3) AUCHINCLOSS, DIARY OF A YUPPIE
(3) AUDEN, LAW LIKE LOVE
(3) BARTH, THE FLOATING OPERA
(3) BENET, THE DEVIL AND DANIEL WEBSTER
(3) CARROLL, WHO STOLE THE TARTS? AND ALICE’S EVIDENCE FROM ALICE’S ADVENTURES IN WONDERLAND
(3) DOSTOYEVSKY, NOTES FROM THE UNDERGROUND

Although I had not intended to list those works mentioned only once or twice, something caught my eye as I scanned the works remaining on the list. Most of those works are works by women—women often involved in both feminist and minority narratives. The list is as follows:

Adams, Alice: After You’ve Gone
Adams, Alice: After You’ve Gone: Stories
Allende, Isabel: The Judge’s Wife
Allison, Dorothy: Bastard Out of Carolina
Angelou, Maya: I Know Why the Caged Bird Sings
Atwood, Margaret: Rape Fantasies
Atwood, Margaret: Spelling
Atwood, Margaret: Weight
Austen, Jane: Mansfield Park
Austen, Jane: Pride and Prejudice
Bishop, Elizabeth: The Ballad of the Burglar of Babylon
Bronte, Charlotte: Jane Eyre
Brooks, Gwendolyn: The Mother
Brown, Rosellen: Before and After
Butler, Octavia: Kindred
Cahill, Susan (ed.): Women and Fiction: Short Stories By & About Women
Cather, Willa: A Lost Lady
Cather, Willa: O Pioneers!

Chopin, Kate O’Flaherty: The Godmother
Christie, Agatha: Witness for the Prosecution
Cisneros, Sandra: Salvador Late or Early
Cisneros, Sandra: Woman Hollering Creek
Dawkins, Cecil: Benny Ricco’s Search for Truth
Deland, Margaret: The Note
Didion, Joan: A Book of Common Prayer
Dworkin, Andrea: bertha schneider’s existential edge
Dworkin, Andrea: Mercy
Eliot, George: Middlemarch, A Study In Provincial Life
Eliot, George: Silas Marner
Erdrich, Louise: Love Medicine
Erdrich, Louise: Tracks
Gibbons, Kay: Ellen Foster
Gilman, Charlotte Perkins Stetson: Herland
Gilman, Charlotte Perkins Stetson: The Yellow Wallpaper
Glasgow, Ellen: Vein of Iron
The above list shows that the efforts of feminists have been extremely successful in “opening up the canon.” Feminists are meeting one of the objectives of law and literature courses: to teach feminist jurisprudence and reflect on the experience of, and discrimination against, women in and outside of the law.
Of the works recommended by Delgado and Stefancic, the following appear on the collective reading list in Appendix B to this survey:

African-American Narratives: Number of Recommended Books = 14

(2) Gaines, A Gathering of Old Men
(1) Hurston, Their Eyes Were Watching God
(6) Morrison, Beloved
(2) Walker, The Color Purple

Asian-American Narratives: Number of Recommended Books = 10

(1) Kingston, China Men
(1) Kingston, The Woman Warrior

Mexican-American Narratives: Number of Recommended Books = 9

None

Native-American Narratives: Number of Recommended Books = 13

(1) Erdrich, Love Medicine
(2) Welch, The Indian Lawyer

Gay and Lesbian Narratives: Number of Recommended Books = 11

None

Women's Narratives: Number of Recommended Books = 9

(1) Gilman, The Yellow Wallpaper
(3) Miller, The Good Mother

Although the feminists and the multiculturalists are gaining ground in shaping the emerging Law and Literature Canon, Weisberg's "Great Books" do not appear to be endangered. Those books recommended by Weisberg show up on the collective reading list contained in Appendix B with the following frequency:

(30) Melville, Billy Budd, Sailor

130. Weisberg, supra note 101, at 117-18.
What is particularly interesting is comparing the works listed in Appendix B of this Article to the works listed by Bloom in his appendices to The Western Canon: Appendix A, The Theocratic Age; Appendix B, The Aristocratic Age; Appendix C, The Democratic Age; and Appendix D, The Chaotic Age: A Canonical Prophecy. Both my Appendix B and Bloom’s four appendices list novels, plays, short stories, and poems. Almost 200 of the 483 works listed on my Appendix B show up on Bloom’s collective appendices. Sometimes an author shows up on both lists but with different titles. My list tends to have more short stories than the lists provided by Bloom, and, of course, Bloom does not include works with the object of assessing their usefulness in the law and literature classroom.

In stating earlier that the feminists were “opening up the canon,” I was forced to consider Bloom’s feelings about this phrase—a phrase which he believes describes “a strictly redundant operation,” as “no secular canon is ever closed.” But here, Bloom engages in sophistry. While the canon itself might be ever open in the sense that new works are constantly added, it still might be closed to works of a certain political persuasion. According to Bloom, “The Western Canon is a kind of survivor’s list,” but works will not survive if they are marginalized or ignored based on the idiosyncrasies of the elite. Surely it is better that the emerging canon be developed by the collective selections of those working within a specific field—no doubt the “great books” will survive, but so will others which might have been overlooked, intentionally or coincidentally, to the single anthologist’s goals or political orientation. The ultimate aim of those involved in law and literature canon formation is to seek out works of literature which serve both to expose the students to great literature and to achieve the objectives of the law and literature movement. Works should not be included in the Law and Literature Canon unless they stand the double test of aesthetic value and of serving curricular needs. The important thing for the law and literature anthologist to remember is that the Law and Literature Canon never “is,” rather it is in a perpetual state of “becoming.”

132. Id. at 37.
133. Id. at 38.
In responding to the criticism of Heilbrun, Weisberg states that he takes her "to be ignorant of the very strong feminist influences in Law and Literature," and, as evidence of this, he refers to my earlier survey to show that "many instructors feature numerous works of women, minorities, and culturally diverse writers." But Heilbrun is not ignorant of my earlier survey. Within the first paragraph of "Convergences: Law, Literature, and Feminism," Heilbrun and Resnik comment: "Elizabeth Villiers Gemmette has, for example, described law and literature classes given in thirty-eight law schools. Only one of the reading lists surveyed included 'feminism' as a topic; most of the courses ignored women's voices altogether." Both Heilbrun and Resnik felt that "much of that hyphenated field [law and literature] examines a world in which white men attempt from a place of power to speak as if for us all." They state: "[W]e have a sense of exclusion, of marginality, of beating at the door of institutions that are recalcitrant when it comes to the serious contemplation of women: their lives, their place in the legal world, their voices."

It would appear from this latest survey that even if Bloom's Western Canon is still intact, Weisberg's Law and Literature Canon has already imploded. That is not to say that "the case has been made for Law and Literature's abandoning the canon just because some feminists insist we do so," but rather to say that there is developing a peaceful coexistence with Weisberg's "Great Books" on the one hand and with feminist and multicultural books on the other. Yet, even here, we run into a problem with semantics. By taking the term "Great Books" to describe his recommended canon, Weisberg deprives us of a term to describe many important books chosen by others. Perhaps we now need to redefine the books on Weisberg's list as representing the "Established Canon" and those on the feminist and multiculturalist lists as representing the "Emerging Canon," for then we can include in a "Great Books" list more minority writers and works than just Toni Morrison's The Bluest Eye.

Just as I came to the end of this section on the Law and Literature Canon and was struggling with language to describe an Elizabethan scene in which people strolled along the banks of the river Avon bemoaning the fact that Shakespeare had not yet made the canon and perhaps ought not to be included

134. Weisberg, supra note 101, at 119.
135. Id.
136. Heilbrun & Resnik, supra note 106.
137. Id. at 1913-14.
138. Id. at 1913.
139. Id. at 1952.
140. Weisberg, supra note 101, at 122.
141. See Weisberg, supra note 101, at 117.
in a "Great Books" course, I stumbled across the following cartoon which made me wish my tools were brushes rather than pens.\textsuperscript{142}

![Cartoon]

"We had great men like Homer and Solon generations ago. But who've we got now? Pipsqueaks like Socrates, Plato, Euripides, Pericles . . ."

V. CONCLUSION

\begin{quote}
Here hills and vales, the woodland and the plain,
Here earth and water seem to strive again;
Not chaos-like together crushed and bruised,
But, as the world, harmoniously confused:
Where order in variety we see,
And where, though all things differ, all agree.\textsuperscript{143}

Alexander Pope
\end{quote}

"Harmonious confusion" strikes a resounding note for the law and literature movement. From this survey we learn of hundreds of recommended works of fiction, we peak at different pedagogical devises of many law professors, we compare our own objectives for our courses with the numerous objectives of


\textsuperscript{143} Alexander Pope, \textit{Windsor Forest}, reprinted in \textit{POPE'S COMPLETE POEMS} 28 (Student's Cambridge ed. 1901) (1711).
others, we see the varied role of hermeneutics in the law and literature classroom, we watch as the movement takes on a new direction with the addition of writings on narrative, and we reflect on the emerging Law and Literature Canon. There is great variety in the voices of those working in the law and literature movement, but there is "order in variety" and "though all things differ, all agree." There is agreement that changes need to be made within the law school curricula and that the law and literature movement is contributing significantly to those changes. There is also agreement that so many professors are "joining the class action," that Law and Literature is no longer "a suspect class within the liberal arts component of the law school curriculum."144

144. See Gemmette, supra note 2.
## Law Schools (Listed in Order of AALS Directory 1993-1994)

<table>
<thead>
<tr>
<th>Law School</th>
<th>Course Offered</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNIVERSITY OF AKRON, C. BLAKE McDOWELL LAW CENTER</td>
<td>NO</td>
</tr>
<tr>
<td>THE UNIVERSITY OF ALABAMA SCHOOL OF LAW</td>
<td>YES</td>
</tr>
</tbody>
</table>

**RESPONDENT:** Professor Timothy Hoff, Gordon Rosen Professor of Law  
**COURSE TITLE:** The Law in Literature  
**ENROLLMENT:** 24 this year; 30 last year.

**PRIMARY WORKS ON CURRENT READING LIST:**

- CAMUS, THE FALL
- DICKENS, A TALE OF TWO CITIES
- DOSTOYEVSKY, CRIME AND PUNISHMENT
- ELLISON, INVISIBLE MAN
- LEE, TO KILL A MOCKINGBIRD
- MILLER, ARTHUR, THE CRUCIBLE
- PORTER, KATHERINE ANNE, "NOON WINE": THE SOURCES
- SHAFFER, EQUUS
- SHAKESPEARE, MEASURE FOR MEASURE
- SMITH, PATRICK, SUSANNAH & THE ELDERS
- SOPHOCLES, PHILOCETES
- TOLSTOY, THE DEATH OF IVAN ILYITCH
- WALKER, THE COLOR PURPLE

**PRIMARY WORKS TAUGHT PREVIOUSLY:**

- BARTH, THE FLOATING OPERA
- BRECHT, THE GOOD WOMAN OF SETZUAN
- CAMUS, THE STRANGER
- COZZENS, JUST AND THE UNJUST
- DICKENS, BLEAK HOUSE
- DONLEAVY, THE GINGER MAN
- DOSTOYEVSKY, THE BROTHERS KARAMAZOV
- FAULKNER, SANCTUARY
- GOLDING, LORD OF THE FLIES
- KAFKA, THE TRIAL
- KOESTLER, DARKNESS AT NOON
- Melville, Bartleby the Scrivener
- MELVILLE, BILLY BUDD, FORETOPMAN
- MILLER, ARTHUR, A VIEW FROM THE BRIDGE
- OSBORNE, JOHN, INADMISSIBLE EVIDENCE
- SHAKESPEARE, HAMLET
- SHAKESPEARE, THE MERCHANT OF VENICE
RECOMMENDED SECONDARY WORKS:

All of Weisberg, James Boyd White, Milner Ball and Tom Shaffer. "No secondary sources are assigned. I have thought seriously about using White's The Legal Imagination, but have never ordered or assigned it, and probably never will. In the course of the semester my students and I bring in lots of other materials, particularly book reviews, news articles, and other materials relevant to what we are reading and discussing. I have also thought seriously about using the Gemmette anthology, but have been put off by the typeface."

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

"I want to encourage my students to think beyond their craft, to relate what they are doing to the culture they are part of on which they have such a profound effect as lawyers. I want to make my students aware of the enormous power they have as lawyers on people, particularly their clients, and to think deeply about the moral implications of the use of that power."

GRADING:

Two-hour closed-book examination, 50%; 25-page paper, 30%; class participation, 20%.

COMMENTS: "We talk a lot about movies. I have two students this fall who studied film in undergraduate school, and who introduced me to the work of Akira Kurosawa, particularly his 1950 film Rashomon. Two weeks ago we discussed My Cousin Vinny in connection with Suzanna and the Elders (noting that in both films a weak and marginal lawyer or lawyer type triumphs over the corrupt ruling class on behalf of a powerless client)."

In relation to Professor Hoff's comment about the typeface in my anthology Law in Literature: Legal Themes in Short Stories, this book is now being re-set and will be published in paperback by Whitston Publishing Co.

ALBANY LAW SCHOOL, UNION UNIVERSITY

RESPONDENT A: Associate Professor James D. Redwood
COURSE TITLE: Law and Literature
ENROLLMENT: 20.
PRIMARY WORKS ON CURRENT READING LIST:

Aeschylus, THE ORESTEIA, Agamemnon, The Eumenides, The Libation Bearers
Balzac, Commission in Lunacy
Camus, THE FALL
Camus, THE STRANGER
Chekhov, Strong Impressions
Conrad, HEART OF DARKNESS
Conrad, Some Reflections
France, Crainquebille
France, Monsieur Thomas
Harte, Colonel Starbottle for the Plaintiff
Henry, The Hypothesis of Failure
Homer, The Envoys Plead with Achilles from THE ILIAD
Lee, To Kill a Mockingbird
Le Fanu, Mr. Justice Harbottle
Melville, Bartleby the Scrivener
Mortimer, The Dock Brief
Rabelais, On Judge Bridlegoose and Lord John the Loony
Scott, Alan Fairford's First Cause
Shakespeare, JULIUS CAESAR, Act III, Scene ii
Shakespeare, THE MERCHANT OF VENICE
Tolstoy, The Death of Ivan Ilyitch
Trollope, ORLEY FARM, Book One, Book Two
Wouk, THE CAINE MUTINY

SECONDARY WORKS ASSIGNED:

Cardozo, Law and Literature
CARDozo, THE NATURE OF THE JUDICIAL PROCESS, Part I
Holmes, The Path of the Law
Jackson, Closing Address in the Nuremberg Trial
Richmond, Can Shakespeare Make You A Partner?

CASE:

Powell v. Alabama

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“To get students to read and appreciate literature about the law.”

COMMENTS: The course is arranged around the following topics: Briefing a Legal Novel, The Necessity of Law, The Origins of Law, The Right

RESPONDENT B: Elizabeth Villiers Gemmette, Esq., Adjunct Faculty Member

COURSE TITLE: Law and Literature


PRIMARY WORKS ON CURRENT READING LIST:

CAMUS, THE STRANGER
DREISER, AN AMERICAN TRAGEDY
ELIOT, SILAS MARNER
Gemmette, ed., LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES
SHAKESPEARE, THE MERCHANT OF VENICE
STEINBECK, OF MICE AND MEN

PRIMARY WORKS TAUGHT PREVIOUSLY:

DICKENS, HARD TIMES
FORSTER, MAURICE
HARDY, JUDE THE OBSCURE
Kafka, A Hunger Artist
MELVILLE, BILLY BUDD, FORETOPMAN
MORRISON, THE BLUEST EYE
TOLSTOY, THE DEATH OF IVAN ILYITCH
TROLLOPE, AN EYE FOR AN EYE

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendices B and C attached. Law in Literature: Legal Themes in Drama will be published by Whitston Publishing Co. within the next few months. This anthology contains the following works: Aeschylus' The Eumenides, Sophocles' Antigone, Shakespeare's The Merchant of Venice and Measure for Measure, Massinger's The Fatal Dowry, Lilio's The London Merchant, Glaspell's Trifles, and Rivers' This Piece of Land.

GRADING:

Participation, 10%; Presentation No. 1, 20%; Presentation No. 2, 20%; Paper, 50%.
COMMENTS: The course follows the structure of Law in Literature: Legal Themes in Short Stories and, therefore, is arranged around the following topics: Natural, Divine, and Positive Law; Obedience to Positive Law; Equality; Standards and Presumptions; Finding the Truth; The Jury System; Trial Lawyers in Action; The Judicial Process; Theories of Punishment; Capital Punishment; The Guilty Conscience; Justice; Juvenile Delinquency; Murderers; The Mens Rea; Defenses of Necessity and Passion; Property Concepts; Contracts and Negotiable Instruments; Torts; and Domestic Relations.

AMERICAN UNIVERSITY, WASHINGTON COLLEGE OF LAW YES

TAUGHT BY: Professor Peter A. Jaszi

UNIVERSITY OF ARIZONA COLLEGE OF LAW YES

TAUGHT BY: Professor Kenny F. Hegland

ARIZONA STATE UNIVERSITY COLLEGE OF LAW YES

TAUGHT BY: Professor Jeffrie Murphy

ENROLLMENT: Offered every other year; always oversubscribed; enrollment of approximately 50-55.

UNIVERSITY OF ARKANSAS, FAYETTEVILLE, LeFLAR LAW CENTER YES

RESPONDENT: Professor Emeritus Albert M. Witte; Professor Witte taught the course for the first time in 1994.

COURSE TITLE: Law and Literature

PRIMARY WORKS ON CURRENT READING LIST:

Gemmette, ed., Law in Literature: Legal Themes in Short Stories
Shakespeare, Measure for Measure
Shakespeare, The Merchant of Venice

COMMENTS: Professor Witte reports that in addition to the texts listed above, the students were asked to select a novel to read. They also were asked to select two stories from the Law and Literature book and teach those stories to the class. They were also offered the option of writing a short story. He tells me that the students had the following suggestions for the course: Eliminate one of the Shakespeare plays; Use a modern play; Select one novel and have everyone read it. Of the stories in the anthology, they disliked "Harrison Bergeron" the most. They particularly liked "It's Hard to Be Good," and "Paul's Case." Oddly enough, my own students particularly liked
"Harrison Bergeron."

UNIVERSITY OF ARKANSAS AT LITTLE ROCK SCHOOL OF LAW
NO

UNIVERSITY OF BALTIMORE SCHOOL OF LAW
NO

BAYLOR UNIVERSITY SCHOOL OF LAW
NO

BOSTON COLLEGE LAW SCHOOL
YES

RESPONDENT: Professor John M. Flackett
COURSE TITLE: Law, Values and Professional Identity
ENROLLMENT: Maximum of 20—third-year students have preference.

PRIMARY WORKS ON CURRENT READING LIST:

- Baldwin, Sonny's Blues
- BOLT, A MAN FOR ALL SEASONS
- BRECHT, THE CAUCASIAN CHALK CIRCLE
- CAMUS, THE STRANGER
- DOCTOROW, THE BOOK OF DANIEL
- DUNNE, DUTCH SHEA, JR.
- Glaspell, A Jury of Her Peers
- KOESTLER, DARKNESS AT NOON
- MELVILLE, BILLY BUDD, FORETOPMAN
- PORTER, KATHERINE ANNE, "NOON WINE": THE SOURCES
- SHAKESPEARE, KING LEAR

PRIMARY WORKS TAUGHT PREVIOUSLY:

- GRIMM, CINDERELLA
- MILLER, SUS, THE GOOD MOTHER

SECONDARY WORKS ASSIGNED:

- Literature Touches A Lawyer's Desk, TIME
- POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION
- Touster, Parables for Judges
- WHITE, JAMES BOYD, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW

Re: *Billy Budd*
- COVER, JUSTICE ACCUSED: ANTISLavery AND THE Judicial PROCESS

Re: *The Book of Daniel*
- Doctorow, Gangsterdom of the Spirit, NATION
United States v. Rosenberg

Re: Cinderella
Elkins, Cinderella: The Mythic Lives of Women Law Students

Re: Darkness at Noon
Fall and Rise of Nikolai Bukharin, BOSTON GLOBE
KOESTLER, ARROW IN THE BLUE and THE INVISIBLE WRITING
Soviets Exonerate A Son of Trotsky, N.Y. TIMES

Re: The Good Mother
Pahl, Eileen (Book Review)
Sanger, Seasoned to the Use

Re: A Man for All Seasons
DVORKIN, ELIZABETH, BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON
LEGAL EDUCATION AND PROFESSIONALISM (Excerpts)
FOX, THOMAS MORE, HISTORY AND PROVIDENCE
MARIUS, THOMAS MORE, A BIOGRAPHY
RIDLEY, STATESMAN AND SAINT: CARDINAL WOLSEY, SIR THOMAS MORE, AND
THE POLITICS OF HENRY VIII
Transcript of the Trial of Saint Thomas More

Re: Noon Wine
Warren, ed., KATHERINE ANNE PORTER: A COLLECTION OF CRITICAL ESSAYS

Re: The Stranger
Sartre, Existentialism and Humanism
Weisberg, Richard, Comparative Law in Comparative Literature: The Figure of
the 'Examining Magistrate' in Dostoevski and Camus
LAWYER IN MODERN FICTION

OBJECTIVE IN TEACHING THE COURSE:

"Using literary texts, the seminar will explore the following themes: the
role of the lawyer in contemporary society; the relationship of human values to
legal norms and professional identity; the role and power of judges; the problem
of doing justice in times of stress; and the relationship between fact and fiction."

GRADING:

Examination or paper.

COMMENTS: This is an ambitious course which combines primary works
with secondary critical works designed to address the concerns and goals of
those working in the law and literature movement and to introduce the students
to discourse about the primary texts assigned. The reading list provides for
others working in the field useful and perhaps overlooked texts worth pursuing.
BOSTON UNIVERSITY SCHOOL OF LAW

NO

BRIGHAM YOUNG UNIVERSITY, J. REUBEN CLARK LAW SCHOOL

YES

TAUGHT BY: Professor Frederick Mark Gedicks

BROOKLYN LAW SCHOOL

YES

TAUGHT BY: Professor Michael Peter Madow

UNIVERSITY OF CALIFORNIA AT BERKELEY SCHOOL OF LAW

YES

RESPONDENT: John Jay Osborn, Jr., Lecturer

COURSE TITLE: Law and Literature

PRIMARY WORKS ON CURRENT READING LIST:

DICKENS, BLEAK HOUSE
KAFKA, THE TRIAL
Melville, Barleby the Scrivener
SHAKESPEARE, HAMLET
SHAKESPEARE, KING LEAR
SHAW, GEORGE BERNARD, SAINT JOAN
SOPHOCLES, OEDIPUS REX

FILMS (USED IN PRIOR COURSES):

INHERIT THE WIND
LEGAL EAGLES
THE PAPER CHASE
TRUE BELIEVER
THE VERDICT

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendices B and C attached.

RECOMMENDED SECONDARY WORK:

WEINRIB, NATURAL LAW AND JUSTICE

OBJECTIVE IN TEACHING THE COURSE:

“To teach that a lawyer is an artist. To describe the great artistic heritage
of the law. (We don’t give lawyers the tools to appreciate the art that they create or the great themes of the law. If the law is to be fun, the students need to know this stuff. Otherwise, they’re just paper pushers.)"

GRADING:

Final examination or paper; class participation.

COMMENTS: How true! From paperchasers in law school to paperpushers in the practice. The course is centered around the following themes: “Causation, moral responsibility, and natural law as they have been expressed in works by Shakespeare, Dickens, Melville, Kafka, Shaw and Sophocles.”

UNIVERSITY OF CALIFORNIA AT DAVIS SCHOOL OF LAW NO

RESPONDENT: Professor John D. Ayer

“I never really taught Law and Literature. I taught James Boyd White’s book The Legal Imagination a few times, but that was long ago. I don’t think that we ever have had a ‘real’ Law and Literature offering here.”

UNIVERSITY OF CALIFORNIA, HASTINGS COLLEGE OF THE LAW YES

TAUGHT BY: Professor Vivian Deborah Wilson

UNIVERSITY OF CALIFORNIA AT LOS ANGELES SCHOOL OF LAW NO

“The University of California at Los Angeles previously has offered a course in Law and Literature; however, we presently do not have faculty who are specializing in this area.”

CALIFORNIA WESTERN SCHOOL OF LAW YES

RESPONDENT: Co-teachers: Associate Professor Daniel Brian Yeager, Associate Professor Paul J. Gudel. Professors Yeager and Gudel taught the course for the first time in the Spring of 1994.

COURSE TITLE: Law and Literature
ENROLLMENT: Limited to 24.
PRIMARY WORKS ON CURRENT READING LIST:

AESCHYLUS, ORESTEIA
CONRAD, HEART OF DARKNESS
DICKENS, BLEAK HOUSE
MARLowe, DOCTOR FAUSTUS
MELVILLE, BILLY BUDD, FORETOPMAN
SHAKESPEARE, THE MERCHANT OF VENICE
SOPHOCLES, ANTIOONE

FILMS:

ADAM'S RIB
APOCALYPSE NOW
THE MAN WHO SHOT LIBERTY VALANCE

OTHER RECOMMENDED PRIMARY WORKS:

KAFKA, THE TRIAL
SHAKESPEARE, KINGS LEAR
SHAKESPEARE, MEASURE FOR MEASURE

RECOMMENDED SECONDARY WORKS:

POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION
WEISBERG, RICHARD, POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE

OBJECTIVE IN TEACHING THE COURSE:

"The first goal of the course is to explore the substantive problem of the relation between civil law, on the one hand, and morality, justice, natural law and the divine, on the other. The premise of the course is that there is an irreducible tension between these things, that it is important for law students to be aware of this tension, and that the tension is most fully and meaningfully expressed in great literary works. Legal materials, primarily reports of judicial decisions, function by leaving out a great deal of the reality of those situations with which they deal. (This in fact is becoming an increasingly frequent political critique of the legal system.) Literary works dealing with legal issues replace what case decisions leave out: human relations and emotions in all their complexity, social relations in all their concreteness. In doing this, they throw into relief the problem of the limitedness of the purely legal senses of justice and truth. The thorough examination of this problem is the substantive goal of the course." The course also aims at improving the student's "ability to read and interpret complex texts," and offers the students an "opportunity to improve their writing ability."
GRADING:

One group paper (4-5 pages); student papers (4 papers each). "Close reading of texts and lots of feedback offered to students on several short papers."

COMMENTS: This course also includes the showing of films. Several people have spoken to me about the use of film in the law school classroom. Some feel that it should be offered as an optional unit outside of the classroom; others feel that it should be an integral part of the course.

CAPITAL UNIVERSITY LAW SCHOOL NO

CASE WESTERN RESERVE UNIVERSITY LAW SCHOOL NO

CATHOLIC UNIVERSITY OF AMERICA SCHOOL OF LAW YES

RESPONDENT: Professor Maxwell H. Bloomfield
COURSE TITLE: Law and American Literature
ENROLLMENT: Seminar of 12-15 students.

PRIMARY WORKS ON CURRENT READING LIST:

BELLOW, THE DEAN'S DECEMBER
BRADFORD, OF PLYMOUTH PLANTATION
HOWELLS, A HAZARD OF NEW FORTUNES
LINCOLN, SELECTED SPEECHES AND WRITINGS, Introduction by Gore Vidal, pp. xxi-xxvii; 3-263
Melville, Bartleby the Scrivener
MELVILLE, BENITO CERENO
MILLER, ARTHUR, THE CRUCIBLE
PAINE, POLITICAL WRITINGS
PORTER, KATHERINE ANNE, THE OLD ORDER: STORIES OF THE SOUTH
WRIGHT, NATIVE SON

PRIMARY WORKS TAUGHT PREVIOUSLY:

Auchincloss, Agreement to Disagree
Auchincloss, Power in Trust
Chesnutt, The Doll
Chesnutt, The March of Progress
COOPER, THE PIONEERS
CORMAN, KRAMER VS. KRAMER
Deland, The Note
DREISER, THE FINANCIER
ELLISON, INVISIBLE MAN
Fox, A Crisis for the Guard
Garland, Under the Lion's Paw
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GLASGOW, VEIN OF IRON
Glaspell, A Jury of Her Peers
HOWELLS, A MODERN INSTANCE
LEWIS, SINCLAIR, BABBITT, Chapters 4, 5, and 6
LONDON, THE IRON HEEL
MELVILLE, BILLY BUDD AND OTHER STORIES
STOWE, UNCLE TOM'S CABIN
Swados, Joe, The Vanishing American

OTHER RECOMMENDED PRIMARY WORKS:

AUCHINCLOSS, THE PARTNERS
AUCHINCLOSS, POWERS OF ATTORNEY
GARLAND, MAIN-TRAVELLED ROADS
MASTERS, SPOON RIVER ANTHOLOGY
Wishingrad, ed., LEGAL FICTIONS: SHORT STORIES ABOUT LAWYERS AND THE LAW
WRIGHT, UNCLE TOM'S CHILDREN

SECONDARY WORKS ASSIGNED:

Camilleri, Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury
POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION

RECOMMENDED SECONDARY WORKS:

FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE
POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION
THOMAS, CROSS-EXAMINATION OF LAW AND LITERATURE: COOPER, HAWTHORNE, STOWE, AND MELVILLE
WEISBERG, RICHARD, POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE
WHITE, JAMES BOYD, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW
WHITE, JAMES BOYD, WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER AND COMMUNITY

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“To explore the ways in which legal texts relate to a changing American culture.”

COMMENTS: Professor Bloomfield has offered a seminar in “Law and American Literature” twice so far and is still working on getting the format to his liking. He reports that he is “considering more use of short stories next
year, in the hope of avoiding some of the time pressures students have experienced with [his] previous sets of materials.” It was with this in mind that I compiled my own anthology. I find that I can introduce legal issues and themes just as easily using a short story as I can with a 600-page novel.

UNIVERSITY OF CHICAGO LAW SCHOOL

RESPONDENT: Judge Richard A. Posner
COURSE TITLE: Law and Literature
ENROLLMENT: Taught for five or six years; enrollment varies from 20 to 65.

PRIMARY WORKS ON CURRENT READING LIST:

AESCULPIUS, Oresteia
CAMUS, THE STRANGER
FORSTER, HOWARD'S END
Glaspell, A Jury of Her Peers
Kafka, In the Penal Colony
Kafka, The Judgment
KAFKA, THE TRIAL
MARLOWE, DOCTOR FAUSTUS
MELVILLE, BILLY BUDD, FORETOPMAN
SHAKESPEARE, HAMLET
SHAKESPEARE, Funeral Orations in JULIUS CAESAR
SHAKESPEARE, KING LEAR
SHAKESPEARE, MEASURE FOR MEASURE
SHAKESPEARE, THE MERCHANT OF VENICE
SOPHOCLES, ANTIOONE
Wordsworth, Untitled Poem
Yeast, Easter 1916
Yeast, The Second Coming

SECONDARY WORKS ASSIGNED:

EAGLETON, WILLIAM SHAKESPEARE
ELLIS, THE THEORY OF LITERARY CRITICISM: A LOGICAL ANALYSIS
FISH, IS THERE A TEXT IN THIS CLASS?: THE AUTHORITY OF INTERPRETIVE COMMUNITIES
HIRSCH, VALIDITY IN INTERPRETATION
JOHNSON, PREFACE TO PLAYS OF SHAKESPEARE
KIRCHBERGER, IN THE PENAL COLONY, IN FRANZ KAFKA'S USE OF LAW IN FICTION
Orwell, Lear, Tolstoy, and the Fool
Orwell, Politics and the English Language
WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS
Wimsatt & Beardsley, The Affective Fallacy
Wimsatt & Beardsley, The Intentional Fallacy
CASE:

_Buck v. Bell_

PUBLICATIONS BY THE RESPONDENT RELEVANT TO THE LAW AND LITERATURE FIELD:

See Appendix C attached.

COMMENTS: Judge Posner writes: "[T]he last quarter of the course will be devoted to statutory interpretation and legal rhetoric, both viewed through the lens of literary theory."

UNIVERSITY OF CINCINNATI COLLEGE OF LAW: NO

CLEVELAND STATE UNIVERSITY, CLEVELAND MARSHALL COLLEGE OF LAW: NO

UNIVERSITY OF COLORADO, SCHOOL OF LAW: YES

RESPONDENT: Professor Marianne Wesson

COURSE TITLE: Seminar entitled Women in Law and Literature

ENROLLMENT: 12.

PRIMARY WORKS ON CURRENT READING LIST:

- Adams, _After You’ve Gone_
- ALLISON, _Bastard Out of Carolina_
- Atwood, _Weight_
- GILMAN, _Herland_
- HOGAN, _Mean Spirit_
- Klass, _Other Women’s Children_
- Le Guin, _The Left Hand of Darkness_
- Marcus, _Centaurs_
- Ozick, _Purmeresser: Her Work History, Her Ancestry, Her Afterself_
- ROBSON, _Cecile_
- WALKER, _Possessing the Secret of Joy_

FILM:

_A JURY OF HER PEERS_

PRIMARY WORKS TAUGHT PREVIOUSLY:

- ATWOOD, _The Handmaid’s Tale_
- HAWTHORNE, _The Scarlet Letter_
- KINOSOLVER, _The Bean Trees_
- LESSING, _The Fifth Child_
SECONDARY WORKS ASSIGNED:

Althouse, Standing, In Fluffy Slippers
Aristodemou, Studies in Law and Literature: Directions and Concerns
Becker, The Politics of Women's Wrongs and the Bill of 'Rights': A Bicentennial Perspective
Gunning, Arrogant Perception, World-Travelling, and Multicultural Feminism: The Case of Female Genital Surgeries
Heilbrun and Resnick, Convergences: Law, Literature, and Feminism
Hom, Female Infanticide in China: The Human Rights Specter and Thoughts Toward (An)other Vision
Lam, Feeling Foreign in Feminism
Law, Homosexuality and the Social Meaning of Gender
MacKinnon, Toward Feminist Jurisprudence
Rich, Compulsory Heterosexuality and Lesbian Existence
Robson, The Specter of a Lesbian Supreme Court Justice: Problems of Identity in Lesbian Legal Theorizing
Sanger, Seasoned to the Use
Scales, The Emergence of Feminist Jurisprudence: An Essay
Schultz, Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument
West, The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory
West, Jurisprudence and Gender
White, James Boyd, What Can a Lawyer Learn from Literature?
Wishik, To Question Everything: The Inquiries of Feminist Jurisprudence

CASES:

Adoption of Kay C.
Anna J. v. Mark C.
Lininger v. Eisenbaum
In re Baby M.

OTHER RECOMMENDED PRIMARY AND SECONDARY WORKS:

"It would be impossible for me to list all of the other works I would recommend. Every day I am shamed by my own ignorance, and by the number of things I have not read. But I would love to see others' lists, if only out of masochism."
PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

"It would be difficult for me to say exactly what impels me to teach this subject. Chiefly I think of my seminar as a kind of recovery experience for formerly thoughtful readers of fiction who have been trained to think like lawyers (i.e. categorically, analytically) and who need to remember that there are also other ways to think, and to write. Legal training deforms us even as it hones our skills; words like love and terror get replaced in our vocabularies by consortium and emotional distress. There's nothing wrong with the last two, but we need to regain the ability to use the former two, and many others, without berating ourselves for unprofessionalism."

GRADING:

Each student is expected to "write a publishable-quality paper, which will undergo at least one revision after the first draft. The paper may address any topic so long as it concerns women or feminism, has some connection with the law, and brings in at least some materials from literature or literary theory."

COMMENTS: Professor Wesson reports that she is "halfway through writing a mystery novel that takes up feminism, victim's rights, criminal justice, and the death penalty." She is also "working as a script consultant to a documentary filmmaker who is making 'Women of Mystery,' an investigation of the political and social significance of the popularity of female-protagonist crime fiction." Her comments in relation to her objective in teaching the course capture and articulate the feelings of many on the relationship of law and literature to the process of legal education. I might also mention that I sense the same feelings from many respondents as Professor Wesson expresses about recommending other texts—that there are so many works each of us has missed, so many more to explore, and such a sense of inadequacy when faced with the syllabi of others offering a myriad of works over a wide spectrum of topics—those thoughts often expressed by professors with the most intimidating syllabi of their own! Professor Wesson's latest course is arranged around the following topics: Feminism, Multiculturism, and Tolerance; Women as Victims? or Survivors?; Women and Work; Women and Their Families: What Counts as a Family?; Feminist Utopias; Women's Strength, Spirit, and Power. An earlier course was arranged around the following topics: Women as Lawyers; Motherhood; Women and Violence; Women and Their Families; Women and Their Work; Women's Strength and Power; Women's Sexuality;
Solidarity and Divided Loyalties.

COLUMBIA UNIVERSITY SCHOOL OF LAW

UNIVERSITY OF CONNECTICUT SCHOOL OF LAW

RESPONDENT: Professor Thomas H. Morawetz
COURSE TITLE: Law and Literature
ENROLLMENT: 19 in Spring of 1994; oversubscribed; chosen by lottery.

PRIMARY AND SECONDARY WORKS ON CURRENT READING LIST:

Abraham, Statutory Interpretation and Literary Theory: Some Common Concerns of An Unlikely Pair
Allende, The Judge's Wife
CAMUS, THE FALL
Capek, The Clairvoyant
Gordimer, Crimes of Conscience
Graff, 'Keep Off the Grass,' 'Drop Dead' and Other Indeterminacies
Grey, The Hermeneutics File
Hancher, Dead Letters: Wills and Poems
Hyland, Babel: a She'ur
Just, About Boston
Kafka, Advocates
Kafka, Before the Law
Kafka, An Imperial Message
Kafka, The New Advocate
Kafka, In the Penal Colony
Kafka, The Problem of Our Laws
Lampedusa, Joy and the Law
Levinson, Law as Literature
Melville, Bartleby the Scrivener
Melville, The Paradise of Bachelors and Tartarus of Maids
Mortimer, Rumpole for the Prosecution
O'Connor, Frank, Legal Aid
Ozick, Puttermesser: Her Work, Her Ancestry, Her Afterlife
Salter, American Express
TWAIN, PUDD'NHEAD WILSON
West, General Bellomo
White, James Boyd, Law and Literature: 'No Manifesto'
Wishingrad (ed.), LEGAL FICTIONS: SHORT STORIES ABOUT LAWYERS AND THE LAW

OTHER PRIMARY AND SECONDARY WORKS ASSIGNED IN AN EARLIER COURSE:

Balkin, Some Realism about Pluralism: Legal Realist Approaches to the First Amendment
Balkin, Tradition, Betrayal, and the Politics of Deconstruction
Boyer, Formalism, Realism, and Naturalism: Cross-currents in American Letters and
Films:

Adam's Rib
Jagged Edge

Publications by Respondent Relevant to the Field of Law and Literature:

See Appendix C attached.

Objectives in Teaching the Course:

"(A) to give law students a chance to contemplate law as a cultural, social, and psychological phenomenon/institution and to discuss these reflections in a structured and probing way; (B) to bring together several of my own interests in interpretation, self-expression, and self-understanding and share my thoughts and concerns with students."

Grading:

Weekly discussion and a final paper of about 20 pages.

Comments: Professor Morawetz points to some of the problems associated with this survey—problems that are addressed in my introduction. He states: "I have no idea what you mean by a 'primary work.' If one conceives the course as being on hermeneutics, primary works are academic books and essays on interpretation. If one conceives the course as primarily about law-oriented works of fiction, then the primary works are literary. And if one conceives the course as involving the [F]irst [A]mendment and literature, primary works are likely to be cases." Criticizing my own survey, I would add...
that "primary works" might be seen as "required readings" with "secondary works" being recommended but optional readings. For this entry, I have simply listed all of the works taught by Professor Morawetz without attempting to break the list down into "primary" and "secondary" works. The course is centered around the following topics: Introduction to Hermeneutics; How is Meaning Determined?; What is Hermeneutics?; Stories about Lawyering Today: Lawyers Loved and Unloved; Stories about American Lawyers and their Cultures; An Existentialist Looks at Judging; Foreign Perspectives on Lawyers and Justice; Melville Looks at Law; Kafka Looks at Law; Order and Disorder in Law and Literature; Pluralism, Tolerance and the First Amendment; Feminism, Discrimination and the First Amendment; Liberalism, Mapplethorpe, and Government Funding of the Arts.

CORNELL LAW SCHOOL

CREIGHTON UNIVERSITY SCHOOL OF LAW

RESPONDENT: Lawrence Raful, Dean.

"Please send copy of final survey."

CUMBERLAND SCHOOL OF LAW OF SAMFORD UNIVERSITY

RESPONDENT: Professor R. George Wright

"While the situation here may shortly be changing, to my knowledge no full-time law faculty member regularly teaches a course focused on law and literature. My own course on Legal Philosophy normally requires the reading of literature excerpts and full texts, and Professor Tom Berg assigned The Brothers Karamazov to his seminar students last semester . . . ."

COMMENTS: Professor Wright's Philosophy of Law syllabus for the Spring of 1994 includes the Reverend Martin Luther King Jr's Letter From Birmingham Jail, Plato's Apology, Plato's Crito, Plato's The Republic, Sophocles's Antigone, and Thoreau's "On the Duty of Civil Disobedience."

UNIVERSITY OF DAYTON SCHOOL OF LAW

UNIVERSITY OF DENVER COLLEGE OF LAW

DePAUL UNIVERSITY COLLEGE OF LAW

RESPONDENT: Professor Susan A. Bandes. Professor Bandes taught the course for the first time in the Spring of 1994.
COURSE TITLE: Law and Literature: Seminar.
ENROLLMENT: 20; oversubscribed.

PRIMARY WORKS ON CURRENT READING:

Adams, *After You’ve Gone*
Atwood, *The Handmaid’s Tale*
Brent, *Incidents in the Life of a Slave Girl* (excerpts)
Carroll, *Who Stole the Tarts?*, and *Alice’s Evidence* from *Alice’s Adventures in Wonderland*
Easmon, *Heart of a Judge*
Glaspell, *A Jury of Her Peers*
Just, *About Boston*
Lewis, Anthony, *Gideon’s Trumpet* (excerpt)
Melville, Billy Budd, *Foretopman*
Morrison, *The Bluest Eye*
Mortimer, *Rumpole and the Younger Generation*
Oates, *Do With Me What You Will* (excerpt)

CASES:

*City of Los Angeles v. Lyons*
Darrow, *Summation in the Sweet Case.*
*DeShaney v. Winnebago County Dept. of Social Serv.*
*Hoyt v. Florida* (Woman accused of murdering her husband tried by an all-male jury)
*In re Baby M* (surrogacy case)
*Plessy v. Ferguson*
*Johnson v. State* (Mother convicted of passing cocaine to newborn through umbilical cord)
*Olmstead v. United States*

FILM:

*Breaker Morant*

SECONDARY WORKS ASSIGNED:

White, James Boyd, *Constituting a Culture of Argument*, from *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community*
White, Lucie E., *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*

RECOMMENDED SECONDARY WORKS:

Gemmette, *Law and Literature: An Unnecessarily Suspect Class in the Liberal Arts Component of the Law School Curriculum*  
Wishengrad, *Legal Fictions*
Recent articles on narrative in the law, including works by Delgado, Sherry and Farber, Kathy Abrams, and Robin West.

OBJECTIVE IN TEACHING THE COURSE:

"This seminar will be a contemplation of several of the connections between law and literature. It will ask the question: What can lawyers learn from literature? It will posit several possibilities. One is that the lawyers can benefit from literary critical techniques and understanding of narrative conventions. Specifically, thinking of lawyers, judges and clients as telling law stories may cast light on the question of how we can be better lawyers and better judges. A second possibility is that reading literature can provide perspectives on legal relations which cannot be learned from cases. I will focus specifically on the perspective of the outsider to the legal system, particularly the powerless, often silenced outsider. Third, reading stories about lawyers may help us understand how the practice of law affects us as human beings."

"The seminar also suggests two more general reasons for lawyers to read literature. One is that arguably our legal education should not be defined so narrowly: until recently, lawyers were encouraged to place their legal learning in a broader and deeper cultural context. The other is that perhaps it is permissible to have some fun in law school, and read books that are enjoyable, because they are enjoyable. In the spirit of this last reason, we will also watch a movie."

GRADING:

60% of the grade based on the outline, first draft and final draft of the paper. Papers are required to be at least thirty pages long, not including endnotes. "The paper should demonstrate comprehensive research and sophisticated, in depth analysis, as well as a clear, organized, concise writing style. It should be analytical: that is, it should not merely report or describe what you have read, but should reflect your own synthesis of the material and your original thoughts on its significance."

40% of the grade based on class attendance, class participation and the oral presentation. The oral presentation focuses on the draft of the student’s paper which is distributed to class members who are expected to read the paper and participate in the class discussion. The presenter is expected to talk for about fifteen minutes and then lead discussion for an additional fifteen minutes.

COMMENTS: The course is structured around the following topics: Narrative Aspects of the Law; The Stories Lawyers and Clients Tell; What Lawyers and Judges Can Learn from Literature; The Perspective of the Other; The Stories Judges Tell; Law, Reason and Justice; The Emotional Life of
Lawyers. Professor Bandes supplied the only syllabus that dealt with the issue of plagiarism, spelling out for the students just what it is and what the consequences are for engaging in such practices. It is also a course that emphasizes the writing process which takes place in a Peter Elbow-type workshop.

**UNIVERSITY OF DETROIT MERCY SCHOOL OF LAW**

**RESPONDENT:** Assistant Professor Laura L. Hirschfeld; First time that Professor Hirschfeld has taught the course.

**COURSE TITLE:** Seminar, Law and Literature

**ENROLLMENT:** 11 students (maximum enrollment of 16).

**PRIMARY WORKS ON CURRENT READING LIST:**

- Hughes, *The Fatal Shore* (excerpt)
- Ibsen, *A Doll’s House*
- Ibsen, *Hedda Gabler*
- Melville, *Bartleby the Scrivener*
- Milton, *Paradise Lost*
- Orwell, 1984
- Pasternak, *Doctor Zhivago*

**SECONDARY WORKS ASSIGNED:**

Essays by Catherine MacKinnon and Andrea Dworkin

**OBJECTIVE IN TEACHING THE COURSE:**

"The objective is to ask second- and third-year students to reevaluate their thoughts about law (and societal structure in general) by viewing it through the eyes of the protagonists in these works. Specifically, I wanted to study rebellion against or rejection of 'law,' (using the term very loosely) and inquire if we view these rebellions differently when they are romanticized in literature, versus how we might feel as lawyers about those who participate in such rebellions in 'real' life."

**COMMENTS:** Professor Hirschfeld writes: "I was looking for an alternative way to teach this course—neither 'law as literature,' nor reading the portrayal of lawyers/judges in literature. I wanted the view of 'Everyman.'"
DRAKE UNIVERSITY LAW SCHOOL

RESPONDENT:  Associate Dean Andrea S. Charlow

"Drake Law School has approved a course in law and literature to be taught by Professor Stanley Ingber, but that course has not been taught to date."

DUKE UNIVERSITY SCHOOL OF LAW

RESPONDENT:  Professor James D.A. Boyle, Visitor from American University

COURSE TITLE:  Law and Literature

ENROLLMENT:  Approximately 50; Taught occasionally.

PRIMARY AND SECONDARY WORKS ON CURRENT READING LIST:

ABBOTT, IN THE BELLY OF THE BEAST:  LETTERS FROM PRISON
ANOUILH, ANTIGONE
Articles by Clare Dalton, Ronald Dworkin, Gerry Frug
ATWOOD, THE HANDMAID'S TALE
Auden, Law Like Love
Borges, Pierre Menard, Author of the Quixote
(excerpts)
Boyle, A Theory of Law and Information: Copyright, Spleens, Blackmail, and Insider Trading (excerpts)
Boyle, The Search for an Author:  Shakespeare and the Framers
BUTLER, SAMUEL, EREWHON
DICKENS, BLEAK HOUSE
DOSTOYEVSKY, CRIME AND PUNISHMENT
FOUCAULT, DISCIPLINE AND PUNISH:  THE BIRTH OF THE PRISON
GARBER, SHAKESPEARE'S GHOST WRITERS:  LITERATURE AS UNCANNY CAUSALITY
KAFKA, THE TRIAL
LEE, TO KILL A MOCKINGBIRD
LEGUIN, THE DISPOSSESSED
MAILER, THE EXECUTIONER'S SONG
Melville, Bartleby the Scrivener
MELVILLE, BILLY BUDD, FORETOPMAN
PERCY, THE THANATOS SYNDROME
Richard Posner vs. Stanley Fish on the uses of literary theory in law
SARTRE, THE WORDS (excerpts)
SHAKESPEARE, THE MERCHANT OF VENICE
Shakespeare, Selections from the Sonnets
SOPHOCLES, ANTIGONE
Sumerian Poetry from 10th Century B.C., Slave Come to My Service
TUROW, ONE L
TUROW, PRESUMED INNOCENT
WOLFE, THE BONFIRE OF THE VANITIES

https://scholar.valpo.edu/vulr/vol29/iss2/4
COMMENTS: As Professor Boyle states in his description of the course, this is "[a]n elective course with an unrepentantly idiosyncratic reading list. The course concentrates on the possible relationships between law and literature, with a focus on the idea of "authorship"—Authorship and interpretive control over legal and literary texts, authorship and authenticity, authorship of one's destiny, authorship in, and as, utopia, authorship as a prerequisite for property rights and so on. More prosaically, the major themes of the class will be: 1) depiction of the law and lawyer in popular and highbrow fiction; 2) the relationship between the interpretation of legal and literary texts; 3) law in utopia and dystopia; 4) crime and punishment; and 5) Law, Literature and the Good." Professor Boyle also states that most of the time will be spent "reading books rather than books about books. Thus, while the course as a whole is certainly shaped by ideas of literary theory and criticism, familiarity with those ideas is not necessary (and perhaps not even desirable)."

DUQUESNE UNIVERSITY SCHOOL OF LAW

EMORY UNIVERSITY SCHOOL OF LAW

RESPONDENT: Associate Professor Martha Grace Duncan
COURSE TITLE: Law and Literature
ENROLLMENT: Seminar; 15; Course is always over-subscribed.

PRIMARY AND SECONDARY WORKS PRESENTLY TAUGHT:

REQUIRED READINGS:

Aeschylus, Oresteia
Camus, The Stranger
Cushing and Roberts, Law and Literature: The Contemporary Image of the Lawyer
DeFoe, Moll Flanders
Dickens, Oliver Twist
Domnaraki, A Novelist's Knowing Look at the Law: Short Stories by John William Corrington
Dostoyevsky, Crime and Punishment
Hawthorne, The Scarlet Letter
King, Martin Luther, Jr., Letter from Birmingham Jail
Melville, Billy Budd, Foretopman
Miller, Arthur, The Crucible
Porter, Katherine Anne, "Noon Wine": The Sources
Punter, Fictional Representation of the Law in the Eighteenth Century
Sophocles, Antigone
Vega, Lope De, Fuenta Ovejuna

RECOMMENDED READINGS:

Bender, Imagining the Penitentiary: Fiction and the Architecture of the
MIND IN EIGHTEENTH-CENTURY ENGLAND (especially Ch. 2, on Moll Flanders and Robinson Crusoe)

Bollinger, The Homer of the Pacific: Melville and the Ambiguities of Judging Evil


FIELDING, AMELIA

Gewirtz, Aeschylus' Law

Nietzsche, The Genealogy of Morals

WATT, THE RISE OF THE NOVEL; STUDIES IN DEFOE, RICHARDSON, AND FIELDING (pages on Moll Flanders)

Weisberg, Richard, Comparative Law in Comparative Literature: The Figure of the 'Examining Magistrate' in Dostoevski and Camus

WRIGHT, NATIVE SON

ADDITIONAL PRIMARY WORKS TAUGHT PREVIOUSLY:

GAY, BEGGAR’S OPERA

SHAKESPEARE, MEASURE FOR MEASURE

STEVENSON, KIDNAPPED

PUBLICATIONS BY RESPONDENT:

See Appendix C attached.

IMPORTANT BOOKS BY OTHERS:

POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION


WHITE, JAMES BOYD, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION

GRADING: Paper course.

COMMENTS: The course is structured around the following topics: The Origins of the Law; The Duty to Obey; The Duty to Enforce; The World of the Outlaw; The Mind of the Outlaw; and Law and Community.

UNIVERSITY OF FLORIDA, COLLEGE OF LAW

NO

"Course has been offered but not in the recent past."

FLORIDA STATE UNIVERSITY COLLEGE OF LAW

YES

RESPONDENT: Associate Professor Harold P. Southerland

COURSE TITLE: Law and Literature

ENROLLMENT: 15; Seminar.
PRIMARY WORKS ON CURRENT READING LIST:

COBB, PATHS OF GLORY
COZZENS, GUARD OF HONOR
DIDION, A BOOK OF COMMON PRAYER
DOCTOROW, THE BOOK OF DANIEL
PORTER, KATHERINE ANNE, SHIP OF FOOLS
STONE, A FLAG FOR SUNRISE

OBJECTIVE IN TEACHING THE COURSE:

“This is an unusual course for a law school. It does not deal with legal rules or principles, or directly invoke or concern the legal system. It makes no use of literary studies that implicate legal philosophy or jurisprudential issues, and it does not offer any of the well-known fictional treatments of law and lawyers. What this course does concern is human beings; what they say, what they want, and how they behave . . . . In these books, you will see how easily the law has been laid hold of and bent and shaped to the felt necessities of the times. You will gain a heightened sense of what human beings are capable of, particularly under stress, and particularly when their individual identities are safely and anonymously merged in the cost-benefit conscious, rationalistic, faceless, amoral entity called ‘the state’—dedicated to securing the greatest good for the greatest number and with a legal monopoly of force in pursuit of that end.”

GRADING:

Pass-Fail. “The course requirements are to read the books, to write the essays [one essay of approximately 1000 to 1500 words for each book] and submit them ON TIME, and to attend class.”

COMMENTS:

The course is structured historically from 1914 with the beginning of World War I to the present day. Each novel captures the life and times of a given period in history: Paths of Glory—set in 1915; Ship of Fools—the period between the two great wars; Guard of Honor—the midst of World War II; The Book of Daniel—the McCarthy era; A Flag for Sunrise and A Book of Common Prayer—the 1960s and 1970s. There are two epigraphs chosen by Professor Southerland for his course, and I have taken the liberty of reproducing them here:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices
which judges share with their fellow-men, have had a good deal more
to do than the syllogism in determining the rules by which men
should be governed.

OLIVER WENDELL HOLMES, THE COMMON LAW 1 (1881).

[A lawyer] is not concerned with facts, he is concerned with probabilities. It is the novelist who is concerned with facts, whose job it is to say what a particular man did do on a particular occasion; the lawyer does not, cannot be expected to go further than to show what the ordinary man would be most likely to do under presumed circumstances.

RICHARD HUGHES, A HIGH WIND IN JAMAICA 183
(Signet Classics ed. 1928).

FORDHAM UNIVERSITY SCHOOL OF LAW  NO

GEORGE MASON UNIVERSITY SCHOOL OF LAW  NO

GEORGETOWN UNIVERSITY LAW CENTER  YES

TAUGHT BY:  Professor Robin L. West

GEORGE WASHINGTON UNIVERSITY NATIONAL LAW CENTER  NO

UNIVERSITY OF GEORGIA SCHOOL OF LAW  YES

RESPONDENT:  Associate Professor Paul J. Heald
COURSE TITLE:  Applying Literature to Law
ENROLLMENT:  Unknown; First class in Fall of 1994.

Classes 1 & 2:  Introduction to the interdisciplinary study of law and literature: Why do we read?  What is the relationship between literature and law?  What is “legal reasoning”?

Discussion of:

POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION (excerpts)
NUSSBAUM, LOVE’S KNOWLEDGE (excerpts)
WHITE, JAMES BOYD, HERACLES BOW: ESSAYS ON THE RHETORIC AND POETICS OF
THE LAW (excerpts)
Fish, The Law Wishes to Have a Formal Existence for Itself
CARTER, CONTEMPORARY CONSTITUTIONAL LAWMAKING: THE SUPREME COURT AND
THE ART OF POLITICS (excerpts)
Heald, A Lost Episode of ‘Meeting of the Minds’: Posner, Kelman, Holmes and Pascal
WELLEK & WARREN, THEORY OF LITERATURE (excerpts)
Classes 3 & 4: Capital Sentencing and the Ethics of Reading: How can literature help us address procedural issues in death cases?

Discussion of:

*Maynard v. Carwright*
*Bundy v. State*
*Adams v. State*
*Walton v. Arizona*
*O.C.G.A. § 17-10-30*
*Euripides, Medea*
*Dante, Inferno (excerpts)*
*DeQuincey, The Stranger's Grave*
*Micau and Aynesworth, Ted Bundy: Conversations with a Killer (excerpts)*
*MacPherson, The Roots of Evil*
*Darrow, Attorney for the Damned: Clarence Darrow in the Courtroom (excerpts)*

Suggested reading:

*Nussbaum, Serpents in the Soul: A Reading of Seneca's Medea*
*Black, The Aesthetics of Murder*
*Heald, Retroactivity, Capital Sentencing, and the Jurisdictional Contours of Habeas Corpus (appendices)*

Class 5: Criminal Responsibility and Plea Bargaining: If, as Nussbaum suggests, the judge of a criminal case is like the ethical reader of a novel, what can we conclude about a system which burns 98% of the books? What does literature tell us about the process of becoming guilty?

Discussion of:

*Bordenkircher v. Hayes*
*Alschuler, The Abolition of Plea Bargaining: A Case Study of El Paso County, Texas (excerpts)*
*Alschuler, Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System (excerpts)*
*Langbein, Comparative Criminal Procedure: Germany (excerpts)*
*Koestler, Darkness at Noon*
*Camus, The Stranger*

Classes 6, 7 & 8: Rape and Seduction: How does literature illustrate the feminist critique of legal reasoning? What rules of evidence should control in rape cases?

Discussion of:

*Federal Rule of Evidence § 412 and Committee Notes*
*Selected Cases*
Classes 9 & 10: Defining Obsenity and Pornography: How can literature help identify the issues? Does literature suggest an acceptable level of social engineering?

Discussion of:

- Lindgren, *Defining Pornography*
- Hawkins and Zimring, *Pornography in a Free Society* (excerpts)
- Dworkin, Andrea, *Pornography: Men Possessing Women* (excerpts)
- Miller v. California
- Bu ler v. Queen
- American Booksellers Ass'n, Inc. v. Hudnut
- Dworkin, Andrea, Mercy (excerpts) (assigned earlier)
- Turow, Scott, *Presumed Innocent*

Class 11: Presentation and discussion of paper topics. Each student will briefly summarize the thesis of his/her paper. The class will critique the proposals and suggest further sources of reading. Hopefully, the consideration of others' ideas will contribute to our definition of the group enterprise—enhancing the viability of law and literature as a useful interdisciplinary pursuit.

Classes 12 & 13: Modern Tort Law and Issues of Responsibility in the Civil Context: Can the dramatic changes in tort liability in the twentieth century be linked to (or illustrated by) changed notions of individual responsibility? Do literature and law provide parallel examples of the post-modern mind?

Discussion of:

- Escola v. Coca-Cola Bottling Co.
- Li v. Yellow Cab Co.
- Epstein, *A Theory of Strict Liability* (excerpts)
- Nietzsche, *Beyond Good and Evil* (excerpts)
- Sartre, *Existentialism and Humanism* (excerpts)
- Eco, *Foucault's Pendulum*

Class 13: Semiotics and the Parole Evidence Rule: Does modern linguistic theory (and its literary embodiment) suggest an approach to problems of contract interpretation?
Discussion of:

Mitchell v. Lath
U.C.C. § 2-202
Stanley Fish, The Law Wishes to Have a Formal Existence for Itself (assigned earlier)
Excerpts from a clearly written primer on modern linguistic theory
Eco, The NAME OF THE ROSE
ROBBE-GRILLET, THE ERASERS (suggested)

Class 14: Applying "Law" to Literature: How does a knowledge of modern jurisprudence and case law affect the way we read?

Discussion of:

PYNCHON, V

Class 15: Summary discussion and closing comments. Evaluation of the enterprise.

COMMENTS: As Professor Heald notes: "This syllabus presents far more than enough material for a two-hour (law school) or three-hour (graduate school) course. In fact, the syllabus might logically be divided into two or three full courses that make the same critical point about the usefulness of studying law and literature, but examine different sets of texts." In a recent conversation with Professor Heald, he indicated to me that his syllabus has been revised and that the number of assigned works has been reduced.

What struck me as I read the syllabus was the opportunity for students to experience a whole range of works which would not be possible if it were not for the fact that excerpts from longer works are assigned. This way, Professor Heald is able to bring the relevant topics before the students with the expectation that they will be prepared for class while at the same time leaving the door open with the hopeful expectation that at least some of the students will read more than the excerpts assigned. For a first course, this is an extremely ambitious and well-thought out syllabus. The syllabus, which is reproduced with permission of Professor Heald, is included in its entirety to show how a typical course using fiction, non-fiction and legal cases is structured around various topics.

GOLDEN GATE UNIVERSITY SCHOOL OF LAW

TAUGHT BY: Associate Dean Margaret A. Hughes

GONZAGA UNIVERSITY SCHOOL OF LAW

Produced by The Berkeley Electronic Press, 1995
HAMLINE UNIVERSITY SCHOOL OF LAW

YES

RESPONDENT: Larry M. Wertheim, Esq., Adjunct Faculty

COMMENTS: Professor Wertheim taught a course in Law and Literature at Hamline in the Spring of 1993 and will be teaching the course at Hamline in the Fall of 1994. In the Spring of 1994 he taught a Law and Literature course at William Mitchell College of Law. Please see the entry for William Mitchell College of Law, supra, as Professor Wertheim's courses at both schools are very similar.

HARVARD UNIVERSITY LAW SCHOOL

YES

TAUGHT BY: Professor Richard Davies Parker

UNIVERSITY OF HAWAII WILLIAM S. RICHARDSON SCHOOL OF LAW

NO

RESPONDENT: Dean Jeremy T. Harrison

"We do not offer a course. I wish we did; we need to find a professor who shares this interest. May I ask you to send us your results as well?"

HOFSTRA UNIVERSITY SCHOOL OF LAW

YES

RESPONDENT: Professor Wendy M. Rogovin

COURSE TITLE: Law and Literature


PRIMARY WORKS ON READING LIST:

FICTION:

AUSTER, MUSIC OF CHANCE
Carver, A Small, Good Thing
Cisneros, Salvador Late or Early
COOPER, THE PIONEERS
Dworkin, bertha schneiders existential edge
Eliot, T.S., The Love Song of J. Alfred Prufrock
GIBBONS, ELLEN FOSTER
GOLDING, LORD OF THE FLIES
HAWTHORNE, THE SCARLET LETTER
IBSEN, A DOLL'S HOUSE
Kafka, The Problem of Our Laws
Kafka, An Imperial Message
MARQUEZ, THE AUTUMN OF THE PATRIARCH
Melville, Bartleby the Scrivener
Pynchon, The Crying of Lot 49
Rich, The Burning of Paper Instead of Children
Rich, Our Whole Life

NON-FICTION:

Coles, The Call of Stories: Teaching and the Moral Imagination (excerpt of first 50 pages or so)

ADDITIONAL PRIMARY WORKS TAUGHT PREVIOUSLY:

FICTION:

Barth, The Floating Opera
Conrad, Lord Jim
Curley, Saccovanzetti
Kafka, The Trial
Lee, To Kill a Mockingbird
Mann, Justice is That Which Serves Our Purpose
Pound, With Usura (paired with the Posner law review articles)
Wiggins, John Dollar
Wright, Native Son
Yerby, Health Card

NON-FICTION:

Douglass, Narrative of the Life of Frederick Douglass: An American Slave
Frankfurter, Essay on the Background of the Sacco & Vanzetti case
Gilligan, In a Different Voice: Psychological Theory and Women's Development (excerpts)
Gilligan and Hamner, Making Connections: The Relative Worlds of Adolescent Girls at Emma Willard School (excerpts)
King, Letter from Birmingham Jail
Sacco and Vanzetti, Letters
Thoreau, On the Duty of Civil Disobedience
Wilde, De Profundis

OTHER RECOMMENDED PRIMARY TEXTS:

Dickens, Bleak House
Dostoyevsky, Crime and Punishment
Shakespeare, Merchant of Venice

ASSIGNED OR RECOMMENDED ARTICLES AND BOOKS BY OTHERS:

"The only secondary sources I find important are those that raise issues relating to the topic of literature that I have assigned. In other words, I find it helpful to read law review articles about family law and domestic violence when
teaching literature like Kaye Gibbons' *Ellen Foster* or Andrea Dworkin's 'bertha schneiders existential edge.'”

Dolgin, Janet, *The Law's Response to Parental Alcohol and 'Crack' Abuse*
Posner, *An Economic Theory of the Criminal Law*

CASES:

*Bowers v. Hardwick* (with De Profundis)
*DeShaney v. Winnebago County Dept. of Social Serv.* (with Ellen Foster)

OBJECTIVE IN TEACHING THE COURSE:

“I have several objectives in teaching the course. I teach Law & Literature as a seminar designed for third-year students. I want to reinfuse legal issues with human aspects. Students spend much of their first two years of law school removing the human element from the study of law, learning how to appraise legal problems systematically and logically and perfecting their abilities to distill the relevant from irrelevant facts. I like to have them reconsider certain legal issues in the contexts in which they arise, and find literature to be an excellent vehicle in which to do that. The reason I think that is an important objective in the course is that unless the law is considered in context, we have no way of knowing whether a given legal rule is effective.”

“Another goal of the course is to offer the students a jurisprudence course of sorts. I usually group the readings around an organizing theme, with the various assignments offering different possibilities for approaching the problem. I like to use literature rather than traditional legal philosophy because it is more accessible to the students and it is somewhat more enigmatic, which forces them to think. Of course, I do not think of my course as a substitute for a jurisprudence course.”

“Perhaps the most important objective of the course is to teach students how to communicate. By assigning great literature, weekly papers, and requiring attendance, the course permits students to develop their communication skills. For those students with writing problems, I use the papers to work on everything from their organization to their grammar. Because the papers are due in advance of the class, the students are forced to be prepared for class, and are forced to think hard about what they have read. The structure of this course ensures students that their thoughts will be taken seriously.”
GRADING:

Thirteen three-page papers; class participation—may be used to raise or lower the grade one step.

COMMENTS: It is delightful to receive the kind of response supplied by Professor Rogovin. Not only was the survey returned with a very gracious cover letter, but the effort that she put into responding and participating in this collaborative effort is readily apparent from her comments under “Objectives in Teaching the Course” above. Teaching students to “think” is goal enough—to have them work on grammar, punctuation, communication, and understanding the human condition at the same time helps to produce humanitarian, humanistic and humane scholars of the law.

UNIVERSITY OF HOUSTON LAW CENTER

RESPONDENT: Associate Professor David R. Dow
COURSE TITLE: Law and Literature

PRIMARY WORKS ON READING LIST:

FICTION:

CONROY, BODY AND SOUL
Dawkins, Benny Ricco's Search for Truth
Fuller, The Case of the Speluncean Explorers
GATES, JERNIGAN
MELVILLE, BILLY BUDD, FORETOPMAN
MILGRAM, OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW XI-XVII, 1-164
PERCY, THE SECOND COMING
SOPHOCLES, ANTIGONE
STEVENS, selected poems from THE PALM AT THE END OF THE MIND:

Sunday Morning, p. 5.
Distillationment at Ten O'Clock, p. 11.
The Snow Man, p. 54.
The Idea of Order at Key West, p. 97.
Sad Strains of a Gay Waltz, p. 97.
The Well Dressed Man with a Beard, p. 190.
Notes Toward a Supreme Fiction (last canto only It Must Give Pleasure), p. 207.
Esthetique du Mal, p. 252.
An Ordinary Evening in How Haven (canto I, V, IX, XII, XIV, XV, XXII, XXIII, XXVIII-XXXI only), p. 331.
A Discovery of Thought, p. 366.
The Course of a Particular, p. 367.
Final Soliloquy of the Interior Paramour, p. 367.
The World as Meditation, p. 381.
Prologues to What is Possible, p. 377.
The Hermitage at the Centre, p. 384.
The Planet on the Table, p. 386.
Not Ideas About the Thing but the Thing Itself, p. 387.
Of Mere Being, p. 398.
TOLSTOY, THE DEATH OF IVAN ILYITCH

NON-FICTION:

COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS (excerpts)
Dow, Advocacy, Truth, Fairness, and Law
Dow, Letters between David R. Dow and Peter Shaw on Law and Literature
Dworkin, Ronald M., Law as Interpretation
FISH, IS THERE A TEXT IN THIS CLASS? THE AUTHORITY OF INTERPRETIVE COMMUNITIES (excerpts)
Fish, Working on the Chain Gang: Interpretation in Law and Literature
HART, THE CONCEPT OF LAW
Kronman, Foreword: Legal Scholarship and Moral Education
Kronman, Living in the Law
Levinson, Law as Literature
LINDLEY, THE END OF PHYSICS: THE MYTH OF A UNIFIED THEORY (excerpts)
POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION, pp. 155-66; 209-68
Putnam, Reasonableness as A Fact And as A Value
Quine, Breaking into Language
Shaw, Reviewing POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION
Tanenhaus, A Lonely Passion for the Liberal Imagination
Teachout, The Well-Wrought Sax
Thoreau, On the Duty of Civil Disobedience
Trilling, Preface to THE LIBERAL IMAGINATION

GRADING:

Paper (two-thirds) and class participation.

COMMENTS: Professor Dow writes: “As the syllabus probably reflects, my interest is primarily in language, and how legal and literary language are fundamentally different. In this regard, I am out of the so-called law and literature mainstream, which generally holds that a text is a text is a text.” His latest syllabus focuses on Law in Literature; Language; Law and Conscience; The Lives Lawyers (Can) Lead; Language and Communication; Law’s Language; and Other Language. An earlier syllabus is centered around the following topics: Origins of Law; The Philosophical Framework; Law and Duty; Law, Culpability, and Punishment; Law, Language and Interpretation; and Law and the Ninth Amendment.

HOWARD UNIVERSITY SCHOOL OF LAW NO
UNIVERSITY OF IDAHO COLLEGE OF LAW NO
UNIVERSITY OF ILLINOIS COLLEGE OF LAW NO

https://scholar.valpo.edu/vulr/vol29/iss2/4
RESPONDENT: Assistant Professor Elizabeth Perry Hodges
COURSE TITLE: Law and Literature
Topic: Formalism and its Discontents
ENROLLMENT: Limited to 20 students.

PRIMARY WORKS ON CURRENT READING LIST:

Akutagawa, In a Grove
ARISTOTLE, NICOMACHEAN ETHICS (excerpts)
ARISTOTLE, POETICS (excerpts)
ARISTOTLE, RHETORIC (excerpts)
HAWTHORNE, THE SCARLET LETTER
MELVILLE, BILLY BUDD AND OTHER STORIES
MORRIS, THE BROTHEL BOY AND OTHER PARABLES OF THE LAW
PLATO, THE REPUBLIC (excerpts)
PLATO, THE STATESMAN (excerpts)
SHAKESPEARE, THE MERCHANT OF VENICE
SOPHOCLES, ANTIGONE
WALKER, YOU CAN'T KEEP A GOOD WOMAN DOWN: STORIES

OTHER RECOMMENDED PRIMARY TEXTS:

AESCHYLUS, ORESTEIA
CAMUS, THE STRANGER
DICKENS, BLEAK HOUSE and other novels
FAULKNER, ABSALOM, ABSALOM!
FAULKNER, GO DOWN, MOSES
KAFKA, THE GREAT WALL OF CHINA
KAFKA A HUNGER ARTIST
KAFKA, THE TRIAL
KLEIST, MICHAEL KOHlhASS
MORRISON, BELOVED
O’CONNOR, FLANNERY, A GOOD MAN IS HARD TO FIND, AND OTHER STORIES
POHL, THE YEARS OF THE CITY
SHAKESPEARE, KING LEAR
SHAKESPEARE, MEASURE FOR MEASURE
STYRON, THE CONFESSIONS OF NAT TURNER
TWAIN, THE ADVENTURES OF HUCKLEBERRY FINN

SECONDARY WORKS ASSIGNED:

BROOKS, THE WELL-WROUGHT URN
COVER, THE FOLKTales OF JUSTICE: TALES OF JURISDICTION
CULLER, STRUCTURALIST POETICS: STRUCTURALISM, LINGUISTICS AND THE STUDY OF LITERATURE (excerpts)
Dworkin, Ronald M., My Reply to Stanley Fish (and Walter Benn Michaels): Please Don’t Talk about Objectivity Any More and Law and Interpretation
Fish, Working on the Chain Gang: Interpretation in Law and Literature
Fish, Wrong Again
Grey, Landell’s Orthodoxy
Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations
Thomas, Billy Budd and Re-righting Legal History, from Cross-Examinations of Law and Literature: Cooper, Hawthorne, Stowe, and Melville
Weisberg, Richard, The Failure of the Word: The Protagonist as Lawyer in Modern Fiction (excerpts)
Wimsatt and Beardsley, The Intentional Fallacy

RECOMMENDED SECONDARY WORKS:

Ball, The Word and the Law
Bell, And We Are Not Saved: The Elusive Quest for Racial Justice
Bell, Faces at the Bottom of the Well: The Permanence of Racism in America
Bloom, The Anxiety of Influence: A Theory of Poetry
Cardozo, Law and Literature and Other Essays and Addresses
Cover, The Folktales of Justice: Tales of Jurisdiction
Cover, Foreward: Nomos and Narrative
Cover, Justice Accused: Antislavery and the Judicial Process
Culler, On Deconstruction: Theory and Criticism After Structuralism
Culler, Structuralist Poetics: Structuralism, Linguistics, and the Study of Literature
Deconstruction and the Possibility of Justice, 11 Cardozo L. Rev. 1990.
Dworkin, Ronald M., Law’s Empire
Eden, Poetic and Legal Fiction in the Aristotelian Tradition
Ferguson, Law and Letters in American Culture
Gates, Jr., The Signifying Monkey: A Theory of Afro-American Literary Criticism
Grey, Landell’s Orthodoxy
Grey, The Wallace Stevens Case: Law and the Practice of Poetry
Holmes, Law in Science and Science in Law
Homans, Bearing The Word: Language And Female Experience In Nineteenth-Century Women’s Writing
Scheppelle, Kim Lane, Foreward: Telling Stories
Levinson and Mailoux, Interpreting Law and Literature: A Hermeneutic Reader
Llewellyn, The Bramble Bush: On Our Law and Its Study
Marks and de Courtivron (eds.), New French Feminisms: An Anthology
Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations
Minow, Making All the Difference: Inclusion, Exclusion, and American Law
Mitchell, ed., The Politics of Interpretation
Posner, Law and Literature: A Misunderstood Relation
Rawls, A Theory of Justice
Showalter (ed.), The New Feminist Criticism: Essays on Women, Literature, and Theory
Thomas, Cross-Examination of Law and Literature: Cooper, Hawthorne, Stowe, and Melville
Weisberg, Richard, The Failure of the Word: The Protagonist as Lawyer in Modern Fiction
OBJECTIVE IN TEACHING THE COURSE:

"Formalism represents a fundamental position in philosophy, literary criticism, and legal theory. In each of these disciplines it has also been the subject of impassioned attacks. This course will examine the conceptual underpinnings of these debates so that students may map more precisely their impact on current legal thought and practice."

"The impulse towards formalism is not unique to the law. By looking at analogues found in literature and philosophy we will broaden the base for our discussion and, I hope, clarify the terms of the debate. Readings drawn from each of the three fields will allow us to explore, for example, the problem of intentionality both in literary texts and in adjudication, or the possible affinities between Plato's theory of forms and legal formalism. Special attention will be given to legal formalism and to various attacks on this position by deconstruction and social criticism."

"Recently, claims that legal formalism is abstract, doctrinaire, or anti-humanistic have given rise to other "isms"—approaches to interpretation that urge us to frame the issues less narrowly. This new work often depends on examples drawn from literary texts, some of which we will be studying. We will read works of fiction selected from the following authors—Sophocles, Shakespeare, Melville, Hawthorne, Walker, Malamud, and Morrison—and focus on the legal questions that their work raises: for example, the quest for objective standards in interpretation; sources of interpretive authority; and tension between form and individual expression. We will read selections by legal scholars (including Wimsatt, Culler, and Fish) who have focused on these issues, and occasionally, argued them in public symposia."

COMMENTS: Professor Hodges writes: "I have attempted to respond to your questions as best I can. There is an enormous amount of material in the "field" and I must confess that I have not had the time to do full justice to your questions. I hope, nevertheless, that some of what I have put together here will help you with your work." The tremendous time and energy that Professor Hodges and others put into answering the questions on the survey indicates just how important they feel the "field" is. Time and time again, laboriously typing in lists of works which at first seemed repetitious and routine, I was surprised and astounded to find yet more and more works being mentioned for the first time. Most lengthy lists supplied by the respondents produced lesser-known, yet important works for others working in this area.
RESPONDENT: Professor David R. Papke

COURSE TITLE: (1) Seminar in Law and Literature; Not offered for the past three years; Expected to be offered again in the future

(2) Legal Process; Enrollment of approximately 50

(1) LAW AND LITERATURE:

PRIMARY WORKS TAUGHT PREVIOUSLY:

AUCHINCLOSS, THE DIARY OF A YUPPIE
Chopin, The Godmother
COOPER, THE PIONEERS
Glaspell, A Jury of Her Peers
KESSEY, ONE FLEW OVER THE CUCKOO'S NEST
Melville, Bartleby the Scrivener
MELVILLE, BENITO CERENO
MELVILLE, BILLY BUDD, FORETOPMAN
MILLER, ARTHUR, THE CRUCIBLE
Poe, The Murders in the Rue Morgue
Poe, The Purloined Letter
PORTER, KATHERINE ANNE, "NOON WINE": THE SOURCES
STOWE, UNCLE TOM'S CABIN
WRIGHT, NATIVE SON

SECONDARY WORKS ASSIGNED:

Ledbetter, The Trial of Billy Budd, Foretopman
Papke, The Advocate's Malaise: Contemporary American Lawyer Novels
Papke, Louis Auchincloss: The Writer on Wall Street (an interview)
Thoreau, Higher Laws
Thoreau, On the Duty of Civil Disobedience

(2) LEGAL PROCESS:

"The course will survey and scrutinize four crucial elements in American legal culture: legal education, legal doctrine and reasoning, law practice, and law-related ideology. In particular, the course will consider the narrative dimension of each element and ask to what extent heightened narrative sensitivities might contribute to one's work within our legal culture . . . . Most of the readings are collected in [Papke], Narrative and the Legal Discourse: A Reader in Storytelling and the Law."
PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

GRADING (LEGAL PROCESS):

Primarily written essay exam; classroom discussion considered if “there is any uncertainty regarding their grades.”

COMMENTS: Professor Papke was the first person to offer support for my earlier work by sending me several articles and inviting me to a conference dealing with the subject of law and literature. As can be seen by the list of articles and books that he has published in the field, he is one of the leading law and literature scholars. His book Narrative and the Legal Discourse: A Reader in Storytelling and the Law is a must for those interested in or teaching in the field of law and literature.

UNIVERSITY OF IOWA COLLEGE OF LAW  YES

TAUGHT BY: Professors Alan I. Widiss & Josephine R. Witte

UNIVERSITY OF KANSAS SCHOOL OF LAW  YES

RESPONDENT: Professor A. Kimberly Dayton
COURSE TITLE: Feminist Theory, Law & Literature
ENROLLMENT: 26.

PRIMARY WORKS ON READING LIST:

REQUIRED TEXTS:
ATWOOD, THE HANDMAID’S TALE
GILMAN, HERLAND
MORRISON, BELOVED
PIERCY, WOMAN ON THE EDGE OF TIME
Smith, ed., FEMINIST JURISPRUDENCE
WOOLF, A ROOM OF ONE’S OWN

RECOMMENDED TEXTS:
DONOVAN, FEMINIST THEORY: THE INTELLECTUAL TRADITIONS OF AMERICAN FEMINISM
GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT
PRIMARY TEXTS TAUGHT PREVIOUSLY:

BARTLETT AND KENNEDY, FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER
NIELSEN, FEMINIST RESEARCH METHODS: EXEMPLARY READINGS IN THE SOCIAL SCIENCES

SECONDARY (SUPPLEMENTAL) WORKS ASSIGNED:

Atwood, Rape Fantasies
Abrams, K., Hearing the Call of Stories
Cook, Behind the Shades
Dworkin, Andrea, Against the Male Flood: Censorship, Pornography, and Equality
Glaspell, A Jury of Her Peers
Grove, Legislators Debate Over Rape Law, UNIV. DAILY KANSAS, Jan. 27, 1993, at 3
Heilbrun and Resnick, Comment, Convergences: Law, Literature, and Feminism
Hunter and Law, Brief Amici Curiae of Feminist Anti-Censorship Taskforce et al., in American Booksellers Ass’n, Inc. v. Hudnut
Menkel-Meadow, Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law
Olsen, One Out of Twelve: Writers Who Are Women in Our Century
State v. Colbath
Tarr, Two Women Attorneys and Country Practice
Weiss and Melling, The Legal Education of Twenty Women
WILLIAMS, On Being the Object of Property and The Death of the Profane, from THE ALCHEMY OF RACE AND RIGHTS
Wolgast, Pornography and the Tyranny of the Majority
Wolff, In the Garden of the North American Martyrs

OBJECTIVE IN TEACHING THE COURSE:

"To teach feminist theory through literature." As Professor Dayton states in her class handout: "The work of feminist theorists has been in large part to expose how women and their experiences have been ignored or marginalized in all aspects of political and social life . . . . Both disciplines (law and literature) have often assumed that women are either irrelevant, or ‘the other’—the subject of discussion, not the speaker . . . . In this course . . . . we will look for parallels between the way women are portrayed in literature, and how they may be regarded in law."

GRADING:

Class presentation and final paper.

COMMENTS: The course is centered around the following topics: Introduction to Feminist Theory; Why Literature? The Role of Narrative; Themes: Women’s ‘Different Voices’, Silences; Constructing a Feminist Law
and Society; Gender and Race; Reproductive Freedom; Images of 'the Bad Mother.' The texts and the topics supplied by Professor Dayton suggest many ways in which someone new to the course might organize and present materials. There are important works on the reading list often ignored by bibliographers.

UNIVERSITY OF KENTUCKY COLLEGE OF LAW
LEWIS AND CLARK NORTHWESTERN SCHOOL OF LAW
LOUISIANA STATE UNIVERSITY LAW CENTER
UNIVERSITY OF LOUISVILLE SCHOOL OF LAW

TAUGHT BY: Dr. Arthur J. Flavin, First time in Spring of 1995

LOYOLA UNIVERSITY SCHOOL OF LAW, CHICAGO

RESPONDENT: Associate Professor William T. Braithwaite
COURSE TITLE: Seminar: Law and Literature
ENROLLMENT: Varies: 20 to 45.

PRIMARY WORKS ON CURRENT READING LIST:

"The last offering had the theme, 'Feminism in the Literature of Classical Antiquity,' and used fourteen plays of Euripides."

PRIMARY WORKS TAUGHT PREVIOUSLY:

"Shakespeare's history plays; Milton's 'Paradise Lost'; plays of Sophocles and Aeschylus; selected novels and short stories."

OTHER RECOMMENDED PRIMARY WORKS:

DANTE, DIVINE COMEDY
DICKENS, BLEAK HOUSE
MILTON, PARADISE REGAINED
MORE, UTOPIA
Shakespeare, The Comedies

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.
OBJECTIVE IN TEACHING THE COURSE:

"To see the law poetically."

COMMENTS: Several respondents have reported in conversations with me that they are involved in the continuing education of judges. One area that is now being introduced increasingly in those continuing education seminars is the area of law and literature. Professor Braithwaite's article "Why, and How, Judges Should Study Poetry" asks the question: "Why should judges study ethics through poetry?" He concludes: "Because poetry, which deals with the timeless, the universal, the permanent in human life, gives us higher ground on which to stand, in comparison with history, which deals with the time-bound, the particular, the accidental, the transitory . . . . Judges should study poetry for the same reason all of us should—because from it we can learn what it really means to be human."

LOYOLA LAW SCHOOL
LOYOLA UNIVERSITY SCHOOL OF LAW, NEW ORLEANS
McGEORGE SCHOOL OF LAW, UNIVERSITY OF THE PACIFIC
UNIVERSITY OF MAINE SCHOOL OF LAW
MARQUETTE UNIVERSITY LAW SCHOOL
JOHN MARSHALL LAW SCHOOL
UNIVERSITY OF MARYLAND SCHOOL OF LAW

RESPONDENT: Professor Alan D. Hornstein
COURSE TITLE: Idea of Law in Western Culture Seminar
ENROLLMENT: 18; oversubscribed.

PRIMARY WORKS ON CURRENT READING LIST:

AESCHYLUS, THE EUMENIDES (familiarity with AGAMEMNON and THE LIBATION BEARERS would be helpful)
ARISTOTLE, NICOMACHEAN ETHICS, Book V (esp. ch. 1-2, 6-10)
Glaspell, A Jury of Her Peers
King, Letter from Birmingham Jail
KAFKA, PARABLES AND PARADOXES (Selections)
LAWRENCE AND LEE, INHERIT THE WIND
LEE, TO KILL A MOCKINGBIRD
MELVILLE, BILLY BUDD, FORETOPMAN
MILLER, THE CRUCIBLE
OTHER PRIMARY WORKS ASSIGNED:

Professor Hornstein writes: “My course is not strictly Law and Literature, though as you can see from the enclosed material, much literary material is included. The readings change a bit from year to year, but there is always something of Shakespeare (I have taught King Lear, Julius Caesar, Othello, Winter’s Tale, Measure for Measure, in addition to Merchant of Venice), usually two from among Hobbes, Locke, Montesquieu and Rousseau, once (once was enough) something from Hegel, sometimes something of Toqueville, [and] occasionally some of The Federalist Papers. I have also taught Baldwin’s ‘Sonny’s Blues,’ Flannery O’Connor’s, ‘A Good Man Is Hard to Find’ and ‘Good Country People,’ Camus’ ‘The Guest,’ Katherine Ann Porter’s Noon Wine, Orwell’s ‘Shooting An Elephant,’ Conrad’s Heart of Darkness and ‘The Secret Sharer’ and others that I cannot recall.”

GRADING:

Class contribution; 3-5 essays (750-100 words); journals are encouraged.

COMMENTS: This is another example of a non-“law and literature” course using literature as the mainstay of the reading list. In this case, the course is structured around readings in literature and philosophy—all works from the humanities. Although it might appear that the thrust of this survey is around the traditional course in law and literature, my real interest from the outset was to discover how literature was being used across the law school curriculum. This second survey offers some insight into that question. Professor Hornstein also offers “Great Books”/Humanities Seminars in continuing judicial education programs and in other professional settings.

MERCER UNIVERSITY LAW SCHOOL

RESPONDENT: Interim Dean Richard W. Creswell

“At this time Mercer University School of Law does not offer a course in Law and Literature. It is very likely that we will, however, consider a proposal for such a course in the near future. Please send us a copy of your survey results. Thank you.”
RESPONDENT: Marlyne Marzi Kaplan, Adjunct Faculty; Formerly the Law Career Planning Placement Director at the University of Miami and an Associate Professor of Law at St. Thomas School of Law

COURSE TITLE: Law, Language, and Literature

ENROLLMENT: Capped at 18; oversubscribed.

PRIMARY WORKS ON CURRENT READING LIST:

Akutagawa, In a Grove
An Excerpt from the Chicago 7 Trial
Auden, Law Like Love
Balzac, How the Pretty Maid of Portillon Convinced Her Judge
Benet, The Devil and Daniel Webster
Boccaccio, Madame Filippa Is Accused of Wronging Her Husband
Camus, Reflections on the Guillotine
CARROLL, The Trial of Knave of Hearts, from ALICE'S ADVENTURES IN WONDERLAND
Chekhov, In the Court
Dickens, Criminal Courts
Faulkner, Tomorrow
France, Crainquebille
Frankfurter, Advice to a Young Man Interested in Going into Law
Galsworthy, The Juryman
Genesis, 43-45, paying particular attention to Judah's Plea, 44:18-34
Henry, O., Law and Order
HYDE, THE TRIALS OF OSCAR WILDE
Jackson, The Lottery
Kafka, In the Penal Colony
Kanfer, Words from Watergate
1 KINGS 3:15-4:1, Solomon
LAWRENCE AND LEE, INHERIT THE WIND
London, The Benefit of the Doubt
MARQUEZ, CHRONICLE OF A DEATH FORETOLD
Maugham, The Letter
Melville, Bartleby the Scrivener
Milne, The Barrister
Nacya, Han's Crime
“O” (Theo Mathew), The Blushing Beginner and the Bearded Juryman
O'Connor, Frank, Counsel for Oedipus
ORWELL, 1984
Orwell, Shooting an Elephant
PATON, CRY, THE BELOVED COUNTRY
PLATO, The Cave, in THE REPUBLIC, Bk 7
SOPHOCLES, ANTIOCHO
Susanna and the Elders, in THE APOCRYPHA
THOREAU, CIVIL DISOBEDIENCE
Twain, Life on the Mississippi
Villiers, The Heroism of Dr. Hallidionhill

Woolsey, U.S.A. v. One Book Called Ulysses

Zola, Address to the Jury on His Trial for Libel

Zola, J'Accuse: An Open Letter on the Dreyfus Case

CASES, ETC.:

The Letters of Barnett Welansky (Petition for Pardon)
People v. Sherwood

SECONDARY WORKS ASSIGNED:

"Marianne Moore's Ford correspondence; well-written and humorously written case opinions."

OTHER RECOMMENDED PRIMARY WORKS:

"Each year I add contemporary readings from current events, as was the Vaclav Havel reading" included in an earlier semester.

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

Professor Kaplan is a regular language columnist for the Florida Bar News. That column is entitled, "The Language of Law." She also writes occasional book reviews for several newspapers.

OBJECTIVE IN TEACHING THE COURSE:

"To enhance professionalism by contributing full-dimensional lawyers. The humanities are essential to the formative development of law students and to the on-going development of practicing attorneys and sitting judges. Toward that end, I devote my professional life."

GRADING:

Seminar paper (20-25 pages); Oral presentation; General preparedness, preparation, and attendance; Overall quality of contribution to the seminar.

COMMENTS: Professor Kaplan quotes Justice Felix Frankfurter to her students: "The best way to prepare for the law is to come to the study of law as a well-read person." Like others who responded to this survey, she is doing her best to see that her students are well-prepared for the law.
UNIVERSITY OF MICHIGAN LAW SCHOOL

RESPONDENT:  Professor James Boyd White  
L. Hart Wright, Professor of Law and English

COURSE TITLE:  (A) The Legal Imagination  
(B) Rhetoric, Law, and Culture

ENROLLMENT:  50 in each course.

PRIMARY WORKS ON READING LIST:

(A) THE LEGAL IMAGINATION:

AUSTEN, PRIDE AND PREJUDICE  
EURIPIDES, ALCESTIS  
SHAKESPEARE, TROILUS AND CRESSIDA  
WHITE, JAMES BOYD, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL  
THOUGHT AND EXPRESSION

(B) RHETORIC, LAW AND CULTURE:

AUSTEN, MANSFIELD PARK  
MELVILLE, BILLY BUDD, FORETOPMAN  
PLATO, CRITO  
SHAKESPEARE, RICHARD II  
SOPHOCLES, PHILOCETES  
TWAIN, THE ADVENTURES OF HUCKLEBERRY FINN  
WHITE, JAMES BOYD, WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS &  
RECONSTITUTIONS OF LANGUAGE, CHARACTER AND COMMUNITY

PUBLICATIONS BY Respondent RELEVANT TO THE FIELD OF  
LAW AND LITERATURE:

See Appendix C attached.

COMMENTS:  Professor White’s books should be on the bookshelves of  
all of us involved in the law and literature enterprise.  How fortunate the  
students are at The University of Michigan to be able to take a course from  
Professor White.  Truthfully, as I sat hour by laborious hour sorting out data,  
learning WordPerfect, and wondering why I began this project, I found myself  
drooling over all of the courses I had missed, courses I would have relished,  
courses I would like to teach.

UNIVERSITY OF MINNESOTA LAW SCHOOL

RESPONDENT:  Professor and Dean Daniel A. Farber,  
Henry J. Fletcher, Professor of Law and Associate  
Dean of Faculty
COMMENTS: Professor Fletcher writes: “Our Law & Literature course is being taught by Professor [James Boyd] White of Michigan. He is teaching the course on a visiting basis as the holder of a special chair in Law and Language.” See entry under The University of Michigan, supra.

MISSISSIPPI COLLEGE SCHOOL OF LAW

RESPONDENT: Professor J. Allen Smith
COURSE TITLE: Law and Literature

PRIMARY WORKS ON CURRENT READING LIST:

BISHOP, THE BALLAD OF THE BURGLAR OF BABYLON
Dostoyevsky, Notes from the Underground (first part)
Faulkner, An Odor of Verbena
FAULKNER, AS I LAY DYING
FAULKNER, GO DOWN, MOSES
Faulkner, That Evening Sun
Frost, A Servant to Servants
Hemingway, The Short Happy Life of Francis Macomber
THE OLD TESTAMENT, Job
Sophocles, Antigone
Thoreau, On the Duty of Civil Disobedience

SECONDARY WORKS ASSIGNED:

Axelrod, Law and Humanities: Notes from the Underground
Smith, J. Allen, The Coming Renaissance in Law and Literature
Smith, J. Allen, Job and the Anguish of the Legal Profession
SMITH, J. ALLEN, LIVES OF THE LORD CHANCELLORS: 1885-1940

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

COMMENTS: It has been my good fortune to have met Professor J. Allen Smith at several conferences over the years. He tells me that he will be retiring shortly, and I am sure that his students will miss him in the classroom. I particularly liked his article “The Coming Renaissance in Law and Literature,” published in 1979!
UNIVERSITY OF MISSOURI—KANSAS CITY, SCHOOL OF LAW

TAUGHT BY: Professor Blanton

WILLIAM MITCHELL COLLEGE OF LAW

RESPONDENT: Larry M. Wertheim, Esq., Adjunct Faculty

COURSE TITLE: Law and Literature

ENROLLMENT: Hamline University College of Law: 10 law students and 1 student from the graduate program in liberal studies.
William Mitchell College of Law—20 law students.

PRIMARY WORKS ON CURRENT READING LIST:

Aeschylus, Eumenides, from Oresteia
Akutagawa, In a Grove
Allende, The Judge's Wife
Auden, Law Like Love
Christie, Witness for the Prosecution
Dickens, Bleak House
Dickens, The Pickwick Papers (excerpts)
Dreiser, An American Tragedy
Empson, Legal Fiction
Glaspell, A Jury of Her Peers
Goldman, Earthly Justice
James, The Figure in the Carpet
Kafka, Before the Law
Kafka, The Judgment
Kafka, The New Advocate
Kafka, In the Penal Colony
Kafka, The Problem of Our Laws
Kafka, The Refusal
Kleist, Michael Kohlhaass
Melville, Bartleby the Scrivener
Melville, Billy Budd, Foretopman
Naoya, Han's Crime
Porter, Katherine Anne "Noon Wine": The Sources
Sandburg, The Lawyers Know Too Much
Shakespeare, The Merchant of Venice
Steinbeck, The White Quail

SECONDARY WORKS ASSIGNED:

Fish, Is There a Text in This Class?: The Authority of Interpretive Communities (excerpts)
Wimsatt and Beardsley, The Affective Fallacy and The Intentional Fallacy
PRIMARY WORKS ASSIGNED TAUGHT PREVIOUSLY:

Melville, *The Paradise of Bachelors and the Tartarus of Maids*

Parker, *The Most Outrageous Consequences*

OTHER RECOMMENDED PRIMARY WORKS:

Orwell, *Animal Farm*

FILMS:

*Rashomon*

RECOMMENDED SECONDARY WORKS:

Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies*

Levinson and Mailloux, *Interpreting Law and Literature: A Hermeneutic Reader*


Richard Weisberg’s books

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“It’s fun and students seem interested and sometimes excited by the material. I think it gives students a broader perspective on the law and allows students to consider issues not always dealt with in more typical law school courses. Finally, it exposes students to great literature which they may never have seen.”

GRADING:

Three, 3-5 page papers; one on *An American Tragedy*, and two on required readings of the student’s choice. Grades are based upon the written papers and upon class participation.

COMMENTS: There are several practicing lawyers who are teaching law and literature as adjunct faculty members at various law schools. I suspect that one reason for their teaching the course is to relieve the boredom, or to offset the moments of stark terror, of private practice!
UNIVERSITY OF MONTANA SCHOOL OF LAW
UNIVERSITY OF NEBRASKA COLLEGE OF LAW
UNIVERSITY OF NEW MEXICO SCHOOL OF LAW
STATE UNIVERSITY OF NEW YORK AT BUFFALO SCHOOL OF LAW

RESPONDENT: Professor Judy Scales-Trent
COURSE TITLE: (A) Law and Literature Seminar (Legal Anthropology)
(B) Law and Literature Seminar (1995).

PRIMARY WORKS ON CURRENT READING LIST (1995):
ALLISON, BASTARD OUT OF CAROLINA
BANKS, THE SWEET HEREAFTER
Cisneros, Woman Hollering Creek
GAINES, A LESSON BEFORE DYING
GREENE, PRAYING FOR SHEETROCK
KINGSTON, PIGS IN HEAVEN
KINGSTON, CHINA MEN
KINGSTON, WOMAN WARRIOR
PORTER, CONNIE, ALL-BRIGHT COURT
SMILEY, A THOUSAND ACRES
WELCH, THE INDIAN LAWYER
Two plays selected by the students

PRIMARY WORKS TAUGHT PREVIOUSLY (LEGAL ANTHROPOLOGY):

BUTLER, OCTAVIA, KINDRED
CARTER, THE EDUCATION OF LITTLE TREE
Glaspell, A Jury of Her Peers
HILLERMAN, SKINWALKERS
MOORE, LAW AND ANTHROPOLOGY
MUKHERJEE, JASMINE
Pospisil, Legal Levels and Multiplicity of Legal Systems

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

(A) (Legal Anthropology): To use literature to explore the concept offered by Pospisil that "in a given society there will be as many legal systems as there
are functioning social units."

(B) (Law and Literature): "Because our legal system is based on precedent, lawyers must be able to see the similarity between the case before them now, and cases in the past. In order to do this, the cases must be stripped bare of all facts extraneous to the legal framework. Thus, when we read cases, we read abstracts of lives. In this seminar, we will read literature in order to make these abstract lives more real to us. Hopefully, this will enrich our understanding of the complicated role the law, and lawyers, play in our society."

COMMENTS: The articles by Professor Scales-Trent articulate how and why she teaches her course on law and literature.

NEW YORK LAW SCHOOL YES

TAUGHT BY: Professor Richard Bernstein

NEW YORK UNIVERSITY SCHOOL OF LAW NO

UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW YES

RESPONDENT: Professor Patricia L. Bryan

COURSE TITLE: Law and Literature Seminar

ENROLLMENT: Limited to 15 (always oversubscribed).

PRIMARY WORKS ON CURRENT READING LIST:

- ATWOOD, THE HANDMAID'S TALE
- Bell, Madison Smartt, Witness
- BROWN, BEFORE AND AFTER
- CAMUS, THE STRANGER
- Dubus, Killings
- Gewirtz, A Lawyer's Death
- Glaspell, A Jury of Her Peers
- Goldman, Earthly Justice
- Just, About Boston
- Marcus, Centaurs
- MELVILLE, BILLY BUDD, FORETOPMAN
- TOLSTOY, THE DEATH OF IVAN ILIYITCH
- Wolfe, Thomas, Justice is Blind
- WRIGHT, NATIVE SON

CASE:

*Hynes vs. New York Central R.R.*
PRIMARY WORKS TAUGHT PREVIOUSLY:

ANOUILH, ANTOINE
AUUCHINCLOSS, DIARY OF A YUPPIE
Chopin, The Godmother
Dexter, PARIS TROUT
Dubus, A Father’s Story
Faulkner, Dry September
Just, Jack GANCE
King, Letter from Birmingham Jail
Lessing, To Room Nineteen
Masters, SPOON RIVER ANTHOLOGY
Melville, Bartleby the Scrivener
Porter, Katherine Anne, "Noon Wine": THE SOURCES
Sophocles, Antigone
Thoreau, On the Duty of Civil Disobedience

SECONDARY WORKS ASSIGNED:

Cover, Of Creon and Captain Vere, Prelude to Justice Accused: Antislavery and the Judicial Process
Elkins, The Stories We Tell Ourselves in Law: A Bibliography of Narrative
Ives, 'Billy Budd' and the Articles of War
Koffler, The Feminine Presence in 'Billy Budd'
Ledbetter, The Trial of Billy Budd, Foretopman
Posner, Comment on Richard Weisberg's Interpretation of 'Billy Budd'
Reich, The Tragedy of Justice in 'Billy Budd'
Wallace, 'Billy Budd' and the Haymarket Hangings
Weisberg, Richard, Accepting the Inside Narrator's Challenge: 'Billy Budd' and the 'Legalistic Reader'
Weisberg, Richard, Coming of Age Some More: 'Law and Literature' Beyond the Cradle
Weisberg, Richard, Wigmore's 'Legal Novels' Revisited: New Resources for the Expansive Lawyer
West, Economic Man and Literary Woman: One Contrast
West, The Feminine Silence: A Response to Professor Koffler
White, James Boyd, Heracles' Bow: Essays on the Rhetoric and Poetics of the Law (excerpts)
White, James Boyd, What Can a Lawyer Learn from Literature? (excerpt)

OBJECTIVE IN TEACHING THE COURSE:

"[T]o raise critical issues involving law, the legal process, and the effects of law and the legal process upon individuals and society. My objective is to engage students in discussions and writing projects that focus on the lawyer’s image in America, ethical dilemmas of lawyers, and the ways in which literature reflects and defines our understanding of ourselves and other people as well as our notions of justice and obedience to the law.”
GRADING:

One one-page paper; five two-page papers; one research paper (15-20 pages in length).

COMMENTS: Professor Bryan adds: “We have also talked about the role of storytelling both in the law and in our own lives. I have found that students really enjoy the seminar and are usually willing to be more active participants than in other classes.”

UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW NO
NORTHEASTERN UNIVERSITY SCHOOL OF LAW NO
NORTHERN ILLINOIS UNIVERSITY COLLEGE OF LAW NO
NORTHERN KENTUCKY UNIVERSITY, SALMON P. CHASE COLLEGE OF LAW NO
NORTHWESTERN UNIVERSITY SCHOOL OF LAW NO
NOTRE DAME LAW SCHOOL YES

TAUGHT BY: Professor Teresa Godwin Phelps

NOVA UNIVERSITY SHEPARD BROAD LAW CENTER YES

TAUGHT BY: Professor Michael Lloyd Richmond

OHIO NORTHERN UNIVERSITY, PETTIT COLLEGE OF LAW YES

RESPONDENT: Assistant Professor Joanne C. Brant
COURSE TITLE: Law and Literature
ENROLLMENT: 12-16.

PRIMARY WORKS ON CURRENT READING LIST:

Benet, The Devil and Daniel Webster
COETZEE, WAITING FOR THE BARBARIANS
DOSTOYEVSKY, THE GRAND INQUISITOR
DOSTOYEVSKY, THE BROTHERS KARAMAZOV
Kafka, Before the Law
Kafka, In the Penal Colony
Melville, Bartleby the Scrivener
MELVILLE, BILLY BUDD, FORETOPMAN
MILLER, ARTHUR, THE CRUCIBLE
SECONDARY WORKS ASSIGNED:

ABBOTT, IN THE BELLY OF THE BEAST (excerpts)
AGEE, LET US NOW PRAISE FAMOUS MEN
Brennan, CONSTITUTIONAL ADJUDICATION AND THE DEATH PENALTY: A VIEW FROM THE COURT
CAUDILL, NIGHT COMES TO THE CUMBERLANDS: A BIOGRAPHY OF A DEPRESSED AREA, ch. 19, THE RAPE OF THE APPALACHIANS
GLENDON, RIGHT'S TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE, chs. 1 and 4.
KAHLENBERG, BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL (excerpt)
LLEWELLYN, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY, chs. 8-10.
Marshall, THE OTHER SIDE OF RELIGION
Pollack, 'ORIGINAL INTENTION' AND THE CRUCIBLE OF LITIGATION
POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION, ch. 6
SCALIA, ORIGINALISM: THE LESSER EVIL
Solzhenitsyn, Commencement Address
STONE, THE TRIAL OF SOCRATES, Prelude and Courage as Virtue, or A Wild Goose Chase, or THE GOOD LIFE
SWIFT, A MODEST PROPOSAL
TUROW, ONE L (excerpt)
Webster, THE DARTMOUTH COLLEGE CASE
Webster, Reply to Calhoun
WEISBERG, RICHARD, Accepting the Challenge of Inside Narrators, in POETICS AND OTHER STRATEGIES OF LAW AND LITERATURE
Weisberg, Richard, How Judges Speak: Some Lessons on Adjudication in Billy Budd, Sailor With an Application to Justice Rehnquist
WHITE, JAMES BOYD, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION

CASES:

Buchanan v. Watson
DeShaney v. Winnebago County Dept. of Social Serv.
Furman v. Georgia
Hudson v. McMillian

RECOMMENDED SECONDARY WORKS:

Smith, Steven D., Idolatry in Constitutional Interpretation
WEISBERG, RICHARD, POETICS AND OTHER STRATEGIES OF LAW AND LITERATURE

OBJECTIVE IN TEACHING THE COURSE:

"The principal objectives of this course are threefold: (1) to explore literature dealing with issues of legal significance; (2) to improve your ability to read literature critically; and (3) to consider the role of law and lawyers in society."
GRADING:

20-page paper, 50%; Presentation, 25%; Class participation, 25%.

COMMENTS: This course allows for a lengthy reading list by making use of excerpts and chapters from some of the longer works and by allowing the students to have some selection of material.

THE OHIO STATE UNIVERSITY COLLEGE OF LAW  NO
UNIVERSITY OF OKLAHOMA LAW CENTER  NO
UNIVERSITY OF OREGON SCHOOL OF LAW  NO
PACE UNIVERSITY SCHOOL OF LAW  NO
UNIVERSITY OF PENNSYLVANIA LAW SCHOOL  NO
PEPPERDINE UNIVERSITY SCHOOL OF LAW  NO
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW  YES

RESPONDENT: Professor Lawrence A. Frolik
COURSE TITLE: Literature and Law Seminar
ENROLLMENT: 12.

PRIMARY WORKS ON CURRENT READING LIST:

BANKS, THE SWEET HEREAFTER
DREISER, SISTER CARRIE
IRVING, THE CIDER HOUSE RULES
MAXWELL, SO LONG, SEE YOU TOMORROW
MELVILLE, BILLY BUDD, FORETOPMAN
TAYLOR, THE OLD FOREST AND OTHER STORIES
TWAIN, THE ADVENTURES OF HUCKLEBERRY FINN
VAN TILBURG CLARK, WALTER, THE OX-BOW INCIDENT

PRIMARY WORKS TAUGHT PREVIOUSLY:

BELL, THOMAS, OUT OF THIS FURNACE
CAMUS, THE STRANGER
ELLISON, INVISIBLE MAN
Hemingway, The Doctor and the Doctor's Wife
JAMES, THE BOSTONIANS
LEWIS, BABBITT
SMILEY, A THOUSAND ACRES
SNOW, STRANGERS AND BROTHERS
SOPHOCLES, ANTIGONE
STEINBECK, CANNERY ROW
STEINBECK, THE GRAPES OF WRATH
THOMPSON, FEAR AND LOATHING IN LAS VEGAS
WRIGHT, NATIVE SON

COMMENTS:

This course is centered around the following topics: Law in Literature; The Search for Legal Truth; The Rule of Law; Family Relationships and the Law; Racism and the Law; Law as the Source of "Civilization"; Women, Economics and the Law; Social Class and the Law; Does the Law Provide Justice?

UNIVERSITY OF PUERTO RICO SCHOOL OF LAW
TAUGHT BY: Carmelo Delgado-Cintron

UNIVERSITY OF PUGET SOUND SCHOOL OF LAW
RESPONDENT: J. Christopher Rideout
Associate Director and Writing Advisor,
Legal Writing Program
COURSE TITLE: "Language and the Law," which is "somewhat broader in scope but does have a law and literature component."
ENROLLMENT: 25 students per semester.

PRIMARY WORKS ON CURRENT READING LIST:

MELVILLE, BILLY BUDD
SHAKESPEARE, MEASURE FOR MEASURE

FILMS:

THE THIN BLUE LINE
TO KILL A MOCKINGBIRD

PRIMARY WORKS TAUGHT PREVIOUSLY:

SHAKESPEARE, THE MERCHANT OF VENICE
TUROW, BURDEN OF PROOF (Would not use this novel again)
TUROW, PRESUMED INNOCENT

SECONDARY WORKS ASSIGNED:

WHITE, JAMES BOYD, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW
WHITE, JAMES BOYD, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

"[M]y course only partly fits into your survey, and so I’m never sure about how to characterize it. It is, essentially, a ‘legal imagination’ course, but without White’s book. We cover everything from interpretation to narratives to metaphors to rhetoric to ethics; what holds the course together is a socio-cultural view of language and its relationships to meaning, what White in his more recent books has called a ‘constitutive’ rhetoric, although others have written recently about similar theories of language. My goal, in the end, is to show my students how the study and practice of law raises mainstream liberal arts questions, about who you are and how you should act in the world, and I want to show them that language and rhetoric are centrally implicated in those questions. Thus, the scope of the course is broad. For example, we spend two weeks looking at metaphor, but never read any ‘law and literature’ readings (we do, now that I think of it, read some poems by Shelley, Frost, and Shakespeare, but they don’t have anything to do with the law). We do look at metaphors and metaphorical reasoning in all kinds of legal texts. The same goes for narratives, for interpretation, etc. By the end of the course I hope to have shown my students that lawyers fulfill professional roles that require that they ask of themselves many of the same questions that any character in, say, a Shakespeare play or an Austen novel also has to ask, especially the ethical questions about how best to act in the world. Once I have convinced my students of that, we can have the last class of the course—what is the proper education of a lawyer? Along the way, students do a lot of reading and writing, including some writing that is introspective and that requires a more personal response."

GRADING:

Position Paper—40%; Seminar Paper—45%; Class Participation and Three Response Papers—15%.

COMMENTS: Professor Rideout’s statement above illustrates the frustration many people experienced in responding to the survey when the course they teach does not fit neatly into the “law and literature” category. His most recent course is centered around the following topics: Law as a Language; Narratives—Legal and Literary; Law, Metaphor, and Legal Fictions; Rules and Legal Interpretation; Argument, Ethics, and Justice; The Language of the
Judicial Opinion; The Education of the Lawyer. Certainly, all of these topics are of concern to those teaching "law and literature" and to those who are engaged in the critical dialogue on the usefulness of law and literature courses.

QUINNIPIAC COLLEGE SCHOOL OF LAW  NO

UNIVERSITY OF RICHMOND, THE T.C. WILLIAMS SCHOOL OF LAW  NO

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY SCHOOL OF LAW, CAMDEN  NO

RESPONDENT: Professor Nancy J. Moore, Associate Dean

"We have in the past offered a seminar in law and literature taught by an adjunct professor."

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, S.I. NEWHOUSE CENTER FOR LAW & JUSTICE  YES

RESPONDENTS: Professor Saul Howard Mendlovitz (Dag Hammarskjold Professor of Peace & World Order Studies), and Professor George C. Thomas, III

COURSE TITLE: Law & Humanities I; Law and Humanities II

PRIMARY WORKS ON READING LIST:

Law & Humanities I:

AESCHYLUS, THE ORESTEIAN TRILOGY
THE BOOK OF JOB
CAMUS, THE STRANGER
DOSTOYEVSKY, THE BROTHERS KARAMAZOV
Dostoyevsky, Notes from the Underground
FLAUBERT, SALAMMBO
PIERCY, WOMAN ON THE EDGE OF TIME
PLATO, PHAEDRUS
SHAKESPEARE, MEASURE FOR MEASURE
SOPHOCLES, THE OEDIPUS PLAYS
WRIGHT, NATIVE SON

Also: An Appreciation of Matisse

Law & Humanities II

ACHEBE, THINGS FALL APART
DREISER, SISTER CARRIE
ELIOT, GEORGE, MIDDLEMARCH, A STUDY IN PROVINCIAL LIFE
HAWTHORNE, THE SCARLET LETTER
MAHFOUZ, PALACE WALK
MALRAUX, MAN'S FATE
MORRISON, BELOVED
PATON, CRY, THE BELOVED COUNTRY
SHAKESPEARE, MERCHANT OF VENICE
WHARTON, THE HOUSE OF MIRTH

SECONDARY WORKS ASSIGNED:

Abrams, Roger I., The Lawyer as an Artist
Fish, Don't Know Much About the Middle Ages: Posner on Law and Literature.
Posner, Law and Literature: A Relation Reargued

OBJECTIVE IN TEACHING THE COURSE:

"To broaden the students' understanding of the role cultural norms play in non-legal social control. By 'cultural norms,' I mean to include the norms of smaller groups within the society (even peer groups) as well as the norms held more generally by society as a whole."

COMMENTS: Professors Mendlovitz and Thomas report that this is the first time they have taught either of these courses.

ST. JOHN'S UNIVERSITY SCHOOL OF LAW

RESPONDENT: Professor Margaret Valentine Turano
COURSE TITLE: Law and Literature
ENROLLMENT: Theoretically limited to 20; have accepted 30; still oversubscribed.

PRIMARY WORKS ON CURRENT READING LIST (1993 and 1994):

AESCHYLUS, ORESTEIA (both semesters)
BRONTE, JANE EYRE (both semesters)
FAULKNER, THE SOUND AND THE FURY (spring)
MORRISON, BELOVED (fall)
MORRISON, SULA (spring)
PERCY, THE SECOND COMING (fall)
SHAKESPEARE, MEASURE FOR MEASURE (fall)
SHAKESPEARE, THE MERCHANT OF VENICE (spring)
WHARTON, HOUSE OF MIRTH (both semesters)

SECONDARY WORKS ASSIGNED:

Allen, Anita L., The Jurisprudence of Jane Eyre
Alscher, I Would Be Friends With You
Braithwaite, Poetry and the Criminal Law: The Idea of Punishment in Shakespeare's
Measure for Measure
Frye, Measure for Measure
Greene, David, The Introduction to AESCHYLUS, THE ORESTEIA
Hirshman, Sex, Money & Classical Philosophy: A Comment on Anita Allen’s ‘The Jurisprudence of Jane Eyre’
Oates, Introduction to JANE EYRE
O’Flaherty, Translating for the State and from the Stage, in THE ORESTEIA BY AESCHYLUS
Rich, Jane Eyre: The Temptation of a Motherless Woman
Rudall, The Theatrical Perspective, in THE ORESTEIA BY AESCHYLUS
Showalter, Death of the Lady (Novelist): Wharton’s House of Myths
West, Communities, Text and Law: Reflections on the Law and Literature Movement

RECOMMENDED SECONDARY WORKS:

Works by Robin West, Richard Weisberg, and James Boyd White.

OBJECTIVES IN TEACHING THE COURSE:

“My objectives in teaching this course are to study the uses of language, a skill that translates well from the study of literature to the study of law; to study the moral and ethical dimensions of law and law’s connection to the fate of individuals; to make connections among law, authority, and humanity; to examine texts from the perspectives of different people and different kinds of people; and (primarily) to have fun.”

COMMENTS: Professor Turano reports: “We do close readings of the six texts each semester, applying principles from several theories of literary criticism, including deconstruction, feminist critique, reader response, and new criticism, although the students are not always precisely aware of the critical direction in which I am guiding the discussion. The response to the course has been very positive.”

SAINT LOUIS UNIVERSITY SCHOOL OF LAW

RESPONDENT: Professor Henry M. Ordower
COURSE TITLE: Law & Literature Seminar
ENROLLMENT: 10-15.

PRIMARY WORKS ON CURRENT READING LIST:

Akutagawa, In a Grove
ARISTOPHANES, LYSISTRATA
BLICHER, RECTOR OF VEILBYE
BUCHNER, Woyzeck
CAMUS, THE STRANGER
Dostoyevsky, Notes from the Underground

https://scholar.valpo.edu/vulr/vol29/iss2/4
Faulkner, Intruder in the Dust
Goethe, Faust, Part I
Gordimer, Happy Event, Six Feet of Country, and A Chip of Ruby Glass
Hafiz, Saga
Ibsen, A Doll’s House
Kafka, The Trial
Kleist, Michael Kohlhaas
Morrison, The Bluest Eye
Tolstoy, The Death of Ivan Ilyich
Vargas Llosa, Who Killed Palomino Molinero?

PRIMARY WORKS TAUGHT PREVIOUSLY:

Buchner, Danton’s Death
Chaucer, The Man of Law’s Tale
Dickens, Bleak House
Melville, Billy Budd, Foretopman
Shakespeare, Measure for Measure
Sinclair, The Jungle
Sophocles, Antigone
Strindberg, Miss Julie

OTHER RECOMMENDED PRIMARY WORKS:

“If the theme is application of legal analytical methodologies to literary texts, it strikes me that almost any high quality literary work would be suitable for a course in law in literature. The issue is one of purpose and methodology. If the focus of the course or seminar is legal themes in literature, the reading list would be more restrictive.”

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“I suppose my primary objectives are to have a good time, read some things that we otherwise would not read in a three-year law school curriculum, and use our legal analytical skills to interpret non-legal texts. I have found that discussion of literary texts often provides an opportunity to address broader ethical and philosophical concerns about which law students often forget in the course of a stressful legal curriculum.”

GRADING:

“Requirements: (1) Participation in weekly discussion of the readings; (2) Responsibility for leading the discussion for one seminar meeting; (3) Term
paper addressing the legal themes and analysis in one or more works which are not part of the required readings for the seminar."

COMMENTS: Professor Ordower shares one of my own concerns in selecting works for the reading list and that concern is one of brevity. As he states: "I have selected [the works] somewhat randomly and eclectically but with an eye toward brevity." It does seem to me that over-extensive reading lists become counter-productive, and several respondents have reported that the use of short stories helps to ensure that students do the reading and that the professor does not teach to a room full of blank stares.

ST. MARY'S UNIVERSITY OF SAN ANTONIO SCHOOL OF LAW  YES

TAUGHT BY: Professor Amy Kastely

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW  YES

RESPONDENT: Professor Thomas H. Morawetz
Visiting Professor

COURSE TITLE: Law and Literature (Visiting Spring of 1995)

COMMENTS: See course descriptions and comments under entry for The University of Connecticut, supra.

UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW  NO

SANTA CLARA UNIVERSITY SCHOOL OF LAW  YES

TAUGHT BY: Judge Conrad Rushing, Santa Clara County Superior Court

SETON HALL UNIVERSITY SCHOOL OF LAW  YES

RESPONDENT: Arthur Russell, Esq., Adjunct Faculty

COURSE TITLE: Modern Approaches to Jurisprudence: Law and Literature

PRIMARY WORKS ON CURRENT READING LIST:

FISH, DOING WHAT COMES NATURALLY: CHANGE, RHETORIC, AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES
LEVINSON AND MAILLOUX, LAW AND LITERATURE: A HERMENEUTIC READER
MCKINNON, CATHERINE (several works including the final chapter of her book TOWARD A FEMINIST THEORY OF THE STATE, chapter entitled Toward a Feminist Jurisprudence.)
OBJECTIVE IN TEACHING THE COURSE:

"The purpose of the course is to develop critical legal thinking in lawyers. Critical legal thinking means discovering the societal paradigms that shape the institution of law. I try to teach that law is conventional right down to the language in which it is spoken. If students come to appreciate the conventional nature of the law without resorting to the skepticism that usually accompanies their encounters with indeterminacy in language, then I have achieved my objective."

COMMENTS: Professor Russell states that his course is "hermeneutical, not ethical; critical, not literary." Therefore, his primary texts are of a critical rather than literary nature.

UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW

RESPONDENT: Professor Robert L. Felix
COURSE TITLE: Law and Literature
ENROLLMENT: 10-20 law students, sometimes mixed with honors college students; occasionally taught only to honors college students.

PRIMARY WORKS ON CURRENT READING LIST:

AESCHYLUS, Oresteia
ATWOOD, THE HANDMAID'S TALE
BENET, THE DEVIL AND DANIEL WEBSTER
BOLT, A MAN FOR ALL SEASONS
HUXLEY, BRAVE NEW WORLD
HUXLEY, BRAVE NEW WORLD REVISITED
LAWRENCE AND LEE, INHERIT THE WIND
MELVILLE, BILLY BUDD, FORETOPMAN
MILL, ENFRANCHISEMENT OF WOMEN
MILLER, ARTHUR, THE CRUCIBLE
SHAKESPEARE, MEASURE FOR MEASURE
STOWE, UNCLE TOM'S CABIN
VAN TILBURG CLARK, WALTER, THE OX-BOW INCIDENT

PRIMARY WORKS TAUGHT PREVIOUSLY:

COZZENS, JUST AND THE UNJUST
DICKENS, A TALE OF TWO CITIES
FAULKNER, SANCTUARY
GOLDING, LORD OF THE FLIES
KAFKA, THE TRIAL
ORWELL, 1984
OTHER RECOMMENDED PRIMARY WORKS:

ATWOOD, THE HANDMAID'S TALE
BRADBURY, FAHRENHEIT 451
BRECHT, THE LIFE OF GALILEO
CAMUS, THE STRANGER
COZZENS, GUARD OF HONOR
DICKENS, BLEAK HOUSE
DOSTOYEVSKY, CRIME AND PUNISHMENT
ELIOT, T.S., MURDER IN THE CATHEDRAL
GAINES, A GATHERING OF OLD MEN
Gemmette (ed.), LAW IN LITERATURE (selected short stories)
GISSING, THE ODD WOMEN
HOCHHUTH, THE DEPUTY
KAFKA, THE PENAL COLONY
KOESTLER, DARKNESS AT NOON
LEE, TO KILL A MOCKINGBIRD
MORE, UTOPIA
PARKS, LEARNING TREE
SHAKESPEARE, MEASURE FOR MEASURE
SHAW, ROBERT, THE MAN IN THE GLASS BOOTH
SKINNER, WALDEN TWO
TURGENEV, FATHERS AND SONS
WARREN, ALL THE KING'S MEN
WOLFE, TOM, THE BONFIRE OF THE VANITIES

SECONDARY WORKS ASSIGNED:

ARISTOTLE, POETICS
CUDDON, HANDBOOK TO LITERATURE
FULLER, THE MORALITY OF LAW

RECOMMENDED SECONDARY WORKS:

ANDREWS, THE GREEKS
ARISTOTLE, POETICS
CUDDEN, A DICTIONARY OF LITERARY TERMS
DICTIONARY OF NATIONAL BIOGRAPHY
FULLER, THE MORALITY OF LAW
KITTO, THE GREEKS
MARIUS, THOMAS MORE: A BIOGRAPHY
OBJECTIVE IN TEACHING THE COURSE:

"At the University of South Carolina School of Law, the course in Law and Literature is one of a group of ‘Perspective Courses’ from which at least one must be chosen as a graduation requirement. I attempt to balance legal or law-related themes and critical appreciation of literature. To provide context for the course, the students and I explore the historical settings of the works assigned as reflected in the stories and as reflected in the audience to which they were presented. To this the class brings its own reaction to the stories as perceived in our own time. I like the historical sweep of the readings as a whole and the variety of forms of drama and narrative that they represent. Films, I think, enhance the presentation of the course and introduce another medium in which to consider the emotional and intellectual impact of literature that deals with matters of legal interest. In sum, I hope that students will become more appreciative of human nature in their professional lives and to learn why they think a work of literature is of value to them.”

GRADING:

25-30 page paper; classroom participation is also considered in the final grade.

COMMENTS:

Some of the themes around which Professor Felix arranges his course are Law and Conscience, Church and State, Anti-Semitism, Slavery, the Posse and the Lynch Mob, the Individual and Regressive Political Systems, and the Ideal of Law.
PRIMARY WORKS ON CURRENT READING LIST:

AESCHYLUS, *The Eumenides* from the ORESTEIA
BOLT, *A Man for All Seasons*
GILBERT, *Trial by Jury*
Glaspell, *A Jury of Her Peers*
Goldman, *Earthly Justice*
Kafka, *In the Penal Colony*
MELVILLE, *Billy Budd, Foretopman*
Morris, *The Brothel Boy and Other Parables of the Law*
SHAKESPEARE, *Measure for Measure*
SHAKESPEARE, *The Merchant of Venice*
SOPHOCLES, *Antigone*
TOLSTOY, *The Death of Ivan Ilyitch*
Tolstoy, *God Sees the Truth But Waits*
Wishingrad ed., *Legal Fictions* (selected stories)

SECONDARY WORKS ASSIGNED:

COLES, *The Call of Stories: Teaching and the Moral Imagination* (excerpts)
Domnarski, *Law-Literature Criticism: Charting a Desirable Course with Billy Budd*
Gewirtz, *Aeschylus' Law*
NOONAN, Preface to *Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of the Masks*

PRIMARY WORKS USED PREVIOUSLY:

Gemmette, ed., *Law in Literature: Legal Themes in Short Stories*

GRADING:

Final Examination—two hours long, closed book—consisting of one essay question and multiple choice questions.

COMMENTS BY THE RESPONDENT: “The course is taking on definition after three years. Substantively, it is a course devoted to several major literary texts, almost all classical or traditional, each of which dramatizes a trial. All except Tolstoy’s *Ilyitch* concern fundamental questions of law: the rule of law and its relationship to equity or mercy; the sources of law; the limits of law; good judging; just penalties, particularly in capital cases. Procedurally, all of the readings raise questions about due process: the creation of due process in *The Eumenides*; the absence of due process in *Antigone*; the operation and defects of due process in Shakespeare’s troubling comedies, *Measure for Measure* and *The Merchant of Venice*, the process in capital cases: *Brothel Boy, Billy Budd* and *A Man for All Seasons*. Even Ivan *Ilyitch* concerns due process to the extent that it depicts the self-centered Ivan ‘efficiently’ processing human problems in a cold and mechanical manner.”
The presentation involves several methods in roughly equal parts: lecture, videos, Socratic discussion, and moot court. The lectures aim to animate the readings with contextual information and textual interpretation. An effort is made to include student reaction and to instigate debate. Most of the important questions remain, after discussion, just that. The videos are used to present the trials—Orestes, Antigone, several characters in Measure for Measure, Shylock and Antonio in The Merchant of Venice, Billy Budd, Thomas Moore. The moot court involves student arguments; each student is assigned a 5-minute argument for either prosecution or defense; the class is the jury. The lessons are multiple, but certainly paramount is insight in the power of persuasion. In the future, more can be done with that concept, both the rhetorical skills and the moral implications. The former involves attention to the form and technique of good argument. The latter involves the perennial question of whether advocacy of a "wrong cause" is moral. I suspect that this issue leads to a discussion of good judging—judge or jury—and the limits of human judges."

"This course is a mixture of literary appreciation, legal debate, philosophical and moral rumination, Socratic dialogue, and just plain fun in the law school's garden of earthly delights."

COMMENTS: Several respondents report that they are teaching law and literature for the first time this year; others report that they have been teaching articles on law and literature for many years; still others, like Scott Wood, report that after three years of teaching the course, it is now taking definition—not only for the students but for the teacher of the course as well.

STANFORD LAW SCHOOL

RESPONDENT: Professor Robert Weisberg

"We have occasionally offered a course in Interdisciplinary Studies which includes about a 3-week unit on Interpretation."

STETSON UNIVERSITY COLLEGE OF LAW

RESPONDENT: Professor Robert Batey, Bernard Bergreen Faculty Scholar

COURSE TITLE: Law and Literature; Seminar

ENROLLMENT: 20 each Spring Semester.

PRIMARY WORKS ON CURRENT READING LIST:

CHEEVER, FALCONER
DOSTOYEVSKY, CRIME AND PUNISHMENT
Glaspell, A Jury of Her Peers
HAWTHORNE, THE SCARLET LETTER
KAFKA, THE TRIAL
MELVILLE, BILLY BUDD, FORETOPMAN
PORTER, KATHERINE ANNE, "NOON WINE": THE SOURCES
SHAKESPEARE, MEASURE FOR MEASURE
WRIGHT, NATIVE SON

PRIMARY WORKS TAUGHT PREVIOUSLY:

BURROUGHS, NAKED LUNCH
DEXTER, PARIS TROUT

WORKS ACCEPTABLE AS PAPER TOPICS:

AESCYLUS, THE ORESTEIAN TRILOGY
ANONYMOUS, NIAL'S SAGA
AUCHINCLOSS, THE EMBEZZLER
AUCHINCLOSS, I COME AS A THIEF
BECKER, A COVENANT WITH DEATH
BELOW, THE BELLAROSA CONNECTION
BELOW, A THEFT
BURGESS, A CLOCKWORK ORANGE
BURROUGHS, NAKED LUNCH
CAMUS, THE STRANGER
DEXTER, PARIS TROUT
DOCTOROW, BILLY BATHGATE
DOCTOROW, THE BOOK OF DANIEL
DOCTOROW, RAGTIME
DOSTOYEVSKY, THE BROTHERS KARAMAZOV
DREISER, AN AMERICAN TRAGEDY
FAULKNER, INTRUDER IN THE DUST
FAULKNER, KNIGHT'S GAMBIT
FAULKNER, REQUIEM FOR A NUN
FAULKNER, SANCTUARY
GAINES, A LESSON BEFORE DYING
GARDNER, THE SUNLIGHT DIALOGUES
GRISHAM, A TIME TO KILL
KOESTLER, DARKNESS AT NOON
LEE, TO KILL A MOCKINGBIRD
MALAMUD, THE FIXER
MATTHIESSEN, KILLING MISTER WATSON
MORRISON, BELOVED
MORRISON, JAZZ
NABOKOV, LOLITA
OATES, BECAUSE IT IS BITTER, AND BECAUSE IT IS MY HEART
OATES, DO WITH ME WHAT YOU WILL
OATES, EXPENSIVE PEOPLE
OATES, FOXFIRE: CONFESSIONS OF A GIRL GANG
OATES, THEM
SOLZHENITSYN, ONE DAY IN THE LIFE OF IVAN DENISOVICH
TRAVER, ANATOMY OF A MURDER
TUROW, THE BURDEN OF PROOF
TUROW, PLEADING GUILTY
TUROW, PRESUMED INNOCENT
TWAIN, PUDD'NHEAD WILSON
VAN TILBURG CLARK, WALTER, THE OX-BOW INCIDENT
WEST, JESSAMY, THE MASSACRE AT FALL CREEK
WOLFE, TOM, THE BONFIRE OF THE VANITIES
WOUK, THE CAINE MUTINY

OTHER RECOMMENDED PRIMARY WORKS:

BERRY, THE WILD BIRDS: SIX STORIES OF THE PORT WILLIAM MEMBERSHIP

RECOMMENDED SECONDARY WORKS:

Works by Richard Weisberg and James Boyd White.

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“Providing textured examples of legal issues and ethical dilemmas.”

GRADING:

Paper 50% (at least 25 pages) on a work or works of fiction “dealing with crime and the legal response to it, other than those on the assigned reading list”; Quizzes 30% (no makeups of missed quizzes, lowest grade dropped); journal 10% (two pages of written reactions to the assigned reading for every class; may be required to read from journals or to react to the journal entries of others); class participation 10%.

COMMENTS: This course focuses on the topic of criminal law. As Professor Batey states, the students “study several fictional depictions of crime and the legal response to crime in order to gain a better understanding of the personal forces at play in this complex social process.” One problem of having the students write on papers outside those assigned for classroom discussion is the fact that students often pick texts which have no relevance to law and literature, perhaps for reasons that we would prefer not to know—I suspected once that I may have been looking at a revised undergraduate paper! I like the idea of providing an extensive list of works with which the professor is
comfortable and allowing the students to pick from that list. I am also quite comfortable, as Professor Batey is, with giving quizzes, even at the graduate level. Nothing promotes class discussion more than having had the students read the works in the first place! I cannot agree with the feelings I have heard expressed that quizzes at the graduate level are inappropriate.

SUFFOLK UNIVERSITY LAW SCHOOL

RESPONDENT: Professor Bernard Michael Ortwein

COMMENTS BY RESPONDENT: "Although I have long been interested in the topic, I will be teaching the course on Law and Literature for the first time in the Spring 1995 semester. I am in the process of developing a syllabus and materials but feel unqualified to answer your questionnaire at this time. If I can help in any other way please let me know."

COMMENTS: Yet another new course!

SYRACUSE UNIVERSITY COLLEGE OF LAW

NO

TEMPLE UNIVERSITY SCHOOL OF LAW

NO

UNIVERSITY OF TENNESSEE COLLEGE OF LAW

YES

RESPONDENT: Associate Professor Judy M. Cornett
Also taught by Professor Jerry J. Phillips.
Professors Phillips and Cornett are expected to team-teach the course in the fall semester of 1995.

COURSE TITLE: Law and Literature
ENROLLMENT: Limited to 25.

PRIMARY WORKS ON CURRENT READING LIST:

BRENT, INCIDENTS IN THE LIFE OF A SLAVE GIRL
DICKENS, BLEAK HOUSE
GODWIN, THE ADVENTURES OF CALEB WILLIAMS
LEE, TO KILL A MOCKINGBIRD
LEWIS, MATTHEW GREGORY, THE MONK
MORRISON, SULA
RADCLIFFE, THE ITALIAN
SHELLEY, FRANKENSTEIN
TROLLOPE, THE WARDEN
WILDE, THE PICTURE OF DORIAN GRAY
PRIMARY WORKS TAUGHT PREVIOUSLY:

CATHER, O Pioneers!
GRISHAM, The Firm
MORRIS, News from Nowhere
ORWELL, 1984
SHAKESPEARE, Measure for Measure
SHAKESPEARE, The Merchant of Venice
Vonnegut, Harrison Bergeron
WOLLSTONECRAFT, Mary, or the Wrongs of Woman

SPEECHES:

Garrison, No Compromise with Slavery
King, I Have a Dream speech (followed by a viewing of the film).
Lincoln, Second Inaugural Address
Long, A Radio Address from January 1935
Seattle, The Dead are Not Altogether Powerless
Stanton, Address to the 1868 Woman Suffrage Convention
Truth, Ain't I A Woman

OTHER RECOMMENDED PRIMARY TEXTS:

“There are many works (both fictional, non-fictional, and film) that I would consider teaching. One thing I would like to do is to teach an entire unit on Oscar Wilde, including the transcripts of his trial, Richard Ellmann’s biography, and works by Wilde including The Picture of Dorian Gray, ‘The Ballad of Reading Goal,’ ‘The Decay of Lying,’ and ‘The Soul of Man under Socialism’ (and perhaps even De Profundis).”

RECOMMENDED SECONDARY WORKS:

“Works of literary criticism with a historical perspective, such as John Bender’s Imagining the Penitentiary, D.A. Miller’s The Novel and the Police, and John Zomchick’s Family and the Law in Eighteenth-Century Fiction.”

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“The University of Tennessee College of Law has an upper-division requirement called the ‘perspective’ requirement, designed to give students a perspective (i.e., a point of view) on the law. As I understand it, the perspective requirement is designed to take students out of the onrushing stream
of legal doctrine and set them apart from it (and perhaps, above it), so that they can see law as part of a bigger picture and can orient themselves in relation to that picture. Essentially, in my course, I try to give students a historical perspective on legal institutions while inviting them to engage in self-reflection about their (past, current, and future) role in the legal system. (Part of the roundtable discussion to be published in the summer issue of the University of Cincinnati Law Review is devoted to this question.)"

**GRADING:**

Based primarily on a 15-25 page paper.

**COMMENTS:** Echoing my own thoughts, Professor Cornett, comments: “I also think this course can be a good opportunity for students to practice (or regain) their own creative powers, which I think law school sometimes stifles. Several students in my Law and Literature courses have chosen to do creative projects (e.g., a poem and accompanying critical commentary or a script for a reader’s theatre performed by the class) instead of traditional papers. Nancy Cook, who writes fiction, has written an article for the *University of Cincinnati Law Review* symposium on treating fictional works as legal scholarship.” The course draws on constructs from various schools of literary criticism, including feminism, Marxism, new historicism, and psychoanalysis.

**THE UNIVERSITY OF TEXAS SCHOOL OF LAW**  
NO

**TEXAS TECH UNIVERSITY SCHOOL OF LAW**  
NO

**UNIVERSITY OF TOLEDO COLLEGE OF LAW**  
YES

**TAUGHT BY:**  
Professor Phillip J. Closius

**TULANE UNIVERSITY SCHOOL OF LAW**  
YES

**TAUGHT BY:**  
Associate Professor Jeanne Louise Carriere

**THE UNIVERSITY OF TULSA COLLEGE OF LAW**  
YES

**RESPONDENT:**  
Brent Hendricks, Adjunct Professor & Research Fellow

**COURSE TITLE:**  
Law and Literature

**COMMENTS:**  
Professor Hendricks reports that this course, to be taught in the spring of 1995, is the first law and literature course he has taught. He does expect to include the following works:
The first three weeks of the course will be used as an introduction to the following major critical approaches: New Criticism, Historicism, Reader-Response Criticism, Deconstruction, and Feminist Literary Theory. The next three weeks of the course will focus on the following jurisprudential schools: Natural Law, Positivism, Legal Realism, Critical Legal Studies, Feminist Legal Studies, and Pragmatism. In addition, the class "will explore the nexus between doctrines of literary and legal theory. The class, for example, will investigate the connection between Deconstruction and the Critical Legal Studies movement, focusing on the indeterminacy of texts. Furthermore, we will examine the link between New Criticism and 'objective' or 'formalist' theories of legal interpretation." The last eight weeks will be used to read primary works of literature "in which the author focuses directly on the nature of law and the role of the lawyer."

COMMENTS: It is nice to see Jude the Obscure on the reading list for a new course. This is a particularly appropriate text for use in a course that makes use of literary theory—it readily lends itself to so many critical readings, including, but not limited to, psychoanalytic, feminist, Marxist, and New Critical readings.

UNIVERSITY OF UTAH COLLEGE OF LAW

RESPONDENT: Professor Debora L. Threedy
Also taught in the past by Professor Terry Kogan

COURSE TITLE: Law and Literature Seminar

ENROLLMENT: 12-15.

PRIMARY WORKS ON CURRENT READING LIST:

Akutagawa, In A Grove
Asimov, The Bicentennial Man
Auchincloss, The Tender Offer
Barthelme, Some of Us Had Been Threatening Our Friend Colby
Bell, Madison Smartt, Witness
Capek, The Clairvoyant
Faulkner, Barn Burning
Faulkner, Tomorrow
Garland, Under the Lion's Paw
Gemmette, ed., LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES
Glaspell, A Jury of Her Peers
Goldman, Earthly Justice
Kafka, In the Penal Colony
Marcus, Centaurs
Maupassant, The Assassin
SHAKESPEARE, THE MERCHANT OF VENICE
Shaw, Irwin, Triumph of Justice
Walker, Advancing Luna—and Ida B. Wells
Wishingrad, ed., LEGAL FICTIONS: SHORT STORIES ABOUT LAWYERS AND THE LAW

SECONDARY WORKS ASSIGNED:

Cohen, Jane Maslow, Feminism and Adaptive Heroism: The Paradigm of Portia as Means of Introduction
Cunningham, A Tale of Two Clients: Thinking About Law As Language
Denvir, William Shakespeare and the Jurisprudence of Comedy
POSNER, Introduction, and Dilemmas of Jurisprudence in Shakespeare . . . , in LAW AND LITERATURE: A MISUNDERSTOOD RELATION
Weisberg, Richard, Literature and Law
WHITE, JAMES BOYD, A Way of Reading, from WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER AND COMMUNITY
WILLIAMS, The Brass Ring and the Deep Blue Sea; The Death of the Profane; and The Pain of Word Bondage, from THE ALCHEMY OF RACE AND RIGHTS

CASES:

Noon v. Knavel
People v. Malausky
Repouille v. United States

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

Professor Threedy is “currently working on a piece about Susan Fromberg Schaeffer’s novel, The Madness of a Seduced Woman.”

OBJECTIVE IN TEACHING THE COURSE:

“My goal in this seminar is to create an atmosphere of cooperative discovery. There is no authoritative interpretation of the stories we will be reading, but we can all learn to speak with authority about them.”

GRADING:

Paper; class presentation; short writing assignment; and class discussion.
COMMENTS: Professor Threedy reports that “the short writing assignment was immensely successful—we put the stories together in a desktop publication.” Those stories were engrossing and very well written. One of my own aims in teaching any course is to encourage students to attempt to publish their papers and short stories. It is surprising that some of the best student writers have never been praised for their efforts, never been told that they have a marketable product, and never thought that they had a voice to be heard.

VALPARAISO UNIVERSITY SCHOOL OF LAW YES

TAUGHT BY: Professor Jack A. Hiller

VANDERBILT UNIVERSITY SCHOOL OF LAW NO

VERMONT LAW SCHOOL YES

RESPONDENT: Associate Professor Philip N. Meyer, Director, Legal Writing Department

COURSE TITLE: Law and Popular Storytelling Seminar

ENROLLMENT: 15-20.

PRIMARY WORKS ON CURRENT READING LIST:

CAMUS, THE STRANGER
CAPOTE, IN COLD BLOOD: A TRUE ACCOUNT OF A MULTIPLE MURDER AND ITS CONSEQUENCES
Carver, (Selected Short Stories)
TUROW, PRESUMED INNOCENT
WOLFF, TOBIAS, THIS BOY’S LIFE: A MEMOIR

SECONDARY SOURCES ASSIGNED:

Amsterdam, An Analysis of Closing Arguments to a Jury
Amsterdam, Thurgood Marshall’s Image of the Blue-Eyed Child in Brown
Elkins, Pathologizing Professional Life: Psycho-Literary Case Stories
Elkins, The Stories We Tell Ourselves in Law: A Bibliography of Narrative
Meyer, ‘Desperate for Love’: Cinematic Influences Upon a Defendant’s Closing Argument to a Jury
Meyer, Law Students Go to the Movies
Scheppel, Foreword: Telling Stories
Scheppel, Just the Facts, Ma’am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth
Articles by Barnes, Davis, Delgado or Williams

FILMS:

ANATOMY OF A MURDER
BADLANDS
THE GRIFTERS
INCIDENT AT OGLALA
STRAIGHT TIME
THE THIN BLUE LINE
TWELVE ANGRY MEN

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

"The Law and Storytelling course is conceived to reconnect and revivify the upper-level law student’s innate sense of narrative. The course reintroduces to students a sense of the singularity of stories and their sometimes maddening irreducibility. Through the exploration of stories and creative interdisciplinary scholarship I hope that the seminar will crack the formalist shell in which law school tends to encase students, and thus to open the students up once again to the discontinuity and inexplicability of the lives they will encounter as lawyers . . . . I hope students will improve critical reading and viewing skills, and strengthen effective critical reasoning, communication and writing skills. Perhaps along the way, some of the students will also develop their own storytelling abilities."

GRADING:

Course participation, 25%; Presentation, 25%; Final Paper, 50%.

COMMENTS: Professor Meyer referred me to his article in the Journal of Legal Education for answers to my questions regarding textual materials for his course. Rather than quote extensively from the article and risk violations of copyright laws with the Journal of Legal Education, I refer the reader to that article which is a well-written and entertaining piece describing and analyzing Professor Meyer’s experimental course, Law and Popular Storytelling. He informs me that he intends to include a theoretical component in the course next year. In November of 1993, Vermont Law School sponsored “Lawyers As Storytellers and Storytellers as Lawyers: An Interdisciplinary Symposium Exploring the Use of Storytelling in the Practice of Law,” which resulted in the symposium issue of the Vermont Law Review in the Spring of 1994.
RESPONDENT: Assistant Professor Richard C. Schneider, Jr.
COURSE TITLE: Law, Literature and Culture
ENROLLMENT: Limited to 20 students.

PRIMARY TEXTS ON CURRENT READING LIST:

CAMUS, THE STRANGER
DOSTOYEVSKY, CRIME AND PUNISHMENT
GAINES, A GATHERING OF OLD MEN
KAFKA, THE TRIAL
MELVILLE, BILLY BUDD, FORETOPMAN
MORRISON, BELOVED
PORTER, KATHERINE ANNE, “NOON WINE”: THE SOURCES
SHAKESPEARE, THE MERCHANT OF VENICE

Professor Schneider is also considering using “experimental . . . interesting texts from Kierkegaard, Michel Foucault, and Louis Althusser . . . and parts of The Executioner’s Song and In the Belly of the Beast.”

COMMENTS: Professor Schneider reports that this is a new course to be taught in the Spring of 1995 and that it is the first such course at Wake Forest University School of Law. He adds: “I envision a course with a three-fold emphasis. First, we will use literature, film, legal opinions, and the images of lawyers in popular culture to focus discussion on ethical and moral issues that will likely confront the students in their legal practices. We will be defining ‘justice’ for ourselves as we confront literature and film. Our differing views of the content of ‘justice’ will, I hope, make us more sensitive to varying needs and perspectives that must be addressed in a truly fair legal system. Second, we will make some close analysis of these ‘texts’ a central part of our discussions because of the very centrality of language and narrative to law. We will learn analytical techniques, techniques often associated with literary criticism, to better our ability to analyze judicial opinions, statutes, and other normative sources of law. Finally, I hope to communicate to the students my passion for literature and film. If I succeed, they will take with them into practice their own new or renewed interest in the texts and the issues.”

RESPONDENT: Professor Gregory J. Pease
COURSE TITLE: Law and Literature
ENROLLMENT: 20-25; Offered once a year.
PRIMARY WORKS ON CURRENT READING LIST:

AESCHYLUS, ORESTEIA
AUCHINCLOSS, DIARY OF A YUPPIE
Cahill, ed., WOMEN AND FICTION: SHORT STORIES BY AND ABOUT WOMEN
CAMUS, THE STRANGER
CATHER, A LOST LADY
CONRAD, HEART OF DARKNESS
MELVILLE, BILLY BUDD, FORETOPMAN
MORRISON, SULA
SHAKESPEARE, OTHELLO

PRIMARY WORKS TAUGHT PREVIOUSLY:

AUCHINCLOSE, THE GREAT WORLD AND TIMOTHY COLT
COOPER, THE PIONEERS
HANSBERRY, A RAISIN IN THE SUN: A DRAMA IN THREE ACTS
HIGGINS, KENNEDY FOR THE DEFENSE
KAFKA, THE TRIAL
ORWELL, ANIMAL FARM
SHAKESPEARE, HAMLET
SHAKESPEARE, MEASURE FOR MEASURE
SHAKESPEARE, MERCHANT OF VENICE
SOPHOCLES, ANTIGONE
STEINBECK, THE GRAPES OF WRATH
STOWE, UNCLE TOM’S CABIN
TUROW, ONE L
TUROW, PRESUMED INNOCENT

RECOMMENDED SECONDARY WORKS:

“Anything written by Posner and the Weisbergs”
POSNER, LAW AND LITERATURE: A RELATION REARGUED
Various articles on Billy Budd
WEISBERG, RICHARD, FAMILY FEUD: A RESPONSE TO ROBERT WEISBERG ON LAW AND LITERATURE
WEISBERG, ROBERT, THE LAW-LITERATURE ENTERPRISE

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“Presenting different perspectives on law. Humanizing. Evaluating the law-literature enterprise itself (students don’t care much for this curricular introspection).”
WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW

RESPONDENT: Professor Lewis Henry LaRue
COURSE TITLE: Law & Language
ENROLLMENT: About 25.

PRIMARY WORKS ON CURRENT READING LIST:

ARISTOPHANES, LYSISTRATA
HOMER, THE ILIAD
PLATO, GEORGIAS
SOPHOCLES, ANTIOONE
THUCYDIDES, PELOPONNESIAN WARS

PRIMARY WORKS USED PREVIOUSLY:

WHITE, JAMES BOYD, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION

RECOMMENDED SECONDARY SOURCES:

WHITE, JAMES BOYD, JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

To teach the students how to write a brief.

COMMENTS: This is a Law and Language course that might not be considered a law and literature course by some people. As you will notice, Professor LaRue uses James Boyd White’s book, *The Legal Imagination*, to reach the goal of teaching the students how to write a brief.

UNIVERSITY OF WASHINGTON SCHOOL OF LAW

TAUGHT BY: Professor Robert Harris Aronson

WASHINGTON UNIVERSITY SCHOOL OF LAW

WASHBURN UNIVERSITY
RESPONDENT A: Professor James R. Elkins
COURSE TITLE: Lawyers and Literature
ENROLLMENT: 26 (current year) (in the past I have limited the enrollment to 20 so that I could use weekly reflective writing exercises).

PRIMARY WORKS ON CURRENT READING LIST:

BUSCH, CLOSING ARGUMENTS
CAMUS, THE FALL
DEXTER, PARIS TROUT
GRISHAM, A TIME TO KILL
LEE, TO KILL A MOCKINGBIRD
PERCY, THE SECOND COMING

PRIMARY WORKS USED PREVIOUSLY:

Ashe, Zig-Zag Stitching and the Seamless Web: Thoughts on 'Reproduction' and the Law
HIGGINS, KENNEDY FOR THE DEFENSE
PIRSIG, ZEN AND THE ART OF MOTORCYCLE MAINTENANCE
RODRIGUEZ, HUNGER OF MEMORY: THE EDUCATION OF RICHARD RODRIGUEZ
WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS
WISHMAN, CONFESSIONS OF A CRIMINAL LAWYER

OTHER RECOMMENDED PRIMARY TEXTS:

AUCHINCLOSS, THE GREAT WORLD AND TIMOTHY COLT
BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM IN AMERICA
COHEN, THE ORGAN BUILDER
PORTER, KATHERINE ANNE, "NOON WINE": THE SOURCES
WIDEMAN, REUBEN

SECONDARY SOURCES ASSIGNED:

"I generally do not assign secondary sources. Good stories speak for themselves. For students who have an intellectual bent and are trying to figure out how stories work and their relevance to jurisprudence and lawyering, I refer them to the chapter entitled ‘A Way of Reading,’ in James Boyd White’s book When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character and Community."
SYMPOSIA:

Lawyers as Storytellers and Storytellers as Lawyers: An Interdisciplinary Symposium
Exploring the Use of Storytelling in the Practice of Law
Pedagogy of Narrative

JOURNALS:

CARDOZO STUDIES IN LAW AND LITERATURE
THE YALE JOURNAL OF LAW AND THE HUMANITIES ("by way of a 'Note from the Editors' providing an 'introduction' to the first issue, celebrates the re-emergence of the humanities as a significant 'voice' in the study of law," 1 YALE J. LAW & HUMAN. v (1988)).

BOOKS AND ARTICLES:

Anderson, Lawyering in the Classroom: An Address to First Year Students
Ayer, Narrative in the Moral Theology of Tom Shaffer
Baron, The Many Promises of Storytelling in Law
Cover, Foreword: Nomos and Narrative
Cover, The Folktales of Justice: Tales of Jurisdiction
Duncan, Tristan Layle, Narrative Jurisprudence: The Remystification of the Law
Elkins, Becoming a Lawyer: The Transformations of Self During Legal Education
Elkins, Coping Strategies in Legal Education
Elkins, Pathologizing Professional Life: Psycho-Literary Case Stories
Elkins, The Quest for Meaning: Narrative Accounts of Legal Education
Elkins, Rites of Passage: Law Students 'Telling Their Lives'
Elkins, ed., Worlds of Silence: Women in Law School
Foster, James C., Antigones in the Bar: Women Lawyers as Reluctant Adversaries
Foster, James C., The 'Cooling Out' of Law Students: Facilitating Market Cooperation of Future Lawyers
Foster, James C., Legal Education and the Production of Lawyers to (Re)Produce Liberal Capitalism
Hauerwas and Shaffer, Hope in the Life of Thomas More
Kurzon, How Lawyers Tell Their Tales: Narrative Aspects of a Lawyer's Brief
Maynard, Narratives and Narrative Structure in Plea Bargaining
O'Barr and Conley, Litigant Satisfaction Versus Legal Adequacy in Small Claims Court Narratives
Papke, Discharge as Denouement: Appreciating the Storytelling of Appellate Opinions
Papke, ed., NARRATIVE AND THE LEGAL DISCOURSE: A READER IN STORYTELLING AND THE LAW
POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION
SHAFFER, AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS
Shaffer, Christian Lawyer Stories and American Legal Ethics
Shaffer, The Ethics of Dissent and Friendship in the American Professions
Shaffer, FAITH AND THE PROFESSIONS
Shaffer, Henry Knox and the Moral Theology of Law Firms
Shaffer, The Legal Ethics of Belonging
Shaffer, The Legal Ethics of Radical Individualism
Shaffer, The Moral Philosophy of Atticus Finch
Shaffer, The Profession as a Moral Teacher
Shaffer, On Being a Professional Elder
SHAFFER, ON BEING A CHRISTIAN AND A LAWYER: LAW FOR THE INNOCENT
SHAFFER AND ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL
Snedaker, Storytelling in Opening Statements: Framing the Argumentation of the Trial
West, Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory
WHITE, JAMES BOYD, HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW
WHITE, JAMES BOYD, JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM
WHITE, JAMES BOYD, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION
White, James Boyd, What Can a Lawyer Learn From Literature?
WHITE, JAMES BOYD, WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER AND COMMUNITY

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“For the most part I try to eschew objectives, law students are objective bound, legal study itself is an exercise in debilitating objectivity. But, and it turns out to be a big but, I find that some students are lost without objectives and I try to have them, lying off-coast, in case a storm blows in. In the first meeting of the class, I make some cursory passes at course objectives, and then get on with reading the stories. I also provide a longer than usual syllabus that sets out my thinking about the course and what it is doing in the law school curriculum. It contains, in the most explicit form that I attempt in the course, what you call objectives.”

GRADING:

Paper Titled: “What Are Lawyers Doing in Literature?”

COMMENTS: Professor Elkins states: “Contrary to what one might expect (and what we are lead to believe by teachers like Robert Coles) I don’t find that literature offers any magic route to redemption, a preferred route to what Pirsig calls the ‘high country of the mind,’ or access to the soul. Law students bring all of the baggage and difficulties to literature that they bring to any reading that requires serious, reflective, and searching interpretative work. They have inadequate strategies for reading and are constantly battling the imperatives pressed upon them by their continuing efforts to take on a Legal Mind. While literature is one antidote for Legal Mind, it is not a cure all.”

RESPONDENT B: Dean and Professor Teree E. Foster
COURSE TITLE: Law and Literature Seminar: Representation of Women

ENROLLMENT: 15.

PRIMARY WORKS ON CURRENT READING LIST:

- Angelou, I Know Why the Caged Bird Sings
- Atwood, The Handmaid's Tale
- Atwood, Spelling
- Bukowski, The Most Beautiful Woman in Town
- Erdrich, Love Medicine
- Gilman, The Yellow Wallpaper
- Glaspell, A Jury of Her Peers
- Hawthorne, The Scarlet Letter
- Hemingway, Hills Like White Elephants
- Hurston, How It Feels To Be Colored Me
- Hurston, Their Eyes Were Watching God
- Ibsen, A Doll's House
- Ibsen, When We Dead Awaken
- Lawrence, Lady Chatterley's Lover
- Maupassant, The Jewelry
- Miller, Arthur, The Crucible
- Miller, Henry, The Tropic of Cancer
- Perrault, The Little Glass Slipper
- Sarton, My Sisters, O My Sisters
- Sayers, Gaudy Night
- Shakespeare, Measure for Measure
- Shaw, George Bernard, Pygmalion
- Smith, Stevie, How Cruel Is the Story of Eve
- Wharton, Roman Fever
- Woolf, Professions for Women, and Shakespeare's Sister, from A Room of One's Own

SECONDARY WORKS ASSIGNED:

- Bolen, Goddesses in Every Woman: A New Psychology of Women
- Dinnerstein, The Mermaid and the Minotaur: Sexual Arrangements and Human Malaise
- Lindbergh, Gift from the Sea
- Maddox, Nora: The Real Life of Molly Bloom
- Milford, Zelda: A Biography
- Rich, When We Dead Awaken: Writing as Re-Vision
- Spater and Parsons, A Marriage of True Minds: An Intimate Portrait of Leonard and Virginia Woolf

FILMS:

- Anna Karenina
- A Question of Silence
- Fatal Attraction
THE GOOD MOTHER
SHAME

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

"An inquiry into literature that reflects and scrutinizes the experience of women, and the societal perception of women, will provide a basis for insight into the persistent misogyny and stereotypical characterizations of women, and consequential societal discrimination. It might also equip students with innovative insights into strategies for decimating the stereotypes and combating the discrimination."

GRADING:

40%, final draft of the 25-page paper—"In lieu of a paper focusing on a literary topic, the student can select one of two options: (1) write a short story that explicates a legal principle (for an elaborate example, see Morris, Ake Dah, 53 U. CHI. L. REV. 553-99 (1985)); or (2) prepare a standard research paper that analyzes a legal topic concerning the role, status, or representations of women; 20%, individual participation and contribution to the seminar; 20%, in-class presentation; and 20%, preparation of the 'reaction papers'—weekly papers based on that week's seminar readings or on focus questions provided by the instructor."

COMMENTS: Although I have listed all of the works on Dean Foster's syllabus, the student is allowed some choice in selecting works. This eliminates about five works, and four works are optional. Even so, it is mind-boggling to think that fifteen students each year come out of a law school having read all of the works on the above list, and it is not hard to imagine the breadth this gives to them as they enter their legal careers. As Dean Foster states: "The law is an interdependent, not an autonomous enterprise. Legal disputes and problems concern virtually every facet of human experience. Lawyers who strive to enhance and restructure their understanding of the human experience and of societal mores will achieve a more inclusive perspective, and will be more effective advocates. Much of legal education focuses upon judicial opinions, statutes, and codes. However, these sources are not the sole foundation for the law. Law exists as a reflection of society's collective decision as to the expressed precepts by which it chooses to be governed. Thus, to explore thoroughly the foundations for the law, it is necessary to examine other disciplines, such as philosophy, history, political science, sociology,
psychology, anthropology, and art, that enlighten human development and the human condition. The humanities provide an invaluable source of accumulated human knowledge and experience.” The course is centered around the following topics: Representations of Women in Mythology; Representations of Woman as Arbiters of Morality; Representations of Women as Temptresses and Vessels of Evil; Representations of Woman as Sex Objects; Representations of Women as Child-Bearers; Representations of Women as Wives and Helpmates; Representations of Woman as Professionals; Representations of Women of Color.

WESTERN NEW ENGLAND COLLEGE SCHOOL OF LAW

TAUGHT BY: Professor Donald R. Korobkin

WHITTIER LAW SCHOOL

WIDENER UNIVERSITY SCHOOL OF LAW

WILLAMETTE UNIVERSITY COLLEGE OF LAW

COLLEGE OF WILLIAM AND MARY, MARSHALL-WYTHER SCHOOL OF LAW

RESPONDENT: Professor Paul A. LeBel, James Goold Cutler Professor of Law

COURSE TITLE: Law and American Literature (Offered Fall 1990 and Fall 1994)

ENROLLMENT: 25 law students and up to 5 graduate students in American Studies.

PRIMARY WORKS ON CURRENT READING LIST:

DREISER, AN AMERICAN TRAGEDY
FAULKNER, KNIGHT'S GAMBIT
GADDIS, A FROLIC OF HIS OWN
Glaspell, A Jury of Her Peers
KINGSOLVER, PIGS IN HEAVEN
LEE, TO KILL A MOCKINGBIRD
London, Selected Short Stories
McPherson, Selected Short Stories
MELVILLE, BILLY BUDD, FORETOPMAN
WELCH, THE INDIAN LAWYER
WRIGHT, NATIVE SON
PRIMARY WORKS TAUGHT PREVIOUSLY:

COOPER, THE PIONEERS
Dexter, PARIS TROUT
McPherson, Problems of Art
McPherson, A Sense of Story
Norris, THE OCTOPUS
Stowe, UNCLE TOM'S CABIN
Wolfe, Tom, THE BONFIRE OF THE VANITIES

SECONDARY WORKS ASSIGNED:

Declaration of Independence and Constitution of 1787
Ferguson, LAW AND LETTERS IN AMERICAN CULTURE
Noonan, PERSONS AND MASKS OF THE LAW: Cardozo, Holmes, Jefferson, and Wythe as MAKERS OF THE MASKS
Posner, LAW AND LITERATURE: A MISUNDERSTOOD RELATION
Thomas, CROSS-EXAMINATIONS OF LAW AND LITERATURE: Cooper, Hawthorne, Stowe, and Melville

OBJECTIVE IN TEACHING THE COURSE:

"To use literature to gain some insights into the role of law and lawyers in the broader society, and to see how law and lawyers are viewed in representative samples of the literary art of that society."

GRADING:


COMMENTS: Professor LeBel comments: "I'm quite new to this enterprise, and am still developing in my own mind what I ought to be doing and what I'm capable of doing. The most striking observation from my first experience of teaching the seminar was the excitement and the commitment of the students to a serious wrestling with the works and their ideas." The course is developed around the following topics: Law on the Frontier: The Situation of Law; Person and Profession: Integration or Conflict; Client and Professional: The Role of Difference; Lawyers and the Reflection/Transmission of Values.

UNIVERSITY OF WISCONSIN LAW SCHOOL

RESPONDENT: Professor Leonard Vernon Kaplan

COMMENTS: Professor Kaplan reports that he has taught literature within
the law school curriculum for over twenty years. Although he has only taught “Law and Literature” two or three times, he has incorporated literature into his course on Legal Process and into his Jurisprudence course. Just as many schools and universities have incorporated and encouraged writing across the curriculum, law schools are incorporating and encouraging literature across the curriculum—into women and the law, feminist jurisprudence, law and medicine, etc.

UNIVERSITY OF WYOMING COLLEGE OF LAW

NO

YALE LAW SCHOOL

YES

TAUGHT BY: Professor Paul D. Gewirtz, Potter Stewart Professor of Constitutional Law

YESHIVA UNIVERSITY, BENJAMIN N. CARDOZO SCHOOL OF LAW

YES

RESPONDENT: Professor Richard H. Weisberg, Walter Floersheimer Professor of Constitutional Law

COURSE TITLE: Law and Literature

ENROLLMENT: 25.

PRIMARY WORKS ON CURRENT READING LIST:

BARTH, THE FLOATING OPERA
DICKENS, GREAT EXPECTATIONS
MELVILLE, BILLY BUDD, FORETOPMAN
SHAKESPEARE, THE MERCHANT OF VENICE
TWAIN, PUDD'NHEAD WILSON

PRIMARY WORKS TAUGHT PREVIOUSLY:

CAMUS, THE FALL
CAMUS, THE STRANGER
DICKENS, BLEAK HOUSE
DOSTOYEVSKY, THE BROTHERS KARAMAZOV
DOSTOYEVSKY, CRIME AND PUNISHMENT
KAFKA, THE TRIAL
SHAKESPEARE, HAMLET
SOPHOCLES, OEDIPUS REX

OTHER RECOMMENDED PRIMARY TEXTS:

FAULKNER, THE HAMLET
FAULKNER, THE MANSION
FAULKNER, SANCTUARY
RECOMMENDED SECONDARY WORKS:

CARDOZO STUDIES IN LAW AND LITERATURE, I, Number 1 (Billy Budd); V, Number 1 (Merchant of Venice)
LEVINSON AND MAILOUX, INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

"Please see Poethics, generally."

COMMENTS: I agree with Professor Weisberg, please see Poethics.

CAMPBELL UNIVERSITY, NORMAN ADRIAN WIGGINS SCHOOL OF LAW

CATHOLIC UNIVERSITY OF PUERTO RICO SCHOOL OF LAW

CITY UNIVERSITY OF NEW YORK, SCHOOL OF LAW AT QUEENS COLLEGE

THOMAS M. COOLEY LAW SCHOOL

RESPONDENT: Professor D. Jason

COURSE TITLE: Law in Literature

COMMENTS: Professor Jason called me some time ago and indicated that he intended to use my book Law in Literature: Legal Themes in Short Stories as a text for his new course on Law and Literature. At that time, I lent him my own syllabus for the course. He writes: "You may recall that I taught a Law in Literature course here at Cooley in the winter term of 1993. I received late notice and did not have as much time to prepare as I would have liked. With your permission I used the syllabus you sent me for a trial run. The course was well received, and it has been approved by our Curriculum Committee for future offerings. Unfortunately, I have not taught an elective course since Law in Literature and I am not certain I will teach it again in the near future. Several other faculty members have expressed interest, however, so I think we will be offering it again in the not too distant future." See my reading selections under

https://scholar.valpo.edu/vulr/vol29/iss2/4
the Albany Law School listing above. It is a pleasure to share information, just as so many people are doing in this survey, and it is delightful when a new course is added through those endeavors.

**DISTRICT OF COLUMBIA SCHOOL OF LAW**
**FRANKLIN PIERCE LAW CENTER**
**GEORGIA STATE UNIVERSITY COLLEGE OF LAW**

**RESPONDENT:** Marjorie L. Girth, Dean

**COMMENTS:** Dean Girth states: “This College does not currently offer Law and Literature, but the University has recently added an expert in that field to the English Department’s faculty. She is Dr. Sandra Sherman, currently a Visiting Assistant Professor . . . . I would appreciate receiving a copy of the results of your updated survey.”

Dr. Sandra Sherman writes: “As I stated, the College of Law at Georgia State University does not offer Law and Literature, but I do teach such a course in the Department of English.” She adds: “that course, with some modification, will be offered next year to graduate students. This means that GSU’s College of Law will cross-list it with its own offerings.” The course is centered around the following topics: Words As Property; Hypertextuality: Words as Property?; Seditious Libel and Evasive Personae; Pornography; Reading Shakespeare Like A Lawyer; Literary Oppression; Law in Literature.

**INTER AMERICAN UNIVERSITY SCHOOL OF LAW**
**THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY**
**MEMPHIS STATE UNIVERSITY CECIL C. HUMPHREYS SCHOOL OF LAW**

**NEW ENGLAND SCHOOL OF LAW**

**TAUGHT BY:** Professor George Dargo

**PRIMARY WORKS ON CURRENT READING LIST:**

Gemmette, ed., Law in Literature: Legal Themes in Short Stories

**NORTH CAROLINA CENTRAL UNIVERSITY SCHOOL OF LAW**
RESPONDENT:  Associate Professor Carole Shapiro
COURSE TITLE:  Law and Literature
ENROLLMENT:  30.

PRIMARY WORKS ON CURRENT READING LIST (Summer 1992; "but that list will most likely change the next time the course is offered.")

CAMUS, THE STRANGER
ERDRICH, TRACKS
GOLDING, LORD OF THE FLIES
KAFKA, THE TRIAL
LEE, TO KILL A MOCKINGBIRD

SECONDARY WORKS ASSIGNED:

ALLEN, PAULA GUNN, SPIDER WOMAN'S GRANDDAUGHTERS (Introduction)
Camilleri, Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury
DILLARD, LIVING BY FICTION (excerpts)
GARDNER, THE ART OF FICTION: NOTES ON CRAFT FOR YOUNG WRITERS (excerpts)
Henderson, Authoritarianism and the Rule of Law
King, Why We Can't Wait
TANNEN, YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION

CASES:

Walker v. City of Birmingham

FILMS:

THE ACCUSED
PUBLICATIONS BY THE RESPONDENT RELATIVE TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“(1) A greater understanding of human motivation, particularly of people different from the reader in various ways; (2) Understanding the importance and function of stories in human discourse so as to help the lawyer conceptualize the client’s case in narrative terms; and (3) Increased sensitivity to language, both spoken and written.”

GRADING:

Requires journal entries, a jury summation, Kafkaesque nightmare; or the student may take the course to fulfill the upper-class writing requirement by writing a 20-25 page paper.

COMMENTS: Professor Shapiro writes: “Typical of the response to law and literature courses elsewhere, the students who took my course at Touro, taught two summers ago, were highly positive about the course. Written comments by students at the end of the summer term focused on their delight in finding a course that was both intellectually stimulating as well as enjoyable, and that allowed them to be human at the same time they were thinking about issues related to law. Indeed, my colleagues were also enthusiastic about the course, and several suggested doing a version of it for the faculty. While this has not happened, the Touro faculty did approve Law and Literature as a course that would fulfill the ‘perspectives’ requirement, necessary for graduation.

Although in the last several years, law and literature courses, as well as the methods and material connected with them, have made some gains in legal academe, in certain of these circles there is still considerable skepticism about the subject. I think part of this negative response is connected to the ‘fun’ and excitement that students experience with these courses. To the critics, such reactions are suspect, denoting the course’s lack of seriousness, and therefore, of value. I look forward to the time the intellectual and human stimulation that
law and literature generates is given universal respect and recognition in legal academic circles.” Professor Shapiro captures the dichotomy between the reactions of the students to the course and the skepticism that still abounds on the part of many academicians—although I think this survey shows the decrease in such skepticism and the acceptance of Law and Literature as a valuable and integral part of the law school curriculum.

UNIVERSITY OF ALBERTA, FACULTY OF LAW

RESPONDENT: Professor C.R.B. Dunlop (Co-taught with Dr. Lynn Penrod, Associate Vice-President (Academic))

COURSE TITLE: Jurisprudence (Representations of Law in Literature); Perspectives course; offered annually to students in the Bachelor of Laws curriculum.

ENROLLMENT: Limited to 25 students; always oversubscribed.

PRIMARY WORKS ON CURRENT READING LIST:

ATWOOD, THE HANDMAID’S TALE
BALZAC, COLONEL CHABERT
BALZAC, OURSULE MIROUET
CAMUS, THE FALL
CAMUS, THE STRANGER
DICKENS, THE PICKWICK PAPERS
Melville, Bartleby the Scrivener
MELVILLE, BILLY BUDD, FORETOPMAN
SHAKESPEARE, MEASURE FOR MEASURE
TWAINE, PUDD’NHEAD WILSON

PRIMARY WORKS TAUGHT PREVIOUSLY:

BRECHT, THE CAUCASIAN CHALK CIRCLE
BURGESS, A CLOCKWORK ORANGE
BURGESS, 1985
DICKENS, BLEAK HOUSE
DICKENS, GREAT EXPECTATIONS
DICKENS, LITTLE DORRIT
DICKENS, OLIVER TWIST
DOCTOROW, THE BOOK OF DANIEL
DREISER, AN AMERICAN TRAGEDY
DREISER, THE FINANCIER
Galsworthy, Justice
GODWIN, THE ADVENTURES OF CALEB WILLIAMS
GOLDING, LORD OF THE FLIES
JONSON, VOLPONE
KESEY, ONE FLEW OVER THE CUCKOO’S NEST
MELVILLE, BENITO CERENO
MORTIMER, THE DOCK BRIEF
ORWELL, 1984
RECOMMENDED SECONDARY WORKS:

Professor Dunlop forwarded to me the bibliography that he and Dr. Penrod hand out to students in their class. It is twelve pages in length and includes numerous authors covering a wide range of topics. Professor Dunlop states: "On general law and literature studies, I would regard as important the books by Richard Posner, Richard Weisberg, and James Boyd White . . . . It is difficult to pick out important articles. I have been influenced by the articles of Atwood, Gemmette, Heilbrun, Hirschman, Richard and Robert Weisberg, West, and Ziolkowski . . . . There are literally countless articles on specific writers."

OBJECTIVE IN TEACHING THE COURSE:

Ten reasons why literature studies should be part of a First Degree in Law:

"(1) Literature challenges assumptions about rationality and the rule of law underlying much of substantive law teaching."

"(2) Literature adds to our understanding of the legal order."

"(3) Literature emphasizes narrative, myth, and ritual as important but neglected aspects of the legal process."

"(4) Law involves intuition and feeling as well as reason; literature helps develop that side of the lawyer."

"(5) Literature reflects the way that laypeople look at law."

"(6) Literature helps cultivate a good imagination, a quality essential in a lawyer."

"(7) Literature involves the law student in conversations about law other than those contained in the judgments, the legal texts and the speeches of Law Society presidents."

"(8) Literature discomfits the lawyer-reader."

"(9) Literature makes lawyers 'better critical readers.'"
“(10) Literature is almost always more interesting than the Bills of Exchange Act.”

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

COMMENTS: In his introductory handout to the course, Professor Dunlop raises some issues about the law and literature movement—issues with the tantalizing topics: “Amateur Night; Procrusteanism, The Overuse of the Great Books Model; Too Much Theory.”

UNIVERSITY OF BRITISH COLUMBIA, FACULTY OF LAW NO
CARLETON UNIVERSITY, DEPARTMENT OF LAW NO
THE UNIVERSITY OF CALGARY, FACULTY OF LAW NO
DALHOUSIE LAW SCHOOL NO
LAVAL UNIVERSITY, FACULTY OF LAW NO
McGILL UNIVERSITY, FACULTY OF LAW YES

RESPONDENT: Associate Professor Dennis R. Klinck
COURSE TITLE: Linguistic and Literary Approaches to Law
ENROLLMENT: Approximately 15; seminar; about every second year.

PRIMARY WORKS ON CURRENT READING LIST:


PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

RECOMMENDED SECONDARY WORKS:

“The list would be much too long. I refer to such people as J.B. White, Stanley Fish, Peter Goodrich, Bernard Jackson, Richard Weisberg, Judith Resnick, and Carolyn Heilbrun, etc.”
OBJECTIVE IN TEACHING THE COURSE:

"My objective in teaching the course is to make law students more critically aware of the medium (language) of the law, and to show them how literary, linguistic, semiotic, rhetorical, etc., understanding can add dimensions to their appreciation of legal discourse and law itself."

COMMENTS: Professor Klinck's book is arranged around the following topics: Language and Thought; Language and Signification; Interpretation; "Legal Language": Structure, Function, Expectation; Rhetoric: Structures of Argument and Discourse; Legal Diction; "Syntax"; Narrative; Metaphor; Critical Evaluation of Texts.

UNIVERSITY OF MANITOBA, FACULTY OF LAW

RESPONDENT: Associate Professor Anne E. McGillivray
COURSE TITLE: Law and Literature Seminar

PRIMARY WORKS ON CURRENT READING LIST:

GIBSON, NEUROMANCER
Kafka, Before the Law
Kafka, The Problem Of Our Laws
KAFKA, THE TRIAL
LEGUIN, THE LEFT HAND OF DARKNESS
STOKER, DRACULA

PRIMARY WORKS TAUGHT PREVIOUSLY:

Borges, The Lottery in Babylon
Borges, Pierre Menard, Author of the Quixote
Borges, Tlon, Uqbar, Orbis Terris
CARROLL, ALICE'S ADVENTURES IN WONDERLAND, ch. 11 Who Stole the Tarts?; ch. 12 Alice's Evidence.
CROWLEY, BEASTS
DELANEY, THE TRITON ULTIMATUM
FOWLES, A MAGGOT
HERBERT, THE DOSADI EXPERIMENT
MELVILLE, BILLY BUDD, FORESTMAN
PIERCY, WOMAN AT THE EDGE OF TIME
SILVERBERG, DOWNWARD TO THE EARTH
Teichroeb, Selected Stories
TEPPER, THE GATE TO WOMEN'S COUNTRY
Vonnegut, Harrison Bergeron

MOVIES:

BLADE RUNNER
OTHER RECOMMENDED PRIMARY WORKS:

SHELLEY, FRANKENSTEIN

SECONDARY WORKS ASSIGNED:

A Response to Judge Heband, (published, WINNIPEG FREE PRESS op/ed page, November 1992.)
ARISTOTLE, RHETORIC, Book 1, ch. 1-3 (excerpted)
Beauchamp, The Frankenstein Complex and Asimov's Robots
CARDozo, Adherence to Precedent: The Subconscious Element in the Judicial Process, from THE NATURE OF THE JUDICIAL PROCESS
Carter, How Trial Judges Talk: Speculations About Foundationalism and Pragmatism in Legal Culture
Christopher, Law, Literature and Humanistic Study
COHEN, JULIUS HENRY, THE LAW: BUSINESS OR PROFESSION?
Crenshaw, Foreward: Toward a Race-Conscious Pedagogy in Legal Education
Dunlop, Debtors and Creditors in Dickens' Fiction
FISH, DOING WHAT COMES NATURALLY: CHANGE, RHETORIC AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES; ch. 4: Working on the Chain Gang: Interpretation in Law and Literature; ch. 13: Don't Know Much About the Middle Ages: Posner on Law and Literature; ch. 16: Still Wrong After All These Years.
Fitzpatrick, Myth and the Negation of Law; Myth and Modernity
Frug, Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook
GREY, A Change Not Quite Completed; and Fat Cats, Ghostly Rabbit in THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY
Heilbrun and Resnik, Comment, Convergences: Law, Literature and Feminism
Heinzelman, Hard Cases, Easy Cases and Weird Cases: Canon Formation in Law and Literature
Hollinger, Cybernetic Deconstructions: Cyberpunk and Postmodernism
Howes, 'We Are the World' and Its Counterparts: Popular Song as Constitutional Discourse
Lawler, Certain Assistances: The Utilities of Speculative Fictions in Shaping the Future
Martin, The Egg and the Sperm: How Science Has Constructed a Romance Based on Stereotypical Male-Female Roles
Martinez-Bonati, The Stability of Literary Meaning
Monk, Frankenstein's Daughters: The Problems of the Feminine Image in Science Fiction
Papke, Discharge as Denouement: Appreciating the Storytelling of Appellate Opinions
Posner, Cardozo's Judicial Technique
POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION
Pue, Common Law Legal Education in Canada's Age of Light, Soap and Water
Rosinsky, The Futures of Feminist Discourse
Scholes and Rabkin, The Sciences of Science Fiction
Schwartz, *A Meditation on 'Bartleby'*

Wallace, *Sentences We Hated to Come to the End Of* (Book Review in the L.A. Times)

Ward, *The Educative Ambition of Law and Literature*

White, James Boyd, *What Can A Lawyer Learn from Literature?*

*WHITE, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION*

*WILLIAMS, Crimes Without Passion; Gilded Lilies and Literal Guilt; and Trial by Test,* from *THE ALCHEMY OF RACE AND RIGHTS*

**PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:**

See Appendix C attached.

**OBJECTIVE IN TEACHING THE COURSE:**

"My objective is to challenge notions of law, text, legal education, and professionalism in an interesting, exploratory, and non-confrontational way by using any materials which seem to have the potential to do this. I do not use canonical materials, like to focus to some extent on popular culture (science fiction), and introduce the course with a few theoretical entries in the law/literature debates. Each course has been quite different from the one before. I am not particularly satisfied with any of the versions but all have met the goals I have set out. I think science fiction is an excellent vehicle for exploring and extrapolating from law and society themes, but of course not all of my students [agree]. Hence the need to continue to balance sources."

**GRADING:**

80%, research paper between 25 and 35 pages; 20%, written assignments and seminar presentation.

**COMMENTS:** Science fiction is included in my anthology of short stories, and I do agree that this is a useful genre to include in a law and literature course. I note that Ursula LeGuin's *Left Hand of Darkness* shows up on more than one reading list.

**UNIVERSITY OF MONCTON LAW SCHOOL** NO

**UNIVERSITY OF MONTREAL, FACULTY OF LAW** NO

**UNIVERSITY OF NEW BRUNSWICK, FACULTY OF LAW** NO
OSGOODE HALL LAW SCHOOL, YORK UNIVERSITY  NO

RESPONDENT:  Dean Marilyn L. Pilkington

"We do not offer a course in Law & Literature although I have, from time to time, heard colleagues express interest in such an offering. We would certainly be interested in receiving the results of your survey."

UNIVERSITY OF OTTAWA, CIVIL LAW SECTION, FACULTY OF LAW  NO

UNIVERSITY OF OTTAWA, COMMON LAW SECTION, FACULTY OF LAW  NO

UNIVERSITY OF QUEBEC AT MONTREAL, DEPARTMENT OF JUD. SCIENCES  NO

QUEEN'S UNIVERSITY, FACULTY OF LAW  YES

RESPONDENT: Professor Mark A. Weisberg has taught both courses. "Images . . ." being taught this year by Rosemary Ofei-Aboagye, Director, Equity Access Program.

COURSE TITLE: (1) Legal Imagination
(2) Images of Nurses, Doctors, and Lawyers in Literature

ENROLLMENT: (1) 18
(2) 10 law students; 10 medical students; 1-4 nursing students.

PRIMARY WORKS ON CURRENT READING LIST (1):

WHITE, JAMES BOYD, THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION

PRIMARY WORKS ON CURRENT READING LIST (2):

Auchincloss, Equitable Awards
Auchincloss, The Fabbri Tape
BOLT, A MAN FOR ALL SEASONS
Broyard, The Patient Examines the Doctor
CLARK, BRIAN, WHOSE LIFE IS IT ANYWAY?
Glaspell, A Jury of Her Peers
Groves, Taking Care of the Hateful Patient
KLASS, OTHER WOMEN'S CHILDREN
PORTER, KATHERINE ANNE, "NOON WINE": THE SOURCES
SELZER, DOWN FROM TROY: A DOCTOR COMES OF AGE
Trillin, Of Dragons and Garden Peas: A Cancer Patient Talks to Doctors
Weinstein, A Father, A Son and the CIA
White, James Boyd, Materials on the Language of Death, in THE LEGAL
IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION
Yalom, Fat Lady

RECOMMENDED SECONDARY WORKS:

“Any book of James B. White or Thomas Shaffer”
Coles, THE CALL OF STORIES: TEACHING AND THE MORAL IMAGINATION

PUBLICATIONS BY RESPONDENT RELEVANT TO THE FIELD OF
LAW AND LITERATURE:

See Appendix C attached.

OBJECTIVE IN TEACHING THE COURSE:

“To encourage students to connect who they are to what they are doing.”

COMMENTS: Professor Weisberg writes: “As were some of the
respondents to your 1989 questionnaire, I’m not sure I would call the courses
I teach Law and Literature courses, but I’ve included course descriptions so that
you can decide.”

“I’ve been teaching Legal Imagination for thirteen years, using James
White’s book. I teach it as a one semester writing course, asking students to do
ten papers (nine from the book, and a self-evaluation). Along with Peter Elbow,
I think students often learn more about literature and about how they connect to
it by writing than they do by reading.”

“I also teach two other courses in which I use fiction. One is a law,
medicine, and nursing course, which I co-taught for three years with a colleague
from the medical school . . . . The other is Legal Ethics, in which I use To Kill
A Mockingbird, Kazuo Ishiguro’s novel The Remains of the Day, and several
short stories.”

COMMENTS: Professor Weisberg uses fiction in many different courses.
He is also a Peter Elbow fan. When I taught undergraduates in writing courses,
I found nothing worked better than Elbow-workshops for getting students to
focus on their own writing. The same must hold true for graduate courses, and
I will certainly consider re-introducing the concept in my next law and literature
course. As I would also like to teach a law and medicine law course using
fiction, I found his “Images” course to be fascinating.

UNIVERSITY OF SASKATCHEWAN, COLLEGE OF LAW

NO
UNIVERSITY OF SHERBROOKE, FACULTY OF LAW  NO
UNIVERSITY OF TORONTO, FACULTY OF LAW  NO
UNIVERSITY OF VICTORIA, FACULTY OF LAW  NO
UNIVERSITY OF WESTERN ONTARIO, FACULTY OF LAW  NO
UNIVERSITY OF WINDSOR, FACULTY OF LAW  NO

RESPONDENT:  Professor William E. Conklin

LITERATURE TAUGHT IN OTHER COURSE:

KAFKA, THE TRIAL
SOPHOCLES, ANTIOONE

PUBLICATIONS AND PRESENTATIONS BY RESPONDENT RELEVANT TO THE FIELD OF LAW AND LITERATURE:

See Appendix C attached.

COMMENTS:  Professor Conklin informs me that it is unlikely that a Law and Literature course would be approved in the next few years in light of recent financial cut-backs.
# APPENDIX B.
**FICTION AND FILMS**

## A. Fiction

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Camus, Albert

The Fall
The Guest
The Stranger

Novel

Capek, Karel

The Clairvoyant

Short Story

Capote, Truman

In Cold Blood: A True Account of a Multiple Murder and its Consequences

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Carroll, Lewis

Who Stole the Tarts? and Alice's Evidence from Alice's Adventures in Wonderland

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A Small, Good Thing
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Selected Stories

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A Lost Lady
O Pioneers!

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Novel

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The Man of Law's Tale
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Chekhov, Anton Pavlovich

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Strong Impressions

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Short Story

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Falconer

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The March of Progress

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Short Story

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Christie, Agatha

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Woman Hollering Creek

Short Story

Short Story

Clark, Brian

Whose Life Is It Anyway?

Play Script

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Novel
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"NOON WINE": THE SOURCES  Short Novel  
THE OLD ORDER: STORIES OF THE SOUTH FROM FLOWERING JUDAS, PALE HORSE, PALE RIDER, AND THE LEANING TOWER  Collection  
SHIP OF FOOLS  Novel  

Pound, Ezra  
With Usura  Poem  

Pynchon, Thomas  
The Crying of Lot 49  Novel  
V  Novel  

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1995

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Stevenson, Robert Louis: *Kidnapped* — Novel

Stoker, Bram: *Dracula* — Novel

Stone, Robert: *A Flag for Sunrise* — Novel

Stowe, Harriet Beecher: *Uncle Tom's Cabin* — Novel

Strindberg, August: *Miss Julie* — Drama


Sumerian Poetry from 10th Century B.C.: *Slave Come to My Service* — Poem

Swados, Harvey: *Joe, the Vanishing American* — Short Story

Tan, Amy: *The Kitchen God's Wife* — Novel

Taylor, Peter Hillsman: *The Old Forest and Other Stories* — Collection

Teichroeb, Ruth: Selected Short Stories — Short Stories

Tepper, Sheri S.: *The Gate to Women's Country* — Novel

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<td><strong>Legal Fictions: Short Stories About Lawyers and the Law</strong></td>
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- **In the Belly of the Beast: Letters From Prison** (1981).

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Becker, Mary E.:


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Boyer, Allen D.:

Boyle, James D. A.:


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Braithwaite, William T.:


Brennan, William J., Jr.:


Brent, Linda:


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Broyard, Anatole:

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Frye, Northrop:


Fuller, Lon L.:

Garber, Marjorie:

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Garrison, William Lloyd:

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Gemmette, Elizabeth Villiers:


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Gillers, Stephen:


Gilligan, Carol:

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Groves, James E., M.D.:


Gunning, Isabelle K.:

Hall, Kermit L.:

Hancher, Michael:

Hart, H.L.A.:

Hauerwas, Stanley and Thomas L. Shaffer:

Hawkins, Gordon and Franklin E. Zimring:

Heald, Paul J.:

Heilbrun, Carolyn and Judith Resnik:

Heinzelman, Susan Sage:

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Henderson, Lynne:


Hirsch, E.D., Jr.:

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