Law and Literature: An Unnecessarily Suspect Class in the Liberal Arts Component of the Law School Curriculum

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LAW AND LITERATURE: AN UNNECESSARILY SUSPECT CLASS IN THE LIBERAL ARTS COMPONENT OF THE LAW SCHOOL CURRICULUM

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Note too that a faithful study of the liberal arts humanizes character and permits it not to be cruel.

Ovid, Ex Ponto Ib. ix, 47

I. INTRODUCTION

This study began out of an idiosyncratic desire to know if—and if, to what extent—Law and Literature and Law and Psychology were offered within the law school curriculum. During the summer of 1987, questionnaires were sent to 175 American Bar Association (ABA) accredited institutions asking for information on their offerings in these two areas. The questionnaires on both Law and Literature and Law and Psychology asked the following basic questions: Does your school offer such a course? What is the title of the course? How often is the course offered? To whom is the course offered? What is the approximate enrollment? Do any or all of the instructors have terminal degrees in the subject area? What is the objective of the school and/or the professor in teaching this course? What works are included on the reading list of your existing course?

One hundred and thirty-five schools responded to the Law and Literature questionnaire and approximately the same number responded to the questionnaire on Law and Psychology. It was readily apparent from the data collected on Law and Literature that the courses taught in that area broke down into three sub-categories: Law in Literature,1 Literature in

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1. Law in Literature courses utilize fiction and are usually organized thematically to show the lawyer or the legal system as they are reflected through the eyes of the novelist, short story writer, dramatist or poet.
Law, and The Legal Imagination. It was equally apparent that the data gathered on Law and Psychology was not amenable to such discrete categorization. Representative titles included the following: Law and Psychiatry, Psychology of the Courtroom, Law and Psychoanalysis, Psychology and the Trial Process, Psychiatric and Psychological Evidence, Mental Health Issues and Law, and Law and Social Science. Therefore, for obvious reasons, this part of the study was set aside leaving the emphasis on Law and Literature. Nevertheless, at the same time that the study was narrowing, it was further expanding to accommodate the suggestions of several respondents to the first set of questionnaires.

The second request for data asked administrators of the same 175 ABA approved law schools to provide a list of their courses that focused upon the Liberal Arts. The categories provided were as follows: Social Sciences—Economics, Mental Health, Political Science, Psychiatry, Psychology, and Sociology; Humanities—History, Law and Humanities, Law and Literature (subdivided into Law in and Literature, Literature in Law, and The Legal Imagination), and Philosophy (subdivided into Critical Legal Studies (CLS), Jurisprudence, Theology, and all other Philosophy courses). Seventy-six schools responded to this second survey. The data which was received in response to this survey will be referred to from time to time as the roles of the Social Sciences and Humanities in the law school curriculum are discussed.

The responses to the Law and Literature survey are detailed in Appendix I. Of the 135 schools which responded to the initial survey, thirty-eight reported offering a course under the general heading of “Law and Literature.” In fact, “Law and Literature” was the actual title of most of these courses. The few notable exceptions were as follows: Harvard—“Dickens
and the Law”; The University of Alabama and The University of Iowa—“Law in Literature”;8 The University of Bridgeport—“Law and the Humanities”; The University of California/Davis and The University of Tennessee—“The Legal Imagination”;8 The University of Maryland—“Jurisprudence in Literature” and “The Idea of Law in Western Culture”; University of Pittsburgh—“Literature and the Law”;7 University of Puget Sound—“Language and the Law.” Appendix I is self-explanatory. Data regarding reading lists and other materials—when provided—is capsulized in the comments at the end of each listing. Publications relevant to Law and Literature are also included in this section. Appendix I will be referred to throughout this paper.

Appendix II is a cumulative bibliography of the books included on all of the reading lists. This bibliography includes fiction—novels, plays, short stores, librettos, poems, operas, sagas—and non-fiction—letters, biography, history, trials, autobiographies, and philosophy; critical works; bibliographies and edited collections.8 This list differs from the many which have been published during the eighty years since Wigmore first published his list of legal novels9 in that this list represents those books actually used as texts by Law and Literature professors. For further illumination as to the preferences of such professors, a compilation of the frequency with which those works of fiction were cited follows the fiction listing.

The collection and organization of the data received in response to the above-mentioned surveys raised a number of questions which the remainder of this paper will address. Generally, the emphasis will be on three major themes. First of all, the article will briefly examine the historical role of the liberal arts in the law school curriculum.10 Secondly, the article will focus

5. These courses are of the same type as those entitled “Law and Literature.”
6. See White, supra note 3. Note that only two courses are entitled “The Legal Imagination.” As it seemed possible that recipients of the Law and Literature survey did not include courses entitled “The Legal Imagination,” I contacted the publisher, Little Brown. They indicated that about 172 copies of “The Legal Imagination” were sold in 1986 and only about 72 copies were sold in 1987. They believed that about five schools bought these texts.
7. Again this course is of the same type as “Law and Literature” and “Law in Literature” courses.
8. All of the reading lists provided by Law and Literature professors were combed to put together this bibliography. A cumulative bibliography appeared to be preferable rather than showing what each professor had selected for his/her own reading list. It seemed inappropriate to expose a course as a fait accompli, although the readiness with which these professors shared their thoughts, insights, reading lists, and objectives was overwhelming.
on the three major movements in the liberal arts component of the law school curriculum: Law and Economics,\textsuperscript{11} Critical Legal Studies,\textsuperscript{12} and Law and Literature.\textsuperscript{13} This turn to the Law and Literature Movement begins with an analysis of the confrontation between the Law and Literature Movement and the Law and Economics and Critical Legal Studies Movements. Finally, it proceeds to a detailed discussion of the two branches of the Law and Literature Movement; namely, the Fiction and the Law Branch and the Critical Branch. The article concludes with the reminder that law school is both a professional and an academic pursuit in which Law and Literature should be a pivotal course in the Law School curriculum.

On a more specific level, this paper will deal with narrower issues regarding Law and Literature. Attention will be paid to the bibliographies and lists relating to law and literature which have proliferated since the first list by Wigmore in 1908.\textsuperscript{14} Consideration will then be given to the earlier but later relinquished idea that a man of the law should also be a man of letters.\textsuperscript{15} A justification for the Law and Literature Movement will be offered, particularly a justification and rationale for the teaching of Law and Literature in the law school curriculum. This offered justification will be two-fold. First, it will be a justification for the inclusion of the traditional law and literature course taught mostly with the aid of fiction. Second, it will recommend that the practice of looking at literary criticism as a tool for legal interpretation should be freely introduced into the law school curriculum\textsuperscript{16} by the inclusion of a course which embraces New Critical


12. Posner includes the Law and Economics Movement and the Critical Legal Studies Movement in his analysis of current political opinion in law schools: "The spectrum of political opinion in law schools, which in 1960 occupied a narrow band between mild liberalism and mild conservatism, today runs from Marxism, feminism, and left wing nihilism and anarchism on the left to economic and political libertarianism and Christian fundamentalism on the right." \textit{Id.} at 766.

13. The Law and Literature Movement branches off into the teaching of law and literature and the critical discourse on the role of literary criticism as a tool for legal analysis.


16. \textit{See Appendix I—American University, Washington College of Law, Pace University, Tulane University, The University of Maryland, The University of Puget Sound, The University of South Carolina and Yeshiva University for inroads into the teaching of literary criticism coupled with legal interpretation.}
Theory, rejects both the "Intentional Fallacy" and the "Affective Fallacy," and elevates the status of the reader. Although the inclusion of competing literary theories seems contradictory, I will argue that these aspects of literary criticism are not mutually exclusive and that it is the very diversity of these methods of interpretation which could, and should, be used to expose students to the process of actively reading and interacting with a literary text. That activity could then be adopted to allow the students to read a legal text with the aim of making the text the "best it can be."

II. THE HISTORICAL ROLE OF THE LIBERAL ARTS IN THE LAW SCHOOL CURRICULUM

Until the publication of Stevens' book Law School: Legal Education in America from the 1850s to the 1980s, material dealing with the topic of American legal education was scarce. Thus, it is to Stevens that we turn to learn the historical role of the Liberal Arts in the law school curriculum. Keeping in mind that the private Lichfield Law School established in Connecticut in 1784 claimed to teach law as a science and that by the 1870s law schools were considered to be "primarily trade schools"—whose role was not to attend to "the elegant training of the mind," but rather to be "in competition for students with the four-year liberal arts curriculum,"—it comes as no surprise to find resistance on the part of law school administrators and faculties to the inclusion of social sciences and humanities in their curriculum. This scientific, anti-liberal arts approach continued


The Affective Fallacy is a confusion between the poem and its results (what it is and what it does) . . . . It begins by trying to derive the standards of criticism from the psychological effects of the poem and ends in impressionism and relativism. The outcome of either Fallacy, The Intentional or the Affective, is that the poem itself, as an object of specifically critical judgment, tends to disappear, . . .

Id. at 21.
19. For an introduction to reader-response criticism see Reader-Response Criticism: From Formalism to Post-Structuralism (J. Tompkins ed. 1980).
20. The term is borrowed from Dworkin. See Dworkin, Law As Interpretation, 60 Tex. L. Rev. 527, 541 n.6 (1982).
22. But see note 10, supra for helpful supplemental materials.
24. Id. at 35.
25. Id.
26. Id.
throughout the founding and early days of Harvard. Later, when Harvard became involved in the subsequent founding of the University of Chicago Law School in 1900, a suggestion was made that taxation, constitutional law, jurisprudence, and Roman law should be included as electives in the Chicago curriculum.27 To this suggestion, however, Harvard's Dean Ames made the predictable statement: "We are unanimously opposed to the teaching of anything but pure law in our department."28 This concern with law as a science led to Harvard's case method, now known as the Socratic method.29 With this strong emphasis on law as a science, together with the entrenchment of the Socratic method, it was not until 1916 that we saw the "social sciences . . . [begin] to affect the increasingly ivory-towered law school."30 But it was from Yale, not Harvard, that the tilt in this direction came.

Under the guidance of the Dean of Yale Law School, Thomas Swan, a proposal was sent to the President of Yale suggesting that the Yale Law School should be expanded into the Yale School of Law and Jurisprudence.31 As Stevens notes, legal education faced the dilemma which it still faces today: "Was the law school essentially a professional school, or was it instead an academic area of the university? Or was it both? Dean Swan would have responded that a law school had a moral duty to fulfill both functions."32

Although Yale's vision did not materialize, Columbia was flirting with its own vision of a redesigned curriculum which, although also unsuccessful, did successfully challenge pre-existing assumptions about legal education. As the Columbia faculty noted: "[T]he time has come for at least one school to become a 'community of scholars.'"33 But the time was not ripe: When Columbia's flirtation with the social sciences failed, Dean Smith "spent much of his report for 1930 explaining that the integration of law and social science was easier said than done."34

The next impetus for change in the law school curriculum appears to have been presented by the advocates of the realist movement whose major achievement, according to Stevens, was "kill[ing] the Langdellian notion of law as an exact science, based on the objectivity of black-letter rules."35 By

27. Id. at 40.
28. R. Stevens, Law School: Legal Education in America from the 1850s to the 1890s 40 (1983).
29. Id. at 52-53.
30. Id. at 135.
31. Id.
32. Id.
33. Id. at 138.
34. Id. at 139.
35. Id. at 156.
the 1920s and 1930s, with the notion of the law no longer tied exclusively to science, an attempt to integrate law and social science was made. Social scientists joined the faculty at Yale and Columbia and case books began to include materials bearing witness to functionalism.36 Following shortly on this change affecting law school education—beginning in 1937 and lasting until 1949—Chicago offered a four-year curriculum which included courses in psychology, English constitutional history, economic theory, accounting, political theory, and ethics.37 Yet in spite of these moves toward the social sciences, Stevens tells us that following World War II, during the late 1940s, the 1950s and the 1960s, suggestions for curricular reform were merely repetitions of the failed experiments of the 1920s and 1930s. "Stress on the need to integrate law and social sciences had not diminished, but, except for a few productive fields, little effective progress was made."38

III. The Three Major Movements: Law and Economics, Critical Legal Studies, and Law and Literature

As reviewers of Stevens' book point out, Stevens' history is most effective and complete up to the period of the 1950s. After that period he leaves us with a sketchy, fragmented and dismal view of American legal education39—"an account which testifies to the schizophrenia of law schools, comfortable neither in the academy [n]or the profession."40 "It remains to be seen whether Stevens' perception of fragmentation [and schizophrenia] is correct or whether his failure to provide a unifying theme for the events of recent decades is attributable simply to the increasing difficulty of organizing and appraising facts as the historian draws nearer to his own time."41

Shreve sees Stevens' pessimism and his failure to take a closer examination of law school teaching as minor weak points of Stevens' total work.42 However, Shreve notes in contradiction of Stevens' position:

Although observers have not favorably regarded all developments in legal education since 1970, the rise of 'critical legal studies,' the attempted integration of law and economics, and the 'search for a new form of [unifying] faith'—each of which Stevens himself describes—suggest that reforms in legal educa-

36. Id. at 158.
37. Id. at 159.
38. Id. at 210-11.
41. Shreve, supra note 10, at 604.
42. Id. at 605.
If these reforms in American legal education are not, in fact, cyclical—a replication of earlier attempts at integration of law and the liberal arts—but rather represent a new turn, a new approach to the teaching of law, how do the two movements of Critical Legal Studies and Law and Economics play a role in curricular reform?

A. Law and Economics: Future Dominance Assured?

Obviously an infusion of the social sciences and the humanities into the law school curriculum undermines the old concept of law as science or law as an autonomous discipline. Judge Posner's article, The Decline of Law as an Autonomous Discipline: 1962-1987, picks up the thread which Stevens left hanging—that is, Steven's failure to identify the common thread running throughout the recent decades of legal education. Posner sees the "boom in disciplines that are complementary to law, particularly economics and philosophy," as contributing to the decline of law as an autonomous discipline. Of the Economics Movement he tells us:

Economics not only has become more rigorous since the 1950s, but it has branched out from market to non-market behavior, thus taking in the subject matter of most interest to legal thinkers. It has also become more empirical. Not only is there today a well-developed economic theory of crime, but economists have measured the effects of punishment on the crime rate more rigorously than other social scientists, or lawyers, have ever done. There is an economics of accidents and accident law, of the family and family law, of property rights and property law, of finance and corporations, even of free speech and the first amendment, and so on through almost the whole law school curriculum.

Posner also makes important claims for the infusion of economics in the law school curriculum:

In several important fields—antitrust, commercial law (including bankruptcy), corporations and securities regulation, regulated industries, and taxation—the economic perspective either is already dominant or will soon be, when the older professors and practitioners retire. In other important fields, such as torts, property law, environmental law, and labor law, the economic

43. Id. at 604-05.
44. Posner, supra note 11.
45. Id. at 767.
46. Id.
approach is making rapid strides. In still others, such as criminal law and family law, the traditionalists retain the upper hand—but for how long, who can say?47

Here, once again, is the question raised earlier by Stevens: "Was the law school essentially a professional school or was it instead an academic area of the university? Or was it both?"48 Even if that dilemma was ever settled temporarily,

there is no longer a consensus as to what a legal education should consist of. For many, if not most students, law school entails learning "black letter law" and "how-to-do-it" skills. In this form, it is an intellectually narrowing rather than broadening experience. It can do little more than equip law students to pass a bar examination and provide legal services of the most rudimentary nature. It most certainly does not introduce them to the theory and craft of lawyering or train them to be "artists of the law."49

According to Posner, law school has already reached new academic heights with economics dominating American legal education, and the status quo is more than threatened—it is destined for extinction: To Posner the question is not if but when.

The data received in response to the questionnaires regarding liberal arts courses in the law school curriculum supports Posner's sweeping claims for Law and Economics. Most schools reported that they offer at least one economics course and others listed eight, nine, ten, eleven, or even twelve, such courses. So it does appear that economics has become safely entrenched in the law school curriculum, but the continuing debate about curricular reform questions the dominance of law and economics as well as the role of other social sciences:

Proposals for expanding the role of social sciences illustrate the varying degrees of change that are being urged. Most good law schools have added faculty who are trained in one of the social sciences and who teach in the basic curriculum. . . .

Most people who have thought about the law school curriculum would agree with the general notion that more needs to be done to accommodate the learning of the social sciences. How

47. Id. at 767-68.
48. Stevens, supra note 10, at 135.
the accommodation is to be made is another matter, however.\textsuperscript{50}
There is a proposal to "reorient the entire first-year curriculum around a law and economics perspective, with additional offerings that would explain, respectively, empirical methodology and the influence of culture on law."\textsuperscript{51}
There is a suggestion that the "law school should become a mini-university within the university and be structured around a number of small graduate divisions, each representing one of the social sciences."\textsuperscript{52}
There is a push for "greater integration of the social science perspective . . . on much milder terms."\textsuperscript{53}

To reformers the question is not if but how and to what extent the social sciences should influence law school education. Whatever the result, Law and Economics, in all likelihood, will have the dominant voice. "Some fields that once seemed to promise important application to law, such as psychology, linguistics, and sociology, have not made much recent progress toward improving our understanding of law."\textsuperscript{54}
Yet, lest we put too much trust in the voice of the guru of economics regarding the relevant role of his own discipline and that of other social sciences, we should turn to at least one other voice. Byse recounts the emergence of economic theory in the law school curriculum:

In the 1930s and 1940s the function of economics in the law school curriculum was, in the main, limited to a subsidiary role in the courses in antitrust and public utilities. Today economic analysis is employed in teaching many other subjects including such staples as torts, contracts . . . . Many law schools have appointed economists . . . . Courses on law and economics are offered. Textbooks have been published. "A new age of faith appeared to be dawning." Other social scientists such as antitrusts, sociologists, political scientists, philosophers, and historians.

\textsuperscript{50} Weistart, supra note 10, at 326.
\textsuperscript{51} Id. at 326.
\textsuperscript{52} Id. at 327.
\textsuperscript{53} Id.
\textsuperscript{54} Posner, supra note 11, at 769. Linguistics is becoming extremely important as the Law and Literature Movement turns to the use of literary criticism to examine legal texts. The Law and Psychology survey resulted in a body of data which did not reflect an actual "movement," but there is a movement known as the Law and Society Movement which is based on the application of sociological concepts and theories to legal institutions. It tends to emphasize—as does the law and economics movement, in a different way—empirical research into how the law 'really' operates . . . . Its members are politically left of center, but there is considerable variety among them. The movement is strong at Wisconsin law school, and has notable representatives here and there. It is essentially unrepresented at Harvard.
Professor Clark speaking at The Harvard Club in New York City on May 13, 1985. See infra note 57, at 3.
ans have been appointed to faculties and, as I have suggested, more and more recent appointees to law faculties have advanced degrees in nonlaw [sic] subject matters. As a result, many “Law and __________” courses are offered. But, in my opinion, none of these, except possibly history and philosophy, equals economics in terms of its impact on legal education.55

We see, therefore, that Posner is not alone in his view that economics has become the predominant force among the social sciences upon legal education.

B. Critical Legal Studies: Pervasive Iconoclasts?

If Judge Posner rallies the cause for Law and Economics, he is less optimistic for the Critical Legal Studies Movement:

Developments in Continental philosophy and in literary theory (for present purposes best regarded as a specialized branch of epistemology) have exposed a deep vein of profound skepticism about the possibility of authoritative interpretation of texts. This skepticism has fueled, along with political radicalism and sheer infantilism, the contemporary movement in legal scholarship known as “critical legal studies.” The combined impact of radicalism and philosophy on constitutional law scholarship has been especially dramatic, some might say disastrous. Lacking real intellectual autonomy, law may be too open to incursions from other fields of thought.56

What “incursion” into law has the Critical Legal Studies Movement (CLSM) made? And has that incursion been “disastrous”?57

Perhaps the best way to attempt to characterize Critical Legal Studies is simply to list the words and phrases most frequently used to describe the movement: It is said to be critical, political, radical, skeptical, liberal, infantile, revolutionary, left-wing, utopian, Marxist, iconoclastic, nihilistic; CLS scholars trash, deconstruct, and destroy legal texts; the movement is antipathetic to science, technology, business, commerce, large organizations, formal organizations, capitalism, conventional law practice, the legal profession, and traditional legal scholarship.57 The movement thus described is

56. Posner, supra note 11, at 768.
said to be either an extension of the Legal Realism Movement of the 1920s and 1930s or the brain child of a bunch of disgruntled hippies left over from the 1960s. Professor Kennedy pinpoints the origins of the movement and addresses the disagreement about its beginnings by explaining that CLS really has two branches: a movement branch and a scholarly branch. On the one hand, the movement has been described as follows:

The movement strand of Critical Legal Studies is something like this. It's a national movement. All over the United States, there are young or middle-aged and a relatively few older law professors who think of themselves as in some sense part of the Critical Legal Studies movement. On that level, it is basically a network for people who are political radicals who are teaching in law schools, who tend to feel, as political radicals, extremely isolated, and they tend to feel that they are a persecuted minority in their institutions, or at best that they are marginal. And the Critical Legal Studies movement is a way to create a kind of political identity . . . .

So, on that level, the movement is really without ideological definition at all. It's really a rag-tag band of left over 60s people and young people with nostalgia for the great events of 15 years ago. That's the movement dimension.

On the other hand, the scholarly dimension "is best understood as an extension and development of American Legal Realism. Very much in the specific tradition of the more left-wing Legal Realist writing of the 1920s and 1930s."

The most frequent criticism leveled against the CLSM is that its dismal view of the law is not coupled with any attempt to offer a workable alternative and solution. "[I]ts prescriptive faith in our human capacity to create new and better societies when freed from the disempowering mystification of our present system seems to many to be naive, vague, or ill-formed. . . . C.L.S. itself has never persuasively incorporated into its vision for the future the lessons it has exposed from our past." As Fiss concludes: "[c]ritique without a vision of what might replace that which is

58. But see Id. at 3 for Professor Clark's statement that the Law and Society Movement is "the true heir to the legal realism of the 1930s and 1940s."
60. Supra note 57 (Comments of Professor Kennedy).
61. Id. at 8-9.
62. Id. at 9.
63. Husson, supra note 59, at 970.
destroyed . . . [is] politically unappealing and politically irresponsible"; 64 and the theorists have "yet to work out the details of their brave new world." 65

Admitting to the unpromising antecedents of the CLSM, Roberto Mangabeira Unger notes two overriding and important concerns of the tradition: First, "the critique of formalism and objectivity . . . , in this context . . . a commitment to, and therefore also a belief in the possibility of, a method of legal justification that contrasts with open-ended disputes about the basic terms of social life, disputes that people call ideological, philosophical, or visionary;" 66 Second, "the purely instrumental use of legal practice and legal doctrine to advance leftist aims . . . ." 67 Even if Unger does not directly challenge the claim that the CLSM offers no reconstruction to their own deconstruction, he does at least propose an aim for the movement: "The constructive outcome of our critique of objectivism is to turn us toward the search for alternative institutional forms of the available institutional ideals, most especially the market and the democracy." 68 The CLSM aims "for the reconstruction of the state and the rest of the large-scale institutional structures of society." 69 Acknowledging the criticism of and resistance to the CLSM, Unger, in a piece of dazzling prose elevated to the level of literature, states:

The legal academy that we entered dallied in one more variant of the perennial effort to restate power and preconception as right. In and outside the law schools, most jurists looked with indifference and even disdain upon legal theorists who, like the rights and principles of the law and economics schools, have volunteered to salvage and recreate the traditions of objectivism and formalism . . . .

When we came, they were like a priesthood that had lost faith and kept their jobs. They stood in tedious embarrassment before cold altars. But we turned away from those altars and found the mind’s opportunity in the heart’s revenge. 70

Even the grand literary style of Unger, however, has proven to be less persuasive than the CLSM would have desired. At Harvard, where “[CLSM] members eschew collaboration with the conventional economists

64. Fiss, The Death of Law?, 72 CORNELL L. REV. 1, 10 (1986).
65. See supra note 57, at 4-5 (Comments of Professor Clark).
67. Id. at 4.
68. Id. at 22.
69. Id. at 25.
70. Id. at 119.
and sociologists of American universities,"71 and where the CLSM has made its greatest mark, it is said that "[t]he main impact has been prolonged, intense, bitter conflict among different groups of faculty members"72 caused primarily by "a ritual slaying of the elders"73 and the criticalists' acquisition of power by voting en bloc on appointments matters.74

The question which the "Discussion on Critical Legal Studies at the Harvard Law School" attempted to answer was "[w]hether the extent of the movement's influence has damaged the intellectual quality of the law school (as its critics claim) or provided invigorating radical dissent (as its proponents suggest) . . . ."75

In his opening presentation at the Harvard forum on CLS, Professor Clark outlines five claims of the CLSM which he, in turn, refutes. Those claims are:

1. **Wrongful legitimation.** Legal doctrine is often aimed at legitimating structures of power and distributions of wealth that are unjust and illegitimate. The same point is made about law-related talk and writing of all sorts: rules, judicial opinions, law review articles, treatises, etc. . . .

2. **Incoherence and contradiction.** When the texts of legal writers are examined closely and critically, they can be exposed as being full of contradictions and deep-level incoherencies . . . .

3. **Indeterminacy.** Legal arguments are generally indeterminate. For each conclusion you can develop an equally plausible argument for the opposite conclusion, often by appealing to the same values or ideals as the first argument . . . .

4. **Illusions of Necessity.** Explanations of legal rules and practices, especially those that purport to use general scientific methods and theories (like those of economics), are often mere attempts to create an illusion of necessity, in order to lull people into accepting the status quo and adopting a defeatist attitude toward the possibility of radical change . . . .

5. **Criticism and Liberation.** If you work to uncover and identify the deep structure and the most basic underlying assumptions behind the legal reasoning of others and eventually of

71. *Supra* note 57, at 3 (Comments of Professor Clark).
72. *Id.* at 7.
73. *Id.*
74. *Id.*
75. *Supra* note 57.
yourself, and if you succeed in achieving this level of critical insight, you will be set free—to choose new and better assumptions and thought patterns.\textsuperscript{76}

The above aspects of the CLSM, outlined and refuted by Professor Clark, are included for their usefulness in understanding what the CLSM is all about.\textsuperscript{77} No utility exists in elaborating on Professor Clark's refutation of these claims, nor in discussing in detail the subsequent arguments presented at the Harvard meeting. However, a few statements by some of the participants in the forum illustrate considerable disagreement over the impact of the CLSM at, and upon, Harvard.

On the one hand Professors Kennedy and Bator believe that the CLSM has had a negative influence on the intellectual climate at Harvard. Professor Kennedy: "It's a generational battle; it's a cultural-style battle; it's a battle about scholarly paradigms."\textsuperscript{78} Professor Bator: "In the early years of CLS presence at the Harvard Law school, the impact of CLS was enriching and strengthening . . . . It is all the more dismaying, therefore, to have to say that, since those early days, this promising beginning has failed to bear fruit. Since the late 70s, it is my sad opinion that CLS has had an absolutely disastrous effect on the intellectual and institutional life of Harvard Law School."\textsuperscript{79}

On the other hand, Professor Chayes views the CLSM as a positive influence on the intellectual climate at Harvard. Professor Chayes: "I don't think the Harvard Law School is the scene of a sectarian battle between two camps, one under the banner of CLS, and the other under some equally far out conservative banner. Today, I think that Harvard Law School is a richer, more diverse, more vibrant . . . innovative place, than it has been in 40 years."\textsuperscript{80} "Suffice it to say, that the CLSM which has made an incursion into law is highly controversial with some people subscribing to Judge Posner's "disaster" hypothesis while others believe that "a group of brilliant and radical, if you want to put it that way, people came in and put us on our mettle, forced us to re-examine assumptions, ideas, premises that we had long taken for granted, forced us to rethink our own positions and our own teaching and writing. And that has been a most healthy experience."\textsuperscript{81} Until all the foregoing controversy is resolved, the place of CLS in the law school curriculum cannot be evaluated adequately.

\textsuperscript{76} Supra note 57, at 5-6 (Comments of Professor Clark).
\textsuperscript{78} Supra note 57, at 11 (Comments of Professor Kennedy).
\textsuperscript{79} Supra note 57, at 13 (Comments of Professor Bator).
\textsuperscript{80} Supra note 57, at 16 (Comments of Professor Chayes).
\textsuperscript{81} Id.
The data collected on the role of the liberal arts in the law school curriculum sheds some light on the extent to which CLS are being taught at various institutions, but even this data tends to blur the distinctions between CLS as a political force, or movement, and CLS as a scholarly endeavor. No real agreement exists between the various law schools as to what should be included under the CLS rubric. Of the seventy-six schools which responded to the survey, thirteen listed courses under CLS. The titles are diverse: Legal Realism Seminar, Seminar in Post Realist Legal Theory, Critical Legal Studies Seminar, Law and Marxism, and Contemporary Legal Theory. One school included “Comparative Law” under CLS while other schools included comparative law under Political Science or general Philosophy. The University of Cincinnati included The First Amendment and The U.S. Supreme Court under CLS while other schools excluded those subjects from the CLS category. Wisconsin listed three courses—Feminist Legal Theory Seminar, Social Theory, and Law and Welfare State Seminar—under a CLS rubric.

Harvard’s courses were taken from the catalogue and these perhaps best illustrate the difficulty in attempting to determine where and to what extent CLS has pervaded the curriculum in both content and philosophy. Comparative law in all its variations is classified as political science. Constitutional law courses are highly susceptible to CLS orientation, as are the many titles listed under sociology, jurisprudence, and general philosophy. What this data tells us is that CLS is out there. What the data does not tell us is to what extent!

C. Law and Literature: Gaining Ground in the Confrontation with the Law and Economics and the CLS Movements?

As the Law and Economics Movement and the CLSM vie for dominance in the law school curriculum, yet another “movement” is gaining ground—that movement, of course, is the Law and Literature Movement. The critical aspect of the Law and Literature movement is seen as a reaction and response to both the Law and Economics Movement and the Critical Legal Studies Movement. Professor Hegland82 responds to the deconstruction of CLS in his article entitled “Goodbye to Deconstruction.”83

Professor Giradeau Spann has recently put forth, and defended with great vigor, what appears to be a central tenet of the much-discussed Critical Legal Studies Movement: all legal rules and doctrines are indeterminate—they don’t, and can’t, decide legal controversies, even the simple ones. The process of demonstrat-

82. Professor Hegland was one of the early advocates of teaching law and literature. See Appendix II, University of Arizona.
ing this Spann calls "deconstruction." 84

Hegland maintains that Spann suggests that "[p]rincipled legal decision-making is a sham, disguising the subjective preference of the judge." 85 Hegland continues: "This is not chopped liver; this is a frontal attack on the rule of Law itself." 86 "Let us assume, however, that he [Spann] correctly asserts the deconstructionist thesis. Thanks to his clarity, the dragon, to use Holmes' metaphor, is out of its cave; we can count its teeth and claws, and discover its strength." 87 Playing Perseus to Andromeda, the critical branch of the law and literature movement attempts to slay two dragons—as Hegland suggests, the “dragon” exposed by CLS that all legal rules and doctrines are indeterminate—and the dragon which is CLS itself.

The members of the critical branch of the law and literature movement attempt to do what the CLS scholars have avoided: acknowledge and climb the mountain. “Articulate deconstructionists, instead of blithely denying the existence of the mountain with tiresome epistemology, might better devote their obvious talents to making it more habitable.” 88 To put it simply: “One hundred years ago, lawyers talked about law as if it were a neutral and objective framework for solving people's disputes” 89 but “[n]o lawyer quite believes that anymore.” 90

On the one hand, we have the lawyers who side with CLS scholars and who “prefer the dangers involved in presenting law in terms of its controversial, political, creative nature to the dangers involved in its idealization.” 91 On the other hand, we have those who are

still trying to save as much of the ideal as possible. Many lawyers currently interested in literary theory are borrowing ideas from this discipline in an attempt to salvage some degree of certainty, predictability, and objectivity in law. They realize that law is man-made and that any legal interpretation is to some extent subjective. But they prefer to rely on those literary theorists—such as E.D. Hirsch Jr., the author of “Validity in Interpretation”; Wayne C. Booth, author of “Critical Understanding: The Powers and Limits of Pluralism”; and the New Critic Cleanth Brooks—who emphasize the limits and restraints on interpretation rather than those—among them Barbara Johnson at

84. Id. at 1203.
85. Id. at 1204.
86. Id.
87. Id.
88 Hegland, Goodbye to Deconstruction, 58 S. Cal. L. Rev. 1203, 1221 (1985).
90. Id. at 28, col. 1.
91. Id. at 29, col. 3.
Harvard; Paul de Man, at the time of his death in 1983 a Professor at Yale University; and the French philosopher-critics Jacques Derrida, Michel Foucault and Roland Barthes—who emphasize its openness.92

But if law and literary theorists are reacting to the nihilism of critical legal theory scholars, so are those who are “turning to economics to accomplish the same purpose [as Law and Literature critics], in the belief that economic science can provide a stable basis for legal decisions . . . .”93 There are those, however, who would level criticism at both the CLSM and the Law and Economics Movement claiming that although “the jurisprudential movements of the seventies have electrified the academy, they also distort the purposes of law and threaten its very existence.”94 With reform in mind, Fiss sums up the frustration with and criticism of these two movements:

Of course, law will exist even if the two jurisprudential movements of which I have spoken are victorious, in the limited sense that there will be people who wear black robes and decide cases, but it will be a very different kind of law. For (Judge) Kennedy, adjudication will be entirely particularistic; for Judge Posner it will be wholly instrumental. In neither case will it be capable of sustaining or generating a public morality. It will be law without inspiration.95

To succumb to Law and Economics or CLS, would “mean the death of the law, as we have known it throughout history, and as we have come to admire it.”96

IV. THE TWO BRANCHES OF THE LAW AND LITERATURE MOVEMENT

A. The Fiction and the Law Branch: The Intrinsic Worth of Literary Values in a Legal Education

Shortly, we shall turn to the law and literary theorists who are trying to bring back “certainty, predictability, and objectivity in the law”97 by applying literary methods of critical analysis to legal texts such as the constitution, statutes, and common law cases. However, consideration will first be given to the beginnings of the earliest branch of the Law and Literature Movement—the branch which deals with fiction and the law.

92. Id. at 28, col. 1.
93. Id.
94. Fiss, supra note 64, at 1.
95. Id. at 15-16.
96. Id. at 16.
97. Frug, supra note 89, at 28.
In the beginning there was a simple list of “legal” novels put together by Wigmore and published in 1908.\textsuperscript{98} To Wigmore, a “legal” novel was simply “a novel in which a lawyer, most of all, ought to be interested.”\textsuperscript{99} Those legal novels were of four kinds:

(A) Novels in which some trial scene is described—perhaps including a skillful cross-examination;

(B) Novels in which the typical traits of a lawyer or judge, or the ways of professional life, are portrayed;

(C) Novels in which the methods of law in the detection, pursuit, and punishment of crime are delineated; and

(D) Novels in which some point of law, affecting the rights or the conduct of the personages, enters into the plot.\textsuperscript{100}

Wigmore thought that the lawyer had a “general duty as a cultivated man . . . [, and] because of his special professional duty[,] to be familiar with those features of his profession which have been taken up into general thought and literature.”\textsuperscript{101} But even more importantly, “the lawyer must know human nature. He must deal understandingly with its types, its motives . . . . For this learning, then, he must go to fiction, which is the gallery of life’s portraits.”\textsuperscript{102} Wigmore’s list was later corrected and reprinted in 1922 under the title of “A list of One Hundred Legal Novels.”\textsuperscript{103}

Although Wigmore saw the reading of legal novels as a duty of the practicing attorney, a divorce existed between the lawyer’s professional training in law school and his pursuit of literature. Chekhov, in speaking of his relationship to literature and medicine makes an apt analogy:

I feel more contented when I remember that I have two professions, and not one. Medicine [Law] is my lawful wife and literature my mistress. When I am bored with one I spend the night with the other. Though this is irregular, it is not monotonous, and besides neither loses anything through my infidelity.\textsuperscript{104}

\textsuperscript{98} Wigmore, \textit{supra} note 9.

\textsuperscript{99} \textit{Id.} at 574.

\textsuperscript{100} \textit{Id.}

\textsuperscript{101} \textit{Id.} at 576.

\textsuperscript{102} \textit{Id.} at 579.

\textsuperscript{103} Wigmore, \textit{A List of One Hundred Legal Novels}, 17 ILL. L. REV. 26 (1922).

\textsuperscript{104} Letter from Anton Pavlovich Chekhov to Alexei Suvorin (Sept. 11, 1898). This is the better known translation cited in \textit{Bartlett’s Familiar Quotations} (according to that source the letter was dated August 29, 1898). \textit{But see letters of Anton Chekhov 107} (M. H. Hein trans. 1973) for the following translation:

I feel more alert and more satisfied with myself when I think of myself as having two occupations instead of one. Medicine is my lawful wedded wife, and literature my mis-
But in an early attempt to unite literature and law in the law school classroom, Professor Davenport gave an experimental course in legal literature at the University of Southern California in 1954. The purposes and goals of the course were as follows:

[The course was taught] with the practical purpose of teaching them [the students] legal terminology, trial procedure, some knowledge of human relations, various ways of interpreting a single action, the various kinds of truth, etc., and the contingent, equally valid, purpose of providing training in reading comprehension, oral and written expression, knowledge of types and forms of literature, and methods of deriving real pleasure from good reading.105

The course was, apparently, only "moderately successful,"108 but when *Time* featured the course in an article under Education,107 Davenport found himself deluged with letters from judges, lawyers, and school administrators from all over the United States—as well as from parties from seven foreign countries—requesting his reading list.108

Those requests led to the publication of "A Bibliography: Readings in Legal Literature."109 A glimpse at the titles under the heading of "Bibliographies and Lists of Readings"110 shows the flurry of activity that has taken place since the 1908 publication of Wigmore's list: "Law in Literature"—(1935);111 "What Do the Justices Read?"—(1949);112 "What Lawyers Read"—(1950);113 and "Literature for Lawyers"—(1954).114 However, the preoccupation with Wigmore's list did not cease. Wigmore's list was "revisited" by Weisberg in 1976118 and "expanded" by Weisberg and Kretschman in 1978.116 Lists continue to be generated, but now the major...

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106. *Id.*
107. *Id.*
108. *Id.*
110. *Id.* at 940.
ity of the new lists are thematically organized, stressing topics such as "Legal Humor" or "Criminals in Nineteenth and Twentieth Century American Law and Literature."  

As interest in the compilation of lists of "legal" works has persisted, so has the interest of law schools in offering courses in Law and Literature: "founded as a clandestine seminar . . . [Law and Literature is] now out in the open and thriving." Appendix I demonstrates that of the one hundred and thirty-five schools which responded to the Law and Literature survey, thirty-eight offer or have offered such a course. Law and Literature courses are usually taught as a seminar with a limited enrollment of between twenty and twenty-five, although there are reports of numbers as low as five and as high as forty. Such courses are usually offered yearly, but some schools report offering them infrequently, perhaps occasionally, or every two years. Several schools report offering them in 1988 for the first time. As these schools come to grips with dealing with a justification for such courses, we are back, once again, to Stevens' question regarding the role of law school as a professional or an academic pursuit.

If I might resort to anecdote for a moment, I think it will underscore the attitude which is prevalent among "trade school" attorneys—the attitude which resists, at least temporarily, the infusion of the humanities into the law school curriculum.

There were four of us at dinner that night, my attorney husband, our friend—also an attorney—his wife, and myself. The conversation turned, first of all, to an ethical question: the question of turning in evidence given to an attorney by someone other than his client. Then my husband mentioned my work on the topic of Law and Literature. "Law and Literature!" our friend exclaimed. "What has that got to do with practicing law? When you get out in the real world and have five real estate closings in a day, how will you have time for law and literature then?" And so I began justifying a course of that title, explaining that it wasn’t a "suspect class"; but I wasn’t sure that he was convinced.

The following week I received in the mail an article published in The

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118. Morse and Bourguignon, supra note 14.
120. Appendix I, Associate Dean and Professor of Law Kenney Hegland, The University of Arizona College of Law.
National Law Journal dealing with an ethics question. The piece was entitled "A Legal Duty to Turn Over the Evidence?"121 With the article was the following note from our friend: "Liz: This would make an excellent ethics question on the bar exam. I turned over the gun to the police in exchange for a promise by them that the source (me!) would not be divulged. Sorry I have no sample possible questions for the bar exam in Law and Literature."

So he wasn't convinced. The bar exam was everything; The humanities were insignificant. But a week later he stopped by and gave me another article from The National Law Journal; this time the article was entitled: "Literature And the Law: A Perfect Fit."122 "It's funny," he said. "I had never heard of such a thing until last week and here it is. It's like having a disease—you never hear of it until you have it yourself."

Without succumbing to the "disease" metaphor—unless it is to stress the infectious nature of Law and Literature courses, that is by way of "spreading"—we come to the place where justification is once again required for the inclusion of Law and Literature courses in the law school curriculum. Law and Literature needs to be shown to be an unnecessarily suspect class,123 and no better place can be turned to than Robert Ferguson's Law and Letters in American Culture124 in order to confirm the first proposition that "[t]o be an eminent barrister, a man must be 'a scholar and gentleman' . . . . The members of the bar form one of the most brilliant sections of society; and he who would be of it must be fit for it."125

In reviewing Ferguson's book, Page126 informs us that "between 1765 and 1840, law and literature were fused both professionally and intellectually. Joseph Story in 1829 expressed the era's dominant view when he stated that the study of law required 'a full possession of the general litera-

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123. But see LaRue, Posner on Literature, 85 MICH. L. REV. 325, 328 (1986) (for the notion that "the genre is suspect").
ture of ancient and modern times.'”

During that period “[m]ost prominent writers and critics were lawyers who viewed the law as their primary occupation; the professional writer or scholar was virtually unknown.” Lawyers at that time “were well educated in literature, especially in the Greek and Roman classics.” As Ferguson states:

Half of the important critics of the day trained for law, and attorneys controlled many of the important journals. Belles lettres societies furnished the major basis of cultural concern for post-Revolutionary America; they depended heavily on the legal profession for their memberships. Lawyers also wrote many of the country's first important novels, plays, and poems.

But by the Civil War, “the configuration of law and literature had collapsed” due to “the rise of legal specialization . . .[, the] democratization of the bar by the influx of lawyers without classical education . . . [,]” and the increasing faith in positive law. “However dedicated the young student might be to letters, the professional 'man of letters' was expected to give his best energies to his profession and to scribble any purely literary works only as his leisure permitted.” With the ultimate collapse of this configuration of law and letters “[t]he lawyer's deliberate combination of intellectual breadth, artistic insight and political commitment” gave way to “the stark separation of intellect, art and politics.”

Ferguson, like Stevens, leaves the reader without taking into account recent developments in education, notably the inclusion of the social sciences, the introduction of philosophy—particularly CLS—and the latest addition to a multidisciplinary approach to legal education—the Law and Literature Movement. As Page notes, these “scholars [have] manifested a renewed faith in the interdependence of law and general knowledge.” In bringing back the humanities as well as the social sciences, we will produce lawyers “whose minds have been opened to the rich experience of western civilization; whose spirits have been enlarged by exposure to philosophy, art, music, literature, and drama; and whose horizons have been widened by the study of the natural and social sciences. Unless a lawyer has contemplated the enigma of the human condition, he or she will be a technician perhaps,

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127. Id. at 394.
128. Id.
129. Id.
130. Ferguson, supra note 15, at 5.
131. Page, supra note 126, at 399.
134. Page, supra note 126, at 402.
but a professional never.”

The ultimate justification, then, for the inclusion of a course in Law and Literature in the law school curriculum is to bring back the lost configuration of law and letters. In order to do that it is necessary to subscribe to the notion that the most effective way to achieve that end is to view law school both as an academic and as a professional pursuit. If we answer Stevens’ question thus and begin with that premise, then at least four valid reasons for the teaching of the traditional Law and Literature course can be proffered and supported:

1. Reading works of literature—especially the classics—will expose students to elements of style generally lacking in poorly written legal decisions and law school text books—the former often created by overworked law clerks and the latter hurriedly prepared to meet marketing deadlines. Axelrod writes a witty and entertaining piece entitled Law and the Humanities: Notes from the Underground in which the protagonist claims that all the humanities have to offer the study of law is style and the author concludes that style “may be all there is.”

Some law schools endeavor to expose students to style, not through fiction, but by the reading of literary legal materials. For example, Indiana University’s course Literature and Law “emphasizes the literary features of rules, statutes, appellate opinions and jurisprudential writers,” but it goes further than style in “[h]ighlighting the personae, mimeis, narrative and interpretive meaning of the law . . . .” And like Indiana University’s Literature and Law course, and courses designated as Literature in Law, courses entitled “The Legal Imagination”—which do utilize fiction and which are based on White’s book of the same name—are also difficult to place in the Law and Literature Movement. The course entitled “The Legal Imagination”—offered at Tennessee University—is taught with the objective of “exploring the potential and limitation of language.” But, of his course, also entitled “The Legal Imagination,” Professor Ayer at the University of California/Davis says: “For theoretical reasons that are somewhat tedious to explain, I don’t like to call this a ‘law and lit’ course. Nev-

136. Axelrod, supra note 3.
137. Id. at 236.
138. Indiana University, Appendix I. The opinions referred to are usually those of Cardozo, see supra note 2. See also Papke, Neo-Marxists, Nietzscheans, and New Critics: The Voices of the Contemporary Law and Literary Discourse, 1985 AM. B. FOUND. RES. J. 883, 884-85.
139. Indiana University, supra note 138.
140. See The University of California/Davis and the University of Tennessee, Appendix I.
141. White, supra note 3.
142. The University of Tennessee, Appendix I.
ertheless I recognize that many other people do, and will continue to do so.”

Professor Papke deals with the placement of *The Legal Imagination* in the Law and Literature movement and states in pertinent part:

The central theme in this book is the suggestion that creativity and imagination need not be abandoned when one writes in and about the law. Like Wigmore and Cardozo earlier in the century, White is concerned that legal practitioners are becoming mechanical in their use of language and thinking, two processes that White sees as inseparable. *The Legal Imagination* is White’s antidote for this professional malady.

With their emphasis on language and style—both in the judicial opinion and fiction—Cardozo, Wigmore, and White are being joined by none other than Judge Posner who is crossing the barrier from the social sciences into the humanities, specifically into the field of Law and Literature. LaRue, himself suspicious of the Law and Literature genre, informs us that Posner’s view of literature is that “[i]f we wish to learn about style, we need to turn to the place where style is most magnificently demonstrated, that is, to literature.” Aided by the work of literary critics, “we can study what judges do, and with our increased sophistication in matters of style, we can see better how they [the judges] go about doing it, that is, how they go about persuading us. Alternatively, we can improve our own style, and thus be more able performers.”

2. By a careful study of literature we can become better critical readers. Literature offers us a “way of reading, and reading not only ‘literature’ but all kinds of texts and expressions . . . .” What “literature has to teach us” is not “reducible [only] to ‘style.’” To White, law is “an art essentially literary and rhetorical in nature, a way of establishing meaning and constituting community in language.” Language for White is the ultimate persuader, and he tells us that “[w]hoever controls our language has the greatest power of all.”

143. Professor Ayer, The University of California/Davis, Appendix I.
145. *Id.* at 892.
147. LaRue, *supra* note 123.
148. *Id.* at 328.
149. *Id.*
151. *Id.* at 747.
152. J. White, *supra* note 126, at xi.
careful reader and a master of style.

3. With the loss of a continued faith in the absolute truth once thought to be inherent in legal texts, exposure to the classics will prepare lawyers and judges for the contemplation of the human condition—a contemplation necessary if lawyers and judges are to be actively engaged in interpretation of legal documents. As Judge Learned Hand reflected:

I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs of thistles, nor supple institutions from judges whose outlook is limited by parish or class.154

4. Law and Literature courses will strengthen the Humanities in the law school curriculum and soften the effect of the social sciences, especially the Law and Economics Movement. Robin West’s comparison of “economic man” with “literary woman” adeptly handles this topic.155 “The ‘literary woman’ posited by literary legal theorists is coming into her own, and she is at least beginning to operate as a check on the excesses of economic man run wild.”156 Unlike the economic man who “relentlessly chooses what he prefers, prefers what he wants, wants what he desires, and desires what will maximize his subjective well-being . . . [and who is] perfectly rational,”157 literary woman allows us to “reach an empathic understanding—a grasping—of the subjectivity, the pain, the pleasure, the happiness, or the sadness of the other.”158 By turning to literature “we can fulfill the empathic promise of the literary person rather than the egoistic danger of economic man.”159 Ultimately, the “literary woman” offers something glaringly obvious “but the least mentioned in modern discourse of the law and literature movement[:].” Literature helps us understand others . . . . It makes us more moral . . . . [Literary woman] is the possibility within all

156. Id. at 867.
157. Id. at 868-69.
158. Id. at 872.
159. Id. at 875.
of us for understanding, for empathy, for sympathy, and most simply, for love.\footnote{160}

If Law and Literature courses which utilize fiction lead to the desired end of once again bringing about the configuration of law and letters by exposing students to grand literary style, by teaching the students to read a text critically, by forcing the student to focus on man's ultimate condition, and by bringing together in the student a balance of Romanticism and Rationalism—a balance between the head and the heart, a balance between the Dionysian and the Apollonian forces—that alone is justification for the inclusion of such courses in the law school curriculum, especially if we accept the premise that law school education should be both an academic and a professional endeavor. What we see, however, is that texts being taught in this area are selected with additional purposes in mind.

Turning to Appendix II, we see that most of the works on the fiction list fall within the four categories outlined by Wigmore—works about trials, works dealing with a lawyer or judge as protagonist, works involving crime and punishment, works dealing with an effect on rights and conduct.\footnote{161} The non-fiction titles include many philosophical works dealing with jurisprudential issues. These works of fiction and non-fiction expose the student to great works of literature while at the same time affording him an opportunity to see himself and his future profession through the eyes of the artists of the world. The student is also given an opportunity to see philosophical minds dealing with jurisprudential issues. Stressing this matter in such courses "should alert students to the moral and ethical dimensions of the law and in the process stimulate broader humanistic thinking and dialogue about legal concerns . . . ."\footnote{162} As Appendix I reflects, respondents to the Law and Literature survey offer many other reasons and justifications for a course in Law and Literature, all of them enticing and inviting, but let us not forget Professor Burnett's objective in teaching the course: "Fun."\footnote{163}

B. The Critical Branch: Applying Methods of Literary Criticism to Legal Texts

It appears, then, that Law and Literature as it has been traditionally taught—that is through courses utilizing fiction or through the rare course in "Literature in Law" or "The Legal Imagination"—is alive and well, and that it is flourishing and multiplying. But, as was mentioned earlier, the Law and Literature Movement has two branches: a branch that deals with

\footnotesize{161. Wigmore, supra note 9, at 574.}
\footnotesize{162. Indiana University, Appendix I.}
\footnotesize{163. Syracuse University, Appendix I.}
fiction, and a branch that applies theories of literary criticism to legal texts. This latter branch is receiving the most attention in current law reviews, and it is to that branch of the Law and Literature Movement that we now turn.

The discussion of the Critical Legal Studies Movement began with a catalogue of words frequently used to describe the movement. A discussion of the critical strand of the Law and Literature Movement might best begin with a catalogue of the names of some of the key figures in the field: Dworkin,164 Fish,165 Fiss,166 Levinson,167 Posner,168 Weisberg,169 West,170 and


165. Fish, Is There a Text in This Class? (1980); Fish, Fish v. Fiss, 36 Stan. L. Rev. 1325 (1984); Fish, Interpretation and the Pluralist Vision, 60 Tex. L. Rev. 495 (1982); Fish, Working on the Chain Gang: Interpretation in Law and Literature, 60 Tex. L. Rev. 551 (1982).

166. Fiss, Conventionalism, 58 S. Cal. L. Rev. 177 (1985); Fiss, Objectivity and Interpretation, 34 Stan. L. Rev. 739 (1982).


"[W]orks like Weisberg's pass under the label of 'criticism' as distinct from critical theory. And critics, unblessed with theory, have a tough time getting a place at the academic high table. Aside from works that bear the pretensions of theory, the critics generally have to occupy a place at the back of the hall somewhere between the astrologers and the phenologists . . . .

Id. at 912. I have preferred to leave him with the priests at the high table. For another review of The Failure of the Word see Posner, From Billy Budd to Buchenwald (Book Review), 96 Yale L.J. 1173 (1987); Weisberg, Comparative Law in Comparative Literature: The Figure of the "Examining Magistrate" in Dostoevski and Camus, 29 Rutgers L. Rev. 237 (1976); Weisberg, How Judges Speak: Some Lessons on Adjudication in Billy Budd, Sailor with an Application to Justice Rehnquist, 57 N.Y.U. L. Rev. 1 (1982); Weisberg, Law and
White. Alternatively the discussion might begin with a listing of the various symposia which have taken place: Rutgers (1976), Texas (1982), Southern California (1985), and most recently, Mercer (1988). The symposia offer a variety of forums for the lively debate which is taking place regarding the nature of legal texts and the related question of whether methods of literary criticism are useful for the analysis of legal documents such as constitutions, statutes, and judicial opinions.

Turning to the analysis of legal documents through methods of literary criticism, we find two diametrically opposed views. One view holds that methods of literary criticism are valuable tools for interpreting legal texts. The other view maintains that literary criticism offers nothing to the field of law. Espousing the view that methods of literary criticism can inform and instruct us in the interpretation of legal texts, Professor White states:

The lawyer and the literary critic, as readers of texts, face difficulties and enjoy opportunities that are far more alike than may seem at first to be the case: in a deep sense, I believe, they

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are the same.

The lawyer must read statutes, cases and other documents that it is his task to understand, to interpret, and to make real in the world. This is essential to his work. Of course, he is not only a reader but a writer as well; his kind of reading completes itself only in the process of speech and writing by which he argues for one result or another . . . . Indeed . . . reading a legal text is often not so much reading for a single meaning as reading for a range of possible meanings. . . .

This is all rather like some current views of reading literature. Literary critics have come to focus on the fact that reading literature (like reading law) is not merely a process of observing and receiving, but an activity of the mind and imagination, a process that requires constant judgment and creation.177

To subscribe to Professor White's thesis that reading legal and literary texts is essentially the same activity would also be to accept the position that literary critical theory can be used as a tool to interpret legal texts. "Like law, literature is inherently communal: one learns to read a particular text in part from other readers, and one helps others to read it . . . . This is an interpretive culture rather like the culture of argument established by lawyers."178 Stating that the activity of reading legal texts is an interpretive process brings us to the objection most frequently raised against using literary methods to examine legal texts: the objection that methods of literary criticism—applied in order to interpret texts—cannot be applied to legal texts where the adjudicative process entails an imperative act, not an interpretive act.

Professor West takes up the challenge—the challenge that literary criticism can offer nothing to law—in an article aptly entitled "Adjudication is not Interpretation: Some Reservations About the Law-As-Literature Movement."179 Professor West states:

The analogue of law to literature, on which most of modern interpretivism is based, although fruitful, has carried legal theorists too far. Despite a superficial resemblance to literary interpretation, adjudication is not primarily an interpretive act of either a subjective or objective nature; adjudication, including constitutional adjudication, is an imperative act. Adjudication is in form interpretive, but in substance it is an exercise of power, in a way which truly interpretive acts, such as literary interpre-

177. White, Law as Language, supra note 171, at 415.
178. Id.
179. West, Adjudication is Not Interpretation, supra note 170.
If we lose sight of the difference between literary interpretation and adjudication, and if we do not see that the difference between them is the amount of power wielded by the judiciary as compared to the power wielded by the interpreter, then we have either misconceived the nature of interpretation, or the nature of law, or both.\textsuperscript{180}

In a similar vein, Lane\textsuperscript{181} in reviewing \textit{A Matter of Principle} by Ronald Dworkin,\textsuperscript{182} asserts that one "questions the appropriateness of Dworkin's foray into literary theory. As social practices, law and literature speak to vastly different human impulses and needs . . . . [I]nterpretation must be a different thing when understood by literary critics from what it is when understood by lawyers."\textsuperscript{183} The major difference is that "[l]aw comes into play in regularizing social structures. It works most actively when incommensurable disputes arise, when competing interpretations face one another, and only one must remain at the end. Social integration demands one right answer . . . ."\textsuperscript{184} The implication is that literary critics, on the other hand, are comfortable and politically safe with a system which provides multiple meanings from which only one meaning need not be selected.

In conclusion, then, there are those who see the use of literary criticism as a valuable tool for interpreting legal texts and those who believe that literary criticism has nothing to offer the field of law. The basic disagreement concerns whether adjudication is interpretation or not. On the one hand, some would say that texts are indeterminate, that judges use subjective preferences in giving meaning to a legal text, and that an act of adjudication is, therefore, interpretation. On the other hand, there are those who would follow the old Langdellian notion of law as a science—descendants of the Legal Positivists who would argue that texts are determinate, meaning is objective, and that an act of adjudication is not interpretation.

Treading the middle path are authors like Dworkin\textsuperscript{185} and Fiss.\textsuperscript{186} Professor Fiss bluntly states the following:

\begin{quote}
Adjudication is interpretation: Adjudication is the process by which a judge comes to understand and express the meaning of an authoritative legal text and the values embodied in that text.
\end{quote}

\begin{itemize}
\item \textsuperscript{180} \textit{Id.} at 207.
\item \textsuperscript{181} Lane, \textit{supra} note 164.
\item \textsuperscript{182} DWORKIN, \textit{A Matter of Principle}, \textit{supra} note 164.
\item \textsuperscript{183} Lane, \textit{supra} note 164, at 215.
\item \textsuperscript{184} \textit{Id.} at 216.
\item \textsuperscript{185} Dworkin, \textit{Law as Interpretation}, \textit{supra} note 164.
\item \textsuperscript{186} Fiss, \textit{Objectivity and Interpretation}, \textit{supra} note 166.
\end{itemize}
Interpretation, whether it be in the law or literary domains, is neither a wholly discretionary nor a wholly mechanical activity. It is a dynamic interaction between reader and text, and meaning the product of that interaction.\textsuperscript{187}

Accepting that adjudication is a form of interpretation "would build bridges between law and the humanities and suggest a unity among man's many intellectual endeavors . . . [and it] might enable us to come to terms with a new nihilism, one that doubts the legitimacy of adjudication. . . ."\textsuperscript{188} In reacting to the nihilism of the deconstructionists,\textsuperscript{189} Fiss accepts the premise that "for any text there are any number of possible meanings and the interpreter creates a meaning by choosing one."\textsuperscript{190} Fiss postulates that the "freedom of the interpreter is not absolute. . . . He is disciplined by a set of rules that specify the relevance and weight to be assigned to the material (e.g., words, history, intention, consequence), as well as by those that define basic concepts and that established the procedural circumstances under which the interpretation must occur."\textsuperscript{191}

While Fiss is developing his set of "disciplining rules," Dworkin is working on his chain novel.\textsuperscript{192} Like Fiss, Dworkin views law as interpretation. To Dworkin, legal practice can be summarized in the following manner:

[L]egal practice is an exercise in interpretation not only when lawyers interpret particular documents or statutes, but generally. Law so conceived is deeply and thoroughly political . . . But law is not a matter of personal or partisan politics . . . [W]e can improve our understanding of law by comparing legal interpretation with interpretation in other fields of knowledge, particularly literature.\textsuperscript{193}

To Dworkin, the act of legal interpretation is analogous to the creation of a chain novel.

Suppose that a group of novelists is engaged for a particular project and that they draw lots to determine the order of play. The lowest number writes the opening chapter of a novel, which he or she then sends to the next number who adds a chapter, with the understanding that he is adding a chapter to that novel

\textsuperscript{187} Id. at 739.
\textsuperscript{188} Id. at 740.
\textsuperscript{190} Fiss, Objectivity and Interpretation, supra note 166, at 762.
\textsuperscript{191} Id. at 744.
\textsuperscript{192} Dworkin, Law as Interpretation, supra note 164.
\textsuperscript{193} Id. at 527.

https://scholar.valpo.edu/vulr/vol23/iss3/2
rather than beginning a new one, and then sends the two chapters to the next number, and so on. Now every novelist but the first has the dual responsibilities of interpreting and creating . . . 194

Like the chain novelist, the judge is constrained: "He must interpret what has gone before because he has a responsibility to advance the enterprise at hand rather than strike out in some new direction of his own." 195 Using those constraints, "he must determine, according to his own judgment, what the earlier decisions come to, what the point or theme of the practice so far, taken as a whole, really is." 196 Having set the ground rules, let us look at Dworkin's chain novelist in action.

Suppose, for a moment, that someone working on the chain novel decided that he did not wish to be constrained by the dull characters and drab setting painted by his predecessors and that he wished to "strike out in some new direction of his own." 197 How might he achieve this? And what would be the consequences? If he were creative, he might decide to begin his chapter:

Jonathon woke up from a dream in which he lived in this dreary castle surrounded by Poe-like swooning maidens. He was relieved now to see his computer in the corner of his bedroom and to know that Vanna would be knocking on his door sometime before the helicopter arrived. He was especially elated to realize that his name wasn't Freda and that he didn't wear women's clothing.

Now obviously, the consequences of this unexpected turn would un-hinge reader expectations. The reader has tolerance for ambiguity, for the unexpected, for the ironic twist, or the O'Henry ending, but that tolerance is not unlimited. Although the reader is able to "suspend disbelief" 198 while reading a science fiction novel, he will throw up his hands in despair if the writer dupes him in the way that was just suggested. He is likely to ask himself if the text had multiple authors, or he is likely to conclude that the novelist is a poor craftsman who has neither sharpened his tools nor studied the rules of his trade. The very object of the chain novel is to make the writing and style appear so consistent that the reader is unable to discern one voice from another. That is also the aim of judicial opinions—to make the reasoning and logic flowing from one decision to the next follow auto-

194. Id. at 541.
195. Id. at 543.
196. Id.
197. Dworkin, Law as Interpretation, supra note 164, at 543.
matically, naturally. Both the writer of the chain novel and the writer of the judicial opinion are constrained by similar rules which are part of the craft of each writer. The chain novelist utilizes these rules as he adds to and interprets previous texts whereas the judge utilizes these rules as he adds to and interprets legal texts. But "[e]ven the first novelist has the responsibility of interpreting to the extent any writer must, which includes not only interpreting as he writes but interpreting the genre in which he sets out to write . . . . [I]t will nevertheless be true, for all novelists beyond the first, that the assignment to find (what they believe to be) the correct interpretation of the text so far is a different assignment from the assignment to begin a new novel of their own."199 Although the first writer is free to locate his novel in time and space, he is, like the chain novelist who attempts to branch off in a totally new direction, constrained by the rules of the craft peculiar to the novelist. As Fish notes: He is both "free and constrained" at the same time.200 Fish and Dworkin are in disagreement regarding the amount of freedom that the first chain novelist may exercise. To Fish . . . .201 Enough!

Enticing as the theories of both Fish and Dworkin may be, my role here is not to become partisan. There are voices aplenty to achieve this task. Professor Fish in his essays—"Working on the Chain Gang: Interpretation in Law and Literature"202 and "Fish v. Fiss"203—debates, discusses, and denies the validity of the theories of both Dworkin and Fiss. Judge Posner204 has a running dialectic with West.205 Graff206 argues with Levinson.207 The cacophony of voices is the very essence of the critical branch of the Law and Literature Movement.

Turning to the many discordant voices echoing in the law reviews, we hear Professor White proclaiming: "[W]e cannot expect the 'law and literature movement' to tell us how to decide cases, or to teach us lessons, or to offer us a technology that might supplant the law. We should instead expect, or hope, for variety, for the distinct sounds of a thousand voices

199. Dworkin, Law as Interpretation, supra note 164, at 541 n.6.
200. Fish, Working on the Chain Gang, supra note 165, at 553.
202. Fish, Working on the Chain Gang, supra note 165.
203. Fish, Fish v. Fiss, supra note 165.
204. Posner, The Ethical Significance of Free Choice, supra note 168.
205. West, Authority, Autonomy and Choice and Submission, Choice and Ethics, supra note 170.
207. Levinson, Law as Literature, supra note 167.
To White, the Law and Literature Movement should offer "no Manifesto." And Dworkin, in the same vein, adds:

Lawyers would do well to study literary and other forms of artistic interpretation. That might seem bad advice (choosing the fire over the frying pan) because critics themselves are thoroughly divided about what literary interpretation is, and the situation is hardly better in the other arts. But that is exactly why lawyers should study these debates. Not all of the battles within literary criticism are edifying or even comprehensible, but many more theories of interpretation have been defended in literature than in law, and these include theories that challenge the flat distinction between description and evaluation that has enfeebled legal theory.

My role now is to argue that it is time to bring these lively debates into the law school classroom. Looking back at what the critics have been saying, we see that they have themselves been hinting at this very point:

Professor White: "The lawyer must read the statutes, cases and other documents that it is his task to understand, to interpret, and to make real in his world . . . . [He reads] for a range of possible meanings."

Professor Dworkin: "Lawyers would do well to study literary interpretation."

Unfortunately the "lawyers" who are currently being exposed to literary theory as a tool for legal analysis are primarily the non-practicing attorneys who divide their time between teaching and scholarship. "Teaching involves the imparting of knowledge: Scholarship the discovery of knowledge." But the professors who seek knowledge through scholarship cannot wait for one critic to stand up and claim: "I hold these truths to be self-evident." If we subscribe to Fiss' well-accepted theory that "[i]nterpretation . . . is neither a wholly discretionary nor a wholly mechanical activity," and that "meaning" is a dynamic exchange between text and reader, then "knowledge" and "truth" are ends to be continually sought but never achieved. The text is always potentiality, never actuality—it is always in a

209. Id.; at 743.
211. White, Law as Language, supra note 171, at 415.
212. Dworkin, Law as Interpretation, supra note 164, at 529.
213. But see supra note 16 which indicates that some student lawyers are already being exposed to critical legal theory.
215. Fiss, Objectivity and Interpretation, supra note 166, at 739.
state of "becoming." All that can be accomplished is to give transient
"meaning" to a text to make it the "best it can be" 216 at some moment in
time and space to one or several readers. The law professor can never im-
part "knowledge" about the meaning of a legal text to the student; the best
he can do is to teach the student to read the text critically by using the
methods of New Critical Theory to search for meaning and to determine
ambiguity. As Socrates pronounced in the Phaedrus:

Then the intending student of the art of rhetoric ought, in the
first place, to make a systematic division of words, and get hold
of some mark distinguishing the two kinds of words, those
namely in the use of which the multitude are bound to fluctuate,
and those in which they are not. 217

Once the ambiguities are isolated from the text, let the student use all
available methods of literary criticism—socio-economic, psychoanalytic,
Marxist, existential, feminist, strict constructionist, reader-response, histori-
cal, comparative, archetypal or symbolic—in order to add his voice to the
interpretive process.

V. CONCLUSION

As this work progressed, I was constantly reminded of the verse:

"Will you walk into my parlor?" said the
spider to the fly;
" 'Tis the prettiest little parlor that
ever you did spy.
The way into my parlour is up a winding
stair.
And I have many curious things to show
you when you're there." 218

The time has come for the spiders 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. Let the
spiders reveal their "curious" wares to the flies in order to make the parlour
a more "habitable" 219 place. In answer to the age-old question which
haunted Stevens: Law school education is now both a professional and an
academic pursuit where students are not mere repositories of "knowledge";
they are scholars actively engaged in the illusive search for "truth."

216. Dworkin, Law as Interpretation, supra note 164, at 591 n.6.
217. The Collected Dialogues of Plato 509 (E. Hamilton & H. Cairns eds., 9th
printing, 1978).
218. Mary Howitt, The Spider and the Fly, in The Book of Verse 176-78 (B. Stevens-
on ed. 1949).
APPENDIX I

"LAW AND LITERATURE" COURSES OFFERED AT THIRTY-EIGHT ABA APPROVED LAW SCHOOLS

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INSTITUTION: AMERICAN UNIVERSITY, WASHINGTON
COLLEGE OF LAW
COURSE TITLE: Law and Literature (Seminar).
ENROLLMENT: 24/1000. Offered for the first time in 1988-89. 2nd and
3rd year students.
OBJECTIVE: "A number of people have asked me what the seminar will
be 'about,' and my only partly facetious answer has been that I really don't
know, and won't until the semester is complete. At the most specific level, I
know at least some of the particular subjects to which I hope our discus-
sions will be recurrently addressed: the analogies between law-making and
literary creativity, the similarities and differences between reading literary
and non-literary texts, legal conceptions of authorship and the creative pro-
cess, competing visions of 'justice' and 'right' in non-legal literature, the
content of literary critiques of law and the legal profession, 'modern' and
'post-modern' critical theory and their significance for understanding law,
and law as a literary metaphor for the human condition. And at the most
general level, I have an idea about why these things are worth discussion,
which has to do (at least in part) with the insularity of most legal educa-
tion: Any attempt to look at our discipline from an external perspective,
rather than the internal ones we ordinarily employ, is bound to pay
dividends."
READING LIST: The reading is structured historically: Ancient Mesopo-
tamian Law and Literature; Medieval Lawyers and Authors in England
and France; Concepts of Law and Justice in Elizabethan England; Making
and Reading Legal Texts in the 16th and 17th Centuries; Satires on Law
and the Legal Profession from the Late 18th and 19th Centuries. This his-
torical review is followed by readings in American literary and popular cul-
ture with emphasis on law and lawyers and the jury system. Finally, the
course turns to legal humor as a literary form, the problem of crime, the
problem of punishment, and law and legal process as metaphors for existen-
tial dilemmas. The list draws from works of history, poetry, literary criti-
cism, philosophy, autobiography, novels, movies, plays, and ancient legal
codes.
COMMENTS: This is one of many new courses in Law and Literature and
it is obvious from the above that Professor Jaszi has given a great deal of
thought to his syllabus. It is a significant listing dealing with works of fic-

GRADING: Student participation, two short (10-15 page) papers, a brief take-home examination.

INSTITUTION: DUKE UNIVERSITY SCHOOL OF LAW
COURSE TITLE: Law and Literature (Seminar).
ENROLLMENT: Course not offered in 1987-88.
PROFESSOR: N/A
OBJECTIVE: “An examination of lawyers’ roles and legal problems in fiction and other literary forms. The semester may also consider the significance of contemporary theories of literary criticism for legal analysis.” (Catalogue)
READING LIST: N/A
COMMENTS: Although the course has emphasized the traditional look at the “lawyers’ roles and legal problems in fiction and other literary forms,” it should be noted that there is the possible inclusion of works of contemporary literary criticism. This serves to underscore the emerging emphasis and interest in literary criticism not only as a forum for discussion between law professors but as valuable course material.
GRADING: Paper required.

INSTITUTION: FLORIDA STATE UNIVERSITY COLLEGE OF LAW
COURSE TITLE: Law and Literature (Seminar).
ENROLLMENT: 20/550. Offered once a year.
OBJECTIVE: “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 do, 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, rationalistc, 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.”

READING LIST: Six novels. 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—the 1960s and 1970s; The Thanatos Syndrome—the present.

COMMENTS: Professor Southerland’s 13-page introduction to this course reads like an academic paper and serves to illustrate how a course in Law and Literature can capture the very essence of the possibilities inherent in the teaching of the Liberal Arts and the Humanities in the law school curriculum. The students are exposed to serious literature considered in an historical framework. Both the literature itself and the framework within which it is presented lend insight and understanding to the human condition in all of its complicated and complex psychological and sociological states.

The course is designed to make students reflect on the world around them and themselves. As Professor Southerland states: “In reflecting on the values, concerns, capabilities, and motivations of people, you will hopefully learn more about them, and about yourself.”

GRADING: Pass/Fail. Six essays of approximately 1,000 to 1,500 words each. Class attendance is required.

INSTITUTION: HARVARD LAW SCHOOL
COURSE TITLE: Dickens and the Law (Seminar).
ENROLLMENT: N/A
PROFESSOR: Robert Coles, A.B., Harvard University, 1950; M.D., Columbia University, 1954. Professor of Psychiatry and Medical Humanities.

OBJECTIVE: “It is hoped that students will use a particular novelist’s inspired vision as a means of looking at today’s American law as well as yesterday’s English law.” (Catalogue)

READING LIST: The course concentrates on Bleak House—“procedural eternity”; A Tale of Two Cities—“law’s link to politics, to political ideology and social change”; Great Expectations—“the lawyer’s connection to the fate of individuals, to family life”; and Little Dorrit—observations on criminology and prison life, of an entire industrial order.” There is also included a segment of literary criticism such as George Orwell’s essay “Charles Dickens.”

COMMENTS: This course falls within the Law and Literature tradition encompassing that field of legal study which uses great works of fiction to study the lawyer, the legal profession, the legal system, and the social milieu in which the competing protagonists and antagonists find themselves.
immersed. It is a study of "The law, its possibilities, hazards, and discontents, through the eyes of Charles Dickens." (Catalogue). Once again, we notice the growing emphasis on the inclusion of literary criticism in a Law and Literature course.

GRADING: One or more papers.

INSTITUTION: INDIANA UNIVERSITY SCHOOL OF LAW

COURSE TITLE: Law and Literature (Seminar).

ENROLLMENT: 20-25/650-750. Offered once a year to upper level law students.

PROFESSOR: David Ray Papke, A.B., 1969, Harvard University; J.D., 1973; M.A., 1973, Yale University; Ph.D., 1984, University of Michigan (American Studies). Five other professors are expected to teach the course, but only Professor Papke has taught it up to this time.

OBJECTIVE:

1) "A course in law and literature can be a vehicle through which interested faculty members may develop and share a special variety of academic work. . . ."

2) "The course may be a remedy, albeit a partial and tardy one, for the narrowly specialized pre-law educations of many law students. . . ."

3) "The course should alert students to the moral and ethical dimensions of the law and in the process stimulate broader humanistic thinking and dialogue about legal concerns. . . ."

4) "The course should enrich and empower legal professionals in their subsequent careers. The course should improve reading, writing and speaking skills, and more importantly, it should enable participants to reflect earnestly on legal authority and authority in general. . . ."

READING LIST: This varies from semester to semester but follows three basic types:

1) A traditional "law in literature" course centered around poems, short stories, plays and novels—the four genres of college English courses—which deal with legal themes and theories.

2) A traditional "literature in law" course. This course "emphasizes the literary features of rules, statutes, appellate opinions and jurisprudential writings. Highlighting the personae, mimesis, narrative and interpretive meaning of the law. . . ." One wonders whether the reading includes:

It may be a line from Kipling or the dolorous refrain of "The Tennessee Waltz"; a whiff of hickory smoke; the running of the fingers across a swatch of corduroy; the sweet carbonation of a chocolate soda; the sight of a faded snapshot in a long-neglected album. All that is required is that it may trigger the

3) A course combining literary and legal assignments which "seeks in a more interdisciplinary manner to explore the shared linguistic and normative fabrics of law and literature." Suggested topics: Law and Literature in Nineteenth-Century America; Law and Literature in a Post-Modern World; The Literature and Law of Civil Disobedience; Literary Views of Insanity.

The reading list which was supplied by Professor Papke for a course in Law and Literature opens with his own work "Neo-Marxists, Nietzscheans and New Critics: The Voice of the Contemporary Law and Literature Discourse." This is followed by seven novels, a handful of short stories, Aleksandr Solzhenitsyn's "Commencement Address" and Jack W. Ledbetter's "The Trial of Billy Budd, Foretopman" (1972). This course takes an historical look at works of literature, this time centering on the themes of law, lawyers, legal institutions and justice.

**COMMENTS:** The faculty of Indiana University School of Law/Indianapolis has contemplated the role of, and reasons for, the inclusion of Law and Literature or Literature in Law in their curriculum. Of particular interest is the third type of course which they offer and which is said to be "to date, [the] most fruitful type of course." This is the course most representative of an interdisciplinary approach to the use of literature in the law school curriculum.

Professor Papke and fellow colleagues welcome an exchange of sample syllabi and suggested assignments from other persons working in or interested in this area of teaching and scholarship. From their own faculty have come published essays and articles as well as paper presentations at conferences sponsored by the Law and Humanities Institute, Law and Society Association, ABA Commission on College and University Non-professional Legal Studies, and American Culture Association. Professor Papke is the author of *Law and Literature: A Comment and Bibliography of Secondary Works*, 73 LAW LIBR. J. 421 (1980); *Neo-Marxists, Nietzscheans, and New Critics: The Voices of the Contemporary Law and Literary Discourse*, 1985 AM. B. FOUND. RES. J., 883; *The Writer on Wall Street: An Interview with Louis Auchincloss*, 5 AM. L. SOC'Y A. F. 5 (1981).

**GRADING:** Attendance, participation, and either a final examination, approved project, or 25-page essay.

**INSTITUTION:** LOYOLA MARYMOUNT UNIVERSITY SCHOOL OF LAW

**COURSE TITLE:** Law and Literature.
COMMENTS: This course was offered in the past, but the professor who taught it recently retired.

INSTITUTION: LOYOLA UNIVERSITY SCHOOL OF LAW/CHICAGO
COURSE TITLE: Law and Literature.
ENROLLMENT: 10-12/750.

INSTITUTION: NEW YORK UNIVERSITY SCHOOL OF LAW
COURSE TITLE: Law and Literature.
ENROLLMENT: 10-15/1100.
OBJECTIVE: "To enhance the student's appreciation of the law's impact on society and response to societal problems and to expand the breadth of the law student."

INSTITUTION: NOVA UNIVERSITY LAW CENTER
COURSE TITLE: Law and Literature.
ENROLLMENT: 15-30/-690. The course is offered annually to 2nd and 3rd year students.
OBJECTIVE:

1) To "show interaction between literary devices and law."

2) To "explore differing treatments of common themes."

3) To "view law from the standpoint of the author."

4) To "enhance awareness of great literature."

READING LIST: Professor Richmond kindly shared the reading list which he has in preparation for a proposed text designed for both pre-law and law school students. Although this work is composed of poetry, short stories, plays, and novel excerpts, it is not centered around a traditional Law and Literature course. Instead, the works are used to teach the rhetorical modes of description, exposition, narration, and argumentation; to teach simile, metaphor, fable, allegory, parable, inference, satire, ambiguity; to look at the writers' views on death. The reading list is ambitious, diverse, and enticing. One senses in this collection yet another law professor concerned with the lack of learning within the legal profession. As he himself states: "The thought that we will soon have a generation of attorneys who haven't read
Shakespeare, for whom Gilbert is an author of [legal study aids] rather than a librettist, or who think F. Lee Bailey wrote The Trial is chilling.” COMMENTS: The influence of James B. White’s book, The Legal Imagination, echoes throughout Professor Richmond’s proposed book and this debt is acknowledged by Professor Richmond. Although the course is entitled “Law and Literature,” it might better be called “The Legal Imagination” in the White tradition.

GRADING: N/A

INSTITUTION: PACE UNIVERSITY SCHOOL OF LAW
COURSE TITLE: Law and Literature (Seminar).
ENROLLMENT: 5-10/800. Offered every one or two years to upperclass students.


OBJECTIVE: “Explore visions of the law and justice in selected works of literature.”

READING LIST: Mostly Dickens (as a “legal reformer” and artist who shows law in society as “corrupt, irresponsible, exploitative, incompetent, irrational and inhuman”); Melville, Dostoevsky, and Shakespeare. The list also includes “Njal’s Saga.”

COMMENTS: This is yet another “Law and Literature” course in the traditional sense of the word. Professor Koffler emphasizes the need to use critical thought in reading literary texts in a way akin to legal analysis, and in the introduction to the course articulates one of the obvious, yet much overlooked, facts that the use language is also the “lawyer’s medium.” Professor Koffler is the author of Fleurs de Mal: Literary Stultification in Law, 5 Am. L. Soc’y. A. F., 23 (1981); Terror and Mutilation in the Golden Age, 5 HUM. RTS. Q. 116 (1983).

GRADING: Attendance, participation, an oral report (20-30 minutes), and 2 or 3 short papers.

INSTITUTION: SOUTHWESTERN UNIVERSITY SCHOOL OF LAW
COURSE TITLE: Law and Literature.
ENROLLMENT: 40/950. Each summer to 1st, 2nd, and 3rd year law students.


OBJECTIVE: “To expose students to broad legal themes (Law and Morality, Law and Authority, Law and Freedom, Law and Punishment) as presented in selected poems, plays, short stories, movies, and essays.”

READING LIST: The course begins with introductory materials in naturalist and positivist legal theory and then deals mostly with plays, novels, short stories, and Billy Budd.
COMMENTS: This is another course dealing primarily with works of fiction but, once again, there is some emphasis on legal theory.

GRADING: Participation, attendance, several short papers (2-3 pages on each work covered in class), and a final exam.

INSTITUTION: STETSON UNIVERSITY COLLEGE OF LAW
COURSE TITLE: Law and Literature.
PROFESSOR: Three faculty members are expected to teach the course; one has a masters degree in English.
OBJECTIVE: To consider "law in society, use of literary works to raise legal issues, the individual and society."
READING LIST: The list is composed of short stories, novels, and plays.
COMMENTS: Surprisingly, this is the only list to include Hawthorne's The Scarlet Letter. In fact, The Scarlet Letter is the only work of Hawthorne to be included on any list. As Hawthorne was the master at dealing with the theme of guilt, one might have expected to have seen The House of the Seven Gables or The Marble Faun included somewhere in the materials.
GRADING: N/A

INSTITUTION: SUFFOLK UNIVERSITY LAW SCHOOL
COURSE TITLE: Law and Literature.
ENROLLMENT: 6-14/1600. 2nd, 3rd, and 4th year students.
OBJECTIVE: To "familiarize the students with great literature that has a legal setting."
READING LIST: The syllabus for the course is extensive, ambitious, and all-inclusive. The course begins with a lecture on "What Every Student Should Know About Charles Dickens, A Study in Character." This lecture is open to all students whether or not they are enrolled in the Law and Literature course. After that the reading centers around the genres of the novel, the short story, the theater, and poetry. The themes dealt with are the Law of Necessity; Humor and the Law; Trials as Literature; Film, TV, and the Law; and Judicial Writing as Literature.
COMMENTS: Although the course is designed to expose the student to "great literature that has a legal setting," Professor Bander includes one segment on Judicial Writing as Literature. This is what has been known traditionally as Literature in Law. Of the reading lists received in response to this survey, only a few include a selection from this source of literature, and usually, like Professor Bander's list, they emphasize the writings of Cardozo. Professor Bander's interest in the area of Law and Literature is evident in his compilation, with Dean Marke, of the Dean's List of Recom-

**GRADING:** Attendance; ten pages of written work which counts for ½ of the grade—one short paper relating "the implications of the book you select to your experience as a law student and your goal in practicing law . . . a short paper on the use that courts make of literature . . . use of Lexis and Westlaw to find references; a final examination."

**INSTITUTION:** Syracuse University College of Law
**COURSE TITLE:** Tutorial—Not a course.
**ENROLLMENT:** 5/600. 2nd and 3rd years students.
**PROFESSOR:** Barbara B. Burnett, B.A., 1969, University of Kansas; J.D., 1972, New York University.
**OBJECTIVE:** "Fun."
**COMMENTS:** Professor Burnett offers one of the best reasons for teaching the course and perhaps she is the only one who dares to say it.
**READING LIST:** N/A
**GRADING:** N/A

**INSTITUTION:** Tulane University School of Law
**COURSE TITLE:** Law and Literature (Seminar).
**ENROLLMENT:** 20 (8 on a waiting list)/766.
**OBJECTIVE:** N/A
**READING LIST:** This list centers around the following topics: Reading Law and Reading Literature; The Search for Stable Meaning; Is There a Meaning in This Text?; Adjudication as Literary Activity; Interdisciplinary Comparison; The Validity of Comparison and a Comparative Exercise; Adjudication as Interpretation; If Adjudication is Not Interpretation, What is It?; Reservations and Revenge; The Future Role of Literary Theory in Law. Besides the heavy emphasis on literary criticism, there are also a few judicial opinions, Kafka's "The Hunger Artist," and O'Connor's "A Good Man is Hard to Find."
**COMMENTS:** As the above topics reflect, this course primarily utilizes literary theory. The nature of the material is revealed by a glance at the authors: White, Fiss, Fish, Levinson, Graff, West, Posner, Dworkin, Stick. Should it come as a surprise to learn that there is a waiting list for a course structured around literary criticism? Or, does the waiting list tell us that the students are ready and capable of dealing with what was formerly the province of a few professors who began to cross interdisciplinary lines?
GRADING: N/A

INSTITUTION: TOURO COLLEGE SCHOOL OF LAW
COURSE TITLE: Law and Literature.
COMMENTS: "The course was approved but has not yet been offered at the Law School."

INSTITUTION: THE UNIVERSITY OF ALABAMA SCHOOL OF LAW
COURSE TITLE: Law in Literature Seminar.
ENROLLMENT: 12-15/485. Occasionally to 2nd and 3rd year students.
OBJECTIVE: To focus "on works of literary merit that are concerned with law and its effects upon individuals and society."
COMMENTS: As the actual works of the authors which are taught in this course were not listed, they are not included in the cumulative bibliography. The University of Alabama also offers a one-credit course on legal themes and the images of lawyers in Dickens' Bleak House, Great Expectations, and A Tale of Two Cities. Professor Hoff is the author of THEOLOGICAL INFLUENCES ON WESTERN LAW (1985) (reviewing Berman, Law and Revolution: The Formation of the Western Legal Tradition, 36 ALA. L. REV. 1003 (1983)).
GRADING: "Based on final course examination extra credit of up to ½ letter grade for superior contribution to class discussions." The student also makes a brief oral presentation and leads class discussion in at least one class meeting.

INSTITUTION: THE UNIVERSITY OF ARIZONA COLLEGE OF LAW
COURSE TITLE: Law and Literature.
ENROLLMENT: N/A
OBJECTIVE: To be gleaned from the following: "Finally, had I written to you who have taken the seminar and are now in that Great Beyond, I would have once again played teacher, whose lot in life, it seems, is to raise inconvenient questions: The issue is not whether you agree with Tolstoi, Sacken, or the other students. Now the issue is you and what you have become."
READING LIST: Dean Hegland included with his response to this study an open letter to his past students. That letter listed twenty-eight works—mostly novels and plays—which were meant to jog the memories of
those now practicing lawyers. The books were mostly classics but the odd thought provoking newcomer showed up—notably Pirsig's Zen and the Art of Motorcycle Maintenance.

COMMENTS: A quotation from Professor Hegland's letter captures the beginnings of the Law and Literature movement:

Had I written to you who have taken the course, I would have reported that things go well here at the school. Law and Literature, founded as a clandestine seminar . . . is now out in the open and thriving. It develops that many on the faculty, in addition to teaching Agency and Partnership, love reading and discussing books. . . .I remember the First Fearful Years of Law and Literature, when we met almost secretly, firm in the belief that the "regular" faculty would "never approve." How wrong we were. Law and Literature Alumni, consider this: If Agency and Partnership Professors enjoy an occasional evening discussing Shakespeare, can senior partners . . . be far behind? Dare you eat a peach?

How wonderful if those former students caught the allusions! To those former students, Professor Hegland also sent the Dean's Recommended List of Readings, presumably, to inspire and motivate continued interest in the field of law and literature. Professor Hegland is the author of Goodbye to Deconstruction, 58 S. Cal. L. Rev. 1203 (1985).

GRADING: N/A

INSTITUTION: UNIVERSITY OF BRIDGEPORT SCHOOL OF LAW
COURSE TITLE: Law and the Humanities.
ENROLLMENT: Unknown/750. Approximately once every 2 years. 2nd, 3rd & 4th year evening students.
PROFESSOR: Adjunct.
OBJECTIVE: The objective is to have students reflect on the Western legal tradition and what the practice of law and being a lawyer has entailed in the course of history.
READING LIST: N/A
COMMENTS: As no reading list was provided, it is impossible to determine what works are stressed in this course. It should be noted also that this is a Law and Humanities course rather than a Law and Literature course.
GRADING: N/A

INSTITUTION: UNIVERSITY OF CALIFORNIA SCHOOL OF LAW/DAVIS
COURSE TITLE: Legal Imagination.
ENROLLMENT: 10-14/500. Once a year.
OBJECTIVE: N/A
READING LIST: Based on James B. White's Book entitled *The Legal Imagination*.

COMMENTS: For obvious reasons, Professor Ayer was reluctant to include a course based on *The Legal Imagination* in a survey of courses in the Law and Literature tradition. As he says: "For theoretical reasons that are somewhat tedious to explain, I don’t like to call this a 'law and lit' course. Nevertheless, I recognize that many other people do, and will continue to do so." The convenience of rubrics may certainly have led to the pigeon-holing of this course where, in fact, it does not belong. Professor Ayer is the author of *Law, Literature, and the "Conversation of Mankind,"* 4 Cardozo Art and Ent. L.J. 261 (1985); *The Very Idea of "Law and Literature,"* 85 Mich. L. Rev. 895 (1987) (reviewing Richard Weisberg, *The Failure of the Word: The Protagonist as Lawyer in Modern Fiction* (1984)).

GRADING: N/A

INSTITUTION: UNIVERSITY OF CHICAGO LAW SCHOOL
COURSE TITLE: Law and Literature (Seminar).
ENROLLMENT: 25/170. Offered twice each year. 2nd and 3rd year students.
PROFESSOR: Judge Richard Posner, U.S. Court of Appeals for the Seventh Circuit; Senior Lecturer.
OBJECTIVE: "Professor is interested in literature as a field of study."
READING LIST: N/A

GRADING: N/A

INSTITUTION: UNIVERSITY OF CONNECTICUT SCHOOL OF LAW
COURSE TITLE: Law and Literature (Lawyers and Fiction Seminar).
ENROLLMENT: 15-20/500. 2nd and 3rd year students. Course is jointly taught by one full-time professor and one adjunct instructor.
OBJECTIVE: To deal with the following themes:

—The relationship of the law in theory and practice
- Why a person might choose the life of a lawyer
- The effects of practicing on the lawyer morally, emotionally, and intellectually
- The susceptibility of lawyers to particular personal problems and attitudes.
- Cynicism as a common characteristic of attorneys
- The manner in which the lawyer views himself in the context of the legal system and the broader society
- The manner in which the lawyer views other participants in the system.
- The interactions between lawyers and clients

READING LIST: Novels and short stories.

COMMENTS: The reading list for this course is less conspicuously composed of classical works than many of the other lists are. The humor is present yet again—this time in the Rumpole stories. Professor Domnarski is the author of Hearing the Judicial Voices, 61 CONN. B. J. 155 (1987); Law-Literature Criticism: Charting a Desirable Course with Billy Budd, 34 J. LEGAL EDUC. 702 (1984); A Novelist’s Knowing Look at the Law: Short Stories by John William Corrington, 69 A.B.A. J. 1706 (1983); The Opinion as Essay, The Judge as Essayist: Some Observations on Legal Writing, 10 J. LEGAL PROF. 139 (1985); Style and Justice Holmes, 6 DEL. LAW 54 (1987); Trouble in Paradise: Wall Street Lawyers and the Fiction of Louis Auchincloss, 12 J. CONTEMP. L. 243 (1987).

GRADING: N/A

INSTITUTION: UNIVERSITY OF IOWA COLLEGE OF LAW

COURSE TITLE: Law in Literature.

ENROLLMENT: 12-16/600. This year long course is offered annually to law students and graduate students.


OBJECTIVE: To focus on the following questions:
- What are the origins and sources of law and morality?
- What is the relationship between law and justice?
- What determines whether an individual is treated justly?
- Does justice differ from law?
- Does justice differ from morality?
- What laws, if any, are essential for a society?

READING LIST: Selected reading from writers such as Barth, Camus, Coetzee, Dostoevski, Faulkner, Ibsen, Kafka, Melville, Plato, Schaffer, Shaw, Thucydides, and Tolstoy. Also included are other selections such as the Code of Hammurabi, the Hippocratic Oath, etc.

COMMENTS: Although Professor Widiss’ response to the Law and Literature survey referred to Iowa’s catalogue description for a course entitled “Law in Literature”—this is the description used for the entries entitled
“Objective” and “Reading List” above—Professor Widiss also supplied a reading list for a course entitled “Law in Literature/medicine in the Humanities” which he team teaches with Professor Caplan. This is a course which “specializes,” so to speak. The reading list for this course is composed primarily of novels, short stories, and plays, all of which deal with ethical and moral dilemmas of medicine. This is a creative and original use of works of literature in a law school course and breaks the stereotypical use of fiction to examine the role of the lawyer in society.

GRADING: N/A

INSTITUTION: UNIVERSITY OF KENTUCKY COLLEGE OF LAW

COURSE TITLE: Law and Literature.

COMMENTS: “Offered once in last 10 years—about 1981.”

INSTITUTION: UNIVERSITY OF MARYLAND SCHOOL OF LAW

COURSE TITLES: (A) Jurisprudence in Literature; (B) Idea of Law in Western Culture (Seminar).

ENROLLMENT: 15/570 (day); 15/230 (evenings). Offered annually. 3rd year law students.


OBJECTIVE:

(A) Jurisprudence in Literature: N/A;

(B) Idea of Law in Western Culture: “The goal of the seminar is not the acquisition of knowledge, important as that may be, but the enhancement of understanding.”

READING LIST:

(A) Jurisprudence in Literature: The list includes the works of Aeschylus, Melville, Kafka, Shakespeare, Camus, Twain, and Lee; but the richness of the course lies in its treatment of interpretive literature—Luban, Posner, Weisberg, West, Unger, Fried, Dworkin, Foss, Cover, Fish, Kennedy, Kelman, Foucault, and MacKinnon. After dealing with Deconstruction in Law, Deconstruction in Social History, and Deconstruction and Feminism, the syllabus has a heading “Deconstruction in Literature.” Under this is the notation: “Readable, Descriptive Essays of Deconstruction in Literature (I’m still looking).” Hopefully, the legal intrusion into deconstruction will help to clarify and enlighten rather than to further confuse and befuddle the reader.

(B) Idea of Law in Western Culture: This course deals with philosophers, playwrights, novelists, short story writers, and the Bible to “explore the notion of law in the tradition of the West through the works of some of the great contributors to that tradition.”
COMMENTS: A student at Maryland taking both Jurisprudence in Literature and Idea of Law in Western Culture would be exposed to some of the finest thinkers and writers of both ancient and modern times.

GRADING:

(A) Jurisprudence in Literature: N/A;

(B) Idea of Law in Western Culture: At least 3 and no more than 5 brief papers (750-1000 words) "exploring some problem or issue raised by the readings or in discussion"; contribution to the weekly discussion; and possibly a brief oral examination.

INSTITUTION: UNIVERSITY OF NOTRE DAME LAW SCHOOL
COURSE TITLE: Law and Literature.
ENROLLMENT: 10/480. Once a year. 2nd and 3rd year students.
OBJECTIVE: "To analyze how literary texts can illuminate legal issues."
READING LIST: The course is structured around three topics: The Duty to Obey the Law; The Nature of Evidence; Judges and Lawyers. The readings are mostly classical novels and plays.
COMMENTS: Notre Dame has a non-lawyer teaching its Law and Literature course; perhaps we will soon begin to see lawyers teaching Law and Literature in the English departments of large universities. Note also the inclusion of the opportunity to write a short story to satisfy the course requirements. What a welcome relief from Torts and Contracts! Professor Phelps is the author of The Criminal as Hero in American Fiction, 1983 Wis. L. REV. 1427; The Story of the Law in Huckleberry Finn, 39 MERCER L. REV. 889 (1988).
GRADING: Attendance, participation, a 10-20 page paper on a law and literature topic, a 15-20 minute formal report to the class on the topic. Or, "You may write a short story (10-20 pages) modelled on Norval Morris' 'Ake Dah,' that expilicates a legal principle."

INSTITUTION: UNIVERSITY OF PITTSBURGH SCHOOL OF LAW
COURSE TITLE: Literature and Law.
ENROLLMENT: 15/700. Offered for the first time fall 1988. 2nd and 3rd year students.
OBJECTIVE: "To investigate the degree to which the law represents and interprets fundamental societal values and norms as expressed in selected literary works. . . . Particular attention shall be paid to whether the principles of property, contract, tort and criminal law promote or contradict the values found in the literary sources. By so doing, we should gain richer understanding of how law is the embodiment of fundamental human needs.
and desires."

READING LIST: This list offers some readings which do not appear on other lists: Steinbeck's *Grapes of Wrath*, Drieser's *Sister Carrie*, Ellison's *Invisible Man*, Thompson's *Fear and Loathing in Las Vegas*. It is what the professor calls an "eclectic sample of American and British 19th and 20th century novels and short stories in a search for the expression of fundamental cultural values, norms, and prohibitions to determine how they find expression or rejection in the law."

COMMENTS: This is yet another course which sounds stimulating.

GRADING: Based 50% upon a long paper, 25% upon two short papers, and 25% upon class participation.

INSTITUTION: UNIVERSITY OF PUERTO RICO SCHOOL OF LAW

COURSE TITLE: (A) Law and Literature; (B) Law and Literature (Seminar).

ENROLLMENT: (A) 35/550; (B) 15/550. Once each semester. 2nd and 3rd year students.


OBJECTIVE: Professor: "To study the relationship between both disciplines by looking at how people in literature objectivise law, how they perceive it."

School: "To give students the opportunity to see how literature looks at law and its actors."

READING LIST: N/A

GRADING: N/A

INSTITUTION: UNIVERSITY OF PUGET SOUND SCHOOL OF LAW

COURSE TITLE: Language and the Law.

ENROLLMENT: 25/850. Offered yearly. 2nd and 3rd year students.


OBJECTIVE: This is not quite a law and literature course. Rather, a course in the *discourse* of the law. The course demonstrates the many ways in which law, like literature, arrives at meaning rhetorically and is language-centered. The course combines a comparison of meaning in literary texts with meaning in legal texts; the course also examines the "rhetoric" of law and its implications.

READING LIST: Melville, Shakespeare, White's *The Legal Imagination*, selections from *Heracles' Bow*, and selections from *When Words Lose Their Meaning*. 

https://scholar.valpo.edu/vulr/vol23/iss3/2
COMMENTS: This "language-centered" course turns naturally to the works of James B. White.

GRADING: N/A

INSTITUTION: UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW

COURSE TITLE: Law and Literature.

ENROLLMENT: 16/650-700. Offered annually. Enrollment limited to law students and/or honors college students.


OBJECTIVE:

1) "To explore literature dealing with issues of legal significance.

2) To teach students how to read literature critically."

READING LIST: As well as the expected selections of plays, novels, and short stories, the list includes a section devoted to utopias: "Political—Orwell's 1984; Apocalyptic—Golding's The Lord of the Flies; Scientific—Huxley's Brave New World."

COMMENTS: Once again, this is a traditional law and literature course with emphasis on critical reading. Professor Felix tells me that he also holds a popcorn and beer session at which movies of related works are shown.

GRADING: "The grade for the course is a 25-30 page paper based on legal and literary aspects of one or more works not on the reading list."

INSTITUTION: UNIVERSITY OF TENNESSEE COLLEGE OF LAW

COURSE TITLE: The Legal Imagination.

ENROLLMENT: 30/450. Offered annually. 3rd year law students.

PROFESSOR: N/A

OBJECTIVE: "To explore the potential of and limitations of language."

READING LIST: Fall 1987. The Shakespeare Histories, Measure for Measure, King Lear.

COMMENTS: Although this course is entitled "The Legal Imagination," and although the emphasis is on language, it appears that this is not based on James B. White's book but rather takes only its title from that work.

INSTITUTION: UNIVERSITY OF TEXAS AT AUSTIN SCHOOL OF LAW

COURSE TITLE: Law and Literature (Seminar).

ENROLLMENT: 12/1550. Offered annually. 2nd and 3rd year students.

INSTITUTION: UNIVERSITY OF WISCONSIN LAW SCHOOL

COURSE TITLE: Law and Literature.

ENROLLMENT: 20/900. Advanced standing students.
COMMENTS: Courses offered infrequently—every two or three years.

INSTITUTION: VALPARAISO UNIVERSITY SCHOOL OF LAW
COURSE TITLE: Law and Literature (Seminar).
ENROLLMENT: 15/354. Offered annually. 3rd year students.
OBJECTIVE: “Independent research and writing with two or three texts discussed as a group.”
READING LIST: The reading list varies but in the past has included Shakespeare, Dickens, Camus, and Miller.
COMMENTS: This course is very much a seminar with group readings secondary to the independent research and writing emphasis of the course.
GRADING: N/A

INSTITUTION: WASHBURN UNIVERSITY OF TOPEKA SCHOOL OF LAW
COURSE TITLE: Law and Literature.
ENROLLMENT: 15-20. Offered annually. 2nd and 3rd year students.
PROFESSOR: Gregory J. Pease, B.A., 1963, Wichita State University; J.D., 1979, University of New Mexico.
OBJECTIVE: “To broaden student perspectives on law.”
READING LIST: The list is composed of drama and fiction arranged into the following units: Origins of the Criminal Law; Natural Law versus Positive Law; The Criminal Act; The Criminal Trial. The books are mostly classical works used primarily to deal with the criminal and the criminal process.
COMMENTS: The students are given an extensive list of topics from which to choose in order to satisfy the individual writing element of the course. This course focuses only on criminal law.
GRADING: One group project structuring the class discussion around one of the required books and a short group-paper based on that project; one long individual paper.

INSTITUTION: WEST VIRGINIA UNIVERSITY COLLEGE OF LAW
COURSE TITLE: Justice in Literature.
OBJECTIVE: To “expand the Liberal Arts approaches to the law.”
READING LIST: N/A

INSTITUTION: YESHIVA UNIVERSITY, BENJAMIN N. CARDOZO SCHOOL OF LAW
COURSE TITLE: Law and Literature I (Seminar); Law and Literature II (Seminar).

OBJECTIVE:

(I) To show "the relationship of the literary protagonist to the laws of his society, as portrayed in novels and plays, using texts fundamentally concerned with the law..." (Catalogue);

(II) To show "the way lawyers use and understand language; theories of interpretation (in literature and law); modes of judicial communication; and perennial and recent problems in legal writing generally.

READING LIST: List includes works of Aeschylus, Shakespeare, Dickens, Dostoevski, Melville, and Camus.


GRADING: N/A
APPENDIX II

A CUMULATIVE BIBLIOGRAPHY OF WORKS TAUGHT IN A NUMBER OF LAW SCHOOL "LAW AND LITERATURE" COURSES

FICTION

ANONYMOUS: Babylonian Writings.
   POEM: The Gilgamesh Epic
   TABLETS: Babylonian Creation Epic

ANONYMOUS: Icelandic Narration of the Middle Ages.
   SAGA: "Njal's Saga"

AESCHYLUS: 525-456 B.C. Greek Athenian Poet of Tragedy.
   POEM: The Oresteia

   VERSE PLAY: Winterset

ANOUILH, JEAN: 1910 -______. French Dramatist.
   PLAY: Antigone

   NOVEL: Diary of a Yuppie
   SHORT STORY: "The Fabbri Tape"

   POEM: "Law Like Love"

   NOVEL: Out of this Furnace

   LIBRETTO: The Devil and Daniel Webster

BOLT, ROBERT: 1924-______. English Playwright.
PLAY: *Man for All Seasons*

PLAY: *The Caucasian Chalk Circle*

NOVEL: *Erewhon*

NOVEL: *The Fall*

NOVEL: *The Plague*

NOVEL: *The Stranger*

NON-FICTION NOVEL: *In Cold Blood*

CHAUCER, GEOFFREY: 1343(?)—1400. First Major English Poet.

POEM: *The Canterbury Tales*


NOVEL: *Oh What a Paradise It Seems*


SHORT STORY: "The Godmother"


PLAY: *Witness for the Prosecution*


NOVEL: *The Ox-Bow Incident*


NOVEL: *Paths of Glory*

CONRAD, JOSEPH: 1857-1924. Polish-born Novelist and Short Story
Writer.

NOVEL: *Heart of Darkness*

NOVEL: *Lord Jim*


NOVEL: *It's Hard to Leave While the Music's Playing*


NOVEL: *The Pathfinder*

NOVEL: *The Pioneers*


COLLECTION OF SHORT STORIES: *Actes and Monuments*

TWO NOVELLAS: *All my Trials*


NOVEL: *Guard of Honor*

NOVEL: *The Just and the Unjust*


PLAY: *A Case of Libel* (Three act-play based on *My Life in Court* by Louis Nizer).


NOVEL: *Bleak House*

NOVEL: *Great Expectations*

NOVEL: *Hard Times*

NOVEL: *Little Dorrit*

NOVEL: *Oliver Twist*

NOVEL: *Pickwick Papers*

NOVEL: *A Tale of Two Cities*


NOVEL: *The Book of Daniel*

DOSTOEVSKY, FEODOR MIKHAILOVICH. 1821-1881. Russian
Novelist.

NOVEL: Crime and Punishment
NOVEL: The Brothers Karamazov


NOVEL: An American Tragedy
NOVEL: Sister Carrie

DUERRENMATT, FRIEDRICH: 1921-_____. Swiss Playwright, Author, Painter, and Critic.

PLAY: The Visit


NOVEL: Dutch Shea Jr.


NOVEL: Middlemarch

ELLISON, RALPH: 1914-_____. American Novelist, Short Story Writer, and Essayist.

NOVEL: Invisible Man


NOVEL: The Case of the Grinning Gorilla


SHORT STORY: “Under the Lion's Paw”
SHORT STORY: “Up the Coolly”


OPERA: Trail by Jury (Music by Sir Arthur Sullivan)

SHORT STORY: “A Jury of Her Peers”


NOVEL: Things as They Are: The Adventures of Caleb Williams (Ethico-political Theory and Narrative Plot)

GOLDING, WILLIAM: 1911-—. English Poet and Novelist.

NOVEL: Lord of the Flies


NOVEL: Red Harvest


NOVEL: The Scarlet Letter

HERSEY, JOHN: 1914-—. American Writer and Novelist.

NOVEL: The Child Buyer

HIGGINS, GEORGE V.: 1939-—. American Short Story Writer and Novelist.

NOVEL: The Friends of Eddie Coyle

NOVEL: Kennedy for the Defense

NOVEL: Penance for Jerry Kennedy


PLAY: Paths of Glory (From the Novel by Humphrey Cobb)


NOVEL: Brave New World


PLAY: An Enemy of the People


NOVEL: The Bostonians

KAFKA, FRANZ: 1883-1924. European (Czech Origin) Novelist and
Short Story Writer.

SHORT STORY: "The Hunger Artist"

STORIES AND SHORT PIECE: The Penal Colony

NOVEL: The Trial


NOVEL: Andersonville


NOVEL: Once Flew Over the Cuckoo's Nest


NOVEL: Darkness at Noon


NOVEL: To Kill a Mockingbird

LEE ROBERT E(DWIN): 1918-——. American Dramatist. JEROME LAWRENCE: 1915-——. American Professor, Director, and Playwright.

PLAY: Inherit the Wind (Scopes "Monkey Trial")


NOVEL: Compulsion

LEVIN, MICHAEL GRAUBART: 1959-——. American Lawyer and Writer.

NOVEL: The Socratic Method


SHORT STORY: "Goodbye Jack"

NOVEL: The Star Rover


POEM: "Gilgamesh"


SHORT STORY: "Rain"

MELVILLE, HERMAN: 1819-1891. American Novelist and Short Story
Writer.

SHORT STORY: “Bartleby, the Scrivener”
SHORT STORY: “Benito Cereno”
NOVELLA: Billy Budd

MILLER, ARTHUR: 1915——. American Dramatist.
PLAY: The Crucible

MORRIS, NORVAL: 1923——. Born in New Zealand. Former Dean of University of Chicago Law School, Criminologist, and Writer.
SHORT STORY: “Ake Dah”

MORTIMER, JOHN: 1923——. English Barrister, Playwright, and Novelist.
COLLECTION OF SHORT STORIES: Rumpole and the Golden Thread
COLLECTION OF SHORT STORIES: The Rumpole Omnibus

NICHOLS, JOHN TREADWELL: 1940——. American Novelist.
NOVEL: The Milagro Beanfield War

NOVEL: Octopus

COLLECTION OF SHORT STORIES: A Good Man Is Hard to Find
SHORT STORY: “The Lame Shall Enter First”

OLSEN, TILLIE: 1913——. American Short Story Writer.
COLLECTION OF SHORT STORIES: Tell Me a Riddle

NOVEL: 1984

PATON, ALAN STEWART: 1903——. South African Novelist and Short Story Writer.
NOVEL: Cry, the Beloved Country

PERCY, WALKER: 1916——. American Physician, Novelist, Critic, and Writer of Medical Articles.
NOVEL: *The Thanatos Syndrome*

PIELMEIER, JOHN. American Playwright.

PLAY: *Agnes of God*


POEM: "The Murders in the Rue Morgue"

POEM: "The Purloined Letter"


NOVEL: *Ship of Fools*

NOVEL: *Noon Wine*


FICTION: *Garantua et Pantagruel*


PLAY: *Counsellor-at-Law*

ROSE, REGINALD: 1920-______. American Writer of Drama and Screen Plays.

PLAY AND SCREEN-PLAY: *Twelve Angry Men*


NOVEL: *Girl in the Red Velvet Swing: The Story of Evelyn Nesbit, Stanford White, and Harry K. Thaw*


PLAY: *The Flies*

SELZER, RICHARD: 1928-______. American Surgeon and Writer of Short Stories and Essays.

SHORT STORY: "Tube Feeding"

SHAFFER, PETER (LEVIN): 1926-______. English Playwright and Critic. Published novels with his brother, Anthony Shaffer, under joint pseudonym Peter Antony.

PLAY: *Equus*

PLAY: Henry IV
PLAY: Henry V
PLAY: Henry VI
PLAY: Henry VIII
PLAY: Richard II
PLAY: Richard III
PLAY: King John
PLAY: King Lear
PLAY: Hamlet
PLAY: Measure for Measure
PLAY: The Merchant of Venice


PLAY: Murder in the Cathedral
PLAY: Saint Joan


NOVEL: The Jungle

SOLZHENITSYN, ALEKSANDR I(SAYEVICH): 1918-______. Russian Novelist, Short Story Writer, and Playwright.

NOVEL: One Day in the Life of Ivan Denisovich

SOPHOCLES: 496(?)-406(?) B.C. Greek Writer of Tragic Plays.

PLAY: Antigone
PLAY: Oedipus Rex


NOVEL: Cannery Row
NOVEL: Grapes of Wrath


NOVEL: Tristram Shandy

NOVEL: Earth Abides
STONE, ROBERT: 1937(?)-——. American Novelist.

NOVEL: A Flag for Sunrise
STOPPARD, TOM: Czechoslovakian Playwright, Novelist, Radio and TV Scriptwriter.

PLAY: Rosencrantz and Guildernstern Are Dead

NOVEL: Uncle Tom's Cabin

NOVEL: Fear and Loathing in Las Vegas

NOVEL: The Death of Ivan Ilyich
NOVEL: Resurrection


COLLECTION OF SHORT STORIES: The Adventure of Ephraim Tutt

COLLECTION OF SHORT STORIES: Mr. Tutt at His Best

TRAVER, ROBERT (VOELKER, JOHN D(ONALDSON)): 1903-——. American Justice, Lawyer, and Author.

NOVEL: Anatomy of a Murder


NOVEL: Orley Farm

TUROW, SCOTT: 1949-——. American Lawyer and Writer of Short Stories and Novels. Also wrote the non-fiction work One L: An Inside Account of Life in the First Year at Harvard Law School.

NOVEL: Presumed Innocent


NOVEL: Huckleberry Finn
NOVEL: *Pudd’nhead Wilson*

WALKER, WALTER (HERBERT III): 1949-—. American Lawyer and Novelist.

NOVEL: *Rules of the Knife Fight*


NOVEL: *The Onion Field*

WARREN, ROBERT PENN: 1905-—. American Poet and Novelist.

NOVEL: *All the King’s Men*

WATERS, FRANK (JOSEPH): 1902-—. American Novelist and Non-fiction Writer.

NOVEL: *The Man Who Killed the Deer*

WEBSTER, JOHN: 1580-1625. English Dramatist.

PLAY: *The White Divel*

PLAY: *The Devil’s Law-case*


SHORT STORIES: The Doctor Stories (Ed. by Robert Coles)


NOVEL: *The Bonfire of the Vanities*


NOVEL: *Native Son*

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