lawyers and literature || faq–2 || July 2-7, 2007 || James R. Elkins

▪ Is it really possible to answer serious questions using what others say? Isn't it better to speak for yourself?

"I use the language of others because I am desperate and because I am simply not up to the task." [Michael Mello, *A Letter on a Lawyer's Life of Death*, 38 So. Tex. L. Rev. 121 125 (1997)]

"[L]ike most writers [and teachers], I initially address an audience of one—myself. However, like most writers [teachers] I live in the hope that my own preoccupations will strike answering chords in others." [Wolfgang Iser, *Do I Write for an Audience?* 115 (3) PMLA 310, 314 (2000)]

Seymour Wishman, relating an incident where he encounters a woman he has brutally cross-examined as a defense lawyer in a rape case, and his sense that something had gone wrong in his life, says, "I had accumulated, without realizing it, a number of reservations about my work." Wishman goes on to say, in his rather remarkable book, *Confessions of a Criminal Lawyer*, "I sensed that my distress was not just a personal matter but revealed some of the painful moral and emotional dilemmas of my profession." [Seymour Wishman, *Confessions of a Criminal Lawyer* (Penguin Books, 1981)]

"Scout Finch, in Harper Lee's *To Kill a Mockingbird* (Popular Library, 1962), describes with careful precision the boundaries of that small world she and her brother Jem inhabited in that last summer before Scout starts to school: "When I was almost six and Jem was nearly ten, our summertime boundaries (within calling distance of Calpurnia) were Mrs. Henry Lafayette Dubose's house two doors to the north of us, and the Radley Place three doors to the south." Louis Auchincloss remarks, in *A Writer's Capital* (University of Minnesota Press, 1974), his intellectual autobiography: "When I am told that I have confined my fiction to too small a world, I find it difficult to comprehend."

▪ Can you provide us with any helpful information about how to get started?

Greek dramatists of tragedy confronted a problem in how to prepare their audience for the drama they were to witness. How much background information must an audience be provided to understand and emotionally participate in a drama? Telling the audience too little resulted in anxiety and blunted the audience's emotional participation in the drama. Told too much, the dramatic impact and sense of participatory involvement were undermined. What should students of law be told about the drama and tragedies of law and lawyering as they set out to become lawyers?

Some years ago, one of my student's commented in a journal that the first year of law school was disorienting because it dropped him in the middle of a drama already underway before he arrived. He said it left him with the feeling that he had missed the beginning and that there was something important he could have been told that would have made his reading of judicial opinions and

more generally about law and the legal profession that would have made his legal education more productive. To succeed as a student of law, to read law as a student, you playing catch-up, working around the absent beginning. Law school is odd in the way it asks you to learn backwards while trying to move forward at the same time.

A course of reading that focuses on lawyer stories presents a paradox: There are serious questions about how we might begin, and how we might go about charting the situation we are in; yet, there is also a sense, that it is now, in beginning a course of reading that we can be most clear-headed and straight-forward about what we have set out to do. Robert J. Palmer suggest the paradoxical nature of the endeavor in his observation that:

> We want a kind of knowledge that eliminates mystery and puts us in charge of an object-world. Above all, we want to avoid a knowledge that calls for our own conversion. We want to know in ways that allow us to convert the world--but we do not want to be known in ways that require us to change as well.

[Parker J. Palmer, *To Know as We Are Known: A Spirituality of Education* 39-40 (New York: Harper & Row, 1983)]

We have, Robert Coles observed, taught students to become tourists and consumers: "As students come to terms with something called a 'curriculum,' they become consumers, tourists of sorts: they go from one scene (called a 'course') to another, and they are constantly told what to think, what to say, what is the 'right' answer to the 'right' question." [Robert Coles, *Walker Percy: An American Search* 115-116 (Boston: Little, Brown and Company, 1978)]

▪ What am I doing in this course, in "Lawyers and Literature" is that what you're asking me?

"I remember my first day of English 311. I was a sophomore bent on a philosophy degree, fulfilling my literature requirement by taking a professor I had heard was a decent guy. When the clock struck 9:00, a tall, middle-aged man with a gray beard strode into class, his dark green sweater swinging down above his black pants arid brown shoes. It was the day affectionately known as 'Syllabus Day,' the do-nothing day, the day when the most important event of each class was figuring out whom you knew and where to sit. Our professor did not care where we sat. He plopped down his heavy Norton anthology on the front podium and turned around.

'What are you doing here?' he asked. We gazed up at him, a bit shocked." [Abram Van Engen, *Reclaiming Claims: What English Students Want from English Profs*, 5 (1) Pedagogy: Critical Approaches to Teaching Literature, Language, Composition, and Culture 5, 8-9 (2005)]

How, one wonders, did you find your way to "Lawyers and Literature"?

- ▫ "The course was offered at a time that fit my schedule. It's just another course as far as

I'm concerned."

□ "Sally and Sherry signed-up for the course and I'm here because they are here."

□ "I just love to read."

□ "I took literature courses and they were my favorite courses. They were, in some way, different from the courses in which I was being presented with all kinds of facts and information. I was, in taking literature courses, asked to be a different kind of student."

□ "I signed up for the course because I wanted a change of pace. Law school can be relentless in its own narrowly focused way; I guess I am looking to escape."

□ "I'm not really sure why I signed up for the course."

You may not, by predisposition or education, have prepared yourself for what we do in "Lawyers and Literature." One aspect of being unprepared is to find that you've become part of a student culture that has you focusing on something besides learning. Mark Edmundson, in *Why Read?* (Bloomsbury, 2004) calls it a consumer culture. It produces students who are: "devotees of spectatorship" [*Id*. at 10], who have a "timidity, a fear of being directly confronted." [*Id*.]. The students Edmundson describes are "lordly and afraid"; "inhibited, except on ordained occasions, from showing feeling" pp. 11, 13]; they are "stifled from trying to achieve anything original." [*Id*. at 13].

The precusor to this question—what are you doing in "Lawyers and Literature"?—is a still more basic question: What are you doing in law school?

> [N]ot every law student enters law school with a clear notion of why (or even whether) they want to become lawyers. For some, it is simply the next logical step in their academic careers. For others, it is a way to fulfill family expectations. For still others, the desire to become a lawyer has more to do with glamorized media images and high salaries than with the real work of practicing law.

[Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 Tulsa L. J. 227 (2000)]

■ **What are you going to ask us to do in the course?**

Read stories and novels. Write about your engagement with what you read and how you read it. And, perhaps most difficult of all, I want you to learn to talk about what your reading.

- **What stories?**

"There is no single, simple story that will define paradise for us and there never will be." [William Kittredge, "Doing Good Work Together," in Kurt Brown (ed.), *The True Subject: Writers on Life and Craft* 52-58, at 57 (Graywolf Press, 1993)]

- **Why is this idea of "reading" so important?**

"To teach reading (or viewing or listening) that is both engaged and actively critical is central because it is in stories, in narratives large and small rather than in coded commandments, that students absorb lessons in how to confront ethical complexity. It is in dealing with narrative conflicts that they imbibe the skills required when our real values, values that are not merely social constructs, clash. To put the point again in jargon that I would never use with any but the most advanced students, literature teaches effective casuistry: the counterbalancing of 'cases.' It is in stories that we learn to think about the 'virtual' cases that echo the cases we will meet when we return to the more disorderly, 'actual' world." [Wayne Booth, *The Ethics of Teaching Literature*, 61 (1) College English 41, 48 (1998)]

"Recent commentators have touted reading at a time when visual media and passive consumption seem to monopolize our lives. According to Sven Birkerts, 'The finished work, the whole of it, then enables the reader to project a sensible and meaningful order or reality, one that might' be initially at odds with the habitual relation to things.' Harold Bloom asserts that we read 'in order to strengthen the self, and to learn its authentic interests,' but he insists that the point of reading is not to improve others or our society. In 'Why Literature?' Mario Vargas Llosa, dumbfounded and alarmed by the decline of serious reading, mourns the increasingly prevalent notion that reading is a 'luxury' for which even educated people cannot seem to find the time. These critics see literature as neither a solipsistic pursuit nor a shortcut to compassion or other attributes. Rather, reading creates a mode of being in which time appears to slow down and one's attentiveness and flexibility of perspective expand. As Kafka famously but violently put it, 'A book must be the ax for the frozen sea within us.' Like friendship or love, reading has a spiritual function, the ends of which are inseparable from the means. In referring to such experiences as spiritual, I mean that they help one to articulate the ultimate meanings by which one chooses to live. Friendship, love, and reading all may have favorable consequences, but when merely focused on results, the point of the activity is lost." [Neil Scheurich, *Reading, Listening, and Other Beleaguered Practices in General Psychiatry*, 23 (2) Literature & Medicine 304, 308 (2004)]

Scheurich notes that "reading has a spiritual function . . . ." Robert Weisberg, a legal scholar, notes that "[t]he advent of law-and-literature scholarship, or at least the pronouncement of Law and Literature as a major new scholarly enterprise, reflects a general tendency in our culture to look to literature as a source of spiritual renewal . . . ." [Robert Weisberg, *Reading* Poetics, 15 Cardozo L. Rev. 1103 (1994)]. Weisberg point out the irony in the turn to literature for renewal:

"[A]s Richard Poirier points out, it is literature itself whose internal troubles seem to best reflect the various types of alienation, malaise, and disbelief which are said to distress modern culture. In that regard, it may be more appropriate to look to literature as a model of postmodernism confusion than as a cure for it." [*Id.*]

▪ Do you have any idea what Scheurich and Weisberg might have been talking about in their references to "spiritual function" and "spiritual renewal"?

Maybe. I'll not try to speak for either author. I can offer the following little vignette that appears in William O. Douglas' autobiography.

> "Night after night I worked until eleven o'clock or midnight, and often until 2:00 or 4:00 A.M., returning to my desk by nine-thirty or ten in the morning, but before that, teaching an eight o'clock class. I learned in those long nights that some men preferred law practice to love, compassion, family, hiking, or sunsets. The partner for whom I worked usually took me to Savarin Restaurant in the Wall Street area for dinner. Dinner talk was always shop talk, never about running fast waters in a canoe or the problems of unrest in India or the "red hunts" in New England.
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> I had a long series of nights working with H.A. Moore, an excellent lawyer of the old school and completely dedicated to "the law." He wore a green eyeshade and smoked cigarettes incessantly.
>
> One night the telephone rang and he answered in an angry voice because he resented the intrusion, "What? The house is on fire? Why in hell bother me? Call the Fire Department."
>
> Hanging up the phone with a bang, he said to me, "Can you imagine that? My wife calling me from Long Island to tell me our house is on fire. Hrrmmph!"
>
> I saw him some years later. He was gaunt and gray, only a shadow of the man I once knew. He had never had the time to get to know the flight of the whistling swan or the call of
> the loons across northern waters. He had given his all to "the law: and it had squeezed every other interest out-even listening to the music of Mozart, which he loved."

[William O. Douglas, *Go East Young Man: The Early Years* 150-151 (Random House, 1974)]

The idea that literature is a basis (a strategy?) for renewal is a common theme in the teaching of literature. Mark Edmundson, puts it this way: "Literature is . . . our best goad toward new beginnings, our best chance for what we might call secular rebirth. . . . [I]n literature there abide major hopes for human renovation." Literature, Edmundson claims, can become the source of a "kind of transforming experience." [Mark Edmundson, *Why Read?* 6 (Bloomsbury, 2004)]

Edumdson provides a more detailed explanation of this idea of transformation when he describes

reading Proust: “Immersing herself in Proust, the reader may encounter aspects of herself that, while they have perhaps been in existence for a long time, have remained unnamed, undescribed, and therefore in a certain sense unknown. One might say that the reader learns the language of herself; or that she is humanly enhanced, enlarging the previously constricting circle that made up the border of what she’s been.” *Id*. at 4.

▪ Can you relate your William O. Douglas story to the “lawyers and literature” course?

Mark Edmundson in *Why Read?* says, about reading: “Reading woke me up. It took me from a world of harsh limits into expanded possibility.” [Edmundson, at 1]. Edmundson’s book is about teaching literature; he explores the problems of teaching literature at a time when literary theory has taken center stage in English departments around the country. It is also, Edmundson says, a book written to students “who might dream of changing their current state through encounters with potent imaginations.” [*Id*. at 3]

It’s undoubtedly true that in teaching “Lawyers and Literature” I have in mind your being (or becoming) a particular kind of student, and in being this kind of student that you will become a particular kind of lawyer. Let me see if I can articulate this ideal, this way of being that I have in mind. I trust that it is a way of being that comports with many of the ideals and hopes you now hold out for yourself as you set out to become a lawyer.

We are dealing here, in “Lawyers and Literature” with what Edmundson calls “final narratives.” “A Final Narrative . . . involves the ultimate set of terms that we use to confer value on experience. It’s where our principles are manifest.” [*Id*. at 25]

> [T]he function of a liberal arts education is to use major works of art and intellect to influence one’s Final Narrative, one’s outermost circle of commitments. A liberal education uses books to rejuvenate, reaffirm, replenish, revise, overwhelm, replace, in some cases (alas) even help begin to generate the web of words that we’re defined by. But this narrative isn’t a thing of mere words. The narrative brings with it commitments and hopes. A language, Wittgenstein thought, is a way of life. A new language, whether we learn it from a historian, a poet, a painter, or composer of music, is potentially a new way of life. [*Id*. at 31-32]

The core of a liberal arts education, according to Edmundson, is directed to the questions that implicate our final narratives: “Who am I? What might I become? What is this world in which I find myself? How might it be changed for the better?” [*Id*. at 5]. The liberal arts and the education they provide are about “the conduct of life.” [*Id*.]. (Edmundson writes of his fear that the liberal arts education he describes is no longer sought or so easily found.) “We are not willing to ask the questions that matter.” [*Id*. at 6]. “We ought to value great writing preeminently because it enjoins us to ask and helps us to answer these questions, and others like them. It helps us to create and re-create ourselves, often against harsh odds.” [*Id*. at 5]

[Edmundson relates how he begins his humanities courses with two questions: (1) the religion question—"How do you imagine God?")(*Id*. at 23, *see generally*, 21-28), and (2) the "good life question"—"I ask about how they imagine the good life." *Id*. at 26-27. Edmundson admits there is nothing new in this inquiry; it is an inquiry left to us as a legacy from Socrates. *Id*. at 27. "Posing the question of religion and the good life allows students to become articulate about who and what they are." *Id*. at 27. This is where "real thinking starts."*Id*. at 28]

At one point, Edmundson calls liberal arts education, a "literary education." *Id*. at 29. In this kind of literary education the questions posed are: "What will you be? What will you do?" *Id*. at 82.

"When we're talking about Final Narratives, we're talking about ultimate values, and strong feelings inevitably come out . . . ." *Id*. Edmundson notes, parenthetically: "I sometimes preside over a raucous classroom." *Id*.

Edmundson describes a kind of teaching in English Departments that fails to place literature in the context of our final narratives:

> They [humanities teachers] cultivate attentiveness to written words, careful consideration, thoughtful balancing, coaxing forth of disparate meanings, responsiveness to the complexities of sense. They try to help students become more like what Henry James said every writer ought to be, someone on whom nothing is lost. Attentiveness to words, to literary patterns and their meaning-making power; that remains a frequent objective of liberal arts education. *Id*. at 26.

"By the time we enter the mythic realm of law school we come as characters in search of *our* plot. We are looking for the key to *our* text. We want something to do with our lives; we need a story for our life cycle. We are questers who separate from the quotidian world, fall into the netherworld of professors, cases, briefs, exams, law review, clerking, and then emerge—reborn—degree (shaman's certificate) in hand to tell others the stories of the law." [John Batt, *Law, Science, and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning*, 40 J. Legal Educ. 19, 22-23 (1990)]

▪ You don't have us reading anything in the way of theoretical work, or trying to learn anything about the various schools of literary criticism. Is there a reason for that?

"If you set theory between readers and literature—if you make theory a prerequisite to discussing a piece of writing—you effectively deny the student a chance to encounter the first level of literary density, the level he's ready to negotiate. Theory is used, then, to banish aspiring readers from literary experience that by rights belongs to them." [Edmundson, *supra*, at 41]

"The way we read now partly depends upon our distance, inner or outer, from the universities,

where reading is scarcely taught as a pleasure, in any of the deeper senses of the aesthetics of pleasure." [Harold Bloom, *How to Read and Why* 22 (Scribner, 2000)]

"Since literature seemed to be about everything that there is—about the human condition—I figured that a good literary critic would have to make himself expert at that big picture. It didn't take me long to realize that the professionalization of literary criticism has taken reductionism as its model, and that it too can lead to learning more and more about less and less until you're in danger of knowing everything there is to know about nothing." [Richard Powers remark, in an interview with Jeffrey Williams, *The Last Generalist: An Interview with Richard Powers*, 2 (2) Cultural Logic __ (1999)]

There is, of course, no science of stories, but there is a well-developed field of narrative theory—narratology—and enough literary criticism theory to provide years of study. Unlike the narrative theorist and the academic literary critic, I do not focus on theory, indeed, I don't try to define fundamental terms like story and narrative, or even draw a distinction between them. In literary criticism circles, the approach I take would signal my status as an amateur, an outsider who does not understand or respect the value of theory. But I take this theory-light approach, and use the language I do, for a reason. We are all, already (more or less), enmeshed in stories and we don't need theorists and narratologists to establish or prove the point. We already know what a story is, what it means to hear one, and what it takes to tell one. We use stories in virtually every aspect of our everyday lives—to pass the time, convey information, to let someone know who we (or at least who we want to be), to locate ourselves in a place, family, and community. We turn to stories to survive and for the pleasure they bring us. Stories are part of our human inheritance. Theory may be necessary to maintain a discipline called literary criticism; stories can survive without theory.

▪ Why stories?

"Consider what it is that trial lawyers do at our very best. We are masters of narrative, attempting to arrange complex and messy facts into a coherent story. We are masters of characterization, attempting to humanize our clients, explain their motives, and even seem mildly likeable ourselves. We're masters of human psychology, attempting to figure out judges and juries and why people do sometimes the amazing things that they do. And we are masters of drama, trying to surprise, engage, and yes, even entertain." [Richard North Patterson, *Law & Literature*, 51 U. Kan. L. Rev. 307, 308 (2003)]

Robert Coles, a child psychiatrist who has taught literature courses at the Harvard Law School, relates the following: "For years I have been teaching . . . doctor stories [of William Carlos Williams] to medical students, and during each class we all seem newly awakened—encouraged to ask the important whys, consider the perplexing ifs. The stories offer medical students and their teachers an opportunity to discuss the big things, so to speak, of the physician's life—the great unmentionables that are, yet, everyday aspects of doctoring: the prejudices we feel (and feel

ashamed of), the moments of spite or malice we try to overlook, the ever loaded question of money, a matter few of us like to discuss, yet one constantly stirring us to pleasure, to bedeviling disappointment in others, in ourselves . . . . He [Williams] gives us a chance to examine our ambitions, our motives, our aspirations, our purposes, our worrying lapses, our grave errors, our overall worth. He gives us permission to bare our souls, to be candidly introspective, but not least, to smile at ourselves, to be grateful for the continuing opportunity we have to make recompense for our failures of omission or commission.

He extends to us, really, moments of a doctor's self-recognition–rendered in such a way that the particular becomes the universal, and the instantly recognizable: the function, the great advantage of all first-rate art. And not to be forgotten in this age of glib, overwrought formulations, of theories and more theories, of conceptualizations meant to explain (and explain away) anything and everything, he brings to us ironies, paradoxes, inconsistencies, contradictions—the small vignette which opens up a world of pleasurable, startling, or forbidden mystery." [Robert Coles, "Introduction," in William Carlos Williams, THE DOCTOR STORIES vii-xvi, at xiv-xv (New Directions Books, 1984)]

"In Ireland the storyteller, the *seanchtfi*, is a revered person, the holder and dispenser of truths about the world and ourselves, truths we find nowhere else—not in religion, not in science, not in law. (Priests of these disciplines might dispute this assertion. Being a storyteller, I don't.) The epiphanous power of the story has to do with boundaries, I think. Like myths and fables that break all boundaries of reality (to plunge to one even deeper), the stories our mothers and fathers tell us about our families, about themselves, stories coming from their mothers and fathers, come to us, even when we don't realize it, as our most powerful realities to be heard, told, and continued somehow—that's usually the dilemma of a lifetime: making new boundaries, making them our own. It's a matter of finding our own voices, identities, boundaries, selves." [Maureen McCafferty, *The Storyteller's Voice*, 2 Colum. J. Gender & L. 154 (1992)]

"Story is what interests me. Not this or that formula for story, not this or that genre, not factual story versus fictional, but story itself in its broadest sense. We do not know of any human community anywhere at any time that did not have and tell stories. Once we step out of the purely physical realm of birth, growth, reproduction, and death, little else is common to all human societies, yet all without exception tell or told stones. As soon as we can define ourselves as human, we can define ourselves as storytellers. Homo sapiens is the Storytelling animal." [Mary Paumier Jones, *The Storytelling Animal*, 50 Georgia Rev. 649 (1996)]

We read stories, according to Wayne Booth in quest of a "kind of triple vision": "First, students must learn how to engage fully and in a sense naively, practicing what Coleridge calls willing suspension of disbelief . . . what might be called 'genuine listening.' They must learn the fun of being 'taken into the narrative world'—often even in a sense taken in, experiencing the fun of total escape from the everyday world. Secondly, they must learn how to join simultaneously . . . the kind of critical audience that implied authors invite them to join as they distance themselves from the credulities of the story they are telling. . . . Thirdly, students must learn how to become

fully critical, skeptical readers and listeners, questioning both the 'taking in' of the narrative 'world' and the implied author's opinions about it . . . . In short, students can learn the rich complex experience of combining full listening with critical analysis of what is 'heard.' They need to learn how to think about, and possibly reject, values of the story world they first 'took in.'

The irrefutable reason all this is important is that our most powerful ethical influences—except perhaps for parental modeling—are stories: it is in responding to, taking in, becoming transported by story that character is formed, for good or ill. Stories that listeners really listen to are powerful self-creators: they can create or reinforce bad ethos or good. They can transform us in self-destructive directions or they can turn us into would-be heroes. Since no one story produces any one provable effect on every listener, it is probably impossible ever to obtain scientific proof of this claim. But it is obvious when we think about our own past experience that in entering the story world we get our strongest impressions of what are the most desirable ways to live. . . . [W]e experience what we would most like our constructed selves to be—or what we would most like to avoid being. We all know from both personal experience and observation of our students that when stories really work, when we are fully 'taken in' by a story-world and feel ourselves loving and admiring or hating and detesting portrayed characters, our own aspirations and habits of thought are changed." [Wayne Booth*, The Ethics of Teaching Literature*, 61 (1) College English 41, 49 (1998)]

"For a while I felt a certain deja vu when working with what I would call the unreflective student. At length I realized that the experience was parallel to a common clinical situation: the patient who seems likely to benefit from psychotherapy but who has no inclination for it. Not infrequently patients reject psychotherapy not for financial or other logistical reasons but rather because they simply prefer the idea of medication or because they see no value in considering their lives in a systematic way. Often such patients are not being difficult; they genuinely fail to appreciate any outstanding virtues of psychotherapy. If they seek medication to treat their symptoms, is it an unwarranted imposition of opinion to feel that anything is amiss?

To be sure, students, residents, and colleagues are not patients, nor is reading literature congruent to undergoing or providing psychotherapy, even if it is widely recognized that there is a narrative aspect to both. But the question of why either process should be valued supersedes both literary criticism and purely clinical prudence. Why read? Why discuss the intimate details of one's life with a stranger designated as a therapist? Within English departments and psychoanalytic institutes, respectively, an avid interest in such matters goes without saying, but advocates of both literature and psychotherapy often find themselves struggling to convey the worth of those experiences to unconvinced general audiences. In expressing their worth, I propose that literature and psychotherapy, while obviously distinct in a number of ways, share a group of core values that are widely seen as endangered within psychiatry as well as within contemporary culture." [Neil Scheurich, *Reading, Listening, and Other Beleaguered Practices in General Psychiatry*, 23 (2) Literature & Medicine 304, 304-305 (2004)]

“Every now and then one comes across some really powerful character in an out of the way place. I mean a really powerful character who writes, or paints, or walks up and down and thinks, like some overwhelming animal in a corner of the zoo. Perhaps, I feel terribly in need of encountering some such character.” [Wallace Stevens, letter to Henry Church, dated November 20, 1945, in Holly Stevens (ed.), *Letters of Wallace Stevens* 517-518 (Berkeley: University of California Press, 1996)(1966)][Wallace Stevens was a lawyer, insurance executive, and a poet]

■ **Do some stories have greater potential for “teaching” than others?**

Of course, the “potential” of any particular story is going to depend a great deal on the reader, but we may well find that some stories, not necessarily by design of the author, are going to be more instructive on what Mark Edmunson called “final narratives” than are others.

Consider the stories told by Sufis: “[T]he Sufi teaching story is open-ended, depending on individual members of the audience for a variety of interpretations. Unlike most stories, the Sufi story becomes a means, rather than an end; significantly, these stories are intended to change the form of the thinking process itself. According to Idries Shah, who is the most important spokesman for contemporary Sufism, the action of the Sufi teaching story ‘is direct and certain upon the innermost part of the human being, an action incapable of manifestation by means of the emotional or intellectual apparatus. The closest that we can come to describing its effect is to say that it connects with a part of the individual which cannot be reached by any other convention, and that it establishes in him or in her a means of communication with a non-verbalized truth beyond the customary limitations of our familiar dimensions.’ . . . . These tales have been long used by the Sufis not only because ‘they are highly economical ways of capturing aspects of the human condition, but also because through the brief narrative form of the tale the Sufis are capable of transmitting knowledge quickly and potently rather than having to explain it away in a discursive, logical or philosophical way.’ Furthermore, since the average person tends to think in conditioned patterns and finds it difficult to adapt to a different point of view, the value of the Sufi tale is to be found in the unexpected juxtaposition of ideas, designed to jar the reader or listener from a more comfortable and often rigid thought pattern.

* * * *

A Sufi can be anyone (scientist, poet, housewife, writer, shopkeeper, etc.) who has the potential to grow by the Sufi method. Indeed, there are two main objectives of Sufism: ‘(1) to show the man himself as he really is; and (2) to help him develop his real, inner self, his permanent part.’ The Sufi teaching story assumes the first of many important functions by operating as a sorting-out process in that it serves to eliminate those individuals who really are in need of psychotherapy or those who have come to worship. Sufism neither encourages disciples nor is there a guru to follow as in other Eastern ideologies. It is not an organized religion with specific dogma. Although one has a teacher, one is much more on his own and must accept responsibility for himself. There are levels of conscious development to achieve, and it is here that the teaching story can aid people to awaken from the conditioning of their ordinary lives. The initial response of even an interested individual is to react as he thinks he should or as his background dictates. It is only after such conditioning is cast off that other interpretations and reactions to the stories

begin to surface. Shah notes: ‘At last, as the students become less emotional, we can begin to deal with the real person, not the artifact that society has made him.’ Because the Sufi experiences the world as having extra dimensions, ‘to him things are meaningful in a sense which they are not to people who follow only the training which is imposed upon them by ordinary society.’ To be a Sufi is to make of life an adventure, or as Shah emphasizes, a ‘necessary adventure.’ It is then through these stories of inner meaning that the Sufi experience can be provoked in a person: ‘Once provoked, it becomes his own property, rather as a person masters an art.’" [Nancy Shields Hardin, *The Sufi Teaching Story and Doris Lessing*, 23 (3) Twentieth Century Literature 314, 314-317 (1977)(citing Idries Shah, "The Teaching Story: Observations on the Folklore of Our ‘Modern’ Thought," in Robert E. Ornstein (ed.), *The Nature of Human Consciousness* 291 (Viking Press, 1974) and other Idries Shah commentary]

■ **Why literature?**

"What Is the Value of Involvement with literature? The twentieth century has given a scientific answer to this question: because it is there. I call the world view underpinning this answer the "knowledge" paradigm. The nineteenth century, by arid large, gave a moralistic answer: because it makes us better people. The view at the base of this answer 1 call the "wisdom" paradigm. Most of the problems facing our conceptualization of literary studies in the West today come from the fact that we are only slowly becoming aware of the disadvantages of the "knowledge paradigm" but do not wish to return to the discarded "wisdom'‘ paradigm, whose disadvantages are clearer. This leads to a reliance on an unacknowledged patchwork combination of both, and so to theoretical confusion." [Bruce E. Fleming, *What is the Value of Literary Studies*?, 31 New Literary History 459 (2000)]

Fleming goes on to note: "Each of us patches together a view of life out of the diverse fragments of our own experience, filtered through and given shape by articulations that we find in the world around us. Literature is not the only place where this can happen, but it is the place set aside in the world for such articulations to be developed. [*Id*. at 471-472]

There are a hundred and ten ways to express the value of literature. What follows is a sampling:

> ▫ "We all have slumbering realms of sensibility which can be coaxed into wakefulness by books."
>
> — Robertson Davies, *A Voice From the Attic: Essays on the Art of Reading* 13 (Penguin Books, rev. ed., 1990)]
>
> ▫ "[L]iterature is an art, and . . . as an art it is able to enlarge and refine our understanding of life."
>
> — Robertson Davies, *Reading and Writing* 2-3 (University of Utah Press,

special ed., 1993)(1992)

▫ The study of literature "is the place—there is no other in most schools—the place wherein the chief matters of concern are particulars of humanness—individual human feeling, human response, and human time, as these can be known through the written expression (at many literary levels) of men living and dead, and as they can be discovered by student writers seeking through words to name and compose and grasp their own experience. English [that is, literature] in sum is about my distinctness and the distinctness of other human beings. Its function, like that of some books called 'great,' is to strive at once to know the world through art, to know what if anything he uniquely is, and what some brothers uniquely are. The instruments employed are the imagination, the intellect, and texts or events that rouse the former to life . . . . [T]he goal . . . is to expand the areas of the human world—areas that would not exist but for art—with which individual man can feel solidarity and coextensiveness."

— Benjamin DeMott, *Supergrow: Essays and Reports on Imagination in America* 143 (E.P. Dutton, 1969)

▫ "It appears to me quite tenable that the function of literature as a generated prize-worthy force is precisely that it does incite humanity to continue living; that it eases the mind of strain, and feeds it, I mean definitely as nutrition of impulse."

— T.S. Eliot, *Literary Essays of Ezra Pound* 20 (New Directions Book, 1935)

▫ Literature "returns you to otherness, whether in yourself or in friends, or in those who may become friends. Imaginative literature is otherness, and as such alleviates loneliness."

— Harold Bloom, *How to Read and Why* 19 (Scribner, 2000)

▫ "You look for your own story in literature; it's one of the best mechanisms you have to convince yourself you're not alone."

— Glenn Schaeffer, founder of the International Institute of Modern Letters, UNLV Magazine

▫ "Literature, I argue, is the product of a way of reading, of a community agreement about what will count as literature, which leads the members of the community to pay a certain kind of attention and thereby to create literature."

— Stanley Fish, *Is There a Text in This Class? The Authority of Interpretive Communities* 97 (Cambridge: Harvard University Press, 1980)

▫ Literature teaches, "it expands one's sympathy, it complicates one's sense of oneself and the world, it humiliates the instrumentally calculating forms of reason so dominant in our culture (by demonstrating their dependence on other forms of thought and express, and the like). It is one of the deepest characteristics of literary texts to throw into question the nature of the language in which they are written, and this necessarily throws into question as well the nature of any language in which they might be talked about or into which they might be translated."

— James Boyd White, *From Expectation to Experience: Essays on Law & Legal Education* 55 (Ann Arbor: University of Michigan Press, 1999).

White goes on to observe that "literary teaching" leads us "towards incrementally more complete, but never wholly adequate, understandings of other people and other minds—towards other languages, other ways of thinking and being and imagining the world. These understandings in turn carry us towards a general understanding both of language and of the mind, one that is literary rather than conceptual in kind and affects our reading not only of 'literature' but of all the texts that make up our world." [*Id*. at 58]

"Literature lives through language, and so must we . . . ." [*Id*. at 60]

"What I think literature has most to teach, then, is a way of reading, and reading not only 'literature' but all kinds of texts and expressions: a way of focusing our attention on the languages we use, on the relations we establish with them, and on the definition of self and other that is enacted in every expression." [*Id*.]

▫ "Reading is a direct and immediate engagement with language. Discussing what we read intensifies this engagement, giving us an increased sense of authority and self-confidence. As we build language skills, we build life skills. We learn our place within the world of language. In an important sense, by reading and discussing what we read, we all create our own place in the world. We become productive citizens."

— Robert Waxler, The Power of Stories, website.

▫ "Students are formed by the reading they do, by the views of self and world such reading presents."

— Parker J. Palmer, *To Know as We Are Known* 19 (Harper & Row, 1983)

▫ "For students whose recent training stresses precise, structured, and explicit analysis, the inferential and expressive freedom of . . . fiction can be disorienting. . . . Some students may have so successfully transformed themselves into legal writers that expressive prose no longer communicates anything . . . ."

— Alexander Scherr & Hillary Farber, *Popular Culture as a Lens on Legal Professionalism*, 55 S.C.L. Rev. 351, 378 (2003)

◻ “The study of literature offers many ways to improve literacy: it gives access to language, reading, writing, a shared culture, and one’s own self.”

— Jean Trounstine, Why Literature in Prison? — website.

◻ “America’s literature matters. A nation defines itself and its world by the stories it tells and the books it reads. Concurrently, its international identity is shaped by the songs of its poets, the myths of its writers, and the imagination of its citizens.”

— “Why Literature?” The Writer’s Garrot—website.

◻ “The craft of literature: Articulates insights, sentiments in ways that sometimes the rest of us cannot—Gives voice to what is submerged and suppressed (the questions behind the questions)—Defamiliarizes the familiar.”

— Johanna Shapiro, Can Poetry Make Better Doctors?—website

◻ “[L]iterature goes beyond life. It is art; it is an imaginative creation that can tell truths gracefully, subtly through narrative, poetry and the movement of characters on a stage. Any imaginative act suggests possibility, and this is another reason to continue studying literature.”

— Florence Dee Boodakian, In Defense of Literature—website—no longer available

◻ “I urge literature upon lawyers and law students to teach how the culture of the law attracts and repels those who enter its province. Novels are profoundly useful tools to study human nature, and I teach these books as a strategy, not a panacea, to counter many of the ills attributed to legal education and lawyering today.”

— Ilene Durst, *Valuing Women Storytellers: What They Talk About When They Talk About Law*, 11 Yale J.L. & Feminism 245 (1999)

▪ Can you relate your “why literature?” question more specifically to the fact that we have set out to become lawyers?

Thomas Eisele has observed that “Professions . . . encourage in-depth but narrow, divorced glimpses of certain aspects of the world. Their obvious value is in their potential for discovery and focus. Their obvious risk is in their potential for myopic vision and an obsession with one view of the world.” [Thomas Eisele, *The Legal Imagination and Language: A Philosophical*

Criticism, 47 U. Colo. L. Rev. 363, 380 (1976)**]**

Robert Scholes, a literary critic, points out, that: "To acquire a first language is to enter an elaborate cultural situation. Such an event may in itself be traumatic and will in any case have important effects on perception and cognition." [Robert Scholes, *Semiotics and Interpretation* 5 (Yale University Press, 1982)]

Terry Eagleton, still another literary critic, argues that: "Discourses . . . of all kinds, from film and television to fiction and the languages of natural science, produce effects, shape forms of consciousness and unconsciousness, which are closely related to the maintenance or transformation of our existing systems of power. They are thus closely related to what it means to be a person. Indeed 'ideology' can be taken to indicate no more than this connection—the link or nexus between discourses and power." [Terry Eagleton, *Literary Theory: An Introduction* 210 (Minneapolis: Univeristy of Minnesota Press, 1983)**]**

▪ For the most part, everyone speaks in laudatory terms about "literature." How does "literature" get such a good press, even as so many of us go about our lives as if *it* didn't exist? Can you define literature?

Literature has a good press because it's a grand abstraction. It's hard to take a principled stance against love, honor, loyalty. Literature has become a virtue that reflects history, community, labor, creativity, individual effort, learning, and personal change. We don't find much in the way of evil done in the name of literature.

As for a definition of literature, I'm not sure I'm up to the task. I'm reminded of a philosophy teacher's observation about his advice to students when they get around to asking for a definition of philosophy. He told them, "when one feels such a need it is generally best to lie down until the feeling passes." [William E. Kennick, "Teaching Philosophy," *Teaching What We Do: Essays by Amherst College Faculty* 163-181, 165 (Amherst College Press, 1991)][1]

"If a literary text does something to its readers, it also simultaneously tells us something about them. Thus literature turns into a divining rod, locating our dispositions, desires, inclinations, and eventually our overall makeup." [Wolfgang Iser, *The Significance of Fictionalizing*, 3 (2) Anthropoetics ___ (1997-1998)(a lecture for the Learned Societies Luncheon, given at Irvine,

[1] "So is there a right relationship for philosophy and literature? This much at least seems to be true to me: we fare best if we keep the relationship between literature (novels, poems, dramas, etc.) and philosophy in this 'and' position, leaving them what they are, whatever they might be, precisely to enable both to bite into each other, like perhaps Plato's dog . . ." Géza Kállay, "Philosophy and Literature—Literature and Philosophy"; with thanks to Michael Blumenthal, who uses the Kállay quote as part of his preface to a new and unpublished collection of poems.

California, February 24, 1997)]

We might, as a matter of curiosity, inquire as to what we think we know about literature, inquire about the kind of scripts we have in place when asked about our relation to literature. William H. Pritchard, an English professor at Amherst noted that, "In his memoir, 'The Dogwood Tree: A Boyhood,' John Updike comments on the innocence of his youthful assumptions about art, religion and politics, yet as a man he reports he has found no certain substitute for those assumptions." [William H. Pritchard, *English Papers: A Teaching Life* 1 (Graywolf Press, 1995)]. So, we might inquire as to the assumptions for which there is "no certain substitute": What assumptions about literature do you bring with you to this course of reading? In what sense would you describe your assumptions as innocent? If asked to describe yourself as a reader of literature, how would you try to do so? What sets literature apart from other writings? Why should literature include Shakespeare and exclude the daily newspaper? Are judicial opinions better considered as literature or journalism? How do you respond to James Boyd White's claim that law is literature? White argues that

> to read the law as if it were literature, that is to ask of this apparently nonliterary discourse questions about tone, character, form, and structure that are drawn from the reading of literature, may do much to lead us both to a clearer sense of the special resources and limits of this discourse and to a clearer sense of the possibilities of our own art. The object is not to deny what is special about the law but to understand it more clearly.

[James Boyd White, *What Can a Lawyer Learn from Literature?*, 102 Harv. L. Rev. 2014, 2023, n. 51 (1989)]

■ **Can you say something about what you think constitutes a "good story"?**

"Every good story begins with some sort of problem or conflict. Put another way, when the story opens, the protagonist finds himself in a state of disequilibrium. It is possible to begin a story with the character in a state of equilibrium, but he must soon find that state of affairs disturbed: there is something the protagonist wants, needs, or desires. There is something missing in his world and he must acquire it; or something has intruded upon his world and he must deal with that change in order to regain equilibrium. And this cannot be any old conflict the writer wishes to attach to his character, it must be anchored in the specificity and texture of the character's background and biography. Something else important to say is that the writer chooses this particular moment in a character's life to dramatize because it is at this moment that the character is living for high stakes. The key word here is change. The ground situation propels the protagonist into a process of transformation." [Charles Johnson, *Storytelling and the Alpha Narrative*, 41 (1) Southern Review 151, 157 (2005)]

■ **When we think of literature, we think of narrative, and of stories being told; we are often, with literature, dealing with something called fiction. And yet, the fiction—in literature—is rarely divorced from reality. Can you say something about the relationship of fiction and reality in literature?**

We can, in reading fiction, begin to think about the ways we make ourselves from the fictions we embrace. Mark Edmundson, *Why Read?*, notes that while humanism has a "long and complex history," it can be defined as "the belief that it is possible for some of us, and maybe more than some, to use secular writing as the preeminent means for shaping our lives. That means that we might construct ourselves from novels, poems, and plays, as well as from works of history and philosophy, in the way that our ancestors constructed themselves (and were constructed) by the Bible and other sacred texts." [Edmundson, *supra*, at 86]

"Fiction and fictionalizing entail a duality, the liar must conceal the truth, but the truth is potentially present in the mask disguising it. In literary fictions, existing worlds are overstepped, and although they are individually still recognizable, they are set in a context that defamiliarizes them. Thus both lie and literature contain two worlds: the lie incorporates the truth and the purposes for which it must be concealed; literary fictions incorporate an identifiable reality that is subjected to an unforeseeable refashioning. And when we describe fictionalizing as an act of overstepping, we must bear in mind that the reality overstepped is not left behind: it remains present, thereby imbuing fiction with a duality that may be exploited for different purposes." [Wolfgang Iser, *The Significance of Fictionalizing*, 3 (2) Anthropoetics ___ (1997-1998)(a lecture for the Learned Societies Luncheon, given at Irvine, California, February 24, 1997)]

Iser argues that we are compelled to overstep the boundaries of our existing world. We do so, because "we seem to need this 'ecstatic' state of being beside, outside, and beyond ourselves, caught up in and yet detached from our own reality . . . ." This *need* "derives from our inability to be present to ourselves." "If we wish to have what remains impenetrable, we are driven beyond ourselves; and as we can never be both ourselves and the transcendental stance to and of ourselves necessary to predicate what it means to be, we resort to fictionalizing." It is, according to Iser, at the "borderlines of knowledge" that "give rise to fictionalizing activity" and in doing so "we might perceive an economy principle at work: namely, what can be known need not to be staged again, and so fictionality always subsidizes the unknowable." [*Id*.]

"Let us sum up by asking what the fictionalizing of literature reveals of the human makeup. If literature permits limitless patterning of human nature, we may infer that what we call human nature is rather a featureless plasticity that lends itself to a continual culture-bound repatterning. It furthermore indicates the inveterate urge of human beings to become present to themselves; this urge, however, will never issue into a definitive shape, because self-grasping arises out of overstepping limitations. Literature fans out human plasticity into a panoply of shapes, each of which is an enactment of self-confrontation. As a medium, it can only show all determinacy to be illusory. It even incorporates into itself the inauthenticity of all the human patterning it features, since this is the only way it can give presence to the protean character of what it is mediating.

Perhaps this is the truth through which literature counters the awareness that it is an illusion, thereby resisting dismissal as mere deception.

Moreover, literature reveals that we are the possibilities of ourselves. But since we are the originators of these possibilities, we cannot actually be them—we are left dangling in-between what we have produced. To unfold ourselves as possibilities of ourselves and - instead of consuming them to meet the pragmatic demands of everyday life—displaying them for what they are in a medium created for such an exposure, literary fictions reveal a deeply entrenched disposition of the human makeup. What might this be? The following answers as to the necessity of fictionalizing suggest themselves: we can only be present to ourselves in the mirror of our own possibilities; or, as a monad in the Leibnitzian sense, we are determined by bearing all imaginable possibilities within ourselves; or we can only cope with the openendedness of the world by means of the possibilities we derive from ourselves and project onto the world; or we are the meeting point of the manifold roles we are able to assume, in order to grasp what we make ourselves into. As none of the roles into which we can transform ourselves is representative of what is possible, humankind is driven to invent itself ever anew. If fictionalizing provides humankind with unlimited possibilities of self-extension, it also exposes the inherent deficiency of human beings—our fundamental inaccessibility to ourselves; owing to this gap within ourselves, we are bound to become creative.

But in the final analysis fictionalizing may not be equated with any of these alternative manifestations. Instead, it spotlights that the in-between state arising as an offshoot of boundary-crossing contains boundless options for human self-fashioning. Fictionalizing, then, may be considered as opening a play space between all the alternatives enumerated, thus setting off free play which militates against all determinations as untenable restrictions. In this sense, fictionalizing offers an answer to the problem which the Greek physician, Alkmaeon, regarded as insoluble: linking beginning and end together in order to create one last possibility through which the end, even if it cannot be overstepped, may at least be illusively postponed. Henry James once said: "The success of a work of art . . . may be measured by the degree to which it produces a certain illusion; that illusion makes it appear to us for the time that we have lived another life - that we have had a miraculous enlargement of our experience."[*Id*.]

I'll not claim that John Bonsignore has nearly so many fish to fry as does Iser, but he will definitely be, for some, a far more accessible commentator (than some will find in Iser): "I am among those who consider artists to be the ultimate social scientists; while the worst of them are caught up in the times and suffer the same loss of perspective or professional deformity as the rest of us, the best transcend the ephemeral and speak from a vision that is both beyond time and place and grounded in the concrete. This is what is exciting about the use of literature as a vehicle for the study of law." [John Bonsignore, *Meta-Law Through Literature*, 1 Am. Legal Stud. Assoc. (ALSA) Newsletter 11 (1976)]

"Perhaps our craving for truth can be satisfied with something other than facts, and fiction has the virtue that it seeks to create not deception, but its gentler cousin, illusion. If truth is stranger

than fiction, possibly fiction is truer than truth." [Marianne Wesson, *Three's a Crowd: Law, Literature, and Truth*, 34 Tulsa L. J. 699, 704-705 (1999)]

In "Lawyers and Literature" we read lawyer fiction to become more attentive to the "fictions" we live and the "stories" we fabricate about the lives we lead as lawyers. In exploring stories we seek to be more reflective about the lives we live and the work we do as lawyers. The course centers around four novels, two novellas, and a selected group of short stories. All of the work you will be assigned for class discussion (with a few exceptions) will be fictional works.

Stories, fictional and real, shape the lives we live. The stories we tell and live as lawyers are as much about "fiction" as they are the "real."[2] Reading fictional accounts of lawyers, we might ask: what is the relation of fiction and reality in our lives as lawyers? A substantial part of the course reading is drawn from fiction, but our reading could as easily be reconfigured using still other fictional writings, autobiographies, and non-fiction readings.

"It is a strange thing to tell stories about non-existent people doing things that never happened. Alone and writing before the abyss of such non-existence, few novelists would have entirely avoided the occasional sense of despair." [Ross Macleay, *An Apology for Parasitism: Revisiting an Old Debate in the Theory of Narrative Art*, 5 Minerva: Internet J. Phil. 1 (2001)]. We live in an age in which "fiction can claim to be one of the great spiritual projects . . . ." [*Id*. at 2]. "Narrative art continues to worry the workday conscience." [*Id*.]

Finally, a little story and a couple of quotes: The vessel that I carry water in has grown a hole. But the distance from the well to the kitchen is short and there is little reason to pay attention to a small leak. One day the well near the house dries up and I go to the stream for water. But in the kitchen I discover that the water vessel is empty. I try again with similar results. There is, I conclude, a problem.

"The knowing self is full of darkness, distortion, and error; it does not want to be exposed and challenged to change. It seeks objectified knowledge in order to know without being known." [Parker J. Palmer, *To Know as We Are Known* 121 (Harper & Row, 1983)]

"A man can try to act out a story that, for him, is false, inappropriate, destructive. Commonly, in fact, people try to be what they cannot be, pretend to be other than they are, overlook their own best strengths in imitation of someone else's story." [Michael Novak, *Ascent of the Mountain, Flight of the Dove: An Invitation to Religious Studies* 60 (Harper & Row, rev. ed., 1978)]

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[2] Reading literature reminds us of the fundamental observation that "[m]an [and woman] does not live simply in the physical world of action, but in the world of language and symbols as well. The reality of language and symbolic representations is often felt to be more factual, concrete and real than the facts of the sensory world." T. Thass- Thienemann, 1 *The Interpretation of Language: Understanding the Symbolic Meaning of Language* 23 (1973).

“At one end of reality is pure fact; at the other end, pure imagination. Spanning these two poles is the infinitely vared spectrum of fiction.” [Robert McKee, *Story: Substance, Structure, Style, and the Principles of Screenwriting* 11 (ReganBooks, 1997)]

■ **How does a literary person read?**

“When we read a narrative, we read it in a particular way. We do not just take in the words and individual incidents. We typically find ourselves asking questions about what is going on; about why the characters and their motives are presented as they are; about the novel’s point of view. Thus, for example, we may ask what attitude Lolita takes toward Humbert Humbert’s pedophilia [in *Lolita*]; what we as readers are to make of his predilection; and about the meaning or point of the narrative. This is part of what it is to read a narrative as a story.

When we read novels, we read them as if the text is organized in a certain way. We read it as organized so as to allow us to ask certain questions. And to see a text as organized in this way is to see it as purposive. The text allows us to ask certain questions. That we come to ask these questions appears to be at least part of the purpose of the novel.

The notion of purposiveness brings with it the idea of an agent. We read the novel as if it has been designed with our interests (cognitive, moral, political) in mind.” [Mary Devereaux, *Moral Judgments and Words of Art: The Case of Narrative Literature*, 62 (1) J. Aesthetics & Art Criticism 3, 5-6 (2004) Devereaux goes on to note that “We read a narrative text as if it were written by an author who has produced the text in such a way as to prompt certain questions and provide the resources to begin to answer them.” *Id*. at 6. And, by way of a footnote, she adds: “It is worth noting here that the novel also develops in such a way as to obscure or refuse answers to the questions it poses.”]

“When we pick up a novel . . . we are invited to understand. . . .

Now when we say understanding we do not mean that there is an inherent, objective meaning which we are called to understand and uncover, but rather that experience to be experience must be ordered, and a coherence of understanding is one aspect of such orderliness. Thus we pick up Henry James’ *The Turn of the Screw* or Nabokov’s *Lolila*, and we try to make sense of what is before us—of the descriptions and thoughts and actions within the world represented by the text.” [H. Peter Steeves, *Phenomenology and the Possibility of Narrative*, 24 (21) Clio 21 , 25-26 (1994)]

“I think most people would agree that I have gotten to its bottom [to the bottom of a work of literature] when I fully understand the work, when I have fully appropriated its language, symbols, ambiguities, organizing principle, persona, narrative techniques, and what have you. All I have to do—and, of course, it’s a lot—is explain all its mysteries, answer all its challenges. It doesn’t matter ultimately what steps I take to appropriate the work: as long as I fully understand

it, I have gotten to its bottom. When I fully understand the work, it may still be complex, but it will no longer be mysterious. All its manifest complexity now makes perfect sense to me. The work of literature has no hidden meanings. It isn't challenging in the way I once thought it to be. If, indeed, a work of literature I have read a dozen times still seems opaque or mysterious to me, I certainly feel more frustration than pleasure. I know for sure I have gotten to its bottom only when I understand it. I know, for example, that when a friend complains about the hidden meaning of a hard work which, for one reason or another, I happen to apprehend fully, I cannot help but feel that my friend is speaking more about himself or herself than about the work of literature, which I can readily see is nothing if not clear in its implications. Everything about the work speaks to me; all its power and all its meaning stand forth. What I am saying is that when I totally appropriate the work of literature, I see what is to be seen. I either see the "the" or I don't. It's not hidden. Where could it be hidden? The extra "the" is visible, just like any of the elements of a piece of writing. There is nothing hidden in the work of literature we have selected to look at. Everything one can ever hope to know about the work shows plainly. I may not see what's there, but that does not mean it is not emphatically showing itself." [Barrett J. Mandel, *What's at the Bottom of Literature*, 38 (3) College English 250, 251 (1976)]

▪ I suspect that a "literary reader" knows how to, in some way, *connect* to a story. Do you have any ideas about how one goes about doing that?

There is, I think, basically two problems. What do you do when you do connect to a story? And, perhaps more problematic, what do you do when you do not connect?

In order to work with a story, you've got to connect to it. I might also note that this idea—this problem—of connecting to a story is related in some indirect way to the way we connect (and don't connect) to our clients and the stories they bring us as lawyers.

As a teacher, I can sometimes, and with some stories, provide a momentary, tentative conduit between you and the story. In asking you to read a particular story|novel, and that I've set about to read it with you, and that I speak for (and not just about) the story, indicates I have found a way, that I hope you to will discover, to connect to the story.

There is, of course, a problem with your dependence upon me for your connection to the story. The connection to the story through me is something like your use of a laptop computer using the battery as a power source. The battery keeps the computer up and running for a few hours, then you get that beeping/warning that says: "save your files and connect with a different power source." A teacher is like the battery power source in a laptop—it gets you a few hours of work on the laptop, but then you've got to switch sources of power. As a reader, you've got to find a source of power which connects you to the story. The teacher is simply a backup, a temporary source of energy, a temporary connection to use while you establish the better source—yourself. [

For some stories, you've never going to understand my enthusiasm for the story, and that's going

to make establishing your own connection to it a bit harder. You may find, even with what you assume is your best effort, that you still don't connect to the story. When this happens, you may need to seek out other sources of enthusiasm, other teachers, other sources of understanding, other readers (and other readings), to keep you going. Let me give you an example. In recent years, I've been trying to read the work of the lawyer/poet, Wallace Stevens. I don't find myself immediately drawn to his poetry. I read it and I don't feel any real connection to it. So, I turn to those who see the genius in it, those who find Stevens' poetry worth reading and writing about, and in doing so I gather renewed energy from their enthusiasm. I find many readers who claim that Wallace Stevens is a wonderful poet. I read what they have to say about Stevens to see if I can undertand how they've come to appreciate his poetry. Reading this secondary literature, I return to Stevens, and see if I too can connect better with his work. and then back to Stevens. It's only by moving from Stevens to those who know him best, those who appreciate his work, that I feel like I'm able to begin to develop my own connection to Stevens. I may not become enamoured with Stevens work, but I've at least found a way to talk about my relationship with Stevens, if not about his poetry!

You may find your engagement is not something you do, so something as it is something done to you. An example of this kind of engagement might be basic Army training. The Army trainee isn't expected or allowed to be "in charge." Indeed, part of the training is to learn to accept that someone else is in command. The lesson is: listen and follow orders. Even so, it's not exactly a passive kind of learning. You don't get to be a soldier by laying around the barracks, listening to music on your iPod. You learn to become a soldier, whether you really/really want to be soldier or not, by doing what basic training requires you to do. There is, of course, a rough parallel between what you do (even if it is not what you most want to do) and what is done to you. There is, one might think, an element of basic training to be found in education more generally. You submit to your teachers, even as you use what they purport to teach to make yourself the kind of autonomous agent/consumer/worker/citizen that you've decided (or unconsciously allowed yourself) to be. Education is, after all our lofty talk, a form of basic training. Whether and how much of education is to be in the form of basic training—in citizenship, sophistication, enculturation, workmanship & craft, or critical thinking—differs depending upon the student, teacher, and institution.

Once you (and your teacher) get beyond the basic training model of education, you must find a way to engage the story; it helps if the story you have taken up has its own power, the power to demand something of you. The teacher, in text-reader equation, is something akin to a mid-wife, prompting you to be the good student, both encouraging your engagement with the story and serving as a source for a temporary connection to the story.

You've got to get your hands on the story. It's one thing to watch the potter throw the clay, still another to find the clay in your own hands, holding it on the spinning wheel (or finding that you can't keep the clay on the wheel at all).

There is always in reading, the pleasure/danger of wish fulfillment. You read a story and get that

gaze in the eye that suggests that the story has had its way with you—that is, you've found the story to be euphoria producing; you say to yourself, "this is wonderful," or "this is what I've known and been trying to say for a long time." But with this kind of star-gazing the reader still has work to do. You've still got to translate your good feelings about the story into an articulation of your engagement with it. It's getting from appreciation ("I like this story") to articulation ("this is the way I read this story") that marks the path of the good student. And, as you may see in my comment about reading the poetry of Wallace Stevens, you don't have to like a story or experience an immediate connection with it to begin to articulate your engagement with the story. (Some engagements don't lead to marriage.) Getting your hands on and in a story—sometimes we get our hands around a story—is simply a matter of saying, "I'm going to do something with this story regardless." ("I'll read and work with this story even if it kills me," says the soldier/student.) Your deep connection to a story may rest upon the deeper mystery of the self, but you may not have the time, the disposition, or the skills to plumb the deep mysteries while your trying to get your way through Lawyers and Literature!

In law school, you've learned that a lawyer's judgment is not simply a matter of reaching a legal conclusion, important as that legal conclusion may be; the lawyer's judgment turns on the argument in supports of that conclusion. (In my Criminal Law course, I tell students we all know what the legal problem is, and most of us know the answer. It's the skill you demonstrate in dealing with we all already know that marks the good student from the mediocre student. The difference between students is marked by the way they argue the case.) In Lawyers and Literature, it's not just a matter of liking or disliking a story, not just reading a story for its characters and its plot, but reading (that is, an engagement) that leaves you (that prompts you) not just with a conclusion about the story, but with an argument. One way to think about the stories and novels you read in Lawyers and Literature is that they both express an argument (the author must argue for the characters and the fictional world that he presents to us) and create, for you the reader, the possibility of an argument, both with yourself and with other readers about not just the meaning of the story, but how to and to read the story, and how to put the story to use. It's not just a matter of reading, but the arguments we make about what we're reading that carries the day.

I sometimes think of this connection/engagement/argument aspects of the reader's work as being most fundamentally, a way of figuring out how to put the story to use. Mark Edmundson, in *Why Read?* puts the problem this way:

> Does it [the work of literature/the story] offer paths one might take, modes of seeing and saying and doing that we can put into action in the world? How, in other words, does the vision at hand, the author's vision, intersect with—or combat—your own vision of experience, your own Final Narrative?

[Edmundson, *supra*, at 74]

■ Is there any handy summary that you can provide about this business of connecting to a story?

I'm not sure I have a good summary for you, but you may find that in the background of all your reading, with every story, you be dealing with some basic questions, questions that might help you locate the story, if they do not provide a guarantee of a connection with it: What is this story doing here (in the course)? And there are a host of questions which accompany this basic one: What am I supposed to do with this story? How am I to talk about this story with my colleagues (my fellow students and the teacher)? How am I supposed to made use of the story to further my education as a lawyer? At times we'll try to be explicit and raise these questions directly, while at other times we'll let them reside off-stage (where they may still be a significant influence on the conversation about the stories). These questions raise a still more basic question, one you may well think too basic to be taken up in a serious way--how do I read? (How is one to try to read this story?) In thinking about these basic questions you may find it interesting, even as you begin the course to think about the s-t-r-a-t-e-g-i-e-s you use in reading

■ Is one person's interpretation of a story as good any other's?

"People cloud the issue if they begin to insist that 'my interpretation is as good as yours.' There is the crucial sense (to which I will return) in which that utterance is true, but all too often when 1 say it I really mean that I am insecure (/ have levels of consciousness, to be sure!); I do not see what the work says, so I delude myself into thinking that one guess is as good as another, thereby saving a vestige of self-respect, however shabbily managed." [Barrett J. Mandel, *What's at the Bottom of Literature*, 38 (3) College English 250, 253 (1976)]

[We see the "any interpretation is as good as any other" most clearly in the skeptical relativism of law students. [W. Bradley Wendel, *Ethics for Skeptics*, 26 J. Legal Prof. 165 (2001-2002)]

■ Do you see a special value in the literature of disaffection and loss?

Maybe I should begin with a parable from Stephen Mitchell's *Parables and Portraits* 10 (Harper & Row, 1990). It goes like this:

> *In the Garden*
>
> Eve bits into the fruit. Suddenly she realizes that she is naked. She begins to cry.
>
> The kindly serpent picks up a handkerchief, gives it to her."It's all right," he says. "The first moment is always the hardest."
>
> "But I though knowledge would be so wonderful," Eve says, sniffling.

"Knowledge?!" laughs the serpent. "This fruit is from the Tree of Life."

"What charm, in the strong sense of that word, which intimates a quasi-magical or medicinal effect, does storytelling have? In general, narrative forms of representation, in fiction or nonfiction, are a steady source of comfort for both author and reader (presenter and listener), though 'comfort' may not be an adequate descriptive term. Homer and Virgil are not afraid to have their warriors shed tears when hearing of past adventures and tribulations, tears that satisfy deeply.

Stories about illness and loss, however, should they portray persons reduced to suffering in a passive way, at most furnish moral examples of endurance. Or, as in Richard Selzer's eloquent vignettes of painful and diseased bodies, they show how ugliness can become, through the doctor's eye and the writer's touch, a strange source of beauty.

Yet a conversion experience is almost needed to value a redeeming change of this kind. It is hard to believe that such consoling depictions are not a mirage. Especially since the sufferer's pain is often heightened by a specific mental anguish, a conception of fault or trespass, as in the Prometheus legend, or Dante's *Inferno*, or the testing of Job.

Today, for the most part, we no longer assume that mortal ills reveal the (hidden) fault of individuals, or of the human as such. We also shy away from accepting Cicero's definition of the philosopher as one who studies death (not unlike the medical doctor in this), or whose entire life, like that of Socrates, is but a preparation of how to make a good end.

Heroism, nevertheless, is not always absent from scenes of extreme suffering, though except for faction or fiction we try to confine such scenes to hospice and hospital. An implicit dramatic conflict between acceptance and defiance is often sensed, not only in the suffering person but also in the vulnerable observer." [Geoffrey Hartman, *Narrative and Beyond*, 23 (2) Literature & Medicine 334 (2004)]

If most of us try to live in the light of day, optimistic, hopeful about the future, is there any one of us that doesn't brood over what this cheerful outlook might disguise. Literature rips away the mask of normality that we so want to embrace. It reminds us, again and again, that life cannot be lived without painful encounters (with ourselves and others), that however successful we are going to experience loss along the way; what we may finally come to admit is that life is tragic.

You might think about "Lawyers and Literature" as an introduction to tragedy. Mark Edmundson in *Why Read?* defines the essential condition/state for tragedy as being "caught between two worldviews, two circles of narratives." [Edmundson, *supra*, at at 80]. "Many of the crises that give us the greatest pain and that are, in their effects on our day-to-day lives, potentially tragic, involve the collision," Edumundson contends, of two sets of values. [*Id*. at 81]

James Boyd White, in *The Legal Imagination*, a book that has so shaped my thinking about legal education that I can't imagine myself as a teacher without White's literary probings, first introduced me to Mark Twain's account of becoming a river boat pilot and what he lost as he acquired his knowledge of the river. The following account is from Twain's *Life on the Mississippi*:

> It turned out to be true. The face of the water, in time, became a wonderful book—a book that was a dead language to the uneducated passenger, but which told its mind to me without reserve, delivering its most cherished secrets as clearly as if it uttered them with a voice. And it was not a book to be read once and thrown aside, for it had a new story to tell every day. Throughout the long twelve hundred miles there was never a page that was void of interest, never one that you could leave unread without loss, never one that you would want to skip, thinking you could find higher enjoyment in some other thing. There never was so wonderful a book written by man; never one whose interest was so absorbing, so unflagging, so sparkingly renewed with every re-perusal. The passenger who could not read it was charmed with a peculiar sort of faint dimple on its surface (on the rare occasions when he did not overlook it altogether); but to the pilot that was an *italicized* passage; indeed, it was more than that, it was a legend of the largest capitals, with a string of shouting exclamation points at the end of it; for it meant that a wreck or a rock was buried there that could tear the life out of the strongest vessel that ever floated. It is the faintest and simplest expression the water ever makes, and the most hideous to a pilot's eye. In truth, the passenger who could not read this book saw nothing but all manner of pretty pictures in it painted by the sun and shaded by the clouds, whereas to the trained eye these were not pictures at all, but the grimmest and most dead-earnest of reading-matter.
>
> Now when I had mastered the language of this water and had come to know every trifling feature that bordered the great river as familiarly as I knew the letters of the alphabet, I had made a valuable acquisition. But I had lost something, too. I had lost something which could never be restored to me while I lived. All the grace, the beauty, the poetry had gone out of the majestic river! I still keep in mind a certain wonderful sunset which I witnessed when steamboating was new to me. A broad expanse of the river was turned to blood; in the middle distance the red hue brightened into gold, through which a solitary log came floating, black and conspicuous; in one place a long, slanting mark lay sparkling upon the water; in another the surface was broken by boiling, tumbling rings, that were as many-tinted as an opal; where the ruddy flush was faintest, was a smooth spot that was covered with graceful circles and radiating lines, ever so delicately traced; the shore on our left was densely wooded, and the somber shadow that fell from this forest was broken in one place by a long, ruffled trail that shone like silver; and high above the forest wall a clean-stemmed dead tree waved a single leafy bough that glowed like a flame in the unobstructed splendor that was flowing from the

> sun. There were graceful curves, reflected images, woody heights, soft distances; and over the whole scene, far and near, the dissolving lights drifted steadily, enriching it, every passing moment, with new marvels of coloring.
>
> I stood like one bewitched. I drank it in, in a speechless rapture. The world was new to me, and I had never seen anything like this at home. But as I have said, a day came when I began to cease from noting the glories and the charms which the moon and the sun and the twilight wrought upon the river's face; another day came when I ceased altogether to note them. Then, if that sunset scene had been repeated, I should have looked upon it without rapture, and should have commented upon it, inwardly, after this fashion: This sun means that we are going to have wind to-morrow; that floating log means that the river is rising, small thanks to it; that slanting mark on the water refers to a bluff reef which is going to kill somebody's steamboat one of these nights, if it keeps on stretching out like that; those tumbling 'boils' show a dissolving bar and a changing channel there; the lines and circles in the slick water over yonder are a warning that that troublesome place is shoaling up dangerously; that silver streak in the shadow of the forest is the 'break' from a new snag, and he has located himself in the very best place he could have found to fish for steamboats; that tall dead tree, with a single living branch, is not going to last long, and then how is a body ever going to get through this blind place at night without the friendly old landmark.
>
> No, the romance and the beauty were all gone from the river. All the value any feature of it had for me now was the amount of usefulness it could furnish toward compassing the safe piloting of a steamboat. Since those days, I have pitied doctors from my heart. What does the lovely flush in a beauty's cheek mean to a doctor but a 'break' that ripples above some deadly disease. Are not all her visible charms sown thick with what are to him the signs and symbols of hidden decay? Does he ever see her beauty at all, or doesn't he simply view her professionally, and comment upon her unwholesome condition all to himself? And doesn't he sometimes wonder whether he has gained most or lost most by learning his trade?[3]

I have selected literary texts that offer a portrait of an authentic American lawyer hero—Atticus Finch—and stories of a far darker sort, stories that suggest that lawyering, with its promise of virtue and glory, has a substantial shadow, a dark element that makes its way into the lives of many lawyers. In *The Second Coming*, *Paris Trout*, *The Fall*, and *The Death of Ivan Ilych*, we find lawyers who followed conventional and well-worn paths to success, but whose success does not immunize them to life's great reversals.

As a footnote to this discussion of disaffection, loss, and tragedy that we find in literature, you

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[3] *See* James Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* 10-13 (Little, Brown and Company, 1973).

might see what we do in "Lawyers and Literature" as an indirect way to address the personal dissatisfaction (and accompanying psychological problems) that many lawyers experience in their work. [*See generally:* Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 Clinical L. Rev. 425 (2005)]

> I begin with a strong dose of the truth for my students. This is something too rarely done at our schools . . . . I tell students the truth about the dismal results of surveys on attorney mental health and career satisfaction, and I tell them the truth about the egregiously low standard of behavior often encountered among attorneys and judges in the real world they are preparing to enter. In case they don't believe me, I recount stories from my own litigation days, and then I pull out the big guns—journals of their student peers now in clinical litigation programs . . . describing the manipulative, abusive, egotistical, and often plainly dishonest actions of some members of our profession. Sharing these truths, and particularly those regarding the unhappiness and ill health in the profession, feels like a bold step because students are unlikely to encounter this information in their other courses. Not surprisingly, students are often taken aback when they see data summaries showing lawyers to have the highest incidence of depression of any occupation in the United States, or to suffer other forms of emotional distress up to 15 times more frequently than the general population.

[*Id*. at 426-427. For a contemporary, detailed, analytical account of how lawyers get themselves into trouble, *see:* Douglas Litowitz, *The Destruction of Young Lawyers: Beyond One L* (Akron, Ohio: University of Akron Press, 2006)]

▪ Is "Lawyers and Literature" in some way related to the law and literature movement?

Basically, "Lawyers and Literature" is not a pedagogical project inspired by the "law and literature" movement. A detailed answer to your question would take us far deeper into the heart of legal academia (and my place in it) than I expect you want to go. "Lawyers and Literature" developed over the years from two courses: "The Legal Imagination" and "The Lawyer as Person." In its first appearance, Lawyers and Literature was based on fiction and memoirs (e.g., Richard Rodriguez, *Hunger of Memory*, and Alice Koller's *An Unknown Woman*. So the course did not develop as a result of my interest in and reading in the field of law and literature. [For a description of a course of reading that draws a distinction between "lawyers and literature" and "law and literature" see William Domnarski, *Law and Literature*, 27 Legal Stud. F. 109 (2003)]

There is now a small tribe of law and legal studies teachers who find more of a connection between lawyers and literature, law and the literary perspective, than the obvious fact that literate people sometimes become lawyers and that lawyers do not give up literature when they become lawyers.

■ **And what is "law and literature" all about?**

"The phrase 'law and literature' is suggestive but unilluminating. A growing cohort of legal scholars claims to be practitioners of law and literature. What activity keeps them off the streets and in the classroom?" [Thomas Morawetz, *Ethics and Style: The Lessons of Literature for Law* (Book Review), 45 Stanford L. Rev. 497 (1993)]

In 1998, Judith Koffler, who was a visiting professor here at West Virginia some years ago noted, in an impressionistic aside:

> "Has it been this long, Lord? Close to a quarter of a century since a band of young law professors, some of us in our hot twenties and nearly all of us without tenure, conspired together over cheap lunches in New York City to promote Law and Literature as a defiant, serious academic pursuit. There was the excitement of the anarchic; no one appeared as a leader, and nothing definite served as authority. There was a glow of fervent dedication; we aimed in no small way to rattle the legal academy with Dante and Dostoevsky, Camus and Homer. We vowed not to produce scholarship that tasted of sawdust. A warren of left-wing lawyers teaching undergraduates in Amherst, Massachusetts, published some of our maiden articles (sometimes immature but invariably imaginative) in the American Legal Studies Association Forum, a comparably anarchic publication that looked then more like a stapled mimeograph.
>
> And why not? Many of us met our hormones in the Sixties and our identities in the Seventies. In our undergraduate days, we had been disgusted and angry over civil rights; we had shut down law schools during the Vietnam crisis and marched on Washington. If our legal training had hammered some discipline into us and had not hammered out our sense of the absurd, fortune favored us with a way to use our skills while feeding our imaginations and satisfying our collective urge for intellectual recognition. As academic mavericks, we could fend off the disdain of colleagues (and the disapproval of curriculum committees) with comforting phone calls. We celebrated when a law journal would publish one of our articles; a Law and Literature symposium brought us ebullience (and no little sense of our growing importance). Tenure followed. Publishers offered book contracts. Adherents emerged. Serious scholars of many political hues (as well as a few hacks and opportunists) joined the ranks.
>
> New agendas have been pushing and pulling at the project, including those of feminists, post-modernists and critical legal scholars. Foundations private and public have helped fund seminars. International scholars have descended on campuses as diverse as Brandeis, Berkeley, and Washington and Lee to give learned papers on our subject. Even in the Siberia of law and economics came a flowering of interest in (and a book about) Law and Literature. These days, law library shelves groan under the weight of new books on law and narrative, law and

> semiotics, and law and literary ideas, while their dusty co-tenants (traditional jurisprudence tomes) make grudging room. A recent issue of the *New York Review of Books* advertises the *Oxford Book of Short Legal Stories*, and that indisputable arbiter of authority, Westlaw, reveals 1,592 iterations of the phrase 'Law and Literature' in its legal periodicals."

[Judith Koffler, *Review Essay: Three Looking Glasses for Law and Literature*, 10 Cardozo Stud. L. & Literature 69, 69-70 (1998)]

"I've always had trouble grasping what 'law and literature' is about. It seems to mean a number of different things. One approach is that the study of literature helps lawyers relate to their day-to-day lives. The practice of law, like the making and the study of literature, involves reading and writing. The idea is this: you study a literary text to see how the author brings her reader into the language of the text and its values; you then study a legal text to see how the same process occurs. The intricate social and human relationships that exist between author and reader, the argument goes, are at the core of both literature and lawyering. A second approach is more substantive. The study of literature allows a lawyer to comprehend human reality more deeply. Literature teaches us about the attributes of the soul. Law and literature are human disciplines. The more a lawyer is aware of how cultural and social nuances and perspectives are expressed in works of literature, the more humane a lawyer's imagination is, and the better off we all are. Then there are those who are more interested in interpretation. A lawyer, by understanding critical techniques used to study the meaning of literature, can better interpret the meaning of legal language. Finally, there are those—Judge Richard Posner primary among them—who maintain that law and literature are separate domains.2 Writing about law and literature—as a form of critical or scholarly thought—really doesn't help one practice law or judging, because lawyering and judging, essentially, have to do with choices of government and political economy, not with literary, or for that matter, artistic, values.

—Yes. I forgot about that. There is also critical literature that probes the narrative dimensions of legal texts, analyzing them in terms of literary texts—like novels, stories, plays and poems. The best of this writing emphasizes the social character of narrative language, and of language itself; some of it creates a narrative of 'storytelling'—that is the word used—as a means by which various dimensions of social reality might be expressed. The question, though, of what narration is, is never asked. The most precise definition I know is Gertrude Stein's. Narration, Stein says, is 'how to tell what one has to tell.' The 'law and literature' writing about narration, including that which engages in 'storytelling,' centers, in Stein's terms, around issues of 'what one has to tell.' '[H]ow to tell' it—a complex and profoundly difficult formal and aesthetic problem, especially in relation to a legal text—is ignored." [Lawrence Joseph, *Reflections on Law and Literature (Imaginary Interview)*, 59 Sask. L. Rev. 417, 418-419 (1995)]

"In the 70s, in a welter of "law and . . ." competitors, Law and Literature struggled to seek a niche in the firmament of accepted legal studies. In the process of seeking an academic appointment, I once met a curriculum committee, whose chairman defiantly asked me, "what

good is it?" In the '80s, its believers weathered attacks from both left and right: the former asked that Law and Literature be a platform to change society; the latter regarded literature as an illegitimate import into the law. In the '90s, a law school worth its reputation could no longer publish its catalogue without inclusion of such an interdisciplinary offering.

Perhaps law educators now see an opportunity to rescue the profession from creeping tedium. Does this portend a new kind of lawyer to be minted for the new millennium? For those of us who have never stopped dreaming of a civilized profession, where the word is its enduring currency, we wish it so." [Daniel Tritter, *Lusty Voice II*, 10 Cardozo Stud. L. & Literature 143, 144-145 (1998)]

There are as many summaries of what constitutes "law and literature" as they are legal scholars who have taken the turn to literature (and narrative). The following, by Philip Kissam might be seen as typical:

> The law and literature movement contains several premises. The study of law in literature may provide insights or criticisms about the practice of law and law's effects upon different individuals or social groups.1 This study might also enhance our moral sensitivities to social oppression and injustices by expanding our imagination, knowledge and empathy for and about others.2 The study of law as literature could enrich our understanding of legal interpretation, legal rhetoric and legal narratives by drawing on the theories and practice of interpretation, rhetoric and narrative in other academic disciplines and contrasting them with conventional legal theories and practice.3 Deploying literary forms in law or scholarship by "telling stories" (fictional and non-fictional stories) may have special value in shocking our assumptions, challenging our established ways of thinking and ultimately reforming law or legal practices.4 More generally, the study of literature and literary aspects of law might make us better readers and writers of legal texts, for example by encouraging our careful and imaginative attention to the words and play of texts, to entire texts rather than merely their "holdings," "rules" or "policies," to ensembles of texts and contexts, and to the inherent and productive ambiguities and multiple interpretations of language.

[Philip C. Kissam, *Disturbing Images: Literature in a Jurisprudence Course*, 22 Legal Stud. F. 329 (1998)]

▪ "Lawyers and Literature" isn't at all like my other classes. Can you comment on that?

John Jay Osborn, Jr., the author of *The Paperchase*, has made a similar observation: "Law and literature courses are springing up in law schools across this country and they are not like other courses in law schools." [John Jay Osborn, Jr., *UFOs in the Law School Curriculum: The Popularity and Value of Law and Literature Courses*, 14 Legal Stud. F. 53 (1990)]. Osborn goes

on to note:

> These courses seem to have arrived in law school in the same way a spaceship might arrive in a backyard. It lands. We have no idea what it is. Half the faculty wants to go out and feel this strange object. It is like nothing they have seen before. That want to touch it, measure it; they want to take little pieces of it back to their laboratories where they can dissect it. The other half of the faculty wants to issue the spaceship a parking ticket.

One difference in the "Lawyers and Literature" course is that it focuses on experience and reflection than on rules and principles. Oddly enough, "Lawyers and Literature" is more a clinic course than it is a traditional law school course. Tony Amsterdam explains the difference this way: "The heart of clinical teaching is immersion in immediate experience and reflection on it. There you have the major difference between clinical law teachers and academic law teachers. The academic teacher seeks to enrich understanding of the general by deriving abstract principles from the particular; the clinician seeks to enrich understanding of the general by refining a capacity to discern the full context of the particular. So analysis serves the clinician as a whetstone of perceptivity—or call it 'sensibility'—or 'intuition' or 'discovery' if you wish." [Anthony G. Amsterdam, *Telling Stories and Stories About Them*, 1 Clinical L. Rev. 9, 39-40 (1994)]

Another reason that "Lawyers and Literature" is different is that the stories and novels set themselves against the usual assumption—that being a lawyer is an absolutely wonderful marvelous thing to do, and in setting out to be a lawyer, you've put yourself on the best possible path to a worthwhile life.[4] This "usual assumption" is further challenged by the fact that we're raising questions about legal education and what kind of path it illuminates for us as lawyers.

Chris Goodrich, describing his first year at Yale, observes:

> My year in law school convinced me that legal education has a way of replacing everyday human values with what I can only call "legal" values—values that sustain the system of law rather than the people that system was created to serve. Law schools commonly boast that they teach students to "think like lawyers," but I learned that some important things are lost, to both the culture and the individual, in the course of this intellectual transformation. Legal training doesn't create selfish, aggressive people—but it does provide the intellectual equipment with which recipients can justify and give force to beliefs and actions most people would wholeheartedly condemn.
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> I no longer doubt that such a transformation occurs among students at most law schools, particularly the "elite" schools that emphasize intellectual

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[4] For a thorough exploration of the alienation of lawyers, see Douglas Litowitz, *The Destruction of Young Lawyers: Beyond One L* (University of Akron Press, 2006).

achievement. At Yale Law . . . the pressure to be somebody else was heavy and constant. The experience often felt a staged event . . . [S]tudents were supposed to leave the legal theater with a distinctly superior understanding of the world. I wasn't alone in that feeling; it seemed impossible for anyone to go through a single day of law school without sensing that he or she didn't measure up—that the ability to think like a lawyer was demonstrably different, and better, than the ability to think as one once did, like an ordinary person.

> From the humiliation that often concluded the professors' Socratic cross-examinations to their scoffing dismissal of our early written work, it was clear that only one worldview—hyperrational, adversarial, and positivistic—was acceptable in law school.

[Chris Goodrich, *Anarchy and Elegance: Confessions of a Journalist at Yale Law School* 4 (Boston: Little, Brown and Company, 1991)]

Scott Turow, in his widely account of his first year at Harvard Law School, confirm's Goodrich's observations. Turow, in *One L*, relates how his fellow students talk about being "limited" and "harmed" by law school, "forced to substitute dry reason for emotion, to cultivate opinions which were 'rational' but which had no roots in experience, [and] the life they'd had before" law school. Turow doesn't try to fully account for their experience, but he takes it as a serious problem. As a classmate told Turow: "They're turning me into someone else . . . . They're making me different."[5] For some students, the transformation that takes place is quite threatening. Colleagues tell Turow they are "being cut away from themselves."

Law school, Turow concludes, teaches you to believe nothing; it's a teaching that comes from learning to take no statement at face value, and to question every premise. This experience of the student, the sense of losing some part of the self, being cut off and cut loose from old meanings comes from learning to think like a lawyer, "a grimly literal, linear, step-by-step process of thought" that leaves the student "suspicious and distrustful." Law school teaches those bathed in optimism a new functional skepticism—the skill of seeing through *everything*—that becomes for some an impenetrable cynicism with a deep disdain of ideals.[6]

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[5] Law teachers do not know (or care) who the student is or what knowledge or skills a student might bring with her to the classroom. Law teachers care less about what you have been, who you are now, and more about what you are going to be. There is a strong sense that whatever qualities of mind a student may bring with him, they must be set aside, give up, in order to become a lawyer.

[6] In a more recent account of legal education, Martha Kimes confirms Turow's observations about law school training in cynicism: "We were being taught to become cynics. To become skeptical. To second-guess everything we were told. To peel back the layers of every statement, looking for a loophole or hidden trap. To analyze every word to death. To distrust people. To become the kind of people other people hate. Indeed, we were learning to think like

The “cost” of legal education, Turow contends, is the dissonance between the new legal world-view he is acquiring and his old “personal way of seeing things.” Turow does not spell out the nature of his personal view of the world, or how it conflicts with his new legal perspective. And, he doesn’t tell the reader enough to evaluate whether what is lost (or changed) is worth what is gained.[7] Turow, confronted with an education that has both destructive potential and will be his future means of livelihood, concludes he must learn the “legal habits of mind without making them” his own “in the deepest sense.” Whatever Harvard Law School might be offering, Turow seeks to learn law and develop legal habits of mind promoted by his teachers but resists the deeper transformative changes that legal education demands of him. The question, for Turow and his Harvard colleagues, is whether they can take up a profession like law without taking on the *shadow* features of those who identify themselves as lawyers. Turow doesn’t make clear what kind of resources, personal or otherwise, might be required to do what he has set out to do. One possible resource is a course of reading like “Lawyers and Literature.”

A final cautionary note: I don’t want to make too much of the difference between reading stories and reading law cases, although there is a difference. The caution is best expressed in James Boyd White’s observation that: “”The process of giving life to old texts by placing them in new ways and in new relations is of course familiar to us as lawyers. It is how the law lives and grows and transforms itself, for the law is nothing if it is not a way of paying attention and respect to what is outside of ourselves: to texts made by others in the past, which we regard as authoritative, and to texts made in the present by our fellow citizens, to which we listen. We try to place texts of both sorts in patterns, of what has been and what will be, and these patterns are themselves compositions. The law is at its heart an interpretive and compositional, and in this sense a radically literary, activity.” [James Boyd White, “Judicial Criticism,” in Sanford Levinson & Steven Mailloux (eds.), *Interpreting Law and Literature: A Hermeneutic Reader* 393-410, at 393

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lawyers.” Martha Kimes, *Ivy Briefs: True Tales of a Neurotic Law Student* 65 (New York: Atria Books, 2007).

[7] When a life is altered, changed, reformed and shaped to meet the demands of a new culture something is lost. For different versions of the loss, see Mark Twain’s account of learning to be a river boat pilot *Life on the Mississippi* and Charles Reich’s story of practicing law with Covington and Burling in Washington, D.C. *See* Charles Reich, THE SORCERER FROM BOLINAS REEF (New York: Bantam, 1977). For fictional accounts see, Walker Percy, THE SECOND COMING (1980); Leo Tolstoy, THE DEATH OF IVAN ILYCH (New York: New American Library, 1960). For theoretical, philosophical accounts, see Gerald Postema, “Self-Image, Integrity, and Professional Responsibility,” in David Luban (ed.), THE GOOD LAWYER: LAWYERS’ ROLES AND LAWYERS’ ETHICS 286-314 (Totowa, New Jersey: Rowman & Allanheld,1983); Thomas Eisele, *The Legal Imagination and Language: A Philosophical Criticism*, 47 U. Colo. L. Rev. 363, 380 (1976)(“Professions (professionals, experts, specialists) encourage in-depth but narrow, divorced glimpses of certain aspects of the world. Their obvious value is in their potential for discovery and focus. Their obvious risk is in their potential for myopic vision and an obsession with one view of the world.”)

(Northwestern University Press, 1988)]

Archibald MacLeish noted that: “The fact is that lawyers would be better off if they stopped thinking of the language of the law as a different language and realized that the art of writing for legal purposes is in no way distinguishable from the art of writing for any other purpose: the problem is one of the mastery, not of a particular vocabulary, but of the tongue itself. The reason why the language of the poet is more precise for his requirements than the language of the law for his is not that the vocabulary is more precise in one case than the other but that the poetry is more likely to write the common language well: he has to--he has nothing else to write.” [Archibald MacLeish, *Book Review*, ___ Harv. L. Rev. ___, 491 (1964)]

In “law and literature” circles, and legal scholars who view law in the broader context of the liberal arts, humanities, history and philosophy, and the tradition of the humanistic perspective more generally, we are asked to read broadly this stuff called law, and to eschew narrow, vocational, technical readings of law beyond those instances in which such readings are demanded by a client. We are asked, in this view of law as one of the humanities, to reconnect our profession and our skills to the underlying social and political justification for our existence—justice. We are asked to look at law as one, among many, explanations of social and political reality. We are asked to judge law by how it is viewed by those outside its embrace as well as those who consider themselves insiders.

▪ There is the hint, the implication, in “law and literature” writings that there is something wrong with legal education. Do you want to comment on this idea that “law and literature” is not just a supplement but a corrective to traditional legal education?

“Fundamentally, our problem [a ‘social malady’ Smith calls it, in legal education and in the legal profession] arises from our failure to take seriously and to ground ourselves securely on the humanistic tradition, of which literature is a chief expression and from which the profession should draw nourishment and direction.” [J. Allen Smith, *The Coming Renaissance in Law and Literature*, 7 Md. L. F. 84 (1978)(Smith, a law professor then at Rutgers University, predicated a “coming renaissance” in law and literature)]

“Literature seems to thrive upon empathetic emanations from the characters portrayed; lawyer’s propensity is to reduce people to stock figures, jammed into the narrow confines of a legal classification system too often concerned only with those facts readily containable within pre-existing phrases, articulated by lawyers using a standard vocabulary.” [Avian Soifer, *Listening and the Voiceless*, 4 Miss. C.L. Rev. 319, 320 (1984). “I am afraid that to think in legal terms, which is largely what the boot camp of the first year of law school tries to get students to do, confines many of us for ever after.” *Id*. at 321 (a comment to which Soifer adds some significant reservations)]

On legal scholarly writing: “It is very formal stuff, winding purposefully, deliberately, through

abstraction upon abstraction, leaving the uninitiated reader gasping for air, or for anything resembling air. It is often writing that removes, or at least seems to remove, more of the world than it lets in, more people than it takes in. It takes the messy, disordered, chaotic, disturbing realities of people's lives and reduces them to fact patterns to be coolly sifted through for relevant details, the rest discarded. It's not life as most of us know it. It's not meant to be. But what is it meant to be?" [Maureen McCafferty, *The Storyteller's Voice*, 2 Colum. J. Gender & L. 154, 154-155 (1992)]

■ **Has the "turn to narrative" taken place in medicine as it has in law?**

"During the decade of the 1980s, literature and medicine has become a legitimate, if modest, field of study. Its Practitioners teach in and out of medical schools, present papers at national and regional conferences, publish articles in journals ranging from Literature and Medicine to Annals of Internal Medicine to College English, write books, and compile bibliographies and collections of teaching materials." [Charles Anderson, "Literature and Medicine: Why Should the Physician Read . . . or Write?" in Anne Hunsaker Hawkins & Marilyn Chandler McEntyre (eds.), *Teaching Literature and Medicine* 33-58, at 33 (New York: Modern Language Association, 2000)]

One of the co-authors of *Literature and Medicine*, Anne Hunsaker Hawkins, responds to Anderson's question, "why should the physician read" as follows:

> In their daily work physicians encounter people undergoing some of the most profound of human experiences—sickness and disability, death, birth—and the turbulent emotions that attend them. Literature that deals with fundamental aspects of human experience can help physicians negotiate those deep waters of human need, grief, and suffering; it can also help them voice their often unarticulated responses to their work. Literature can give them a vehicle, as it were, to explore all these things. A literature course offers the physician an acquaintance with another discipline that, like medicine, deals with character, relationships between characters, story, interpretation, and major life issues.

[Anne Hunsaker Hawkins, "'Read Two Chapters and Call Me in the Morning': Teaching Literature to Physicians," in Anne Hunsaker Hawkins & Marilyn Chandler McEntyre (eds.), *Teaching Literature and Medicine* 353-363 (New York: Modern Language Association, 2000)]

It would be difficult for anyone putting together a map of contemporary perspectives in the disciplines to miss the "turn to narrative." One scholar describes the "turn" this way:

> Until relatively recently, formulating, or thinking about formulating, say, economic theory, jurisprudence, or medicine in terms of narrative was not an available option. The production and dissemination of knowledge in these domains (as well as in those domains listed in the beginning of the previous

> paragraph) were governed by largely scientific or quasi-scientific modes of inquiry and discourse, by nonstoried forms of investigation and reportage. Narrative models were so far outside the disciplinary paradigms that they were literally inconceivable, at least as analytic tools. Story may have appeared in these contexts, but it would have been mobilized and thought of only as digression, example, or rhetorical ornament, something supplementary to the guiding armature of rational argument, and not worth commenting on. But, as we know, things have changed; the wheel has turned.

[Martin Kreiswirth, *Merely Telling Stories? Narrative and Knowledge in the Human Sciences*, 21 (2) Poetics Today 293, 295 (2000)]

Here is the way Kreiswirth made the same point, some five years earlier, in 1995:

> As anyone aware of the current intellectual scene has probably noticed, there has recently been a virtual explosion of interest in narrative and in theorizing about narrative; and it has been detonated from a remarkable diversity of sites, both within and beyond the walls of academia. Along with progressively more sophisticated and wide-ranging studies of narrative texts—historiographic, literary, cinematic, psychoanalytic—we find a burgeoning development of disciplinary appropriations or mediations: narrative and psychology, narrative and economics, narrative and experimental science, narrative and law, narrative and education, narrative and philosophy, narrative and ethnography, and so on, as well as numerous, newly negotiated cross-disciplinary approaches.

[Martin Kreiswirth, "Tell Me a Story: The Narrativist Turn in the Human Sciences," in Martin Kreiswirth & Thomas Carmichael (eds.), *Constructive Criticism: The Human Sciences in the Age of Theory* 61-86, at 61 (Toronto: University of Toronto Press, 1995)]

Just how much things have changed is suggested in Richard Weisberg's recanting of an invitation to visit with some Stanford Law School colleagues:

> I recall a trip to Stanford Law School in 1975, during which a friend invited me to a weekly reading group often attended by members of that faculty. Since we were collaborating on a piece about Law and Literature, my friend was especially pleased that someone in that evening's group had recommended Burgess's *A Clockwork Orange*, a story depicting "horror show" innovative technologies in a futuristic criminal justice system. I happily attended but was surprised to see the assembled faculty's genuine annoyance that fiction had taken its place with the usual readings in political science, judicial biography, economic theory, or—at a tolerated extreme—Rawlsian jurisprudence.

[Richard Weisberg, *The True Story: Response to Five Essayists*, 15 Cardozo L. Rev. 1245

(1994)]

■ **You sometimes use the term narrative, while more often you use the term story. Is there any significant difference in these terms?**

There may, among English professors who specialize in narratology, be a difference. I subscribe to the notion that: "'Narrative' is, after all, a fancy word for story . . . ." [Mary Devereaux, *Moral Judgments and Words of Art: The Case of Narrative Literature*, 62 (1) J. Aesthetics & Art Criticism 3 (2004)]

■ **Do you have a particular purpose in mind in having us read the story|text that you have "assigned" us to read?**

Yes, with a minor nod in the direction of, no. First, the no. The stories|novels assigned have their own existence. They are what they are; you'll do with them what you will. The stories were not written with my pedagogical purposes in mind; consequently, they stand on their own merit quite apart from any "purpose" I might have in making them a part of the course.

And yes, of course, I have a "purpose"—more accurately a set of purposes—in asking you to read what I have assigned. I'm reminded of a little bit of confession found in a law review article I read a good many years ago: "Authors of course materials . . . package their biases in subtle but effective ways, through their selection, organization, and emphasis of materials." [Thomas E. Baker & James E. Viator, *Not Another Constitutional Law Course: A Proposal to Teach a Course on the Constitution*, 76 Iowa L. Rev. 739 (1991)]

There must, of course, be some overall purpose "in mind" or the stories and novels would, upon your reading them, leave you with the sense that you were being lead into a quagmire, or that the person who compiled the course reading list was demented, or simply didn't know what he was doing.

If the major "purpose" in turning to literature is to set you to thinking about your life as a lawyer, and the way that life gets "composed" out of something more than legal rules, legal doctrines, daily interactions with clients, occasional court appearances, writing a trial or appellate brief (or a demand letter for a client), I think it fair to say that there are hundreds of books that might be assigned for such a purpose. (These books may focus on lawyer, or on lawyers; they might all be read with the idea that law is always more than legal rules and their application; that lawyers are not, when it's all said and done, legal plumbers.) So, it's not this more universal purpose in turning to literature that governs may selection, although I do not mean at all to discount its significance.

My purpose is, first, more narrowly limited to lawyers, and less focused on law. Law may be a

character, may play some role, in the stories and novels you are asked to read, but it is always a secondary character. I have, however, limited the readings to those which feature lawyers, or perhaps I should say, someone, who happens to be a lawyer is a character—of some kind—in the story|novel.

But it's not just lawyers in general that I want to explore in the lawyers and literature course, but the lawyer as a reflective human being—or as the title of the course that proceeded this one was called, "The Lawyer as Person." What I'm after with *these particular stories/novels that I've assigned you*—beyond the entertainment, pleasure and edification that comes from reading any well-crafted story—is a story that pulls you toward and into an act of reflection: Who is this lawyer? What am I when I claim to be a lawyer? Can I be a lawyer and anything else?

The reflective work prompted by the stories we read is fairly well captured in Charles Anderson's observation that:

> By absorbing and responding to the story, we work upon ourselves, upon how we represent the world to ourselves, upon our values and our assumptions about the things of the world, and upon the decisions we will ultimately make in response to those things, in the process, we become so deeply immersed in the reality represented by the work, in its events, emotions, and ideas, that we become collaborators in the act of creating that world, resonating in a metaphorical way to the conjunction of our lives and the words of writer. The distance between self and other is diminished, reduced, and finally disappears altogether as we round out and complete the work in greater detail and complexity that any mere words on a page can hope to do. In a very real sense, reading becomes a literary event becomes a composing activity, and we become writers as well as readers.

[Charles Anderson, "Literature and Medicine: Why Should the Physician Read . . . or Write?" in Anne Hunsaker Hawkins & Marilyn Chandler McEntyre (eds.), *Teaching Literature and Medicine* 33-58, at 49-50 (New York: Modern Language Association, 2000)]

Winfried Fluck finds in the historical origins of the novel, what he calls the "literature of religious self-inspection which, following a logic of secularization and dehierachizations, leads to a literature of bourgeois self-empowerment . . . ." [Wilfred Flicked, *Fiction and Justice*, 34 New Literary History 19, 22 (2003)]. The "usefulness of fiction," according to this view is a "process of imaginary self-empowerment. Flicked describes the process this way:

> Wherein does the usefulness of fiction lie for this process of imaginary self-empowerment? The answer of aesthetic modernism, which was crucial in replacing mimetic models of representation, focuses on fiction's potential for defamiliarization, boundary crossing, and cultural transgression. Fiction is regarded as experimental epistemology which permits the reader to cross existing boundaries, explore other worlds, and try out new identities.But why should the

> individual be interested in this kind of imaginary self-extension? The answer provided by modernism is that we are stifled by convention, which suffocates the authentic inner self and prevents self-realization. Why do we seek self-expression in the first place? The explanation provided by one branch of modernism is that a repressed side of the self seeks to overcome self-control by means of art. I think that this is a plausible description of one possible function of fiction . . . .

[*Id.* at 23-24]

Flicked, in an extraordinary passage, drawing on Wolfgang Iser, explains how the process of imaginary self-empowerment works.

> In an essay on representation as a concept of literary analysis, Wolfgang Iser provides a helpful suggestion by drawing on the example of a reading of *Hamlet*. Since we have never met Hamlet and know that he never existed, we have to come up with our own mental images of him. Inevitably, this mental construct will draw on our own associations, feelings, and bodily sensations in order to give life to this character who never existed. In the act of reading, the literary text thus comes to represent two things at once: the world of the text and the imaginary elements added to it by the reader in the process of giving meaning to the words on the page. And it is exactly this "doubleness" or double reference of fiction that can be seen as an important source of aesthetic experience, because it allows us to do two things at the same time: to articulate imaginary elements and to look at them from the outside. Aesthetic experience is thus a state "in-between" in which, as a result of the doubling structure of fictionality, we are, in Iser's words, "both ourselves and someone else at the same time" so that, in reading, we can be inside and outside a character at once. The fictional text allows us to enter a character's perspective and perhaps even his or her body; on the other hand, we cannot and do not want to completely give up our own identity. In reading, we thus create other, more expressive versions of ourselves. This is achieved, however, in a much more complex way than suggested by the term identification. One may assume, for the sake of the argument, that it may be possible to "identify" with a character, but one cannot identify with a whole text. It is the text, however, that provides an aesthetic experience, not just single characters in it. Clearly, in actualizing the text in the act of reading, all characters have to be brought to life by means of a transfer, not only the good or sympathetic ones. The more expressive version of ourselves" is thus not a simple case of self-aggrandizement through wish-fulfillment but an extension of our own interiority over a whole (made-up) world.

Id. at 24.

Flicked continues:

> By engaging the reader's interiority, ranging from mental images to bodily sensations, in the transfer that transforms the words on the page into an aesthetic experience, fiction provides recognition of the reader's subjectivity. This individual empowerment goes beyond any identification with single characters or events in the text. It arises from the necessity of the individual reader to actualize a whole world along the lines of her own interiority . . . . One may call this the "articulation effect" of fiction. Because of its status as a made-up world, the fictional text can employ "official" discourses of the real as host for the expression of yet unformulated dimensions of the self. But what exactly is articulated in this process? Concepts like "the unsayable" may suggest material that violates cultural taboos. This would tie the fictional articulation effect primarily to the expression of socially repressed impulses. We could, in this case, apply categories like desire or the unconscious for that which is articulated.
>
> One way to get around the problem of an all-too-literal understanding of the transgressive role of fiction, which ties its function to an avant-garde role of cultural subversion, is to extend the definition of that what is articulated by fiction from a forbidden or repressed impulse to the broader term "imaginary," which Wolfgang Iser defines, from a phenomenological point of view, as an indeterminate, diffuse, and protean flow of impressions, images, feelings, and bodily sensations. These strive for articulation but, since they do not yet have a gestalt to manifest themselves, have to attach themselves to existing cultural signifiers. Seen in this context, the function of fictional texts to offer a counter-perspective is no longer restricted to daring pioneer works. It is now tied to a potential which fiction possesses in principle, its ability to articulate an interiority that cannot be represented in any other way. By requiring a transfer for their actualization, fictional texts engage this interiority, thereby providing the possibility of articulating something radically subjective, while at the same time representing this dimension of interiority in a way that opens up a way for public recognition.
>
> This "duplicity" can explain fiction's usefulness for an articulation of the imaginary: fictional texts are especially useful, because they can link the subjective and the public dimension by means of a structural analogue.

Id. at 25.

Fluck's explanation may, for some, read like a technical manual. The following, in more simplified terms (that draw on Kierkegaard), may suffice:

> Adopting the [story's] life-view is not the point: the narrative does not indoctrinate us into its life-view as the one true way to approach life. Instead, we see the life-view embodied, enter into it, understand how it looks and feels to

> construct the world in its way, and we are consequently stimulated to reflect on our own way of construing the world. We are led away from immediate actuality, to the work's imaginative ordering of reality according to its life-view, then back to consider our own actuality. It is like looking at ourselves in an inner mirror.

[Pamela Mitchell, *Why Care About Stories?*, 86 (1) Religious Educ. 30, 36 (1991)]

▪ **Any final thoughts?**

Yes, a jumbled, tangled lot of them!

"Tell me, Muse, of the man of many ways, who was driven far journeys, after he had sacked Troy's sacred citadel. Many were they whose cities he saw, whose minds he learned of, many the pains he suffered in his spirit on the wide sea, struggling for his own life and the homecoming of his companions. Even so he could not save his companions, hard though he strove to; they were destroyed by their own wild recklessness, fools who devoured the oxen of Helios, the Sun god, and he took away the day of their homecoming. From some point here, goddess, daughter of Zeus, speak, and begin our story." [*The Odyssey of Homer* 27 (1967)(Richard Lattimore transl.)**]**

Closer to home: I'm downtown with my daughter, who was four years old at the time, to see a parade. When the parade started she turned to me and said: "Lift me up bapa, so I can see."

Walker Percy, in his novel, *The Second Coming*, presents us with a lawyer named Will Barrett. In the opening pages of the novel, Percy, speaking for both Barrett and himself, observes:

> As for Will Barrett, as for people nowadays—they were never a hundred percent themselves. They occupied a place uneasily and more or less successfully. More likely they were forty-seven percent themselves . . . . All too often these days they were two percent themselves, specters who hardly occupied a place at all." Then, later, near the end of the novel, Will Barrett "snapped his fingers and nodded to himself, for all the world like a man who has hit upon the solution to a problem which had vexed him for years." He says, "there is a secret after all" and the secret is to know the "enemy."

[*Id*. at 271]

In "Lawyers and Literature," we will try, ever so humbly and sometimes perhaps not so humbly at all, to see where our "own wild recklessness" has taken us, as we see ourselves the "fools who devoured the oxen of Helios, the Sun god . . . ." I hope that there will be stories, even if in some odd, or perverse way, life you up, so you can see the parade. And in seeing the parade, learning of the pains we suffer in "spirit on the wide sea" we see whether we are two-percent ourselves, or forty-seven? How is it, in being a lawyer we occupy "a place uneasily and more or less

successfully"?

"A man made a long pilgrimage to a holy city. As he neared the city he saw, looming above the lower irregular shapes of other structures, the walls and roof of the great temple that was the object of his journey. Yet again and again, as he searched through dark narrow alleys and small marketplaces, he failed to find its entrance. As best he could, in a language not his own, he made inquiries of the townspeople; but all of them, taught in a newer religion, seemed neither to know nor to care. After much frustration, he was directed at last to a priest of the old faith, who told him that the great temple had in fact long ceased to possess a formal entrance, but rather could be entered in many ways, through any of a large number of the narrow houses and tiny shops which surrounded it. Yet in the end this revelation gave the pilgrim no help at all. Each house or shop he entered seemed so dark and squalid, its furniture so alien, its occupants so forbidding, that it seemed manifestly incapable of opening into the grandeur and freedom of the temple vault. The man left the city in bitterness and sought an easier faith." [Robert Grudin, *Time and the Art of Living* 209 (Harper & Row, 1982)]

I want to leave you with the idea that a literary education invites you to "read over the shoulders of your teachers. You are invited, if need be, to supplant them: For much of what teachers can offer, you can provide for yourself. It is simply a matter of knowing where to start. It's a matter of knowing what you might ask for and get from a literary education." [Mark Edmundson, *Why Read?* 3 (Bloomsbury, 2004)]

Appendix A: Excerpt from—Wolfgang Iser, Do I Write for an Audience?, 115 (3) PMLA 310 (2000)

I have been mainly concerned with conceptualizing why art, and literature in particular, exists. To be more precise, I am fascinated by its function. Why humans beings need fictions is a question that intrigued me very early on, and literature appeared to epitomize this human desire for self-extension.

* * * *

Instead of asking what the text means, I asked what it does to its potential readers.

* * * *

A literary work is not a documentary record of something that exists or has existed; it brings into the world something that hitherto did not exist and that at best can be qualified as a virtual reality.

* * * *

Every literary text normally contains a selection from a variety of social, historical, cultural, and literary systems that exist as referential fields outside the text. This selection is an overstepping of boundaries in that the elements selected are lifted out of the systems in which they fulfill their specific functions. This applies both to cultural norms and to literary allusions, which are incorporated into every new literary text in such a way that the structure and the semantics of the systems concerned are decomposed; the systems are rearranged when selected features of them reappear in the text. These rearrangements move the systems into focus, so that they can be discerned as referential fields of the text. So long as they are organized units of the given world, in which they fulfill their regulatory functions, they are taken for reality itself and thus remain unobserved. The selection disassembles their given order, thereby turning them into objects for observation. The literary text, therefore, does not copy the referential field to which it relates; instead it is a reaction to the extratextual systems whose elements have been incorporated into the text.

As a rule, literature addresses the problems inherent in the systems referred to, so that we can construct whatever was concealed or ignored in the systems concerned or in the ideologies of the day, because their deficiencies form the focal point of the work. At the same time, the tcxl must implicitly contain the basic framework of the respective systems, for these are what cause the problems that literature reacts to.

Since literature endeavors to counter those problems, the literary historian should be able not only to gauge which of the systems were dominant at the time of the work's creation but also to reconstruct the weaknesses and the historical human impact of the systems concerned. If we were to apply R. G. Collingwood's question-and-answer logic, we might say that literature answers the questions arising out of the systems of its environment.

Focusing primarily on two points of intersection—between text and context and between text and reader—reception theory, as I have tried to formulate it, conceives of literature as a form of interaction. This conception goes against the aura surrounding autonomous art, as well as against

the notion of literature as a representation of life; instead, by intervening in contextual realities, literature refracts life's multifariousness.

* * * *

[I]f a literary text does something to its readers it simultaneously tells us something about them. Thus literature turns into a divining rod, locating our dispositions, desires, and inclinations and eventually our overall makeup. This gives rise to the question of why we may need this medium, especially in view of the fact that literature has been put on a par with other media, whose ever-increasing role in our civilization shows how much literature has lost its significance as the epitome of culture. If literature still has anything to offer that the competing media arc unable to provide, it is insight into the all-pervading need of human beings for fictions.

Literary anthropology, as I conceived it, has to highlight why such a fictionalizing activity, ranging from lying to dreaming, permeates human life. Fictionalizing begins where knowledge leaves off, and this dividing line turns out to be the fountainhead of fictions by means of which we extend ourselves beyond ourselves. The anthropological significance of fictionalizing becomes unmistakable in relation to the many unknowable realities that underlie our existence. The beginning and the end are perhaps the most all-pervading realities of this kind. If fictionalizing transgresses those boundaries beyond which unrecognizable realities exist, then the very means we concoct to repair this deficiency—caught between our unknowable beginning and end—becomes indicative of how we conceive of what is withheld, inaccessible, and unavailable. In this respect, our fictions are a measuring rod by which one may gauge the historically conditioned changeability of deeply entrenched human desires.

If the borderlines of knowledge give rise to fictionalizing, we might perceive an economy principle at work: what can be known need not be staged again, and so fictionality always subsidizes the unknowable. This becomes strikingly obvious when, in contradistinction to the inaccessibility of beginnings and endings, human beings are in full possession of what is or of what they are in. This applies to all those evidential experiences in life that are characterized by certainty. Love is probably the most intense of these experiences, and it is also the central topic of staging in literature. Evidential experience is almost like an assault: it happens to us, and we are inside it. But the experience awakens in us the desire to look at what has happened to us, and this is when the evidence explodes into alternatives. Thus the certainties of experience trigger the need for staging in exactly the same way as the cardinal mysteries do.

We can only penetrate otherwise inaccessible realities (beginning, end, and evidential experiences) by staging what is withheld. This enactment is propelled by the drive to reach beyond oneself—not so as to transcend oneself but so as to become available to oneself. become present to ourselves and what eludes cognition and knowledge and is beyond experience can enter consciousness only through feigned representations, for consciousness has no barrier—as Freud remarked—against the perceptible and no defense against the imaginable. Consequently, ideas can be brought forth in consciousness from an as yet unknowable state of affairs, indicating that the presence of the unknowable does not depend on any preceding experience.