

## LAW AND LITERATURE 952 (“Law-Lit”)

Capital University Law School

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### I. LAW’S STORIES

We explore law’s meaning, practice, and value through stories. What is justice? How should we judge? What are law’s foundations? Why should we obey law? How do gender, race, poverty, and cultural norms influence the administration of justice? How do we really decide what happened and whom to blame or hold accountable? Which values are essential to a meaningful life in law? What kind of lawyer should I aspire to become? Such vital questions can find answers in stories about law. Those stories can also help us discover our personal values and affirm our professional ethics as we prepare for the many moral-legal dilemmas in a lawyer’s life. Stories likewise teach us useful skills for legal writing and persuasiveness, including how to build character, conflict, and narrative arc, among other story tools. To these ends, we read short classics such as *A Jury of Her Peers*, *Antigone*, *Billy Budd* and *Noon Wine*, along with the more contemporary works such as *A Trial by Jury* and *Conspiracy: A True Story of Power, Sex, and a Billionaire’s Secret Plot to Destroy a Media Empire*. We also enjoy the movies *The Children Act*, *Michael Clayton*, *Runaway Jury*, and *Anatomy of a Fall* for their many law-lit leitmotifs. We also look to excerpts from poetry, essays, and actual legal cases.

### II. WEEKLY ASSIGNMENTS AT-A-GLANCE

Class Date	Reading Assignment
1/11	<i>A Jury of Her Peers</i>
1/18	<i>Antigone</i>
1/25	<i>The Children Act</i> (movie)
2/1	<i>Billy Budd, Sailor</i>
2/8	<i>A Trial by Jury</i> , Part I
2/15	<i>A Trial by Jury</i> , Part II
2/22	<i>Anatomy of a Fall</i> (movie)
2/29	<i>Noon Wine</i>
3/7	<i>Conspiracy</i> , Part I, pp. 1-110
3/14 (Spring Break)	<i>Conspiracy</i> , Parts II-III, pp. 111-296
3/21	<i>Conspiracy</i> , Parts II-III, pp. 111-296
3/28	<i>Runaway Jury</i> (movie)
4/4	<i>The Soul of Law</i> , <i>One L</i> , and “Notes from a Difficult Case” (all excerpts emailed by Prof. Lewis)
4/11	<i>Michael Clayton</i> (movie)
4/18	TBD depending on schedule

### III. REQUIREMENTS & GRADING

- A. **Books and Movies.** We read the writings and watch the movies listed above. The **only** books you'll need to purchase in print, e-edition and/or audio are (1) D. Graham Burnett's *A Trial By Jury*, (2) Ryan Holiday's *Conspiracy: A True Story of Power, Sex, and a Billionaire's Secret Plot to Destroy a Media Empire*, and (3) Katherine Anne Porter's *Noon Wine* found in *The Collected Stories of Katherine Anne Porter*. **All other readings are available online as linked below or will be emailed by Prof. Lewis as excerpts or online links before class the week of the assignment.** The movies are widely available for rental on most streaming services, such as Netflix, Apple TV, Amazon, and the like.
- B. **Papers.** You write one short mid-semester and one longer paper at semester's end. The short paper (3 pages, double-spaced) can explore an interpretive, jurisprudential, thematic or creative issue raised in law-lit. I'll offer a list of approaches, ideas and topics, while also inviting you to develop your own. The first short paper is due **February on a day to be announced**. It is worth **25%** of your grade. The longer paper (5 pages, double-spaced) is due our final week or later time determined by our schedule. This final paper is worth **50%** of your grade.
- C. **Class Discussion + Law-Lit Confabs.** Our enjoyment and success depend on participation. We strive to create a classroom in which we're all willing to share our personal and intellectual struggles with this thought-provoking material. To help achieve this goal, I create questions, issues, and talking points for our weekly class dialogue. I'll email these *Law-Lit Confabs* before each class. You are **not** required to provide written answers to Confabs, but you can do so to improve your participation. Your overall participation in class throughout the semester equals **25%** of your grade. Note also that if you miss more than 3 unexcused absences, your grade can be lowered by one level, e.g., A to A-.
- D. <http://www.literaryl原因.org>. You can also visit our class website for further info, links, and welcoming content about our studies. Links to our syllabus and various online readings can be found along the left-hand column of the website home page.

### IV. WEEKLY READINGS AND MOVIES IN DEPTH

#### Class 1

#### ***A Jury of Her Peers* – Obedience and Subversion; Gender and Law**

After our class introduction, we talk about what makes a good story, what are some of our favorite stories, and why. We introduce basic story structure and writing ideas that will guide us throughout the semester. We look at what makes for a good *beginning* to a story. We introduce character, conflict and arc as useful writing ingredients, and we apply them to famous literary openings. Can these same ingredients inform our legal writing too?

We then turn to jurisprudential questions in the context of our first story, *A Jury of Her Peers*. This story centers on a murder investigation in the house of the woman suspected of killing her husband while he slept. The male investigators struggle to make sense of the domestic scene while their wives, who have accompanied them to the house, understand all too well what the subtle clues around the home portend. The wives, however, do not tell the men and, in fact, hide evidence from them.

Can we justify subverting law in favor of other values, including those expressed in our customs and norms? Which or whose values control? How do we weigh the competing values? What if we believe the legal system cannot achieve a just outcome? Should we then subvert or manipulate it to find justice? More bluntly, if the justice system privileges one perspective, say the male-dominated outlook, are women justified in undermining legal process to achieve justice or to protect one of their own? Like so many of the stories we read or watch, this one forces us to choose between the characters facing moral-legal conflict: whose side are you on, and why?

To explore these and other questions, we read Susan Glaspell's *A Jury of Her Peers*, which you can find on various servers via Google search, including:

<https://web.archive.org/web/20110214100326/http://etext.lib.virginia.edu/etcbin/toccer-new2?id=GlaJury.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=1&divison=div1>

## **Class 2**

### ***Antigone* – Religion, Morality and Law in Ancient Days**

We return to good story beginnings, asking whether this story creates one. What makes this beginning good or bad? Why does it matter to the reader? Why does it matter to the writer, including you as a legal writer?

We then turn to *Antigone* by Sophocles. This ancient play tells the tale of a young niece, Antigone, who defies her uncle, King Creon, when he decrees that no one can bury Antigone's fallen brother. Antigone rails against the King for violating God's law requiring burial, while Creon in turn demands his sovereign power be respected by his subjects.

You'll find the Dudley Fitts and Robert Fitzgerald translation online here: [https://mthoyibi.files.wordpress.com/2011/05/antigone\\_2.pdf](https://mthoyibi.files.wordpress.com/2011/05/antigone_2.pdf). Feel free, if you prefer, to purchase the paperback, Kindle version or, for that matter, any other widely available translation as well. The minor differences in various modern translations won't concern us.

We delve into *Antigone* by first asking whether the story is good, what makes it so (or not), and why. We apply the above character, conflict, and arch ingredients to the story's opening passages.

We then move onto jurisprudential and thematic questions: How can we compare the various understandings and manifestations of law presented or implied in *Antigone*? What is law to Antigone and King Creon – how do they understand it, where does it come from, and where does it get its legitimacy and authority? Why do those questions matter to Antigone and Creon and the other characters?

Finally, in *Antigone*, we feel compelled to choose sides. Whose side do *you* choose and why?

## **Class 3**

### ***The Children Act* – Religion, Morality and Law in the Modern Era**

Judge Fionna Maye presides over the case of 17-year-old Adam Henry whose Jehovah's Witness parents refuse to give him a life-saving blood transfusion due to their religious beliefs. Judge Maye must decide whether to overrule the family's beliefs to save Adam's life. The difficult decision forces Judge Maye to reckon with her own personal and professional choices as a judge. The film allows us to continuing exploring *Antigone's* central dilemmas of law, morality, faith and the human condition in our modern era.

#### **Class 4**

##### ***Billy Budd* - Warm Hearts, Cool Heads: Anatomy of Legal Decision-Making**

We discuss an extended excerpt from Herman Melville's *Billy Budd, Sailor*. This story revolves around the summary court martial and hanging of a young seaman accused of fomenting mutiny aboard a 19<sup>th</sup> century English warship on the high seas.

How do the letter and spirit of the law conflict? Can the objective rule of law or its formal application comfortably co-exist with emotion and human subjectivity? How do we reconcile these powerfully opposing forces in administering justice? Specifically, do passion, irrationalism, and self-interest subvert or promote legal decisions? And how much should legal analysis openly rely on social facts, ethical values, feelings or intuitions?

This inquiry allows us to investigate what it might mean to “think like a lawyer.” For instance, lawyers are trained to solve problems through linear, rule-based reasoning—a largely formalistic enterprise. Is this thinking too narrow? What does it leave out? Does it discount the ability to see all sides, to capture relevant details, to regard the likely consequences, and to engage moral possibilities? Is such thinking always intellectually honest? Should we enlarge our notion of “thinking like a lawyer” to embrace these literary, pragmatic, and humanistic concerns?

To help answer these questions, we focus on **Chapters 19-26** in the novella. You can find the online text here: [https://mseffie.com/assignments/billy\\_budd/Billy%20Budd%20Text.pdf](https://mseffie.com/assignments/billy_budd/Billy%20Budd%20Text.pdf) and elsewhere by Googling for other editions that will allow you to read Chapters 19-26.

#### **Classes 5-6**

##### ***A Trial by Jury* – What Happened, Whom to Blame?**

How do we decide which side is right in legal contests? How can we know the truth of what happened? Who should win or lose the case? What judgment or verdict is just? The adversarial theory of justice says that truth can emerge from the contest of opposing legal and factual positions. But how much do the opposing lawyers and parties really care about truth? What other values, interests and incentives complicate the practice and purpose of truth-seeking and justice in our legal system? We examine these and other questions in D. Graham Burnett's little-known autobiographical classic, *A Trial by Jury*, in which he tells of his life changing experience as a juror in a NYC murder case.

#### **Class 7**

##### ***Anatomy of a Fall* – Murder, Suicide or Accident?**

A woman is suspected of her husband's murder, and their blind son faces a moral dilemma as the main witness. This breathtaking French legal thriller and courtroom drama shows how we all construct stories based on incomplete evidence, emotion, and personal history. A better movie could not be made for a class like ours. How do we determine the facts and truth of a legal case? How do we render legal and moral decisions in the face of uncertainty?

## **Class 8**

### **Noon Wine: When Stories Fail**

We read Katherine Ann Porter's harrowing novella about a farmer who kills a bounty hunter. The bounty hunter appears one day looking for a farmhand accused of murder. In a bizarre, confusing altercation, the bounty hunter is killed with an axe. The farmer is charged with his murder. He protests his innocence, claiming he was only defending his farmhand. At trial, the farmer's lawyer won't let him tell his own story about what happened. His lawyer tells a different story, one that better fits the defense strategy and wins acquittal for the farmer. All is not well, however. Neither the farmer nor the small town can accept the not-guilty verdict. The different stories they tell themselves fail to match the story that won acquittal. Why, and at what cost to the accused, the victim, the community, and the legal system?

We compare the law's judgment with the stories the accused and guilty tell themselves and others. Does a legal verdict give the accused, the victim, or society what they need or deserve? Are the language and authority of the law sometimes inadequate to their ostensible purposes? What happens when law's stories fail? We draw on James Boyd White's seminal work in law and literature to help us answer such questions.

## **Classes 9-10**

### ***Conspiracy: A True Story of Power, Sex, and a Billionaire's Secret Plot to Destroy a Media Empire* – The Uses and Abuses of Law**

We continue our focus on lawyers as both professionals and ordinary people, the ways their values, morals, and personalities influence and blend with their working "legal" lives. We also center our attention on clients, along with their needs, values, motivations, and goals in hiring lawyers. These considerations prompt us to turn toward a better understanding of "legal narratives" and the stories lawyers and clients tell to justify and explain their legal actions. We study how lawyers and clients use and abuse our legal system for both legitimate and illegitimate aims, including the ethics, costs, and consequences for our justice system and the lives embroiled in it.

Our focal text for these purposes is Ryan Holiday's *Conspiracy: A True Story of Power, Sex, and a Billionaire's Secret Plot to Destroy a Media Empire*, a riveting and bizarre non-fiction account of clients and lawyers embroiled in a prolific legal battle stemming from an online blog outing a gay billionaire to a former professional wrestler secretly videoed having sex with his best friend's wife. Truth is indeed stranger than fiction when it comes to billionaire Peter Theil's conspiratorial legal quest for revenge and ruination against online gossip site Gawker by secretly funding Hulk Hogan's lawsuit against Gawker for posting Hogan's private sex tape. We study the clients, the lawyers, the law, the litigation, the outcome, the unintended consequences of legal action, among many other aspects of this sordid and edifying legal tale.

## **Class 11**

### ***Runaway Jury* – Tampering with Justice**

We watch *Runaway Jury* to deepen and complicate many of the themes developed so far in the course: how we define and achieve justice; law vs. morals; the ethics of good and bad lawyering; subverting legal process to achieve justice; subordinating truth to competing legal or cultural values, among other topics. We also look closely at the film's legal professionals – the lawyers, judge, jury consultant, and even the jurors to better understand how we wrestle with assigning moral and legal blame in our justice system while maintaining our ethics, dignity, and sense of moral virtue. We might find that the stories we tell each other and ourselves play important roles in answering such questions.

## **Class 12**

### ***The Soul of the Lawyer – Law, Learning and Language***

In our supplemental reading, we personify the “Law” to ask the questions, “What does the Law *want*?” and “What does the Law *look* like?” We will examine order, objectivity, consistency, and conflict, among other crucial dimensions of legal psychology and culture. We borrow from Benjamin Sells’ groundbreaking mixture of law and psychology in *The Soul of The Law* (29<sup>th</sup> Anniversary Edition). Sells was a lawyer who switched professions to psychology and then shared insights he learned from treating lawyers as patients. He has much to say about how to care for ourselves in the legal profession.

We also read an excerpt from *One L*, Scott Turrow’s autobiography of his first-year law student experience at Harvard in the late Twentieth Century. What does it mean to be educated as a lawyer and to “think like a lawyer”? Has law school changed since Turrow shared his experience? What should we expect and need from our legal education? How has law school changed *you*?

Legal language can seem talismanic, powerful and secret. Is filled with jargon and technical, obscure sounding words. But much of that language is necessary for precision. And no profession can thrive without its own terms of art.

In what ways do legal language and its many verbal formulas capture, delimit, or falsify experience, including our moral experience? What are the dehumanizing effects of law’s language? Can we humanize our professional speaking and writing to improve legal practice and our quest for justice?

To help answer these questions, we read excerpts from “Notes from a Difficult Case,” law professor Ruthann Robinson’s personal essay about the dehumanizing effects of professional indifference, technical language, and objectivity in law when she became entangled in her own medical malpractice case following a terrifying cancer misdiagnosis.

## **Class 13**

### ***Michael Clayton – Law’s Values, Your Values***

We watch *Michael Clayton*, the story of a disenchanted lawyer who seeks redemption in a corrupt legal and corporate system. The movie portrays several lawyers, all of whom face intense ethical and moral-legal dilemmas during a complex toxic tort class action lawsuit.

We also seek to better understand our multifaceted legal culture, the esteem (or lack thereof) for legal practitioners, and the specific way film and television influence both the popular misconceptions and the rude realities of our legal system. We will evaluate lawyers as heroes, as villains, and as ordinary, flawed human beings. We will also reflect on the conflicting ways in which screen depictions of the legal system might influence the administration of justice.

We return to story structure. What is the “structure” of a story? Are there common or useful structures? Can we apply story structure to legal writing?