LAW AND LITERATURE
Dean Stimpson & Professor Gillers
[L06.3510]

SYLLABUS

We will read the literary and other works on the annexed reading list. Each assigned work (or set of works) will occupy about 2-4 class hours. Some of the questions we will try to address for each work or generally are:

• How does literature use law as a source of structure and theme?

• How does literature view law and legal institutions?

• What can literature and literary imagination bring to the performance of legal tasks, including “telling stories” about cases? Indeed, how much of law itself is a series of narratives, of stories?

• What different (or similar) interpretive rules do lawyers, authors, and literary critics employ in construing a text? For example, a will. And how does each profession define “text”?

• How are human passions and the human condition differently described and treated in law and literature?

The Calendar. Our first class is Thursday, September 1. After a general introduction, we will begin our discussion of Antigone that day.

The Papers. This course carries “B” writing credit. You will have to write six papers (of the eight assigned) of 900-1000 words each. The topic and deadline for each paper are annexed. We advise you to read the assignment prior to reading the work. The papers should be 12 point type and double-spaced.

You may omit two of these eight assignments but everyone must do the first assignment for Antigone, which is due on September 7 at 9 a.m. for discussion on September 8. Everyone is
required to read all of the assigned works (whether or not writing a paper) and come to class prepared to discuss them and the question posed. For each class, we will designate two people in advance to begin the discussion.

Papers must be handed in on time to Dean Stimpson and to Professor Gillers as described below and on the annexed chart. It is necessary that you hand your papers in on time so we each have a chance to read them before class. Each of our classes is on Thursday from 4:00-6:00. The deadline for each paper (in the weeks that a paper is due) is the immediately prior Tuesday at 9:00 a.m. The sole exception to this is the very first paper on Antigone. That paper must be handed in by 9:00 a.m. on Wednesday, September 7. (We have allowed an extra day because it is the first week of class.) The papers may be handed in via e-mail as follows:

To Dean Stimpson: You should e-mail your paper to Dean Stimpson at catharine.stimpson@nyu.edu. (Notice that “catharine” is spelled with an “ar” not an “er.”)

To Professor Gillers: E-mail the paper to stephen.gillers@nyu.edu.

You should attach your paper to the e-mail in either Word or WordPerfect. Please do not use other programs since we may not be able to open them. Please remember to put your name on the attachment.

We plan to post all papers on Blackboard prior to the class at which the paper will be discussed unless, for a particular paper, you tell us you do not want us to post it.

Make Up Class for October 13. We will not meet on Thursday, October 13, to accommodate those observing Yom Kippur. We will have a make up class on Friday, October 14 at 1:00-3:00 in Room 318 Furman Hall.

Course Requirements. There will be no final examination. Grades will be based on the quality of the papers and class participation.

Attendance is mandatory absent an emergency. Because this class is heavily dependent on collegial class discussion (see below), you are expected to be present for all of every class. Because your instructors need to have read your papers before the class at which they will be discussed, the deadline for their submission is firm.

The purpose of the papers is to focus your attention on certain questions and thereby facilitate class discussion. Independent research is not expected nor encouraged. On the other hand, if you happen to know of a critical observation or a reference that helps make your point,
you are free to cite it with attribution. You must write your paper without conferring unduly with others.

In evaluating the papers and class participation, we are interested in: Thoughtfulness, demonstrated familiarity with the text, clarity, specificity (anchoring your answers in the text), and quality of writing. To save space in your papers, you should not quote extensively from the text. Citations can be in any conventional format. For books, you can just cite the page number. For the plays, you can cite the act, scene, and line. Footnotes are strongly discouraged.

Each of us will read each paper. We will rotate putting written comments on your papers (the penmanship will reveal our identity). The papers will be returned. The comments will generally not be extensive. We will instead rely on class discussion of the question to illuminate the themes we think are important. You can pick up your papers with comments after 4:00 pm on the Monday following the week it is handed in from Professor Gillers’ assistant, Shirley Gray, in Room 422 Vanderbilt Hall. Any papers not picked up by 5 p.m. will be placed in your Law School mailboxes (Room 101).

The Orientation of the Course. Why have an interdisciplinary law school class that closely reads literary works?

Law and literature courses are taught at about two-fifths of American law schools. Their content ranges broadly. Some focus on traditional works by such as Aeschylus, Shakespeare, Dickens, Camus, Melville, and Dostoevsksy. Some add modern fiction, like To Kill A Mockingbird. Some even include John Grisham. A few add nonfiction -- memoirs for example.

We expect to use the assigned works in three ways:

First, the works raise questions of law and morality, broadly defined. We can discuss these questions in the context of the works and more generally. This is the “law” part of the course.

Second, we can discuss the works as stories -- talk critically about their structure, narrative, and characters, their motives and actions -- in an effort to understand what they can teach us about the human condition and about the meanings of law. This approach is close to, but distinct from, the first approach. It’s the “literature” side of the course.

Third, we can study the narrative qualities and the language of the works -- their density, use of ambiguity, imagery, conciseness, word choice, puns, descriptions of motivation, skill in conveying character and describing action -- for what they may teach us about the performative dimensions of writers' and lawyers’ work. This is both the “literature” and the “law” part of the course.

Much of your professional life will be spent conveying ideas and events to others -- adversaries, judges, colleagues, juries, public officials, clients -- in language, written and oral.
This is so true of lawyers’ work we hardly ever focus on it as a distinct component. But what has this truth got to do with the study of literature? Can the study of how a good writer tells stories and uses language improve corresponding skills in lawyers? We think the answer is yes. (The lawyer half of us believes strongly that working with literature -- learning how to read and talk about literature -- improved his skills in practice.) Moreover, some of you may be involved, now or later, in the field of intellectual property, which includes literature, drama, movie and TV scripts, lyrics, etc.

**The Importance of Class Discussion.** So it is a premise of the class that reading and discussing literature improves legal skills, and indeed the skills in any endeavor that demands an understanding of human motivation, character, performance and language. That endeavor needn’t be traditional work. It can be the “work” of personal relations.

For example, if we pay attention, reading and discussing such works as *King Lear*, *The Merchant of Venice*, *Othello*, *Hamlet*, or *The Tempest*, should teach us something about parent-child relationships. Notice, we say “discussing.” And here’s the important point and the foundation for the class.

The *full* benefit of literature (not only for lawyers) is gained in discussion with others who are equally engaged. Any of us could read the works on the syllabus, alone in a room in the dead of night, perhaps with critical essays alongside, and get a lot out of them. This is always worth doing, of course.

But we are likely to get even more if we can talk about the stories, the characters, and the language with those similarly inclined. This phenomenon of the whole being greater than the sum of its parts is also true when lawyers gather to discuss and solve legal problems. For one thing, we are forced to articulate our inchoate thoughts as expressions that others can understand and in doing so we understand them better. For another, we hear not only how others articulate their thoughts, but we also learn from their responses to what we think. You don’t have to subscribe to a postmodern view that the readers or community of interpreters are the dominant authors of a text to appreciate that when people discuss any work of art, they extend it (at least in their own experience) and become participants to the creative process. A work of art, like law, lives on through interpretative acts, which are a form of creativity.

At or before the start of each class, we will ask one or two students to begin the discussion. This responsibility will rotate randomly. Of course, everyone will be expected to participate in the discussion thereafter.

**The Unimportance of Experience.** Some members of the class will have a lot more experience with literature than do others. We may even have a few former English students in the class. Yet other class members may not have read much in (say) Shakespeare and nothing since a college (high school?) course years ago.
No one should worry about being wrong. Reactions to the works -- explanations of their events -- are not true or false for our purposes. Others may agree or disagree with our reactions, but that’s to be expected. Experts have diverged wildly, over time and in the same epoch, in their explanations of Shylock’s character or the proper way to understand The Trial. If experts can do that, so can we. What matters is that we contribute our understanding to the group effort to answer questions about the works and seek coherence in our own responses. Even if we disagree with another person’s perspective, we might modify or better understand our own view after hearing it, and we should enhance our own analytical skills and emotional sensibilities.

What we have just written has two direct implications.

Mostly, the class will not be run hierarchically (if we can help it). This is a collegial effort. We have some prerogatives as teachers, but not many. (In any event, we don’t especially want them and don’t want often to have to call upon them.) Mainly, our prerogatives are to keep order, help direct the discussion, and ensure that the pace does not get too slow or too fast.

Next, you have to be willing to take two risks -- first to risk listening to others with a willingness to be persuaded; and then, to risk voicing your views on the questions under discussion, or to suggest others if you think they are better ones to ask. You can’t be shy. Nor can our discussion be restrained by political correctness. The works inspire many heated opinions. Many of the characters engender great dislike, others win our sympathy. Sometimes the same character does both, to different readers or to the same reader. We can discuss why this is so and how the author managed it.

Catharine Stimpson
Stephen Gillers
READING LIST

Here are the works we will read. The Law School Bookstore should have them all. Please buy the assigned edition of Shakespeare so we are all reading from the same page. Please buy the indicated translation of *The Trial*, which differs from prior translations.

Jean Anouilh, *Antigone* (Methuen 2001)


Sir Arthur Conan Doyle, Three Sherlock Holmes Stories\(^1\) (handout)


Shakespeare, *Merchant of Venice* (Washington Square Press)


Excerpt from *De Profundis* (handout)

*Lawrence v. Texas*, 123 S.Ct. 2472 (2003)\(^2\)

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\(^1\) The Boscombe Valley Mystery
The Adventure of the Blue Carbuncle
The Adventure of the Abbey Grange

\(^2\) Please download this opinion.
### LAW & LITERATURE

**L06.3510**

#### Fall 2005

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#### Paper Due Dates:

Your papers for each work (except the first one) are due by 9:00 a.m. of the Tuesday preceding the Thursday on which the work is first listed for discussion. The papers should be delivered to Dean Stimpson and Professor Gillers by e-mail as described above. However, the first paper is due 9:00 a.m. on Wednesday, September 7.

* We will not have class on Thursday, October 13, but will have a make-up class on Friday, October 14 in Room 318 Furman from 1:00-3:00 PM.
**PAPER TOPICS**

**ANTIGONE**  (paper due Weds., 9/7)

As you read Antigone, remember that it is the third of three plays by Sophocles that deal with the myth of Oedipus, the others being Oedipus Rex and Oedipus at Colonus. We will, of course, be reading Antigone in translation, which has its difficulties. In the version of the myth we will be exploring, Antigone and Ismene are Oedipus’ two daughters, Eteocles and Polynieces his two sons. Their mother is Jocasta, also Oedipus’ mother. Creon, Jocasta’s brother, figures in each of the plays, although in none more centrally than Antigone. In brief, within myth and drama, Creon and Antigone are well-known to each other. Like the story of Oedipus, the story of Creon and Antigone has become a part of world culture. Indeed, Theodore Ziolkowski, in his magisterial The Mirror of Justice: Literary Reflections of Legal Crises, writes, “Probably no work in the history of world literature has been more assiduously debated by students of literature and law than that powerful fable of conflicting sexes, generations, laws, and religions in which a passionate and articulate young woman in the name of kinship and reverence advances the claims of equity and the mercy of unwritten tradition against the will of an older man who, in the name of civil order, demands the fulfillment of the law in all its rigor.” (p. 145) Our course will have two dominant themes or motifs to which we will return again and again. One is the conflict between “the law” and “equity and...mercy.” The second theme is the connections, at once theoretical and actual, and often so difficult, between crime and punishment. Both are crucial to the foundational text of Antigone. Please discuss how they are interwoven with a focus either on Sophocles’ Antigone or the contemporary reworking of the play by Jean Anouilh.

**THE MERCHANT OF VENICE**  (paper due Tues., 9/13)

Although he appears in only five scenes, Shylock is a (perhaps the) central character in The Merchant of Venice, and certainly the one whose motives determine the action and therefore how we understand the play. Shylock can be played in many ways – as a villain, a victim, a clown, an ogre. Following are the different views of just two modern scholars:

Scholar A:

Ostensibly, The Merchant of Venice is the story of the friendship of an unselfish Venetian merchant for a charming young gentleman who is in love with a beautiful heiress; of the noble sacrifice that the friend is on the point of making when nearly brought to disaster by a vile Jew; of the transformation of the lovely lady into lawyer and logician just in the nick of time and her administration to the villain of a dose of his own medicine. Was ever a play more compact with popular appeal? But what if, all the while, underneath and overhead, it were something as different from all this as the contents of the three caskets are from their outward appearance? It would be in keeping. What if the author is putting
to the test, not just the suitors of Portia, but other characters as well, even, possibly, every reader or spectator of his play? It would be like him.

* * *

Though he was rendered coldhearted by his vocation, made cruel by the insults that had been heaped upon him by everybody from the respectable Antonio to the very children in the streets, driven to desperation by his daughter, there is nothing to indicate that Shylock was congenitally coldhearted, cruel, or desperate. On the contrary, it is clear that he had it in him, however deep down, to be humane, kindly, and patient, and his offer to Antonio of a loan without interest seems to have been a supreme effort of this submerged Shylock to come to the surface. If so, here is the supreme irony of this ironical play. If so, for a moment at least, the Jew was the Christian. The symbolism confirms the psychology: Shylock was the leaden casket with the spiritual gold within.

Scholar B:

One would have to be blind, deaf, and dumb not to recognize that Shakespeare’s grand, equivocal comedy *The Merchant of Venice* is nevertheless a profoundly anti-Semitic work. Yet every time I have taught the play, many of my most sensitive and intelligent students become very unhappy when I begin with that observation. Nor do they accept my statements that Shylock is a comic villain and that Portia would cease to be sympathetic if Shylock were allowed to be a figure of overwhelming pathos.

* * *

Shakespeare’s comedy is Portia’s play, and not Shylock’s, though some audiences now find it difficult to reach that conclusion. Antonio, the title’s merchant, is the good Christian of the play, who manifests his piety by cursing and spitting at Shylock. For many among us now, that is at least an irony, but clearly it was no irony for Shakespeare’s audiences. I have never seen *The Merchant of Venice* staged with Shylock as comic villain, but that is certainly how the play should be performed. Shylock would be very bad news indeed if he were not funny; since he doesn’t provoke us to laughter, we play him for pathos, as he has been played since the early nineteenth century, except in Germany and Austria under the Nazis, and in Japan. I am afraid that we tend to make *The Merchant of Venice* incoherent by portraying Shylock as being largely sympathetic. . . . If I were a director, I would instruct my Shylock to act like a hallucinatory bogeyman, a walking nightmare flamboyant with a big false nose and a bright red wig, that is to say, to look like Marlowe’s Barabas.
These are just two views. The question for you is this: If you were asked to direct *The Merchant of Venice*, how would you instruct the actor playing Shylock? Perhaps you agree with one of these two scholars in part or in full (or not at all). Perhaps your answer might depend on the time and place of the production. England in 1601? The American South before the Civil War? New York in September 2005?

**SHERLOCK HOLMES STORIES and P.D. JAMES NOVEL**  
(paper due Tues., 9/20)

The roots of the English noun “detective” and the verb “to detect” are in the Latin language, more specifically in a verb meaning to uncover, to lay bare. Today, the figure of the detective -- be he or she a police or a private detective -- is so common that we tend to forget of how comparatively recent a vintage it is, namely the 19th century. Sherlock Holmes is one of the paradigmatic creators of the detective story; P.D. James one of its paradigmatic contemporary practitioners. What have these writers given us? And if you were an innocent person accused of a crime, would you trust their detectives with your life?

**GROSS INDECENCY, De PROFUNDIS EXCERPT, LAWRENCE v. TEXAS**  
(paper due Tues., 10/4)

Oscar Wilde was a celebrity when he was tried for sodomy. So it follows that his trial was a celebrity trial, although it was probably not called a celebrity trial because the category was not yet recognized. Maybe it’s not a real category. Or maybe it is. (What would make it a "real" category is a separate question.) In any event, we do refer to celebrity trials today. O.J. Simpson, Kobe Bryant, Michael Milken, Michael Jackson and Martha Stewart are all celebrities and their trials were all celebrity trials. Some defendants in the WorldCom, Enron, and Tyco trials are famous in their own worlds, but they are not celebrated in the popular culture because merely being rich is not enough to become a celebrity, so we don’t generally call their trials celebrity trials. Other trials also get a lot of attention – the murder trial of Scott Peterson, for example, or the trial of Timothy McVeigh for the Oklahoma City bombing – but attention is not the same thing as celebrity. Peterson and McVeigh were not famous before they committed their crimes.

Putting aside these overlapping categories, there is much debate about whether true celebrities can get a fair trial. One point of view posits that they get fairer trials than the "unfamous" because (a) they generally have more money to fight the charges; and (b) the fact of their celebrity dazzles the jury. The opposing point of view is that (c) they are prosecuted precisely because of their celebrity when an unfamous person might not be (or not be as aggressively); and (d) the fact of their celebrity may cause the jury to hold them to higher standards or even to resent them. As for (e), the idea is that prosecutors will go after celebrities in ways that they would not pursue the unfamous because convicting a celebrity can make the prosecutor a celebrity (thereby boosting his or her career), and because a celebrity trial will generate publicity that will deter others from committing the same crime. Each of these points (a-d), interestingly, was raised in the trial of Martha Stewart.
Comment on the idea of the celebrity trial, including the observations above, in the context of the Wilde trial or any of the modern day celebrity trials.

**THE TRIAL**  (paper due Tues., 10/11)

The Trial, a novel, is a part of the canon of world literature and another staple of law and literature courses. It has also been translated into and adapted for other media, e.g. a film and an opera. In March 2005, The Royal Danish Opera staged the premiere of “Proces Kafka” (“Kafka’s Trial”) by Poul Ruders, a Danish composer, and Paul Bentley, a British librettist. After you finish the novel, ask yourself what you would do if you had to adapt The Trial. Which medium would you choose? And why? Your paper can either be an analysis of the medium and method of adaption you would choose, or an adaption itself. Remember that you can consider a statement by a prosecuting attorney or a defense attorney or a court-appointed psychiatrist as an adaption into another medium. Do understand the novel, and, if you wish, also let your imaginations run a little freely.

**BROTHERS AND KEEPERS**  (paper due Tues. 10/25)

Did John Wideman's brother get justice? Take a position and defend it, which will require you to explore what in this context you mean by “justice.”

**THE HOUSE GUN**  (paper due Tues., 11/1)

Nadine Gordimer chooses a line from a 1991 work of fiction by Amos Oz, the Israeli writer, as the epigraph for THE HOUSE GUN. It is, “The crime is the punishment.” How do you interpret this statement, especially as it may or may not apply to THE HOUSE GUN?

**A TRIAL BY JURY**  (paper due Tues., 11/15)

Graham Burnett is a nonlawyer who has written about his encounter with the legal system. It is rather easy for professionals, not only lawyers, to fall prey to a kind of tunnel vision, where they see the world in which they work (or maybe the whole world) solely or largely through the lens of its particular assumptions, concepts, and language, losing sight of the fact that the institutions they work for and in are part of a larger social context, indeed its byproduct. Outsiders may see the "big picture" or the "broader context" where insiders do not. (George Bernard Shaw once said that all professionals are a conspiracy against the laity.) Burnett is a particularly valuable commentator here because as an academic whose field is the history of
science he is trained to be precise in his use of language and skeptical and logical in analyzing argument and information (which the law calls evidence). Giving at least two examples from the book, how have Burnett’s observations and insights about the criminal justice system generally, or the trial he judged in particular, affected your views of law or legal institutions? What got you thinking in ways that the narrower focus of professional education (even at NYU!) might overlook?