

UNIVERSITY OF PITTSBURGH LAW REVIEW

Vol. 85 • Winter 2023

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ISSN 0041-9915 (print) 1942-8405 (online) • DOI 10.5195/lawreview.2023.1005
<http://lawreview.law.pitt.edu>



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Professor Richard H. Weisberg*

ABSTRACT

This Article represents the concluding remarks made by Professor Richard H. Weisberg at “Disarmed, Distracted, Disconnected & Distressed,” a conference on Modern Legal Education and the Unmaking of American Lawyers, hosted by the University of Pittsburgh School of Law and the Law & Humanities Institute, April 20–April 23, 2023.

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INTRODUCTION

First, I join my co-organizer Professor Hibbitts in recognizing the crucial place of the Law & Humanities Institute in the creation of, and inspiration for, this conference.¹

I. THE PLACE OF STORIES AND POEMS IN THE TEACHING OF LAW

I wanted this conference to convey that stories and poems, together with related subjects like rhetoric, writing,² jurisprudence, comparative law, and legal history, will give rising second-year law students a needed supplement to the traditional first-year curriculum.

Conjure a world, first proposed by Dean John Wigmore, in which lawyers had read and mastered a series of excellent stories, short and long.³ The skill of “reading other people,” which a current successful practitioner recently laments he never learned in law school, can find no better source.⁴ It does not matter—yet—that the story (or poem) has any particular legal theme, but it does count that it be **read** and not absorbed through film, streaming, or television. Narrative—the organization of the world through language—is the uniquely common feature of law and literature. I would add the adjective “imaginative” to this exclusively language-based organization of the wonderfully spontaneous and hence often chaotic world around us. Reading to comprehend people should be required of all public actors, but it is perhaps too obvious a means to an end. Better, some have decided, to ignore what is ready to hand and instead bow down to foreign idols such as economics. Yet the current political environment proves for the umpteenth time how miserably inadequate are standard approaches to training policymakers, including, of course, lawyers. Lying ready to inculcate “reading other people” comprehensively are **all** well-told stories. When we then add works that specifically pertain to the law in one way or another, we have enough of a present-day justification for adding at least one

¹ For more information about the five-decades-long work of LHI to bring humanity to law, please use rhw19@pitt.edu.

² See, e.g., RICHARD WEISBERG, *WHEN LAWYERS WRITE* (1986). See also *infra* note 12.

³ John H Wigmore, *A List of Legal Novels*, 11 *ILL. L. REV.* 574 (1908). See also Richard H. Weisberg, *Wigmore and the Law and Literature Movement*, 21 *L. & LITERATURE* 129 (2009).

⁴ See James Grippando, *Storytelling: A Tale of Two Careers*, 109 *A.B.A. J.* 19 (2023); Stephanie Francis Ward, Julianne Hills, Matt Reynolds & Amanda Robert, *Reading, Writing and Regret: What I Wish I'd Learned in Law School*, 109 *A.B.A. J.* 44 (2023).

story or poem to each first-year course. The argument is not that the first-year student becomes thereby a better person. She becomes a better lawyer. Standard short texts in the Law and Literature canon that can be inculcated into first-year teaching these days include stories, poems, and plays by Aeschylus, Shakespeare, Camus, Melville, Katherine Anne Porter, Susan Glaspell, Dostoevsky, Kafka, Tolstoy, Richard Wright, and Toni Morrison.

For policymakers in training, fiction is the still overlooked, maximally potent vehicle for the understanding of how lawyers reason, and (contrary wise), of how clients and juries and human nature apart from law tend to see the world.⁵ This bald statement, endorsed on a higher level of generality most recently by journalist David Brooks,⁶ especially implicates lawyers if they are liberated to read stories and poems in their first year as well as cases. While the field of Law and Literature has made immense strides, quantitatively and qualitatively—locally and worldwide⁷—the aggressive fight of pedagogic tradition, as well as the social sciences, to quell stories as sources of law and policy forms a depressing subchapter of the unwillingness of those who make decisions to welcome fiction as guests at the table of analysis and conclusion.

II. A PRACTICAL WAY OF INCULCATING LITERARY SOURCES INTO THE 1-L CURRICULUM

I argue that each “substantive” first-year class, such as the one I often teach (Torts), should include at least one required literary text as such a supplement. My own choices, pegged here to the specific skill they enhance, are:

⁵ Ward et al., *supra* note 4, at 48.

⁶ David Brooks, Opinion, *The Power of Art in a Political Age*, N.Y. TIMES, Mar. 2, 2023. “[A] piece of art has quieted the self-conscious ego voice that is normally yapping from within. A piece of art has served as a portal to a deeper realm of the mind. It has opened up that hidden, semiconscious kingdom within us from which emotions emerge, where our moral sentiments are found—those instant, aesthetic-like reactions that cause us to feel disgust in the presence of cruelty and admiration in the presence of generosity.” *Id.* Brooks, who refers to books, music, and the plastic arts here, proves too much. The argument should not be that books make you better, as a person; rather, as he suggests correctly, they open up otherwise unavailable, entire worlds to us. Nothing is more important for a law student, who seems to be encouraged to narrow the still budding imagination to the rules currently emphasized.

⁷ It is currently taught at well over 100 North American law schools and countless graduate literature seminars; in China; all over the continent of Europe; in South America; and everywhere in Great Britain. *See, e.g.*, M. Pawlowski & S. Greer, *Film and Literature in the Legal Classroom*, 43 L. TEACHER 49 (2009); *see also* Elizabeth Villiers Gemmette, *Law and Literature: An Unnecessarily Suspect Class*, 23 VAL. U. L. REV. 267 (1998).

1. Shakespeare, *HAMLET*.⁸ The Danish prince exemplifies the form of reasoning each law student must learn and make organic, namely that the specific controls the general, the new set of facts yields a potential new generalization, and there is no useful top-down reasoning in the common law approach. This remarkably creative way of looking at the world brings both enjoyment and success to the common lawyer. Each new client, and each new situation, engage the common lawyer's active mind towards a new generality; the continental lawyer's reliance on a code yields to the far more client-friendly inductive approach. But Hamlet's case also helpfully proves the *risk* of inductive reasoning, of always looking for the "new" (e.g. "What are the facts of this case?"), by abjuring reasoning from generalities. Hamlet loses sight of his polestar, given to him by the Ghost of his father: "Revenge my foul and unnatural murder!" Common lawyers should not abandon all generalities, because the lure of the new can entail the destruction of the good. Prince Hamlet's excellent, witty, and creative urge to learn lessons from each new situation he faces causes him, tragically, to lose sight of the Ghost's rule, which should have dominated his thoughts throughout. Why not assign Act I of *HAMLET* at any point in teaching the common law mode of reasoning, from "the facts of the case" towards the rule and not the opposite?
2. Susan Glaspell, "A Jury of Her Peers"⁹ will convey in eighteen brilliant pages the importance of community to the sound development of law. It exemplifies one of those fabulous stories that key legal authorities have been recommending to lawyers for well over a century.¹⁰ Two farm women bond to overcome the fact-finding (see #1 above) myopia of the male authorities and to save the life of their friend. Outsiders to the law need to depend on each other, and to fight hard for better legal conditions. This remarkably short story will dazzle your students and make them more—not less—ready to take on their doctrinal responsibilities.
3. Emily Dickinson, "I heard a fly buzz when I died."¹¹ A reading out loud by the instructor and then a short discussion of almost any fine poem will enhance the student's ability to think like a lawyer and to read cases closely, and also offer

⁸ WILLIAM SHAKESPEARE, *HAMLET*.

⁹ SUSAN GLASPELL, *A JURY OF HER PEERS* (1919).

¹⁰ See Wigmore, *supra* note 3.

¹¹ EMILY DICKINSON, *I heard a fly buzz when I died—*, in *THE SELECTED POEMS OF EMILY DICKINSON* 268 (2016).

so much more to their development as rounded lawyers.¹² I suggest the following for fifteen minutes of class time in any substantive class for first-year law students:

I heard a Fly buzz - when I died -
The Stillness in the Room
Was like the Stillness in the Air -
Between the Heaves of Storm -

The Eyes around - had wrung them dry -
And Breaths were gathering firm
For that last Onset - when the King
Be witnessed - in the Room -

I willed my Keepsakes - Signed away
What portion of me be
Assignable - and then it was
There interposed a Fly -

With Blue - uncertain - stumbling Buzz -
Between the light - and me -
And then the Windows failed - and then
I could not see to see -¹³

Discussion points for lawyers connected to this masterpiece would begin with the last line of the poem followed by this question: “What part of your legal training, which endows you with the unique skill of ‘seeing’ the world a certain way, also runs the risk of limiting your larger vision of the world, so that perhaps when you retire someone unfortunately for you might say that you ‘could not see to see’, that you were an adequate technician of the law but brought no broader vision to your years in practice”? And then the instructor can take it from there if time allows. A mere fifteen minutes has brought both beauty and humanity to the first-year classroom.

III. CONCLUSION INCLUDING BERNHARD SCHLINK AND DR. LAWRENCE WEISBERG

I hope now, from a vantage point a few months after the “4-D’s” conference, that attendees emerged, perhaps especially from listening to Dr. Lawrence Weisberg

¹² See WEISBERG, *supra* note 3; JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (1974).

¹³ DICKINSON, *supra* note 11.

and the renowned lawyer-novelist Bernhard Schlink, with an enhanced awareness of the absolute necessity to reform legal education. The students we train must be ready for a world of complicated issues, varied clients, and challenges to make their profession better while on their generation's watch. The humanities, and stories and poems in particular, must play a mandated role in their training.