

## Preface

### STORIES IN THE EDUCATION OF LAWYERS

a note to **Lawyers and Literature** students  
Spring | 2018 | James R. Elkins

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Barren trees on the mountainside soar up from the hidden river below. The light snow that fell during the night carpets the mountainside in white. I am reminded that the season has pivoted; we are now headed due course into winter. Last night's snow is a portent of the winter coming our way.

My reading has always been different in winter, and I'm not at all sure I have a ready account for this. Maybe the difference in my winter and summer reading lies in the freedom I associate with summer; in the winter my reading is more disciplined, more focused on what I am teaching. In summer—not a single student in sight—I read to follow whatever scent the interest of the day may have detected.

**Lawyers and Literature** may be winter reading, but the stories I invite students to read contemplate a season of their own. Reading stories, I escape the disciplined confines of what I think of as school-bound reading; I am not so much reading to teach, as I am reading to experience, again, the freedom of summer. (Reading to teach, I should note, is not quite the burden I seem to imply here.) With the stories I ask students to read in **Lawyers and Literature**, I find I am able to disentangle myself from abstractions—philosophical and psychological—as I stay close to the meat and the bones of a particular story. Reading a story I am presented a world whose characters require my attention, and quite often, my concern. I listen to the characters speak and puzzle over their actions and reactions. I surround myself with the peculiarities of how the characters talk, the troubles they confront, and how they see themselves in the world they have been created to inhabit.

In the essays in *Stories in the Education of Lawyers*, I speak as directly, precisely—and yes, sometimes indirectly, and in an obscure way—about **Lawyers and Literature** and the varied purposes and the different angled views we find for reading the stories in the course. The chapter essays that follow have been organized with an idea that they are linked, although there is, no guarantee that the organization will make the kind of sense to a student in the course, or to other readers, as it does to me. One way to see these essays is that

they are a reminder to a teacher of what he has set out to do in a course—a place—in which it is all too easy to lose our bearings. I don't see much to be gained with a summary of what follows except to say each chapter might be considered still another "preface" for the course.

I might say to a student, pragmatic to the core, that the generalizations of the first chapter, "Claiming Law School as a Place of Stories" serves as an introduction to the claim that stories abound in legal education. The three chapters on Lowell Komie's stories—"The Law World Gets Real," "Meditations on the Fictions We Live," and "A Letter to My Friend, Lowell Komie" are one of many ways we might try to write about the stories we read. The Komie chapters 2, 3, and 4, might be deferred until we have had an opportunity to read the Komie stories. For this pragmatic—"tell me only what I most need to know"—student, the better place to begin might be the essays most directly bearing on the **Lawyers and Literature** course: chapter 5 ("Stories Take Center Stage"), chapter 6 ("Our Work with Stories"), and chapter 7 ("A Conversation about Lawyers & Literature Continues").

In thinking about the **Lawyers and Literature** course, I have turned often to the work of English professors, literary critics, and narrative scholars. And, read this scholarly work as I do, I can tell you that what we do in **Lawyers and Literature** is derived from my own experience as a reader and teacher. I might note that my reading of stories has been shaped by my reading of Sigmund Freud, C.G. Jung, humanistic psychology, anthropology and ethnography, critical theory, mythology, and Robert Pirsig's *Zen and the Art of Motorcycle Maintenance*. In my reading beyond the course, I have adopted the practice of excavating whatever fragments, useable commentary, and insights I can find for students in **Lawyers and Literature**. These fragments are collected in chapter 8, "Listening to Others Talk about What We Are Trying to Do in Lawyers & Literature."

Students in **Lawyers and Literature** have all kinds of reactions—some muted, some verbal—to what we read and try to do in the course. One finds in education these days—and legal education has not been spared—talk about "outcomes based" teaching and learning. What this means, simply put, is that a teacher is expected to walk into the classroom and present students with the desired "learning outcomes" that have been prescribed for the course—laid out, shall we say, like the streets in a new sub-division. The teaching in the "outcomes based" course is supposed to insure that established "outcomes" are achieved. You will be told what to learn and assessed to determine whether you have learned what you have been told to learn. The idea goes something like this: I tell you that I want you to learn x, y, and z. I then teach you x, y, and z and in order to insure it is x, y, and z that you have learned. You will be assessed (the more often the

better) to provide evidence that pre-established learning outcomes have been realized. I am not expected or encouraged to teach you anything that it is not presented on the prescribed list. We don't prescribe anything for you to learn that we cannot assess. If you are fond of this kind of "outcomes based" teaching and assessment, you have, I suspect, registered for the wrong course. While I have, as I trust the essays in *Stories in the Education of Lawyers* make evident, no desire to hide what we attempt to do in **Lawyers and Literature**, I know of no way to guarantee that you will not, at times, feel that much that you are expected to learn has not been fully explained. And while there is always an aspect of what is *hidden*—often, in plain sight, it is what you hide from yourself that is most curious (and potentially pernicious). If there is mystery surrounded what we do, it emanates, I think, not from the failure—up front—to be explicit about what we do in **Lawyers and Literature**, but in the multi-dimensional way that stories are read, the multi-dimensional ways in which stories exist and make their presence known to us, and in how we anxiously sift through these dimensions to mark our presence, our engagement, with the stories we read. The best way to think about what takes place when you read stories and try to make them a part of your education as a lawyer is to see what you do as a matter of being a particular kind of student. Of course, thinking about **Lawyers and Literature** as a way of establishing your character as a student raises a good many questions. You will find some of these questions addressed in chapter 9—"Talking with Rebecca and Clara about Their Encounter with Fictional Lawyers." The folks in education who urge us to focus on "learning outcomes" are not the kind of folks who expect to see character as one of the "outcomes" you would you would be tested on in a law school course.