

Preface

STORIES IN THE EDUCATION OF LAWYERS

a note to Lawyers and Literature students
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Barren trees on the mountainside soar up from the hidden river below. On December 14, 2006, the date I first wrote these remarks, a light snow had fallen during the night and carpeted the mountainside in white. I was reminded by the snow of the obvious—the season had pivoted and we were headed due course into winter. That snow was a portent of the winter that awaits us.

My reading has always been different in winter, and I'm not at all sure I have a ready account for how this happens. Maybe the difference in my winter and summer reading lies in the simple fact that in summer I experience the freedom to read, a freedom so expansive that on some days I think I might well read *everything*. In the winter, my reading is more disciplined, more focused on what I am teaching. My most pleasurable reading I do in the winter months is the reading I do in **Lawyers and Literature**. In summer—not a single student in sight—I read to follow whatever scent the interest of the day may have detected. In winter and in summer, I find reading a constant pleasure.

Lawyers and Literature may be winter reading, but the stories I invite you to read contemplate a season of their own. Reading stories, I hope you will find it possible to escape the disciplined confines of your law-school-bound reading. In **Lawyers and Literature**, I confess that I inevitably end up reading the stories, not so much because I have set out to teach the stories, but to experience in these winter months a freedom I have long associated with summer. (Reading to teach, I should note, is not exactly the burden I imply it to be.) With the stories I ask you to read in **Lawyers and Literature**, I find I am able to disentangle myself from abstractions—philosophical and existential—as I stay close to the meat and the bones of a particular story. Reading a story, I find I am presented characters and a world that require my attention, and quite often, my concern. I listen to the characters in the stories speak; I puzzle over their actions and reactions. I surround myself with the peculiarities of characters and how they talk. I immerse myself in the troubles they confront. I am delighted at the pleasure of finding these characters and learning how they see themselves in the world they have been created to inhabit.

In the essays in *Stories in the Education of a Lawyer*, I speak as directly, precisely—and yes, sometimes indirectly, and in an obscure way—about **Lawyers and Literature** and the varied purposes and strategies we find for reading the stories in the course. The chapters 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 you, or to other readers, as it does to me. I see these essays as a reminder of what I have set out to do in a course—a place—in which it is all too easy to lose one’s bearings. I don’t see much to be gained in providing you with a summary of each chapter, except to say, each chapter might be considered a “preface” for the course.

I might say to a student, pragmatic to the core, that the generalizations of Chapter 1, “Claiming Law School as a Place of Stories” are 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,” “Letter to My Friend, Lowell Komie”—can be deferred until we have had an opportunity to read the Komie stories. I present these chapters to suggest that in reading stories in **Lawyers and Literature**, you should keep in mind that you will eventually be doing some writing for the course in which you draw on the stories you have been reading.

For the most pragmatic “tell me only what I most need to know now” student, the better place to begin reading *Stories in the Education of a Lawyer*, are the chapters most directly bearing on the **Lawyers and Literature** course: Chapter 5 (“Stories Take Center Stage”), Chapter 6 (“Stories Prod Us to See Our Education and Ourselves in a More Critical Light”), and Chapter 7 (“Robert, and His Fellow Escape Artists”).

In my own thinking about the **Lawyers and Literature** course, I turn often to the work of English professors, literary critics, and narrative scholars. But, reading this scholarly work as I do, what we do in **Lawyers and Literature** is derived from my own experience as a reader and teacher. And, yes, of course, my thinking about the course and my reading of the stories has been considerably influenced 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 and insights I can find for students in **Lawyers and Literature**. These fragments are collected in Chapter 8, “Endnotes and Detours: Rewinding the Lawyers and Literature Course.”

I find that 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 desired “learning outcomes”; these “learning outcomes” are to be laid out like the streets in a new sub-division. The teaching in the “outcomes based” course is designed to insure that these established “outcomes” are achieved. You will be told what to learn and assessed to determine whether you have learned what you have been prescribed 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. The assumption is that I will then assess whether you have, in fact, learned the prescribed x, y, and z. In a “learning outcomes” based course, you are assessed (the more assessment the better) to provide evidence that pre-established “learning outcomes” have been operationalized. I am not expected or encouraged to teach you anything that it is not presented on the prescribed list of “learning outcomes.” In fact, you are not to be prescribed anything to learn for which you cannot be assessed. If you are fond of this kind of “outcomes based” teaching and assessment, you have, I can assure you, registered for the wrong course. While I have, as I trust the essays in *Stories in the Education of a Lawyer* 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, in literary studies, a sense that much is *hidden* and not fully revealed, often we find that what is *hidden* is 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 can be read, the multi-dimensional ways in which stories exist and make their presence known to us, and then, 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 expect to be tested on in a law school course.