

LAW AND LITERATURE

WILLIAM DOMNARSKI*

Unlike Moliere's character who learned that he had without knowing it been speaking prose his whole life, I thought I had been teaching law and literature until I learned from a recent survey of law and literature courses offered at law schools around the country that almost no one shares my idea of what law and literature is or can be about. I learned from Elizabeth Villiers Gemmette's article, "Law and Literature: An Unnecessarily Suspect Class in the Liberal Arts Component of the Law School Curriculum,"¹ that law and literature classes break down into three types: law in literature courses, which "utilize fiction and are usually organized thematically to show the lawyer or the legal system as they are reflected through the eyes of the novelist, short story writer, dramatist or poet;" literature in law courses, which "emphasizes the literary characteristics of statutes and judicial opinions;" and legal imagination courses, which rely on James Boyd White's textbook of the same name and which "deal with literary language and style."²

A canvass of the objectives of these courses revealed the obvious, the generic, and the platitudinal. The objective of one was said to be "an examination of lawyers' roles and legal problems in fiction and other literary forms," for another it was "to enhance the student's appreciation of the law's impact on society and response to societal problems and to expand the breadth of the law student."³ Other law and literature teachers seek: "to explore visions of the law and justice in selected works of literature;" "to expose students to broad legal themes (Law and Morality, Law and Authority, Law and Freedom, Law and Punishment) as presented in selected poems, plays, short stories, movies and essays;" "to consider law in society, use of literary works to raise legal issues, the individual and society;" "to familiarize the students with great literature that has a legal setting;" the use of literary theory; and "to focus on works on literary merit that are concerned with law and its effect upon individuals and society."⁴ In light of these objectives, the texts used are not at all surprising, coming mostly from a genre of great books containing legal issues or legal themes in the writings of Dickens, Camus,

* Author and former teacher of law and literature.

¹ 23 Val. U.L. Rev. 267 (1989).

² *Id.* at 267-268. See James Boyd White, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL EXPRESSION* (Boston: Little, Brown, 1973).

³ Gemmette, *supra* note 1, at 304, 308.

⁴ *Id.* at 309, 310, 311, 312.

Kafka, Tolstoy, Dostoevsky, Arthur Miller, Brecht, Barth, Golding, Faulkner, Harper Lee, Melville, Twain, Hawthorne, Shakespeare, Ibsen, Plato, and Thucydides. Not so famous literary texts also appear in these courses. We find *Paths of Glory*, *Ship of Fools*, *Guard of Honor*, *The Book of Daniel*, *A Flag for Sunrise*, *The Thanatos Syndrome*. In the law and literature courses featuring critical theory, students explore structuralism, deconstructionism, feminist literary theory, Marxist literary theory, and critical legal studies. Some of the critics and academic thinkers examined include: Owen Fiss, Stanley Fish, Sanford Levinson, Robin West, Richard Posner, Duncan Kennedy, Roberto Unger, Charles Fried, Richard Weisberg and Ronald Dworkin.

In contrast to these conventional approaches to law and literature, I sought to explore with students the various ways a lawyer's life might be understood from the way it is described in the fiction about lawyers written by lawyers. My reading list was confined, with some minor exceptions, to fiction written by and about contemporary American lawyers. My reading list was drawn from fiction by Louis Auchincloss, George V. Higgins, Walter Walker, and John William Corrington. My law and literature teaching was geared to a special audience—law students—and to the unique professional problems they would encounter as members of the legal profession. While a law student's education may have taught them something about the state of the law, and its application to specific legal problems, I assumed that they had learned far less about lawyering and how it might affect a person's life. Learning to think like a lawyer—whatever that turns out to mean—is not the same as working as a lawyer and living a lawyer's life. Lawyering is the only professional calling that is adversarial in nature. It is adversarial in that lawyers find themselves pitted not only against each other, each side zealously representing a client, but lawyers often find themselves pitted against themselves in that the position of their client (which they are paid to represent) might not be their own. The result, for any person of substance, is an ongoing conflict between the lawyer with an independent intellectual (and a regard for the truth) and his role as advocate (for clients who may not share his intellectual concerns, nor his regard for the truth). Basically, law school doesn't help students recognize, explore, or deal with this problem of immersing oneself in an adversarial existence and being in conflict with one's self.

An examination of my law and literature readings might have suggested that I was simply not a worker in the law and literature vineyard, a suspicion which could have been confirmed by an exploration of those with a critical perspective who have turned to law and literature. Critical theorists seem invariably to have taken up ideologically-based (pluralist, feminist, radical) approaches that use literature to set

the real world straight by reforming, deconstructing, or excoriating the texts which they associate with hegemony. In contrast, I had no ideological program to offer by the law and literature critical theorists, but then I had simply assumed that much of this ideological critique may turn out to be of little relevance to students as they take up the practice of law. Law students are, for the most part, heading off to become practicing lawyers, not academics, and its not clear what they are expected to do with the hosts of critical theories and ideologies they are presented. I was less interested in gender and ideology, more interested in the intellectual and the professional worlds of the lawyer.

My pedagogical focus was narrow and perhaps even selfish. I wanted to read about the world I inhabit in my profession, and I wanted to talk the way we inhabit this world with others who have an interest in living in this same world (even if to learn we don't live in the same world at all). I knew that I had learned a great deal about lawyers from fiction and assumed that students might as well. But to learn from fiction students must know how, or be willing to learn how, to read well. They need to be sensitive to tone, voice, point of view, and character development, a way of reading that is unlikely to be taught or encouraged in most law school courses. The challenges to good reading are of two kinds. First, the students must be willing to have their fundamental notions of what being a lawyer is about challenged. They must be willing to explore the consequences of the choices they make when their professional responsibilities as lawyers conflict with their own individual, intellectual responsibilities. We could have subtitled the course: *Lawyers and the Abdication of Professional and Individual Intellectual Responsibility*. The second challenge to reading lawyer fiction is to be able to make sense of what the authors and the characters in the fiction often themselves do not purport to understand. I wanted to make the students sufficiently self-aware of themselves as lawyers that they would be more attentive to the self-awareness issue as it appears so frequently in lawyer fiction and to recognize the effects of a lawyer's failure to be attentive to his intellectual and moral life. Consequently, lawyer fiction of the kind I prescribed for students, requires an inquiry into the nature of the lawyer's professional and individual identity. Our reading, and the exploration it demands, was informed by Orwell's dictum in "Shooting an Elephant" in which the tyrant wears a mask and his face grows to fit it. To understand how this relates to lawyers, is to understand why law students need to study literature and how they can use literature to better understand the nature of the lawyer's life.

As a group, the lawyer-novelists I read with students represented something of a cross-section of the legal profession. Not surprisingly, their backgrounds helped shape their fiction. Throughout his long

career, Louis Auchincloss has been a Wall Street lawyer and has chosen, not surprisingly, to write about that world. As Gore Vidal aptly put it, "of all our novelists, Louis Auchincloss is the only one who tells us how our rulers behave in their banks and their boardrooms, their law offices and their clubs." George V. Higgins began as a newspaper reporter covering the crime scene in Providence, Rhode Island, and then went on to serve as an Assistant U.S. Attorney working the organized crime beat before he opened his own criminal law practice in Boston and began writing fiction featuring minor crimes and criminals in and around Boston. Higgins' world is tough and his criminals talk tough and, perhaps it is not surprising, their lawyers talk tough and practice tough. Walter Walker, the youngest of the lawyer novelists I read with the students, was involved in a practice as a litigator in a small firm and wrote about young lawyers in small firms coming of age professionally. John William Corrington, an academic, poet, and intellectual historian before he took up the study of law at age 40, reflects all these careers and his early work as a novelist in his lawyer stories. With Corrington there is also a streak of the Southern gentleman in his stories about solo, and general practitioners working in the deep South. But as diverse as the backgrounds of the writers, they are all probing, some more wittingly than others, what it means to be a lawyer, and how being a lawyer affects one's personal life.

In Higgins's *Kennedy for the Defense*,⁵ Jerry Kennedy has a solo, criminal practice of the kind that most students would definitely not seek out, although some may find themselves closer to this kind of world than they would imagine. *Kennedy for the Defense* is a novel of self-justification, a first-person narrative in which Jerry Kennedy boastfully rationalizes why he does what he does. The novel is structured in something-like alternating chapters with Kennedy in his office and with his family at their vacation house. Jerry Kennedy is supposed to be on vacation during the two weeks that the novel chronicles, but his work is always taking him back to the office. The subplots in the novel center on several criminal cases Kennedy is handling simultaneously. He has one long-time client, Cadillac Teddy, a car thief who is again in trouble, one young man caught up in a drug-running operation he does not sufficiently understand, and the young son of a Boston scion whose homosexuality has brought him afoul of the law. The novel is filled with dialogue, much of it between Kennedy and his clients.

⁵ George V. Higgins, *KENNEDY FOR THE DEFENSE* (New York: Henry Holt and Company, 1980).

In the opening pages of the novel, Jerry Kennedy makes two statements, our testing of which determines how we are going to read the novel. He says first that he is a man with few illusions about himself. Second, he says, in almost the same breath, "I go to my office to make a living, not to make a life." We're encouraged to think that Kennedy knows what he is talking about. After all, he identifies himself with some affection as the "classiest sleazy lawyer in Boston." The problem with Kennedy's credibility and, indeed, his self-awareness, is that he seems to have little ability to keep his private life and personal life nearly so separate as he claims. We see, chillingly, however, what he cannot see: the extent to which his life is affected by his sleazy criminal practice. He carries a gun because of the potential danger posed by his clients; he breaks ethical rules (and may even engage in criminal action) when he asks one of his clients to teach a lesson to another client who has threatened his family; and he brings the language and lives of his clients home and makes them part of family conversation. He applies the rudeness learned in his dealings with clients to nearly everyone he encounters. He bullies his family in the same way he bullies his clients, and he finds his emotional well-being tied to his ability or inability to successfully defend clients who have become friends over time. As a result, Kennedy alienates himself from his family, but unlike the powerless clients, they rebel and seek redress. It is not until Kennedy recognizes in a sequel—*Penance for Jerry Kennedy*⁶—that his understanding of relationships with others finds its root in his relationship with his clients and only then does he begin to see how inapplicable his professional life really is to living a worthwhile life.

Reading *Kennedy for the Defense* with students, I have them look to where Jerry Kennedy is most himself, his language and his interest in monopolizing conversation, whether it is with clients, friends, or family. In the stories Kennedy tells about his practice he is always holding something back. When others try to talk to him, to engage him, he gets around to berating them. He condescends, and rather than ask questions as anyone else would, he assumes facts that portray his partner in the conversation as stupid, or childish. Kennedy wants to be, for ever, one step ahead of the person he is talking to. This forces the other party to explain further, which gives Kennedy more targets and occasion for derision. From Kennedy's language and the way he talks to people, we learn that he basically doesn't want to interact with them at all. If we listen carefully and identify the dynamics at work, we find that Kennedy's language, ironically, isolates him. We then see why Kennedy has

⁶ George V. Higgins, *PENANCE FOR JERRY KENNEDY* (New York: Alfred A. Knopf, 1985).

so few friends; he simply can't relate to others. He has built a wall around himself. We are left with a number of questions: Does it have to be this way? Is there something in the practice of law that encourages this kind of thing? And if so, why can't Kennedy, who is quite smart, see what is going on?

The question is whether Kennedy needs to act as he does to be an effective lawyer. Given the nature of his work, it is easy to see that his clients might well respond positively to his hostility. They might assume that if he treats them aggressively, he will treat the opposition no less badly and that in doing so their case will be better represented. The implication is that if the lawyer can control the client, he can control the lawyer on the other side. But how much of this is simply a *persona* acquired by habitual dealings with hardened criminals. And, if it is a *persona*, how much of it does he leave behind at the office? Clearly Kennedy thinks he needs to be as tough. The hostility that so defines him, however, makes us wonder whether he has simply brought some of this hostility to his profession or whether the profession demands it. There are, arguably, explanations for Kennedy's hostility that do not have roots in his practice. Throughout the novel Kennedy refers to his humble beginnings and shows a general antipathy to the wealthy. In short, Kennedy carries a class consciousness chip on his shoulder.

We're interested in whether a lawyer like Kennedy can change. Can he figure out that his personal life has become so intertwined with his professional life that his declaration that he goes to his office to make a living, not a life is more a posture than a reality? Can he reassess the relationship of his professional and personal life? In an ending that cannot be reconciled with the declarations of the opening pages, we find the gun-toting Kennedy convinced that he has done the right thing in turning to violence. The voice of his wife, so often sounding like the voice of reason (and which we might assume is the author's voice) has by novel's end been drowned out. If this reading is right, the reader learns more about how Kennedy's life works than he does, a rather odd result in that this is a first-person narrative in which the narrator is convinced that he has few illusions about himself. That a novel might permit the reader to learn even more than the novel's protagonist, or even the author knows, requires explanation. First, it lies in the fact that Kennedy is a man out of control. And as to the author, we know from Higgins himself that he aligns himself with Kennedy. "I suppose there is quite a lot of me in Kennedy," Higgins is quoted as saying in a *Time* magazine review, "particularly in his commitment to his family and his general attitude toward the law." For Higgins to have thought differently about his character, the logic suggests, Kennedy would have needed to think differently about himself. Consequently, our initial

speculation that the voice of Kennedy's wife represents Higgins's voice cannot be right. A perhaps more persuasive reason for thinking that both Kennedy and Higgins were out of control in *Kennedy for the Defense* is that Higgins's sequel, *Penance for Jerry Kennedy*, has Higgins figuring out some things that had escaped him in the first novel. He has a glimpse of the truth that his life is unraveling when, late in the first novel, he says that "like most professional jerks, or most of the jerks who enter the professions, I tend to slough my family obligations when my job takes too much time." By the end of the second novel, *Penance for Jerry Kennedy*, he recognizes that it is not just a question of how much time he spends away from his family, it is a question of how much he has become his work. He says: "This is a tough business, the one I am in. We are always seeing people that are in deep trouble. People at their worst, you know? That is when we see them. Happy people, working people, people with good lives: they don't get in trouble and we very seldom see them. So we get used to the hard stuff, and we sometimes mimic it. Not intentional, I guess, but that's the way it is."

We can follow the central theme of self-awareness we first took up in Higgins's *Kennedy for the Defense* in Louis Auchincloss's *Diary of a Yuppie*.⁷ Here again we have a first-person narrative, this time in the form of journal entries, inviting us to test the narrator's credibility, motive for keeping a journal, and his level of self-awareness. The story itself, slender as it is, has us following the exploits of thirty-two-year-old Robert Service as he leaves the firm at which he has toiled for eight years because of the moral squeamishness of the senior partner he has been working with. Service, with colleagues he convinces to join him, opens his own firm. Law firm infighting puts Service through his paces as a ruthless, triumphant leader, and the novel ends with a merger with still another ambitious, morally questionable firm. Against the backdrop of this Wall Street legal world, and Service's law firm machinations, we find him separating from his wife because of her moral squeamishness, living on his own and using his personal, romantic life to enhance the firm's prospects. He eventually reunites with his wife, who finally begins to see what he is about and is willing to tolerate it.

The drama of the story, we are told in the beginning, is not with the plot. Rather, the drama is in watching Service, the Jamesean observer, observing. If we observe closely, however, Service does little if any real observing in the novel. Rather, he rationalizes and justifies. The writing of a journal, which we associate with self-examination and introspection—the exploration of tentative thoughts and vulnerabilities, focusing

⁷ Louis Auchincloss, *DIARY OF A YUPPIE* (Boston: Houghton Mifflin, 1986).

in new ways on old problems, setting out what we now know in a way that will make it possible for us to see later what we do not see clearly at first—doesn't provide an occasion of doing anything of the sort for Robert Service. Once we start testing Service's journal by asking how he portrays himself and those around him, we see that the use of the journal might have added a sense of irony if Auchincloss had used Service's journal to allow us to see the shallowness of his protagonist. But that does not seem to be his intention. As with *Kennedy for the Defense*, the conclusion tells all as to how we should read the novel. Service does not change. What he gets, at the end, is a tacit acknowledgment from his wife that if nothing else, Service adheres to a set of principles, a code of honor.

Service is made out to be something of an honorable man, which, of course, he has always thought himself to be. The most significant question the novel poses is whether Service earns our commendation or condemnation. The answer to the question turns on how we as readers feel lawyers should act in their representation of clients. At issue are not only the effective and zealous representation of a client, but the moral and ethical dimension of the representation and the zeal to which it is carried out. Are there any limits to what a lawyer should do for his client? Service, in a hotly contested take-over case, has found incriminating information about a board member of the target company he is trying to take over, information discovered by having someone go through the man's wastepaper basket. He wants to use this information as blackmail to weaken the opposition, but the senior partner with whom he is working, Blanders Blakelock, forbids the use of the information and is repelled by Service's inclinations, both in looking for such information and his eagerness to use it. In explaining to his wife why Blakelock is out of step with the moral times, Service says:

"The trouble with you and Blakelock is that neither of you has the remotest understanding of the moral climate in which we live today. It's all a game, but a game with very strict rules. You have to stay meticulously within the law; the least misstep, if caught, involves an instant penalty. But there is no particular moral opprobrium in incurring a penalty, any more than there is being offside in football. A man who is found to have bought or sold stock on inside information, or misrepresented his assets in a loan application, or put his girl friend on the company payroll, is not 'looked down on,' except by sentimentalists. He's simply been caught, that's all. Even the public understands

that. Watergate showed it. You break the rules, pay the penalty and go back to the game.”⁸

An advantage of using novels to teach law students about lawyering is that the fiction provides situations in which the student can participate by asking himself what he would do if he were in the character’s shoes. Exploring with students their views of Service’s conduct and his attitude in the takeover battle, I ask them: “would you do this kind of thing?” Most said they would, basing their response on what we might call an “insulation theory.” The lawyer, they say, is not acting for himself when he represents a client, but is being paid to service the client’s needs so long as that service is within the bounds of the law. Service makes the “insulation argument” to his wife when he tells her what kind of firm he has started and believes in. He says:

I told her now, in all gravity, that I was determined that my firm should be a success. And not just a financial success, either: *a moral* success. I was resolved that it would be a union of highly trained, competent men and women who would do everything for a client that could be lawfully done. We should be taut, keen, hard-boiled, comprehensive. There would be no room for sentimentality and none for sloppiness. Uniform rules of office procedure would be laid down and rigidly adhered to; overhead would be kept strictly under control. Partners and associates would be paid in accordance with the quality of their labor and the fees that it produced. The perfect machinery of the firm would be totally at the service of its legal expertise.

And what would that expertise be used for? Well, first and foremost, of course, for the clients—for the skillful handling of their interests within the last letter of the law, but never a millimeter beyond. Nor would the client ever be subjected to the smallest piece of moral advice or guidance; all such matters would be strictly the client’s affair. My firm would be a sharp cutting weapon to be picked up and used; weapons did not preach, but they had to be paid for.⁹

And what, we might ask, does this speech mean? To whom or to what does Service express any sense of responsibility? The answer, as to his life as a lawyer, is a code of professional amorality, but outside the office, we learn that Service feels responsible to no one else, to nothing else. He has no friends to speak of and no commitment to his family. He stands alone. To invoke *Macbeth* and the telling fact that he had, as McDuff wails, no children goes too far, but not by much. Service has used everyone in his life to pursue his professional goals, for what they

⁸ *Id.* at 26-27.

⁹ *Id.* at 80-81.

can do for him as he pursues his own aims. He remains unaffected by those around him, which means he defines himself by his amorality, by an absence of personal values.

We learn all too well what kind of lawyer Service is by the stances he takes in his professional life. He is not only a man of action, but offers speeches along the way to tell us exactly what he is about and who he is. (Service doesn't want anyone to think him anything other than what he is.) Yet, getting a sense of what kind of person he is, is more difficult and especially troublesome for students because this exploration will pierce the veil of Service's supposed efforts at self-reflection. We are told, of course, only what Service wants us to know, and unless we accept Service as he presents himself, we need to ask what Service is not telling us, what he is not able to say about himself. We must, ultimately, if we are not to accept Service's own rationalizations and justifications, begin to assemble a more truthful portrait of Service than he has created of himself.

The issue of self-awareness is not settled at all by the notion that Service is simply not an introspective person. We should be curious as to how he got to be this way and what it costs. And there is still the author's level of self-awareness to deal with. Does Auchincloss mean for *Diary of a Yuppie* to be a cautionary tale, and thus of special significance for an audience of law students? Since Service does not change and does not see how limited his view of the law and legal practice is, Auchincloss cannot have intended *Diary of a Yuppie* as a cautionary pedagogical tale. Moreover, when we look to other lawyer fiction by Auchincloss addressing similar themes, we see that he has a tendency to support the attitudes that Service illustrates and defends.

It is a tenet of faith in Auchincloss's world that for a Wall Street lawyer his firm is his life. It was true for Auchincloss's father, who was, as is Auchincloss, a Wall Street lawyer. Yet, there are differences in the world of Auchincloss and his father, differences reflected in Auchincloss's fiction, where different generational views are recognized. For his father's generation, the practice of law was an elite, hierarchical, even tyrannical fraternity. For some of the older generation who had looked forward to being revered as elder sages, they are instead trying, desperately, to hold on to their jobs in the face of opposition of younger partners who insist on productivity and fees, not memories.

Auchincloss supports the changing of the guard and links the emergence of a new corporate sensibility with the moral and psychological issues his lawyer characters must now wrestle. Auchincloss's lawyers are often presented with the choice between living in the ideal moral world he believes should exist (isolated as it may be), or living in a compromised, real world. In this struggle, the lawyers are influenced (or

refused to be influenced) by women, who, Auchincloss repeatedly tells us in his fiction, are interested in (and do manage to represent a morality that goes beyond adversarial advocacy), but are, basically confused about morals. Along with Auchincloss's odd psychological mix is the idea that to execute the demands of the new corporate sensibility—to be a leader of a modern law firm—is a mark of honor and manliness. Many of his characters need to demonstrate to themselves that they possess the qualities necessary to lead and to be honored, which they assume follows from the successes occasioned by the ruthlessness of their actions. Whether he is writing about lawyers on Wall Street from his father's generation, his own generation, or the current generation, Auchincloss, perhaps unwittingly, presents us with emotionally-warped characters. Their attachment, psychological and intellectual, to the life of the firm is too great and it leaves their lives seriously unbalanced. Family and personal relationships are diminished not only by the long hours and intellectual demands of the work, but also by the sensibility required to compete and be successful in this work world. Auchincloss's lawyers have no interests of note that extend beyond themselves. Indeed, the lawyers seem not to have anything like a personal relationship with the law itself. It is the firm and its politics, not with the law, to which these men are devoted. The law is a function of what the firm represents and demands, including all those social and cultural forces shaping and propelling the firm. The lawyers use the law to exercise power, which, in its most pathetic example, means emotionally defective lawyers using the law to frustrate the joys of others.

Service's morality is premised on the selfishness of the individual and what he calls "the moral climate in which we live." He is consumed by his job and indifferent to the emotional needs of his wife and children. He lives in a self-centered world in which his own striving (and personal philosophy) transcends all other goals. Everything is to be sacrificed in his pursuit of success in the firm (and to take on the management of the firm). There is in this pursuit, not only a need to control and dominate those with whom one works, but a need to compensate for perceived deficiencies in one's masculine images. Basically, this is a world in which those who succeed are in control, those who learn strategies for dealing with the constant conflicts which arise over control issues. The practice of law becomes a way to exert control and to compensate unconsciously for those aspects of life when one cannot be in control. The result: given the choice of life or law, lawyers choose law, in all its sterility.

With Robert Service and a host of similarly unappealing and emotionally and morally deficient characters, we find ourselves confronting the most profound issues involving the relationship between profes-

sional and personal lives. In *Diary of a Yuppie*, as elsewhere in Auchincloss's lawyer fiction, lawyers must adapt themselves to the demands of the new marketplace. Auchincloss's fiction suggests that to be successful, lawyers must merge their personal and professional lives; they must become privately what they are publicly. His fiction illustrates the meaning of Orwell's dictum in "Shooting an Elephant" that "the tyrant wears a mask and his face grows to fit it."

Orwell's observation about who we are and the *personas* we adopt and present to those who govern our "success" and those we think might hold us accountable, is displayed all through our best lawyer fiction and brings us around to confront the question of how the practice of law can change, deform, and undermine the life which law seems to so ardently promise us as its servant. Orwell, as he prepared to shoot the elephant he knew he did not have to kill, understood the transforming power wielded by an onlooking crowd of natives; it is an insight that lawyers in fiction so often lack. The threshold problem for lawyers in fiction is in their inability to identify the forces at work that shape their lives well beyond their work. Auchincloss's characters do not seem fully aware of how the law is affecting them, nor, at least, at first, does George V. Higgins's most fully realized lawyer character, Jerry Kennedy.

We shift focus a bit when we consider with Walter Walker's novel, *A Dime to Dance By*,¹⁰ a young lawyer coming slowly to assert his independence, professionally and individually, in a social and professional milieu that has held him captive to the expectations of others.¹¹ *A Dime to Dance By*, another first-person narrative, is told by Chuckie Bishop, a lawyer in his mid-thirties who has been a high school football star and now practices law and lives in the town where he grew up. As the story gets underway, Bishop has little commitment to his professional life and continues in a social circle of men with whom he had gone to high school and who have not progressed much beyond. It is a adolescent, beer-drinking, bar crowd. Bishop gets hired to defend a local policeman, a former high school friend of Chuckie's, who has shot and killed an alleged house burglar, as the burglar was leaving the scene of the crime. Investigating the case, Bishop learns that the policeman he represents is part of a larger scheme of political corruption which he must navigate as he tries to exonerate his client. On the

¹⁰ Walter Walker, *A DIME TO DANCE BY* (New York: Penguin Books, 1985).

¹¹ In another Walker novel, *Rules of the Knife Fight*, we find a meditation on the nature of friendship and the nature of the attorney-client relationship. See Walter Walker, *RULES OF THE KNIFE FIGHT* (New York: Harper & Row, 1986). Walker has still another lawyer novel, *The Two Dude Defense* (New York: Harper & Row, 1985).

personal front, Bishop grows increasingly dissatisfied with his underachieving friends and must deal with problems presented by his teenage daughter and his ex-wife.

The novel centers around Chuckie Bishop's perceptions of himself and of others, his identity and that of those he tries to relate to. Bishop turns out not to be much like Robert Service or Jerry Kennedy because he is so less sure of himself than are these arrogant men. *A Dime to Dance By* is about resolve and the difficulty in following that resolve. Bishop is resolved to be more serious about his life, both his work and his personal life. We want to know how he succeeds in this effort, and what changes must take place for him to follow through on this resolve. It is something of a game keeping your eye on Chuckie Bishop. As the novel opens, for example, we find him attending a fundraiser, as small town lawyers looking to make contacts do, for a politician who becomes a central figure in the book. At this event Bishop is an observer, but by the novel's end he is a participant and an equal of the politicians honored at such events.

Charting Chuckie Bishop's progress is not a linear path and not without setbacks. He falters due as much to his weak nature as to the forces of mediocrity which surround him. Listening to Bishop relate events as they unfold, we hear him steeling himself for encounters, but acknowledging his anxiety and fears, and then slipping as his resolve dissipates as he finds himself in situations he had not anticipated. He finally decides that the only way he can represent his client, the policeman, is to play hardball with the local politicians. But in his personal life, he continues to let his high school buddies treat him as though he were still simply one of the boys even when he does not feel like one of them, and there are times when he wants them to know this. But when they press, he succumbs.

The theme, here, is responsibility, to clients, and to oneself, a theme worked out, in both his professional and personal life. We learn that Bishop, as a teenager, has had a sexual involvement with the mother of the high school friend turned burglar. Bishop instead of recognizing the impropriety of his acts as a teenager, has still not learned how he might have crossed the line. Another former friend tells him, more than twenty years after the fact, that there are "no boundaries to what you will do." Indeed, it seems there are none. Chuckie not only has casual sexual dalliances with women he cannot stand and sleeps with the wife of another high school friend. Finally beginning to recognize a pattern in which involvement with women—seen by the reader well before Bishop does—Chuckie finally begins to accept responsibility and to say no when it counts.

As the story progresses, Bishop beats the political machine at its own game, disentangles himself from his high school buddies, repairs the damage to his daughter wrought by years of neglect and irresponsibility, and begins to establish himself, not coincidentally, as a lawyer in his own right.

Walker, continuing his exploration of the responsibility theme in *Rules of the Knife Fight*, presents another young lawyer hoping to find himself both professionally and personally. Chris Cage, the lawyer, says, "I'm just a guy who spends his days working and his nights wondering where the days go." But Cage has problems in trying to be responsible in the fashion expected of lawyers. He settles a personal injury case for a fee which he badly needs to keep his small firm afloat, subtly maneuvering his clients into thinking that the settlement offer is a good one, when it might not be. He then, in a post-settlement social affair, sleeps with his client's wife. Granted, they desire each other equally, but the fact remains that Chris has failed to keep any distance between his professional life and his personal sexual affairs. He goes even further and sleeps with his best friend's wife. Again, she may have been equally interested in the affair, but it hardly bears saying that sleeping with your best friend's wife is risky behavior.

We read these various encounters, sexual and legal, as apparently discrete events, and then it dawns on the reader that there is an underlying pattern. The question is whether Chris Cage can recognize this pattern and free himself of it. At the center of the novel is an incident, perhaps an accident, which lawyers label as a wrongful death action. The defendant is Chris's best friend, Leigh Rossville, himself a lawyer. The novel takes a panoramic view of the incident and its aftermath by focusing, on several of the book's important characters. The sections on Chris Cage and Rossville are of the greatest interest to law students because here we find Rossville turning to Chris, his best friend, to represent him in the wrongful death action. Chris takes the case, at least in part, because of the guilt he feels over having slept with his friend's wife.

Rossville sits Chris down and pours out the story, all with the expectation that his friend will represent him.

Choosing his words carefully, Chris said, "I think that as your friend I don't want to work on this for you. I think as your friend I can give you support, money, advice. I can share your losses and your victories. But if you're my client it won't be like that anymore. There won't be any more give-and-take in our relationship. It will be you depending on me and that will be it. You won't be able to call me an asshole or risk hurting my feelings or even arguing with me. You'll find yourself being careful about everything you say in front of me for fear it will affect my

judgment. Worse, you'll start telling me things for the specific purpose of affecting my judgment. The whole exchange between us will become so cautious, so contrived, so fraught with reminders of what's at stake, that we won't even want to be around each other." Chris's hand came down. His face constricted into an anguished squint of appeal. "Do you understand what I'm saying?"

Leigh felt himself on the verge of a violent shiver. When he spoke he had to grit his teeth from chattering. "What I understand, Chris, is that even while you're talking to me about friendship, you're talking like a lawyer. What I understand is that you and I knew each other as human beings a long time before you became a lawyer and that's why I came to you today. I don't want you to take me on as a client. I want you to say, 'Holy shit, you're in trouble and this is what I can do to help.' It's like, it's like . . . if you need to borrow my house, my car, my ski cabin—whatever—they're yours. And if I need your legal talent, I expect you to say, 'Here, it's at your disposal.' One might be more serious than the other, sure, but they're both things that a friend should do."¹²

With parallels found in Auchincloss's *Diary of a Yuppie*, Rossville's request and Chris's response to it provide an opportunity for a law student reader to place himself in Chris Cage's shoes. Moreover, Chris's dilemma of representing a friend poses an opportunity to explore exactly what it is we think the nature of the attorney-client relationship is all about. Why would Rossville want his friend as his lawyer? The answer, of course, is that he gets what every client wants from every lawyer—sympathy, empathy, and a complete commitment to the case and the willingness to assume responsibility for what happens—someone who is responsible as a friend is to a friend. Rossville, the client-friend, could hardly get a better deal.

But we might also look at the situation from the perspective of the lawyer representing a friend. From this perspective the novel, for the law student reader, serves as a cautionary tale. We see that Chris gives, in his representation of his friend Leigh, the autonomy and distance that defines a professional relationship and exposes himself to the vicissitudes of litigation with no way to shield himself from the consequences of losing. But perhaps more importantly we see that Chris Cage is transformed by his responsibility, as he lives with the anxiety of the situation, and his obligations to his friend. In Walker's novel, Cage, who we see first as a rather casual, indifferent lawyer, has become a different kind of man. He dresses differently—seriously now in his role as litigator—and acts differently, as he commits himself to his work (leaving his firm

¹² *Rules of the Knife Fight*, *id.* at 238-239.

and devoting himself full-time to his friend's case). That he is willing, as part of this transformation, to base his defense on his client's knowing perjury, serves only to show us the depth of his transformation.

In Walter Walker's lawyer novels we have lawyers who recognize that their lives are out of alignment and are seeking ways to become more mature, responsible and committed lawyers, a person with both substance and character. With Walker's fiction our attention is drawn to the connection and relationship of acts and consequences. And it is this connection, recognizing and seeing how it works, that brings us to the fiction of John William Corrington.¹³ Corrington's lawyer stories and legal fiction¹⁴ takes us well beyond the work of the other writers we have been discussing. Corrington's fiction is distinguished by the way his reflective lawyers try to understand the law, themselves, and their relationship with the law. The lawyers in his stories deal in some important way with these relationships, made all the more significant by Corrington's brilliant prose and the lawyer's speech-making. Corrington identifies precisely the tensions that are most real to and central in a lawyer's life. His lawyers practice quietly, contemplatively, and leisurely. (It matters, to the story, and to Corrington, that these lawyers practice in the South.)

In "Pleadings,"¹⁵ for example, the lawyer-narrator is trying to understand why his own marriage is troubled while he works on an unusual divorce case. In Corrington's stories, love plays a central role, and appears as a countervailing force to the demands of the practice of law. The lawyers make conscious (or unconscious) decisions to reject or limit one or the other (and learn the consequences).

¹³ On Corrington's fiction and his life, see James R. Elkins, *A Great Gift: Reading John William Corrington*, 26 Legal Stud. F. 425 (2002).

¹⁴ Corrington's law related short stories and novellas were recently republished in an issue of the *Legal Studies Forum*. James R. Elkins (ed.), *Fiction by John William Corrington*, 26 Legal Stud. F. 1-423 (2002). For a collection of Corrington's short fiction, see John William Corrington, *THE COLLECTED STORIES OF JOHN WILLIAM CORRINGTON* (Columbia: University of Missouri Press, 1990)(Joyce Corrington ed.)(hereinafter *Collected Stories*). The collected stories are drawn from two previously published collections (many of the stories originally appeared in literary journals): *The Actes and Monuments: Stories* (Urbana: University of Illinois Press, 1978) and *The Southern Reporter: Stories* (Baton Rouge: Louisiana State University Press, 1981). Corrington also published two novellas which involve lawyers, "Decoration Day" and "The Risi's Wife," which were published under the title, *All My Trials* (Fayetteville: University of Arkansas Press, 1987).

¹⁵ John William Corrington, *Pleadings*, 26 Legal Stud. F. 211 (2002)(*"Pleadings,"* in *Collected Stories*, at 255-299).

At issue, on one level, is Orwell's dictum. As one of Corrington's lawyers puts it, "one cannot play bloodster without gradually coming to possess the metabolism of a jaguar, a predator." If the lawyer feels compelled to adopt a certain *persona* or sensibility to be a lawyer, he runs the risk that he will be unable to disengage himself from the adopted identity when it no longer serves a useful purpose. The lawyer here confronts a conflict: if the client comes to a lawyer expecting him to be a shark in litigation (as some clients certainly do), a lawyer has some motivation to become what the client expects and will find positive reinforcement in doing so. How he goes about maintaining or preserving an identity apart from the expectations placed upon him as a hired-gun becomes a central question for both his professional life and his identity.

The distinctive feature of Corrington's fictional lawyers is that they are far more self-aware than the typical lawyer. They are lawyers who not only participate in and respond to the demands of the law but are observers of the forces that shape their lives. A Corrington lawyer remains sensitive to the feeling of others, and thus, retains an ability to relate to others. But there is still the problem, as for any lawyer, in not being a principal, and thus, the risk of one sufficiently removed from the actual conflict to be both hired gun and still be able to respond emotionally and personally when the day is done after spending a day wreaking havoc on others.

The lawyer's ability to relate to others is affected not by the power of the gun, as is true of the gunfighter, but by the power of words, which are the tools of the lawyer's trade. He needs to understand the deadening influences of words and how they fundamentally distort the lawyer's response to life when words become the substitutes for acts. As the narrator of "Pleadings" ponders: "[A]cts in law are almost always merely words. I live in a storm of words: words substituting for action, words to evade actions, words hinting at actions, words pretending actions."¹⁶ Knowing his life is in trouble, he wonders, "was it that I didn't love [my wife] anymore, that somewhere along the way I had become insulated against her acts? Could it be that the practice of law had slowly made me responsive only to words?"¹⁷

Corrington's fiction pushes us to think about the transforming force of time. His stories help us see that a lawyer's experience, over time, accretes and slowly mold him to be a particular kind of person. It is not just that lawyers face a life filled with tension and conflict (professional and personal), but that there are, for the lawyer, forces for transforma-

¹⁶ *Id.* at 221.

¹⁷ *Id.* at 222.

tion inherent in the practice of law. In a memorable passage from "Nothing Succeeds," Corrington gives us the insight of an elderly lawyer reflecting on a lifetime of work as a lawyer:

One of the results of aging in the law is that you are not easily gotten to. By the time you have been at it thirty or forty years, you have done so many things no one should have to do that something has drained out of you, to be replaced with the law, like a creature trapped in the mud which is hard pressed for a long, long time, leaching away the soft parts, making everything over. In stone.¹⁸

This transformation is made easier, for some, perhaps even inevitable, by the lawyer's adaptability to the demands of adversarial advocacy and its culture. The same lawyer says,

It is of the essence of advocates that they be able to take on at once the color of the place where they must work. It is not a conscious thing, or it would be useless. It is an inherent capacity by which he who would preserve or alter the status of a situation in which he is alien shifts his cognitions into the key dominant amongst the contenders with whom he deals.¹⁹

Central to Corrington's stories is a view of law as an institution which fails in its response to human needs, and a lawyer's efforts to deal with this failure as they try to make sense of their cases and clients and the system in which their claims are judged. Corrington makes clear that a lawyer, to rescue his life, must break free of the limited role that law prescribes for him. Only by this effort at rescue from a confining role, can a lawyer embrace and experience love.

Corrington's stories, when we focus on the relationship between acts and consequences, represents lawyers who acquire a heightened moral sensibility. The lawyer in "Pleadings" discovers, by witnessing the acts of love of his divorce client and her husband's final recognition of the truth that had alienated them, that acts, as Pericles noted, "deserve acts, not words, in their honor." This moral sensibility opens the way for a lawyer to reconcile his professional and personal life.

In "The Actes and Monuments," Corrington has one of the lawyer's reach back through history to right our worst wrongs.²⁰ His action is necessary because of his belief that lies cannot withstand the force of

¹⁸ John William Corrington, *Nothing Succeeds*, 26 Legal Stud. F. 286, 317 (2002) (*Collected Stories*, at 360-411).

¹⁹ *Id.* at 299.

²⁰ John William Corrington, *The Actes and Monuments*, 26 Legal Stud. F. 181 (2002) (*Collected Stories*, at 215-245).

truth and that the lawyer's job (his obligation) is to assert that truth. In "The Actes and Monuments" these beliefs lead the lawyer, in what many readers will find to be eccentric behavior, to take up the cases of aggrieved parties hundreds of years ago, writing briefs for some heavenly court. But the lawyer's eccentricity should not divert us from the idea that a lawyer has a moral obligation to deal with truth, and to facilitate a moral, historical consciousness (infused as that consciousness may be with the ideals represented by law and by justice).

Another lawyer in "The Actes and Monuments," representative in so many ways of Corrington's lawyers, is so transformed by his work—and the massive moral dislocation it can demand—that it is figuratively, if not literally, killing him. Corrington's stories present us, in stark form, the chilling possibility, that our involvement with law can destroy us, or so deform us that we become persons we no longer recognize. The lawyer in "The Actes and Monuments" says: "I had had a certain gift with exceptionally sharp teeth. Yes, I had been cruel. I had enjoyed finding certain lawyers in the opposition, men I had known who were blessed with a kind of unwillingness to go for blood. They worked within the confines of their dignity, their gentleness, their inadequacy. But I worked elsewhere and won invariably. But such work tightens the viscera. One cannot play bloodster without gradually coming to possess the metabolism of a jaguar, a predator."²¹

The lawyers in Corrington's stories see lawyering as an extension of their moral selves. Corrington insists that his lawyers have autonomy, an identity separate from the client's, to enable them to act as moral beings. Corrington presents us with lawyers who come to recognize that they have the capacity to choose what kind of lawyers and what kind of people they want to be. To do so, they must see how their personal and professional lives are inextricably linked, but that this fact alone does not lead to the inevitable conclusion that they must succumb to the corrosive, deadening forces of their profession. Those who blame the law for the lawyer's moral bankruptcy miss the point—a lawyer can live greatly in the law. The trick is to have the lawyer take hold of his lawyering and make himself personally responsible for how the work is done, and the consequences of that work.

What we find, in law and literature as I conceive it, is that the relationship between the professional's personal and work life lies at the heart of our best lawyer stories, our best legal fiction. A professional commits himself, through training and dedication to the profession, to a life that will be shaped by work. Physicians, scientists, and scholars,

²¹ *Id.* at 191.

to name three, are all shaped, personally, by committed relationships with their disciplines. Science, judging from the autobiographical literature of its practitioners, teaches a patience and respect for a world larger than that of the individual scientist, a world to be appreciated for its great beauty.

With the unique nature of the legal professional's obligations—to the client, rather than to the system of law—the lawyer often conducts his professional life as if were literally dictated by some system (as if that system had a tyrannical god). By way of lawyer fiction, the lawyer might discover himself, fully adapted to a role, adhering to the demands of clients, losing touch with his ability to relate to others and to experience the relationship of his acts to their consequences, leading a professional life that has devoured his identity as a whole person. Paradoxically, as the lawyer, in his professional life gains control (and enjoys an ever greater level of success), he is in danger of losing control of his personal life, and finding that he faces the greatest of all failures, the loss of his own soul. With the loss of soul, the lawyer becomes Orwell's tyrant, the man who cannot remove his professional mask.

Corrington's view that the lawyer must live his professional life for himself, rather than for his client, to live morally and ethically, encourages lawyers to reassess the importance of ethics, morality, and love; it points to the surprising truth that unless mastered, a life in the law does not enrich but impoverishes the lawyer; it desiccates and destroys him. The lawyer's life, understood in terms that Corrington understands so well, must beware of a life devoted to professional demands that cut him off from other intellectual worlds, indeed, cuts him off from those who love him.

Absent the lawyers we find in fiction, one might be aghast at my conclusion, that the practice of law can be hazardous to one's emotional and psychological health. But there is still a more fundamental challenge. We must become better readers, the kind of readers who come to text (and a story) with an open-mind, curious as to what can be learned, evolving strategies that allow us to give the text meaning, and hold open the possibility that the meaning we find in the text is one that we can (by adept strategies) incorporate into our own lives.

Reading lawyers in literature raises questions about our status as readers. What happens when a plaintiff's lawyer reads a judicial opinion involving negligence? What happens when an insurance company lawyer reads the same decision? What happens when a prosecutor and a defense lawyer read the same criminal law opinion? The answer may be obvious, an interested party reads with an eye to seizing upon that which supports his special interest. Since lawyers have their "interest" so fundamentally shaped by being a plaintiff's lawyer, an insurance

lawyer, a prosecutor or defense lawyer, a lawyer in private practice who represents only certain kinds of clients, then one's problem as a reader can seemingly be averted. But in reading only as an "interested party," is there not a danger that the lawyer will lose his intellectual independence, the ability to decide for himself, what he or she thinks the law is all about. The thing we need most as lawyer/readers, the independence to read and interpret free of the special interest demands of others, is at risk when one becomes a lawyer. One response to this danger is to take seriously the Elihu Root admonition that "about half the practice of a decent lawyer consists in telling would-be clients that they are damned fools and should stop."²² These words might send Robert Service into an apoplectic fit and would prompt hoots of derision from some quarters in the practicing bar, but if a lawyer is to have any independence, any ability to resist the forces tugging at his soul and mind, he must be able to say no to a client and be respected for it.

²² Philip C. Jessup, 1 ELIHU ROOT 132-33 (New York: Dodd, Mead & Co., 1938)(2 vols.) (quoting Elihu Root) (reprinted in Fred R. Shapiro (ed.), THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS 45 (New York: Oxford University Press: 1993)).

