

GESM 120
Language, Law and Literature

GE Seminar in Humanistic Inquiry
Fall 2016

Time: Tuesdays and Thursdays, 9:30 – 10:50 a.m.

Place: GFS 229

Instructor: Prof. Sandra Ferrari Disner
GFS 301d
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Office hours: TBA

Course description:

Language is the attorney's essential tool in activities such as arguing a case, drawing up a contract, or defending a trademark. It is used by police to request permission to conduct a search, by detainees to invoke their right to legal counsel, and by victims to describe their ordeal.

A judge may address the jury, but jurors are forbidden from addressing the judge. Jury instructions are usually read aloud, once, and withheld from the jurors thereafter.

The precise, clear, and artful use of language has for centuries affected the outcome of legal disputes -- even long before the plot of *The Merchant of Venice* famously turned on Portia's linguistic skills.

This course will examine some of the landmark issues in American jurisprudence through the prism of language. Whether discussing the Miranda rights of detainees, or the treatment of rape victims on the witness stand, or the responsibilities of jurors, or the deniability of an instigation to murder, we will first review the case law, then illuminate it with linguistic principles, and finally explore the use of legal language in some notable works of literature, film, and ballad.

Linguistics, the scientific study of language, can shed a great deal of light on the language of the law. It can reveal where (and why) laws and legal documents are ambiguous, and where (and why) they may be susceptible to lawyerly manipulation. It can point out all the promises implied, but never actually specified, in a legal document. It can discern the power relationships in courtroom interactions between lawyer and witness, or those between police and suspect. It can justify the use of the sentence, "It depends on what the meaning of the word 'is' is."

All of the linguistic tools and concepts needed for this course will be introduced early in the semester. ***There are no prerequisites for this course.***

Grades will be based on four written assignments (supplemented by occasional questions posed in class), a midterm exam, and a final exam. Attendance and active participation, which are vital for a lively seminar discussion, will be factored into the final grade.

Film screenings are not optional events. If you happen to miss a film, make arrangements to see it.

Prompts will be provided for the four written assignments, and these will be the operative guidelines. The most successful responses to the prompts are those that carefully consider the questions posed and proceed to answer them thoughtfully, making frequent and appropriate reference to the readings.

Course objectives:

After reading case law and related works of literature, film, and ballad, the student should be able to:

- Demonstrate the ability to critically analyze legal discourse, including courtroom questioning, police interrogation, invocation of rights, overt and covert threats, warnings, and promises.
- Recognize structures that merely imply, rather than state, certain facts.
- Recognize ambiguity in the structure and vocabulary of legal discourse.
- Recognize the linguistic and societal influences upon jurors which may countervail the direct evidence presented in court.
- Discern power imbalances in courtroom and law enforcement interactions.
- Appreciate the subtle power of legal language in some of the great works of world literature.

Readings:

Case law (optional readings):

Anderson v State Farm Mutual Automobile Insurance Co. 270 Cal. App. 2d 346

Berghuis v. Thompkins 130 S. Ct. 2250

Davis v. United States 512 U.S. 452

Miranda v. Arizona 384 U.S. 458

Regina v. Bentley 1 Cr. App. R. 307 (U.K.)

Schneckloth v. Bustamonte 412 U.S. 218

California Criminal Jury Instructions for Judges and Attorneys, section on Homicide

Commentary on case law (required readings):

Ainsworth, Janet, 2008. "'You have the right to remain silent...' but only if you ask for it just so." *International Journal of Speech, Language and the Law* 15:1-21.

Ainsworth, Janet 2012. "The meaning of silence in the right to remain silent". *Oxford Handbook of Language and Law*. Oxford: Oxford University Press. pp. 287-298.

Coulthard, Malcolm, 2002. "Whose voice is it?" *Language in the Legal Process* (J. Cotterill, ed.) pp. 19-34. NY: Palgrave

Elwork, Amiram, Sales, Bruce & Alfini, James (1982) *Making Jury Instructions Understandable*. Charlottesville: Michie.

Tiersma, Peter, 1995. "Dictionaries and Death: Do capital jurors understand mitigation?" *Utah Law Review* 1995: 1-49.

Tiersma, Peter & Solan, Lawrence, 2004. "Cops and robbers" *Law & Society Review* 38(2): 229-66.

Ward, Colleen, 1995. *Attitudes Towards Rape*. London: Sage.

Works of world literature, film, and ballad (required readings), including:

Anatomy of a Murder by Robert Traver (pen name for Michigan Supreme Court Justice John D. Voelker), and excerpts from the 1959 film directed by Otto Preminger.

Bartleby, the Scrivener, by Herman Melville

Becket, by Jean Anouilh*

The Bible (Genesis 27)

The Decameron, by Giovanni Boccaccio

Edward II, by Christopher Marlowe

Henry VI, by William Shakespeare

Let Him Dangle, lyrics by Elvis Costello

Macbeth, by William Shakespeare*

Richard II, by William Shakespeare

Sanctuary, by William Faulkner*

Tristan and Isolde, by Gottfried von Strassburg

Twelve Angry Men (1957 film directed by Sidney Lumet, screenplay by Reginald Rose)

[Starred items are to be read in their entirety. Excerpts from the other works will be provided.]

Grade components:

1. Class participation (**14%** of final grade), including attendance, responses in class, and occasional written questions to be completed in class, designed to probe your knowledge of the week's reading(s). Each student's lowest-graded question will be discarded.
2. Four written assignments (**36%** of grade), cumulatively 20 pages of work. Points will be deducted for late submission without a valid and documented reason, such as illness.
3. Midterm quiz (**25%** of grade)
4. Final exam (**25%** of grade)

Academic integrity:

USC seeks to maintain an optimal learning environment. Students are expected to uphold the USC Student Conduct Code, which can be found in Section 13.00 of <http://studentaffairs.usc.edu/scampus/>. Violations of the code harm every student in the class, and carry strict sanctions. (See <https://sjacs.usc.edu/students/academic-integrity/>).

If you think that an infraction such as plagiarism will go undetected, be apprised that your instructor is a forensic linguist.

Students with disabilities:

Students needing special accommodations (e.g., longer exam time) due to a physical or learning disability should contact the instructor as early in the semester as possible, and should also contact Disability Services and Programs (DSP) to obtain a letter of verification for approved accommodations. The phone number for DSP is (213) 740-0776 and the webpage is http://sait.usc.edu/academicsupport/centerprograms/dsp/home_index.html.

Tentative Course Schedule:

August 23: Course introduction

August 25 & 30, September 1st: Invocation of Miranda rights

Excerpts from *Miranda v. Arizona* 384 U.S. 458 (optional reading, on Blackboard)

Ainsworth (2008): "You have the right to remain silent..." but only if you ask for it *just so*".

[Note this would be a good time to start doing the lengthy readings for September 6 & 8]

Assignment 1 (due September 15): Write a reaction paper to Ainsworth 2008, making sure to express your own views on what ought to count as a proper invocation of one's Miranda rights.

September 6 & 8: Conversational implicatures in literature

Passages from the following works (on Blackboard, in the course reader, or in entirety):

Becket, by Jean Anouilh ("Will no one rid me of this turbulent priest?")

Macbeth, by William Shakespeare ("For none of woman born shall harm Macbeth.")

Tristan and Isolde, by Gottfried von Strassburg ("Never been in any other man's arms")

Richard II, by William Shakespeare ("Have I no friend will rid me of this living fear?")

September 13 & 15: The linguistics of silence

Ainsworth (2012) "The meaning of silence in the right to remain silent"

Supreme Court decision *Berghuis v. Thompkins* 130 S. Ct. 2250

Also, discussion of Assignment 1.

September 20: The jury trial, I

Film *Twelve Angry Men* (1957). Directed by Sidney Lumet; screenplay by Reginald Ro

September 22: Questions on the witness stand I: How to phrase a question

Bartleby, the Scrivener, by Herman Melville

September 27 & 29: Consenting to a search

Schneckloth v. Bustamonte 412 U.S. 218 [optional]

Tiersma & Solan (2004) "Cops and Robbers", pp. 229-239 [posted on Blackboard]

Assignment 2 (due October 6) Write your own wording for the request and consent needed for a consensual search, and consider the words of Bartleby the Scrivener in this context.

October 4: The police statement: The case of Derek Bentley

Chapter in course reader by Malcolm Coulthard.

"Let Him Dangle" by Elvis Costello <https://www.youtube.com/watch?v=eVpkIj1KA0>

October 6: Discussion of Assignment 2, and review for midterm exam.

October 11: Midterm exam

October 13: The jury trial, II

Guest speaker: William Weiss, Esq., Chief Public Defender (ret.), LA County Courthouse

October 18: Discussion of midterm exam, and introduction to courtroom practices.

October 20: Legal language

Tiersma, Peter, 1995. "Dictionaries and Death: Do capital jurors understand mitigation?"
Utah Law Review: 23-49. [Posted on Blackboard]

October 25 & 27: Jury instructions

California Criminal Jury Instructions for Judges and Attorneys, section on Homicide
Elwork, Sales, and Alfini (1982). *Making Jury Instructions Understandable*.

Assignment 3 (due November 3): Review the writings on jury instructions by Tiersma (*Dictionaries and Death*) and by Elwork et al. (*Making Jury Instructions Understandable*). Then peruse the jury instructions which will be provided to you from *California Criminal Jury Instructions for Judges* and write **6-8 typed pages** in response to the prompt.

November 1: The role of the jury consultant

Guest speaker: Prof. Ellen Leggett, Director of USC's MA Program in Applied Psychology

November 3 & 8: Ambiguity

Excerpts from *Henry VI, Part II*, by William Shakespeare [on Blackboard]
Excerpts from *Edward II*, by Christopher Marlowe [on Blackboard]
Excerpts from *The Decameron*, Day 1, Tale 1, by Giovanni Boccaccio [on Blackboard]

November 10 & 15: Attitudes toward rape

Ward, 1995. *Attitudes towards rape* [excerpts on Blackboard]

Assignment 4 (due November 22): Evaluate the situations listed on the prompt in terms of how prototypical of rape each one is.

November 17: Questions on the witness stand II: The rape trial

November 22: Film clips from *Anatomy of a Murder*, directed by O. Preminger, screenplay by R. Traver. Viewing this film is not optional, but a requirement. You will have to make arrangements to reserve the Linguistics Department's copy, or find it on your own.

November 24: Thanksgiving Day [no classes]

November 29: The rape victim

Sanctuary, by William Faulkner
Also http://www.dailymotion.com/video/xjl0_vicky-pollard-courtroom_fun

December 1: The work of the forensic linguist: Speaker identification.

Also review for final exam.

Biblical story of Isaac's blessing of Jacob. (Genesis 27: 1-38)

December 8, 11 a.m.: Final exam, covering the second half of the lectures (i.e., not cumulative!)