

GESM 120
Language, Law and Literature

GE Seminar in Humanistic Inquiry
Spring 2020

Time: Tuesdays and Thursdays, 5:00 pm - 6:20 pm

Place: VKC 254

Instructor: Prof. Sandra Ferrari Disner
GFS 301d
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Office hours: Tuesdays 1-2, Thursdays noon-1, and by appointment

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, of course, *no prerequisites* for this GE seminar.

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. Late submissions will be marked down by 10% each day, beginning immediately after class.

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:

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.

Conley, J. & O'Barr, W., 2005. *Just Words*. Chicago: Univ. of Chicago Press.

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) Introduction to *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, 2006. "Communicating with Juries: How to draft more understandable jury instructions". *The Scribes Journal of Legal Writing*, 10: 1-54.

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, part 2 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.]

Case law (for reference only; not required):

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

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)

Late Submission and Make-up Work:

For the midterm exam (not the final, which obeys strict University rules), if a *documented* emergency occurs, a student will be allowed to make up the exam within five days. Undocumented emergencies will not be granted such consideration.

All assignments are expected to be submitted on time. A deduction of 10% *per day* will be applied automatically to any assignments submitted late; here 'late' is defined as 'submitted *after the end of the lecture* on the due date'. Assignments submitted during or after the subsequent class session will not be accepted at all.

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 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. Contact DSP at (213) 740-0776 or http://sait.usc.edu/academicsupport/centerprograms/dsp/home_index.html.

Tentative Course Schedule:

January 14: Course introduction

January 16, 21, 23: Invocation of Miranda rights. Considerations of *Davis v US*, 512 U.S. 452. Ainsworth (2008): "'You have the right to remain silent...' but only if you ask for it *just so*". [Note that this would be a good time to start doing the lengthy readings for month's end.]

Assignment 1 (due February 4): Write a reaction paper to Ainsworth 2008, including your own views on what ought to count as a proper invocation of one's Miranda rights.

January 28, 30: Conversational implicatures in literature
The following works (passages on Blackboard or the course reader, or in their 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?")

February 4, 6: The linguistics of silence. Considerations of *Berghuis v Thompkins*, 130 S. Ct. 2250. Ainsworth (2012) "The meaning of silence in the right to remain silent"
Discussion of Assignment 1.

February 11, 13: Questions on the witness stand I: How to phrase a question.
Bartleby, the Scrivener, by Herman Melville

February 18, 20: Consenting to a search. Considerations of *Schneekloth v Bustamonte* 412 U.S. 218. Tiersma & Solan (2004) "Cops and Robbers", pp. 229-239 [posted on Blackboard]

Assignment 2 (due March 5): 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.

February 25, 27: Courtroom practices. Discursive strategies used in litigation.
Readings from Conley & O'Barr on handout.
Also, www.dailymotion.com/video/xjl0_vicky-pollard-courtroom_fun

March 3: 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=eVpktlj1KA0>

March 5: The jury trial, I
Guest speaker: William Weiss, Esq., Chief Public Defender (ret.), LA County Courthouse

March 10: Midterm exam

March 12: The jury trial, II

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

March 24: Discussion of Assignment 2 and midterm exam.

March 26: Legal language

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

March 31, April 2: Jury instructions. Considerations of *California Criminal Jury Instructions for Judges and Attorneys*.

Elwork, Sales, and Alfini (1982). *Making Jury Instructions Understandable*.

Tiersma (2006). *Communicating with Juries: How to draft more understandable jury instructions*.

Assignment 3 (Due April 16): Review the writings on jury instructions by Tiersma (*Dictionaries and Death; Communicating with Juries*) 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 **at least 6 typed pages** in response to the prompt.

April 7: Attitudes toward rape

Ward, 1995. *Rape Myths* [excerpts on Blackboard]

April 9, 14: The rape victim

Sanctuary, by William Faulkner. Film: *The Story of Temple Drake* (1933)

April 16: Film clips from *Anatomy of a Murder*, directed by O. Preminger, screenplay by R. Traver [This, like all films in this course, is not optional but a requirement]

Assignment 4 (due April 28): Evaluate the situations listed on the prompt in terms of how prototypical of rape each one is.

April 21, 23: Ambiguity

Excerpts from *Henry VI, Part II*, by William Shakespeare [on Blackboard]

Excerpts from *The Decameron*, Day 1, Tale 1, by Giovanni Boccaccio [on Blackboard]

Excerpts from *Richard II*, by William Shakespeare, revisited [on Blackboard]

April 28: The work of the forensic linguist: Speaker identification.

Also discussion of Assignment 4.

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

Ransom note (Illinois, 1979), analyzed by Prof. Roger Shuy

April 30: Review of material from the second half of the semester.

May 7 at 4:30 pm: Final exam, covering the second half of the semester (i.e., not cumulative!)