**GESM 120**

**Language, Law and Literature**

GE Seminar in Humanistic Inquiry -- course 35391D

Fall 2020

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

**Place: [**Online course]

**Instructor:** Prof. Sandra Ferrari Disner

GFS 301d

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**Office hours:**  Monday afternoons and Thursday mornings, 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.

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. Full-length films are available via Kanopy; links to film clips shown in class will be made available upon request.

Guest lectures are not optional events. Unless the student presents a valid excuse for his/her absence, each missed guest lecture will result in one point being deducted from the class participation total.

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 that 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.

• Point out the subtle power of language in driving the plots of some 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.

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 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.]

**Notable 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 (**10%** of final grade), including responses in class, and
2. Pop quizzes (**4%** of final grade), consisting of written questions to be completed in class, which are designed to probe your knowledge of the week's reading(s). To compensate for the occasional tardy arrival or absence, each student's lowest-graded question will be discarded.
3. 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.
4. Midterm quiz (**25%** of grade)
5. 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 to any assignments submitted late (here defined as ‘submitted *after the end of the class meeting* on the due date’). No assignment submitted after the subsequent class meeting will be accepted.

**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**:

August 18: Course introduction

August 20, 25, 27: 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 early September.]

Assignment 1 (due September 8): 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.

September 1, 3: Conversational implicatures in literature

The following works (passages on Blackboard or works 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?")

Sept. 8, 10: 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.

September 15, 17: Questions on the witness stand I: How to phrase a question.

*Bartleby, the Scrivener,* by Herman Melville

Sept. 22, 24: Consenting to a search. Considerations of *Schneckloth v Bustamonte* 412 U.S. 218.

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

Assignment 2 (due October 1): 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.

September 29: Courtroom practices. Discursive strategies used in litigation.

Readings from Conley & O'Barr on handout.

Also, www.dailymotion.com/video/xjl0\_vicky-pollard-courtroom\_fun

October 1: The police statement: The case of Derek Bentley

Chapter on Blackboard by Malcolm Coulthard.

"Let Him Dangle" by Elvis Costello <https://www.youtube.com/watch?v=eVpktlj1KA0>

October 6: The jury trial, I

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

October 8: Midterm exam

October 13: The jury trial, II.

Required film *Twelve Angry Men* (1957). Directed by Sidney Lumet; screenplay by Reginald Rose. Available through Kanopy, USC course reserves.

[Watch the film on your own and submit answers to a prompt. *Short class meeting.*]

October 15: Legal language

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

October 20: The use of dictionaries in felony cases

Guest speaker: Prof. Edward Finegan, President, Dictionary Society of North America

October 22, 27: 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 November 5): 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.

October 29: Attitudes toward rape

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

November 3: The rape victim

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

Assignment 4 (due at midnight on November *15*): Evaluate the situations listed on the prompt in terms of how prototypical of rape each one is.

November 5: Film *Anatomy of a Murder,* directed by Otto Preminger, screenplay by R. Traver. Available through Kanopy, USC course reserves.

[Watch the film on your own and submit answers to a prompt*. Short class meeting*]

November 10, 12: 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]

T.B.A. Final exam, covering the second half of the semester (i.e., not cumulative!)