

GESM 120
Language, Law and Literature

GE Seminar in Humanistic Inquiry -- course 35391D
Fall 2021

Time: Tuesdays and Thursdays, 11 a.m. - 12:20 p.m.

Place: CPA 256

Instructor: Prof. Sandra Ferrari Disner
GFS 301d
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Office hours: Mondays 1-2 pm (Zoom), Tuesdays 1-2 pm (in person),
Wednesdays 2-3 pm (Zoom), 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.

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 essay. 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 in the Course Reserves.

Guest lectures are not optional events. Unless the student presents a valid excuse for his/her absence, each missed guest lecture will result in 10% 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.

Students are expected to comply with all aspects of USC's COVID-19 policy. Failure to do so may result in removal from the class and referral to SJACS.

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.
- 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, 1959 film directed by Otto Preminger, screenplay by Robert Traver (pen name for Michigan Supreme Court Justice John D. Voelker)*

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 or viewed in their entirety. Excerpts from the others will be provided.]

Notable case law (for reference only; not required reading):

Berghuis v. Thompkins (2010) 560 U.S. 370.
Davis v. United States (1994) 512 U.S. 452.
Miranda v. Arizona 384 U.S. 458
Regina v. Bentley 1 Cr. App. R. 307 (U.K.)
Schneckoeth v. Bustamonte (1973) 412 U.S. 218

Grade components:

1. Quality and quantity of class participation (**15%** of final grade), including responses to questions in class.
2. Pop quizzes (**5%** 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, one's *two lowest-graded pop quizzes 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 (closed book exam) (**24%** of grade)
5. Final assignment (essay submitted via TurnItIn) (**20%** of grade)

Late Submission and Make-up Work:

For the midterm exam, 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. According to University rules, a final assignment *must* be submitted in timely fashion.

All assignments are expected to be submitted on time, via TurnItIn. It is up to you to make sure that your work has been received. (TurnItIn will send out a confirmation.) A deduction of 10% *per day* will be applied to any assignments submitted late (here defined as 'submitted after 11:59 p.m. 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 the Office of Student Accessibility Services (OSAS) to obtain a letter of verification for approved accommodations. The phone number for OSAS is (213) 740-0776 and the webpage is <https://osas.usc.edu/>

Safety:

Students are expected to comply with all aspects of USC's COVID-19 policy. Failure to do so may result in removal from the class and referral to SJACS.

Tentative Course Schedule:

August 24: Course introduction

August 26, 31, September 2, 7: Invocation of Miranda rights. Considerations of *Davis v US*.
Ainsworth (2008): "'You have the right to remain silent...' but only if you ask for it *just so*".
<https://www.youtube.com/watch?v=vEM8gZCWQ2w>
"Grice's Maxims" [with apologies for the slightly salty content!]
[Note that this would be a good time to start doing the lengthy readings for mid-September.]

Assignment 1 (due September 14): See prompt for instructions on writing a reaction paper to Ainsworth 2008, including your own views on what ought to count as a proper invocation.

September 9, 14: 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?")

September 16: The jury trial, I.

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 be prepared to submit (via email) your answer to a reaction question no later than September 17.]

September 21, 23: The linguistics of silence. The precedent of *Berghuis v Thompkins*.

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

Discussion of Assignment 1.

September 28, 30: Questions on the witness stand I: How to phrase a question.

Bartleby, the Scrivener, by Herman Melville

October 5, 7: Consenting to a search. Considerations of *Schneckloth v Bustamonte*.

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

YouTube video "Ten Rules for Dealing with the Police":

https://www.youtube.com/watch?v=s4nQ_mFJV4I [Watch video on your own before class.]

Assignment 2 (due October 19): See prompt for writing your own wording for the request and consent needed for a consensual search. Consider the words of *Bartleby the Scrivener* in this context.

October 12, 19: Courtroom practices. Discursive strategies used in litigation.

Readings from Conley & O'Barr on handout. (No chapters assigned.)

Also, www.dailymotion.com/video/xjl0_vicky-pollard-courtroom_fun

October 21: The jury trial, II

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

October 26: Midterm exam

October 28: Legal language

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

November 2, 4: Jury instructions.

Elwork, Sales, and Alfini (1982). *Making Jury Instructions Understandable*.
Tiersma (2006). *Communicating with Juries: How to draft more understandable jury instructions*. [Both articles posted on Blackboard]

Assignment 3 (due November 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.

November 9, 11: 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]

November 16: Attitudes toward rape

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

November 18: The rape victim and the accused

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

Assignment 4 (due on December 2): Evaluate the situations listed on the prompt in terms of how prototypical of rape each one is.

November 23: 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 be prepared to submit (via email) your answer to a reaction question no later than Nov. 30.]

November 30: 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>

December 2: 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

December 14: Final assignment: Essay on ambiguity, to be submitted via TurnItIn.