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ESSAY: INNOVATIVE TEACHING METHODS AND PRACTICAL USES OF LITERATURE IN LEGAL EDUCATION

KARIN MIKA*

The complaint most attorneys have about students graduating from law school is that they cannot write.¹ As a legal writing instructor, this is obviously a special concern of mine. I have found, however, that fixing the problem is more complicated than merely improving law school curriculum or becoming a better teacher.² This is especially true because law school, generally, does not provide activities which instill a zeal for the written word.

Because I believe a breadth of reading enhances one's ability to think and write, throughout the years I have tried to encourage extra-

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1. Geoffrey C. Hazard, Jr., *Arguing the Law: The Advocate's Duty and Opportunity*, 16 GA. L. REV. 821, 822 (1982). The deficiency of legal skills was also the focal point of the MacCrate task force which produced the much contemplated *MacCrate Report*. AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

2. Most schools are attempting to push "writing across the curriculum." See generally Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135 (1987). This is a curriculum that mandates writing in all types of courses and not just traditional writing courses such as English and History. *Id.* There are few people who do not advocate "writing across the curriculum" and yet many do not understand the difference between making a student complete a writing assignment and teaching a student how to write a certain type of document. Depending on the level of a particular professor's involvement, upper level writing assignments translate into turning in a thirty to sixty page paper at the end of a semester sans any type of structural guidance.

curricular and diversified reading to be done in conjunction with my Legal Writing class.³ Unfortunately, yet understandably, law students generally only do the required work, but not more. As a consequence, I have discovered, over time, that the “readers” in my classes continue to read while the “non-readers” never take the opportunity to discover what advantage there might be in taking my advice. Because no change has occurred in students’ overall attitudes, I decided to make life more interesting by integrating literature into the first year Legal Writing curriculum.⁴

The final project of our first year Legal Writing course is the appellate advocacy experience. Traditionally, this consists of pleadings and opinions from a Moot Court casebook⁵ assigned for the purpose of researching legal issues,⁶ writing a brief, and preparing an oral argument. I decided, however, that I would shift from the stock format and begin assigning a novel to be used as the basis for the problem. The novel I chose for the experiment was *Lolita*, by Vladimir Nabokov.⁷

Lolita was first published in France in 1955 after being rejected by American publishers for its “explicitness.”⁸ The book was later banned in France and periodically throughout the world, until such time as it was recognized for its genius of character presentation as opposed to its supposedly pornographic content.⁹ *Lolita* is the story of an older European man who becomes fixated with a young, barely teenage, girl. The

3. Felix Frankfurter wrote, “The best way to prepare for the law is to come to the study of the law as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give.” Letter from Felix Frankfurter to M. Paul Claussen, Jr. (May, 1954), in *THE WORLD OF LAW: THE LAW AS LITERATURE* 725 (Ephraim London ed., 1960).

4. I had no visions of a law and literature course in which the object was either to analyze legal literature or make comparative analyses between literature and law. Rather, I sought to accomplish something beneficial and pragmatic in an innovative way of conducting an appellate advocacy experience. This is more in line with some recent ideas for Law and Literature courses rather than what has come to be known as the Law and Literature movement. See, e.g., Teree E. Foster, *But Is It Law? Using Literature to Penetrate Societal Representations of Women*, 43 *J. LEGAL EDUC.* 133 (1993); Philip N. Meyer, *Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 *J. LEGAL EDUC.* 129 (1992).

5. Up until 1993, our school used the Moot Court Casebook produced annually by New York University.

6. Most times we selected the cases the students were to use.

7. VLADIMIR NABOKOV, *LOLITA* (Vintage Books 1989) (1955).

8. Daniel Wiener, *Biography Details Nabokov's Achievements, Disappointments*, *STAR TRIB.*, Dec. 15, 1991, at 10F.

9. *Id.*

story delves deep into the gray areas of love, lust, seduction, and psychopathic behavior, ending in a vicious murder, provoked by the obsessive love.

Using the book as my fact situation and assuming that the main character, Humbert Humbert, had been convicted for first degree premeditated murder, my assignment of error was the following:

WHETHER THE TRIAL COURT JUDGE ERRED IN REFUSING TO ALLOW THE JURY TO BE INSTRUCTED ON THE LESSER OFFENSE OF VOLUNTARY MANSLAUGHTER WHEN THE JUDGE DETERMINED THAT THE INITIAL PROVOCATION WAS THE TIME OF DOLORES'S¹⁰ DISAPPEARANCE, THAT NO SUBSEQUENT PROVOCATION EXISTED, AND THAT THE TIME BETWEEN THE INITIAL PROVOCATION AND THE MURDER WAS TOO LENGTHY TO WARRANT A MANSLAUGHTER INSTRUCTION.

As additional information, I included excerpts of statements made by the judge justifying his failure to giving a manslaughter instruction, such as, "even if there was sufficient provocation, the cooling time was too lengthy." The students would take sides, do the research, prepare a brief and an oral argument—all the traditional elements of the appellate advocacy experience.

I had multiple goals in doing this project. First, I wanted my students to become educated and "broadened" without knowing it. *Lolita* is not a lengthy book, but it is difficult.¹¹ The sentences are complex and the vocabulary advanced. It was a book the students would not be able to master without working hard. Additionally, with respect to learning a legal skill, it provided the students with the full scope of the client's story. In order to complete the assignment with any degree of success, the student had to use all the skills of good representation. The student had to prioritize information and understand the psychology of the characters to create plausible arguments and defenses. The student had to master the nuances of the law with respect to the selected strategies for representation. Those representing the defense had to decide whether to portray the client as insane, or justified, or whether the conviction should be reversed based on a technicality. Those representing the prosecution would have to choose whether to portray the main

10. The object of the main character's affection was named Dolores Haze. Michael Dirda, *The Enchanter in the New World*, WASH. POST, Sept. 8, 1991, at X10. The main character referred to her as "Lolita."

11. LOLITA combines a difficult English vocabulary with words and phrases written entirely in French.

character as a monster. In short, the assignment was pretty close to a real criminal prosecution—whether the students realized it or not. Additionally, I hoped some students who had not previously been exposed to quality literature would take an interest that continued once the year was finished.

I informed the students at the beginning of the year that we would be using *Lolita* as the basis for our appellate advocacy problem. That statement alone had no significance for the students, and it was not until Christmas break that students began asking me about my intentions for the project. Several students read *Lolita* during the break but had no clue as to how I might use the novel. Most thought I intended a First Amendment issue. Those who read the book seemed not to have any real feelings with respect to the characters. Rather, they attempted to mechanically fit the book as a whole into their understanding of a law school exercise.

As moot court time approached and more students began reading the book, I began to get frustrated. Most of my students told me the book was lengthy, difficult, and all they could distill from it was that the protagonist, Humbert Humbert, was a sick man. I started having stilted conversations with students who seemed to want to extract exactly what I “wanted” from them. My frustration increased, and I began to feel like I was playing the role of the literature professor who, they felt, was needlessly cramming an inappropriate piece of curriculum down their throats. I heard what was being said and not said—“What does this have to do with the law?” I envisioned (and probably was not too far off) comparisons with previous, despised English teachers who had “made” them read novels they hated and that had no relevance to their lives. I gritted my teeth when a student joked about how I should make the next class “suffer” through *War and Peace*.

I thought I would be vindicated when the assignment was actually distributed. In legal terms, the book was about murder—criminal law, conviction, erroneous jury instruction, provocation—all terms to which the students *did* relate to those terms, but no other. There seemed to be no appreciation for any human elements in the book. I heard the same story over and over again: Humbert Humbert was a child molester who sought out a man and killed him; clear cut, black letter law, application of a test, the state wins. Ninety-eight percent of the students wanted to represent the state. They wanted to apply an equation not to human beings, but to three hundred difficult-to-read pages of information.

I began thinking that maybe I had made a mistake in assigning *Lolita*. My students were there to learn a career, to learn the law and how to incorporate legal explanations into legal documents. Learning to appreciate literature seemed to have no place on this agenda.

I was too far in to back out, however, so I tried to figure out ways to make my students appreciate the human conflicts in *Lolita*. To that end, I went to the library and selected various criticisms of *Lolita* written from different perspectives.¹² I thought if students read about how other people perceived the book, they would see that it was something more than a difficult reading about a sick man. As I selected a less onerous reading, I already envisioned the grumbling about the additional work.

I began the next class with distributions in hand. Before I gave them to the students, however, I first tried to get them to talk about the book. "What do you think?" I began. They responded with icy glances, and a few sporadic, "It was long;" "I don't speak French," and, "What a sick man." One student said, "Nothing happened until the last ten pages. You talk about brevity—the first three hundred pages could've been written in about twenty."

I questioned whether the students really thought about what they were reading. I asked whether they were aware that in some respects the book was a comedy—a satire on the works of various authors.¹³ I pointed out that in many respects, none of the characters were likeable, and purposely so.¹⁴ I said the book was not really about molestation, but about obsessive love.¹⁵ I asked whether any of them had been in love, and whether they had lived to regret anything they may have done while in love.

12. I gave my students the following materials to read: LEONA TUCKER, *NABOKOV: THE MYSTERY OF LITERARY STRUCTURES* 202-09 (1989); John Hollander, *Lolita*, in *NABOKOV: THE CRITICAL HERITAGE* 81, 81-83 (Norman Page ed., 1982) (Hollander's review first appeared in the *Partisan Review* in Autumn 1956); Lionel Trilling, *Lolita*, in *NABOKOV: THE CRITICAL HERITAGE* 92, 92-102 (Norman Page ed., 1982) (Trilling's review first appeared in *Encounter* in October 1958).

13. See Hollander, *supra* note 12, at 81-82.

14. For a discussion of the complexity of Humbert's perversity that still evokes commonplace emotions, see F.W. Dupee, *Lolita*, in *NABOKOV: THE CRITICAL HERITAGE* 84, 84-85 (Norman Page ed., 1982) (Dupee's review first appeared in *Anchor Review* in 1957); see also TUCKER, *supra* note 12, at 199 (discussing "reader entrapment" in which the author claims Nabokov forces the reader to "reassess" attitudes during the course of the reading process).

15. See Trilling, *supra* note 12, at 95.

I thought I would jar some realization within them, but I did not reach any part that related to any theme within the book. Many denied ever being in love; most denied ever having done anything regrettable. Many looked at me in silent abject horror as they seemed to feel I was trying to extract an undesired personal confession. A few simply responded, "That guy was sick," or "I never did anything close to *that*." As the dialogue waned to nothing, I silently distributed my handouts confident that I was on my way to memorializing their first year moot court experience as horrifying.

The next few days did nothing to alleviate my fears. Outside of class, I asked several of my students whether they had read the criticisms. Without fail they answered, "I haven't had time yet." A few students began talking to me about the law, not from a point of enthusiastic advocacy, but rather from a task-oriented ("We have to") point-of-view. As near as I could tell, all viewed Humbert Humbert as a sick man who neither had, nor deserved, a defense. Those assigned as his representative saw their situation as hopeless.¹⁶

Thus, my struggle was three-fold. First, I had to make the students understand that the book was not necessarily one about a child molester. Secondly, I had to convince the class that the issue was not as one-sided as it appeared. Thirdly, and perhaps most importantly, I had to convince my students that the exercise had some relevance to law school and was not just a torture exercise I devised. As two weeks passed with no change in perspective, I again began to get discouraged.

Just when I began to believe that my innovative idea for incorporating literature into Legal Writing was a pretty terrible idea, I began to see a flicker of potential. It began slowly—a couple of students saying they had read the criticisms and began seeing the book from another perspective, or how the annotated version of the book really helped. A couple of other students commented that, at second glance, the case law was not completely negative.

The real breakthrough, however, was when several students began telling me they were starting to understand Humbert's personal motivation. One student commented that when she asked her husband what he would do if she were whisked away by another man, he responded he would kill the guy who did it. Several others began approaching me, slowly but surely, talking about how they had come to understand a

16. I did not understand this since the students were only required to demonstrate adequate provocation. I could not imagine a more provocative situation than an individual's true love being stolen.

prolonged burning rage. Much to my relief, what I hoped would happen was happening. The students began to appreciate *Lolita* in the way I envisioned they might.

As briefs became due and students began preparing for oral arguments, I had the proof I needed to reassure myself that the project was a good idea. Despite the initial complaints, consternation, and protestations that the problem was too difficult and one-sided, the briefs and arguments for both sides were passionate, well-constructed, and full of conviction. There was not one brief, nor one argument, that was subpar due to an apparent disdain for the assignment.¹⁷ Many students admitted to me that what they thought would be an impossible and worthless assignment actually turned out to be fun. Many found their niche as defense advocates without having known they possessed such capabilities.

In retrospect, I cannot say that I made any cataclysmic changes in anyone's writing or lawyering abilities; however, it is my hope that I sent many students away with new perspectives on literature and legal education. My students read something that, in many ways, was as far away from legally analytic writing as one could get. The students were required to study language for the purpose of understanding what was occurring and were exposed to a stylistic manipulation of the language which most had not seen. They were exposed to ways in which language worked, or could be worked, in order to convey an idea.¹⁸

In addition, the project added pragmatic knowledge for the students, which they otherwise might not have obtained. Through the novel, they were able to go places they might not otherwise have gone, meet people they might not otherwise have met, and experience lifestyles they might not have otherwise experienced—something all graduating students are bound to come across in the practice of law. Many of the students became more open to new ideas and to new perspectives during the course of the project, both personally and legally. Many admitted that they had formed opinions they thought themselves incapable of having before the exercise.

A teacher rarely discovers the impact he or she has had on a student's life. Several colleagues commented that the only conclusion I

17. There were, of course, briefs and arguments that were better than others. I was pleased, however, to see that the original dislike for the problem did not appear to cause any deficiencies in what was produced for purposes of completing the class assignment.

18. That is not to say that anyone should have come away from the project writing a brief in the style of Nabokov, but studying various styles of written presentation gives an individual the dexterity of language in his or her own written work.

could draw from my experiment was that it had not ended quite as badly as I thought it might. I am not inclined to agree. Despite *Lolita's* seeming irrelevance to the law school experience, I never had a doubt that it was an eloquently written portrayal of some very real human conflicts—conflicts that, in real life, unfortunately end in the violence with which the book ended. I gave my students the opportunity to spend time with such characters, get to know them, and ultimately feel for them—the good, the bad, the vile, and the heart wrenching. I cannot think of a more appropriate way in which to prepare students for their chosen careers as attorneys.

NOTES AND COMMENTS

