At the Lectern

Talking with Rebecca and Clara About Their Encounter with Fictional Lawyers

James R. Elkins

Two men are riding a commuter train. One is, as the expression goes, fat, dumb, and happy. Though he lives the most meaningless sort of life, a trivial routine of meals, work, gossip, television, and sleep, he nevertheless feels quite content with himself and is at home in the world. The other commuter, who lives the same kind of life, feels quite lost to himself. He knows that something is dreadfully wrong. More than that, he is in anxiety; he suffers acutely, yet he does not know why. What is wrong? . . . .

If now a stranger approaches the first commuter, takes him aside, and says to him earnestly, “My friend, I know your predicament; come with me; I have news of the utmost importance for you”—then the commuter will reject the communication out of hand. For he is in no predicament, or if he is, he does not know it, and so the communication strikes him as nonsense.

The second commuter might very well heed the stranger’s “Come!” At least he will take it seriously. Indeed it may well be that he has been waiting all his life to hear this Come!

—Walker Percy, The Message in the Bottle

All great experience has a guarded entrance and a windowless facade.

—Robert Grudin, Time and the Art of Living

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Rebecca

Rebecca has survived law school’s notorious first year. Now a student in my Lawyers and Literature seminar, she has ventured beyond the well-charted boundaries of law school’s traditional curriculum and finds herself in trouble. She has scheduled an appointment to talk about her writing—the course paper in which she tries to figure out what to do with the stories we are reading. In anticipation of our meeting, she stops by the office to give me a draft of her paper. When Rebecca leaves, I read her paper; what follows is the kind of uneasiness that slams at a teacher in the discovery that a student who has come so far can have so little idea about how to write and presents writing that reflects so little curiosity about the lawyer stories she has been reading.

I don’t look forward to this meeting with Rebecca. I can’t imagine how she might react to anything approximating an honest assessment of her writing. I know I must try to help Rebecca get back on the right path; I know that may turn out to be difficult to do. I have little sense about what kind of student Rebecca is or what might account for her anemic writing. Rebecca rarely speaks in class and I have no idea what kind of road she may have traveled to write with so little imagination using such dispirited prose.

Reading Rebecca’s paper, I confront a host of questions: How can a young woman in professional school present such a poorly conceived, shallow, seven-page paper and assume it will pass muster in a course with literature in its title? Does she really mean for this to constitute her work for the course? Whatever Rebecca’s hopes and fears, her successes and failures as a student, I cannot expect her to walk into my office, sit down, and offer a full accounting of her education. Rebecca will, undoubtedly, want to know what has gone wrong with her paper and how to fix it; she may be less enthusiastic about trying to uncover what has gone wrong in her life as a student. I’m left, basically, with two questions: How did Rebecca end up writing a paper that shows so little promise? And how can we talk about such a failed effort? These questions remind me of James Boyd White’s observation: “Sometimes one’s language seems a perfect vehicle for speech and action; it can be used almost automatically to say or do what one wishes. But at other times a speaker may find that he no longer has a language adequate to his needs and purposes, to his sense of himself and his world; his words lose their meaning.”3 Ironically, White’s observation speaks both to Rebecca’s paper and to my situation as I try to think about working with Rebecca to get her writing back on track.4

The Lawyers and Literature course attracts students eager to read and think about something other than judicial opinions. Inevitably, the course is an allure for students looking for something soft: a course in which they


4. I would have been better-prepared to think about my meeting with Rebecca and how to discuss her writing if I had reflected on Joseph M. Williams’ work-up of “threshold concepts” in learning. See Joseph M. Williams, ON THE MATURING OF LEGAL WRITERS: TWO MODELS OF GROWTH AND DEVELOPMENT, 1 J. LEGAL WRITING INST. 1 (1991).
can “chill out.” Some hope to find in Lawyers and Literature the law school equivalent of spring break at Cancun. An occasional student—I don’t know whether Rebecca is one of them—will say something like, “I mean, really, how can anyone evaluate what I write when I’m writing about stories and about my reading of them? Reading cases and writing legal papers, I know basically what I’m doing, but writing about stories, I feel like I’m in la-la land. Who wouldn’t?”

My meeting with Rebecca imminent, I mull over a prescriptive outline of what I might say to her: Reading, if it counts for anything, must be an act of engagement—appreciation, puzzlement, argument, language. You must, in your writing, find a way to describe this engagement. You must find a way in your writing to reflect your encounter with the stories. What I want to convey to Rebecca is that the kind of writing she must undertake in the course cannot be laid out for her in a descriptive summary of the kind found in a course syllabus. There is no way to precisely outline for a student like Rebecca how to put her own mind to work on the stories she reads, or how her writing can be used to give an account of her engagement with the stories. But what I can do is relate to Rebecca, again, some basic ways readers use stories to prompt reflection. They do it by

—focusing on the possibilities and difficulties faced in reading stories;
—identifying recurring themes and motifs and tensions found in the stories;
—locating the fundamental tensions found in the stories, and, when possible, relating these tensions to their own lives;
—seeking, in the stories, if not in their own lives, a sense of how all that is ordinary lies so perilously close to the wondrous, the strange, and the mysterious; and
—demonstrating how one becomes a curious, reflective reader of stories.

I suspect that Rebecca’s engagement with the stories we read in the course has left her wanting to say, “I have been forced to write this paper, and I don’t have a clue about what to do. I have waited too late to get the paper done right. And, now, I can only pray that I survive the course.”

5. I make it clear to students in Lawyers and Literature that the course reflects one teacher’s reading and experience: The course bears my imprint. “Authors of course materials . . . package their biases in subtle but effective ways, through their selection, organization, and emphasis of materials.” Thomas E. Baker & James E. Viator, Not Another Constitutional Law Course: A Proposal to Teach a Course on the Constitution, 76 IOWA L. REV. 739-739 (1991). Students put their own imprint on the course as they read the stories they use in their course writing: The student is asked, in essence, to read, to write the course.

6. A comment on the “tensions” we find in stories might be warranted: “We cannot exist outside an interplay of tensions. Even those who live passively cannot escape some measure of tensions. Frequently there is an ongoing denial of tensions, but these tensions should be understood. I believe, in fact, that one task of radical pedagogy is to clarify the nature of tensions and how best to cope with them.” PAULO FREIRE & DONALD MACEDO, LITERACY: READING THE WORD & THE WORLD 49 (1987) (statement by Paulo Freire).
My discussion with Rebecca begins on a promising note. She knows the paper is dismal. What she doesn’t know is what to do with the mess she has created; she says, “I’m stuck.”

I ask Rebecca what may well sound like a dumb question: “Did you have difficulty writing the paper?” She indicates that she did and is, surprisingly, brutally honest in her explanation. “I don’t see myself as a deep person. Sometimes in class, I find the discussion pretentious; everyone is trying to sound so serious and philosophical about the stories.”

I ask Rebecca if she thinks her paper reflects her frustrations with the course. I’ve learned that students can often diagnose their writing problems by talking about the way they write and how they view what they are asked to write. I’m curious if Rebecca can see how her ambivalence about the course has found its way into her writing. In her paper, Rebecca has largely ignored the stories and novels she’s been asked to read—Tolstoy’s “The Death of Ivan Ilych”; Melville’s “Bartleby the Scrivener”; Camus’ The Fall; Walker Percy’s The Second Coming—stories and novels in which we find lawyers struggling to understand how their lives work, and how they have fallen into disarray. Rebecca may not be willing to do what Ivan Ilych, Jean-Baptiste Clamence, and Will Barrett, protagonists in these stories and novels, do in the way of reflection, but she’s going to need to do some digging in the stories, and maybe even in her own life, if she is to get any heft into her writing.

The stories I ask students to read can be troubling, and few students find it possible to wrestle with the full complexity of the psychological excavations undertaken by Tolstoy, Melville, Camus, and Percy. Rebecca needs to know that I respect a student who recognizes her limits and walks with care along the familiar shoreline of her own experience and acquired knowledge. I also want Rebecca to know that there are times when a student must venture forth and take some measured risks. In Rebecca’s case, the decision to play it safe has reduced her writing to pablum.

Rebecca doesn’t think she has anything to say about the stories; she has put as little of herself as possible into the writing. Jeffrey Wilhelm describes readers who do not bring their “life to literature” and consequently do not know how to take “a literary experience back” to their lives. They seem, on first appearance, to treat literature as if it is merely the “decoding of words.” Wilhelm describes one reader, Marvin, who “did not expect reading to be meaningful, and if he had a goal it was to identify individual words successfully . . . .” Of another student, Kevin, Wilhelm says, “if meaning existed it was ‘in there,’ inside the text waiting to be discovered. Successful reading was being able to answer factual questions about text to the teacher’s satisfaction.”

7. For a creative writing class—a workshop—in which students are unselfconsciously serious, philosophical, and literary in their class conversation, see Paul West, Master Class: Scenes from a Fiction Workshop (2001).

students described by Jeffrey Wilhelm, is a passive reader, a reader who wants to expose herself to a story "like a photographic plate . . . hoping to receive a clear and accurate impression automatically."\(^9\)

As we talk about her writing, Rebecca tells me she has never been asked by a teacher to write in a reflective way. Rebecca and I face the knotty question: Where do we go from here?

Rebecca reminds me she doesn’t know anything about reflective writing. She reminds me, again, “I’ve never liked deep stuff.” Then she says something that startles me: “I’m willing to admit I’m a really superficial person.” I am taken aback by this rather remarkable statement, which I can admit I find audacious and refreshing. *Is this comment, I wonder, Rebecca’s response to my invitation to take a risk, a risk she has so assiduously avoided in her writing?* I tell Rebecca, in a jovial fashion, “Maybe you should use the stories as a guide to writing The Autobiography of a Superficial Law Student.” I’m joking—well, maybe I’m not—and we both laugh. I detect a liveliness in Rebecca’s face when she laughs that breaks up the blandness that so often settles around her, a grayness that finds its way into her voice and has seeped deep into her writing. We laugh, I think, because we both want to believe that she is not nearly as superficial as she fears.

Rebecca seems, to my surprise, open to the idea of writing about her superficiality. She asks, “Would anyone actually be interested in reading that kind of thing?” I confess that I would. She smiles again and listens intently as I speculate how her writing might look dramatically different if she could confront her suspicion that she is superficial. If she can entertain the frightening notion of what she fears about herself—using the stories and novels we are reading to do it—I’m willing to bet she will see herself and her confessed superficiality in a different light. If Rebecca can chart what she sees as her fears of superficiality, it’s hard to imagine that her writing would not improve.

Would it be possible, I ask Rebecca, to write A Law Student’s Guide to Superficial Reading? Maybe an exposé of the ways that law students try to convince teachers that they are more sophisticated readers than they actually are? Is it possible, I ask Rebecca, that law school has become a retreat for all kinds of pompous creatures, including some who pose as teachers? She laughs again and tells me, “I don’t think this is what you had in mind for us to be writing about in Lawyers and Literature.”

As Rebecca gathers her thoughts about giving some life to her writing, she says, with a quizzical expression, “It isn’t easy to be superficial.” She falters a bit as she admits, “I’m not all that excited about admitting how superficial I am. When I talk about this, I feel almost as bad as I do about the paper I’ve given you to read.” I wonder whether Rebecca is thinking, *Do I really want anyone, particularly this teacher, to know just how hard it is to carry around this fear I have about myself?*

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I tell Rebecca, “Go where you want to go with your writing, see where your
efforts to think about being superficial might take you.” I remind Rebecca that
the stories we have been reading are themselves an antidote to the superficial.
I also want her to know that the purpose of reflective writing is not confession
or exposure of personal secrets, and the idea is not to create a pretense of
being philosophical or having a literary bent you don’t have. As we talk about
her disdain for anything that sounds philosophical or literary, I tell Rebecca,
“Everyone has a philosophy of some kind or other. To oppose the idea of
anyone taking a philosophical stance is itself a kind of philosophy.”

There is a danger in the kind of reflective writing I have invited Rebecca to
consider, and I do not want to hide that danger from her. She may set out to
write in a more engaged way only to learn that her fears are well-grounded. I
cannot guarantee Rebecca that in trying to get more life into her writing she
will not face still more confusion and anxiety. The gamble we take in reflective
writing is that it’s better to know the reality of who we are than to live with
debilitating scripts, shadowy doubts, and unconfronted fears. The danger is
that we let our fears, imagined and real, shut us off from parts of the self that
can enliven our reading, our writing—our lives. What I hope will happen is
that Rebecca will find that she can use the lawyer stories we read to address
some of these lingering fears she has about herself and see these fears in a
different light and from a different perspective.10

Rebecca, with a sigh of resignation, tells me, “I guess it’s now pretty
obvious, I don’t really know what you want in this paper at all. You never told
us exactly what you want us to write about, and I’m still not clear how this
course works or what my writing for the course should look like.” Rebecca
goes on to express concern about the grade she will receive in the course.
Looking at her hands in her lap, she says, “I’m worried about my grades this
semester. My parents have such high expectations; I’m not at all sure I can ever
measure up to their standards. My father was on law review when he was in law
school. He doesn’t understand why I don’t make the kind of grades he did.”
Without prompting, she adds, “I feel like I’m constantly being judged against
my father’s standards.” Her spirits seem to lift a bit, and there’s a slight smile
when she adds, “I guess I’ve come to the wrong place if I want to avoid being
judged.” I ask Rebecca what she means about law school not being a good
place to avoid judgment. “Well,” she says, “there’s a bunch of Little Despots
running around here.” We both laugh—an acknowledged conspiracy—finding
humor in Rebecca’s outrageous observation.

Hearing Rebecca laugh again—and seeing her in this more lively way—I
point out, on impulse, “Rebecca, you have a sense of humor that I don’t see
anywhere in your writing. You keep it hidden away with your silence in class.”

10. Benjamin Sells, a therapist and lawyer, talks about teachers who “encourage the hunt”
for what we hope Rebecca will set out to find. Benjamin Sells, The Essentials of Style:
A Handbook for Seeing and Being Seen 89 (2007). These are the teachers who say,
“[H]ell yes there is much to fear, but quickly add[] that hidden in such fear are unimagined
treasures.” Id. at 88.
I tell Rebecca, candidly, that I find her sense of humor a surprise, given the way she writes and the way she presents herself: “There seems to be a closeted part of you that you hold in reserve and that you rarely reveal.” “Yeah, you’re right,” she says, “and this sometimes gets me into trouble.” A quizzical look on my part, and she continues, “Maybe I should be more willing to write about things that seem to get me into trouble.” She laughs, and finishes her thought, “But I really don’t know how to write about these things. Maybe I don’t know how to write about anything.”

I glance at my watch; we’ve been talking for almost an hour. Rebecca shifts uneasily in her chair and I sense we have circled around her dreary writing and come around to the time when we both know we have done about all we can do.11

Rebecca says, as she gets up to leave, “Well, I guess I need to think about what I’m going to do now.” I tell Rebecca to keep in mind that she cannot think her way into creating a fabulous paper. “It’s really all about writing,” I tell her; “try to see what writing reveals to you as you write—stay close to the stories, try to see where the stories take you.” I remind Rebecca to reflect on our conversation and see if she can find anything in what we have talked about that allows her to read the stories in a different light. She smiles again, but, more serious than somber now, lowers her voice, and says, “Maybe I can start by trying to write without the constant dread that seems to always be hovering over me in law school.”

With so much left unspoken, Rebecca leaves my office and I realize I would be hard-pressed to say what she might find in our conversation that will guide her writing. What I distinctly remember from that afternoon talk with Rebecca is that I felt like I had done all a teacher could do and that even that may not have been enough.

11. There are different ways to think about what Rebecca and I have been doing. One might view it as a conversation that centers on critique. Richard Neumann has called it “the art of critique.” See Richard K. Neumann, Jr., A Preliminary Inquiry into the Art of Critique, 40 Hastings L. J. 725 (1989). Critique is a “latent form of art,” Neumann observes, “resembling a cadenza or a raga in its union of defined compositional principles with improvisation. Its status as an art is certified by its capacity to awaken and transform its participants and, where there is one, its audience.” Id. at 727. Neumann relates the art of critique to Socratic dialogue. “In the elenchus, the teacher’s questions guide the student to an understanding of the nature and extent of his or her ignorance. The elenchus ends when the student reaches aporia, a state of new-found perplexity. In the psychagogia (literally, the leading of a soul), the questions help the student construct the knowledge that the elenchus showed was lacking.” Id. at 730 (citation omitted). Neumann goes on to present a brief but instructive list of reasons that might explain a student’s resistance to a Socratic-inspired critique. Id. at 738–39, 753–62.
Clara stands outside the room where law firms interview the prospective crop of new lawyers. I stop to say hello. She jokes about her interview outfit; her daughter told her before she left to go to school that, in her tailor-trim suit, she looked like an airline stewardess. Clara looks more comfortable in her business suit than I suspect she will be with the stilted formulaic conversations that take place in the law school’s little claustrophobic interview room. When the interviewer steps out of the interview room to tell her he is running twenty minutes behind schedule, I invite Clara to my office.

She apologizes for missing the class when we discussed Walker Percy’s *The Second Coming*, one of the novels we are reading in the Lawyers and Literature course. She hated to miss the class, she said, but her son had a soccer match and his ride to the match didn’t show up, so she had to drive him to his soccer game. She asks about the class she missed. I tell her how we struggled with Percy’s story of lawyer Will Barrett. In the novel, we find Barrett at midlife, after living and practicing law in New York City, returning to the Carolinas after the death of his wife. A good many students find Will Barrett’s malaise and philosophical musings to be more than they want to puzzle through; some students find the novel dour, notwithstanding Will Barrett’s crackling philosophical ruminations, new-found love interest, and resolution to resume his professional life as a small-town lawyer.

Clara, in stewardess disguise, is not surprised at her fellow students’ response to Will Barrett. She says that she too found the novel difficult. “It was just too much,” she says, “too much to be inside Will Barrett’s head, as he struggles with the loose ends of his life. We don’t get much inside our own heads as law students. We either don’t know how or believe it would be debilitating to try. This isn’t the kind of thing we do in law school. Maybe we don’t know how to do it. But then, I’m just telling you what you must already know.”

Clara wants me to know that, notwithstanding what she has just said, she doesn’t think law students are any more impaired in their psychological sensitivities than anyone else. “Basically,” she said, “we just don’t have time to do the kind of reflection we see Will Barrett doing in *The Second Coming*. I know how important it is to be reflective, but at times, knowing I should be digging deeper, I was simply reading so I could say ‘I finished the novel.’”

“The problem with the Will Barrett story,” Clara tells me, “is that you don’t get any relief. Barrett’s problems land on you in the first chapter and there’s no letup. Who is willing to admit that Will Barrett’s problems—most likely depression—might be related to their own life? I know I’m vulnerable to

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depression. But what am I supposed to do? No one wants to talk about this kind of thing. And you think we can talk about our depression in class! What I know about depression is that everybody I know in law school is depressed. What depresses us—the effect that law school has on us—we don’t want to talk about. Everywhere you turn in Percy’s *The Second Coming*, the characters are going down into themselves. We’re too busy, too fearful, in law school, to do that. Law students think—well, actually, we know—we don’t have to be reflective to get through law school. And, in all honesty, we have so many other things to do that we can’t afford to waste time dwelling on how bad we feel. We don’t have time to think about what we are doing day in and day out in law school, much less think about ourselves."

I tell Clara that I don’t see law students being all that fearful about what is happening to them in law school: “Most of you seem so boisterously confident.” “Yes,” she adds, “of course, that’s what we want everyone to believe; actually much of this is just a way to cover up our fear. Our fear is that we’ll end up being unhappy lawyers. We get to contemplate that possible unhappiness head-on when we do the kind of soul-searching that Walker Percy has Will Barrett undertaking. Confident we may appear to be, but it’s mostly a disguise of what we hide and deny.”

Listening to Clara, I’m all the more convinced of the need to study the personal and psychological dimensions of the lawyer characters we find in fiction. The stories I ask students to read in Lawyers and Literature are cautionary tales; they remind us that the practice of law implicates one’s soul.14 It’s an implication that some students try, in every way possible, to avoid if they can.

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Robert Coles describes Walker Percy as a writer who “intend[s] to bring readers up short, to prompt in them a thought or two about why they were doing what, day in and day out.”15 It’s hard to talk about Walker Percy’s portrayal of Will Barrett without, as Coles puts it, being brought up short. Students like Rebecca resist. And even a student as introspective as Clara realizes that the resistance is a built-in part of legal education. Many students don’t give much thought to the legal mindset they develop in law school: they want to be lawyers, do what lawyers do, earn a lawyer’s salary, live a lawyer’s life—swim with other lawyer fish. They assume that this lawyer life and the


15. Robert Coles, Walker Percy: An American Search x (1978). Coles observes that we turn to novels to embrace the writer’s “struggle to obtain brief moments of partial liberation for their characters, and by extension, for those . . . readers who for a while, anyway, are brought up short, jolted, made to think about themselves and their lives . . .” Id. at 93.
practices they will engage in—what they learn, what they do, how they make a living—will not be allowed to fully dominate their lives and their minds. They are, like the commuter in Walker Percy’s commuters vignette, content with themselves and their place in the world—at least the place they imagine for themselves.

Student resistance to introspection becomes all the more obvious, even painful, when students read stories that spotlight the dark corners of their own shadow and the uncertain future they now rush to embrace. Law students may, as Clara observes, think as deeply about their lives as anyone else, but do they think in a way that exposes the neurotic-inducing features of legal education? Nothing makes it easy or painless to talk about the shadow side of legal education. This is the way Robert Coles describes our persistent efforts to resist introspection: “[W]e try to protect ourselves, keep secure our ‘adjustments,’ our various accommodations, if not outright surrenders. We resist knowledge of boredom, loneliness, despair—do so artfully, insistently, and, for the most part, successfully enough.”¹⁶ To deal with Will Barrett’s story, a student who resists introspection argues something like this: “No, I don’t see Will Barrett’s story as being all that relevant. I want to be a lawyer, not a psychologist or philosopher. If you take Walker Percy seriously, it would threaten your ability to be a successful lawyer.” This student is willing to invest in legal thinking, dismiss its corrosive cost, and assume there is nothing to be done to ameliorate its effects.

By bringing those who are oblivious to how law might shape their lives into conversation with those who have gotten a glimpse of law’s power to capture and deform the mind, we have the makings of a conversation worth having. It’s a conversation between Percy’s two commuters: the student who wants to think carefully and seriously about how her life in the law might unfold and the student who finds reflection a waste of time. My part in this conversation is to keep the conversation going, to prevent it from getting derailed.

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I’m intrigued by a novelist like Percy whom Coles describes as a philosopher, “a man of special understanding and humor, a person who helps the reader think altogether differently about life . . . .”¹⁷ Coles, in his infectious appreciation of Percy’s philosophical writing and his novels, led me to the The Second Coming, a novel that has the power to awaken a student’s story sensibilities.

Robert Coles, during his psychiatric training, found Walker Percy through Paul Tillich. I found Walker Percy by way of Robert Coles. I read Walker Percy for the same reason that Coles did, because Percy “took up, yet again, the old Socratic question of ‘life’s meaning,’ but did so in a lively, humorous way—offering psychological and sociological observations almost casually, as if they were important, yes, but had to be taken with a few grains of salt.”¹⁸

¹⁶.  Id. at 3-4.
¹⁸.  Id. at x.
There is, in this chain of readers—Tillich to Coles, Coles to Percy, Percy to me, me to my students—a strand of thinking with important philosophical and psychological implications for legal education: Stories that prompt reflection and introspection can be put to use in thinking about our professional lives.\footnote{For Robert Cole’s reflections on teaching stories at the Harvard Business School and Harvard Law School, see ROBERT COLES, THE CALL OF STORIES: TEACHING AND THE MORAL IMAGINATION (1989). Coles, a psychiatrist, biographer, and essayist, celebrates the power of stories to shape and mold our lives.}