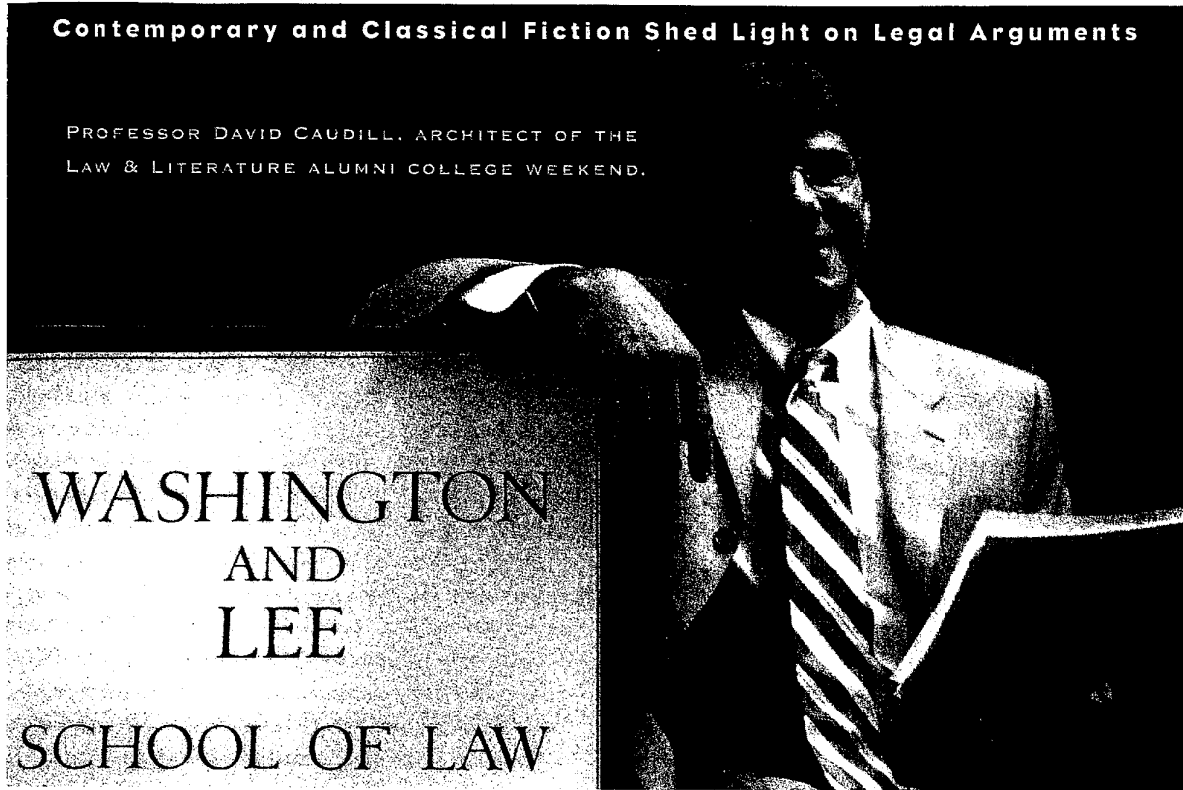


Law & Literature

Contemporary and Classical Fiction Shed Light on Legal Arguments

PROFESSOR DAVID CAUDILL, ARCHITECT OF THE
LAW & LITERATURE ALUMNI COLLEGE WEEKEND.

PHOTO BY PATRICK HINELY '73A



WASHINGTON
AND
LEE
SCHOOL OF LAW

In Sophocles' *Antigone*, or William Shakespeare's *Measure for Measure*, or Herman Melville's *Billy Budd*, each author proposed plot complications with distinctly legal twists. But these literary works have nothing in common with legal textbooks, and, in fact, are stingy with their answers to legal questions.

Move now to a cool, Saturday morning last November and an Alumni College weekend seminar in the Moot Courtroom. Law Professor David S. Caudill is standing before an audience of about 50, and he has in his hand a copy of the book that will be the text for the seminar. It's a dog-eared book, not nearly massive enough to look authoritative. It's *Intruder in the Dust* by William Faulkner. Everyone in the room has read the novel to prepare for the seminar and their quest is to find modern-day legal and ethical significance in a decades-old work of fiction. (See sidebar below.)

Caudill began using literary representations of lawyers in his first professional responsibility classes at W&L after he joined the faculty in 1989. He found that effective fiction can afford excellent case studies, and, furthermore, that a good story with believable characters can "engage future lawyers to consider the goals of professionalism above and beyond the minimalistic rules." The professor points out that Shakespeare, as an example, often dealt with legal institutions and processes. "And while he was suspicious of legal authority, he seemed to focus on good people as guarantors of good laws."

I can't really say that we try to lead participants to a consensus in the law and literature seminars. There is usually a controversy surrounding the books we select—we don't try to start fights, but we do choose great, or at least popular, literature, and usually critics and commentators have

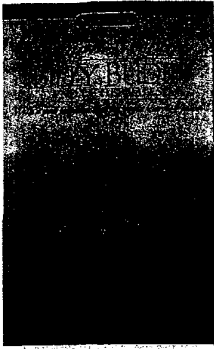
not agreed about how to interpret them.

We seem to track the cultural wars, such as traditionalists versus postmoderns in English departments, so we argue regularly about whether we are looking for the author's intended meaning, or whether the text has a life of its own and

can change meanings in different contexts, or whether we make meaning out of our own ideological biases.

Intruder in the Dust was definitely controversial. We tried to decide whether Faulkner was a reformer or a closet racist in the manner in which he portrays a near lynching. That was terribly interesting. We got into all the segregation and states' rights

Agreeing to
Disagree
By David S. Caudill



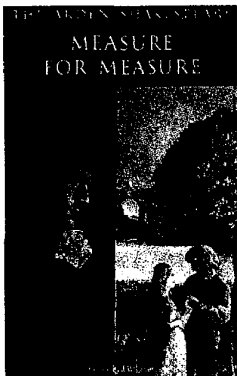
Former Dean Randall Bezanson took note of Caudill's use of literature to teach law and worked with him and Rob Fure, director of W&L's Office of Special Programs, to plan the first law and literature alumni weekend in the fall of 1993. It was an immediate hit with the alumni and has been repeated each fall since then. In 1996, while the program was still in its infancy, it was awarded the F. Smythe Gambrell

Award for Professionalism from the American Bar Association. The award recognizes law schools and other law-related organizations that contribute to the understanding of professionalism among lawyers.

Hardin Marion '55A, '58, says he was not surprised when the ABA announced the award. He and his wife, Heather, have attended seven of the nine seminars held so far (their son's wedding prevented them from attending one) and he has become a champion of the program. Marion, a former University trustee, is "90 percent retired" from his career as a lawyer with a firm in Baltimore, and in recent years has kept a home in Lexington and audited courses at the undergraduate college, most of them in literature. "Even though I'm a lawyer, I'm really more fascinated by the literature side of the seminar," he said. "I appreciate the interdisciplinary aspect and the fact that the seminars appeal to a general audience." He agrees with Caudill about the light that great fiction can cast on "how real people respond and relate to each other in situations that have legal implications."

The seminar also has delved into *The Merchant of Venice* by Shakespeare, *Heart of Darkness* and *The Secret Sharer* by Joseph Conrad, *A Passage to India* by E. M. Forster, *Orlando* by Virginia Woolf, short stories by Eudora Welty and Flannery O'Connor and even modern crime fiction, including novels by Sara Paretsky and Scott Turow. Sometimes a seminar's reading list is only one piece of literature; occasionally two or more works are the required reading.

Fure, the special programs director, was optimistic from the start about the seminar's appeal. "We're pleased to see an increasing number of law alumni, undergraduate alumni



issues of the 1950s, trying to be sensitive to history and social context in our judgments.

Antigone was controversial. Did it recommend civil disobedience? Is that the right thing to do? Shouldn't we follow man-made law?

Captain Vere in *Billy Budd* was controversial. Was he a good or a bad judge; didn't he have to do what he did? We reached no consensus.

Measure for Measure was controversial in the same way. We really did get into tyranny and power, Bill Clinton's abuses of office, some pretty critical feminist thought, and that's always ripe for disagreement.

I should say that the disagreement is always respectful, the fights always friendly. We've had speakers disagree

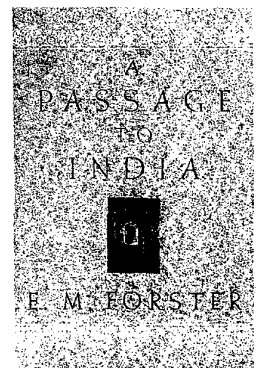
and their family members participate each year. Once they join us, they seem to come back, so the seminar has developed, by now, its own sort of homecoming. We enjoy putting the Law School's outstanding teaching faculty before such a highly appreciative audience."

Marion acknowledges that the audience is always appreciative. But, he adds, it is never docile. He recalls the seminar in which Professor Scott Sundby of the Law School suggested that characters and incidents from *A Passage to India*, including the bogus assault charge against Dr. Aziz, resembled characters and incidents from O. J. Simpson's arrest and prosecution. Needless to say, the analogy was not readily accepted by all, but, says Marion, "Isn't that one role of the professor, to be provocative? Certainly not everyone is going to agree. That's what makes the seminars so much fun."

The law and literature weekend "is unique in the law school world," says Dean David Partlett. "For those wanting to think about the operation of law in society—the law's role and its promise—no better portal is afforded than that of literature. Strong opinions, new perspectives and great energy have filled the room in the sessions I have attended. The life of the mind lives!"

Caudill says the law and literature weekend this fall is tentatively scheduled for Oct. 11-12 and the text will be, Ibsen's *An Enemy of the People* as adapted by Arthur Miller. This play about a whistleblower, he says, will assure that the seminar continues to examine "admirable and embarrassing features of law and lawyering" via literature that "provides just enough distance from actual law practice to permit critical reflection."

Other law faculty who have participated in the seminars are professors Brian C. Murchison, Lewis H. "Lash" LaRue '59A, Louise Halper, Maurcen B. Cavanaugh, Ann M. Massie, Andrew W. "Uncas" McThenia Jr. '58A, '63 and Laura S. Fitzgerald. They have been joined by W&L English professors Marc C. Conner, Suzanne P. Keen, Eric Wilson and James P. Warren, as well as Joseph D. Martinez, associate professor of theatre. ♣



about what the text is about. The English professor, Marc Conner, said *Measure for Measure* is a religious allegory and I said it is a political text. He thought I was reading too much into it; I thought he was stuck in a traditional interpretive mode. He probably won the argument since he has a Ph.D. in English and mine is in philosophy. ♣