



George D. Gopen Responds

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for its verbosity, students are to learn that, in order to be entirely safe in legal drafting, they must never work without a thesaurus.) A lawyer must find the exact word—no other word will do. Better verbose than sorry.

Then in Part III Gopen argues that every word, no matter how “exact” in meaning or non-fungible with other words, is inherently ambiguous. Consequently, the more words you put in, the more ambiguous your writing becomes. The more ambiguous you are, the more you lay a trap for yourself, toward the day when a lawyer still more ingenious finds meanings you never intended.

Ironically, the history of the law illustrates this same tension. By the end of the eighteenth century “form” pleading was supreme (in which the omission of the section symbol, §, from the caption of a pleading could render the pleading fatally defective, no matter how meritorious the party’s case was). In the nineteenth century “notice” pleading developed (in which the purpose of pleading was seen as merely making the adversary party aware, in whatever form, of your allegations). A very good illustration of notice pleading (and incidentally of the way courts treat English) is *Henderson v. Mississippi*, 445 So.2d 1364 (Miss. 1984). A criminal indictment was filled with legalese, dangling modifiers, and bad punctuation. The defense called a nine-year veteran of English teaching as an expert witness, who testified that the indictment could be grammatically read only to mean that certain goods burglarized a building and stole themselves. The court disagreed, holding that “[m]ore properly” the indictment could only mean that the building burglarized itself and stole the goods. Everyone, however, agreed that the

indictment was virtually unintelligible because of the “atrocious” grammar. The defense attorney quoted *Macbeth* in its argument; the court responded with quotes from *Macbeth* and *Hamlet*. The point of the defense was that the indictment did not provide the defendant with sufficient notice of the charges against him. In the end the defendant was convicted, and his conviction upheld on appeal. The Mississippi Supreme Court stated that the “[e]stablishment of a literate bar is a worthy aspiration. . . . Its achievement, however, must be relegated to means other than reversal of criminal convictions justly and lawfully secured.” Ben Jonson escaped execution as a murderer because he could recite Latin; in our day a court has sent a three-time convicted felon to prison, despite his own citation of Shakespeare and the district attorney’s grammatical illiteracy. Perhaps society’s interests in protecting its citizens against crime do, after all, outweigh the desirability of ingenious word-play and the ability to quote great literature.

The most ingenious and word-twisting lawyer is not necessarily the best. Nor one likely to be sensitive to the real concerns of his or her client (high among which is likely to be exorbitant legal fees caused by the pyrotechnics of verbal word-play). Nor the most moral.

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George D. Gopen Responds

I appreciate J. Wesley Miller’s spirited reply to my article on why the study of

poetry is the best preparation for the study of law. I find his own love of rhetoric exhilarating, from the *praeteritio* that ends the second paragraph to the stunningly effective 189-word sentence that catalogues the deficiencies of today's legal education. His fears, however, of the uses to which the article might be put seem to me groundless, if my intentions are read correctly.

I never argued that the *love* of poetry would lead to a *love* of law, but rather that the *study* of poetry would prepare one well for the *study* of law. I can well imagine that the humanistic instincts which lead one to appreciate great poetry might also lead one to dislike and distrust the daily grind of the practice of law, as his catalogue of lawyers-turned-writers convincingly documents. (Would-be teachers of "Law and Literature" courses would do well to keep his list handy.) Practice in the close textual analysis of poetry should aid a student in developing the ability to handle legal study and to appreciate the process of legal analysis, but being able to handle legal distinctions and growing to love the doing of it may well be unrelated matters.

With that in mind it should be clear that I am not luring people into English studies with the purpose of swelling the ranks of the legally-trained unemployed; rather I am suggesting that if a student already intends to study law, he or she would do well to study poetry instead of or in addition to studying other more seemingly related subjects. Moreover, the study of law need not and often does not lead to the practice of law. Of my own law school classmates, only 45% took jobs in law firms, the rest choosing an intriguing variety of positions, including jobs in

journalism, publication, civil service, and education. One of us even became an English professor.

James B. Spamer's response, on the other hand, seems to me confused and petulant. He confuses the practice of law with the study of law; he seems to believe poems "mean" whatever the poet intended them to mean, ignoring the input of the reader into the reading experience; and he mistakenly suggests an equation between the positive sense of "ambiguity" that we cherish in poetry and the negative sense of the same word that we deprecate in the practice of law. He ignores the distinction I make between the study of law, in which negative capability plays such a large part, and the practice of law, in which indecision and multiple interpretation serve mostly to mount up billable hours of work. He whirlingly contradicts himself, insisting (for example) in consecutive sentences that in the practice of law 1) precision is a value and 2) verbosity is a virtue. I am baffled by his incoherent example of the *Henderson v. Mississippi* case, with its conclusion that "ingenious word-play and the ability to quote great literature" cannot outweigh "society's interests in protecting its citizens against crime." At this point he has left my article far behind. I fear that the combination of his holding a PhD in English and his inability to construct logical progressions produces the strongest argument possible against training in English being a good preparation for the study of law.

I can extract only one point of interest from his convoluted reasoning: that teaching students to manipulate textual interpretation might lead them to unethical practices in their attempt to

manipulate the law, producing victories for verbally superior lawyers no matter what the virtues of the substantive legal issues might dictate. That is indeed a problem, one of the most serious problems of our legal system, but it is also a fact of life in the law. The better lawyer always stands a chance of defeating the less able lawyer, despite the facts of the case, despite any particular sense of justice we might entertain, but no one to this point has found a way around that ethical problem, short of adopting the kind of procedure-based legal system the Anglo-Saxons developed, which we have so carefully dismantled in the past 500 years. Keeping our law students inept at textual analysis is hardly a responsible solution. If we want to train our lawyers to behave ethically once they have developed their professional skills, what better way than to subject them to large quantities of great poetry?

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A Comment on "On Going Home: Selfhood in Composition"

In his article (*CE*, April 1983) Evan Carton attempts to account for his "apprehensions about composition" by explicating an assignment he gave his students which allowed him to finally articulate those apprehensions: "About a month into the semester, in a better than average freshman class, I asked my students to read Joan Didion's essay 'On Going Home' and assigned a composition on it. . . . In the introductory paragraph of my assignment, I noted that Didion's attitude to-

ward her two families and toward 'home' itself were very complex and that nowhere in her essay was there a simply stated thesis. My students' challenge then, I instructed, would be to explain Didion's response to her personal situation, to formulate their own statements of the meaning of her essay by piecing together the comments, images, and descriptive details that they thought were most revealing and representative. We briefly discussed the essay and the assignment before the students went home to re-read and write" (p. 343).

Carton's initial assignment is a classic exercise in basic literary analysis. As such it rests upon important, though seldom stated, assumptions that Carton fails to consider in his analysis. First of all, whatever its real intent, the assignment assumes that the reason one reads is to search out and formulate the text's thesis, that sentence that sums up meaning and leads into considerations of evidence. Because their job is to find a thesis and to "piece together" evidence to support it, students are pushed into an objective, analytical relationship with the text. They are the examiners, it is the thing to be examined. While this relationship is not absolute, it tends to pressure the reader into distancing herself from the issues that are dealt with in the reading. Her job is not to engage but to explicate. Given this job, the assignment also implies and demands a particular form of written response, the "thesis with support" essay. In the hands of a sophisticated literary critic, this form can produce marvelously complex writing, but in the hands of inexperienced writers, it becomes reductionist, imposing upon complicated experiences a simplistic,