

# BOOK REVIEW

## The Waste Land Of Law School Fiction

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Sad things can happen when an author chooses the wrong subject: first the author suffers, then the reader, and finally the publisher, all together in a tiny whirlpool of pain.<sup>1</sup>

Law schools generate controversy and initiate change. They attract the “best and the brightest” students.<sup>2</sup> They have not, however, received the ultimate measure of recognition—the examination of institutional character through literary fiction. Novels about law school society can be counted on one hand—with a finger and thumb left over.<sup>3</sup> They are John Osborn’s *The Paper Chase*,<sup>4</sup> Katherine Roome’s *The Letter of the Law*,<sup>5</sup> and Michael Levin’s *The Socratic Method*.<sup>6</sup> None succeed as fiction.<sup>7</sup> This review focuses on the way each writer uses style, plot, and

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1. Sheed, *The Exile*, N.Y. REV. OF BOOKS, Oct. 27, 1988, at 35, col. 1.

2. Even this causes controversy. Harvard University President Bok claims that the “brain drain” into law schools is “a massive diversion of exceptional talent into pursuits that often add little to the growth of the economy, the pursuit of culture, the enhancement of the human spirit.” Lieberman & Goldstein, *Why Have Lawyers Proliferated?*, N.Y. Times, Aug. 6, 1986, at A27, col. 1.

3. Novels with legal themes are prevalent. Wigmore’s analysis of “legal literature” remains the best introduction to the subject. See Wigmore, *A List Of One Hundred Legal Novels*, 17 ILL. L. REV. 26 (1922).

4. J. OSBORN, *THE PAPER CHASE* (1971).

5. K. ROOME, *THE LETTER OF THE LAW* (1979).

6. M. LEVIN, *THE SOCRATIC METHOD* (1987).

7. Scott Turow’s *ONE L* (1977), is an actual diary, and thus is not included in the review. While a diary may have literary merit, such as Samuel Pepys’ “The Diary,” it is not fiction. A diary is a slice of history that describes, as accurately as possible, actual events or personal information about the author or other people. As James Boswell’s *LIFE OF JOHNSON* (1901) demonstrates, there is often a thin line between diary and biography. On the other hand, an autobiography — a form of diary — can cross the line into fiction. See, e.g., H. COSELL, *COSELL* (1973); see also Lehmann-Haupt, *People Who Have Known Me*, N.Y. Times, Oct. 17, 1973, at 45, col. 1 (In book review of COSELL, Lehmann-Haupt remarks that “[w]here he is not making ludicrous claims for his buddies . . . , and where he is not combining such absurdities with other people’s witticisms . . . , he simply resorts to the tired mechanics of yesteryear’s gossip columns.”). Nevertheless, the main characteristic of a diary is that it is a genre that provides information. Since *ONE L* furnishes the prospective law student with information on combat at Harvard Law School, it is a guidebook and not a story.

Turow’s diary has created more controversy than the three novels combined. (It has also sold more than 100,000 copies.) Turow’s version of Kingsfield is a contracts professor named Perini.

character evolution to address the law school environment, particularly the use of the Socratic method.

John Houseman, as a contracts professor, created folkloric overtones in *The Paper Chase*,<sup>8</sup> a simple story about a former boy scout from the Midwest struggling to mature in Harvard Law School's impersonal environment. Through a series of Socratic encounters with Professor Kingsfield, Mr. Hart succeeds in mastering the rules, thereby defying Ralph Nader's edict that the Socratic method is a game that only the professor can win.<sup>9</sup>

Roome's *The Letter of the Law* concerns a protagonist with a personality that is compatible with the system's vitiating forces. While "sensitive," Ixias Smith is nevertheless hardened by a bourgeois work ethic and relentless ambition to succeed. The competition to make law review by writing a "note" victimizes her, compels her to cheat, study obsessively, and seduce a professor in an attempt to obtain editorial advice. Things get worse. An old lover returns and offers her a last chance to escape this corruption through retreat to a kinder and gentler life teaching in rural Vermont. When Ixias rejects his offer, he commits suicide, and she returns to the system's womb.

Levin's bitterness towards law school society exceeds that of Roome or Osborn; to him the system is a malignancy. In *The Socratic Method*,

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Professor Arthur Miller of Harvard, rumored to be Perini's real life model, calls ONE L "faction." *One L: Mixed Reviews*, AM. LAW., Sept. 1986, at 19. According to Miller: "I think there is something journalistically questionable when you don't know what's fish and what's fowl, when you don't know what's fact and what's fiction." *Id.*

A law school friend of Turow says that the book "turned out to be somewhat of a handbook for psychological coping for the first year of law school. . . . And that handbook leaves students ill-prepared for coping with the Socratic method, the hierarchy of grading, [and] competition with other students." He continues to say that the ultimate result is that Turow sanctions the oppression by "suggesting it's a really rough thing, but it's worth it . . . and it's a rite of passage, and we're all going to come out as good lawyers." *Id.*

In a review of ONE L, a Harvard law graduate concluded:

*One L* reads so much like a parody of itself that one is hard put to comment on it. To this observer, at least, it would seem that if there really are a lot of students like Turow, eager to debase themselves on the altar of their own illusions about what the Harvard Law School requires of them, and who can do as little as he obviously did for their own or the school's character, then perhaps it is time for the admissions office to consider recruiting more grown-ups as law students.

Bennett, *Student Lawyers*, COMMENTARY, March 1978, at 82, 83.

ONE L received favorable reviews in Lehmann-Haupt, *Books Of The Times*, N.Y. Times, Sept. 15, 1977, at C22, cols. 1-4; Stern, *Inside Harvard Law School*, N.Y. Times Book Rev., Sept. 25, 1977, at 13.

8. The movie got mixed reviews. Vincent Canby was not generous, saying: "It goes slowly soft like a waxwork on a hot day, losing the shape and substance that at the beginning have rightfully engaged our attention." He concludes: "It takes a long while for 'The Paper Chase' to disintegrate, and there are some funny, intelligent sequences along the way, but by the end it has melted into a blob of cliches." Canby, *Screen: Paper Chase*, N.Y. Times, Oct. 17, 1973, at 55, col. 6.

9. S. TUROW, *supra* note 7, at 41.

Levin goes after law school culture with a single-minded viciousness unmatched even by Turow's loathing of "the pressures, and the uncertainty, and the personal humblings"<sup>10</sup> of the Socratic method. The antagonist, Professor Sanford Clapp, has perfected the casebook method to a merciless torture session that would transform Rambo into an amiable glob of silly putty within a week. Clapp's colleagues at McKinley Law School reflect a cross section of the academic universe. Professor Rebecca Shepard is young, smart (editor of her law review and first in her class), and "cares." There also is the dean, who skillfully networks in anticipation of obtaining a higher position; there is even the inevitable "shadow" professor who makes a fortune practicing law. Add to that a senile old coot who bores everyone with history, a bisexual, and a woman chaser—your average law school faculty.

Because Levin charts new ground in law school fiction by building his plot around faculty rather than students, he is able to flush out various perversions of the law school administration. McKinley faculty meetings conform to the grand tradition of chaos, gamesmanship, and impotence. For example, in the midst of a student strike threatening to close the school, an emergency faculty meeting devolves into an argument about the appropriate place to hang a former dean's portrait. Should he hang next to a hated predecessor—they had different antitrust philosophies—or should he have a wall to himself?

In addition, all three novelists attempt to titillate their audience with sex. Osborn uses serious, orchestrated, and boring sex that allows Susan Kingsfield to harass her love slave Hart about the evils of her father and the system: "'You're a nice guy but you're going to get screwed.'"<sup>11</sup> Roome sees sex as escapist fun, but also necessary to co-opt the competition. Like cheating and lying, sex, in her view, is an accepted part of law school trade craft. It is nothing more than a service (and thus not covered by the U.C.C.) to be bartered for political advantage. "It's like a contract," claims Ixias' Conflicts professor.<sup>12</sup> Levin uses sex as a manifestation of faculty oppression. It is the feudal custom of *droit de seigneur*, carried on by a new type of academic lord. Professor Blotchett uses the couch in his office to "interview" females for clerkships, while Clapp and his colleagues make nocturnal visits to the dorms. As the outraged Katrina Walfish, head of the Women's Law Caucus, put it, "all they care about is . . . how many women law students they can screw in a semester!"<sup>13</sup>

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10. *Id.* at 153.

11. J. OSBORN, *supra* note 4, at 71.

12. K. ROOME, *supra* note 5, at 118.

13. M. LEVIN, *supra* note 6, at 248.

Osborn's use of sex is subtle and effective, and it does not intrude on the central theme of Hart's struggle with Kingsfield. Roome's version of Woodstock style sex—"wham bam, thank you Sam (or Shamela)" is too abrupt and casual to embellish the plot, or make a statement about the characters. Levin's politicization of sex as the radical-chic of an Andrea Dworkinean anti-male diatribe<sup>14</sup> merely creates burlesque, rather than caricature.

It is, however, polarization, not copulation, that really turns these authors on. Student alienation is the central theme of all three authors, and it is where the novels succeed as trash and bash, but fail as fiction.

Matthew Arnold claimed that the essence of literary genius is "a work of synthesis and exposition, not of analysis and discovery; its gift lies in the faculty of being happily inspired by a certain intellectual and spiritual atmosphere, by a certain order of ideas . . ." <sup>15</sup> Osborn, Roome, and Levin are certainly not geniuses. Their characters do not evolve through conflict derived from the plot, but instead are merely fabricated plastic props used to harangue the law school system. The result is a literary wasteland, as deserted and boring as a forty-dollar casebook.

In *The Paper Chase*, as Elliott Abrams correctly observed, "Osborn also fails to develop sufficient dramatic tension to sustain the reader's interest."<sup>16</sup> We never discover what compels Hart to eagerly embrace a method he despises. Why does he sacrifice his soul and compromise his Midwestern values to deal with Kingsfield on Kingsfield's terms, only to reject (with the pacific gesture of throwing the unopened grade letter into the ocean) the rewards?<sup>17</sup>

Roome attempts to create psychological depth in Ixias, but the *The Letter of The Law* leaves us with the impression of a spoiled brat who enjoys wallowing in her own pity. As a critic has noted, she "turns out

14. See, e.g., Dworkin, *Abortion, Chapter 3, Right-Wing Women*, in 1 *LAW & INEQUALITY* 95, 101-06 (1983) (asserting that heterosexual sex is primarily a means for men to subjugate and control women).

15. M. Arnold, *The Function of Criticism at the Present Time*, in *ESSAYS IN CRITICISM, FIRST SERIES* 10 (T.M. Hoctor ed. 1964).

16. Abrams, *Common Law Story*, *New Leader*, Sept. 20, 1971, at 21, cols. 2, 3. Another review complained that the characters lacked "either psychological or physical dimension, so that at the novel's end it is difficult to recall any of the students as distinct personalities." Fessler, *The Book Review, Fiction*, 96 *LIBR. J.* 2672 (1971). This is supported by another review: "Mr. Osborn tells it all as it may have been, in a fine, lean style—but there just isn't enough intramural conflict to attract the innocent bystander." *N.Y. Times Book Rev.*, Sept. 12, 1971, at 50.

17. In reviewing the movie, Jay Cocks says: "His last, too easy gesture of mocking his achievement thus looks not only frivolous and empty-headed but contemptuous. It means that the students brought themselves to the edge of hysteria for nothing, that one tried to kill himself for nothing, that we were manipulated into caring about it all for nothing." Cocks, *Hells of Ivy*, *TIME*, Oct. 29, 1973, at 96, 98.

to be more crassly unlikable and destructive than any of her classmates or even her counterparts at Harvard in other similar novels."<sup>18</sup>

Despite moderately favorable reviews,<sup>19</sup> *The Socratic Method* suffers a similar malaise. Its characters are overly stereotyped, and Levin's tirades against the method are much more oppressive than Clapp, even at his meanest.

The three writers, especially Levin, also practice a contemporary version of minimalism that produces the "flattest possible characters in the flattest possible landscape rendered in the flattest possible diction."<sup>20</sup> Minimalist authors paint eggs rather than canvases.<sup>21</sup> Minimalism's narrow, disjointed technique is unable to comprehend the culture and history of law school and cannot nourish a coherent plot with characters who grow as they confront the system. Minimalistic characters, like Rebecca and Clapp, exist to deliver thirty-second "reader bites" to an audience comprised of law students, faculty, and recently graduated lawyers.<sup>22</sup> Moreover, there is no time or opportunity for symbolism. When a Dickens' law clerk comes home and vigorously washes his hands, we know that he excises the legal system's malevolences, albeit temporarily, from his soul.<sup>23</sup> We receive no implications of symbolism from the brief bites of law school minimalism.

18. Book Review, 67 A.B.A. J. 602, 604 (1981). Another reviewer called the book a "cliché-ridden narrative." *Recent Publications*, 29 EMORY L.J. 595, 597 (1980).

19. The *New York Times* says that "the plot is so amusingly complex that one can't help getting caught up by its machinery." Lehmann-Haupt, *Books Of The Times*, N.Y. Times, Nov. 26, 1987, at C21, col. 1. Although he has reservations ("[A]nyone who has ever wondered what can be learned in creative writing courses would do well to read this book."), Scott Turow also has praise: "*The Socratic Method* is an energetic, intelligently motivated and often extremely funny book." Turow, *The Tenure Trap*, N.Y. Times Book Rev., Dec. 27, 1987, at 9. For a generally unfavorable review, see Mead, *Guilty in the Legal Degree: In a Law School Setting, a Farce That Judges the Professors*, Wash. Post, Dec. 22, 1987, at C4, col. 1.

20. Newman, *What's Left Out of Literature*, N.Y. Times Book Rev., July 12, 1987, at 1.

21. Peter Smith, 28, author of the undeservedly neglected HIGHLIGHTS OF THE OFF-SEASON, says:

Most of the young writers I hang around with are satisfied with capturing the ethos of their times—it's like painting eggs rather than canvases. . . . A lot of these writers, including myself, have worked in publishing and seen big, serious books sell two copies—I hate to say it, but there's a lesson there. These people don't want to invest the three or four years it takes to produce a great masterpiece, because there is too much money to be made in movies and foreign rights—they want to get a book out every year or two. The idea is still to be as young as possible and get books out, even if you have to finger-paint them.

Quoted in Friend, *Dim Lights in the Big City*, G.Q., Dec. 1987, at 298, 299.

For a spirited defense of minimalism, see Barthelme, *On Being Wrong: Convicted Minimalist Spills Bean*, N.Y. Times Book Rev., Apr. 3, 1988, at 1. See generally, Barth, *A Few Words About Minimalism*, N.Y. Times Book Rev., Dec. 28, 1986, at 1 (asserting that "less is more" is the principle underlying "the most impressive phenomenon on the current literary scene").

22. Friend quotes Jonathan Yardley, "The young writers seem to have been writing about themselves, for each other—it's sort of a circle jerk." Friend, *supra* note 21, at 300.

23. C. DICKENS, *BLEAK HOUSE* (1852).

A view of a law school faculty meeting is a microcosm of the system's Byzantine infrastructure. Like Franz Kafka's short stories, faculty meetings metamorphose the history—and the dirty linen—of the institution.<sup>24</sup>

In Levin's novel, every student, especially those advocating "sunshine," should be gagged, strapped firmly in a chair, and then subjected to the excruciating torture of a faculty meeting. People who haven't read anything except *The New York Times* (or the *National Enquirer*) during the past decade and spend the bulk of their time devising ploys to evade writing,<sup>25</sup> justify sinecure with long-winded and convoluted speeches on poor lighting, the shortage of chalk, or complaints that the clocks are not synchronized. An inconvenient parking assignment is a crisis. A teaching assignment on Friday is filibuster time. "Call girls,"<sup>26</sup> easily seduced by consulting work or inflated honoraria given by friends who control the symposium circuit, are regularly condemned by those who are never propositioned. Students would be shocked at the sporadic vicious outbursts, often in response to innocent comments. Like the younger faculty, they would fail to understand that faculty meetings are conducted on as many different levels as a Dylan Thomas poem. Members of the "Tenure Club" often speak in private code, and a single word or phrase can revive a bitter animosity derived from events that occurred ten to fifteen years ago.<sup>27</sup> Despite a few good scenes, Levin's treatment of faculty meetings is too superficial and contrived to flush out the significance of these commonplace "happenings."

The most pronounced example of egg painting occurs when Professor Clapp and his wicked cohorts suddenly become pussycats, voting Re-

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24. F. Kafka, *Metamorphosis*, in THE BASIC KAFKA 1, 1 (1946) ("As Gregor Samsa awoke one morning from uneasy dreams he found himself transformed in his bed into a gigantic insect.").

25. Evasion ploys include: time consuming traveling to get "first hand research"; giving papers and attending various conferences and interdisciplinary symposia as part of the "call girl" circuit; working on a "significant" multi-volume set covering in depth the law of bailments, or some other irrelevant and unpublishable topic. The multi-volume ploy can be effective until retirement—one can always justify delay for the need to revise the earlier volumes or the need to add another volume to accommodate new cases. Sloth can be covered in the annual report to the dean by including a list of ambitious projects under the heading "works in progress." The list cannot be verified and can be cited to show a commitment to scholarship. Lack of publication by tenured faculty has been verified. See Swygert & Gozansky, *Senior Law Faculty Publication Study: Comparisons of Law School Productivity*, 35 J. LEGAL EDUC. 373, 381-382 (1985).

26. For a description of the corruption in the symposium circuit, see A. KOESTLER, *THE CALL GIRLS* (1972).

27. For important meetings, experienced faculty may resort to various forms of foreplay tactics. For example, it is not uncommon to see someone arrive early to dislodge an outspoken opponent from his favorite seat, a tactic intended to disorient and unnerve the opponent into rage and impotence. Another tactic is to sit as close to an opponent as possible, thereby creating an intimacy that deters harangues.

becca Shepard into the Tenure Club and accepting reforms that would "kill the goose that laid the golden egg."<sup>28</sup> After pages of spiteful treatment of Rebecca and the students, the faculty are reborn quicker than Oral Roberts can say, "You are saved. Send money." This abrupt and unexplained character reversal obviously leaves an inexplicable gap in the plot. Possibly this gang of lechers, egomaniacs, and reactionary dogs got high while reading Charlie Reich's *The Greening of America*,<sup>29</sup> and achieved instant "Consciousness III."<sup>30</sup> More likely, Levin resorted to the hack's traditional Hollywood plot ploy: rehabilitating rogues to make a "happy"—and saleable—ending.

Using the Socratic method as the motif in a minimalist novel is another Vietnam—failure is inevitable. Minimalism deals with the surface of life; it avoids motive and the subconscious. Its motto is "less is more"<sup>31</sup>—the ultimate goal is a one-word novel.<sup>32</sup> The Socratic method, however, is too subtle for the "less is more" technique. Ignoring stylistic limitations, Osborn and Roome futilely attempt to convince the reader that the Socratic method is an experience as dehumanizing and sadistic as *One Day in the Life of Ivan Denisovich*.<sup>33</sup> Instead, they produce "K-Mart realism."<sup>34</sup> Levin seeks satire and farce, but concludes his novel with panegyric. His plot is a factoid version of *People* magazine.

28. M. LEVIN, *supra* note 6, at 283.

29. Charles Reich was a young activist law professor at Yale when he wrote *THE GREENING OF AMERICA* (1970). It is an anti-establishment manifesto advising people—especially students—to ". . . resist the State, when you must; avoid it, when you can; but listen to music, dance, seek out nature, laugh, be happy, be beautiful, help others whenever you can, work for them as best you can, take them in, the old and the bitter as well as the young, live fully in each moment, love and cherish each other, love and cherish yourselves, stay together." C. REICH, *THE GREENING OF AMERICA* 347 (1970).

The book was an instant success. "So everybody knows by now that *GREENING* is an Important Book, the In thing to read this season, the one to wave around if you're hip." Brudnoy, *One, Two, Many Consciousnesses III*, 22 NAT'L REV. 1354 (1970).

30. In achieving Consciousness III, the faculty would be rejecting status, elitism, and rational thought. "Consciousness III is deeply suspicious of logic, rationality, analysis, and of principles." C. REICH, *supra* note 29, at 256. "[T]he goals of status, a position in the hierarchy, security, money, possessions, power, respect, and honor are not merely wrong, they are *unreal*." *Id.* at 239. "The foundation of Consciousness III is liberation. It comes into being the moment the individual frees himself from automatic acceptance of the imperatives of society and the false consciousness which society imposes. . . . The meaning of liberation is that the individual is free to build his own philosophy and values, his own life-style, and his own culture from a new beginning." *Id.* at 225.

31. Barth, *supra* note 21, at 1.

32. Friend, *supra* note 21, at 301. The ultimate goal for a law school minimalist novel is "The Socratic method is evil."

33. A. SOLZHENITSYN, *ONE DAY IN THE LIFE OF IVAN DENISOVICH* (1963) (description of a political prisoner's degradation and survival in a Soviet slave-labor concentration camp during the reign of Stalin).

34. A term used to describe minimalism. See Barth, *supra* note 21, at 1-2.

Minimalism does not furnish a forum to explore the realities of the Socratic method as an institutional force. Any effort to "get" the method cannot succeed without exploration of why it prevails and perseveres in the face of so much antipathy. In truth, like Faulkner's Dilsey,<sup>35</sup> the Socratic method survives because it is a financial jockstrap, a protector of faculty "perks," and it provides an illusion of oppression for the contemporary "fun" generation of law students.

Christopher Columbus Langdell should be in the *Fortune Magazine* Hall of Fame. Spreading the method with a trademark and a franchise system would have made him as rich as the robber barons of his era. His innovation revolutionized legal education.<sup>36</sup> Blending the Socratic style with a casebook, Langdell converted the legal trade into a profession. The legacy is an extremely profitable industry for law schools and a lucrative profession for lawyers.

Langdell fertilized a congeries of law school "profscams"<sup>37</sup> that would make one proud to be an academic capitalist. The Socratic method is first and foremost an illusion because it does not really exist. Similar to the economic principle of "pure" competition that functions as the "theoretical extreme"<sup>38</sup> of the free market system, the Socratic method is simply a theoretical construct to idealize the law school classroom. It is, therefore, not surprising that Professor Kingsfield, the keeper of the illusion, has been accused of not measuring up to theoretical ideals.<sup>39</sup> What is surprising is that Osborn and his literary colleagues

35. W. FAULKNER, *THE SOUND AND THE FURY* (1956).

36. By proselytizing the scientific analogy, Langdell gave legal education a respectability that had not existed. "Science, apparent practicality, elitism, financial success, and 'thinking like a lawyer' produced an 'unbeatable combination.'" R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S* 64 (1983). Seeking to achieve Harvard Law School's newly acquired status, other law schools quickly adopted the method, creating a network of imitators. Hence the quid pro quo for academic respectability was, and is, adherence to the illusion.

37. See C. SYKES, *PROFSCAM: PROFESSORS AND THE DEMISE OF HIGHER EDUCATION* 5-7 (1988) (discussing professors' "crimes against higher education").

38. [T]he concept of perfect competition is a *theoretical extreme* — like the concept of a perfect vacuum or the assumption of a frictionless state in physics. For example, in elementary physics, it is expressly assumed in many problems of motion that there is *no friction*, although everyone knows that friction always exists in the real world. The assumption creates an idealized situation which permits simplification of a problem in order to analyze it.

M. SPENCER, *CONTEMPORARY ECONOMICS* 396 (4th ed. 1980).

39. "So, while Socrates asks genuine questions, Kingsfield asks fraudulent ones; Socrates infects his listeners with perplexity, Kingsfield with anxiety; Kingsfield imposes the correct answer and Socrates joins his partner in trying to find one." Dillon, *Paper Chase and the Socratic Method of Teaching Law*, 30 J. LEGAL EDUC. 529, 532 (1980).

There are a variety of reasons for deviation from the ideal version of the method. For example, the schizophrenia between the professor as scholar and as "Hessian-trainer" often results in compromises in the process of implementing the method. Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637, 638 (1968). Even those with a Hessian mentality who con-

never recognize that they conduct their vendetta against a mere illusion.

The illusion of classroom tyranny effectively differentiates the educational product of law schools,<sup>40</sup> and creates the impression that law schools offer a unique experience and a special challenge. "In a way," Turow said, "I'm looking forward to Socratic instruction. I've heard so much about it since I applied to law school—it will at least be interesting to see what it's like."<sup>41</sup>

The faculty in law schools rely on the Socratic method as a source of profscams. Faculty and publishers work together to exploit a captive market by producing, at low cost in time and intellectual effort, scissors and paste compilations of cases, notes, and trivia which are sold at supra-competitive prices.<sup>42</sup> Shirkers exploit the casebook and instruction manual to minimize class preparation and reserve time to read the *Village Voice* or play squash.<sup>43</sup>

The illusion that the method is demanding and harsh serves another function; it justifies the existence of "personalized" seminars to relieve student stress. "Law and banana" courses on things like "blood feuds,"<sup>44</sup> make it possible for faculty to conduct classes whenever the mood strikes them. The payoff for the student is "paper courses," completed without a serious drain on time that can best be spent watching

sider law a vocation and the "pure" Socratic method the only way to train lawyers, have different approaches and styles. At the other end of the spectrum, activists repudiate the method because it is perceived as an oppressive vehicle for the law schools' authoritarian-hierarchical system. Note, *How The Law School Fails: A Polemic*, YALE REV. L. & SOC. ACTION, Spring 1970 at 71, 72 (authored by Duncan Kennedy). In fact, most professors use the method for background to tell war stories of practice, to preach value judgments, or to socialize with students. Many disdain it for lecture, "problems," or some other chic reform technique.

40. "Product differentiation is propagated . . . by efforts of sellers to distinguish their products through packaging, branding, . . . and sales-promotional efforts designed to win the allegiance . . . of the potential buyer." J. BAIN, BARRIERS TO NEW COMPETITION 114 (1956).

41. S. TUROW, *supra* note 7, at 40.

42. The liaison between law professors and book publishers pervades legal education. As a by-product of the case method, the affiliation is symbiotic; on the payroll as members of the 'editorial (or advisory) board' or as scissors-and-paste 'editors' of collections of opinions and fragments of commentary, professors act as representatives to sell their principal product to a captive market. From indifference or sloth, other professors sustain the liaison.

Austin, Book Review, 56 U. CIN. L. REV. 193 (1987) (footnotes omitted).

Turow says that "prices [are] probably inflated because the publishers recognize that casebooks are required reading and have to be purchased. Faculty agitation for lower prices would probably do little good and in any event is unlikely, since the professors are most often the editors or authors of the books they assign." S. TUROW, *supra* note 7, at 47.

43. "Occasionally we have spent many hours in preparation for a single hour of class, but we know we could 'get by' if necessary by a close reading of the casebook just before class. We knew that, if we chose to, we could simply follow the course set by the casebook editor." Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 974.

44. Rothfeld, *What Do Law Schools Teach? Almost Anything*, N.Y. Times, Dec. 23, 1988, at B8, col. 3.

"L.A. Law," or Hulk Hogan putting Macho Man away with the atomic drop.

The Socratic method rationalizes gamesmanship in scholarship. By writing articles attacking this method of education, a professor can get a fashionably progressive reputation while padding his resume.<sup>45</sup> There is not a student-edited law journal in the country that would reject a broad-side attack on the Socratic method.<sup>46</sup> On the other hand, a professor can use vocational traits associated with the method to avoid writing. A modest publication schedule can be justified on the basis that the Socratic method demands thorough preparation, leaving no time to write.<sup>47</sup>

These are merely some of the subtle nuances associated with the Socratic method that law school fiction ignores. American legal education is a system that has a cumulative effect on everyone associated with the legal profession. Some faculty are infuriated at the sloth and waste it encourages, while others praise the system they self-aggrandizingly exploit. But law school fiction does not seek out these contradictions of Socratic culture. In these three novels, we never encounter a professor who symbolically washes away the system's infections; the writers devote every page to the oppression theme—a construct that does not exist and never existed. As a result, these examples of law school fiction are the ultimate in minimalist humbug—and self-indulgence.

The haze that enshrouds the Socratic method cultivates the prevailing *Zeitgeist* that students spend three years of adversity in a horror house. The reality, religiously evaded by the minimalists and those with a vested interest, is substantially different. There is no actual confrontation or oppression in the law school environment. As Professor Allen notes, we live in an age of "consumerism," where "student demands and dissatisfactions are likely to be given even greater attention."<sup>48</sup> One consequence is "that intellectual demands on students in some law school classrooms are less stringent than they were a decade ago."<sup>49</sup>

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45. See, e.g., Austin, *Is the Casebook Method Obsolete?*, 6 WM. & MARY L. REV. 157 (1965) (analyzing the efficacy of the Socratic method). For a thoughtful evaluation of the method, see Stone, *Legal Education On the Couch*, 85 HARV. L. REV. 392 (1971).

46. Combine the criticisms with a feminist perspective and publication is assured. Hot topics include: charges that the selection of cases and text perpetuates a sexist image of women. See, e.g., Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U.L. REV. 1065 (1985).

47. "The primary orientation of their work remains teaching and the preparation of casebooks or law review articles that are useful for teaching or that are directed to practitioners, judges among them." Reisman, *The Law School: Critical Scholarship vs. Professional Education*, 32 J. LEGAL EDUC. 110, 115 (1982).

48. F. ALLEN, *LAW, INTELLECT, AND EDUCATION* 67 (1979).

49. *Id.*

Law school is a period of transition; students spend three years between the pleasant experiences of undergraduate life and the upbeat materialism of a yuppie lifestyle.<sup>50</sup> They learn the manners of a lawyer and a smattering of legal vocabulary while passing through the typical law school shopping mall of diversionary entertainment "experiences."<sup>51</sup> By agitating big audiences with explosive rhetoric while using the lecture circuit to stockpile personal income, advocates of leftist policies spend more time in law schools influencing law student's viewpoints than many professors. Numerous student political groups exist to assuage middle class guilt, and, not incidentally, burn more calories than jogging. At Harvard—the ultimate law school shopping mall—entertainers like Stevie Wonder counter student boredom with singing lectures.<sup>52</sup> Rather than an experience of drudgery and oppression, many agree that law school is "above all—fun."<sup>53</sup>

Allen sums up the "fun" generation:

There has developed a widely held conviction in our culture that individuals possess a kind of natural right not to experience pain. When pain is felt, the reactions are often indignation and bewilderment. These assumptions manifest themselves in student reactions to the phenomenon of tension in law school education. Many modern students, having been denied the knowledge that tensions may be normal and inevitable incidents of the educational experience, conclude that the pain they feel is abnormal. Pain creates self-doubts because it is seen as evidence of personal deficiency or of illness. It also produces resentment against the institution and the educational process that engender

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50. The cultural illiteracy of the contemporary student and the decline in the quality and demands of higher education is indisputable. See E. HIRSCH, JR., *CULTURAL LITERACY: WHAT EVERY AMERICAN NEEDS TO KNOW* 1-10, 110-125 (1987).

The controversial Professor Bloom says: "Today's select students know so much less, are so much more cut off from the tradition, are so much slacker intellectually, that they make their predecessors look like prodigies of culture." A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* 51 (1987).

51. A term derived from E. HIRSCH, JR., *supra* note 50, at 20 (citing A. POWELL, E. FARRAR, AND D. COHEN, *THE SHOPPING MALL HIGH SCHOOL: WINNERS AND LOSERS IN THE EDUCATIONAL MARKETPLACE* (1985)).

52. "The importance of getting people's attention and then using that attention to make a better world was stressed in a rare lecture delivered . . . by Steveland Morris, better known to the world as musical genius Stevie Wonder." Klima, *Wonder Speaks, Sings*, *HARV. L. REC.*, Apr. 27, 1984, at 1, col. 1.

Students in a criminal procedure class at the University of Virginia got special insights from a visit by Muhammed Ali. *Champion Courtroom Fight*, *VA. L. SCH. REP.*, Spring 1988, at 37.

Schools compete to get "celebrity professors." See Foderaro, *Big Name on Campus*, *N.Y. Times*, Education Life (special sect.), Aug. 7, 1988, at 4A-35 (describing how universities look for those celebrity instructors who can "enhance the institution's image, electrifying the campus and inspiring students").

53. *At Harvard, Where Studying Law Is Fun*, *HARV. L. BULL.*, Summer 1988, at 28 (quotation of Harvard law student).

it.<sup>54</sup>

Osborn, Roome, and Levin are products of this "fun" generation. They are related by class, school, and ideology. As Ivy League undergraduates,<sup>55</sup> they write about Ivy League law schools (Harvard, Columbia, and Cornell), and their books reflect sympathy with the Leary-Reich "Consciousness III" creed of the 1960s.<sup>56</sup> Their characters cannot tolerate external criticism or the challenge of tough intellectual standards.<sup>57</sup> Like their real life counterparts, they are "arrogant and immature, and not all that motivated."<sup>58</sup>

The authors' similar backgrounds explains why the novels follow the same theme. They focus exclusively on oppression under the thrall of the Socratic method. Each uses a simple diary technique to cover a single year of events. Levin and Osborn write in the chic McInerney<sup>59</sup> style, while Roome unsuccessfully attempts to capture motivation.

The minimalist fiction of the fun generation does not mean that law school culture is incapable of inspiring work that would satisfy Matthew Arnold's criteria of literature. Literary craftsmen like Louis Auchincloss, C.P. Snow, and Mary McCarthy have written successfully about the unpredictable tensions fermented by the clash between the vested interests of the faculty, administration, and profession. They write in a

54. F. ALLEN, *supra* note 48, at 73. Law students are no different, according to a law professor who left teaching:

'Frankly, I'm leaving because I can't stand being around law students anymore,' says one professor, who plans to leave her post after three years. As a class, she finds law students arrogant and immature, and not all that motivated. She says most students are surprised and resentful that they have to work so hard in law school. As a member of her school's readmissions committee, she reviewed the petitions of dozens of students who were dismissed for low grades and then pleaded their cases to be let back in. 'They said things like 'I spent too much time playing tennis,' or 'I practiced taekwondo too long instead of studying as much as I should have.'

Repa, *Taking Leave*, STUDENT LAW., October 1988, at 23.

55. There is a very interesting connection. Turow and Levin are graduates of Amherst. Roome is a Williams graduate, as is minimalist writer Jay McInerney. Osborn is from Harvard.

56. See *supra* notes 29-30.

57. In his review of Levin's book, Mead says:

With its vague promises of access to power and politics, law school attracts the same kind of thinkers who might be revolutionaries in another culture—children who believe that good grades, youthful righteousness and a speaking acquaintance with current events give them the mandate to remake the world in their own images.

Mead, *supra* note 19.

58. Repa, *supra* note 54.

59. Jay McInerney is author of the yuppie oriented novel, BRIGHT LIGHTS, BIG CITY. According to George Plimpton, McInerney "caught perfectly a culture people were in the fringe of and wondered about, or were in and said, 'That's it!' or, best of all, were in and didn't know they were until the author told them." *Quoted in* Friend, *supra* note 21, at 299.

“maximalist style,”<sup>60</sup> building the muscle of sub-plot around the central story to achieve a “butterfly effect.”<sup>61</sup> They also provide a frame of reference for what fiction ought to do with the law school environment.

By shrewdly juxtaposing the old and the new, Auchincloss<sup>62</sup> creates a conflict between the values of a patrician establishment and the greed of newcomers who have neither manners nor a proper appreciation for the system.<sup>63</sup> This scenario is played out in most of the law schools in the country as conventional academics are challenged by the Snopeses<sup>64</sup> of legal education—the clinicians, the surrealists who dabble in banana seminars, the social engineers of “diversity,” and the “crits.” Auchincloss’s restrained style creates a quiet drama that eludes minimalists like Osborn, Roome, and Levin.

From years of experience as an academic, C.P. Snow knew that student’s travails are banal when compared to faculty politics. Lord Snow’s book, *The Masters*,<sup>65</sup> is about a retired lawyer teaching at a college at Cambridge University, who gets enmeshed in the politics of selecting a new master. Lord Snow’s lessons on the whimsical shifts in alliances and vote-swapping is informative reading for even the most devious academic scoundrel, and is mandatory reading for faculty about to vote on a new dean. The contrast between the development of Snow’s characters, who vacillate between malevolence and virtue, and thin and one-dimensional “mouth pieces” like Hart and Clapp, makes it evident that a minimalist style cannot cope with the complexities of the law school culture. Jago, the protagonist in Snow’s book, comments after losing the contest for Master, that “[t]here will be no celebration for my friends. . . . I shall not even know how to meet them. I don’t know who they are.”<sup>66</sup> This conveys a brooding sense of humiliation, along with the message that faculty commitments are indeed fragile. It is the type of symbolism that eludes minimalism.

Mary McCarthy was a master of academic polemics. She knew that academe, more than Washington or Hollywood, “is the only place on

60. Maximal books have the sweep of a John Dos Passos novel. They are “difficult information-retrieval novels that envision huge ecological and cultural wholes.” LeClair, *The Systems Novel*, NEW REPUBLIC, April 25, 1988 at 41.

61. The “butterfly effect” is “that model of random motion describing how a butterfly flapping its wings in Peking propagates an unpredictable chain reaction of air currents, ultimately altering tomorrow’s weather in Duluth.” *Id.*

62. Auchincloss is one of the few, if not the only, writer to publish fiction in a law review. See Auchincloss, *Abel Donner*, 75 VA. L. REV. 1 (1989); Auchincloss, *The Senior Partner’s Ghosts*, 50 VA. L. REV. 195 (1964).

63. See, e.g., L. AUCHINCLOSS, *THE PARTNERS* (1974).

64. See W. FAULKNER, *THE HAMLET* (1940); *THE TOWN* (1957); and *THE MANSION* (1959).

65. C. P. SNOW, *THE MASTERS* (1951).

66. *Id.* at 350.

earth where you can get stabbed in the back while you're climbing a ladder."<sup>67</sup> Her *The Groves of Academe*<sup>68</sup> should be a training manual for anyone aspiring to write law school fiction. It is an account of Henry Mulcahy, one of the most loathsome academic schemers ever to appear in literature. This "self-pitying, uxorious"<sup>69</sup> character excels in the politics of academe, knows how to read events, and exploits what few friends he has. Every law school has a Mulcahy, yet we never encounter him in Osborn, Roome, or Levin.

Good fiction, such as that of Auchincloss, Snow, and McCarthy, is based on a plot that incorporates "the why and the how as well as the what."<sup>70</sup> The writer must be intimate with the subject and capable of picking out the subtle nuances that enable the characters to act out the why and the how. Although they have different styles and different perspectives, Auchincloss, Snow, and McCarthy mingle motive with circumstance to produce conflict and resolution. These authors deal in ideas.

Law school culture is rich with substance for fiction. Its participants are constantly confronted with choices married to conflict,<sup>71</sup> and they are challenged by ambiguity of identity and purpose.<sup>72</sup> Current law school fiction by authors like Osborn, Roome, and Levin avoids these challenges. It never transcends the Socratic method which serves as its plot, target, and *raison d'être* for portraying faculty as "Masters of the

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67. J. Blotner, *Faulkner: A Biography* 447 (one vol. ed. 1984) (Remark attributed to William Faulkner describing Hollywood).

68. M. MCCARTHY, *THE GROVES OF ACADEME* (1951).

69. *Id.* at 6.

As a prophet of modern literature in a series of halfway-good colleges, he had gladly accepted an identification with the sacred untouchables of the modern martyrology—with Joyce, the obscure language teacher in Trieste; with tubercular Kafka in Prague, brow-beaten by an authoritarian father; with the sickly, *tisane*-drenched Proust; with Marx, even, and his carbuncles; with Socrates and the hemlock. He carried an ash-plant stick in imitation of Joyce's Stephen Dedalus; subscribed to *Science and Society*, the Communist scholarly publication; and proclaimed the Irish, his ancestors, to be the ten lost tribes of Israel.

*Id.*

70. N. FRIEDMAN, *FORM AND MEANING IN FICTION* 63 (1975) ("Plot, then, equals the sequence of incidents plus its causes, which is not the same thing at all as an outline or summary, for it includes the why and how as well as the what.")

71. "Law professors . . . have divided loyalties: to an academic community which often regards them with suspicion for their connection to the real world, and to a bar which may perceive their interest in intellectual currents in the arts and sciences as indifference to the concerns of the practicing lawyer." Entin, *The Law Professor As Advocate*, 38 CASE W. RES. L. REV. 512, 536 (1988).

72. A short list includes: vocationalism versus research and scholarship, advocacy of public issues versus ivy tower isolation, institutional autonomy versus integration with the university, "advocacy" scholarship versus "objective" scholarship, law school as a service center versus exclusive commitment to teaching, "diversity" recruitment versus "quality control."

Universe." Until fiction writers confront these complex forces pulsating through law school society, they will continue to fail.

