Law School Admissions Essay, Research Paper

LAW, SOCIAL SCIENCE, LITERATURE, LAW SCHOOL, AND PERSONAL STATEMENTSLaw School Admissions: Why Bother?Stately and plump, Harvard Law School admits just 850 to yield a class of550; for Yale, fewer than 400 admitted brings a svelte class of 170. Ever battlingits late entry and the suspectness of a West Coast address — newness coupledwith the perception that sunshine vitiates seriousness — Stanford Law Schooladmitted 435 to make a class of 180 for the class of 1998. For the most part,students admitted to Stanford either go to Stanford, go to Harvard, go to Yale, ordon t go to law school. Five-hundred fifty plus 150 plus 180 equals 880. Eight-hundred eighty isjust 30 more than 850, which implies that Harvard, which was first, still is firstwhen it comes to circumscribing the legal elite. In other words, if Harvardeffectively locates the 850 students who will be divided among itself, Stanford,and Yale, why bother worrying about what Stanford does, who it admits? As thisreasoning goes, Harvard has taken care of things. Harvard defines the 850students, implying that the admissions procedures of the latter two aresuperfluous — like so much, parasitic on Harvard. Not so. First, it matters, year to year, for as long as Stanford s and Yale sclasses are small and Harvard s is big, who Stanford and Yale reject. Stanfordrejects contribute importantly to the School s reputation. Stanford admits 400compared to Harvard s 800. Assuming considerable overlap in applicationpatterns, many of Harvard s last 400 admitees were likely rejected by Stanford.The perception, widely held, that attendance at Harvard means one could havegone anywhere is false; rejection by Stanford serves as a reminder of theproposition s falseness. The presence of Stanford rejects at Harvard is anotherway of saying Stanford is good because, as everyone knows, Harvard is good. More broadly, it is possible to play renegade in this game as Stanfordapparently did several years ago by admitting older students and reachingoutside the 850. Thus it does, or can, matter who Stanford admits in the sense ofStanford making an original contribution to the 850 who will compose the firstyear classes at Harvard, Yale, and Stanford. What is being rewarded orpredicted when an applicant is considered — particularly something that differsfrom the competing schools — can materially alter, for good or for bad, theprofession by deliberately attempting to send a different sort of person into thelaw. Without belaboring the laborious topic of which are the top law schools,a few general observations suffice to justify the narrow focus on Harvard, Yale,and Stanford. They are commonly ranked as the top three law schools by U.S.News and World Report. Prospective law students know about the U.S. Newsrankings, its several tiers, its methodology. Some have nearly memorized therankings. Others will tolerate massive personal and geographic dislocation inorder to attend the number 12 rather than number 13 law school. A fall from asecond-place tie to third place inspires at least as much out-of-classconversation as all of the substantive law taught in the first year does. The separateness of Harvard, Yale, and Stanford is most evident in theSupreme Court. A seven-Justice majority could, in a lawless and ultra-realistmoment, declare its law schools to be not just functionally, but legally, superior –strict scrutiny for decisions produced by judges from lesser law schools! (AndRuth Bader Ginsburg, having spent two of her three law school years at Harvard,could make it eight, leaving only John Paul Stevens, first in his class atNorthwestern, to dissent.)At a minimum, there is no equal protection for law school graduates. Supreme Court clerkships are common at Harvard, Yale, and Stanford, whereeven the valedictorians of schools lower down in the hierarchy have a hard go ofit. One guide to law schools has referred to Harvard, Yale, and Stanford as the Holy Trinity of American legal education. Being dead last in the class at any ofthe three would likely not be a bar to conventional law firm employment. In 1948,Robert Swaine of Cravath, Swaine & Moore wrote, The firm has taken most ofits associates from the law schools of Harvard, Columbia, and Yale, suggesting that the Holy Trinity is both a static entity and fluid in its internalcomposition. More recently, one Boston law firm known to have a penchant forHarvard graduates, Ropes and Gray, has even created a lifetime associate position for a New England School of Law alumnus. Anecdotes from other firmsin other cities suggest similar practices. The badges of inferiority, struck anddecried in Brown v. Board of Education, remain permanent fixtures within thelegal culture, with an educational rather than a racial underpinning.Whom to Admit: Literary Woman or Economic Man?Given that it matters where one goes and who is admitted to law school,the question arises: what sorts of people should Stanford Law School admit?Diligent people? Brainy people? Older people? People who have had jobs priorto coming to law school? People who will be good law students? People who willbe good lawyers? People who will be rich lawyers? People who will be famouslawyers? People likely to donate an appealing building, one that might persuadea student inclined to attend Yale to attend Stanford instead?Those with high grades have presumably been diligent; those with highLSAT scores are thought to be smarter. Or at least good test takers areassumed more capable of taking in the information and returning it to a bluebook in a condition resembling that in which it was received. Do we want hightest scores coupled with low grades, possibly a proxy for laziness? Or highgrades and low test scores, possibly a proxy for extreme diligence in the face oflimited abilities. But high grades/low test scores might also be a proxy for havingestablished close relationships with light-grading college professors, or forhaving absorbed the collective wisdom at any college that points the way toclasses where A s are easily gotten. Work experience, while it can provide astore of greater knowledge, can also be viewed as either useless or even anencumbrance to the extent that law attempts to remain an autonomousdiscipline, beyond the reach of policy, of politics, of social science, of allsources of information and experience deemed outside the law. No BrandeisBriefs on the post-college experience, in other words. Whether the diligent person, the lazy person, or the experienced personturns out to be a good student is measurable, at least within the limits of thegrading system. Whether someone will be a good lawyer, is harder to gauge.Income is a faulty measure in that it would lead to the conclusion that fifth yearassociates, of mediocre ability at a mediocre law firms about to deny thempartnerships, are more skilled lawyers than Supreme Court justices who are paidless. At the same time, mere notoriety associated with an exalted but lower-paying legal job (judge, professor) is not itself a guarantee of merit, unless futurenotoriety is, in itself, defined to be meritorious in that it brings notoriety to the lawschool. Additionally, problems of prediction and measurement (whatever is beingpredicted) are greater the farther removed the admissions objective is from lawschool itself. Academic performance in law school is easier to predict thanprofessional greatness, although the two are sometimes correlated, sometimesnot. As a consequence, law school admissions offices engage in only amodest sort of prediction of the first type above. The emphasis is on who will besuccessful first year law students. In addition to the problems of prediction andmeasurement, economies in the admission process make anything moreambitious — such as exhaustive psychological and intellectual appraisals ofeach candidate — unlikely.I will, therefore, take the current components of law school admission as agiven: grades, LSAT, recommendations, and an essay. Within those givens, mypurpose here is to explore whether something slightly more beneficial to lawschool and the legal profession than a respectable correlation betweenquantitative measures before and during law school can be ventured. Specifically: would Stanford Law School, and by implication the legalprofession, be improved if it sought to admit what Professor Robin West calls literary woman ? Literary woman exists in metaphoric opposition to economic man. Economic man is, Professor West describes, peculiarly capable and peculiarlydisabled: He knows everything there is to know about his own subjective life, andnothing whatsoever about the subjective lives of others. Economic man is bothcapable and disabled according to the standard terms of microeconomics. He iscapable in that his choices, market and otherwise, define the good so long asthey are executed without coercion on another and so long as he is not himselfcoerced. He is disabled in that the similar choices of others are unassailable. The chief consequence of the economic man paradigm arises in thesecond prong, economic man s disabled condition. As Professor West asserts:Although economic man is perfectly rational with respect toknowledge of his own subjective well-being, he is at the same timeutterly incapable of empathetic knowledge regarding the subjectivewell-being of others. He is unable, in economic terms, to compare the relative intensity of the subjective pain of another with eitherhis own pain or with that of others. Although the technical,jargonistic language of the law and economics movement hides thepoint, the economist s insistence that economic man is unable tomake intersubjective comparisons of utility, when translated intocommon parlance, amounts to no more than an admission (ratherthan an assertion) that he lacks even minimal empathetic skills. Economic man, in other words, suffers from empathetic impotence — acondition that might be worth trying to avoid in admitting a law school classLiterary woman, on the other hand, is virtually defined by not just acapacity for empathy, but by possessing empathy in abundance. The literarytemperament brings with it attributes that might be thought desirable in lawstudents and lawyers::The ability to make interpersonal comparisons of utility is,in simpler language, the ability to empathize with the pains andpleasures, the joys and sorrows, and the happiness and sufferingof others. The claim that we are incapable of making suchcomparisons is simply the claim that we arenonempathetic[...]Through reading, hearing, and telling stories, wedo precisely what economic legal analysis insists we are incapableof doing. We reach an empathetic understanding — a grasping –of the subjectivity, the pain, the pleasure, the happiness, or thesadness of the other. When we read with understanding, we notonly understand the happiness or pain, but to some degree wetake it on as our own. The law does sometimes take the literary tint suggested that ProfessorWest suggests it lacks. The standard criminal law approach to finding otherwisecriminal conduct to be justified includes the requirement that the accused, inclaiming self-defense, establish either an imminent or immediate threat ofserious bodily injury. Meeting the imminence requirement is problematic in theclassic hard case of a woman who kills a battering spouse or boyfriend while heis sleeping. Such a woman finds no refuge in a strict and legalistic — unliterary –understanding of what it means to be in imminent danger. Sleeping husbandsnot only present no obvious imminent threat, but their sleeping state provides anopportunity for escape, suggesting that killing him fails to meet the reasonableness component of the self-defense test, as well. As one court putit, a battered woman cannot reasonably fear imminent life-threatening dangerfrom her sleeping spouse. The reality, however, might be in the details. The dissenting opinion in theStewart case works with the same factual narrative yet reaches a differentconclusion about imminence (beyond its finding that imminence, not immediacy,should be legally controlling). What was for the majority a source of escapebecomes, for the dissent, evidence of a mental state that did not comport withgenerally held notions of rational behavior: Ignoring the truck and car outside,although she had the keys in her purse inside, she ran over a mile to theneighbors house and pled with them to keep Mike from killing her. (Thishappened after the husband had already been killed.)A similar message evolves in Browne s When Battered Women Kill: thatabsorbing the details typical of abusive relationships expands our view of what isreasonable and imminent. The naked fact — killed sleeping husband — takes ona different aspect when seemingly trivial details bring the observer into aprecise set of human circumstances and challenge abstract, syllogistic analysis.Those who write about Battered Woman s Syndrome share Professor West saim in dislodging the typical legalistic response to these cases (sleeping, thusno imminence, thus no reasonable self-defense) and replace it with a morenuanced response that is sensitive to narrative particulars. In this regard, abattered woman speaking before a law school seminar is a source ofcomparable authority to the Model Penal Code s four-part test for self-defense. While Professor West s rendering of the two types, economic and literary,will likely leave most with a preference for the literary — seemingly a deeper,more perceptive, creative, and, above all, more empathetic person — thepurpose of this paper is not so much to advocate a policy of favoring literarywoman in Stanford s admission process. Instead, and despite more or lesssharing West s literary bias, I will attempt to raise questions suggested byWest s analysis. Assuming there is such a thing as literary woman, are there predictors inthe existing admission process that suggest who she might be? Then, assumingwe find, admit, and enroll her, what sort of a student will she be — what gradeswill she get, what will be her out-of and in-class observations, and what might beher out-of-class social patterns? Or, alternatively, what sort of a student is she,under the assumption that literary women and men already are attendingStanford Law School? Anecdotally, what seems to be the ratio of economic manto literary woman? Do we want more or fewer literary types? And, finally, how isthe literary temperament likely to interact in the legal culture outside of lawschool? Or, to put that last question more provocatively: is the empathy, love ofdetail, and non-economic ponderousness of the literary mind doomed to bedevoured in a hierarchical law firm if not before, in a law school that ispredominantly a path to the law firm? Is literary woman too radical ? Or doesshe simply work within the established legal patterns — as in the battered womanexample, where the imminence test is modified rather than eliminated? Will shehave a transforming, humanizing effect on the institutions she touches? Or isliterary woman already implicitly favored in the admission process, and has she already had her effect in law schools, law firms, and throughout the legalculture?Beyond the Literary, Beyond WomenAlthough Professor West s scholarship grows directly out of CarolGilligan s work around the idea of a distinct feminine voice, it would beneedlessly narrowing to take so literal a view of literary woman to contend thatshe is, necessarily, a she. The stated purpose of favoring empathetic lawyers isthat they are not hardened to others, but able to step into the unfamiliaraspects of others. Thus while a strict reading of Gilligan and West might suggestthat men are by nature not inclined to empathy, it is through the literaryexperience itself that men canacquire a capacity for empathy in the same way that women can sharpen theirs. Men in the seminar, for example, were far from unmoved at hearing thestory and feeling the manner of the battered woman who spoke to us. And whena first year constitutional law course reads Chief Justice Warren Burger srendering of homosexuality — Condemnation of those practices is firmly rootedin Judeo-Christian moral and ethical standards. — men are at least equallycapable of locating in Burger s reasoning a literary deficiency in his inability toimagine the legitimacy of a different sort of life. All of the dissenters in Bowerswere, in fact, male, as are all of the homosexuals strictly affected by thedecision. The compact idea of literary woman dissolves further when, in additionto men being plausibly among the literary, we find that favoring the literary is notexclusively a way for views more or less on the political left to prevail. The mostfamous and recent invocation of literature in support of a position generallyassociated with the political right (opposition to flag burning) arises in ChiefJustice Rehnquist s Texas v. Johnson dissent. Rehnquist begins by quotingRalph Waldo Emerson, moves to Francis Scott Key, and includes all 62 lines ofJohn Greenleaf Whittier s poem Barbara Frietchie — something that elicitedsnickers from my Constitutional Law class at Harvard Law School in 1990.Whether the snickers arose from the students dislike of poetry as such, poetryin judicial opinions, the legal position of the Rehnquist dissent, or Rehnquisthimself is, without more, unknowable. But the incident does suggest that a lawmore informed by literature would find skeptics of all political views, despiteWest s focus on the likelihood that ends traditionally associated with the leftwould tend to received a more favorable hearing under a more literary reading ofthe law . Literature, in other words, is not per se progressive. In fact, the quoted literature, far more than specific Constitutionaldoctrine, is controlling in the Rehnquist dissent, a dissent joined by JusticesWhite (who wrote the majority opinion in Bowers) and O Connor (the Court s firstwoman). Alliances grounded in the literary are, therefore, uncertain both in theirpolitical valence and the tendency of a particular lawyer, judge, or Justice toadopt a relatively literary persona. It is equally plausible that one will be movedby Edmund White toward as deeper understanding of sexual orientation as onewill assume a bleak view about the possibility for social transformation throughpolitics after reading All the King s Men, where it is possible to find anempathetic association with Willie Stark s strict Machiavellianism, an empathythat obliterates all other empathies. West s focus on empathy as the chief and nearly exclusive result ofraising literature s profile in the law also understates the consequences offavoring the literary in the law and law school admissions. Just as empathyimplies more than socially progressive outcomes, literature implies more thanempathy.Literature, particularly poetry, is also about metaphor, which can be seen,alternatively, either as a tool either for communicating the ineffable or previouslymisunderstood (about battered women, for example) or for obscuring the justand obvious (myth, of the bad sort). In gaining a title — an authoritativemetaphor — Post-Traumatic Stress Disorder was effectively accorded anexistence, an existence that, while scientifically dubious, can hold sway with acourt in excusing criminal conduct. Thus insofar as literature trains one scapacity for the construction of metaphor, it is not unambiguously in the serviceof constructing metaphors that sharpen the general understanding of what istrue.Literature, particularly prose fiction, is also about narratives. As extendedmetaphors, narratives hold powers that can also cut both toward and againstaccuracy. For every triumphant narrative that can be seen as deepening ourunderstanding of how things really are, one can generally imagine an equal andopposite competing narrative. In the Stewart Battered Woman Syndrome case,the majority was no less assiduous in its attention to details while reaching aresult adverse to the battered woman defense. Thus favoring the literary over the legalistic is no reliable strategy forindirectly rigging outcomes. Bernard Goetz is to urban vigilantism what PeggyStewart is to the Battered Woman s Syndrome. Shooting someone in the back,someone who asks for five dollars, looks bad and unreasonable until, out ofGoetz s underlying personal narrative, the picture of a reasonable bigot starts toevolve in the same way as that of a reasonable battered woman did. The formsof law are not without lasting utility where, as with Goetz, basic notions ofproportionality of punishment can do most of the work without literary assistance. For those of only a mildly left-leaning political bent, moreover, bringingliterature and literary-mindedness to bear on the law also holds the prospect ofconsequences too radical, particularly for those secure and entrenched, whetheras law professors or law firm partners. An acquaintance who is also a first-yearlaw student at Stanford and an African-American woman, believes that what shesees as the resistance to a more diverse faculty and the serious inclusion ofcritical race theory in the law school curriculum (as something more than acuriosity) is traceable to a well-founded fear. It would change things. It wouldexpose absurdities and contradictions in legal education. It would uproot thevery conception of what constitutes legitimate scholarship. It would actuallymatter.She reasons that curricula have been modified and Great Books listsradically transformed at the undergraduate level precisely because doing sorepresented no institutional threat. There has been no radical outflow. College

is, in its basic ethos, a time for experimentation. A more inclusive curriculum isjust part of the experimentation, not a serious challenge to society s establishedstructures. Students do emerge from college different from the way they did in1950 or even 1980, with a greater sensitivity to difference.But in leading everywhere, college leads nowhere in particular; itseducation is broad, the liberal arts are aimed at no specific institution. Society is too broad a target for radical transformation. There is nowhere, especially fora 22 year-old, to begin…so they wind up doing little more than correcting theirparents archaic nomenclature ( Dad, it s not Black anymore, it s African-American. ) and then getting on with life…possibly going to law school. Professional school, however, is something else, especially law school.Law school has a significant scholarly component and the law has a formidablybroad and long scholarly history. Yet just as law is attached to its scholarship, itis also attached to its benefactor profession, the law, predominately as practicedin law firms — stunningly hierarchical and necessary adjuncts to free-marketcommerce. Law may be a learned profession, but it is not scholarly in the senseof putting established institutions and patterns of behavior to the doubting anddeconstructing tests of scholarship — the tests of the literary mind, especially theliterary mind as imagined in the fullest imagination of literary woman, criticalrace theory. In The Alchemy of Race and Rights, Patricia Williams uses personalnarrative as scholarship. Williams discusses the rules/standards debate not withreference to case law or doctrine, but in the context of a personal anecdote, herpreference for rules demonstrated by a story about her obtaining an apartment inNew York City. In using the personal narrative technique, Williams challengesthe conception of what constitutes legitimate legal scholarship. The threat,therefore, is to a relatively narrow class of people: law professors. Mari Matsuda presents a more comprehensive threat — to the very idea ofwhat constitutes legitimate legal and political voice. Matsuda argues that voices from the bottom — cadence from the pulpit, rap from the streets –ought to be admitted as sources of legal authority. The concept is genuinelyradical in two ways. First, voices from the bottom thoroughly redefines thecontent of scholarship, bringing Snoop Doggy Dogg into the debate aboutpersonal autonomy along with, or even instead of, John Stuart Mill. Second,the messages of the voices from the bottom tend to be, though they are notexclusively, more challenging and candid than the voices from the top. It could be that when the rap song says when you re broke you break, itdoes so with greater reach and resonance than anything before it has on thetopic of poverty-based criminality. The risk, of course, is not just of radicalism butradical inaccuracy. The emotive force of a song (or even traditional verse andprose, not set to music) threatens to overwhelm the more rigorous but lessemotionally compelling message of social science — that, perhaps, poverty isnot, controlling for other variables, a cause of crime. At this point literature, in allits forms, is left with but one rebuttal: that it is not just an authority, acomplement to legal doctrine, traditional legal scholarship, and the findings ofsocial science, but it is a superior authority, an authority more appropriate todescribing complexities, human situations that are not reducible to theconventional forms of expression found in law reviews and peer-reviewed socialscience journals. It is on the matter of candor that the personal voices are most upsetting tolaw, even a progressive vision of law. One need only witness the enormousdiscomfort of law students on confronting a seemingly obvious psychologicalfinding: people tend to follow authority, even evil authority. Literature cutsdeeper, reaching impulses easily concealed from social science investigators.Literature, like music, has its impact not through the persuasion of statistics, butin the simple response of recognition — I know that thought…that sounds likeme… Camus, in The Fall, undertook to deconstruct the inner mind of anoutwardly conventional man, the first-person narrator who describes hisputatively normal romantic life this way:The only deep emotion I occasionally felt in these affairs wasgratitude, when all was going well and I was left, not only peace,but freedom to come and go — never kinder and gayer with onewoman than when I had just left another s bed, as if I extended toall others the debt I had just contracted toward one of them. In anycase, however apparently confused my feelings were, the result Iachieved was clear: I kept all my affections within reach to makeuse of them when I wanted. On my own admission, I could livehappily only on condition that all the individuals on earth, or thegreatest possible number, were turned on me, eternally insuspense, devoid of independent life and ready to answer my callat any moment, doomed in short to sterility until the day I shoulddeign to favor them. In short, for me to live happily it was essentialfor the creatures I chose not to live at all. They must receive theirlife, sporadically, only at my bidding. Camus s project is, as the epigraph to The Fall says, to expose the aggregate ofthe vices of our whole generation in their fullest expression. Camus s world isthat of All the Kings Men, in a libidinous rather than a political context. It is aworld stamped forever with the insights of Machiavelli — A man may forget thedeath of the father, but never the loss of the patrimony, the coldfaced Florentine,who is the founding father of our modern world, said, and he said a mouthful. What Machiavelli said, candidly, so upset all prior political theory becauseit banished the quest for the better side of human nature. Empirically,Machiavelli exposed the inner mind of princes just as Camus s narrator exposesthe inner workings of his mind. Normatively, Machiavelli told never to tell…neverto tell what it is that you really seek, but to conceal motives through indirection.There is plenty of modern resonance here, as when a judge announces hisdevotion to original intent in order to get his actual preferences under theneutrality radar.The indirection works, for the most part, until literature turns up in the law,sharpens our instincts, and presents us as Camus does with unsettlingaphorisms that sound all too true: Today we are always ready to judge as weare to fornicate. Consider abortion, where the political meets the libidinous. Roe v. Wadeboth endures and is burdened by its virtually total lack of candor. It is attackedas being outside the law, which of course it is, but it could not have been anyother way. Only gradually has candor turned up in the litigated portion of theabortion debate. In Webster, Justice Blackmun first broaches the idea thatwomen, because of their uniquely burdensome reproductive capacity, arematerially disadvantaged by abortion restrictions — an argument aboutanatomical differences under the safe cover of equal protection. Only inCasey do we start to get closer to candor, when Justice O Connor talks of how an entire generation has come of age assuming the rights guaranteed by Roe. Justice O Connor said a mouthful. She is ostensibly talking about law,about stare decisis, and preserving the continuity of the law. In other contexts,however, she is not as adamant about precedent. In reversing a permissiveprecedent on affirmative action, Justice O Connor showed her facility withopposing narratives in stating that we do not depart from the fabric of the law;we restore it. Why not the same restoration in Casey? Some say it is onlyexplained by a growing animus toward Chief Justice Rehnquist, with whom shewas rumored to have been romantically involved during their time at StanfordLaw School. That is a story for another day, however. What is unspoken, but implied, in Casey is something nearer to candorthan any prior Supreme Court abortion decision: that people commonly haverecreational, non-procreative sex; law students do, perhaps even conservativeSupreme Court justices. It would be absurd, therefore, to insist that pregnancybe the necessary consequence of so common a practice. Law and politicsmilitate against such candor. The literary quality of such frank admissionsshocks the conscience of a broad public, much as the admissions andrevelations of Camus s and Warren s protagonist narrators do. When I was writing political speeches, I never had a harder fight keepinga line in a speech that I did with one about abortion: Are we really ready to tellwomen they have to grin and bear it when contraception fails and they getpregnant? It cut too close to the reality of the situation; it recognized that whileabortion is about autonomy and privacy and a differential impact on women, it isalso, and primarily, about sex, and about men as well as women. Ultimately, Itook my case to the Governor and he retained the line. One newspaper thatcovered the event quoted that contested line and no other, noting that all headsin the room were nodding. Male heads as well as female heads noddedbecause men know, if nothing else, the purging of abortion rights would meaneither a circumscribed sexual life or the extraordinary financial impact ofsupporting a child born of recreation not procreation. Still more challenging would be the Snoop Doggy Dogg version of sexand sexuality, as expressed in a record that sold several million copies: Guesswho s back in the mutha fuckin house, with a fat dick for your mutha fuckin mouth…it ain t no fun, if the homies can t have none…it ain t no fun, if the homiescan t have none… On that view, sex is inclusive and plentiful, sexual practicesare diverse, and sex, with the assistance of mild hallucinogenic (illegal) drugs,is life s animating force. As such, in the fullest inclusion of voices from thebottom, abortion is a necessary option; conventional morality — monogamy, law-abiding behavior, the regulation of one s pleasure instinct — is seriouslyopposed. What matters is securing the liberty that only the political system canprovide; jurisprudential consistency is of no moment. It is a matter for the nextlife or one s progeny, were their either.The rap music metaphysics is not without resonance, however, evenamong those who have played the straight and narrow with enough attention andreserve to be admitted to Stanford Law School. For others, however, it is aslippery slope not only never to be sledded upon, but to be actively denied.Literary Man and Economic Woman at Stanford Law School: A First YearNarrative in Three PartsPart 1: The Erotic Allure of FormalismAs one model answer from Professor Gunther s 1994 Constitutional Lawfinal exam put it: Much as I support a woman s right to choose whether or not tohave an abortion, I think Blackmun really had to stretch the Constitution to findthat this decision is one that is fundamental to a scheme of ordered liberty. This view of ordered liberty is, if not dominant, widely in evidenceamong first-year law students at Stanford. It is reminiscent and directly in thetradition of Herbert Weschler s famously self-abnegating appraisal of Brown v.Board of Education. Like the model answer student, Weschler liked the result ofBrown but was troubled by the flawed jurisprudence. In relevant part, Weschlerwrites:Lastly, I come to the school decision [Brown], which for one of mypersuasion stirs the deepest conflict…Yet I would surely be engaged inplaying Hamlet without Hamlet if I did not try to state the problems thatappear to be involved… The problem inheres strictly in the reasoning of the opinion… In other words, much as Weschler supports desegregated schools, he thinksthat Warren really had to stretch the Constitution… The allure of the law, for many like Weschler and the model answerproducing student of Gunther (himself Weschler s student) is the language of thelaw itself, its structure and its constraints. Sacrifice, whether it is giving up Roeor Brown, is taken to be a symbol of commitment to genuine principle. Thetendency is recurrent at Stanford Law School…much as I sympathize with theplight of the homeless, I have separation of powers concerns if the courtsmandate a level of funding for homelessness programs (first yearproperty)…much as I sympathize with toxic tort victims, there is no basis inestablished causation doctrine for recovery here (first year torts)…all acts ofrestraint, of sacrifice, and restraint knows no part in the most extreme, nihilisticrenderings (Camus, Snoop Doggy Dogg, or Bernard Goetz, or the man who robsa bank because of Post-Traumatic Stress Disorder) of what began simply as empathetic woman. The fullest extension of the literary is where volitionanswers only the commands of desire, and all desire — political or sexual — isexcusable in its criminal consequences if a compelling narrative attaches to itand to us in the telling. Where restraint is still operative, encouraged, and admired, one can bothsupport the pro-choice position and, yet, and a matter of law, as a professionalmatter…in a gesture that adds a layer of complexity and professionally viablenuance to a first-year law student s personality…oppose the mechanism bywhich the pro-choice position has been secured, knowing all the while thattaking such a position is of no consequence…after Casey, Roe is secure, and,anyway, first-year law students aren t likely to affect the law…Part 2: The Pragmatic Allure of ConformityOne student wrote the following cover letter to a judge, for whom hehoped to clerk:I am a second-year student at Stanford LawSchool writing to apply for the position of LawClerk… I assume my writing skills, analyticalability, research proficiency, and other mundaneskills are on a par with most other qualifiedapplicants, and I am confident that I have honedthem just as much in law school. Other than that,I am not sure I am outstanding in any singlerespect, but I do believe I am well rounded. As myresum indicates, I lived in Paris, France fromthe age of seven to eighteen. I then attendedHampshire College, a relatively alternative college… After that I worked for two years inWashington, D.C., first as an intern in Congressand then as a lobbyist and research associate forACORN, a relatively radical organization workingon a variety of issues affecting low-incomefamilies… Having temporarily satisfied my alternativeand radical urges, I have focused at law school onlegal issues surrounding the business and financeworld… My recommendations are being written byProfessor Crawford, who I work for and isintimately familiar with my work, as well asProfessors Janet Halley and Professor Goldstein,who I know less well but who assured me they wouldnonetheless write typically laudatoryrecommendations. Thank you for your consideration. I lookforward to the opportunity to meet with you. It was widely believed by fellow law students, when the writer of the letterasked if he should use it, that he should not. Part 3: The Ambivalent Allure of the EroticIn October, four first-year law students engaged in what came to beknown as group sex in Crothers, which it was, except that it happened in MenloPark, not Crothers. At the end of the encounter, one of the four students is saidto have remarked, Law school is cool. Evidently, it became less so. Acrimony broke out among the group of four,seemingly because the student who thought the encounter cool had foundmore value in the retelling of it than the others. The three who had remainedsilent cut off relations with the talker.Then, near the end of the school year, in the heavily-attended Law SchoolMusical, one of the four — not the one who had told about the adventure — sanga song called Stanford Law Sex :There s things you try to hideAnd things the whole school knowsThere s 2Ls you trustAnd 1Ls you don tThere s things that you d expectAnd things you d never guessNo one expected good sex in law schoolBut baby we did it and it was the bestSex is natural — Sex is goodNot many 2Ls do itBut many of them shouldSex is natural — Sex is funSex is best when it s…five on fourSix on threeThe student who had been previously censured for tell the story publicly wasperplexed. Implications for the Admission ProcessHow might Stanford s admissions process located and admit either moreor fewer students of a literary temperament? There is little to go on. Thetranscript can show a penchant for literature courses, but as the foregoinganalysis suggests, literary woman is something more than one who tends totake literature classes. The LSAT is no assistance. Recommendations areunreliable. Many applicants write their own recommendations (the offer to do sowas made to me; I refused) and, even if they don t, are unlikely to solicit one thatwill be either strictly unflattering or revealing in an unflattering way. All that is left in this application process of modest aspirations is the so-called personal statement, a purportedly literary act. The personal statement issuspect in the same way recommendations are; its authorship is unverifiable. Idid write my own, and as a service to those who read application folders, I endthis paper by offering the following deconstruction of my own personal statementthat I submitted to Stanford Law School (and Harvard and Yale):Application to Stanford Law SchoolPersonal StatementRobert C. Byrnes (004-58-9690)My boss turned to ask me the location of an obscureBoston street. Comment: Purely a literary device to start the statement You know that from your bike messenger days, hepresumed, correctly. He added: Probably the best job you llever have. Comment: A true fact, having been a bikemessenger…probably included to suggest a unique backgroundand to be cast in ironic juxtaposition to my current job atthe time (Chief Speechwriter to the Governor ofMassachusetts)Bill Weld could never have been a bike messenger,living outside the expectations of his social class. For thefirst time he (public figure, prominent family) showed astreak of envy. Comment: Bill Weld is Governor…narrative suggests closecontact, detailed conversation with a powerful person,despite having been a bike messenger…first application toStanford, during bike messenger phase, did notsucceed…need to establish legitimacy for law schoolAnd he might have been right. Some jobs dominate yourmind, others your body. Biking dominated my body, but mythoughts were always my own. A romantic image of life as abike messenger survived my actually doing it. Comment: Unrepentant about deviant way of life…but thetime comes to get serious, take a respected job, go to lawschool… Growing up, I also had a romantic image of politics. Iremember watching Governor Dukakis speak on television, whenI was in high school. d words seemed to have been deliveredfrom the heavens. I had no idea his speech had been writtenby an actual person, and that for Dukakis s successor, thatactual person would be me. Comment: Reinforces the idea that Massachusetts governorsare significant political players…Dukakis the Democraticnominee in 1988…also reinforces my connection to thelegitimate and the powerful… The romance of politics also survives. In my work, Ilive beyond the expectations I had for myself, and mythoughts can live beyond me, as well. Comment: I am not a cynic…I believe, especially in themainstream sources of power and rights…the days of bikemessenger nihilism are behind meIn a bar, I once watched Governor Weld deliver a gayrights speech I had written. There were no cheers, but therewere no derisive remarks — a small victory for tolerance. Itold Weld his gay rights position would probably be his mostsignificant contribution as Governor. Comment: I am a right-thinking, Bowers-hating progressive,just in case the affiliation with a Republican made youwonder…Am I gay?And while my mind can never be entirely free writinghis speeches, it can travel paths I once thought off-limitsto people like me. Comment: I have come far, confronted and vanquished doubts,cynicism…I am hopeful and life-affirming…yes I said yesI will Yes. . James B. Stewart, The Partners, Simon and Schuster, New York, 1983, p. 16. Robin West, Economic Man and Literary Woman: One Contrast, 39 Mercer L. Rev. 867-878 Id. at 869. Id. Id. Id. 871-872. State of Kansas v. Peggy Stewart, 243 Kan 639; 763 P.2d 572; 1988 Kan. Id. A. Browne, When Battered Women Kill, Ch. 8, Even Unto Death, pp. 131-158. The FreePress, New York, 1987. See, for example, State of Kansas v. Joan E. Hodges, 239 Kan. 63, 716 P.2d 563; 1986,where, in a decision finding imminent the proper jury instruction rather than immediate, thecourt relates that at [a]round 2:00 a.m…the defendant s stomach was upset and she went to theconvenience store to get some Di-Gel for herself and some Skoal for her husband. She returned,went into the bedroom… Id. at 875. In Bowers v. Hardwick, 487 U.S. 186, where Burger also affirmingly notes Blackstone sdescription of sodomy as the infamous crime against nature and a crime not fit to be named. In addition to providing a finer understanding of homosexuality, West also refers to race andbattered women as issues that would benefit from a more literary treatment. Law and Social Science Seminar, Stanford Law School, February 5, 1996. Id., January 30, 1996. Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. Civ.Rts.-Civ. Lib. L. Rev. 323, 323-342 (1987) This is all the more contentious when the inclusion of Mill or any philosopher at all is opposedby some, such as Charles Fried, who see no room for disciplines other than law within legalscholarship. Albert Camus, The Fall, Random house, New York, 1956, pp. 67-68. Robert Penn Warren, All the Kings Men, Harcourt Brace Jovanovich, New York, 1974, p. 393. Camus, at 77. Webster v. Reproductive Health Services, 492 U.S. 490 (1989) Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. (1992) Aderand Constructors, Inc. v. Pena, 518 U. S. (1995) Snoop Doggy Dogg, Aint No Fun, on Doggystyle, Death Row/Interscope Records, at track#12, (1993) see Walter Michael, Ebbe B. Ebbensen, and Antonette Raskoff Zeiss, Cognitive andAttentional Mechanisms in Delay of Gratification, in Journal of Personality and SocialPsychology, February 1972. Herbert Weschler, Toward Neutral Principles of Constitutional Law, 73 Harv. L. Rev. 1 (195928