Social Science Essay, Research Paper

LAW, SOCIAL SCIENCE, LITERATURE, LAW SCHOOL, AND PERSONAL STATEMENTS Law School Admissions: Why Bother? Stately and plump, Harvard Law School admits just 850 to yield a class of 550; for Yale, fewer than 400 admitted brings a svelte class of 170. Ever battling its late entry and the suspectness of a West Coast address — newness coupled with the perception that sunshine vitiates seriousness — Stanford Law School admitted 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, or don t go to law school. Five-hundred fifty plus 150 plus 180 equals 880. Eight-hundred eighty is just 30 more than 850, which implies that Harvard, which was first, still is first when it comes to circumscribing the legal elite. In other words, if Harvard effectively locates the 850 students who will be divided among itself, Stanford, and Yale, why bother worrying about what Stanford does, who it admits? As this reasoning goes, Harvard has taken care of things. Harvard defines the 850 students, implying that the admissions procedures of the latter two are superfluous — like so much, parasitic on Harvard. Not so. First, it matters, year to year, for as long as Stanford s and Yale s classes are small and Harvard s is big, who Stanford and Yale reject. Stanford rejects contribute importantly to the School s reputation. Stanford admits 400 compared to Harvard s 800. Assuming considerable overlap in application patterns, many of Harvard s last 400 admitees were likely rejected by Stanford. The perception, widely held, that attendance at Harvard means one could have gone anywhere is false; rejection by Stanford serves as a reminder of the proposition s falseness. The presence of Stanford rejects at Harvard is another way of saying Stanford is good because, as everyone knows, Harvard is good. More broadly, it is possible to play renegade in this game as Stanford apparently did several years ago by admitting older students and reaching outside the 850. Thus it does, or can, matter who Stanford admits in the sense of Stanford making an original contribution to the 850 who will compose the first year classes at Harvard, Yale, and Stanford. What is being rewarded or predicted when an applicant is considered — particularly something that differs from the competing schools — can materially alter, for good or for bad, the profession by deliberately attempting to send a different sort of person into the law. 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. News rankings, its several tiers, its methodology. Some have nearly memorized the rankings. Others will tolerate massive personal and geographic dislocation in order to attend the number 12 rather than number 13 law school. A fall from a second-place tie to third place inspires at least as much out-of-class conversation as all of the substantive law taught in the first year does. The separateness of Harvard, Yale, and Stanford is most evident in the Supreme Court. A seven-Justice majority could, in a lawless and ultra-realist moment, declare its law schools to be not just functionally, but legally, superior — strict scrutiny for decisions produced by judges from lesser law schools! (And Ruth 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 at Northwestern, to dissent.) At a minimum, there is no equal protection for law school graduates. Supreme Court clerkships are common at Harvard, Yale, and Stanford, where even the valedictorians of schools lower down in the hierarchy have a hard go of it. 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 of the 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 of its associates from the law schools of Harvard, Columbia, and Yale, suggesting that the Holy Trinity is both a static entity and fluid in its internal composition. More recently, one Boston law firm known to have a penchant for Harvard graduates, Ropes and Gray, has even created a lifetime associate position for a New England School of Law alumnus. Anecdotes from other firms in other cities suggest similar practices. The badges of inferiority, struck and decried in Brown v. Board of Education, remain permanent fixtures within the legal 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 prior to coming to law school? People who will be good law students? People who will be good lawyers? People who will be rich lawyers? People who will be famous lawyers? People likely to donate an appealing building, one that might persuade a student inclined to attend Yale to attend Stanford instead? Those with high grades have presumably been diligent; those with high LSAT scores are thought to be smarter. Or at least good test takers are assumed more capable of taking in the information and returning it to a blue book in a condition resembling that in which it was received. Do we want high test scores coupled with low grades, possibly a proxy for laziness? Or high grades and low test scores, possibly a proxy for extreme diligence in the face of limited abilities. But high grades/low test scores might also be a proxy for having established close relationships with light-grading college professors, or for having absorbed the collective wisdom at any college that points the way to classes where A s are easily gotten. Work experience, while it can provide a store of greater knowledge, can also be viewed as either useless or even an encumbrance to the extent that law attempts to remain an autonomous discipline, beyond the reach of policy, of politics, of social science, of all sources of information and experience deemed outside the law. No Brandeis Briefs on the post-college experience, in other words. Whether the diligent person, the lazy person, or the experienced person turns out to be a good student is measurable, at least within the limits of the grading 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 year associates, of mediocre ability at a mediocre law firms about to deny them partnerships, are more skilled lawyers than Supreme Court justices who are paid less. 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 future notoriety is, in itself, defined to be meritorious in that it brings notoriety to the law school. Additionally, problems of prediction and measurement (whatever is being predicted) are greater the farther removed the admissions objective is from law school itself. Academic performance in law school is easier to predict than professional greatness, although the two are sometimes correlated, sometimes not. As a consequence, law school admissions offices engage in only a modest sort of prediction of the first type above. The emphasis is on who will be successful first year law students. In addition to the problems of prediction and measurement, economies in the admission process make anything more ambitious — such as exhaustive psychological and intellectual appraisals of each candidate — unlikely. I will, therefore, take the current components of law school admission as a given: grades, LSAT, recommendations, and an essay. Within those givens, my purpose here is to explore whether something slightly more beneficial to law school and the legal profession than a respectable correlation between quantitative measures before and during law school can be ventured. Specifically: would Stanford Law School, and by implication the legal profession, 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 peculiarly disabled: He knows everything there is to know about his own subjective life, and nothing whatsoever about the subjective lives of others. Economic man is both capable and disabled according to the standard terms of microeconomics. He is capable in that his choices, market and otherwise, define the good so long as they are executed without coercion on another and so long as he is not himself coerced. He is disabled in that the similar choices of others are unassailable. The chief consequence of the economic man paradigm arises in the second prong, economic man s disabled condition. As Professor West asserts: Although economic man is perfectly rational with respect to knowledge of his own subjective well-being, he is at the same time utterly incapable of empathetic knowledge regarding the subjective well-being of others. He is unable, in economic terms, to compare the relative intensity of the subjective pain of another with either his own pain or with that of others. Although the technical, jargonistic language of the law and economics movement hides the point, the economist s insistence that economic man is unable to make intersubjective comparisons of utility, when translated into common parlance, amounts to no more than an admission (rather than an assertion) that he lacks even minimal empathetic skills. Economic man, in other words, suffers from empathetic impotence — a condition that might be worth trying to avoid in admitting a law school class Literary woman, on the other hand, is virtually defined by not just a capacity for empathy, but by possessing empathy in abundance. The literary temperament brings with it attributes that might be thought desirable in law students and lawyers:: The ability to make interpersonal comparisons of utility is, in simpler language, the ability to empathize with the pains and pleasures, the joys and sorrows, and the happiness and suffering of others. The claim that we are incapable of making such comparisons is simply the claim that we are nonempathetic[...]Through reading, hearing, and telling stories, we do precisely what economic legal analysis insists we are incapable of doing. We reach an empathetic understanding — a grasping — of the subjectivity, the pain, the pleasure, the happiness, or the sadness of the other. When we read with understanding, we not only understand the happiness or pain, but to some degree we take it on as our own. The law does sometimes take the literary tint suggested that Professor West suggests it lacks. The standard criminal law approach to finding otherwise criminal conduct to be justified includes the requirement that the accused, in claiming self-defense, establish either an imminent or immediate threat of serious bodily injury. Meeting the imminence requirement is problematic in the classic hard case of a woman who kills a battering spouse or boyfriend while he is sleeping. Such a woman finds no refuge in a strict and legalistic — unliterary — understanding of what it means to be in imminent danger. Sleeping husbands not only present no obvious imminent threat, but their sleeping state provides an opportunity for escape, suggesting that killing him fails to meet the reasonableness component of the self-defense test, as well. As one court put it, a battered woman cannot reasonably fear imminent life-threatening danger from her sleeping spouse. The reality, however, might be in the details. The dissenting opinion in the Stewart case works with the same factual narrative yet reaches a different conclusion about imminence (beyond its finding that imminence, not immediacy, should be legally controlling). What was for the majority a source of escape becomes, for the dissent, evidence of a mental state that did not comport with generally 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 the neighbors house and pled with them to keep Mike from killing her. (This happened after the husband had already been killed.) A similar message evolves in Browne s When Battered Women Kill: that absorbing the details typical of abusive relationships expands our view of what is reasonable and imminent. The naked fact — killed sleeping husband — takes on a different aspect when seemingly trivial details bring the observer into a precise set of human circumstances and challenge abstract, syllogistic analysis. Those who write about Battered Woman s Syndrome share Professor West s aim in dislodging the typical legalistic response to these cases (sleeping, thus no imminence, thus no reasonable self-defense) and replace it with a more nuanced response that is sensitive to narrative particulars. In this regard, a battered woman speaking before a law school seminar is a source of comparable 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 — the purpose of this paper is not so much to advocate a policy of favoring literary woman in Stanford s admission process. Instead, and despite more or less sharing West s literary bias, I will attempt to raise questions suggested by West s analysis. Assuming there is such a thing as literary woman, are there predictors in the existing admission process that suggest who she might be? Then, assuming we find, admit, and enroll her, what sort of a student will she be — what grades will she get, what will be her out-of and in-class observations, and what might be her out-of-class social patterns? Or, alternatively, what sort of a student is she, under the assumption that literary women and men already are attending Stanford Law School? Anecdotally, what seems to be the ratio of economic man to literary woman? Do we want more or fewer literary types? And, finally, how is the literary temperament likely to interact in the legal culture outside of law school? Or, to put that last question more provocatively: is the empathy, love of detail, and non-economic ponderousness of the literary mind doomed to be devoured in a hierarchical law firm if not before, in a law school that is predominantly a path to the law firm? Is literary woman too radical ? Or does she simply work within the established legal patterns — as in the battered woman example, where the imminence test is modified rather than eliminated? Will she have a transforming, humanizing effect on the institutions she touches? Or is literary woman already implicitly favored in the admission process, and has she already had her effect in law schools, law firms, and throughout the legal culture? Beyond the Literary, Beyond Women Although Professor West s scholarship grows directly out of Carol Gilligan s work around the idea of a distinct feminine voice, it would be needlessly narrowing to take so literal a view of literary woman to contend that she is, necessarily, a she. The stated purpose of favoring empathetic lawyers is that they are not hardened to others, but able to step into the unfamiliar aspects of others. Thus while a strict reading of Gilligan and West might suggest that men are by nature not inclined to empathy, it is through the literary experience itself that men can acquire 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 the story and feeling the manner of the battered woman who spoke to us. And when a first year constitutional law course reads Chief Justice Warren Burger s rendering of homosexuality — Condemnation of those practices is firmly rooted in Judeo-Christian moral and ethical standards. — men are at least equally capable of locating in Burger s reasoning a literary deficiency in his inability to imagine the legitimacy of a different sort of life. All of the dissenters in Bowers were, in fact, male, as are all of the homosexuals strictly affected by the decision. The compact idea of literary woman dissolves further when, in addition to men being plausibly among the literary, we find that favoring the literary is not exclusively a way for views more or less on the political left to prevail. The most famous and recent invocation of literature in support of a position generally associated with the political right (opposition to flag burning) arises in Chief Justice Rehnquist s Texas v. Johnson dissent. Rehnquist begins by quoting Ralph Waldo Emerson, moves to Francis Scott Key, and includes all 62 lines of John Greenleaf Whittier s poem Barbara Frietchie — something that elicited snickers from my Constitutional Law class at Harvard Law School in 1990. Whether the snickers arose from the students dislike of poetry as such, poetry in judicial opinions, the legal position of the Rehnquist dissent, or Rehnquist himself is, without more, unknowable. But the incident does suggest that a law more informed by literature would find skeptics of all political views, despite West s focus on the likelihood that ends traditionally associated with the left would tend to received a more favorable hearing under a more literary reading of the law . Literature, in other words, is not per se progressive. In fact, the quoted literature, far more than specific Constitutional doctrine, is controlling in the Rehnquist dissent, a dissent joined by Justices White (who wrote the majority opinion in Bowers) and O Connor (the Court s first woman). Alliances grounded in the literary are, therefore, uncertain both in their political valence and the tendency of a particular lawyer, judge, or Justice to adopt a relatively literary persona. It is equally plausible that one will be moved by Edmund White toward as deeper understanding of sexual orientation as one will assume a bleak view about the possibility for social transformation through politics after reading All the King s Men, where it is possible to find an empathetic association with Willie Stark s strict Machiavellianism, an empathy that obliterates all other empathies. West s focus on empathy as the chief and nearly exclusive result of raising literature s profile in the law also understates the consequences of favoring the literary in the law and law school admissions. Just as empathy implies more than socially progressive outcomes, literature implies more than empathy. Literature, particularly poetry, is also about metaphor, which can be seen, alternatively, either as a tool either for communicating the ineffable or previously misunderstood (about battered women, for example) or for obscuring the just and obvious (myth, of the bad sort). In gaining a title — an authoritative metaphor — Post-Traumatic Stress Disorder was effectively accorded an existence, an existence that, while scientifically dubious, can hold sway with a court in excusing criminal conduct. Thus insofar as literature trains one s capacity for the construction of metaphor, it is not unambiguously in the service of constructing metaphors that sharpen the general understanding of what is true. Literature, particularly prose fiction, is also about narratives. As extended metaphors, narratives hold powers that can also cut both toward and against accuracy. For every triumphant narrative that can be seen as deepening our understanding of how things really are, one can generally imagine an equal and opposite competing narrative. In the Stewart Battered Woman Syndrome case, the majority was no less assiduous in its attention to details while reaching a result adverse to the battered woman defense. Thus favoring the literary over the legalistic is no reliable strategy for indirectly rigging outcomes. Bernard Goetz is to urban vigilantism what Peggy Stewart is to the Battered Woman s Syndrome. Shooting someone in the back, someone who asks for five dollars, looks bad and unreasonable until, out of Goetz s underlying personal narrative, the picture of a reasonable bigot starts to evolve in the same way as that of a reasonable battered woman did. The forms of law are not without lasting utility where, as with Goetz, basic notions of proportionality of punishment can do most of the work without literary assistance. For those of only a mildly left-leaning political bent, moreover, bringing literature and literary-mindedness to bear on the law also holds the prospect of consequences too radical, particularly for those secure and entrenched, whether as law professors or law firm partners. An acquaintance who is also a first-year law student at Stanford and an African-American woman, believes that what she sees as the resistance to a more diverse faculty and the serious inclusion of critical race theory in the law school curriculum (as something more than a curiosity) is traceable to a well-founded fear. It would change things. It would expose absurdities and contradictions in legal education. It would uproot the very conception of what constitutes legitimate scholarship. It would actually matter. She reasons that curricula have been modified and Great Books lists radically transformed at the undergraduate level precisely because doing so represented no institutional threat. There has been no radical outflow. College is, in its basic ethos, a time for experimentation. A more inclusive curriculum is just part of the experimentation, not a serious challenge to society s established structures. Students do emerge from college different from the way they did in 1950 or even 1980, with a greater sensitivity to difference. But in leading everywhere, college leads nowhere in particular; its education is broad, the liberal arts are aimed at no specific institution. Society is too broad a target for radical transformation. There is nowhere, especially for a 22 year-old, to begin…so they wind up doing little more than correcting their parents 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 formidably broad and long scholarly history. Yet just as law is attached to its scholarship, it is also attached to its benefactor profession, the law, predominately as practiced in law firms — stunningly hierarchical and necessary adjuncts to free-market commerce. Law may be a learned profession, but it is not scholarly in the sense of putting established institutions and patterns of behavior to the doubting and deconstructing tests of scholarship — the tests of the literary mind, especially the literary mind as imagined in the fullest imagination of literary woman, critical race theory. In The Alchemy of Race and Rights, Patricia Williams uses personal narrative as scholarship. Williams discusses the rules/standards debate not with reference to case law or doctrine, but in the context of a personal anecdote, her preference for rules demonstrated by a story about her obtaining an apartment in New York City. In using the personal narrative technique, Williams challenges the 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 of what 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 genuinely radical in two ways. First, voices from the bottom thoroughly redefines the content of scholarship, bringing Snoop Doggy Dogg into the debate about personal 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 not exclusively, 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, it does so with greater reach and resonance than anything before it has on the topic of poverty-based criminality. The risk, of course, is not just of radicalism but radical inaccuracy. The emotive force of a song (or even traditional verse and prose, not set to music) threatens to overwhelm the more rigorous but less emotionally compelling message of social science — that, perhaps, poverty is not, controlling for other variables, a cause of crime. At this point literature, in all its forms, is left with but one rebuttal: that it is not just an authority, a complement to legal doctrine, traditional legal scholarship, and the findings of social science, but it is a superior authority, an authority more appropriate to describing complexities, human situations that are not reducible to the conventional forms of expression found in law reviews and peer-reviewed social science journals. It is on the matter of candor that the personal voices are most upsetting to law, even a progressive vision of law. One need only witness the enormous discomfort of law students on confronting a seemingly obvious psychological finding: people tend to follow authority, even evil authority. Literature cuts deeper, reaching impulses easily concealed from social science investigators. Literature, like music, has its impact not through the persuasion of statistics, but in the simple response of recognition — I know that thought…that sounds like me… Camus, in The Fall, undertook to deconstruct the inner mind of an outwardly conventional man, the first-person narrator who describes his putatively normal romantic life this way: The only deep emotion I occasionally felt in these affairs was gratitude, when all was going well and I was left, not only peace, but freedom to come and go — never kinder and gayer with one woman than when I had just left another s bed, as if I extended to all others the debt I had just contracted toward one of them. In any case, however apparently confused my feelings were, the result I achieved was clear: I kept all my affections within reach to make use of them when I wanted. On my own admission, I could live happily only on condition that all the individuals on earth, or the greatest possible number, were turned on me, eternally in suspense, devoid of independent life and ready to answer my call at any moment, doomed in short to sterility until the day I should deign to favor them. In short, for me to live happily it was essential for the creatures I chose not to live at all. They must receive their life, sporadically, only at my bidding. Camus s project is, as the epigraph to The Fall says, to expose the aggregate of the vices of our whole generation in their fullest expression. Camus s world is that of All the Kings Men, in a libidinous rather than a political context. It is a world stamped forever with the insights of Machiavelli — A man may forget the death 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 because it banished the quest for the better side of human nature. Empirically, Machiavelli exposed the inner mind of princes just as Camus s narrator exposes the inner workings of his mind. Normatively, Machiavelli told never to tell…never to 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 his devotion to original intent in order to get his actual preferences under the neutrality 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 unsettling aphorisms that sound all too true: Today we are always ready to judge as we are to fornicate. Consider abortion, where the political meets the libidinous. Roe v. Wade both endures and is burdened by its virtually total lack of candor. It is attacked as being outside the law, which of course it is, but it could not have been any other way. Only gradually has candor turned up in the litigated portion of the abortion debate. In Webster, Justice Blackmun first broaches the idea that women, because of their uniquely burdensome reproductive capacity, are materially disadvantaged by abortion restrictions — an argument about anatomical differences under the safe cover of equal protection. Only in Casey 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 permissive precedent on affirmative action, Justice O Connor showed her facility with opposing 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 only explained by a growing animus toward Chief Justice Rehnquist, with whom she was rumored to have been romantically involved during their time at Stanford Law School. That is a story for another day, however. What is unspoken, but implied, in Casey is something nearer to candor than any prior Supreme Court abortion decision: that people commonly have recreational, non-procreative sex; law students do, perhaps even conservative Supreme Court justices. It would be absurd, therefore, to insist that pregnancy be the necessary consequence of so common a practice. Law and politics militate against such candor. The literary quality of such frank admissions shocks the conscience of a broad public, much as the admissions and revelations of Camus s and Warren s protagonist narrators do. When I was writing political speeches, I never had a harder fight keeping a line in a speech that I did with one about abortion: Are we really ready to tell women they have to grin and bear it when contraception fails and they get pregnant? It cut too close to the reality of the situation; it recognized that while abortion is about autonomy and privacy and a differential impact on women, it is also, and primarily, about sex, and about men as well as women. Ultimately, I took my case to the Governor and he retained the line. One newspaper that covered the event quoted that contested line and no other, noting that all heads in the room were nodding. Male heads as well as female heads nodded because men know, if nothing else, the purging of abortion rights would mean either a circumscribed sexual life or the extraordinary financial impact of supporting a child born of recreation not procreation. Still more challenging would be the Snoop Doggy Dogg version of sex and sexuality, as expressed in a record that sold several million copies: Guess who 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 homies can t have none… On that view, sex is inclusive and plentiful, sexual practices are 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 the bottom, abortion is a necessary option; conventional morality — monogamy, law- abiding behavior, the regulation of one s pleasure instinct — is seriously opposed. What matters is securing the liberty that only the political system can provide; jurisprudential consistency is of no moment. It is a matter for the next life or one s progeny, were their either. The rap music metaphysics is not without resonance, however, even among those who have played the straight and narrow with enough attention and reserve to be admitted to Stanford Law School. For others, however, it is a slippery slope not only never to be sledded upon, but to be actively denied. Literary Man and Economic Woman at Stanford Law School: A First Year Narrative in Three Parts Part 1: The Erotic Allure of Formalism As one model answer from Professor Gunther s 1994 Constitutional Law final exam put it: Much as I support a woman s right to choose whether or not to have an abortion, I think Blackmun really had to stretch the Constitution to find that this decision is one that is fundamental to a scheme of ordered liberty. This view of ordered liberty is, if not dominant, widely in evidence among first-year law students at Stanford. It is reminiscent and directly in the tradition of Herbert Weschler s famously self-abnegating appraisal of Brown v. Board of Education. Like the model answer student, Weschler liked the result of Brown but was troubled by the flawed jurisprudence. In relevant part, Weschler writes: Lastly, I come to the school decision [Brown], which for one of my persuasion stirs the deepest conflict…Yet I would surely be engaged in playing Hamlet without Hamlet if I did not try to state the problems that appear to be involved… The problem inheres strictly in the reasoning of the opinion… In other words, much as Weschler supports desegregated schools, he thinks that Warren really had to stretch the Constitution… The allure of the law, for many like Weschler and the model answer producing student of Gunther (himself Weschler s student) is the language of the law itself, its structure and its constraints. Sacrifice, whether it is giving up Roe or Brown, is taken to be a symbol of commitment to genuine principle. The tendency is recurrent at Stanford Law School…much as I sympathize with the plight of the homeless, I have separation of powers concerns if the courts mandate a level of funding for homelessness programs (first year property)…much as I sympathize with toxic tort victims, there is no basis in established causation doctrine for recovery here (first year torts)…all acts of restraint, of sacrifice, and restraint knows no part in the most extreme, nihilistic renderings (Camus, Snoop Doggy Dogg, or Bernard Goetz, or the man who robs a bank because of Post-Traumatic Stress Disorder) of what began simply as empathetic woman. The fullest extension of the literary is where volition answers only the commands of desire, and all desire — political or sexual — is excusable in its criminal consequences if a compelling narrative attaches to it and to us in the telling. Where restraint is still operative, encouraged, and admired, one can both support the pro-choice position and, yet, and a matter of law, as a professional matter…in a gesture that adds a layer of complexity and professionally viable nuance to a first-year law student s personality…oppose the mechanism by which the pro-choice position has been secured, knowing all the while that taking 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 Conformity One student wrote the following cover letter to a judge, for whom he hoped to clerk: I am a second-year student at Stanford Law School writing to apply for the position of Law Clerk… I assume my writing skills, analytical ability, research proficiency, and other mundane skills are on a par with most other qualified applicants, and I am confident that I have honed them just as much in law school. Other than that, I am not sure I am outstanding in any single respect, but I do believe I am well rounded. As my resum indicates, I lived in Paris, France from the age of seven to eighteen. I then attended Hampshire College, a relatively alternative college… After that I worked for two years in Washington, D.C., first as an intern in Congress and then as a lobbyist and research associate for ACORN, a relatively radical organization working on a variety of issues affecting low-income families… Having temporarily satisfied my alternative and radical urges, I have focused at law school on legal issues surrounding the business and finance world… My recommendations are being written by Professor Crawford, who I work for and is intimately familiar with my work, as well as Professors Janet Halley and Professor Goldstein, who I know less well but who assured me they would nonetheless write typically laudatory recommendations. Thank you for your consideration. I look forward to the opportunity to meet with you. It was widely believed by fellow law students, when the writer of the letter asked if he should use it, that he should not. Part 3: The Ambivalent Allure of the Erotic In October, four first-year law students engaged in what came to be known as group sex in Crothers, which it was, except that it happened in Menlo Park, not Crothers. At the end of the encounter, one of the four students is said to 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 found more value in the retelling of it than the others. The three who had remained silent cut off relations with the talker. Then, near the end of the school year, in the heavily-attended Law School Musical, one of the four — not the one who had told about the adventure — sang a song called Stanford Law Sex : There s things you try to hide And things the whole school knows There s 2Ls you trust And 1Ls you don t There s things that you d expect And things you d never guess No one expected good sex in law school But baby we did it and it was the best Sex is natural — Sex is good Not many 2Ls do it But many of them should Sex is natural — Sex is fun Sex is best when it s…five on four Six on three The student who had been previously censured for tell the story publicly was perplexed. Implications for the Admission Process How might Stanford s admissions process located and admit either more or fewer students of a literary temperament? There is little to go on. The transcript can show a penchant for literature courses, but as the foregoing analysis suggests, literary woman is something more than one who tends to take literature classes. The LSAT is no assistance. Recommendations are unreliable. Many applicants write their own recommendations (the offer to do so was made to me; I refused) and, even if they don t, are unlikely to solicit one that will 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 is suspect in the same way recommendations are; its authorship is unverifiable. I did write my own, and as a service to those who read application folders, I end this paper by offering the following deconstruction of my own personal statement that I submitted to Stanford Law School (and Harvard and Yale): Application to Stanford Law School Personal Statement Robert C. Byrnes (004-58-9690) My boss turned to ask me the location of an obscure Boston street. Comment: Purely a literary device to start the statement You know that from your bike messenger days, he presumed, correctly. He added: Probably the best job you ll ever have. Comment: A true fact, having been a bike messenger…probably included to suggest a unique background and to be cast in ironic juxtaposition to my current job at the time (Chief Speechwriter to the Governor of Massachusetts) Bill Weld could never have been a bike messenger, living outside the expectations of his social class. For the first time he (public figure, prominent family) showed a streak of envy. Comment: Bill Weld is Governor…narrative suggests close contact, detailed conversation with a powerful person, despite having been a bike messenger…first application to Stanford, during bike messenger phase, did not succeed…need to establish legitimacy for law school And he might have been right. Some jobs dominate your mind, others your body. Biking dominated my body, but my thoughts were always my own. A romantic image of life as a bike messenger survived my actually doing it. Comment: Unrepentant about deviant way of life…but the time comes to get serious, take a respected job, go to law school… Growing up, I also had a romantic image of politics. I remember watching Governor Dukakis speak on television, when I was in high school. d words seemed to have been delivered from the heavens. I had no idea his speech had been written by an actual person, and that for Dukakis s successor, that actual person would be me. Comment: Reinforces the idea that Massachusetts governors are significant political players…Dukakis the Democratic nominee in 1988…also reinforces my connection to the legitimate and the powerful… The romance of politics also survives. In my work, I live beyond the expectations I had for myself, and my thoughts can live beyond me, as well. Comment: I am not a cynic…I believe, especially in the mainstream sources of power and rights…the days of bike messenger nihilism are behind me In a bar, I once watched Governor Weld deliver a gay rights speech I had written. There were no cheers, but there were no derisive remarks — a small victory for tolerance. I told Weld his gay rights position would probably be his most significant contribution as Governor. Comment: I am a right-thinking, Bowers-hating progressive, just in case the affiliation with a Republican made you wonder…Am I gay? And while my mind can never be entirely free writing his speeches, it can travel paths I once thought off-limits to people like me. Comment: I have come far, confronted and vanquished doubts, cynicism…I am hopeful and life-affirming…yes I said yes I 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 Free Press, 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, the court relates that at [a]round 2:00 a.m…the defendant s stomach was upset and she went to the convenience 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 s description 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 and battered 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 opposed by some, such as Charles Fried, who see no room for disciplines other than law within legal scholarship. 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 and Attentional Mechanisms in Delay of Gratification, in Journal of Personality and Social Psychology, February 1972. Herbert Weschler, Toward Neutral Principles of Constitutional Law, 73 Harv. L. Rev. 1 (1959 28