

# Airy Nothing Comes To The Courtroom

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## Our Love-Hate relationship with the law and lawyers

1. Jokes from the lawyer's joke a day calendar:
  - a. The female litigator
  - b. test for lying
  - c. what looks good on a lawyer
2. In Jurassic Park the lawyer is eaten.
3. In a popular commercial the fat tax layer is roped and tossed in a rodeo.
4. One of the most famously misused lines from Shakespeare is, "let's kill all the lawyers."
5. Dickens proclaims that, "The law is an ass."
6. Public opinion polls rate lawyers just below used car salesman.

## But,

1. The Bill of Rights is spoken of with Scriptural reverence (usually, however, without particularity).
2. Law Day honors our superiority over Godless communism.
3. "We are a Nation of Laws and not of men"
4. We repeatedly acknowledge indebtedness to the Magna Carta and English Common Law

The OJ Simpson case is an indicator of our fascination.

## It isn't surprising then that the Courtroom has won its place in literature

1. Everything a human can do can come into a courtroom.
2. "Nowhere is the cupidity and nobility of man better demonstrated than in the judicial arena," says Louis Nizer.
3. The courtroom gives us conflict; someone wants something; someone doesn't want them to have it. This is the heart of a good story.
4. The courtroom is populated by diverse characters. All types come to court.
5. Trials provide surprises.
6. There is a resolution.

Grisham and Scott Turfow didn't start a trend

1. Aeschylus, *The Eumenides*. The furies harass Orestes for the murder of his mother and give up their vengeful insistence on the ancient law of blood for blood. At the end they are worshipped as the 'Kindly ones.' The conflict is between two conceptions of justice.
2. Shakespeare, *Merchant of Venice*. Portia's speech in the trial scene is similar to and better than what an appellate judge will hear in a death penalty plea for mitigation. The conflict is between commerce/rules (Venice) and love/values (Belmont).

The quality of mercy is not strained  
It droppeth as the gentle rain from heaven  
Upon the place beneath. It is twice blest:  
It blesseth him that gives, and him that takes.  
'Tis mightiest in the mightiest: it becomes  
The throned monarch better than his crown.  
His scepter shows the force of temporal power,  
The attribute to awe and majesty,  
Wherein doth sit the dread and fear of kings.  
But mercy is above this sceptered sway:  
It is enthroned in the hearts of kings.  
It is an attribute to God himself,  
An earthly power doth then show likest God's  
When mercy seasons justice. Therefore, Jew,  
Though justice be thy plea, consider this:  
That in the course of justice none of us  
Should see salvation. We do pray for mercy,  
And that same prayer doth teach us all to render  
The deeds of mercy. I have spoke this much  
To mitigate the justice of thy plea,  
Which, if thou follow, this strict court of Venice  
Must needs give sentence 'gainst the merchant, there.

3. Dostoevski, *The Brothers Karamazov*. The trial of Dimitri for the murder of his father is based on circumstantial evidence. The letter to Katrina suggests that he would kill his father to obtain the money he owed Katrina. There was blood on Dimitri's clothing. Dimitri was in the possession of a large sum of money at a drunken orgy. He had expressed an intent to kill. The Defense had the

confession to Ivan by Smerdyakov the epileptic, but Ivan was discredited, lost control, appeared to be feverish. (impeachment?) The Prosecutor urged rationality. The Defense Counsel relied upon skepticism (discrediting evidence) and emotion.

4. Stairway to Heaven - trial in a celestial court for the right to remain alive on earth.
5. Anatomy of Murder, John D. Voelker, writing as Robert Traver. The case explores the criminal state of mind and the defense is based upon 'irresistible impulse.'
6. The Trial, Kafka - uses the judicial process to show chaos.
7. The Red and The Black, Stendahl - Trial serves as act of vengeance by bourgeoisie society against Sorel for shooting twice (not killing) Mdm. de Renal at church. The act increases her passion but he gets death penalty. Use of the law by society to serve its prejudice.
8. The Stranger, Camus - Meursault, the hero, has no ambition, nothing to say, is not affected by what happens to others and love is meaningless to him. At trial he must justify who he is and what he has done. Not having wept at his mother's funeral weighs against him. Initially indifferent, he becomes impassioned. He is urged to renounce his view of the world and turn to God. He refuses. He comes to believe that he was right all along. He must be the enemy of the society he sees.
9. Billy Budd, Melville. Billy, innocently good, is goaded by Claggart, the evil master-at-arms. Unjustly accused before the Captain, Billy is speechless with rage. He strikes and kills. The Captain, who loves Billy, decides Billy must hang. The first obligation is to preserve society; mercy is secondary. We have come full circle from what Shakespeare has Portia say in Merchant. Billy's last, ironic words are: "God Bless Capt. Vere."
10. A few more to think about.
  - The Winslow Boy (schoolboy falsely accused of theft)
  - 12 Angry Men (tension in the jury room as jurors perform their God-like role)
  - The Good Mother - Sue Miller (mother loses trial, gives up fight for custody)
  - Bleak House - Dickens (Jardyce vs. Jardyce)
  - Louis Auchincloss (portraits of lawyers)
  - Measure for Measure - Shakespeare (sexual harassment and a corrupt judge)

Defending Billy Ryan -George V. Higgins (trial of a corrupt politician - Rostenkowski?)  
To Kill A Mockingbird - Harper Lee (the noble lawyer undertaking an unpopular cause)  
The Caine Mutiny - Herman Wouk (irony in using the trial to build feeling against Queeg; then making him a hero of sorts)  
Witness For The Prosecution - Agatha Christie (use of surprise)

11. Spate of new material.

12. Erle Stanley Gardner - 43, and a partner in a California firm when he wrote "The Case Of The Velvet Claws," his first novel. Died in 1970 at age 81, having written 131 works of fiction with sales of 325 million copies. "The more successful I became as an attorney, the more I was called to be available at all hours. That wasn't what I wanted ... however, when I get homesick for a courtroom fight I pull out my dictating machine and turn out another Perry Mason.

#### Fiction versus Non-fiction

1. What happened vs. What will happen.  
Black Water - Oates  
Libra - Don DeLillo
2. Ghosts and larger than life characters.
3. Premise vs. Event.
4. Ambiguity vs. certainty.
5. Real cases limit the imagination.

#### Airy Nothing

Lovers and madmen have such seething brains,  
Such shaping fantasies that apprehend  
More than cool reason ever comprehends.  
The lunatic, the lover, and the poet  
Are of imagination all compact.  
One sees more devils than vast hell can hold.  
That is the madman. The lover, all as frantic,  
Sees Helen's beauty in a brow of Egypt.  
The poet's eye, in a fine frenzy rolling,  
Doth glance from heaven to earth, from earth to heaven.  
And as imagination bodies forth  
the forms of things unknown, the poet's pen  
Turns them to shapes, and gives to airy nothing

A local habitation and a name.  
Such tricks hath strong imagination  
That if it would but apprehend some joy,  
It comprehends some bringer of that joy.  
Or in the night, imagining some fear  
How easy is a bush supposed a bear?

This giving to airy nothing a local habitation and a name. That is what all these writers - from Shakespeare and Dickens, down through Dostoevsky, Harper Lee and Traver to Scot Turow and Grisham - have done. The courtroom, the justice system, the law and lawyers have been a repository for their acts of imagination. This has not been intended as an exhaustive listing of works that depend upon trial scenes. Rather it is an attempt to sketch the range and diversity of such efforts. It is to note a device that is 2000 years old and still going strong.