

APPENDIX F — PROGRAM IN LAW AND HUMANITIES

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PROPOSAL FOR A VANDERBILT LAW AND HUMANITIES PROGRAM Originally Prepared by Jerome Christensen, Department of English

Rationale

In recent years there has been a surge in the scope and force of interdisciplinary approaches to the study of the law. The law and economics movement of the 1970s is now a school, with its intellectual heartland at the University of Chicago. The 1980s and 1990s saw the emergence of similar efforts to illuminate legal theory and practice by way of methods and categories derived from a variety of disciplines in the humanities: literary studies, philosophy, cultural anthropology, and history. Among the nationally prominent JDs who teach in leading law schools and employ literary and humanistic materials and methodologies to illuminate vexed legal issues are: Martha Nussbaum at Chicago, James Boyd White and Catherine MacKinnon at Michigan, Drucilla Cornell at Rutgers, Patricia Williams at Columbia, Robin West at Georgetown, Janet Halley at Stanford, Ronald Dworkin at NYU and Lawrence Lessig at Stanford.

The benefits of these intersections of legal study with other forms of analysis have not flowed entirely in the direction of the illumination of the law, however. The contributions of Stanley Fish at Duke (now at UI Chicago), Judith Butler at Berkeley, and Michael Warner at Rutgers are well known. Recent efforts to produce histories of literary forms by John Bender at Stanford, Catherine Gallagher of Berkeley, and D. A. Miller of Columbia have made frequent and compelling recourse to the legal contexts in which those forms were developed and disseminated. Legal history has become increasingly vital to the practice of literary history and theory. Jurisprudence has, of course, traditionally involved exploration of issues that engross philosophers. Recently, however, Anglo-American philosophical practice, especially in the work of ordinary language philosophers, has been refreshed by investigating a legal discourse and employing legal concepts once considered far removed from it.

Given the spread of crossover work in law and the humanities and the increased sophistication of the interdisciplinary dialog that has occurred, it is remarkable that no top flight law school has collaborated with faculty in the humanities to establish a program that would provide institutional support for leading scholars to work together in a disciplined interdisciplinary manner. As yet no university has taken the initiative to form a faculty that could organize the distinct but complementary approaches to law and the humanities into a coherent program that would systematically address the relations between legal and literary interpretation, group identity and social justice, individual and corporate agency. To be successful such an initiative cannot simply be a matter of mixing and matching courses currently on the books in an English or Philosophy department with courses taught in the Law School. It is a matter of innovation: imaginative,

nimble, and rigorous. There is no curriculum anywhere that seriously engages such emergent and pressing topics as the contemporary culturalization of the grounds for individual and corporate responsibility; the effects of the construction and imposition of codes on the production, distribution, and ownership of cyberproperty; the legal, political, and ethical implications of the mass media induced transformation of the public sphere; and the radical challenge that digital technology presents to the status of evidence as it is used in the law court, the news broadcast, and the laboratory. By working in new configurations of collaboration scholars in the humanities and law will be able to engage those issues in their full complexity and equip students to apply their knowledge effectively in the academic, governmental, and corporate spheres. Vanderbilt has a historically rare opportunity to inaugurate and define a field and consequently to identify cutting edge work in law and humanities with this university. It can do so by providing the institutional framework and the necessary financial resources to hire first rate scholars who have the ambition to build a program and the energy to propagate ideas through the education of undergraduates, graduates, and professional students.

Definition of the field of Law and the Humanities will involve interdivisional initiatives between the College and the Law School that will result in new approaches to undergraduate and graduate education as well as new configurations of research among Vanderbilt faculty. The value of a Law and Humanities program to both the Law School and participating graduate programs in the humanities would be great. Many of the most dynamic law school faculty members across the nation have had extensive humanities training in PhD programs in first rank graduate programs before they pursued their law degrees. The connection between their PhD work and their legal training has been largely ad hoc. Vanderbilt can attract and train the best in an innovative and systematic way. Leading undergraduate programs in English have identified a distinctive, highly motivated and qualified type of student who wavers between pursuit of a PhD and a JD. Vanderbilt could raise the quality of graduate admissions in both the humanities and Law School by offering such students a program in which they could effectively integrate their interests and make themselves highly attractive candidates for jobs in the best institutions across the nation. Law students who aspire to be practitioners will benefit from a hybridization of disciplines that would introduce them to unique approaches to pressing topics and would inculcate the kind of versatility required to empower them as professionals in the foreseeable future.

The advantages of such a program for graduate education are manifest. But the advantages for undergraduate education are equally strong. Chancellor Gee has frequently called attention to the unique competitive advantages that Vanderbilt has by virtue of the high caliber of its professional schools and their intimate proximity to the College. The existence of a substantial number of bright, zealous undergraduates who plan legal careers presents the opportunity for the College to become a national leader in adapting the liberal arts curriculum to recognize and cultivate pre-professional interests. Vanderbilt should establish an undergraduate concentration that would involve law school faculty in courses that would imaginatively combine education in the subject of the law and in the methods of the humanities in order to foster disciplined and sophisticated reflection on the legal profession. Liberalizing the law and professionalizing Vanderbilt students can and should be mutually implicated practices. Princeton is currently in the process of implementing an undergraduate law major. Vanderbilt should not imitate that example. But it should exploit the intellectual demand that such a decision recognizes by closely involving legal

scholars in a pioneering liberal arts program that will attract smart, committed undergraduates. No other combination of schools and departments at Vanderbilt has the intellectual capital to launch such a bold experiment in pre-professional education. We are confident that such a program will be a tremendous tool to recruit highly qualified undergraduates to Vanderbilt and to retain the best for postgraduate work in Law and the humanities.

It would be premature to specify the organization of an undergraduate concentration in law, but an assessment of the strengths and interests of the current humanities faculty suggests that the curriculum would address at least these six areas:

- 1) Literary and legal methods: conducting research, analyzing arguments, making cases.
- 2) The case of fiction: legal fictions as literary truths; literary fictions as legal briefs.
- 3) The reciprocal relations between social change and the evolution of legal institutions.
- 4) The mutual implication of law and technology in the redefinition of what counts as evidence, property, and persons.
- 5) The history of the law and of legal institutions considered in social, political, and cultural contexts.
- 6) The philosophy of law and the ethics of the legal profession.

Faculty and Administrative Support

There is already a core of faculty from several departments with records of scholarship and teaching in those areas who are eager to participate in a formal program. With the active participation of Law School faculty, the English Department last year hired a junior faculty member, Drayton Nabers, who was given the responsibility of developing courses in literature and law at the undergraduate and graduate levels. This initiative, which has received the active cooperation of the Law School, has been highly successful. The crowded undergraduate course in legal and literary theory received superb evaluations. And the graduate seminar, which is dedicated to investigating whether there are categories of insight about justice that seem particular to either legal or literary activity, has attracted fifteen law students as well as English graduate students. This spring, under Nabers' direction and with the financial support of Dean Syverud and Dean Venable, the English Department and the Law School sponsored two sets of workshops (one in the Law School, one in the English Department) in literature and law that brought together over a dozen scholars from both fields. Nabers has written articles on the fourteenth amendment and Melville's poetry; on the Civil Rights Act of 1964, Uncle Tom's Cabin, and the legal standing of inherited disabilities; and on transformations in the understanding of substantive due process and the development of realism in American fiction. In the spring of 2002 he will be team teaching a course in cinema and law, supported by a Provost Venture Fund grant.

Other faculty members of the English Department have active research interests in literature and law: namely, Jerome Christensen, Jay Clayton, Dennis Kezar, and Mark Schoenfield. Christensen's forthcoming essay, "The Time Warner Conspiracy: Toward a Managerial Theory of Hollywood Film," examines the effect of legal restraints on the evolution of the motion picture industry, with special attention to the first amendment, to antitrust law, and to questions of the due diligence and the fiduciary responsibility of the boards of directors of media conglomerates. Clayton has published "Voices and Violence" in the *Vanderbilt Law Review* as well as a chapter on law and narrative in his book *The Pleasures of Babel*. He is currently working on a book that addresses the conceptualization and operations of genetic codes in literature, science, and law. Christensen's and Clayton's work dovetails with innovative pursuits among Law School faculty and students that will find infrastructural and programmatic support in the media lab that will be a component of the new Creative Arts Center. Kezar has edited and contributed to a forthcoming volume of essays on theater and law and will be teaching a cinema and law course with Nabers next spring. Schoenfield has published on the relations between the emergence of the modern professional poet in the nineteenth century and on the concurrent revisions of the status of intellectual and real property. This fall an English Department graduate student will begin a dissertation on the effects of the laws of libel and blasphemy on the definition of the unspeakable in eighteenth and nineteenth century British literature under the direction of Christensen, Schoenfield, and Nabers.

Professor Gregg Horowitz of the Philosophy Department has taught courses in "The Origin of Law" and "Modern Concepts of Property." Professor Idit Dobbs-Weinstein has proposed to teach a course in the area of medieval philosophy and law. The Sociology Department currently offers a course in "Society and Law" and is eager to expand its offerings. "Roman Law," which is offered by Classical Studies would harmonize both with Professor Dobbs-Weinstein's interests and potential offerings from the History Department. Two of the finalists for an entry-level position in the German Department this year had pursued extensive research programs in Continental law.

The Dean of the Law School has endorsed a Law and Humanities program. The Law School already has a substantial core of faculty members eager to collaborate with humanities scholars. It wants to hire more. The English Department, one of the strongest graduate programs in CAS, has made the formation of such a program part of its strategic plan. Soon the leading Vanderbilt humanities departments will, by following their own departmental priorities, have developed a cadre of faculty expert in the cultural implications of the law and in the social impact of legal institutions. There is, then, ferment and considerable potential for growth. Neither the humanities departments nor the Law School can succeed in this transformative endeavor alone, however. Greater collaboration must occur so that growth will be purposeful and the program will have the maximum impact.

The absolute limit on curricular development at Vanderbilt is the absence of senior scholars who have established national reputations in the area of humanities and law. The absolute opportunity available to Vanderbilt is to exploit its strengths in both areas. Vanderbilt should take advantage of the demonstrated commitment of the Law School and humanities departments and the pent-up demand among the brightest undergraduates at the best schools by recruiting a cohort

of scholars to our faculty who will help devise a nationally paradigmatic program. Recruitment must come before curriculum but the commitment to curriculum along with the provision of substantial resources and sufficient autonomy will make recruitment possible.

Recruitment Possibilities

Here are viable candidates whose addition to the faculty would give Vanderbilt instant recognition and credibility.

Recommended senior appointments:

1. Don Herzog, Law, Michigan
2. Debra Shuger, English, UCLA
3. Brook Thomas, English UC Irvine
4. Lauren Berlant, English University of Chicago
5. Sanford Levinson, Law, UT Austin
6. Wai-Chee Dimock, English and American Studies, Yale

Recommended junior appointments:

1. Greg Crane, English, University of Washington
2. Matthew Greenfield, English, Ohio State
3. Kenji Yoshino, Law, Yale

Summary of objectives of a Law and Humanities Program:

- 1) Foster interdisciplinary research on questions of legal history, jurisprudence, intellectual property, cyberlaw, entertainment law and other matters where the study of the humanities and the study of the law might be mutually illuminating.
- 2) Develop a law and humanities concentration for undergraduates.
- 3) Offer joint JD-PhD as well as PhD training that includes minors in literature and law, philosophy and law, etc.
- 4) Sponsor an annual summer institute to address major issues in the law and the humanities, to conduct workshops for students, and to run programs for recruiting students interested in the relationship between the law and the humanities. Such an institute would rotate between research and seminar themes appropriate to the Law and Politics and Law and Humanities programs. It would be designed to advance the research objectives of Vanderbilt and visiting scholars, involve contributors from the legal community in Nashville, and assist the College and departments in recruiting top flight students at the undergraduate and graduate levels.

- 5) Establish a journal to publish cutting-edge scholarship which integrates law and humanities subjects.
- 6) Serve as a vehicle for recruiting and retaining faculty members in the Law School and relevant humanities fields.
- 7) Strengthen the focus of the Law School in the areas of legal history, legal and literary theory, jurisprudence, the sociology and philosophy of law, and intellectual property law.
- 8) Strengthen the College of Arts and Sciences in the areas of history, philosophy, literary study, political philosophy, and sociology.
- 9) Improve the student application pools and the entry classes for the College of Arts and Sciences, the Law School, and relevant graduate programs in the humanities.
- 10) Exploit an area of strength at Vanderbilt in order to define an area of excellence that will elevate it above peer institutions.

Law and Humanities Budget Proposal			
Item	Annual Recurring	Endowment College	Endowment Law
Endowed Chair I		\$ 1,250,000	\$ 1,250,000
Endowed Chair II		\$ 1,250,000	\$ 1,250,000
Postdoc I	\$ 36,900	\$ 820,000	
Postdoc II	\$ 36,900	\$ 820,000	
Half-tuition undergraduate scholarships	\$ 96,000	\$ 2,133,333	
Graduate Fellowships (10 @ \$17,000 stipend, \$25,000 tuition)			
TA stipend, tuition and fees fellowships (2 new each yr, 10 total)	\$ 420,000	\$ 9,333,333	
Administrative Support	\$ 35,000	\$ 388,889	\$ 388,889
Symposia, Lectures, Travel	\$ 20,000	\$ 222,222	\$ 222,222
Total	\$ 644,800	\$ 16,217,777	\$ 3,111,111
Grand Total of Endowment			\$ 19,328,888