CORRESPONDENCE

To the editors:

Word had come of Herman Belz's attack on me and *A March of Liberty* several days before the Summer issue of *Constitutional Commentary* arrived, and so it was with some interest that I turned to the fifteen-page "review."

Evidently, my abiding sin in Professor Belz's eyes is that I am a "liberal," and that from this unpardonable crime all sorts of heinous results flow, including my support of the Supreme Court's expansion and defense of civil rights and liberties.

While I could certainly respond to Belz in kind ("You're a *conservative*!!!), I think the readers of *Constitutional Commentary* might well wish to look at the book themselves. It is, after all, a text for college and graduate courses in constitutional history, and has even been adopted in some law schools. They might also wish to compare how I treat issues with that of a competitor, Professor Belz's revision of Kelly and Harbison.

Sincerely,

Melvin I. Urofsky
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University

Herman Belz replies:

For reasons that he chooses not to disclose, Professor Urofsky does not dispute any of the details of my analysis of his book. He misunderstands in asserting that I hold his liberalism to be a sin, from which flows his support of civil liberties. It is his *uncritical* support—as he concedes—of civil rights and civil liberties that leads him into his inaccuracies and scholarly errors.

To the editors:

Lino A. Graglia must have felt he really had something to say about the growing field of Law and Literature. After all, his review of Richard Posner's new book had already been published elsewhere before it appeared in the pages of this journal (vol. 6, p. 437); but unless your editors were looking for an adulatory piece about Posner, I question the wisdom of revivifying Graglia's superficial analyses.

Graglia, unlike some four dozen law professors now teaching in the field (see Elizabeth Gemmette's survey of Law and Literature teaching at 23 *Valparaiso L. Rev.* 267), was ill-prepared to comment intelligently about one of the major interdisciplinary movements of our generation. He seems to excuse his own ignorance early in the review, when he observes generally about lawyers that a "craftsman's scrupulousness" need not define our work.

Perhaps Graglia feels that way, but I am sure most lawyers—and certainly most law professors—aspire to craftsmanship and care in their work. Given his own standard, Graglia not surprisingly relies almost entirely upon Posner to teach him about literature. Yet Posner's book quickly situates its author as an "amateur" in matters literary, and this journal's readers might have hoped for a more objective critique of the book's incessant belligerence against earlier scholars' efforts.

Ironically, Graglia manages to make this point late in his review, but he is speaking there about unnamed practitioners of Law and Literature who need meet "less demanding" standards of literary criticism and theory than those actually in literature departments. Yet this unproven assertion would apply far more to Posner (and to Graglia himself) than to those who have pioneered law school work in the field. Indeed, the comment also serves to characterize much of the Law and Economics field, which Graglia otherwise worships in an almost kneejerk reflex. Posner would be the first to admit that his economic analyses may not meet with the approval of a majority of "real" economists in the academy.

The point is that Law and Literature, like Law and Economics, has had much to say to a legal academy dissatisfied with the narrowing unidisciplinary constraints of the past few decades. Its practitioners—including James Boyd White and the present writer, who both fall prey to Graglia's absolutely mindless attack in the review—often have considerably more formal training in literature than legal economists have in economics. In fact, our work actually crosses the disciplinary frontier; my own approach to Dostoevski's legal obsession has recently been incorporated in critical editions of

Notes From Underground and *Crime and Punishment*, and the Melville world has been most sensitive to law school debates on *Billy Budd, Sailor*.

The only paragraph of real analysis—rather than uncritical parroting—occurs when Graglia tries to understand why a cost-effective writer like Posner would spend so much of his time attacking Law and Literature. Graglia claims that Posner "has scores to settle" with those who have disliked his brand of legal economics. If true, this would be a damning description of the motives behind a book-length effort; but in fact I (and most others in the field) have never deigned to criticize Posner. (An exception is Robin West, whose comparison of Posner and Kafka made quite a hit in the *Harvard Law Review* recently, but Graglia strangely overlooks Professor West.)

Posner surely has good reason to enter the fray, and Graglia has identified one unedifying motivation. But, had he read Posner carefully, or even a small fraction of the primary and secondary works the judge has perused (if often misunderstood), Graglia would have perceived the rich menu offered by Law and Literature to the legal world. Posner allows, for example, that central legal issues such as the repression of revenge-urges are best addressed by literary art. Other scholars have suggested that only fictional works about law provide a full jurisprudential comprehension of the virtual identity between rhetoric and performance in our legal system. Posner seizes the implication of the latter idea and applauds a renewal of legal stylistics; but he steadfastly declines the literature's associated offer; to scrutinze the *ethical* base for the lawyer's often articulate formulations.

Most earlier legal generations in our country took the literary sources for law as a given (see Robert Ferguson's *Law and Letters in American Culture*). For us, the Law and Literature movement uniquely appreciates the fundamental sources—the life-affirming sources—of law in its surrounding literary culture.

If Posner does fear, then, the incursion of Law and Literature upon his own relatively arid and dull interdisciplinary turf, Graglia's unthinking acceptance of that fear can only be explained by the following syllogism, pervasive in his review: Law and Literature threatens a certain system of legal economics; that system is good; Law and Literature is bad. But, uncraftsmanlike though he may be, Graglia cannot hope to see that logic succeed with the vast majority of this journal's readers.

Let those readers scan Posner's book. Then let them read carefully the literary works Posner musters for his arguments and the secondary works he dismisses out of fear.

Richard Weisberg
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UCLA, and
Professor of Law, Cardozo Law School

Lino Graglia replies:

"Graglia must have felt he really had something to say" about law and literature! Gimme a break, I'm asked to review a book and I review a book. Who needs something to say? It's true that Posner and I are not as high on literary studies in law school as Weisberg, but that does not show either Posner's "incessant belligerence" or that I made an "absolutely mindless attack" on White and Weisberg. Posner's discussion strikes me as quite peaceful, and my basic criticism of White was that he says things like a judge should determine what a decision "shall mean in the language of a culture." The world divides into people who like that kind of talk (law and lits) and those who consider it hot air; the latter may well be insufficiently sensitive or perceptive, but they are not necessarily mindless. If anything, they may be too much into real thought.

I am disappointed that literary study apparently does not improve one's argumentation, either in substance, as by making it less of a game and less pandering—"I am sure most lawyers—and certainly most law professors" are scrupulous—or in style, as by moderating the lawyer's urge to overstatement—"*absolutely* mindless"?

"Who is Graglia," Weisberg might reply, "to complain of overstatement?" But that of course would be unfair, because I am not only, as he says of Posner, "an 'amateur' in matters literary," but, even worse, an amateur without quotation marks.