

# **Billy Budd: Conflict of Laws & Prejudice to the Administration of Justice.**

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**The Scrivener's Quill**



# Billy Budd

- The plot follows Billy Budd, a seaman impressed into service aboard HMS Bellipotent in the year 1797, when the British Royal Navy was reeling from two major mutinies and was threatened by the Revolutionary French Republic's military ambitions. He is impressed from another ship, The Rights of Man (named after the book by Thomas Paine). As his former ship moves off, Budd shouts, "Good-by to you too, old Rights-of-Man."



# British Mutinies

- 1741 - Wager Mutiny
- 1789 - Mutiny on the Bounty
- 1795, 1797, 1798 - HMS Defiance
- 1795 - HMS Shark
- 1797 - Spithead and Nore mutinies
- 1797 - Ceres
- 1797 - HMS Marie Antoinette
- 1797 - HMS Hermione
- 1800 - HMS Danae
- 1806 - HMS Dominica
- 1814 - Fleetwood Pellew
- 1822 - HMS Winchester
- 1931 - The Invergordon Mutiny
- 1945 - HMS Javelin



**KEEP  
CALM  
AND  
MUTINY**



# 1797

- 1795, 1797, 1798 - HMS Defiance
- 1797 - Spithead and Nore
- 1797 - Ceres
- 1797 - HMS Marie Antoinette
- 1797 - HMS Hermione



# Mutiny Acts

- The Mutiny Acts were a series of annual Acts passed by the Parliament of England, the Parliament of Great Britain, and the Parliament of the United Kingdom for governing the British Army.
- The first Mutiny Act was passed in 1689 in response to the mutiny of a large portion of the army which stayed loyal to James II upon William III taking the crown of England. Today, mutiny by British forces is punished under the Armed Forces Act 2006.



# 6 June 1797 – The Incitement to Mutiny Act

- An Act for the better Prevention and Punishment of Attempts to seduce Persons serving in His Majesty's Forces by Sea or Land from their Duty and Allegiance to His Majesty, or to incite them to Mutiny or Disobedience



# 6 June 1797 – The Incitement to Mutiny Act

- “An Act for the better Prevention and Punishment of Attempts to seduce Persons serving in His Majesty’s Forces by Sea or Land from their Duty and Allegiance to His Majesty, or to incite them to Mutiny or Disobedience”
- The Act was passed in the aftermath of the Spithead and Nore mutinies and aimed to prevent the seduction of sailors and soldiers to commit mutiny



# 6 June 1797 – The Incitement to Mutiny Act

- “Any person who shall **maliciously and advisedly** endeavour to seduce any person or persons serving in His Majesty's forces, by sea or land, from his or their duty and allegiance to His Majesty, or **incite or stir up** any such person or persons to commit any act of mutiny, or to make, or endeavour to make, any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall on being legally convicted of such offence, be adjudged guilty of felony . . .”



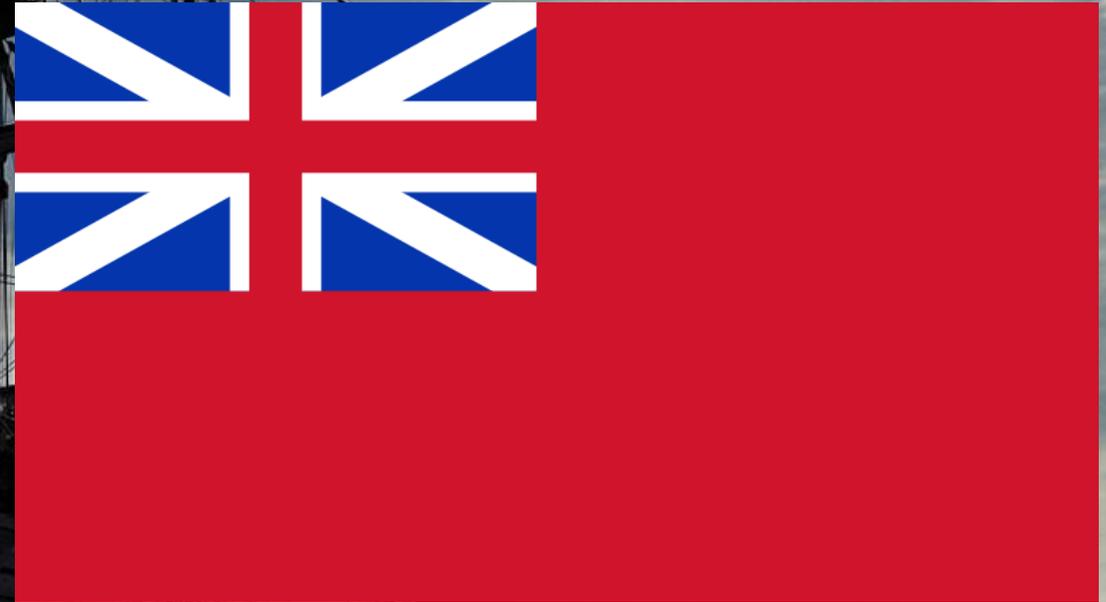
# Model Rule 8.4(d)

- (d) engage in conduct that is prejudicial to the administration of justice;

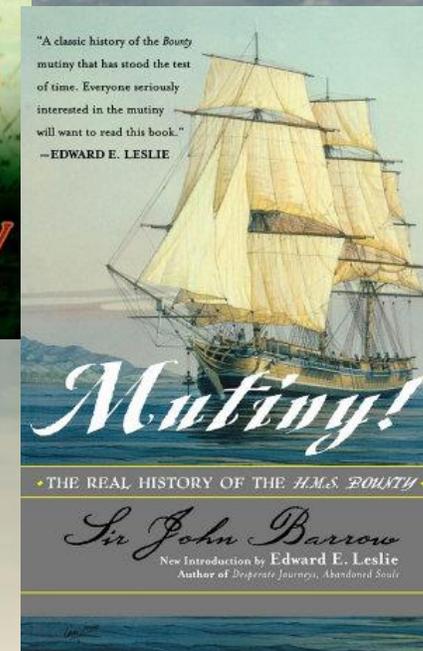
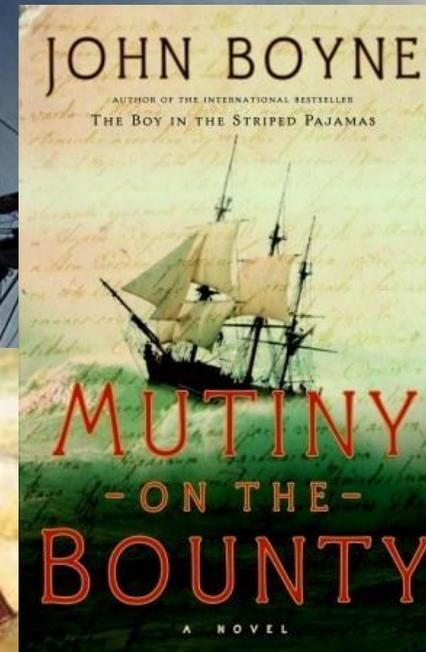
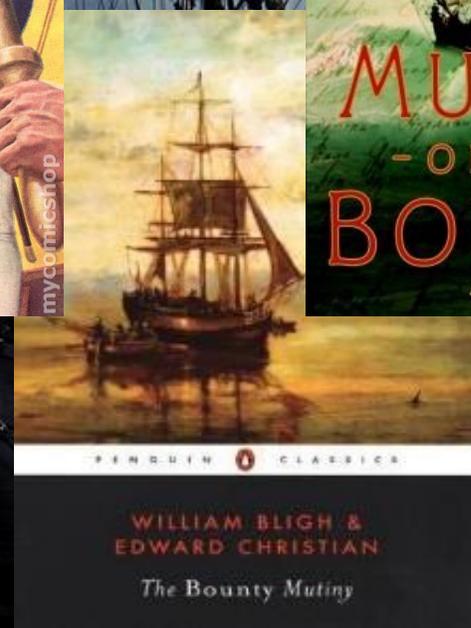
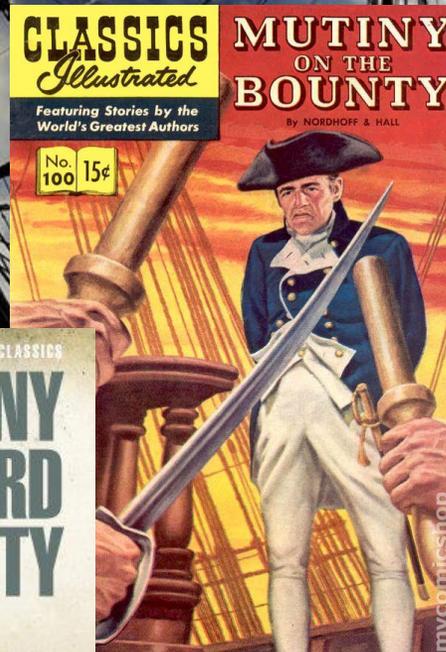
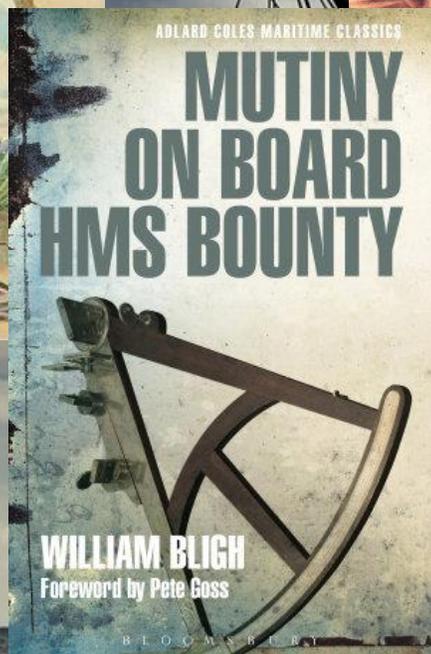
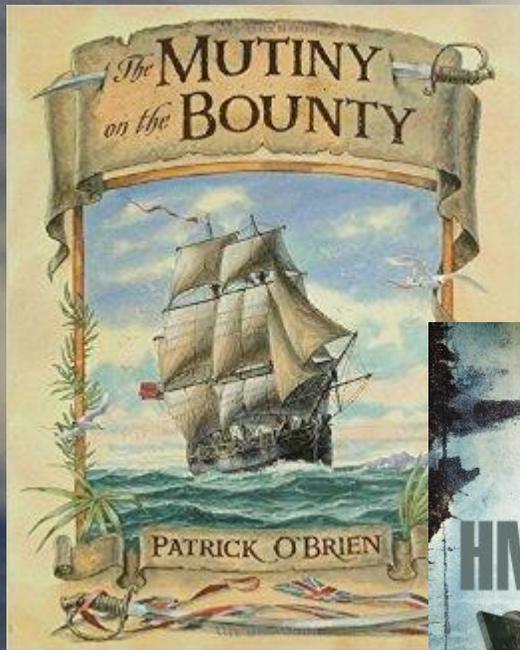


# Model Rule 8.4(g)

- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or **discrimination** on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or **socioeconomic status** in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.



# 1789 - Mutiny on the Bounty



"A classic history of the *Bounty* mutiny that has stood the test of time. Everyone seriously interested in the mutiny will want to read this book."  
— EDWARD E. LESLIE



# 1789 - Mutiny on the Bounty







# Prefatory Comment

- Who in the rainbow can draw the line where the violet tint ends and the orange tint begins? Distinctly we see the difference of the colors, but where exactly does the one first blindingly enter into the other? **So with Sanity and insanity.** In pronounced cases there is no question about them. But in some supposed cases, in various degrees supposedly less pronounced, to draw the exact line of demarcation few will undertake tho' for a fee some professional experts will. . . .
- Whether **Captain Vere** . . . was really the sudden victim of any degree of aberration, one must determine for himself by such light as this narrative may afford.
- *Billy Budd*, Herman Melville.



# Legal Conflicts

- In light of the **martial code** whereby it was formally to be judged, innocence and guilt personified in **Claggart and Budd in effect changed place**. In a legal view the apparent victim of the tragedy was he who had sought to victimize a man **blameless**; and the indisputable deed of the latter, **navally regarded**, constituted the **most heinous of military crimes**. Yet more essential **right and wrong** involved in the matter, the clearer that might be, so much the worse for the responsibility of **a loyal sea-commander** inasmuch as he **was not authorized to determine the matter on that primitive basis**.
- *Billy Budd*, Herman Melville.



# Captain's Duty

- A true **military officer** is in one particular like a true monk. Not with more of self-abnegation will the latter keep his vows of monastic obedience than the former his **vows of allegiance to martial duty**.
- *Billy Budd*, Herman Melville.



# Captain's Duty

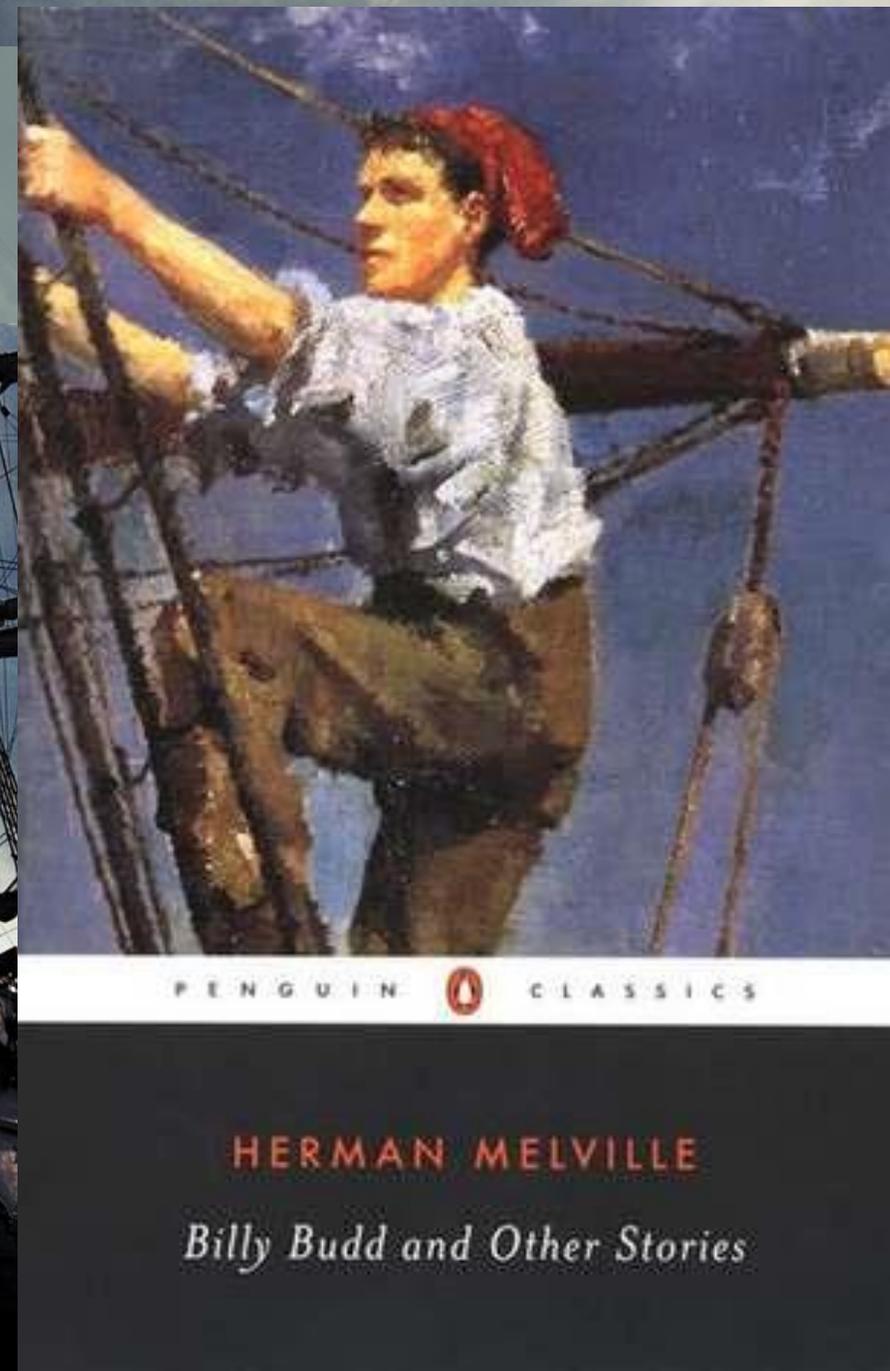
- He was glad it would not be at variance with usage to turn the matter over to a summary court of his own officers, **reserving to himself as the one on whom the ultimate accountability would rest, the right of maintaining a supervision of it, or formally or informally interposing at need.**
- *Billy Budd*, Herman Melville.





# Model Rule 8.4(f)

- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or



# Captain's Formal Interposition

- “Hitherto I have been but the witness, [not really] little more; and I should hardly think now to take another tone, that of your **coadjutor**, for the time, **did I not perceive in you, -- at the crisis too -- a troubled hesitancy, proceeding, I doubt not, from the clash of military duty with moral scruple – scruple vitalized by compassion.** For compassion, how can I otherwise than share it? But, mindful of paramount obligation I strive against scruples that may tend to enervate decision. Not, gentlemen, that I hide from myself that the case is an exceptional one. Speculatively regarded, it well might be referred to a jury of casuists. But for us here acting not as casuists or moralists, **it is a case practical, and under martial law practically to be dealt with.**
- *Billy Budd*, Herman Melville.



# Captain's Formal Interposition

- “We are bound to regard the death of the master-at-arms as the prisoner's deed, then does that deed constitute a capital crime whereof the penalty is a mortal one? But in **natural justice** is nothing but the prisoner's overt act to be considered? How can we adjudge to summary and shameful death a fellow-creature innocent before God, and whom we feel to be so? – Does that state it aright? You sign sad assent. Well, I too feel that, the full force of that. **It is Nature. But do these buttons that we wear attest that our allegiance is to Nature? No, to the King.**
- *Billy Budd*, Herman Melville.



**Gravity.**

It's not just a good idea.  
It's the Law.



# Captain's Formal Interposition

- “Ay, Sir, emotionally broke in the officer of marines, in one sense it was. **But surely Budd purposed neither mutiny nor homicide.**
- Surely not, my good man. And **before a court less arbitrary and more merciful than a martial one, that plea would largely extenuate.**
- *Billy Budd*, Herman Melville.



# Captain's Formal Interposition

- Our avowed responsibility is in this: **That however pitilessly that law may operate, we nevertheless adhere to it and administer it.**”
- *Billy Budd*, Herman Melville.

## WESTERN DEFENSE COMMAND AND FOURTH ARMY WARTIME CIVIL CONTROL ADMINISTRATION

Presidio of San Francisco, California

May 23, 1942

## INSTRUCTIONS TO ALL PERSONS OF JAPANESE ANCESTRY

Living in the Following Area:

All of that portion of the County of Santa Clara, State of California, lying generally north and northwest of the following boundary: Beginning at the point on the Santa Clara-Santa Clara County line, due west of a line drawn through the peak of Santa Prieta; thence due east along said line through said peak to its intersection with Liguas Creek; thence downstream along said creek toward Walden to the point where it is crossed by Liguas Avenue; thence northwesterly on Liguas Avenue to U. S. Highway No. 101; thence northwesterly on said Highway No. 101 to Carbon Road; thence northwesterly on Carbon Road to its junction with Stocker Road; thence westerly on Stocker Road to Madrone Springs; thence along a line parallel due east from Madrone Springs to its intersection with the Santa Clara-Santa Clara County line; together with all portions of Santa Clara County not previously covered by Executive Order of the War Relocation Authority.



# Captain's Formal Interposition

- “With that, crossing the deck he resumed his place by the sashed port-hole, tacitly leaving the three to come to a decision. On the cabins opposite side the troubled court sat silent. Loyal lieges, plain and practical, **though at bottom they dissented from some points Captain Vere had put to them**, they were without faculty, hardly had the inclination, to gainsay one whom they felt to be an earnest man, one too not less superior in mind than in naval rank. **But it is not improbable that even such of his words as were not without influence over them, less came home to them than his closing appeal to their instinct as sea-officers in the forethought he threw out as to the practical consequences to discipline”**
- *Billy Budd*, Herman Melville.



# Captain's Insanity?

- “Billy Budd was formally convicted and sentenced to be hung at the yard.”
- *Billy Budd*, Herman Melville.

