

Sherlock Holmes: First Impressions & Evidence



Travis R. Marker, JD & LLM

Two Ultimate Questions

- Reliability
- Relevance

Relevance

- RULE 401. TEST FOR RELEVANT EVIDENCE
- Evidence is relevant if:
 - (a) it has any tendency to make a fact more or less **probable** than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action.

Relevance

"Truth is irrelevant. What is relevant is whether or not they **believe it.**"

The logic in the words grated. "The first rule of scoundrels?"

— Sarah MacLean (A Rogue by Any Other Name (The Rules of Scoundrels, #1))

Reliability

- "When making factual findings for sentencing purposes, district courts `may consider any information which bears **sufficient indicia of reliability to support its probable accuracy.**" United States v. Harris, 702 F.3d 226, 230 (5th Cir. 2012) (quoting United States v. Solis, 299 F.3d 420, 455 (5th Cir. 2002)). *US v. Maldonado*, Court of Appeals, 5th Circuit 2016

Reliability

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Reliability

- Because the PSR contained **sufficient indicia of reliability** to support the confidential informant's report, the district court committed no error in attributing the additional 945 grams of heroin to Maldonado. See *United States v. Rogers*, 1 F.3d 341, 344 (5th Cir. 1993) (finding **sufficient indicia of reliability** to support a confidential informant's report where the "government[']s investigation . . . corroborated many of the other details of the drug distribution scheme"). *US v. Maldonado*, Court of Appeals, 5th Circuit 2016

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 US 579 - Supreme Court 1993

- The inquiry envisioned by Rule 702 is, we emphasize, a flexible one. Its overarching subject is the scientific validity — **and thus the evidentiary relevance and reliability** — of the principles that underlie a proposed submission. The focus, of course, must be solely on principles and methodology, **not on the conclusions that they generate.**

Evidentiary Review – Prejudices?

- Individual
 - Five Senses
 - Intuition
 - Personal script & background
- Group Analysis
 - Cultural Analysis
 - Consensus of reaction via senses & intuition
- Others?

Scope of Effectiveness

- Timing
- Ability to effectively research
- Need for a decision
- Previous background or knowledge before encounter with evidence
- Others

Eyewitness Found to be Ineffective

“[M]ore than three quarters of wrongful convictions later overturned by DNA evidence relied on faulty eyewitness evidence.”

– “Is Eyewitness Testimony Inherently Unreliable?”

By Aileen P. Clare – May 28, 2012

Why Are Eye Witnesses Ineffective?

Reconstructive Memory . . . “people store information in the way that makes the most sense to them. We make sense of information by trying to fit it into **schemas**, which are a way of organizing information. Schemas are mental 'units' of knowledge that correspond to frequently encountered people, objects or situations. They allow us to make sense of what we encounter in order that we can predict what is going to happen and what we should do in any given situation.” – *Simply Psychology*, “Eyewitness Testimony,” Saul McLeod 2009

Why Are Eye Witnesses Ineffective?

“Our first impressions are generated by our experiences and our environment, which means that we can change our first impressions . . . by changing the experiences that comprise those impressions.”

— Malcolm Gladwell

So What About Sherlock Holmes?





F FANDANGO
MOVIECLIPS

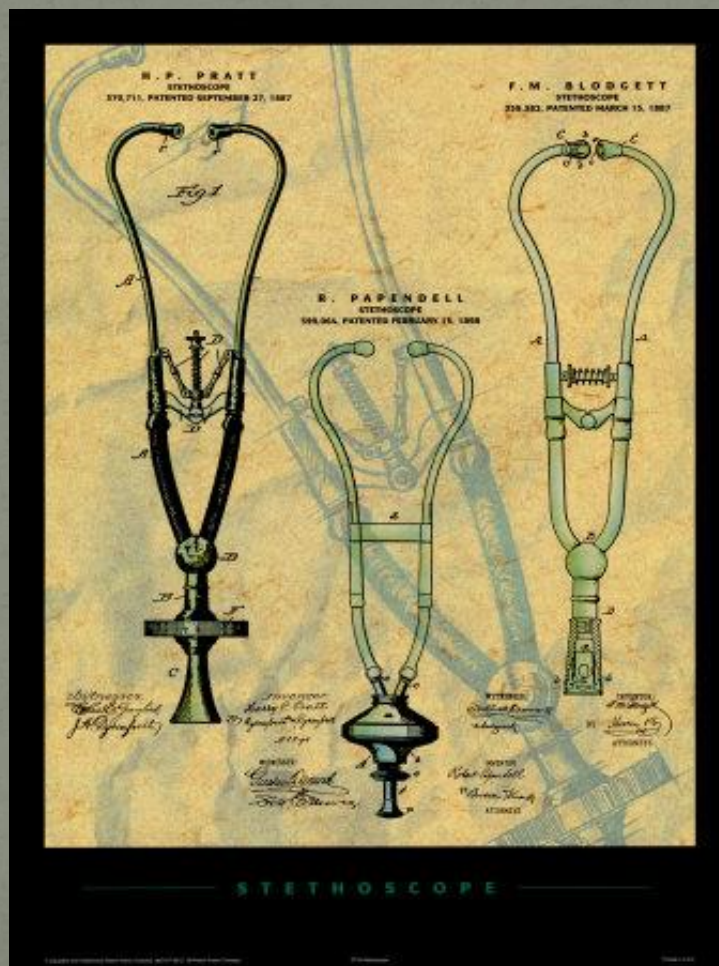
Why Are Eye Witnesses Ineffective?

- “It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.”
 - Arthur Conan Doyle, *Sherlock Holmes*

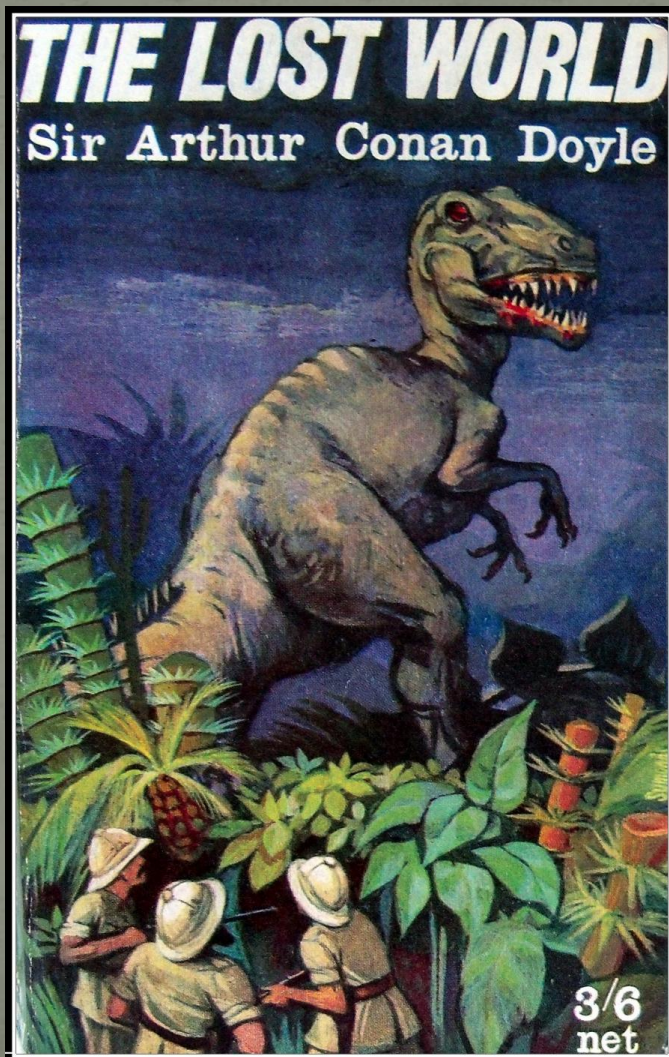
Sir Arthur Conan Doyle



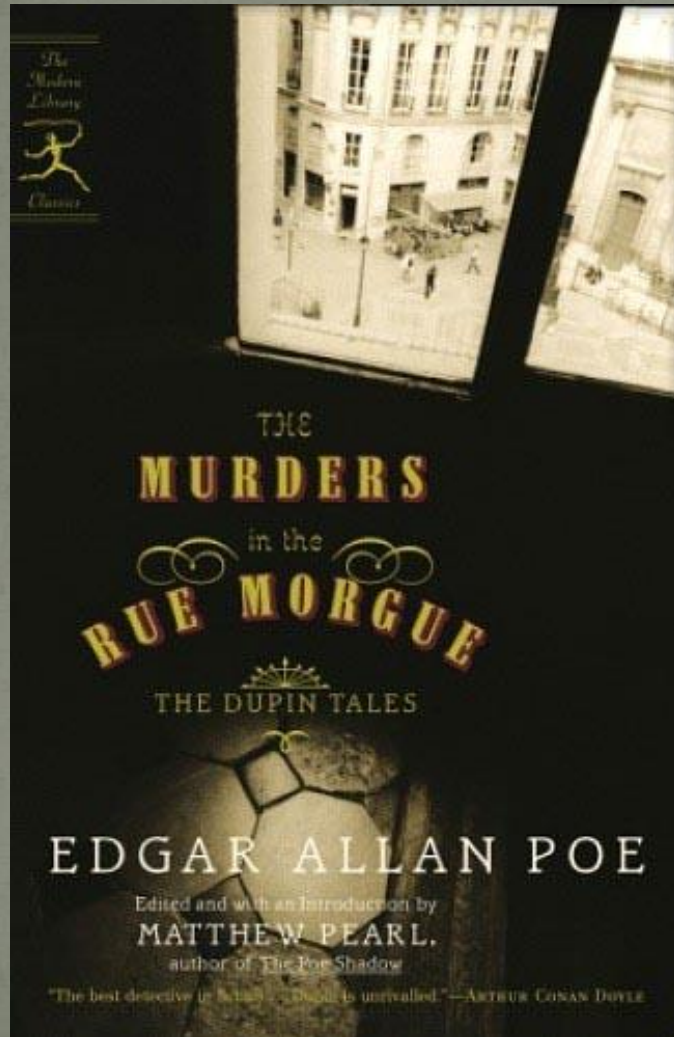
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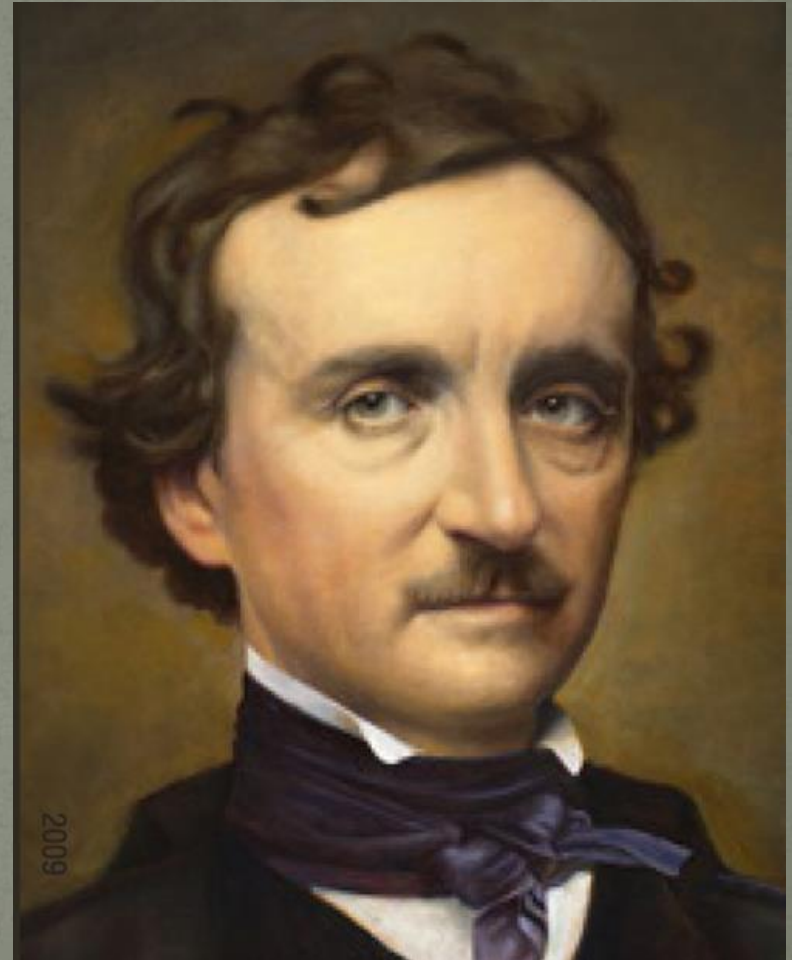


Before There was Sherlock?



The Murders in the Rue Morgue (1841)

- They have fallen into the gross but common error of confounding the unusual with the abstruse. But it is by these deviations from the plane of the ordinary, that reason feels its way, if at all, in its search for the true. **In investigations such as we are now pursuing, it should not be so much asked, what has occurred, as 'what has occurred that has never occurred before.'** In fact, the facility with which I shall arrive or have arrived, at the solution of this mystery, is in the direct ratio of its apparent insolubility in the eyes of the police. (page 19) – **August Dupin**



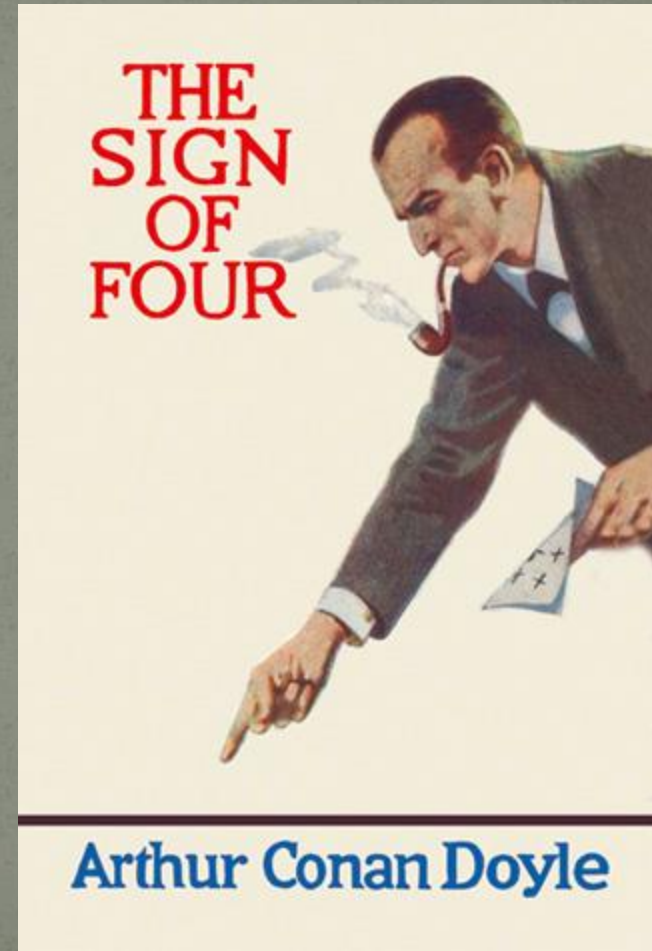
Anna Katherine Green – THE LEAVENWORTH CASE

- Edgar Allen Poe wrote the first detective story by an American author—but the first detective novel was the work of Anna Katharine Green, with **1878's** *The Leavenworth Case*. . . . This book predates both Sherlock Holmes and Agatha Christie, and it's a worthwhile read to see how Green's novel (which was a bestseller in its time) influenced the evolving mystery genre.

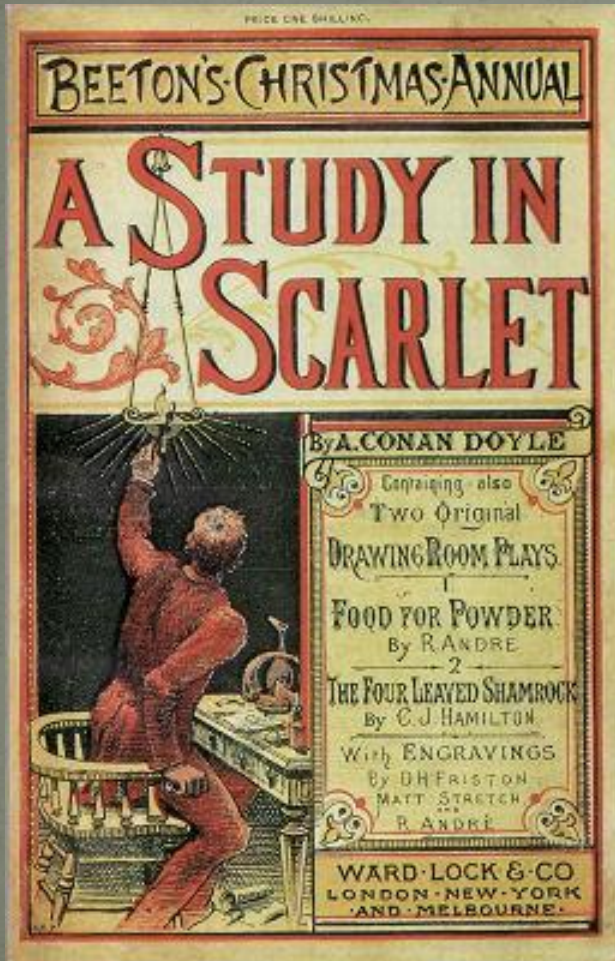


Sherlock Holmes – Sign of Four (1890)

- ‘You will not apply my precept,’ he said, shaking his head. ‘How often have I said to you that **when you have eliminated the impossible, whatever remains, however improbable, must be the truth?**’

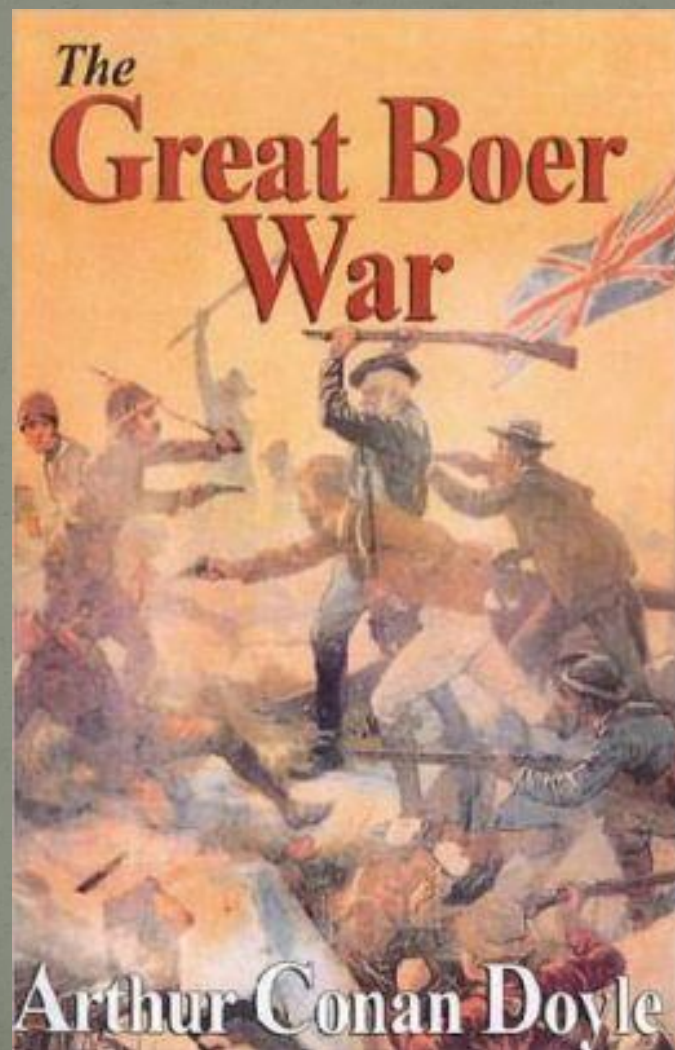


The First



- "What you do in this world is a matter of no consequence. The question is **what can you make people believe you have done.**"
- **"To a great mind, nothing is little,"** remarked Holmes, sententiously."
- — Arthur Conan Doyle (A Study in Scarlet (Sherlock Holmes, #1))

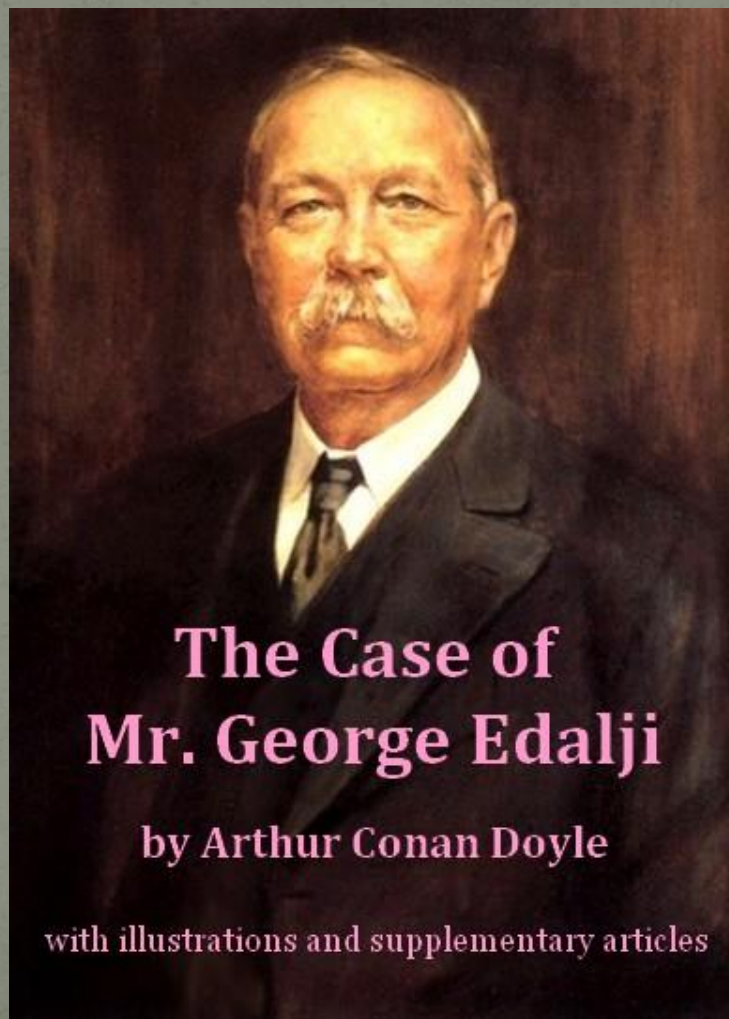
But Still Wants More



He Can't Compete with Him so . . .



But Holmes Appears in Real Life



The Case of Mr. George Edalji

by Arthur Conan Doyle

with illustrations and supplementary articles

Holmes Returns and Lives Forever



Let's Look at His Approach



Increase Your Data!

“It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.”

“Data! data! data!” he cried impatiently. “I can't make bricks without clay.”

Let's Look at His Approach



Eliminate Careless First Impressions

“There is nothing more deceptive than an obvious fact.”

“It has long been an axiom of mine that the little things are infinitely the most important.”

Let's Look at His Approach



Observation!

“The world is full of obvious things which nobody by any chance ever observes.”

“You see, but you do not observe.”

Let's Look at His Approach



Discipline with Reason

“When you have eliminated all which is impossible, then whatever remains, however improbable, must be the truth.”

Let's Test It –

Why do we miss it?

Why are we unreliable?



SIR ARTHUR CONAN DOYLE

Sherlock Holmes

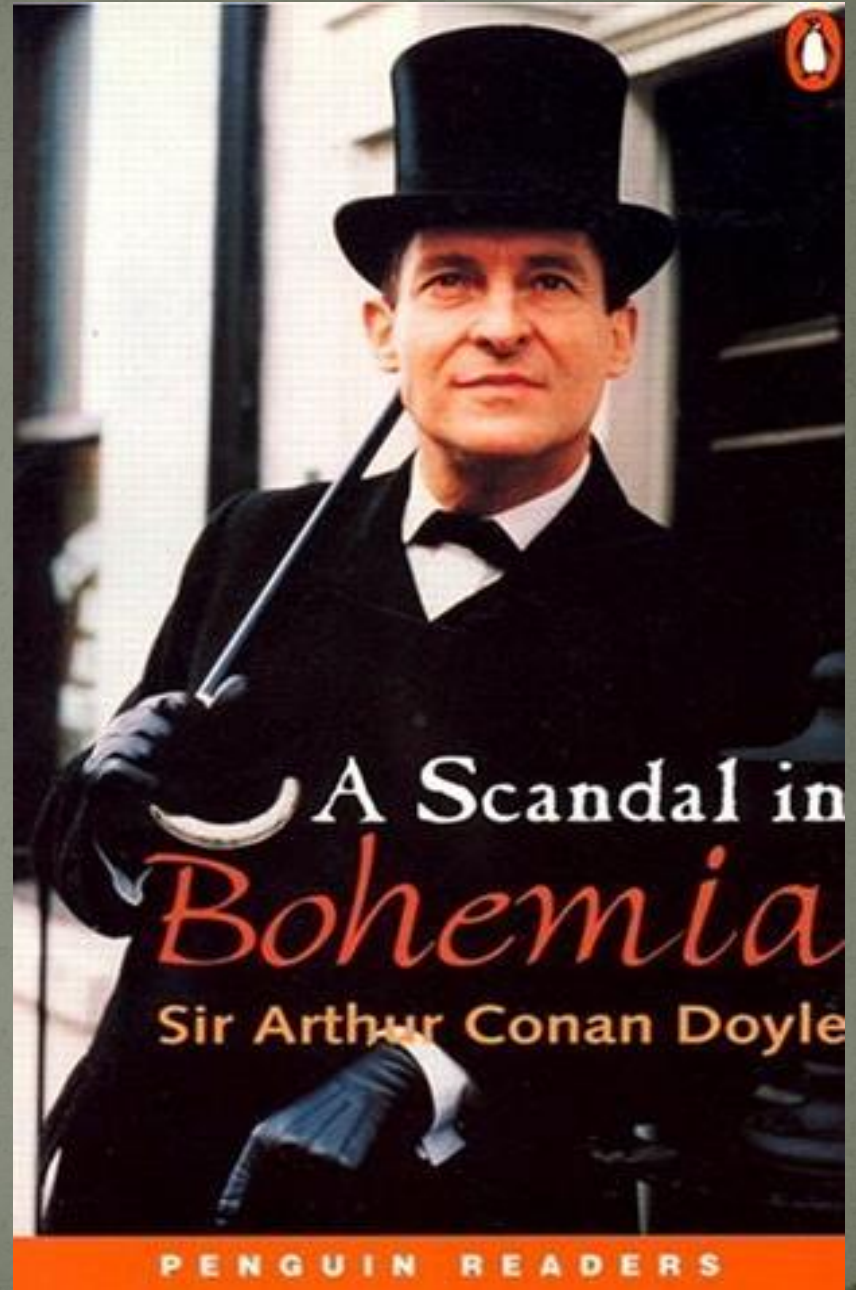
The Adventure of

**THE
COPPER
BEECHES**

David Ian Davies
ONE VOICE RECORDINGS

- "My dear Watson, you as a medical man are continually gaining light as to the tendencies of a child by the study of the parents. Don't you see that the converse is equally valid. **I have frequently gained my first real insight into the character of parents by studying their children.**"

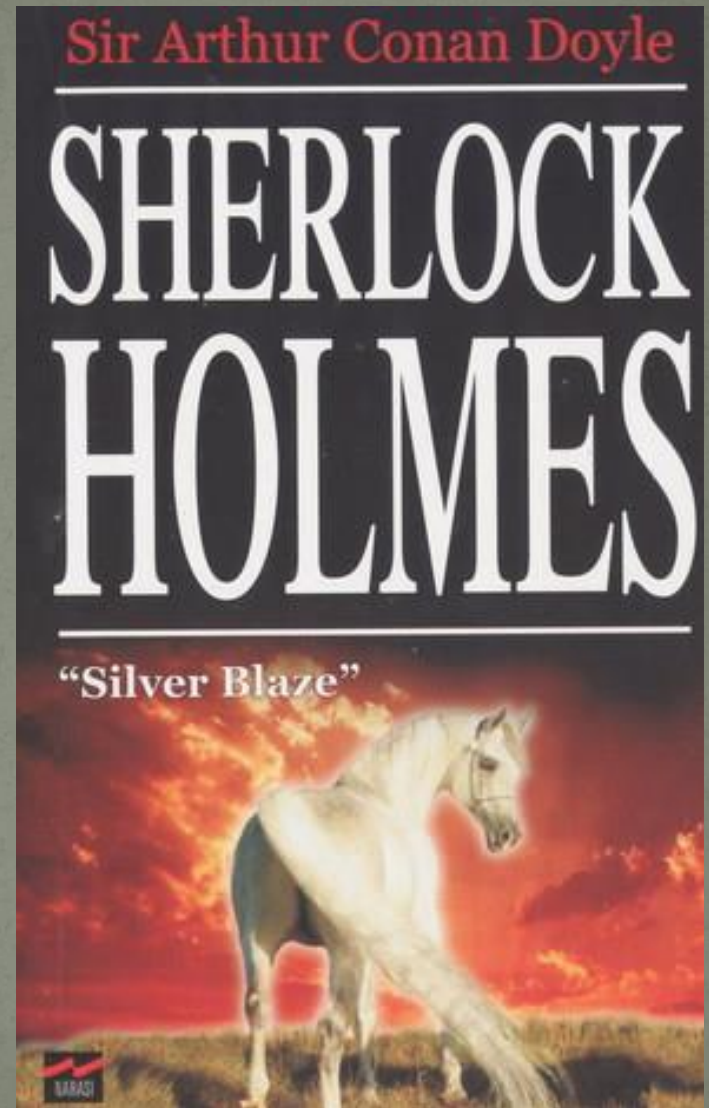
- "To Sherlock Holmes she is always the woman. I have seldom heard him mention her under any other name. In his eyes she eclipses and predominates the whole of her sex . . . there was but one woman to him, and that woman was the late Irene Adler, of dubious and questionable memory."



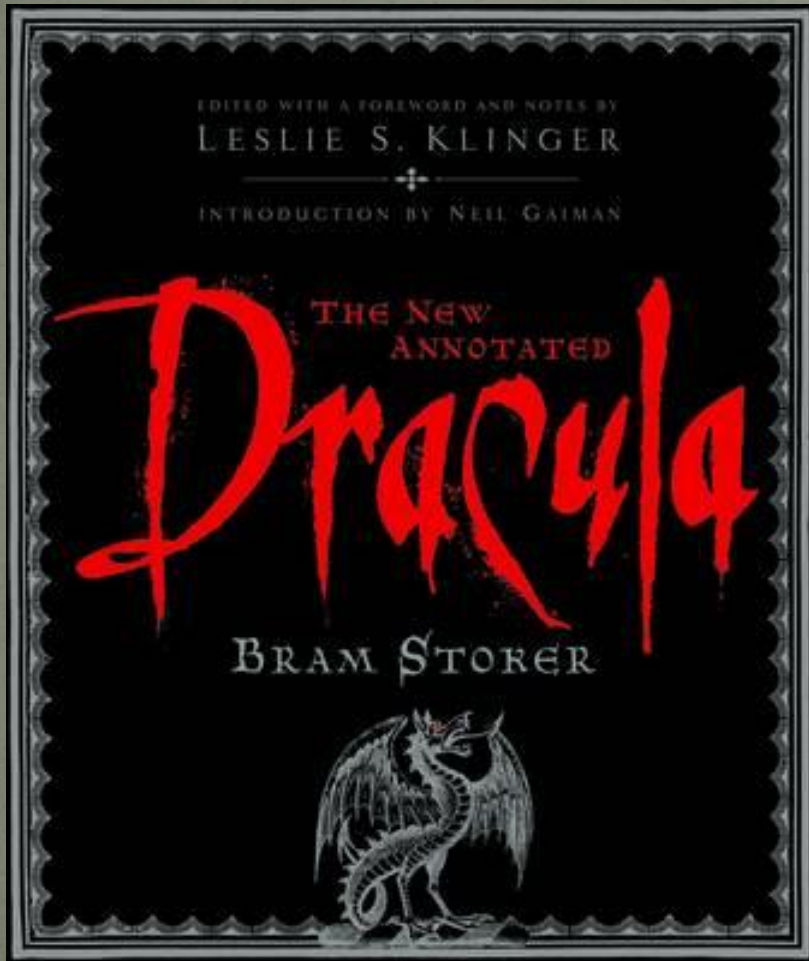


- "I have heard, Mr. Holmes, that you can see deeply into the manifold wickedness of the human heart."
 - – The Speckled Band
- "Where there is no imagination, there is no horror."
 - – A Study in Scarlet

- "Is there any point to which you would wish to draw my attention?"
- 'To the curious incident of the dog in the night-time.'
- 'The dog did nothing in the night-time.'
- 'That was the curious incident,' remarked Sherlock Holmes."



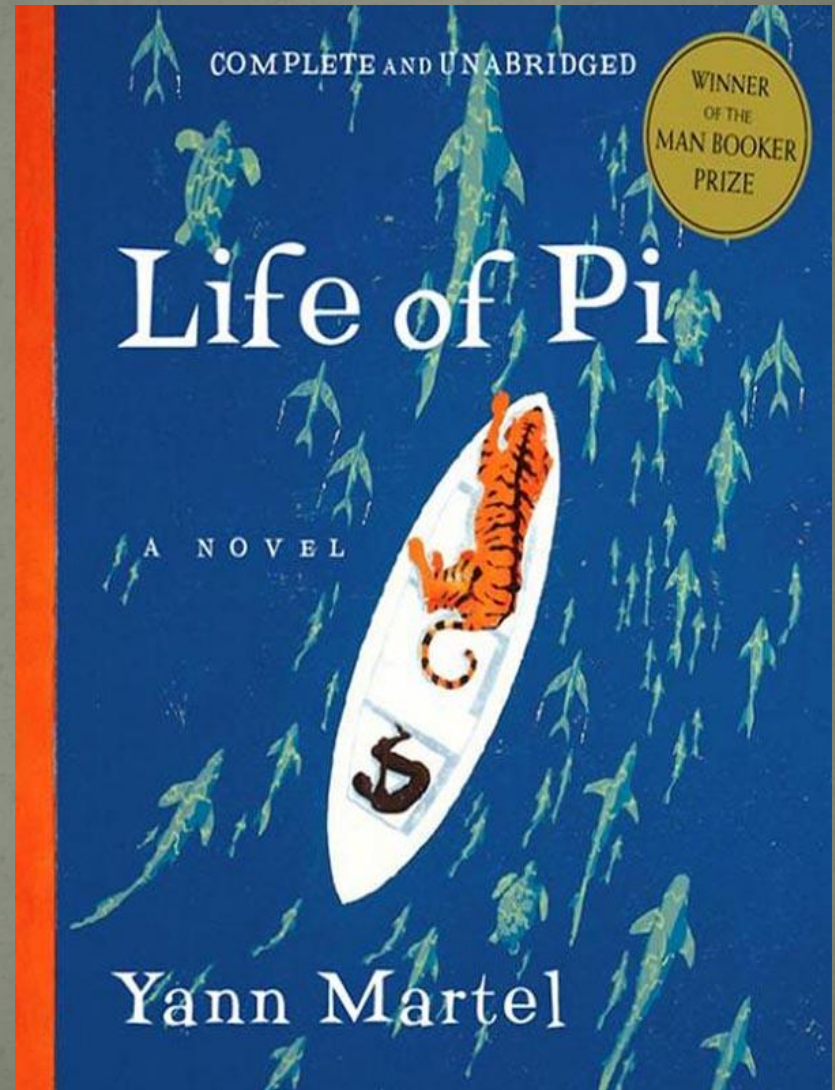
Dracula



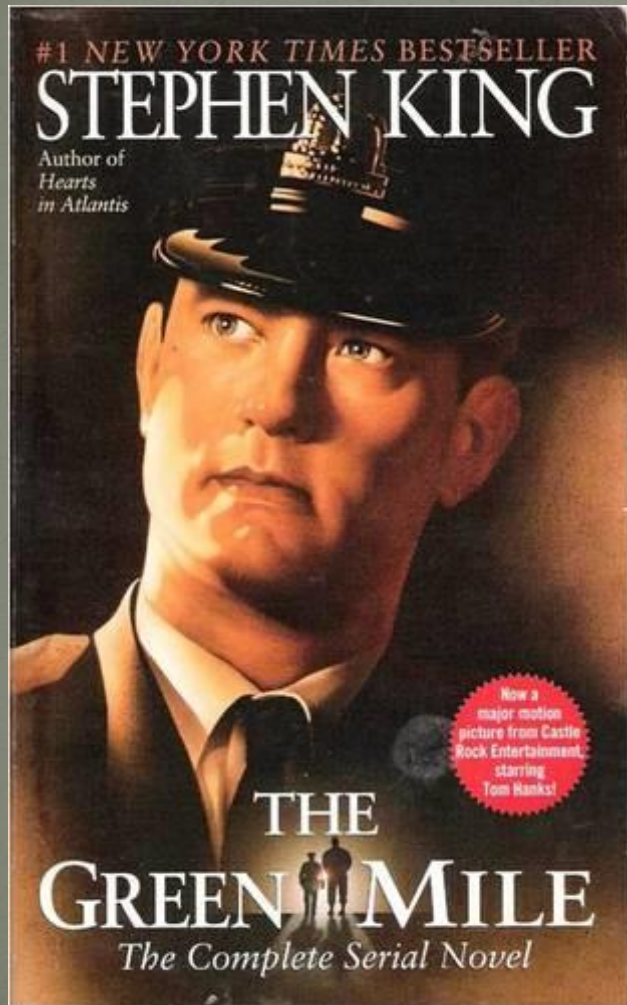
- The Reader of this story will very soon understand how the events outlined in these pages have been gradually drawn together to make a logical whole. Apart from excising minor details which I considered unnecessary, I have let the people involved related their experiences in their own way . . . In all other respects I leave the manuscript unaltered,

The Life of Pi

- "If you stumble about believability, what are you living for? Love is hard to believe, ask any lover. Life is hard to believe, ask any scientist. God is hard to believe, ask any believer. **What is your problem with hard to believe?**"
- — Yann Martel (Life of Pi)



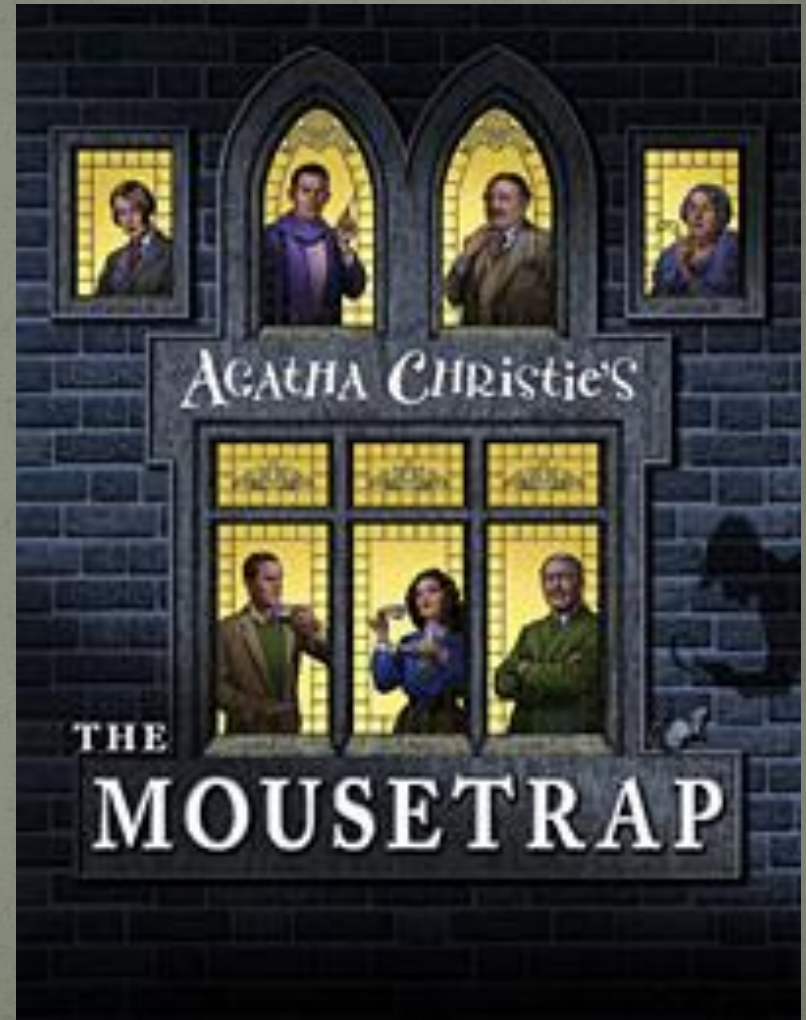
The Green Mile



- “On the day of my judgment, when I stand before God, and He asks me why did I kill one of his true miracles, what am I gonna say? That it was my job? My job?”
- — Stephen King, *The Green Mile*

The Mousetrap

- “Every murderer is probably somebody's old friend.”
- — Agatha Christie, *The Mysterious Affair at Styles*



Six Degrees of Separation

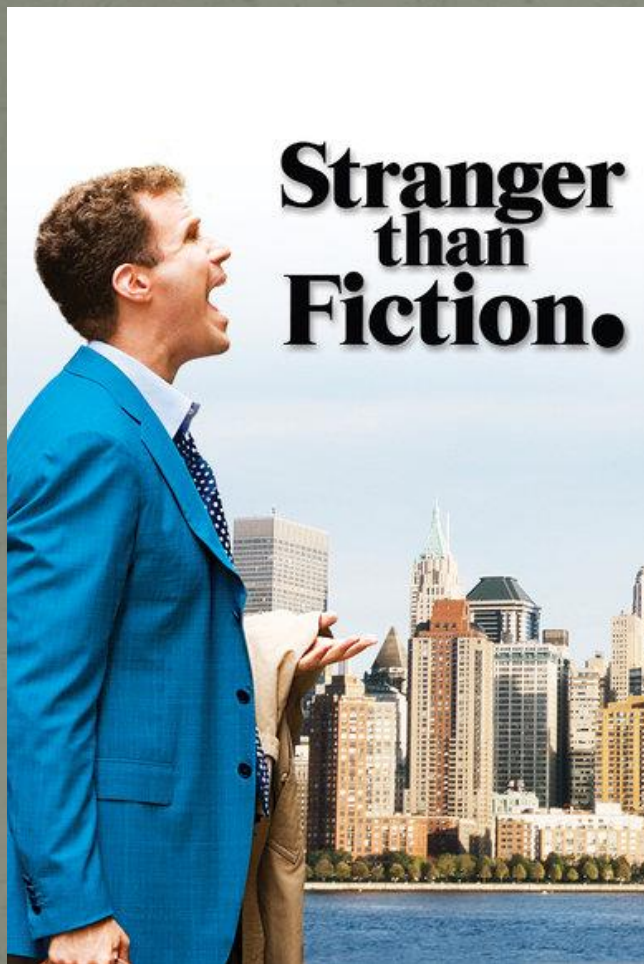


- “I believe that the imagination is the passport we create to take us into the real world. I believe the imagination is another phrase for what is most uniquely us.”
- John Guare, *Six Degrees of Separation*

The Life You Save Maybe Your Own



Stranger than Fiction



Casablanca



Thank you!



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