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Incorporating Literature into a Health Law Curriculum

Stacey A. Tovino

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INCORPORATING LITERATURE INTO A HEALTH LAW CURRICULUM

Stacey A. Tovino*

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INTRODUCTION

Literature has had a long relationship with medicine¹ through literary images of disease, literary images of physicians and other healers, works of literature by physician-writers, and the use of literature as a method of active or passive healing.² Literature also has had a long relationship with the law through literary images of various legal processes, lawyers, and judges,³ works of literature

* Stacey A. Tovino, Visiting Assistant Professor, Health Law & Policy Institute, University of Houston Law Center; Ph.D. Candidate, Institute for the Medical Humanities, University of Texas Medical Branch; J.D., University of Houston Law Center, 1997; B.A., Tulane University, 1994. I am grateful to Anne Hudson Jones for her comments on an early draft of this Article and for introducing me to the literature discussed herein.

1. See, e.g., Kathryn Montgomery Hunter et al., *The Study of Literature in Medical Education*, 70 ACADEMIC MED. 787, 787 (1995) ("Literature has long had a deep and nourishing relationship with medicine."); Anne Hunsaker Hawkins & Marilyn Chandler McEntyre, *Introduction: Teaching Literature and Medicine: A Retrospective and Rationale*, in TEACHING LITERATURE AND MEDICINE 1 (Anne Hunsaker Hawkins & Marilyn Chandler McEntyre eds., Modern Language Association 2000) ("Literature and medicine have a long history of cross pollination."); Rita Charon et al., *Literature and Medicine: Contributions to Clinical Practice*, 122 ANNALS INTERNAL MED. 599, 599 (1995) ("The relation between literature and science has fueled impassioned debate since the Victorian era."); M. Faith McLellan & Anne Hudson Jones, *Why Literature and Medicine?* 348 LANCET 109, 109 (1996) ("the affinity between literature and medicine has long been recognized and stretches back to antiquity").

2. See Anne Hudson Jones, *Literature and Medicine: Traditions and Innovations*, in THE BODY AND THE TEXT: COMPARATIVE ESSAYS IN LITERATURE AND MEDICINE 11-17 (Bruce Clarke & Wendell Aycock eds., Texas Tech University Press 1990); see also McLellan & Jones, *supra* note 1, at 110.

3. See, e.g., TRUMAN CAPOTE, IN COLD BLOOD (Reprint ed., Vintage Books 1994); NATHANIEL HAWTHORNE, THE SCARLET LETTER (Reissue ed., Bantam Books 1965); FRANZ KAFKA, THE TRIAL (Breon Mitchell trans., Schocken Books 1995); Herman Melville, *Billy Budd in BILLY BUDD & OTHER STORIES* (Harold Beaver ed., Penguin Books 1989).

by lawyer-writers,⁴ and the use of literature as therapy.⁵ At last count, eighty-four law schools in the United States and Canada reported offering some variation of a “law and literature” course,⁶ and recent scholarship demonstrates that literature increasingly is being used to illuminate specific, and notoriously difficult, areas of the law such as tax law.⁷

Although more than a dozen U.S. law schools have established health law institutes, programs, centers, departments, or certifications,⁸ each of which offers a variety of health law courses ranging from “Alternative Medicine and the Law” to “Toxic Tort Litigation,” literature has yet to be routinely incorporated into these health law curricula.⁹ How can the field of law and literature inform the study of health law? And how can the field of literature and medicine help the field of law and literature in this regard?

Sections I and II of this Article provide an overview of the fields of literature and medicine and law and literature and identify several common approaches to the use of literature, literary non-fiction, and illness narratives (hereinafter,

4. Samuel Warren was a Victorian writer and lawyer and sometimes is referred to as an ancestor of the law-and-literature movement. See C.R.B. Dunlop, *Samuel Warren: A Victorian Law and Literature Practitioner*, 12 *CARDOZO STUD. L & LITERATURE* 265, 265 (2000). John Grisham is one of the most popular present-day lawyer-writers. See, e.g., JOHN GRISHAM, *THE LAST JUROR* (Doubleday 2004); JOHN GRISHAM, *THE KING OF TORTS* (Doubleday 2003); JOHN GRISHAM, *THE SUMMONS* (Doubleday 2002); JOHN GRISHAM, *THE BROTHERS* (Doubleday 2000).

5. Literature also can encourage law students and lawyers to examine what they do in law and what law has done to them. For example, many law students connect with the characters in SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* (Warner Books 1997).

6. See Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 *VAL. U. L. REV.* 665, 666 (1995).

7. See Jeffrey G. Sherman, *A Tax Teacher Tries Law and (Dramatic) Literature*, 37 *SUFFOLK U. L. REV.* 255, 255 (2004).

8. See *infra* note 153.

9. Although literature is not routinely incorporated into health law curricula, individual health law professors have used various creative forms of expression to illuminate the legal issues addressed in their classrooms. For example, Timothy Hall, Assistant Professor at the University of Louisville’s Louis D. Brandeis School of Law (which offers a health law specialization), uses film as a teaching tool in his mental health law seminar. See Timothy S. Hall, “Using Film as a Teaching Tool in a Mental Health Law Seminar,” 2004 ASLME Health Law Teachers’ Conference Poster Presentation, Seton Hall University School of Law, Newark New Jersey (June 4-5, 2004) (presentation on file with author). Elizabeth Pendo, Professor of Law at St. Thomas University Law School, uses film to teach various aspects of health law, including health insurance law. See Elizabeth Pendo, *Images of Health Insurance in Popular Film: The Dissolving Critique*, 37 *J. HEALTH LAW* 267 (2004); Elizabeth Pendo, *Using Film to Teach Health Law*, *HOUSTON J. HEALTH L. & POL’Y* (forthcoming 2005). Thomas Mayo, Associate Professor Law at Southern Methodist University Dedman School of Law, offers a “Law, Literature, and Medicine” surgery elective for fourth-year medical students at the University of Texas Southwestern Medical School and third-year law students at Dedman School of Law. This course is discussed in more detail in note 160, *infra*.

“literature”)¹⁰ in medical and legal education. Section III argues that the descriptive, contextual, and narrative qualities of literature can be used to enhance traditional case law, statutory, and regulatory approaches to teaching health law. Using Samuel Shem’s *The House of God*,¹¹ Section III(A) shows how the descriptive powers of literature can inform the study of health law by helping students better understand the history of medicine, the American system of medical education, the environments in which health care providers practice, the essential non-physician personnel in the health care industry, and the financial, social, and political interests that can interfere with physicians’ medical and scientific pursuits and raise ethical and legal dilemmas.

Although the descriptive qualities of literature are important, an even greater feature of literature is its ability to provide a rich, detailed, and frequently historical context in which law students can place the cases, statutes, regulations, and other legal principles studied in class. Section III(B) uses Aleksandr Solzhenitsyn’s *Cancer Ward*¹² to show that the contextual powers of literature can provide students with a fuller understanding of the history, purposes, and goals of the legal principles under study. Section III(B) also shows how literature can be used to fill gaps that may exist in courses designed around watershed cases, statutes, and regulations.

Section III(C) illustrates the narrative qualities of literature by examining George Eliot’s *Middlemarch*¹³ and Anne Fadiman’s *The Spirit Catches You and You Fall Down*.¹⁴ This Section argues that literary works that tell complex and

10. For the sake of brevity, this Article uses the word “literature” to refer to literature, literary nonfiction, and illness narratives collectively; however, these forms of writing are exceptionally distinct. Literature has been defined to include creative writing of recognized artistic value. *But see* W.W. ROBSON, THE DEFINITION OF LITERATURE AND OTHER ESSAYS (Cambridge University Press 1984) (focusing on the definition of literature that is to be recommended rather than on a particular formulation). Literary nonfiction (also known as creative nonfiction, factual fiction, and literary journalism) has been used to refer to the branch of writing that employs literary techniques and artistic vision usually associated with fiction or poetry to report on actual persons, places, or events. Literary nonfiction tends to be broadly defined to include nature and travel writing, biography, memoir, and the familiar essay. *See, e.g.*, PHILLIP LOPATE, ED, THE ART OF THE PERSONAL ESSAY: AN ANTHOLOGY FROM THE CLASSICAL ERA TO THE PRESENT (Doubleday 1994) (selecting seventy-five personal essays covering four hundred years to show the development of the genre). Illness narratives (also known as pathographies) have been defined to include forms of autobiography or biography that describe personal experiences of illness, treatment, and sometimes death. *See, e.g.*, ANNE HUNSAKER HAWKINS, RECONSTRUCTING ILLNESS: STUDIES IN PATHOGRAPHY 1 (2d ed. Purdue University Press 1999) (studying the myths, attitudes, and assumptions that inform the way individuals deal with illness through a detailed review of accounts of others’ illnesses).

11. SAMUEL SHEM, THE HOUSE OF GOD (Bantam Dell/Delta Trade 2003).

12. ALEKSANDR SOLZHENITSYN, CANCER WARD (Farrar, Straus and Giroux 1968).

13. GEORGE ELIOT, MIDDLEMARCH (Norton 2000).

14. ANNE FADIMAN, THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD, HER AMERICAN DOCTORS, AND THE COLLISION OF TWO CULTURES (Farrar, Straus and Giroux 1997).

multi-staged stories about health care providers and their interactions with their patients and business colleagues can improve law students' ability to apply complicated health law principles to elaborate fact patterns. This Article concludes that incorporating one or more carefully selected works of literature into the syllabus of an existing health law course or seminar, or offering a "Literature, Medicine, and Health Law" seminar that focuses on a number of literary works, can enhance a health law curriculum.

I. THE FIELD OF LITERATURE AND MEDICINE¹⁵

During the first half of the twentieth-century, most American medical schools assumed that their students would absorb the human aspects of doctoring while watching attending and other senior physicians work with patients in clinical settings.¹⁶ Despite these assumptions, many medical students failed to become empathetic, respectful, and effective clinicians due, in part, to the lack of specific and on-going training addressing the personal aspects of the art of medicine.¹⁷

In response, a handful of U.S. medical schools began to incorporate humanities coursework into their curricula in the 1960s.¹⁸ The first two medical schools to establish humanities departments were the Pennsylvania State University College of Medicine (1967) and Southern Illinois University School of Medicine (1969).¹⁹ One stated purpose of these programs was to remedy a perceived over-emphasis on the technological aspects of medicine.²⁰

The field of literature and medicine was formally introduced in 1972, when Joanne Trautmann (Banks) was appointed to a position in literature at the Pennsylvania State University College of Medicine.²¹ The field received scholarly recognition in the 1980s with the publication of numerous books and articles addressing the relationship between literature and medicine, as well as a new journal, *Literature and Medicine*, which was devoted to exploring literary and

15. The intersection between literature and medicine is referred to both as a discipline and an interdisciplinary field. Hawkins & McEntyre, *supra* note 1, at 4 ("Literature and medicine first emerged in its present form as an academic discipline in 1972 . . ."); *id.* at 3 ("Literature and medicine today is perhaps best understood not as a fusion of the literary and the medical but as a genuinely interdisciplinary (some would prefer cross-disciplinary) field, a dialogue rather than a merger."). Without limiting these important distinctions, this Article will refer to literature and medicine as a field.

16. See Charon et al., *supra* note 1, at 599.

17. See *id.*

18. See *id.*; see also Hawkins & McEntyre, *supra* note 1, at 3; McLellan & Jones, *supra* note 1, at 109.

19. See Hawkins & McEntyre, *supra* note 1, at 20, 22 and n.1.

20. See *id.* at 3-4.

21. See *id.*; see also Hunter, *supra* note 1, at 788.

medical knowledge and understanding.²² In 1994, an informal survey of members of the Society for Health and Human Values found that approximately one-third of U.S. medical schools taught literature to their students.²³ In 1995, the *Annals of Internal Medicine* accepted and published an article entitled “Literature and Medicine: Contributions to Clinical Practice”²⁴ and, in 1996, *The Lancet* accepted and published an article entitled “Why Literature and Medicine?”²⁵ The publication of these articles in such prestigious medical journals indicated the medical establishment’s recognition of the relationship between literature and medicine. Today, medical students, interns, residents, fellows, and practicing physicians participate in courses, clerkships, writing workshops, and ethics seminars that use literature to illuminate the human and scientific aspects of medical practice.²⁶

Scholars in literature and medicine have identified at least four traditional approaches to the relationship between literature and medicine, including images of disease, illness, and death; images of physicians, other health care providers, and their ethical dilemmas; works by physician-writers; and literature as a method of active or passive healing.²⁷ The first approach uses literary images of disease, illness, and death to explore questions relating to how and why patients suffer; how disease, illness, and death are perceived by individuals other than the patient; and whether and how patients can manage illness and the dying process.²⁸ For example, Marcus Aurelius’s *Meditations* and Sophocles’s *Philoctetes* investigate the sources of and reasons for suffering, including nature²⁹ and divine punishment.³⁰ Tillie Olsen’s “Tell Me a Riddle” and Leo Tolstoy’s “The Death of Ivan Ilych”

22. See Hawkins & McEntyre, *supra* note 1, at 4; *Literature and Medicine*, Johns Hopkins University Press (1982 to present), available at http://muse.jhu.edu/journals/literature_and_medicine/.

23. See Charon et al., *supra* note 1, at 600.

24. *Id.*

25. McLellan & Jones, *supra* note 1.

26. See Charon et al., *supra* note 1, at 600; see also Joanne Trautmann (Banks), *The Wonders of Literature in Medical Education*, in *THE ROLE OF THE HUMANITIES IN MEDICAL EDUCATION* 32, 35 (Donnie J. Self ed., Bio-Medical Ethics Program, Eastern Virginia Medical School, 1978) (“The literary works in that course are not simply *illustrations* of the medical subject of old age. I hope they are *illuminations* of age, a fine but important distinction.”) (emphasis in original).

27. See Jones, *supra* note 2, at 12-17.

28. See *id.* at 12-13.

29. See MARCUS AURELIUS, *MEDITATIONS* 4:26 (Gregory Hays trans., Modern Library 2003) (identifying nature as the source of all suffering: “Something happens to you. Good. It was meant for you by nature, woven into the pattern from the beginning.”).

30. See SOPHOCLES, *PHILOCTETES* 22 (Keith Dewhurst trans., Oberon Books 2000) (identifying divine punishment as the source of Philoctetes’ suffering: “Oh, how I suffer and the gods hate me!”).

provide examples of how individuals live—lyrically and consciously for Eva³¹ and rigidly and successfully for Ivan Ilych³²—and whether and how they can die meaningfully.³³ John Donne's *Devotions upon Emergent Occasions*, written during Donne's slow convalescence from an attack of an illness reported as typhus, offers an extended meditation on the meaning of mortality, the possibility of salvation, and the true nature of the passage of eternal life.³⁴ And Reynolds Price's *A Whole New Life* shows how the author, a Professor of English at Duke University, survived spinal cancer and intractable pain to offer insight, encouragement, and inspiration to others.³⁵

Literature also reveals how individuals other than the patient respond to disease, illness, and death. Tolstoy, for example, uses satire to examine the behavior of Ilych's self-absorbed friends and colleagues who view Ilych's death as a disruption in their own lives.³⁶ One may interpret Franz Kafka's description of Gregor Samsa's metaphoric transformation from human to insect in "The Metamorphosis" as revealing of how some families respond to the burdens associated with caring for ill family members.³⁷ Paul Monette's *Borrowed Time: An AIDS Memoir* demonstrates how two individuals can continue to live and love, even while one of them is dying.³⁸ Sandra Butler and Barbara Rosenblum's *Cancer in Two Voices* describes the social, emotional, and physical effects of breast

31. See Tillie Olsen, *Tell Me a Riddle*, in TELL ME A RIDDLE (Dell Publishing/Delta Fiction 1989). Because Tillie Olsen gives Eva no last name, I refer to her simply as Eva.

32. See Leo Tolstoy, *The Death of Ivan Ilych*, in THE DEATH OF IVAN ILYCH AND OTHER STORIES (Aylmer Maude & J.D. Duff trans., New American Library/Signet Classic 2003).

33. Joanne Trautmann Banks, *Death Labors*, 9 LITERATURE & MED. 162, 164 (1990) ("It is what [Eva] must do before she can die meaningfully.").

34. See JOHN DONNE, *Devotions upon Emergent Occasions*, in DEVOTIONS UPON EMERGENT OCCASIONS TOGETHER WITH DEATH'S DUEL (University of Michigan Press 1959). See also William B. Ober, *John Donne as a Patient: Devotions upon Emergent Occasions*, 9 LITERATURE & MED. 21, 27 (1990) (arguing that "Donne viewed his illness as a proper visitation from God and [that] he accepted his illness with good cheer because it was a sign of salvation . . ."); Murray D. Arndt, *Distance on the Look of Death*, 9 LITERATURE & MED. 38, 38 (1990) (arguing that the *Devotions* "present with enormous immediacy the confusion, weakness, and loneliness occasioned by the illness and the terror precipitated by the very real possibility of dying"); Anne Hawkins, *Two Pathographies: A Study in Illness and Literature*, 9 J. MED. & PHIL. 231 (1984) (discussing Donne's analogy between illness of the body and illness of the soul).

35. See REYNOLDS PRICE, *A WHOLE NEW LIFE* (Scribner Classics 1994).

36. See Tolstoy, *supra* note 32, at 95 ("But the more intimate of Ivan Ilych's acquaintances, his so-called friends, could not help thinking also that they would now have to fulfill the very tiresome demands of propriety by attending the funeral service and paying a visit of condolence to the widow.").

37. See FRANZ KAFKA, *THE METAMORPHOSIS* 51 (Stanley Corngold ed. and trans., Bantam Books/Bantam Classic 1986) ("I won't pronounce the name of my brother in front of this monster, and so all I say is: we have to try to get rid of it. We've done everything humanly possible to take care of it and to put up with it; I don't think anyone can blame us in the least.").

38. See PAUL MONETTE, *BORROWED TIME: AN AIDS MEMOIR* (Harcourt Brace 1988).

cancer on both authors' lives.³⁹ And *Refuge: An Unnatural History of Family and Place* shows how Terry Tempest Williams, a naturalist and writer from northern Utah, reckons with the meaning of life during and following the death of her mother from cancer.⁴⁰ In summary, literature is a rich source of human experience relating to disease, illness, and death that medical students can use to better understand patients and circumstances with which they may be personally unfamiliar.⁴¹

A second approach to the relationship between literature and medicine relies on images of physicians, other health care providers, and their ethical dilemmas.⁴² For example, Chaucer and Molière provide examples of quackery and greed through their physician and apothecary characters in *The Canterbury Tales* and *The Imaginary Invalid*.⁴³ *Arrowsmith* by Sinclair Lewis⁴⁴ and *Middlemarch* by George Eliot⁴⁵ illustrate how social, political, and financial interests can interfere with physicians' medical practices and scientific pursuits. Ken Kesey's *One Flew over the Cuckoo's Nest* exposes a physician's addictive behavior and his consequent ineffectiveness, as well as a head nurse's need for control, which is used to destroy her patients' confidence and inhibit growth.⁴⁶ "The Death of Ivan Ilych" and "Tell Me a Riddle," as well as Margaret Edson's *Wit*, provide examples of functional (Gerasim) and actual (Jeannie and Susie) nurses whose value lies in their performance of human, not necessarily professional, tasks.⁴⁷ These and other healing images provide "an interesting barometer of social attitudes toward and fears of those who tend us and sometimes heal us—and who hold such awesome power over us."⁴⁸

The third approach to the relationship between literature and medicine focuses on the works of physician-writers.⁴⁹ This approach allows medical students and physicians "to examine what they do in medicine and what

39. See SANDRA BUTLER & BARBARA ROSENBLUM, *CANCER IN TWO VOICES* (2d ed., Spinsters Ink Books 1996).

40. See TERRY TEMPEST WILLIAMS, *REFUGE: AN UNNATURAL HISTORY OF FAMILY AND PLACE* (2d ed., Vintage Books 2001).

41. Julia E. Connelly, *The Whole Story*, 9 LITERATURE & MED. 150, 151 (1990) ("The stories of ill persons contribute knowledge to our less knowable patients.").

42. See Jones, *supra* note 2, at 13-15.

43. See GEOFFREY CHAUCER, *THE CANTERBURY TALES* (R.M. Lumiansky trans., Washington Square Press 1971); Molière, *The Imaginary Invalid*, in *THE MISANTHROPE AND OTHER PLAYS* (Donald M. Frame trans., Penguin Group/Signet Classic 1968).

44. See SINCLAIR LEWIS, *ARROWSMITH* (New American Library/Signet Classic 1998).

45. See ELIOT, *supra* note 13.

46. See KEN KESEY, *ONE FLEW OVER THE CUCKOO'S NEST* (New American Library/Signet 1963).

47. See Tolstoy, *supra* note 32; Olsen, *supra* note 31; MARGARET EDSON, *WIT* (Faber and Faber 1999).

48. Jones, *supra* note 2, at 15.

49. See *id.* at 15-16.

medicine has done to them.”⁵⁰ For example, Samuel Shem, a physician on the faculty of Harvard Medical School and the author of several fiction and non-fiction works, explains that he wrote *The House of God* for catharsis and to share with his friends the worst (medical internship) year of his life.⁵¹ Other popular physician-writers whose works are frequently used in medical humanities programs include William Carlos Williams⁵² and Richard Selzer.⁵³ Williams’s “The Use of Force” and Selzer’s “Brute” examine how good doctors sometimes hurt their vulnerable patients by exploiting the power imbalance inherent in the physician-patient relationship.⁵⁴ The works of physician-writers also “provide a mirror for practitioners who face parallel or analogous issues in their own lives,”⁵⁵ grant lay persons access to the privileged world of medicine, and can help patients balance otherwise uneven power relationships.

The fourth approach to the relationship between literature and medicine focuses on literature as a means of active and passive healing.⁵⁶ Active healing occurs when an individual considers his or her experiences and feelings and records them in a journal or uses them to write, for example, a play, short story, or book.⁵⁷ In active healing, “Catharsis is provided by the act of expressing oneself.”⁵⁸ For example, William Ober argues that writing *Devotions upon Emergent Occasions* was therapeutic for John Donne during his seventeenth-century convalescence from an illness reported as typhus.⁵⁹ In contrast, passive healing occurs when reading or watching brings some type of insight or therapy to the reader.⁶⁰ Reading *The House of God*, for example, may passively heal overwhelmed or disillusioned medical students by offsetting the negativity of their

50. Charon et al., *supra* note 1, at 601.

51. See SAMUEL SHEM, *Afterword to SAMUEL SHEM, THE HOUSE OF GOD* at 392 (Bantam Dell/Delta Trade 2003).

52. See WILLIAM CARLOS WILLIAMS, *THE DOCTOR STORIES* (Robert Coles comp., New Directions 1984).

53. See RICHARD SELZER, *LETTERS TO A YOUNG DOCTOR* (Simon and Schuster/Touchstone Books 1982).

54. See WILLIAM CARLOS WILLIAMS, *The Use of Force*, in *THE DOCTOR STORIES*, *supra* note 52, at 56-60; RICHARD SELZER, *Brute*, in *LETTERS TO A YOUNG DOCTOR*, *supra* note 53, at 59-63. See also Anne Hudson Jones, *Narrative in Medical Ethics*, 318 *BRITISH MED. J.* 253, 254 (Jan. 23, 1999) (discussing “The Use of Force” and “Brute”).

55. Charon et al., *supra* note 1, at 601.

56. See Jones, *supra* note 2, at 16-17.

57. See *id.* at 16.

58. *Id.*; SHEM, *supra* note 51, at 392 (“I began writing *The House of God* for catharsis . . .”).

59. See William B. Ober, *John Donne as a Patient: Devotions upon Emergent Occasions*, 9 *LITERATURE & MED.* 21, 35, 36 (“One cannot doubt that writing the *Devotions* during his convalescence was therapeutic for Donne and also gave him pleasure. . . . What must have pleased Donne was to find out that his ability to arrange his ideas and to write them was unimpaired, and what enjoyment he must have had in composing the sentences and paragraphs.”).

60. See Jones, *supra* note 2, at 17.

classroom and clinical experiences and by affirming their own lives and the lives of others.⁶¹

Literary scholars argue that these four approaches to the relationship between literature and medicine provide several good reasons to teach literature in medical school, two of which are discussed herein.⁶² The first reason relates to the ability of the physician to understand and interpret his or her patient's story. When a patient presents to a physician for diagnosis or treatment, the patient:

... tells a complex and many-staged story. Using words and gestures, the patient recounts the events and sensations of the illness while his or her body "tells"—in physical findings, images, tracings, laboratory measurements, or biopsies—that which the patient may not yet know. If the patient is a hesitant or chaotic narrator, the physician has to be an especially alert listener, leaning forward to grasp the point, to fill in the blanks, to hear the story to the end, so that he or she can then group the data into testable hypotheses. Evaluating patients requires the skills that are exercised by the careful reader: to respect language, to adopt alien points of view, to integrate isolated phenomena (be they physical findings or metaphors) so that they suggest meaning, to organize events into a narrative that leads toward their conclusion, and to understand one story in the context of other stories by the same teller.⁶³

Thus, the argument is that literature can teach medical students how to listen more carefully to patient stories, establish better patient relationships, and recognize and interpret multiple, and sometimes contradictory, texts relating to the patient.⁶⁴ These texts can include patient or family descriptions of the patient's complaints, information revealed to the physician through physical examination and tests, and the physician's own interpretation as documented in the medical record.

61. *See id.*

62. Anne Hunsaker Hawkins and Marilyn Chandler McEntyre identify three broad purposes for including literature in a medical school curriculum: the patient, the physician, and ethics. Hawkins & McEntyre, *supra* note 1, at 5. Other literary scholars identify five purposes for including literature in a medical school curriculum. Charon et al., *supra* note 1, at 600 (explaining that: (1) literary accounts of illness can teach physicians concrete and powerful lessons about the lives of sick people; (2) great works of fiction about medicine enable physicians to recognize the power and implications of what they do; (3) through the study of narrative, physicians can better understand patients' stories of sickness and their own personal stake in medical practice; (4) literary study contributes to physicians' expertise in narrative ethics; and (5) literary theory offers new perspectives on the work and the genres of medicine). I will briefly address the two main approaches to teaching literature in medical schools identified by Anne Hudson Jones: the aesthetic approach and the ethical approach. Jones, *supra* note 2, at 19-21.

63. Charon et al., *supra* note 1, at 601.

64. *See* Hawkins & McEntyre, *supra* note 1, at 5.

Incorporating literature into a medical school curriculum for purposes of teaching medical students and physicians to better read, interpret, and understand texts (which happen to be the same skills required to diagnose patients) frequently is referred to as the aesthetic approach to the use of literature.⁶⁵ The aesthetic approach is addressed in the literature by Joanne Trautmann Banks, Edward Gogel, and James Terry, among others.⁶⁶ These scholars argue that the literary activity of interpretation, or hermeneutics, can be used in the practice of medicine.

The aesthetic approach frequently is contrasted with the ethical approach.⁶⁷ The ethical approach is based on the argument that “literature and literary skills enable physicians to think both critically and empathetically about moral issues in medicine.”⁶⁸ The ethical approach is exemplified by Robert Coles, who argues that all individuals should engage in ethical reflection, or an “intense scrutiny of one’s assumptions, one’s expectations, one’s values, one’s life as it is being lived or as one hopes to live it.”⁶⁹ For example, the short stories “Brute” and “The Use of Force” have been used to encourage medical students to think about how they would ethically deal with unlikable or noncompliant patients, including a man described as “hugely drunk—toxic, fuming, murderous—a giant mythic beast broken loose in the city”⁷⁰ and a potentially diphtheric child who refuses to allow the doctor to look at her throat.⁷¹ Importantly, the works of literature that provoke moral reflection need not be “about” a physician or medicine to be useful. Dante’s *Divine Comedy*,⁷² for example, may be used to teach students how to live a good life and how to engage in the ethical practice of medicine.⁷³

65. See Jones, *supra* note 2, at 18; see also McLellan & Jones, *supra* note 1, at 109.

66. See Jones, *supra* note 2, at 18-19; see also McLellan & Jones, *supra* note 1, at 109; Trautmann, *supra* note 26, at 35-36 (arguing that “the training a medical student needs to read literature properly is training that is extremely useful in medical practice”); Edward L. Gogel & James S. Terry, *Medicine as Interpretation: The Uses of Literary Metaphors and Methods*, 12 J. MED. & PHIL. 205 (1987); James S. Terry & Edward L. Gogel, *Poems and Patients: The Balance of Interpretation*, 6 LITERATURE & MED. 43 (1989); Hunter, *supra* note 1, at 789 (noting that “The aesthetic approach emphasizes the literary skills of reading, writing, and interpretation, using them in the service of medical practice. Focusing on the patient’s story as a narrative and the doctor or student as its listener or reader, the aesthetic approach encourages tolerance for the ambiguity and turmoil of clinical situations and offers training in the interpretive actions that form the center of diagnosis and clinical relationships.”).

67. See McLellan & Jones, *supra* note 1, at 109 (noting that the ‘aesthetic approach’ “is frequently juxtaposed with the ‘ethical’ approach to teaching literature in medical education”).

68. Hawkins & McEntyre, *supra* note 1, at 5.

69. Jones, *supra* note 2, at 18; see also McLellan & Jones, *supra* note 1, at 109; Robert Coles, *Medical Ethics and Living a Life*, 301 NEW ENG. J. MED. 444, 446 (1979).

70. SELZER, *supra* note 53, at 60.

71. See WILLIAMS, *supra* note 52, at 57.

72. DANTE ALGHIERI, *THE DIVINE COMEDY* (John Ciardi trans., New American Library 2003).

73. See Jones, *supra* note 54, at 254 & n.13 (citing Anne Hunsaker Hawkins, *Charting Dante: the “Inferno” and Medical Education*, 11 LITERATURE & MED. 200 (1992)).

Today, the aesthetic and ethical approaches appear to have merged under the rubric of “narrative ethics.”⁷⁴ Narrative knowledge and practice refer to methods of thought and action that individuals use to understand and react to particular human events in order to give them meaning.⁷⁵ In narrative ethics, then, “readers provide an (aesthetic) analysis of the parts that explains how the whole achieves its (ethical) meaning.”⁷⁶ Narrative ethics thus requires physicians to know the principles of medical ethics⁷⁷ and to understand the life of a particular patient in all of its moral complexity.⁷⁸

In an ideal form, narrative ethics recognises the primacy of the patient’s story but encourages multiple voices to be heard and multiple stories to be brought forth by those whose lives will be involved in the resolution of a case. Patients, families, physicians, and other health care providers can be respected by sharing their voice and stories.⁷⁹ Proponents of narrative ethics argue that narrative competence improves ethical deliberations by helping individuals to identify and formulate the ethical problem, select a reasonable interpretation among those available, and validate the chosen interpretation.⁸⁰

When literature was first incorporated into medical school curricula, teachers tended to use literary works of physician-writers or realistic fiction that focused on patients, illness, or health care.⁸¹ “Teaching literature in medical schools was intended to illustrate specific experiences in medicine, such as aging, disability, and death, that might not be familiar to young and healthy students.”⁸² As the field of literature and medicine developed, the focus of teaching shifted

74. See Jones, *supra* note 2, at 22 (“Ultimately, I look for these two approaches—the ethical and the aesthetic—to merge under some such rubric as ‘narrative ethics.’”); see also McLellan & Jones, *supra* note 1, at 109 (“Interestingly, the aesthetic and ethical approaches seem to have merged in the current interest in narrative ethics.”).

75. See Rita Charon, *Narrative Contributions to Medical Ethics: Recognition, Formulation, Interpretation, and Validation in the Practice of the Ethicist*, in *A MATTER OF PRINCIPLES? FERMENT IN U.S. BIOETHICS* 260 (Edwin R. DuBose, Ronald P. Hamel, & Laurence J. O’Connell eds., Trinity Press International 1994).

76. Jones, *supra* note 2, at 22 (“The responsible practice of narrative ethics requires both the aesthetic and the ethical approaches that are now being used in teaching literature and medicine.”).

77. The standard text on the principles of biomedical ethics is TOM L. BEAUCHAMP & JAMES F. CHILDRESS, *PRINCIPLES OF BIOMEDICAL ETHICS* (5th ed., Oxford University Press 2001).

78. See Charon et al., *supra* note 1, at 602.

79. Jones, *supra* note 54, at 255.

80. Charon, *supra* note 75, at 261. Narrative ethics has been explored in detail by Rita Charon, Anne Hudson Jones, and Kathryn Montgomery Hunter. See *id.* at 260-83; Anne Hudson Jones, *Darren’s Case: Narrative Ethics in Perri Klass’s Other Women’s Children*, 21 *J. MED. & PHIL.* 267 (1996); Jones, *supra* note 54, at 253-56; Kathryn Montgomery Hunter, *Narrative, Literature, and the Clinical Exercise of Practical Reason*, 21 *J. MED. & PHIL.* 303 (1996); KATHRYN MONTGOMERY HUNTER, *DOCTORS’ STORIES: THE NARRATIVE STRUCTURE OF MEDICAL KNOWLEDGE* (Princeton University Press 1991).

81. See Hunter, *supra* note 1, at 788.

82. *Id.*

“from descriptive work to analysis, with scholars less interested in how literature reflects medicine than in how it can be used to dissect, critique, and strengthen medical epistemology and practice.”⁸³

The field of literature and medicine is not without its critics, including those who argue that medical students already should have sufficient training in the humanities to be able to interpret their patients' stories and engage in ethical reflection. Harvard Medical School does encourage its applicants to “strive not for specialized training but for a balanced and liberal [undergraduate] education;”⁸⁴ however, recent statistics reported by the Association of American Medical Colleges (“AAMC”) show that many medical school students have very little training in the humanities.⁸⁵ According to the AAMC, 34,786 students applied for a 2003 admission to a U.S. medical school and 16,538 students matriculated at a U.S. medical school in 2003.⁸⁶ Of the 16,538 students who matriculated at a U.S. medical school in 2003, 129 majored in math and statistics, 442 majored in a “specialized health science,” 9,585 majored in a biological science, 2,061 majored in a physical science, 1,918 majored in a social science, and 1,709 majored in “other.”⁸⁷ Only 694 of the 16,538 (or 4.2 percent of those) students who were admitted to a U.S. medical school in 2003 majored in the humanities.⁸⁸

Incorporating literature into medical school curricula is not always easy. Medical curricula are crowded with required science courses and required and elective clinical rotations, and curriculum committees sometimes hesitate to eliminate a required or elective science or clinical course in order to make room for a literature and medicine course. Because “[n]ot every [medical school] curriculum committee leaps at the chance to offer a new interdisciplinary course,”⁸⁹ one important factor in the success of literature and medicine coursework is support from clinical and basic science departments, deans, and program and course directors, which can vary widely from medical school to medical school.⁹⁰

83. McLellan & Jones, *supra* note 1, at 110. See also Hunter, *supra* note 1, at 788 (“As the field has matured, its scholars have also studied more fundamental aspects of literary activities, recognizing, for example, the interpretive parallels between acts of reading and acts of diagnosis.”).

84. Harvard Medical School, *Frequently Asked Questions*, available at <http://hms.harvard.edu/admissions/default.asp?page=admissions> (last visited June 22, 2005).

85. See generally ROBERT E. PROCTOR, *DEFINING THE HUMANITIES: HOW REDISCOVERING A TRADITION CAN IMPROVE OUR SCHOOLS WITH A CURRICULUM FOR TODAY'S STUDENTS* 173 (2d ed., Indiana University Press 1998) (“The tradition of classical education, which began in the Renaissance and flourished in Europe and America until the end of the last century, is now gone.”).

86. Association of American Medical Colleges, *FACTS: Applicants, Matriculates and Graduates*, available at <http://www.aamc.org/data/facts/2003/mcatgpbaymaj1.htm> (last visited June 22, 2005).

87. *Id.*

88. *Id.*

89. Hawkins & McEntyre, *supra* note 1, at 10.

90. See *id.* at 8.

II. THE FIELD OF LAW AND LITERATURE⁹¹

Until the Civil War, individuals who practiced law in the United States generally were men⁹² of letters.⁹³ In the 1870s, however, Harvard Law School Dean, Christopher Columbus Langdell, advocated his belief that law was a science, not an art, and that law was a specialized, independent, self-sustaining, professional field of study that had its own logic, methodology, and subject matter.⁹⁴ Langdell reportedly “did much to undermine the relationship between law and other disciplines, including literature.”⁹⁵ Late nineteenth and early twentieth century law school casebooks, which contained copies of judicial opinions and very little other material,⁹⁶ reflected Langdell’s vision of the law as an independent field.

The field of law and literature emerged, in part, as a response to the perceived inadequacies of the late nineteenth and early twentieth century law school

91. Depending on the scholar, law and literature may be characterized as a field, an interdisciplinary field, a discipline, a movement, an enterprise, or a project. See, e.g., Jane B. Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 YALE L. J. 1059, 1074 (1999) (classifying law and literature as an enterprise); Michael Pantazakos, *Ad Humanitatem Pertinent: A Personal Reflection on the History and Purpose of the Law and Literature Movement*, 7 CARDOZO STUD. L. & LITERATURE 31 (1995) (referring to the law and literature movement); William H. Page, *The Place of Law and Literature*, 39 VAND. L. REV. 391, 415 (1986) (book review) (“The modern field of law and literature . . .”); Gretchen A. Craft, *The Persistence of Dread in Law and Literature*, 102 YALE L.J. 521, 523 (1992) (“The recent development of the law and literature movement . . .”); Michael Pantazakos, *The Form of Ambiguity: Law, Literature, and the Meaning of Meaning*, 10 CARDOZO STUD. L. & LITERATURE 199, 200 (1998) (“the Law and Literature Movement . . .”); Willem J. Witteveen, *Law and Literature: Expanding, Contracting, Emerging*, 10 CARDOZO STUD. L. & LITERATURE 155, 158 (1998) (“The Law and Literature Movement (which is not, strictly speaking, a movement in a sociological sense . . .”); Bruce L. Rockwood, *The Good, the Bad, and the Ironic: Two Views on Law and Literature*, 8 YALE J.L. & HUMAN. 533, 533 (1996) (book review) (“The law and literature project continues to expand in two directions.”). Without limiting any of these important distinctions, I will refer to law and literature as a field.

92. Before the Civil War, no American woman had graduated from an American law school or had been admitted to a state bar. In 1869, however, Arabella Mansfield became the first woman to be admitted to a state (Iowa) bar. A year later, Ada H. Kepley graduated from the Union College of Law in Chicago, making her the first woman to graduate from law school. Myra Bradwell, who was admitted to the Illinois Bar in 1890, is usually referred to as America’s first practicing woman lawyer. JANE M. FRIEDMAN, *AMERICA’S FIRST WOMAN LAWYER* (Prometheus Books 1993).

93. See Baron, *supra* note 91, at 1074.

94. See *id.*; William T. Schemmel, *Law and Literature*, 45 RES GESTAE 50, 50 (2001).

95. Schemmel, *supra* note 94, at 50.

96. Even today, many first-year (as well as many second- and third-year) law students have only one casebook per class. Recent editions of classic first-year casebooks include, for example, VICTOR E. SCHWARTZ, KATHRYN KELLY, & DAVID F. PARTLETT, PROSSER, WADE, AND SCHWARTZ’S TORTS: CASES AND MATERIALS (11th ed., West/University Casebook Series 2005).

curriculum.⁹⁷ Legal ‘realists’ began to question whether legal principles alone should dictate or explain outcomes,⁹⁸ and literature was identified as one field that could be used to supplement, enrich, or correct legal principles.⁹⁹ In 1908, the *Illinois Law Review* published an article by John Wigmore entitled, “A List of Legal Novels.”¹⁰⁰ Wigmore, frequently identified as the founder of the law and literature movement, believed that it was important for lawyers to study literature to understand the aspects of the legal profession that had become part of the general culture.¹⁰¹

Contemporary law and literature usually is linked to the early works of University of Michigan School of Law Professor James Boyd White who, in 1973, published *The Legal Imagination: Studies in the Nature of Legal Thought and Expression*.¹⁰² Fourteen years later, Seventh Circuit Court of Appeals Judge Posner confirmed the law’s decline as an autonomous discipline.¹⁰³ The 1989 arrival of the *Yale Journal of Law and Humanities* and the *Cardozo Studies in Law and Literature* (renamed *Law and Literature* in 2002) confirmed scholarly recognition of the relationship between law and literature. In the 1980s and 1990s, numerous books addressing the relationship between law and literature

97. Marijane Camilleri, *Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury*, 39 CATH. U. L. REV. 557, 557 (1990) (“The law and literature movement emerged, in part, as a response to the widely proclaimed inadequacies of current legal education, as well as to the perceived limitations in legal analysis.”).

98. See Baron, *supra* note 91, at 1074.

99. See *id.* at 1074-75.

100. *Id.* at 1060, n. 4.

101. See David R. Papke, *Law and Literature: A Comment and Bibliography of Secondary Works*, 73 L. LIBR. J. 421, 422 (1980) (“Wigmore thought it advisable that every lawyer be aware of ‘those features of the profession which have been taken up into general thought and literature.’”).

102. See, e.g., JAMES BOYD WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (University of Chicago Press 1973). See also Craft, *supra* note 91, at 524 (“James Boyd White, a founder of the law-literature movement. . . .”); John Fischer, *Reading Literature/Reading Law: Is There a Literary Jurisprudence?* 72 TEX. L. REV. 135, 136 and n.5 (1993) (“[M]odern efforts to cross disciplinary boundaries are usually thought to start with the early work of James Boyd White.”). White has published several other highly influential books including *WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY* (University of Chicago Press 1984); *HERACLES’ BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW (RHETORIC OF THE HUMAN SCIENCES)* (reprint ed., University of Wisconsin Press 1989); *JUSTICE AS TRANSLATION: AN ESSAY IN CULTURE AND LEGAL CRITICISM* (University of Chicago Press 1990); *ACTS OF HOPE: CREATING AUTHORITY IN LITERATURE, LAW, AND POLITICS* (University of Chicago Press 1995).

103. See Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-1987*, 100 HARV. L. REV. 761 (1987).

were published,¹⁰⁴ and some law schools established law and humanities institutes¹⁰⁵ as well as annual law and literature lecture series.¹⁰⁶

Although the relationship between law and literature received a growing amount of attention in the mid-1980s, the number of law schools that actually used literature in their curricula at that time was unknown. However, in 1987, Elizabeth Villiers Gemmette sent questionnaires to 175 law schools accredited by the American Bar Association in an attempt to identify the number and type of law school classes that incorporated literature.¹⁰⁷ Of the 135 schools that responded, 38 schools reported offering some variation of a law and literature course.¹⁰⁸ In order to update her earlier work, Gemmette conducted a second survey at the end of 1993.¹⁰⁹ This time, Gemmette sent questionnaires to the 199 law schools listed in the Association of American Law Schools' Directory of Law Teachers for 1993-1994, which included law schools located in North America and Canada. Of the 199 law schools surveyed, 84 schools reported offering some variation of a "law and literature" course, 111 schools reported that they did not offer any variation of a "law and literature" course, and one school reported that a "law and literature" course has been approved but had not yet been taught.¹¹⁰

Most of the law and literature courses identified by Gemmette in her first survey, which was published in 1989, fell into three sub-categories: law-in-literature, law-as-literature (sometimes referred to as literature-in-law), and the

104. Classics include ROBERT A. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* (Harvard University Press 1984); RICHARD WEISBERG, *THE FAILURE OF THE WORD: THE PROTAGONIST AS LAWYER IN MODERN FICTION* (Yale University Press 1984); BROOK THOMAS, *CROSS-EXAMINATIONS OF LAW AND LITERATURE: COOPER, HAWTHORNE, STOWE, AND MELVILLE* (CAMBRIDGE STUDIES IN AMERICAN LITERATURE AND CULTURE) (Cambridge University Press 1987); RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (Harvard University Press 1988); RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (Columbia University Press 1992). In addition, Elizabeth Villiers Gemmette has edited a series of books identifying legal themes in drama, novellas, and short stories. See *LAW IN LITERATURE: LEGAL THEMES IN LITERATURE: AN ANNOTATED BIBLIOGRAPHY OF LAW-RELATED WORKS* (Elizabeth Villiers Gemmette ed., White Papers Press 1998); *LAW IN LITERATURE: LEGAL THEMES IN DRAMA* (Elizabeth Villiers Gemmette ed., Whitston Publishing 1995); *LAW IN LITERATURE: LEGAL THEMES IN NOVELLAS* (Elizabeth Villiers Gemmette ed., Whitston Publishing 1996); *LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES* (Elizabeth Villiers Gemmette ed., Whitston Publishing 1995).

105. For example, Chicago-Kent College of Law, *Institute for Law and the Humanities*, at <http://www.kentlaw.edu/ilh/> (last visited June 22, 2005).

106. Loyola University Chicago School of Law, *The Law and Literature Lecture*, at http://www.luc.edu/law/activities/opportunities/law_lit.shtml (last visited June 22, 2005).

107. Elizabeth Villiers Gemmette, *Law and Literature: An Unnecessarily Suspect Class in the Liberal Arts Component of the Law School Curriculum*, 23 VAL. U. L. REV. 267 (1988-1989).

108. *Id.* at 268.

109. See Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. L. REV. 665, 666 (1995).

110. See *id.*

“legal imagination.”¹¹¹ By the time of her second study, which was published in 1995, Gemmette found that:

Eighteen courses utilize fiction only (Law in Literature), thirty-seven courses utilize both fiction and critical works (often, but not always, having some variant of “Law and Literature” in the title), two courses are structured around James Boyd White’s Book *The Legal Imagination*, one course stresses hermeneutics and utilizes, among other texts, a hermeneutic reader, and one course utilizes a reader on storytelling. The courses still fit within the three categories identified in the early survey: Law in Literature, Literature in Law, and the Legal Imagination, but it is now more difficult to pigeon-hole each course in one of the three rubrics.¹¹²

The law-in-literature approach identified by Gemmette used literature to focus on the workings and developments of law, law students, lawyers, and legal issues, themes, and theories.¹¹³ Under the law-in-literature approach, literary texts were analyzed for what they said about the law, how legal issues worked the plot, or what the text and the characters said about what law was or what it should have been. The law-in-literature approach frequently was juxtaposed with the law-as-literature approach, which applied rigorous principles of literary criticism to legal writing in order to identify literary features of statutes, regulations, judicial opinions, contracts, and other forms of legal or jurisprudential writings.¹¹⁴ A third approach identified by Gemmette was the “legal imagination” approach, which relied on James Boyd White’s 1973 work and addressed literary language and style.¹¹⁵ A fourth, novel, approach views “literature as law”

111. *Id.* at 668.

112. *Id.* at 670.

113. See, e.g., Shawn E. Tuma, *Law in Texas Literature: Texas Justice—Judge Roy Bean Style*, 21 REV. LITIG. 551 (2002); Larry M. Wertheim, *Law, Literature and Morality in the Novels of Charles Dickens*, 20 WM. MITCHELL L. REV. 111, 114 (1994) (distinguishing law-in-literature from law-as-literature).

114. See, e.g., BUYORA BINDER & ROBERT WEISBERG, *LITERARY CRITICISMS OF LAW* (Princeton University Press 2000); Lenora Ledwon, *The Poetics of Evidence: Some Applications from Law & Literature*, 21 QUINNIPIAC L. REV. 1145, 1164-72 (2003) (examining the tone, theme, voice, style, characters, heroes, plot structure, and genre of the Federal Rules of Evidence); Mark Kingwell, *Let’s Ask Again: Is Law Like Literature?* 6 YALE J. L. & HUMAN. 317 (1994) (examining whether law is, indeed, like literature); Ronald Dworkin, *How Law is Like Literature*, in A MATTER OF PRINCIPLE 146 (Harvard University Press 1985); Kenji Yoshino, *What’s Past is Prologue: Precedent in Literature and Law*, 104 YALE L.J. 471, 472-73 (1994) (distinguishing law-as-literature from law-in-literature); Terece E. Foster, *But is it Law? Using Literature to Penetrate Societal Representations of Women*, 43 J. LEGAL EDUC. 133 (1993) (distinguishing law as literature from law in literature). In 1982, the Texas Law Review devoted an entire volume to exploring the implications that literary interpretation could have for legal interpretation. *Symposium, Law & Literature*, 60 TEX. L. REV. 373 (1982).

115. William Domnarski, *Law and Literature*, 27 LEGAL STUD. F. 108 (2003).

and applies law to literature and literary themes to further legal study and analysis.¹¹⁶

Since Gemmette's second survey, scholars have argued that the false dichotomy between the law-in-literature and the law-as-literature approaches has broken down.¹¹⁷ Scholars do, however, continue to identify with different "strands," "topics," "divisions," "forks," and "purposes" within the field of law and literature.¹¹⁸ Without limiting any of the important distinctions among the foregoing, this Article describes three very general approaches—humanist, hermeneutic, and narrative—to the relationship between law and literature.

The first general reason that law students, practicing lawyers, and legal scholars should read literature, according to humanist law and literature scholars such as Martha Nussbaum, Linda Hirshman, and Harvey Couch, is that literature is needed to humanize lawyers.¹¹⁹ This humanist approach also is referred

116. Cynthia G. Hawkins-Leon, "Literature as Law": *The History of the Insanity Plea and a Fictional Application within the Law and Literature Canon*, 72 *TEMPLE L. REV.* 381, 383 (1999) ("This Article intends to take a novel tack and view 'literature as law.'").

117. Richard Weisberg, *Notes from the Editorial Advisory Board*, 10 *YALE J. L. & HUMANITIES* 395, 395 (1998) ("I believe that the false dichotomy between 'theory' and 'text'—sometimes stated as between law-as and law-in-literature—has, fortunately, broke down.").

118. Baron, *supra* note 91, at 1063 (identifying three "strands" within law and literature); John D. Ayer, *Aliens are Coming! Drain the Pool!* 88 *MICH. L. REV.* 1584, 1585 (1999) (book review) (identifying four "disparate topics" within law and literature); Thomas Morawetz, *Ethics and Style: The Lessons of Literature for Law*, 45 *STAN. L. REV.* 497, 497-99 (1999) (book review) (identifying four "strands" within law and literature); Kingwell, *supra* note 114, at 320-21 (identifying several "forks" within law and literature). Over time, many different purposes and objectives for using literature in legal education have been identified. These include, but certainly are not limited to: (1) exposing students to grand literary style; (2) helping students to become better critical readers; (3) preparing students for the contemplation of the human condition; (4) strengthening the humanities in the law school curriculum; (5) presenting legal issues (including finding the truth, obedience to the law, equality, theories of punishment, justice) through literature; (6) studying law in dystopian and utopian fiction; (7) contemplating the role, power, moral and ethical responsibility of judges and lawyers; (8) contemplating the human condition and human relations by supplying that which is left out of judicial opinions; (9) considering the role of the lawyer as an artist; (10) addressing the lack of skills in law school students by exposing them to literature that will foster their ability to read a text carefully, to develop oratorical skills and to communicate better through the written and oral word; (11) teaching students to interpret complex legal and literary texts by addressing the inherent difficulties in the language of both law and literature; (12) producing fully-dimensional and well-read lawyers; (13) having fun in law school; (14) considering rebels both inside and outside of literature and to ask ourselves whether we feel differently about fictional rebels than we do about real-life rebels; (15) considering authorship in all its forms; (16) teaching feminist jurisprudence and reflecting on the experience of discrimination against women in and outside of the law; and (17) developing storytelling techniques to aid the lawyer in framing a client's case in narrative terms. Gemmette, *supra* note 109, at 671-72.

119. Letter from Felix Frankfurter, Associate Justice, U.S. Supreme Court, to M. Paul Claussen, Jr. (May 1954), in *THE WORLD OF LAW: THE LAW AS LITERATURE: A TREASURY OF GREAT WRITING ABOUT AND IN THE LAW FROM PLATO TO THE PRESENT* at 725 (Ephraim London ed., Simon and Schuster 1960).

to as the “moral uplift” approach.¹²⁰ In her book *Cultivating Humanity: A Classical Defense of Reform in Liberal Education*, Nussbaum argues that if law students are to become good lawyers and good citizens, they need more than logical ability and knowledge, which tend to be emphasized in law school. Law students also must learn “how to be a human being capable of love and imagination.”¹²¹ Nussbaum further argues that literature helps readers to recognize and share the experiences of different types of people¹²² and to respond to issues that might be difficult to confront.¹²³ Hirshman argues that literature teaches individuals how to make moral decisions by giving them the skills to engage in reflection, consciousness, choice, and responsibility.¹²⁴ Couch argues that literature turns the abstract into the concrete.¹²⁵ All three scholars probably would agree that literature offers law students additional information about human nature,¹²⁶ invites the use of emotional or intuitive reasoning in addition to abstract reasoning,¹²⁷ and provides training in moral decision making.¹²⁸

The second, hermeneutic, approach to law and literature focuses on the need for law students and lawyers to read literary theory.¹²⁹ Under this approach, different sources of legal authority (including case law, statutory and regulatory law, and contracts) are viewed as texts that must be read, interpreted, and understood. Hermeneutic law and literature scholars thus argue that interpretive methodologies embedded in literary studies should be used by law students to better understand the law.¹³⁰ Authors such as Derrida, Foucault, Heidegger, and Wittgenstein are popular among hermeneutic law and literature scholars.¹³¹

120. Baron, *supra* note 91, at 1064.

121. MARTHA NUSSBAUM, *CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN LIBERAL EDUCATION* 14 (Harvard University Press 1997).

122. MARTHA NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 5-6 (Beacon Press, 1996).

123. *See id.*

124. *See* Linda R. Hirschman, *Bronte, Bloom, and Bork: An Essay on the Moral Education of Judges*, 137 U. PA. L. REV. 177, 179 (1988).

125. *See* Harvey Couch, III, *Law and Literature—A Comment*, 17 VAND. L. REV. 911, 914 (1964).

126. *See generally* John H. Wigmore, *A List of Legal Novels*, 2 ILL. L. REV. 574 (1908).

127. *See* Baron, *supra* note 91, at 1064.

128. *See id.*

129. *See id.* at 1064-65.

130. Some law and literature scholars argue that the hermeneutic approach does not require law students and lawyers to read actual literature, just the methodology:

So one need not read the play, but only the methodology. Hermeneutic law-and-lit thus do not argue that lawyers need to read literature. Indeed, besides looking beyond legal materials to sources from the humanities, the interpretive project of hermeneutic law-and-lit has very little connection to the moral uplift project of humanist law-and-lit. The two strands of law-and-lit are neither reading the same works nor asking the same questions.

Id. at 1065.

131. *See* Gary Minda, *Law and Literature at Century's End*, 9 CARDOZO STUD. L & LITERATURE 245, 245 (1997) (“As it turned out, Dickens, Kafka and Melville were being edged-

The third approach to law and literature focuses on narratives and stories told by clients, lawyers, judges, juries, witnesses, and legal doctrine itself.¹³² Narrative law and literature scholars focus on the use of narratives and stories as a persuasive technique,¹³³ for evidentiary purposes, including how the law actually functions in real life,¹³⁴ and for epistemological purposes, including to demonstrate how different individuals can tell inconsistent stories about the same series of events and to question whether just one “truth” really exists.¹³⁵ Some scholars further divide narrative law and literature into trials and storytelling, outsider storytelling, rhetoric and storytelling, storytelling and cognition, evidence in literature and evidence as literature, narrative structure and evidence, popular culture, teaching evidence using narrative, and statutory and literary interpretation.¹³⁶

Like the field of literature and medicine, the field of law and literature also began with descriptive work. The original law and literature scholars tended to explore literary works that focused on a particular aspect or point of law, or a particular attorney, client, or judge.¹³⁷ Over time, the focus of law and literature shifted. Scholars in the field now explore non-legal works, including Beatrix Potter’s *The Tale of Peter Rabbit*, James Fenimore Cooper’s *The Deerslayer*, Toni Morrison’s *Beloved*, and Charlotte Bronte’s *Jane Eyre*, to humanize law students.¹³⁸ Current law and literature scholarship addresses topics such as pedagogy, storytelling, and the law and literature canon.¹³⁹

The three general approaches to the relationship between law and literature overlap in some places. In addition, divisions exist within each approach. For example, humanist law and literature scholars argue about which works of literature law students and lawyers should read.¹⁴⁰ Feminist scholars argue that the law and literature canon does not include voices of women.¹⁴¹ Questions

out by authors like Derrida, Foucault, Heidegger and Wittgenstein as Law and Literature scholars explored the meaning of law’s language as a cultural and literary artifact.”).

132. See Baron, *supra* note 91, at 1066.

133. See *id.*

134. See *id.*

135. See *id.* See also Judy Scales-Trent, *Using Literature in Law School: The Importance of Reading and Telling Stories*, 7 BERKELEY WOMEN’S L.J. 90 (1992); Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2088-94 (1989) (suggesting that the existence of multiple plausible stories of a single event raises questions about the “objectivist theory of truth”).

136. See Lenora Ledwon, *The Poetics of Evidence: Some Applications from Law and Literature*, 21 QUINNIPIAC L. REV. 1145 (2003).

137. See Baron, *supra* note 91, at 1067.

138. See *id.*

139. See Gemmette, *supra* note 109, at 672-92.

140. See Baron, *supra* note 91, at 1067.

141. See, e.g., Foster, *supra* note 114, at 134 (noting that neither the law in literature or the law as literature approaches “seemed cognizant of the experience, the realities, the recurring disaffection of women”); Carolyn Heilbrun & Judith Resnik, *Convergences: Law, Literature, and Feminism*, 99

about how law and literature scholars should read literature also have been raised. “One humanist law-and-lit might read in a New Critical style, while another may be concerned with historical content, and still another might be an intentionalist.”¹⁴² Law and literature scholars also disagree regarding the interpretation of particular literary works.¹⁴³ For example, Robin West and Richard Posner differ in their interpretations of the implications of the works of Franz Kafka on the tenets of law and economics.¹⁴⁴ Similarly, some hermeneutic law and literature scholars disagree regarding the value of particular interpretive methodologies and who or what (the author, the reader, the words of the text, or conventions of reading) should control the meaning of a text.¹⁴⁵ In addition, narrative law and literature scholars working out of different “strands” may disagree regarding the “truth.” Narrative scholars who rely on narratives and stories for evidentiary purposes might argue that one objective truth exists, while scholars who rely on narratives and stories for epistemological purposes might dispute a claim of objective truth by emphasizing the existence of multiple, inconsistent stories.¹⁴⁶ One of the biggest complaints about the field of law and literature relates to its failure to reach and engage practicing attorneys: “Law and literature must enthusiastically embrace the practicing lawyer, lest Law and Literature become a promise to the ear, broken to the hope.”¹⁴⁷ It is this last complaint to which the remainder of this Article is addressed.

III. USING LITERATURE TO ENHANCE A HEALTH LAW CURRICULUM

With rising health care spending,¹⁴⁸ increased government regulation of all

YALE L.J. 1913, 1914 (1990) (“This essay dissents from the creation of a law and literature canon that excludes feminist perspectives.”); Kristin Brandser Kalsem, *Law, Literature, and Libel: Victorian Censorship of ‘Dirty Filthy’ Books on Birth Control*, 10 WM. & MARY J. WOMEN & L. 533 (2004).

142. Baron, *supra* note 91, at 1068 (internal citations and references omitted).

143. *See id.* at 1070.

144. *See id.*

145. *See id.* at 1070-71.

146. *See id.* at 1071.

147. Daniel J. Kornstein, *A Practicing Lawyer Looks Back on Law and Literature*, 10 CARDOZO STUD. L. & LITERATURE 117, 117 (1989) (“The greatest shortcoming in Law and Literature to date has been its failure to reach and engage the ordinary practicing lawyer.”).

148. In 2002, the United States spent approximately \$1.55 trillion, or 14.9% of its gross domestic product, on health care. CENTERS FOR MEDICARE AND MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, 2003 EXPECTED TO MARK FIRST SLOWDOWN IN HEALTH CARE COST GROWTH IN SIX YEARS, *available at* <http://www.cms.hhs.gov/media/press/release.asp?Counter=961> (last visited June 22, 2005); CENTERS FOR MEDICARE AND MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL HEALTH ACCOUNTS: DEFINITIONS, SOURCES, AND METHODS USED IN THE NHE 2002, *available at* <http://www.cms.hhs.gov/statistics/nhe/definitions-sources-methods/> (last visited June 22, 2005). For additional U.S. statistics and a historical summary of American health care expenditures, *see* CENTERS FOR

aspects of the health care industry, and skyrocketing medical malpractice insurance premiums, it is not surprising that health law is one of the fastest growing areas of the legal industry.¹⁴⁹ By August 31, 2003, the American Bar Association's Health Law Section had 8,556 lawyer members, 216 associate members, and 1,383 law student members.¹⁵⁰ Peter M. Leibold, Chief Executive Officer of the American Health Lawyers Association ("AHLA"), reported in 2004 that the AHLA added 500 new members over the last two years and now has a total membership of 9,500.¹⁵¹ Health lawyers tend to practice or specialize in one or more of the following broad and overlapping areas: operations of physicians and other individual health care providers; operations of hospitals and other institutional health care providers; health care fraud, abuse, and compliance; health care business transactions including formation of health care corporations, associations, and other types of legal entities; medical malpractice and risk management; managed care and health insurance; health care reimbursement; tax and accounting issues raised by health care providers; medical research, biotechnology, and clinical ethics issues; health care technology and associated dispute resolution; and employee health care benefits.

According to 2004 data from *U.S. News and World Report*, 151 of the 188 law schools accredited by the American Bar Association offer at least one elective health law course for second- and third-year law students.¹⁵² To train law students for sophisticated health law practices, more than a dozen U.S. law schools have established health law institutes, programs, centers, departments, and certifications,¹⁵³ each of which offers a variety of health law courses that

MEDICARE AND MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL HEALTH CARE EXPENDITURES: HISTORICAL OVERVIEW, at <http://www.cms.hhs.gov/publications/overview-medicare-medicaid/default2.asp> (last visited June 22, 2005).

149. See Arlene Karidis, *Law Firms, Schools Witness Growth in Health Care Focus*, BALT. BUS. J., July 9, 2004, available at <http://baltimore.bizjournals.com/baltimore/stories/2004/07/12/focus2.html> (last visited June 22, 2005) ("Skyrocketing medical malpractice premiums. Complex codes and regulations that are part of the federal government's new patient privacy rules. And a greater use of more health care services. These are a few reasons that a growing number of attorneys are specializing in health care law, arguably the hottest law focus this side of corporate governance counsel.").

150. AMERICAN BAR ASSOCIATION, HEALTH LAW SECTION, ABOUT THE SECTION, available at <http://www.abanet.org/health/06.membership/01.about.html> (noting that, "As of August 31, 2003, the Section had a membership of 8,556 lawyer members, 216 associates and 1,383 law students. Members practice in all areas of law with a special interest in the health care industry.") (last visited June 22, 2005).

151. Karidis, *supra* note 149.

152. U.S. NEWS AND WORLD REPORT, *Advanced Search by Health Law Specialty*, at http://www.usnews.com/usnews/edu/grad/tools/premium/law_srch_advanced.php (last visited June 22, 2005)).

153. *U.S. News and World Report* publishes an annual ranking of American health law programs, the 2005 version of which is available at http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawsp04_brief.php (visited June 22, 2005). The health law programs ranked

address aspects of the intersection between law and health care including, but certainly not limited to, access to health care, alternative medicine, antitrust issues, bioethics, child abuse and neglect, disability discrimination, e-health, food and drugs, gender in health care, genetics, health care financing, health care fraud and abuse, health care quality, HIV/AIDS, human subjects research, long-term care, managed care, medical licensure and discipline, medical malpractice, privacy of health information, physician-hospital contracting, psychiatry, public health, and toxic tort litigation.¹⁵⁴ According to Diane Hoffmann, Director of The Law and Health Care Program at the University of Maryland School of Law, more and more law students are registering for elective health law classes each year,¹⁵⁵

in 2005 include (in alphabetical order): Boston University, Department of Health Law, Bioethics & Human Rights, *available at* http://www.bu.edu/dbin/sph/departments/health_law/index.php (last visited June 22, 2005); Case-Western Reserve University School of Law, The Law-Medicine Center, *available at* http://www.law.case.edu/centers/law_med/content.asp?content_id=33 (last visited June 22, 2005); DePaul University College of Law, Health Law Institute, *available at* http://www.lifelearn.depaul.edu/cert_programs/detail.asp?item=22 (last visited June 22, 2005); Duke University, Center for Genome Ethics, Law & Policy, *available at* <http://www.genome.duke.edu/research/centers/gelp> (last visited June 22, 2005); Georgetown University Law School, Health Law, Policy & Bioethics Program, *available at* http://www.law.georgetown.edu/curriculum/tab_clusters.cfm?Status=Cluster&Detail=60 (last revisited June 22, 2005); Indiana University School of Law, Center for Law and Health, *available at* <http://indylaw.indiana.edu/centers/clh/> (last visited June 22, 2005); Loyola University Chicago School of Law, Institute for Health Law, *available at* <http://loyola.atcommunications.com/home/index.php> (last revisited June 22, 2005); Seton Hall Law School, Health Law & Policy Program, *available at* http://law.shu.edu/healthlaw_programs/index.html (last visited June 22, 2005); St. Louis University School of Law, Center for Health Law Studies, *available at* <http://law.slu.edu/healthlaw/> (last visited June 22, 2005); University of Houston Law Center, Health Law & Policy Institute, *available at* <http://www.law.uh.edu/healthlaw/> (last visited June 22, 2005); University of Louisville, Louis D. Brandeis School of Law, Health Law Specialization, *available at* <http://www.louisville.edu/brandeislaw/academics/specialization.htm> (last visited June 22, 2005); University of Maryland School of Law, The Law and Health Care Program, *available at* <http://www.law.umaryland.edu/specialty/maryhealth/index.asp> (last visited June 22, 2005); University of Minnesota, Consortium on Law and Values in Health, Environment, and the Life Sciences, *available at* <http://www.lifesci.consortium.umn.edu/> (last visited June 22, 2005); University of Pittsburgh, Health Law Certificate Program, *available at* <http://www.law.pitt.edu/academic/programs/health.php> (last visited June 22, 2005); Widener University School of Law, Health Law Institute, *available at* http://www.law.widener.edu/academics/certificate/health_law.shtml (last visited June 22, 2005). Other law schools not included in the *U.S. News and World Report* rankings also have significant health law programs or areas of specialization. *See, e.g.,* Quinnipiac University School of Law, Health Law Concentration, *available at* <http://law.quinnipiac.edu/x628.xml> (last visited June 22, 2005).

154. *See, e.g.,* St. Louis University School of Law, Center for Health Law Studies, Health Law Course Offerings, *available at* http://law.slu.edu/healthlaw/academics/juris_doctor/courses.html (last visited June 22, 2005); University of Houston Law Center, Health Law & Policy Institute, Health Law Course Descriptions, *available at* <http://www.law.uh.edu/healthlaw/> (last visited June 22, 2005); University of Maryland School of Law, The Law and Health Care Program, Curriculum, *available at* <http://www.law.umaryland.edu/maryhealth/curriculumhealth.asp> (last visited June 22, 2005).

155. Karidis, *supra* note 149.

and many health law program graduates are recruited to law firms that have sophisticated health law practices.¹⁵⁶

At last count, eighty-four law schools in the United States and Canada reported offering some variation of a “law and literature” course,¹⁵⁷ and recent scholarship demonstrates that literature is increasingly being used to illuminate specific areas such as tax law.¹⁵⁸ However, despite the large number of health law classes offered by the law schools that have established health law programs or certifications,¹⁵⁹ literature has yet to be routinely incorporated into these health law curricula.¹⁶⁰ The question becomes: How can the field of law and literature movement inform the study of health law? And how can the field of literature and medicine help the field of law and literature in this regard? As discussed in more detail below, literature has descriptive, contextual, and narrative qualities that can enhance traditional case law, statutory, and regulatory approaches to teaching health law.

A. The Descriptive Powers of Literature

Attending and other senior physicians who work in the academic medical center setting (hereinafter, “teaching physicians”) supervise medical students, interns, and residents in their performance of numerous medical procedures. Teaching physicians frequently request operational and regulatory health care attorneys to provide education and counsel regarding the level of teaching

156. Law firms with sophisticated health law practices include, but certainly are not limited to, Faegre & Benson (based in Minneapolis); Harty, Springer, and Mattern (based in Pittsburgh), Jenkins and Gilcrest (based in Dallas); McDermott, Will, and Emery (based in Boston), Ober/Kaler (based in Baltimore), and Vinson & Elkins (based in Houston).

157. Gemmette, *supra* note 109, at 666.

158. Sherman, *supra* note 7.

159. See course descriptions discussed at *supra* note 154.

160. Although Southern Methodist University’s Dedman School of Law does not have a formal health law institute, program, center, department, or certification, Thomas Mayo, J.D., Associate Professor of Law, co-teaches a class entitled “Literature, Medicine, and Law” with Patricia Hicks, M.D., Assistant Professor in the Department of Pediatrics at the University of Texas Southwestern Medical Center and the Children’s Medical Center. The class is offered as a surgery elective for fourth-year medical students at the University of Texas Southwestern Medical School and third-year law students at Dedman School of Law. Typical classes include six medical students and three law students. The online syllabus indicates that the course explores various forms of literature, including novels, plays, short stories, and poems and that: “As much as anything, this course is about professionalism. Students will learn some important things about professionalism and about the profession they are about to enter.” Law, Literature, and Medicine Syllabus (Spring 2004), available at <http://faculty.smu.edu/tmayo/lmsyl.htm> (last visited June 22, 2005); E-mail from Thomas Mayo, Associate Professor of Law, Southern Methodist University, Dedman School of Law, to Stacey Tovino (July 22, 2004, 11:38 CST) (on file with author). In addition, health law professors Timothy Hall and Elizabeth Pendo use film to illuminate various issues in health law. See note 9, *supra*.

physician presence and involvement required to bill federal health care programs for services provided by medical residents.¹⁶¹ Very generally, and subject to certain exceptions, federal law requires teaching physicians to be present during the “critical or key” portions of services provided by residents.¹⁶²

Although health law students may learn about the laws and regulations that govern teaching physician supervision of medical residents in a “Regulation of Physicians” or “Medicare” course, new health lawyers still may find it tricky to educate and counsel their academic medical center clients regarding these issues because of the difficulty in understanding the way in which the American system of graduate medical education actually works. For example, many new health lawyers do not understand why an attending physician might not have time to personally supervise a medical resident throughout his or her performance of the key portion of a medical procedure, or why an attending physician might not have time to document in the medical record the level of supervision provided to the resident. In addition, many new health lawyers may be unfamiliar with the extremely large number of patients that present to urban academic medical centers on a daily basis. In short, many new health lawyers fail to understand that physicians and other health care providers have duties in addition to complying with the law, including attempting to diagnose and treat dozens of patients each day while operating within a health care system that, at times, can constrain medical, ethical, and even legal decision making.

Incorporating Samuel Shem’s *The House of God*¹⁶³ into coursework that covers the laws and regulations governing teaching physician supervision of medical residents can give students a good idea of how graduate medical education actually worked in one urban academic medical center during the 1970s. In *The House of God*, Shem follows the life of a first year internal medicine resident named Roy Basch, as well as several of his classmates, all of whom came from the top of their medical school classes and now are at the bottom of the hospital staff hierarchy.¹⁶⁴ More specifically, though, Shem describes the transformation of these smart, gentle, disciplined interns to sufferers of lack of sleep and psychic torture.¹⁶⁵ Sometimes, the well-intentioned interns make poor medical decisions that could have been prevented with better oversight

161. See, e.g., 42 C.F.R. §§ 415.150-.208 (2005) (federal regulations governing payment for physician services provided in the teaching setting); MEDICARE CARRIER MANUAL § 15016, available at http://www.cms.hhs.gov/manuals/14_car/3b15000.asp#_15016_0 (federal manual provisions governing payment for physician services provided in the teaching setting).

162. MEDICARE CARRIER MANUAL § 15016.B.2.

163. SHEM, *supra* note 11.

164. *Id.* at 13 (“The House medical hierarchy was a pyramid—a lot at the bottom and one at the top.”).

165. *Id.* at 46 (“I couldn’t believe it. One night on call, and a Southern gentleman had become a sadist.”).

by Fats, the chief resident, or an attending physician. In one case, Basch's classmate Potts failed to order steroids for a patient who, unbeknownst to Potts, was suffering from fulminant necrotic hepatitis, a condition that requires steroids to avoid death:¹⁶⁶

Fats asked Potts in a kind voice if he'd given the Yellow Man steroids. Potts said that he'd thought about it, but had not.

"Why didn't you tell me the lab results? Why didn't you ask me for help?" asked Fats.

"Well, I . . . I thought I ought to be able to make the decision alone."¹⁶⁷

Other times, the book-trained interns hurt their patients because they simply do not have sufficient experience performing the medical procedures required by their patients. In one case, Basch attempts to perform a lumbar puncture (LP) on an elderly patient named Sophie. Basch can only draw blood, not the desired spinal fluid:

I tried to recall how to do an LP. At [medical school] I had been particularly bad at these, and to do an LP on an old person was more difficult, for the ligaments in between the vertebrae are calcified, like guano on an old rock. And then there was the fat. Fat is death to a[n intern]. All the anatomical landmarks get obligated in fat, and as I tried to locate Sophie's midline, with my ill-fitting rubber gloves and the rolling fat, it was impossible. I thought I had it, and as I put the needle in, Sophie screamed and leaped . . . I tried another spot on Sophie's fat back. No luck. Another. Nothing. I noticed that blood was coming out of the spinal needle, so I knew I wasn't where it was supposed to be. Where was it? . . .¹⁶⁸

Rough details such as these usually are not described in law school casebooks. Are the medical interns in *The House of God* properly supervised? If the chief resident or an attending physician evaluates each of the interns' medical decisions before it is carried out, or provides in-person supervision of each of the interns' medical procedures, how will the other patients in the hospital get treated? In addition, how will the interns learn to practice medicine if they never have the opportunity to exercise their own medical judgment or practice their clinical skills? Law students who reflect on the activities of the quasi-fictional characters in Shem's *House of God* can come away with a better understanding of the difficulties faced by well-intentioned interns and other physicians who try to adhere to black-and-white medical, ethical, and legal principles that sometimes fail to provide any guidance in actual health care encounters.

166. *Id.* at 42.

167. *Id.* at 49.

168. *Id.* at 58-59.

House of God is descriptive of one academic medical center's system of graduate medical education; however, numerous other literary works could further health law students' understanding of different aspects of medicine. For example, Sinclair Lewis' *Arrowsmith* contrasts an image of a grubby, rural medical practice from 1897¹⁶⁹ with an image of a sleek, urban sub-specialty clinic from 1915—a “most competent, most clean and brisk and visionless medical factory . . . ”¹⁷⁰ The reader thus learns to distinguish the turn-of-the-century American country doctor from the specialty physician of the twentieth century. The reader also follows the progress of the main character, Martin Arrowsmith, through medical school, internship, and general practice, through positions in a public health department, a surgical clinic, and the laboratory of an urban institute and, finally, through field research in the West Indies and independent research at a retreat in Vermont. In so doing, the reader gains an understanding of the different environments in which physicians work as well as an appreciation for the various interests that can arise in each environment and threaten medical and scientific independence.

Literature also may be used to describe specific aspects of providing medicine or therapy in various health care settings, including the mental health setting (*One Flew Over the Cuckoo's Nest* by Ken Kesey,¹⁷¹ *A Beautiful Mind* by Sylvia Nasar,¹⁷² *The Quiet Room: A Journey Out of the Torment of Madness* by Lori Schiller and Amanda Bennett,¹⁷³ and *Dora: An Analysis of a Case of Hysteria*

169. Lewis describes the central room of Doc Vickerson's office as:
at once business office, consultation room, operating-theater, living-room, poker den, and warehouse for guns and fishing tackle. Against a brown plaster wall was a cabinet of zoological collections and medical curiosities . . . On the wall was a home-stuffed pickerel on a home-varnished board. Beside the rusty stove, a sawdust-box cuspidor rested on a slimy oilcloth worn through to the threads. . . . The most unsanitary corner was devoted to the cast-iron sink, which was oftener used for washing egg breakfast plates than for sterilizing instruments. On its ledge were a broken test-tube, a broken fishhook, an unlabeled and forgotten bottle of pills, a nail-bristling heel, a frayed cigar-butt, and a rusty lancet stuck in a potato.

LEWIS, *supra* note 44, at 3.

170. *Id.* at 270.

171. KESEY, *supra* note 46.

172. SYLVIA NASAR, *A BEAUTIFUL MIND: THE LIFE OF MATHEMATICAL GENIUS AND NOBEL LAUREATE JOHN NASH* (Simon & Schuster/Touchstone Edition 1998).

173. LORI SCHILLER & AMANDA BENNETT, *THE QUIET ROOM: A JOURNEY OUT OF THE TORMENT OF MADNESS* (Warner Books 1994). *See also* WILLIAM STYRON, *DARKNESS VISIBLE: A MEMOIR OF MADNESS* (Random House 1990); MARTHA MANNING, *UNDERCURRENTS: A THERAPIST'S RECKONING WITH HER OWN DEPRESSION* (Harper 1994); SUSANNA KAYSSEN, *GIRL, INTERRUPTED* (Vintage Books 1993); Elizabeth Wurtzel, *PROZAC NATION: YOUNG AND DEPRESSED IN AMERICA*; PATTY DUKE & GLORIA HOCHMAN, *A BRILLIANT MADNESS: LIVING WITH MANIC-DEPRESSIVE ILLNESS* (Bantam Books 1992); KATE MILLETT, *THE LOONY-BIN TRIP* (Touchstone 1990); ROSS DAVID BURKE, *WHEN THE MUSIC'S OVER: MY JOURNEY INTO SCHIZOPHRENIA* (Richard Gates & Robin Hammond, eds., Basic Books 1995). *See generally* Anne

by Sigmund Freud¹⁷⁴), in the teaching (and county) hospital setting (*The Spirit Catches You and You Fall Down* by Anne Fadiman¹⁷⁵), and in the public health setting (*The Plague* by Albert Camus¹⁷⁶). Additional works are descriptive of the methods by which health care providers treat specific diseases including cancer (*Cancer Ward* by Aleksandr Solzhenitsyn, "Tell Me a Riddle" by Tillie Olsen,¹⁷⁷ "The Death of Ivan Ilych" by Leo Tolstoy,¹⁷⁸ "A Mastectomy" by Fanny Burney,¹⁷⁹ *Wit* by Margaret Edson,¹⁸⁰ *Cancer in Two Voices* by Sandra Butler and Barbara Rosenblum,¹⁸¹ *A Whole New Life* by Reynolds Price,¹⁸² and *Refuge: An Unnatural History of Family and Place* by Terry Tempest Williams¹⁸³), HIV/AIDS (*Angels in America* by Tony Kushner,¹⁸⁴ *The Normal Heart* by Larry Kramer,¹⁸⁵ and *Borrowed Time: An AIDS Memoir* by Paul Monette),¹⁸⁶ tuberculosis ("Tristan" by Thomas Mann¹⁸⁷ and *Illness as Metaphor* by Susan Sontag¹⁸⁸), and cerebral vascular incidents and brain injuries (*The Diving Bell and the Butterfly* by Jean-Dominique Bauby¹⁸⁹ and *The Man with a Shattered World* by A.R. Luria¹⁹⁰).

At the most simple level, then, literature can be a rich source of human experience relating to medical education, practice, and hierarchies that health law students can draw upon to understand issues with which they may be personally

Hudson Jones, *Voices from the Darkness: Narratives of Mental Illness*, 9 MEDICAL HUMANITIES REV. 9 (Spring 1995) (reviewing eight narratives of mental illness published between 1990 and 1995).

174. Sigmund Freud, *Dora: An Analysis of a Case of Hysteria*, in PETER GAY, ED., THE FREUD READER (W.W. Norton 1989).

175. FADIMAN, *supra* note 14.

176. ALBERT CAMUS, THE PLAGUE (Stuart Gilbert trans., Vintage International 1991).

177. Olsen, *supra* note 31.

178. Tolstoy, *supra* note 32.

179. Fanny Burney, *A Mastectomy*, in JOYCE HEMLOW ET AL., EDs., THE JOURNALS AND LETTERS OF FANNY BURNEY at 595 (Clarendon Press 1975).

180. EDSON, *supra* note 47.

181. BUTLER & ROSENBLUM, *supra* note 39.

182. PRICE, *supra* note 35.

183. See TERRY TEMPEST WILLIAMS, REFUGEE: AN UNNATURAL HISTORY OF FAMILY AND PLACE (2d ed., Vintage Books 2001).

184. TONY KUSHNER, ANGELS IN AMERICA: A GAY FANTASIA ON NATIONAL THEMES (Theatre Communications Group 1995).

185. LARRY KRAMER, THE NORMAL HEART (Reissue ed., Penguin 1990).

186. MONETTE, *supra* note 38. See also PAUL MONETTE, LOVE ALONE: 18 ELEGIES FOR ROG (St. Martin's Press 1988).

187. Thomas Mann, *Tristan*, in DEATH IN VENICE AND OTHER STORIES (David Luke trans., Bantam Classic 1988).

188. SUSAN SONTAG, ILLNESS AS METAPHOR AND AIDS AND ITS METAPHORS (Farrar, Straus and Giroux 1989).

189. JEAN-DOMINIQUE BAUBY, THE DIVING BELL AND THE BUTTERFLY (First Vintage International ed. 1997).

190. ALEKSANDR ROMANOVICH LURIA, THE MAN WITH A SHATTERED WORLD: THE HISTORY OF A BRAIN WOUND (Harvard University Press 1972).

unfamiliar. Knowledge of fictional physicians and other healers can help law students better understand their future clients' thoughts, worries, and beliefs about patients and health care industry colleagues. This knowledge can promote identification and understanding between the legal and medical professions.

B. The Contextual Powers of Literature

Although literature's descriptive powers are important, literature has additional, contextual, qualities that may further inform the study of health law in ways that the traditional approaches do not. For example, Marsha Garrison and Carl Schneider's casebook, *The Law of Bioethics: Individual Autonomy and Social Regulation: Cases and Materials*,¹⁹¹ is an excellent text for an introductory, or survey, bioethics and the law course. In addition to important cases and relevant statutes and regulations, the text also contains numerous other materials that illuminate the practical application of the many legal principles discussed therein. In the portion of the textbook discussing informed consent, for example, the textbook cites numerous articles and studies addressing whether informed consent really works, whether and how patients want to receive information about their physical and mental health conditions (including empirical evidence about patient preferences), whether patients understand and remember what they are told, and how well patients and physicians make medical decisions.¹⁹² The text more than suits the goals of many introductory bioethics courses.

Like many classes designed to provide an introduction to numerous important health law topics (the depth of study of which is always constrained by the number of hours assigned to the course), *The Law of Bioethics* does not specifically describe the nature of health care encounters *before* the watershed informed consent opinions¹⁹³ and the enactment of hospital patients' rights legislation and regulation¹⁹⁴ in the mid-twentieth century. Without providing additional, specific examples of the paternalistic behavior that *Schloendorff v. Society of New York Hospital* and *Canterbury v. Spence*¹⁹⁵ and later legislation attempted to remedy, the textbook could leave an advanced health law student without a complete understanding of the history, purposes, and goals of our current informed consent statutes, regulations, and principles.

191. MARSHA GARRISON & CARL E. SCHNEIDER, *THE LAW OF BIOETHICS: INDIVIDUAL AUTONOMY AND SOCIAL REGULATION: CASES AND MATERIALS* (West/American Casebook Series 2003).

192. *See id.* at 27-146.

193. *Schloendorff v. Society of New York Hosp.*, 211 N.Y. 125 (1914); *Canterbury v. Spence*, 464 F.2d 772 (D.C. Cir. 1972).

194. *See, e.g.*, 42 C.F.R. § 482.13(b) (Medicare Conditions of Participation provision relating to patients' rights); 25 TEX. ADMIN. CODE § 133.42(a) (Texas hospital patients' rights provisions).

195. *See* note 193, *supra*.

Literature, such as Aleksandr Solzhenitsyn's *Cancer Ward*,¹⁹⁶ can fill the gaps created by courses designed around watershed cases, statutes, and regulations. *Cancer Ward* takes place in the men's cancer wing of a hospital in Soviet Central Asia in the mid-twentieth century. The reader is first introduced to Pavel Nikolayevich Rusanov, a Communist Party functionary who suffers from a rapidly growing cancerous tumor of the neck. In the first chapter, which is aptly titled "No Cancer, Whatsoever," Rusanov asks Ludmila Afanasyevna Dontsova, the chief of the hospital's radiation therapy department, whether he has cancer. Dontsova responds, "Good heavens, no. Of course not."¹⁹⁷ Later, when the physicians arrive at Rusanov's bed for his first experience of morning rounds, Rusanov complains: "No one shows the slightest interest, nobody bothers to make a diagnosis!"¹⁹⁸ Dontsova replies: "Generally speaking, we don't have to tell our patients what's wrong with them, but if it will make you feel any better, very well—it's lymphoma"¹⁹⁹ Rusanov asks one more time, "You mean it's not cancer?" and Dontsova responds "Of course it's not."²⁰⁰

Dontsova's response to Rusanov is not atypical. Throughout *Cancer Ward*, the physicians refuse to tell the cancer patients about their true conditions as well as the risks and benefits of proposed and current treatments, including drugs that contain hormones and damaging X rays. During rounds, the physicians refuse to even speak any words such as "cancer," "sarcoma," or "carcinoma" that will indicate the patients' true conditions; instead, the physicians use benign words like "ulcer," "gastritis," "inflammation," and "polyps."²⁰¹

Rusanov is not the only cancer patient who struggles to learn the truth about his condition. Another cancer patient, Oleg Kostoglotov, also expresses to Dontsova his frustration at the physicians' failure to involve the patients in their own treatment decisions and, more generally, the inability of the patients to act autonomously and effectively:

"You see, you start from a completely false position. No sooner does a patient come to you than you begin to do all his thinking for him. After that, the thinking's done by your standing orders, your five-minute conferences, your program, your plan and the honor of your medical department. And once again I become a grain of sand, just as I was in camp. Once again nothing *depends* on me."²⁰²

196. SOLZHENITSYN, *supra* note 12.

197. *Id.* at 1.

198. *Id.* at 49.

199. *Id.*

200. *Id.*

201. *Id.* at 361.

202. *Id.* at 76.

When Dontsova vaguely replies that, “The clinic obtains written consent from every patient before every operation,”²⁰³ Kostoglotov responds:

“Thank you! Thank you for that anyway! Even though it’s only for its own protection, the clinic at least does that. Unless there’s an operation you simply don’t ask the patient anything. And you never explain anything! But surely X rays have some effect too?”²⁰⁴

“. . . Why do you assume you have the right to decide for someone else? Don’t you agree it’s a terrifying right, one that rarely leads to good? You should be careful. No one’s entitled to it, not even doctors.”²⁰⁵

In a later chapter aptly entitled “The Right to Treat,” Dontsova contemplates her conversation with Kostoglotov:

Was it possible? Could the question arise of a doctor’s *right* to treat? Once you begin to think like that, to doubt every method scientifically accepted today simply because it might be discredited or abandoned in the future, then goodness knows where you’d end up. After all there were cases on record of death from aspirin. A man might take the first aspirin of his life and die of it! By that reasoning it became impossible to treat anyone. By that reasoning all the daily advantages of medicine would have to be sacrificed.²⁰⁶

Near the end of the book, Kostoglotov notes that the other cancer patients continue to ask the same questions over and over again (“Is it or isn’t it cancer? Will they cure me or won’t they? What other remedies are there that might help?”).²⁰⁷ In addition, the reader learns that Dontsova also has cancer and that she, unlike Rusanov and Kostoglotov, does not want to be involved in her own diagnostic process: “[T]he patient shouldn’t know everything. I always thought so and I still do. When the time comes for the discussion, I shall leave the room.”²⁰⁸ When another physician finally discusses Dontsova’s case with her, the physician vaguely explains to Dontsova that she will have to travel to Moscow for treatment. Dontsova, much like Rusanov and Kostoglotov, was left trying to interpret what the physician really meant:

(He had said, “If there has to be an operation.” Was he trying to say it mightn’t be necessary? Or perhaps he meant that . . . No, it must be worse than that. . .)²⁰⁹

203. *Id.*

204. *Id.*

205. *Id.* at 79.

206. *Id.* at 90.

207. *Id.* at 476.

208. *Id.* at 451.

209. *Id.* at 453.

Cancer Ward provides readers insight into Soviet medicine and medical ethics in the mid-twentieth-century. *Cancer Ward* also prompts the reader to explore the personal qualities and motivations of particular physicians, as well as the intimate relationships that develop between the physicians and their patients. Why does Dontsova think that she has the right to make decisions for Rusanov and Kostoglotov? Does Dontsova's arguable "right to treat" actually lead to better decision making? How should Dontsova and the other physicians address Rusanov's need to know whether he has cancer and his specific diagnosis? What exactly should they tell him? How can the physicians involve Kostoglotov in his own treatment decisions and, more generally, empower him to act autonomously and effectively? Will the written consent form mentioned by Dontsova satisfy Rusanov's and Kostoglotov's concerns? Why does Dontsova not want to be involved in her own treatment decisions? If Dontsova were your patient today, would you allow her to remain relatively uninvolved in her care? Stated another way, would Dontsova have the "right" to remain uninformed?

When Dontsova tells Kostoglotov that the clinic obtains a consent form from each surgical patient, Kostoglotov argues that the forms are only for the clinic's own protection and that no consent forms or explanations are given to those patients who undergo non-surgical treatments such as drugs and radiation.²¹⁰ *Cancer Ward* thus distinguishes between the legal approach,²¹¹ which emphasizes the use of forms to disclose relevant risks, and true informed consent conversations, in which the physician provides the patient with useful and understandable information and the patient is encouraged to ask questions and become and remain involved. *Cancer Ward* also shows the reader that the legal approach is not necessarily flawed. Instead, the problem lies in Dontsova's exclusive reliance on legal forms and her inability to carry out additional and important conversations with her patients.

Many other works of literature provide contextual information that can enhance the traditional common law, statutory, or regulatory approach to teaching legal principles. Health law students who are studying the statutes, regulations, and standards that limit a health care provider's use of seclusion and physical and chemical restraints for behavior management²¹² can better under-

210. *Id.* at 76.

211. *See, e.g.*, 25 TEX. ADMIN. CODE § 601.2 (listing all of the risks that must be disclosed to patients undergoing particular medical treatments and surgical procedures); *id.* § 601.4 (adopting a standard consent form that physicians shall use to inform patients of the possible risks and hazards associated with particular medical treatments and surgical procedures).

212. *See, e.g.*, 42 C.F.R. § 482.13(e) (addressing the use of restraints for acute medical or surgical care); § 482.13(f) (addressing the use of seclusion and restraint for behavioral management); JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS, HOSPITAL ACCREDITATION STANDARDS (2004), Standards PC.11.10-PC.12.190 (addressing the use of restraints for acute medical or surgical care and the use of seclusion and restraints for behavior management).

stand how health care providers can abuse such methods (and why we need strong patients' rights standards for mental health patients) after reading Sylvia Nasar's *A Beautiful Mind*²¹³ and Ken Kesey's *One Flew Over the Cuckoo's Nest*.²¹⁴ Students studying Title VI of the Civil Rights Act and the rights of individuals with limited English proficiency ("LEP")²¹⁵ can better understand the need for accurate communications with (and understanding of the religion and culture of) individuals who have LEP after reading Anne Fadiman's *The Spirit Catches You and You Fall Down*.²¹⁶ Fraud and abuse or other health law courses that cover the federal and state anti-kickback statutes,²¹⁷ federal and state physician self-referral laws,²¹⁸ and prohibitions against fee-splitting²¹⁹ can provide students with concrete examples of behavior (using Chaucer's character sketch of The Physician in *The Canterbury Tales*,²²⁰ George Eliot's *Middlemarch*,²²¹ and Sinclair Lewis's *Arrowsmith*²²²) that would be considered illegal in the United States today.

C. The Narrative Qualities of Literature

In addition to its descriptive and contextual qualities, literature also has additional narrative qualities that can help law students apply complicated health law principles to elaborate fact patterns and to provide better legal advice. These narrative qualities are evident in George Eliot's *Middlemarch*²²³ and Anne Fadiman's *The Spirit Catches You and You Fall Down*.²²⁴

213. NASAR, *supra* note 172.

214. KESEY, *supra* note 46.

215. DEPARTMENT OF HEALTH AND HUMAN SERVICES, GUIDANCE TO FEDERAL FINANCIAL ASSISTANCE RECIPIENTS REGARDING TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AFFECTING LIMITED ENGLISH PROFICIENT PERSONS, *available at* <http://www.hhs.gov/ocr/lep/revisedlep.html> (last visited June 22, 2005).

216. FADIMAN, *supra* note 14.

217. 42 U.S.C. § 1320a-7b(b) (federal anti-kickback statute); FLA. STAT. § 456.054 (Florida anti-kickback statute); TEX. OCC. CODE § 102.001 et seq. (Texas anti-kickback statute).

218. 42 U.S.C. § 1395nn (federal physician self-referral law); FLA. STAT. § 456.053 (Florida Patient Self-Referral Act).

219. TEX. OCC. CODE § 164.052(a)(13) (interpreted by the Texas State Board of Medical Examiners to prohibit fee-splitting by a physician). *See* Texas State Board of Medical Examiners, *Corporate Practice of Medicine*, *available at* <http://www.tsbme.state.tx.us/faq/cpq.htm> (last visited June 22, 2005).

220. CHAUCER, *supra* note 43, at 9 (the Physician "had his apothecaries quite ready to send him drugs and syrups, for each of them worked to the other's profit—their friendship was not newly begun.").

221. ELIOT, *supra* note 13, at 94 (Lydgate intends to "act stoutly on the strength of a recent legal decision, and simply prescribe, without dispensing drugs or taking percentage from druggists.").

222. LEWIS, *supra* note 44, at 161 (Dr. Adam Winter offers to split fees with Arrowsmith).

223. ELIOT, *supra* note 13.

224. FADIMAN, *supra* note 14.

1. Middlemarch

Regulatory health care attorneys spend a significant amount of time analyzing financial and other arrangements into which their health care industry clients desire to enter. Among other legal issues, many of the proposed arrangements will implicate the federal anti-kickback statute,²²⁵ the physician self-referral law (better known as the “Stark Law”),²²⁶ and analogous state laws,²²⁷ which can be tricky laws for any health care lawyer to interpret and apply. One common fact pattern involves a hospital that desires to provide some type of benefit, or incentive, to a physician to recruit the physician to join the hospital’s medical staff. Both the federal anti-kickback statute and the Stark Law permit certain types of physician recruitment arrangements, although the arrangements must satisfy a number of specific criteria.²²⁸

Although health law students can memorize the elements of an anti-kickback or Stark Law violation as well as the regulatory criteria that must be satisfied for a safe harbor to the anti-kickback statute or an exception to the Stark Law to apply, understanding the complex relationships between hospitals and physicians is more difficult. In consultation with outside counsel, a hospital may propose one type of arrangement, the target physician may counter with a different type of arrangement, and the negotiations between the hospital and the physician can go on for quite some time. By the time the arrangement has been approved by the target physician, the arrangement can look nothing like what outside counsel first proposed. For example, what started out as a formal medical director arrangement that satisfied a safe harbor to the anti-kickback statute and an exception to the Stark Law may end up as an informal loan arrangement that satisfies neither a safe harbor nor an exception.

How can literature teach health law students to provide better legal advice? Unlike judicial opinions and government advisory opinions, in which the judge or administrative agency succinctly summarizes only the most relevant facts of the case into a paragraph or two (and which may be condensed even further by the editors of a law school casebook), longer works of literature generally tell complex and multi-staged stories. When the plot is intricate, or the narrator happens to be descriptive, curious, or circular (as are many of our health industry clients when describing proposed arrangements), the reader must read (and sometimes, re-read) especially carefully, make connections, unite relevant facts, and determine what further questions must be asked.

225. 42 U.S.C. § 1320a-7b(b).

226. *Id.* § 1395nn.

227. *See, e.g.*, FLA. STAT. § 456.053 (Florida Patient Self-Referral Act); FLA. STAT. § 456.054 (Florida anti-kickback statute); TEX. OCC. CODE § 102.001 et seq. (Texas anti-kickback statute).

228. *See* 42 U.S.C. § 1395nn(e)(5); 42 C.F.R. § 411.357(e); 42 C.F.R. § 1001.952(n).

For these reasons, George Eliot's *Middlemarch*²²⁹ would be instructive to health law students studying the legal prohibitions against physician self-referrals and kickbacks. In *Middlemarch*, a new physician named Lydgate arrives in the town of Middlemarch, England, ambitious to investigate the primitive tissue, to start a new fever hospital, and to avoid financial and other influences that could interfere with his medical and scientific pursuits.²³⁰ In the beginning of the book, Lydgate recognizes the importance of maintaining the independent value of his work and ignoring financial conflicts of interest. For example, Lydgate refuses to take a percentage (or kickback) from druggists, as was the practice of Chaucer's Physician in *The Canterbury Tales*,²³¹ because Lydgate saw "that the best security for his practicing honestly according to his belief was to get rid of systematic temptations to the contrary."²³² Thus, Lydgate had considered, and had even been warned by another character, Farebrother, about the need to remain financially and politically independent.²³³ In the meantime, the reader learns that management of a new hospital, presumably owned and operated by a wealthy banker named Bulstrode, may be conferred to Lydgate²³⁴ and that Lydgate and Bulstrode are "often in consultation."²³⁵ By Book V of VIII, the reader learns that Bulstrode has appointed Lydgate the medical director²³⁶ or the "chief medical superintendent"²³⁷ of the hospital. Because the position carries no salary,²³⁸ Lydgate continues to remain financially independent of Bulstrode. During the same time, Lydgate meets and weds a woman named Rosamond Vincy and incurs financial obligations the new couple can ill afford. By Book VII, Lydgate requires one thousand pounds to clear himself of debt and, beaten down by these debts, finally accepts a loan from Bulstrode.

Because the anti-kickback statute and the Stark Law are predicated upon the exchange of remuneration and the existence of a financial relationship, respect-

229. ELIOT, *supra* note 13.

230. He was but seven-and-twenty, an age at which many men are not quite common—at which they are hopeful of achievement, resolute in avoidance, thinking that Mammon shall never put a bit in their mouths and get astride their backs, but rather that Mammon, if they have anything to do with him, shall draw their chariot.

Id. at 91.

According to Mathew and Luke, Mammon is the personification of riches and material wealth. *Id.* and n.2.

231. CHAUCER, *supra* note 43.

232. ELIOT, *supra* note 13, at 94-95.

233. *See id.* at 282, 283.

234. *See id.* at 59 (Bulstrode states, "I, for my part, hail the advent of Mr. Lydgate. I hope to find good reason for confiding the new hospital to his management.").

235. *Id.* at 114.

236. *Id.* at 272 ("Bulstrode has put the medical direction into my hands.").

237. *Id.* at 281 ("Lydgate was to be chief medical superintendent . . .").

238. *Id.* at 273 ("And the course is all the clearer from there being no salary in question to put my persistence in an equivocal light.").

ively, between a referral source such as a physician and an entity such as a hospital that can provide federal government-reimbursed health care, neither statute would have been implicated in the beginning of the book when Lydgate was steadfast in his determination to remain financially independent of Bulstrode and his hospital.²³⁹ Even in the middle of the book, when Bulstrode places the medical direction of the hospital in the hands of Lydgate, neither statute would have been implicated because Lydgate's position carried no salary or other type of perquisites. However, by the end of the novel, when Lydgate agrees to borrow one thousand pounds from Bulstrode, a financial relationship has been created between a potential referral source (Lydgate) and a provider of health care services (Bulstrode and his hospital), thus (hypothetically) implicating federal and state anti-kickback and physician self-referral laws.²⁴⁰

In *Middlemarch*, the multiple stories and relationships unfold very slowly and demonstrate how even the most steadfast characters can develop and change over time as they come to understand, accept, and reevaluate the situation in which they find themselves. Unlike judicial opinions, which tend to be written in a straightforward, summary, manner, literature is valuable precisely for its tendency, like real life, to include complicated fact patterns and unpredictable human emotions and behavior. Health law students who study the physician-hospital relationship described in *Middlemarch* may be prompted to warn future clients about the implications of formal medical directorship arrangements as well as informal loan arrangements, both of which can implicate federal and state anti-kickback and self-referral laws.

2. *The Spirit Catches You and You Fall Down*

A second example of the benefits literature (in this case, literary nonfiction) has to offer the traditional case law, regulatory, and statutory approaches to teaching health law, relates to Section 601 of Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits persons and organizations that receive federal financial assistance from using race, color, or national origin as a basis for discrimination in a program or activity that benefits from such assistance.²⁴¹ In

239. Both the federal anti-kickback statute and the Stark Law require the referred services to be paid in whole or in part by a federal health care program such as the Medicare program for a violation to exist. Since the town of Middlemarch, England, likely does not have residents that are beneficiaries of the United States's Medicare program, the story could not implicate either the anti-kickback statute or the Stark Law in real life. However, the story is valuable for presenting a complicated fact pattern that is characteristic of the manner in which many hospital-physician relationships develop.

240. *Id.*

241. 42 U.S.C. § 2000d. Section 602 of Title VI authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity to effectuate the provisions of Section 601 by issuing rules, regulations, or orders of general applicability. 42 U.S.C.

1974, the United States Supreme Court²⁴² interpreted Title VI's prohibition against discrimination based on national origin to include discrimination against individuals with limited English proficiency (individuals with LEP).²⁴³ Since then, the federal Department of Health and Human Services (HHS) has issued and re-issued a guidance document (Guidance) designed to interpret the application of Title VI's prohibitions to individuals with LEP and to assist recipients of financial assistance from HHS in fulfilling their responsibilities to provide meaningful access to individuals with LEP.²⁴⁴ Because Title VI, its implementing

§ 2000d-1. In response to Section 602, the federal Department of Health and Human Services (HHS) issued regulations that forbid recipients of its financial assistance from utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. 45 C.F.R. § 80.3(b)(2).

242. *Lau v. Nichols*, 414 U.S. 563 (1974). *Lau* involved an action by students of Chinese ancestry who did not speak English for relief against a San Francisco school system based on its failure to provide the students with English language instruction. The Supreme Court held that the system's failure to provide English language instruction denied the students a meaningful opportunity to participate in public educational program in violation of Title VI. *Id.* at 563.

243. HHS defines individuals with LEP as individuals "who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English." 68 Fed. Reg. at 47313-14.

244. On August 11, 2000, President Clinton issued Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." 65 Fed. Reg. 50121 (Aug. 16, 2000). Executive Order 13166 required every federal agency that provides financial assistance to non-federal entities to publish guidance addressing how financial assistance recipients can provide meaningful access to individuals with LEP and comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." On that same day, the Department of Justice (DOJ) issued a general guidance document addressed to "Executive Agency Civil Rights Officers" that established general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency, 65 Fed. Reg. 50123 (Aug. 16, 2000) (hereinafter, DOJ Guidance). Consistent with Executive Order 13166, HHS developed an initial guidance documents for recipients of its financial assistance on August 30, 2000. Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency, 65 Fed. Reg. 52762 (Aug. 30, 2000). Following instructions in an October 26, 2001, memorandum from Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, clarifying and reaffirming the DOJ's guidance in light of the United States Supreme Court's opinion in *Alexander v. Sandoval*, 532 U.S. 275 (2001), HHS republished its existing guidance document for additional public comment on February 1, 2002. Office for Civil Rights; Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency, 67 Fed. Reg. 4968 (Feb. 1, 2002). Following its February 2002 republication, HHS received nearly 200 public comments

regulations, and the HHS Guidance apply to physicians, hospitals, nursing homes, home health agencies, managed care organizations, state health departments, state Medicaid agencies, and other types of health care providers and organizations that receive federal financial assistance from HHS,²⁴⁵ the requirements set forth in these authorities are an important part of any curriculum that focuses on health law.

The HHS Guidance clarifies that the failure of a recipient of federal financial assistance from HHS to take reasonable steps to provide individuals with LEP a meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI and HHS's implementing regulations. Law students generally demonstrate no difficulty in identifying the four-factor analysis that should be used to determine the extent of a covered entity's obligation to provide LEP services,²⁴⁶ recognizing the reasonable steps that should be taken by a covered entity to ensure meaningful access to individuals with LEP, including oral interpretation and written translation services,²⁴⁷ applying the criteria set forth in the written translation "safe-harbor" (the satisfaction of which will be considered strong evidence of compliance with the covered entity's written-translation obligations),²⁴⁸ and identifying the elements of an appropriate LEP

raising serious concerns about coverage, compliance costs, the use of family and friends as interpreters, and requesting additional assistance from OCR regarding compliance with the general and specific provisions of HHS' initial guidance. In addition, on July 8, 2002, Assistant Attorney General Boyd issued a memorandum expressing the need for consistency across federal agency LEP guidance documents and specifically requesting HHS to use the DOJ's latest guidance published at 67 Fed. Reg. 41455 (June 18, 2002) as a model. Accordingly, HHS on August 8, 2003, published revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (Aug. 8, 2003), which had a 120-day comment period that ended January 6, 2004.

245. HHS explains that covered entities include any state or local agency, private institution or organization, or any public or private individual that: (1) operates, provides or engages in health, or social service programs and activities; and (2) receives federal financial assistance from HHS directly or through another recipient/covered entity. 68 Fed. Reg. at 47313.

246. HHS explains that, "While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) the number or proportion of individuals with LEP to be served or likely to be encountered by the program or grantee; (2) the frequency with which individuals with LEP come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs." 68 Fed. Reg. at 47314. See generally *id.* at 47314-16 (discussing each of the four factors).

247. *Id.* at 47316-19.

248. The safe harbor protects HHS recipients who provide written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally. If there are fewer than fifty persons in a language group that reaches the five percent trigger, satisfaction of the safe harbor does not require the recipient to translate vital written materials but, instead, to provide written notice

implementation plan.²⁴⁹ However, students without LEP, as well as students who have little or no experience working with individuals with LEP, frequently have difficulty understanding how a lack of understanding of language and culture can lead to tragedies as serious as those studied in coursework focusing on medical malpractice.

For these reasons, health law teachers should consider incorporating Anne Fadiman's *The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures* into coursework that covers Title VI and the HHS Guidance relating to individuals with LEP.²⁵⁰ As indicated by its subtitle, Fadiman's book explores the clash between a refugee family from Laos over the care of their daughter, Lia Lee, and the physicians and other health care providers at a county and teaching hospital in Merced, California.²⁵¹ At the time the book was written, Lia's parents, who could neither read nor write in any language, were part of a large Hmong community in Merced made up of refugees from the CIA-run "Quiet War" in Laos.²⁵² Like many Hmong, the Lee family steadfastly adhered to the rituals and spiritual beliefs of their Hmong ancestors. In contrast, Lia's pediatricians, Neil Ernst and Peggy Philip, strictly adhered to the highest standards of care established by the traditions of Western medicine. Although both Lia's parents and her physicians wanted what they thought was best for Lia, the lack of understanding between them ultimately may have played a role in Lia's brain death.

When Lia was three months old, her sister slammed the front door of the Lee family apartment.²⁵³ Shortly thereafter, Lia's eyes rolled up, her arms jerked over her head, and she fainted.²⁵⁴ The Lee family interpreted Lia's display as indicating that the noise of the door had frightened Lia's soul, which subsequently left her body and became lost.²⁵⁵ The Lee family specifically identified

in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials free of cost. *Id.* at 47319.

249. *Id.* at 47319-21.

250. FADIMAN, *supra* note 14.

251. Although county hospitals have a reputation for being overcrowded, dilapidated, and dingy, Fadiman explains that Merced Community Medical Center (MCMC) had a modern, 42,000-square-foot wing that housed coronary care, intensive care, and transitional care units; 154 medical and surgical beds; medical and radiology laboratories outfitted with state-of-the-art diagnostic equipment; and a blood bank. *Id.* at 24. MCMC also was a teaching hospital, staffed in part by the faculty and residents of a nationally known family practice residency affiliated with the University of California at Davis. *Id.* Like many other hospitals operating during the 1980's, however, MCMC also was plagued by financial problems.

252. *Id.* at 46 ("they are illiterate in Hmong as well as in English"); *id.* at 98 ("Because Foua and Nao Kao could not read or write in any language . . .").

253. *Id.* at 20.

254. *Id.*

255. *Id.*

Lia's symptoms as *qaug dab peg*, which means "the spirit catches you and you fall down."²⁵⁶ Although the Hmong acknowledge that *qaug dab peg* is a serious condition, they also consider it an illness of some distinction.²⁵⁷

Over the next few months, Lia had at least twenty similar incidents in which the spirit caught her and she fell down.²⁵⁸ Following a few such incidents, Lia's parents brought Lia to Merced Community Medical Center (MCMC) which, on any given day, had one or more Hmong patients in each of its units due to a one-to-five ratio of Hmong residents to total residents in Merced.²⁵⁹ Because MCMC cared for so many Hmong, MCMC was supposed to hire bilingual staff members to interpret for its Hmong patients.²⁶⁰ However, Fadiman explains that:

There are no funds in the hospital budget specifically earmarked for interpreters, so the administration has detoured around that technicality by hiring Hmong lab assistants, nurse's aides, and transporters, who are called upon to translate in the scarce interstices between analyzing blood, emptying bed pans, and rolling postoperative patients around on gurneys. In 1991, a short-term federal grant enabled MCMC to put skilled interpreters on call around the clock, but the program expired the following year. Except during that brief hiatus, there have often been no Hmong-speaking employees of any kind present in the hospital at night. Obstetricians have had to obtain consent for cesarean sections or episiotomies using embarrassed teenaged sons, who have learned English in school, as translators. Ten-year-old girls have had to translate discussions of whether or not a dying family member should be resuscitated. Sometimes not even a child is available. Doctors on the late shift in the emergency room have often had no way of taking a patient's medical history, or of asking questions as Where do you hurt? How long have you been hurting? What does it feel like? Have you had an accident? Have you vomited? Have you had a fever? Have you lost consciousness? Are you pregnant? Have you taken any medications? Are you allergic to any medications? Have you recently eaten? . . . I asked one doctor what he did in such cases. He said, "Practice veterinary medicine."²⁶¹

It is not surprising, then, that when Lia Lee first arrived at MCMC on October 24, 1982, MCMC's lack of adequate language (and cultural) interpretation services prevented adequate communication between the Lee family and the MCMC physicians. At that time, MCMC had not yet hired any interpreters

256. Fadiman explains that the spirit referred to in this phrase is a soul-stealing *dab*; *peg* means to catch or hit; and *qaug* means to fall over with one's roots still in the ground, as grain might be beaten down by wind or rain. *Id.* at 20.

257. *Id.* at 20-21.

258. *Id.* at 23.

259. *Id.* at 24.

260. *Id.* at 25.

261. *Id.* at 25.

“de jure or de facto.”²⁶² And, because Lia’s symptoms had stopped by the time she got to the hospital, Lia’s parents had no way of explaining to the on-call medical resident what had happened. Accordingly, the resident found only that Lia had a cough and congested chest, which was diagnosed after X-ray as “early bronchiopneumonia or tracheobronchitis.”²⁶³ Unable to communicate with Lia or her parents, the resident had no way of knowing that Lia’s bronchial congestion probably was caused by aspiration of saliva or vomit during a seizure, and he discharged Lia with a prescription for ampicillin.²⁶⁴ During the discharge process, Lia’s father signed a piece of paper that stated, “I hereby acknowledge receipt of the instructions indicated above,” and the instructions stated, “Take ampicillin as directed. Vaporizer at cribside. Clinic reached as needed 383-7007 ten days.”²⁶⁵ The “ten days” meant that Lia’s father was supposed to call the affiliated Family Practice Center in ten days for a follow-up appointment.²⁶⁶ Because he could not read the paper and because no one could translate the paper for him, Lia’s father failed to present Lia to her follow-up appointment.²⁶⁷

When Lia had another display of symptoms on November 11, 1982, eighteen days later after her first visit to MCMC, Lia’s parents brought her again to the emergency room, “where the same scene was repeated, and the same misdiagnosis made.”²⁶⁸ Only on Lia’s third visit to MCMC, when her head was still rolling back and her arms and legs were jerking at the time she was brought in (and an English-speaking relative was available to translate for Lia’s parents), did the resident identify that Lia was suffering from a grand mal episode and correctly diagnose Lia with epilepsy.²⁶⁹ The resident had no way of knowing, however, that Lia’s parents had already diagnosed Lia as having an illness in which the spirit catches you and you fall down, and Lia’s parents had no way of knowing that the resident diagnosed Lia’s condition as epilepsy.²⁷⁰

Between the ages of eight months and four and a half years, Lia was admitted to MCMC seventeen times and had more than one hundred outpatient visits to MCMC’s emergency room and Family Practice Center.²⁷¹ By the time Lia was four and a half, her parents had been told to give her, in “varying combinations, varying amounts, and varying numbers of times a day,” Tylenol, ampicillin, amoxicillin, Dilantin, Phenobarbital, erythromycin, Ceclor, Tegretol,

262. *Id.*

263. *Id.* at 26.

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.* at 26.

269. *Id.* at 27-30.

270. *Id.* at 28.

271. *Id.* at 38.

Benadryl, Pediazole, Vi-Daylin Multivitamins with Iron, Alupent, Depakene, and Valium.²⁷² In an attempt to adhere to the highest standard of care and give Lia just the right mixture and quantity of medications, Lia's physicians changed her prescriptions twenty-three times in less than four years.²⁷³ Unfortunately, Lia's parents had no idea what the different labels on the prescriptions said or what each of the prescriptions was for.²⁷⁴ Even if a Hmong-speaking relative or hospital janitor was available to translate at the time the prescription was issued, Lia's parents had no way of writing down the instructions because they were illiterate in both Hmong and English.²⁷⁵ And, because the prescriptions changed so frequently, Lia's parents forgot what they were told.²⁷⁶ The result was that Lia's parents failed to administer the appropriate medications and Lia suffered additional seizures and developmental delay that resulted in a state agency removing Lia from the custody of her parents for a period lasting more than ten months.²⁷⁷

During and after this time, communication between Lia's parents and Lia's physicians remained difficult, if not impossible. For example, Lia's parents continued to believe that a Hmong shaman could cure Lia and that the Western style of treatment and drugs prescribed by Lia's physicians was making Lia sick. On the other hand, Lia's physicians believed that it was their duty to attempt to prevent further seizures and developmental delay by identifying and prescribing the perfect combination of medications. By further example, when one of her physicians decided to transfer Lia to a critical care unit in a Fresno hospital because MCMC did not have the capability of treating Lia's condition, Lia's parents believed that Lia was transferred because the physician had vacation plans.²⁷⁸

On November 25, 1986, Lia was admitted to MCMC after suffering "the big one"—a grand mal seizure in which she continuously seized for nearly two hours.²⁷⁹ When Lia finally stopped seizing, she was unconscious but breathing.²⁸⁰ After being transferred to another hospital where she suffered from septic shock and was diagnosed as brain dead, Lia was transferred back to MCMC and ultimately was released into her parents' care at their home.²⁸¹ Although physicians

272. *Id.* at 46.

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.* at 47-59, 81-92.

278. *Id.* at 145.

279. *Id.* at 140-44.

280. *Id.* at 144.

281. *Id.* at 147-153.

did not expect her to live more than a few hours or days, Lia reportedly is still alive and lovingly cared for at home by her mother and siblings.²⁸²

The Spirit Catches You and You Fall Down is valuable as a teaching tool precisely because it is capable of doing that which Title VI, the HHS Guidance, and many judicial opinions interpreting Title VI cannot. In addition to identifying the language barriers that can exist between English-speaking health care providers and patients with LEP, it also explores the profound cultural differences that created and exacerbated the rift between Lia's parents and her physicians. Fadiman's work also prompts students to explore what, if anything, could have been done differently, to prevent "the big one." Indeed, at the conclusion of her book, Fadiman specifically asks her readers questions such as: What if Lia's physicians had diagnosed her epilepsy and prescribed anti-seizure medications earlier? What if, instead of placing Lia in foster care following her parent's failure to administer her medications, Lia's physicians had arranged for a visiting nurse to administer her medications? What if Lia's physicians had received cross-cultural training while in medical school or residency? What if MCMC had attempted to seek out a Hmong leader who could straddle both the American and the Hmong cultures and attempt to mediate between the physicians and the Lee family? And, what if MCMC had better interpreters and more funds so that it could strictly adhere to the HHS Guidance?²⁸³

The Spirit Catches You and You Fall Down shows that although language is a large barrier to the provision of Western medical care, it certainly is not the only one. Cultural differences frequently accompany language differences, and the combination of these differences can prove disastrous. After studying Title VI, its implementing regulations, and the HHS Guidance, law students will be prepared to advise physicians and other health care providers regarding their responsibility to provide oral interpretation and written translation services to individuals with LEP. After reading *The Spirit Catches You and You Fall Down*, the same students will have a better understanding of the broader conflicts facing their provider clients and, as such, may be prompted to ask additional questions and pose additional (in this case, perhaps cultural) solutions for their clients' problems.

IV. CONCLUSION

One of the goals of legal education is to produce lawyers who are capable of grasping the essential facts of a situation, identifying the relevant legal issues, applying the law to such issues, and advising clients accordingly. The descriptive

282. *The Spirit Catches You and You Fall Down*, Updates, available at <http://www.spiritcatchesyou.com/updates.htm> (last visited June 22, 2005).

283. See FADIMAN, *supra* note 14, at Reader's Guide (located at the conclusion of the book).

powers of literature can enhance the traditional common law, statutory, and regulatory approaches to health law education by helping law students better understand the history of medicine, the American system of medical education, the environments in which health care providers practice, the essential non-physician personnel in the health care industry, and the financial, social, and political influences that can interfere with physicians' medical and scientific aspirations and raise ethical and legal dilemmas. Stated another way, the descriptive powers of literature can improve students' ability to grasp the essential facts of a particular health care encounter or arrangement.

Literature also is unmatched in its ability to provide a rich, detailed, and frequently historical context in which the law students can place the statutes, regulations, cases, and principles under study. As such, literature can help students understand relevant legal issues. Finally, literature that tells complex and multi-staged stories about physicians and their interactions with their patients and their business colleagues can teach law students to listen more carefully to their future clients' problems and version of the facts, to apply complicated health law principles to elaborate fact patterns, and to provide better legal advice.

The field of literature and medicine has helped the field of law and literature by identifying medically-themed literature that can prompt law students to recognize and share the experiences of physicians and other health care providers and that can promote identification and sympathy between the legal and medical professions. Law teachers working out of a health law program can take advantage of the benefits of medically-themed literature by incorporating one or more carefully selected literary works into the syllabus of an existing health law course or seminar or by offering a "Literature, Medicine, and Health Law" seminar that focuses on a number of literary works.

Please note that literature has powers and qualities in addition to those discussed in this Article. For example, literature can encourage health law students to identify and engage in ethical behavior.²⁸⁴ By further example, literature can "humanize" health law students, or help them understand and identify with different types of people.²⁸⁵ These additional powers and qualities are worthy of exploration in future research.

284. See, e.g., PETER SINGER & RENATA SINGER, *THE MORAL OF THE STORY: AN ANTHOLOGY OF ETHICS THROUGH LITERATURE* (Blackwell Publishing 2005) (a collection of fiction, drama, and poetry designed to encourage the reader to ponder ethical questions).

285. See, e.g., NUSSBAUM, *supra* note 121, at 10-11 (discussing the concept of the narrative imagination, defined as the ability to "think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person's story, and to understand the emotions and wishes and desires that someone so placed might have.").

