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## THREE WAYS OF LOOKING AT A HEALTH LAW AND LITERATURE CLASS

*Jennifer Bard,\* Thomas W. Mayo\*\* & Stacey A. Tovino\*\*\**

The authors of this Article participated in a panel at the American Society of Law, Ethics & Medicine Conference in 2008 that discussed the use of literary materials in law school to teach medical ethics (and related matters) in a law school setting. Each author comes at the topic from a different perspective based on his or her own experience and background. This Article and the panel on which it was based reflect views on how literature can play a valuable role in helping law students, as well as medical students, understand important legal and ethical issues and concepts in health law and bioethics.

In Part I, Stacey Tovino introduces the parallel fields of “literature and medicine” and “law and literature” and identifies several common approaches to the use of literature, literary non-fiction, and illness narratives in medical and law school curricula. Tovino places current coursework in Law, Literature, and Medicine in its proper historical and pedagogical context.

In Part II, Tom Mayo describes the Law, Literature, and Medicine seminar he offers to third-year law students at Southern Methodist University’s Dedman School of Law and fourth-year medical students at The University of Texas Southwestern Medical School. Mayo examines the features of his course that make it effective, suggests literature that may be used by health law professors who do not have the oppor-

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tunity to teach a seminar devoted to literature, and comments on the ongoing medical humanities debate.

In Part III, Jennifer Bard describes the Law, Medicine, and Literature course she offered for the first time at Texas Tech University School of Law during the Spring 2008 semester. Bard examines the texts and films she assigned to build a working knowledge of medicine and science and the literature she selected to immerse her students in medico-legal situations with which they were unfamiliar.

## I. INTRODUCTION

Literature has had a long relationship with medicine<sup>1</sup> 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.<sup>2</sup> Literature also has had a long relationship with the law through literary images of various legal processes, lawyers, and judges;<sup>3</sup> works of literature by lawyer-writers;<sup>4</sup> and the use of literature as therapy.<sup>5</sup> This Part examines the

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1. See, e.g., 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."); 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., 2000) ("Literature and medicine have a long history of cross pollination."); Kathryn Montgomery Hunter et al., *The Study of Literature in Medical Education*, 70 ACAD. MED. 787, 787 (1995) ("Literature has long had a deep and nourishing relationship with medicine."); M. Faith McLellan & Anne Hudson Jones, *Why Literature and Medicine?*, 348 LANCET 109, 109 (1996) ("[T]he affinity between literature and medicine has long been recognised 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., 1990); see also McLellan & Jones, *supra* note 1, at 110.

3. See generally TRUMAN CAPOTE, IN COLD BLOOD (Reprint ed., Vintage Books 1994) (1966); NATHANIEL HAWTHORNE, THE SCARLET LETTER (Reissue ed., Bantam Books 1965) (1850); FRANZ KAFKA, THE TRIAL (Breon Mitchell trans., Schocken Books 1995) (1925); HERMAN MELVILLE, BILLY BUDD (1924), *reprinted in BILLY BUDD AND OTHER STORIES* (Harold Beaver ed., Penguin Books 1989).

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).

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 (1997).

development of the fields of 'literature and medicine' and 'law and literature' and places current coursework in law, literature, and medicine in its proper historical and pedagogical context.<sup>6</sup>

### A. *The Field of Literature and Medicine*

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.<sup>7</sup> 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.<sup>8</sup>

In response, a handful of U.S. medical schools began to incorporate humanities coursework into their curricula in the 1960s.<sup>9</sup> The first two medical schools to establish humanities departments were the Pennsylvania State University College of Medicine in 1967 and Southern Illinois University School of Medicine in 1969.<sup>10</sup> One stated purpose of these programs was to remedy a perceived over-emphasis on the technological aspects of medicine.<sup>11</sup>

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.<sup>12</sup> 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 with a new journal, *Literature and Medicine*, which was devoted to exploring literary and medical knowledge and

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6. Portions of Part I were originally printed as Stacey A. Tovino, *Incorporating Literature into a Health Law Curriculum*, 9 J. MED. & L. 213 (2005). Inquires related to that article should be sent to Editor-in-Chief, the *Michigan State University Journal of Medicine and Law*, 215 Law College Building, East Lansing, Michigan 48824; or msujml@msu.edu.

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

8. See *id.*

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

10. See Hawkins & McEntyre, *supra* note 1, at 22 n.1.

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

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

understanding.<sup>13</sup> 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.<sup>14</sup> In 1995, the *Annals of Internal Medicine* accepted and published an article entitled *Literature and Medicine: Contributions to Clinical Practice*,<sup>15</sup> and, in 1996, *The Lancet* accepted and published an article entitled *Why Literature and Medicine?*<sup>16</sup> The publication of these articles in 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.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> For example, Marcus Aurelius's *Meditations* and Sophocles's *Philoctetes* investigate the sources of and reasons for suffering, including nature<sup>20</sup> and

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13. See Hawkins & McEntyre, *supra* note 1, at 4; LITERATURE & MED., Johns Hopkins University Press (1982 to present), available at [http://muse.jhu.edu/journals/literature\\_and\\_medicine/](http://muse.jhu.edu/journals/literature_and_medicine/).

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

15. *Id.*

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

17. See Charon et al., *supra* note 1, at 600; see also Joanne Trautmann, *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.").

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

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

20. 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.") (circa 167 A.D.).

divine punishment.<sup>21</sup> Tillie Olsen's *Tell Me a Riddle* and Leo Tolstoy's *The Death of Ivan Ilych* provide examples of how individuals live—lyrically and consciously for Eva<sup>22</sup> and rigidly and successfully for Ivan Ilych<sup>23</sup>—and whether and how they can die meaningfully.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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

21. See SOPHOCLES, PHILOCTETES 22 (Keith Dewhurst trans., Oberon Books 2000) (409 B.C.) (identifying divine punishment as the source of Philoctetes's suffering: "Oh, how I suffer and the gods hate me!").

22. See TILLIE OLSEN, *Tell Me a Riddle*, in TELL ME A RIDDLE (Dell Publishing 1989) (1961). Because Tillie Olsen gives Eva no last name, I refer to her simply as Eva.

23. See LEO TOLSTOY, *The Death of Ivan Ilych*, in THE DEATH OF IVAN ILYCH AND OTHER STORIES (Aylmer Maude & J.D. Duff trans., Signet Classic 2003) (1886).

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

25. See John Donne, *Devotions upon Emergent Occasions*, in DEVOTIONS UPON EMERGENT OCCASIONS TOGETHER WITH DEATH'S DUEL (University of Michigan Press 1959) (1624); see also 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, 238 (1984) (discussing Donne's analogy between illness of the body and illness of the soul); William B. Ober, *John Donne as a Patient: Devotions upon Emergent Occasions*, 9 LITERATURE & MED. 21, 27 (1990) ("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 . . .").

26. See REYNOLDS PRICE, *A WHOLE NEW LIFE* (1994).

27. See TOLSTOY, *supra* note 23, 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 fulfil the very tiresome demands of propriety by attending the funeral service and paying a visit of condolence to the widow.").

family members.<sup>28</sup> 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.<sup>29</sup> Sandra Butler and Barbara Rosenblum's *Cancer in Two Voices* describes the social, emotional, and physical effects of breast cancer on both authors' lives.<sup>30</sup> 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.<sup>31</sup> Literature can be 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.<sup>32</sup>

A second approach to the relationship between literature and medicine relies on images of physicians, other health care providers, and their ethical dilemmas.<sup>33</sup> For example, Chaucer and Moliere provide examples of quackery and greed through their physician and apothecary characters in *The Canterbury Tales* and *The Imaginary Invalid*.<sup>34</sup> *Arrowsmith* by Sinclair Lewis<sup>35</sup> and *Middlemarch* by George Eliot<sup>36</sup> 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'

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28. See FRANZ KAFKA, *THE METAMORPHOSIS* 51 (Stanley Corngold ed. & trans., Bantam Books/Bantam Classic 1986) (1915) ("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.").

29. See PAUL MONETTE, *BORROWED TIME: AN AIDS MEMOIR* (1988).

30. See SANDRA BUTLER & BARBARA ROSENBLUM, *CANCER IN TWO VOICES* (2d ed., Spinsters Ink Books 1996) (1991).

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

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

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

34. See GEOFFREY CHAUCER, *THE CANTERBURY TALES* (R.M. Lumiansky trans., Washington Square Press 1971) (circa 1386); Moliere, *The Imaginary Invalid*, in *THE MISANTHROPE AND OTHER PLAYS* (Donald M. Frame trans., Signet Classic 1968) (circa 1673).

35. See SINCLAIR LEWIS, *ARROWSMITH* (Signet Classic 1998) (1925).

36. See GEORGE ELIOT, *MIDDLEMARCH* (Penguin Classics 2003) (1872).

confidence and inhibit growth.<sup>37</sup> *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.<sup>38</sup> 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."<sup>39</sup>

The third approach to the relationship between literature and medicine focuses on the works of physician-writers.<sup>40</sup> This approach allows medical students and physicians "to examine what they do in medicine and what medicine has done to them."<sup>41</sup> 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.<sup>42</sup> Other popular physician-writers whose works are frequently used in medical humanities programs include William Carlos Williams<sup>43</sup> and Richard Selzer.<sup>44</sup> 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.<sup>45</sup> The works of physician-writers also "provide a mirror for practitioners who face parallel or analogous issues in their own lives,"<sup>46</sup> 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

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37. See KEN KESSEY, *ONE FLEW OVER THE CUCKOO'S NEST* (Signet 1963) (1962).

38. See MARGARET EDSON, *WIT* (1999); OLSEN, *supra* note 22; TOLSTOY, *supra* note 23.

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

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

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

42. See SAMUEL SHEM, *THE HOUSE OF GOD* 392 (2003).

43. See WILLIAM CARLOS WILLIAMS, *THE DOCTOR STORIES* (1984).

44. See RICHARD SELZER, *LETTERS TO A YOUNG DOCTOR* (1983).

45. See RICHARD SELZER, *Brute*, in *LETTERS TO A YOUNG DOCTOR* 59-63 (1983); WILLIAM CARLOS WILLIAMS, *The Use of Force*, in *THE DOCTOR STORIES* 56-60 (1984); see also Anne Hudson Jones, *Narrative in Medical Ethics*, 318 *BRIT. MED. J.* 253, 254 (1999) (discussing *The Use of Force* and *Brute*).

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



passive healing.<sup>47</sup> 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.<sup>48</sup> In active healing, “[c]atharsis is provided by the act of expressing oneself.”<sup>49</sup> 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.<sup>50</sup> In contrast, passive healing occurs when reading or watching brings some type of insight or therapy to the reader.<sup>51</sup> Reading *The House of God*, for example, may passively heal overwhelmed or disillusioned medical students by offsetting the negativity of their classroom and clinical experiences, as well as affirming their own lives and the lives of others.<sup>52</sup>

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.<sup>53</sup> The first reason relates to the ability of the physician to understand and interpret his or her patient’s story. Here, the argument is that literature can teach medical students how to listen more carefully to patient stories, establish better patient relationships, and recognize and

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

48. See *id.* at 16.

49. *Id.*; SHEM, *supra* note 42, at 392 (“I began writing *The House of God* for catharsis . . .”).

50. See Ober, *supra* note 25, at 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.”).

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

52. See *id.*

53. 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.

interpret multiple, and sometimes contradictory, texts relating to the patient.<sup>54</sup> 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.

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.<sup>55</sup> The aesthetic approach is addressed in the literature by Joanne Trautmann Banks, Edward Gogel, and James Terry, among others.<sup>56</sup> 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.<sup>57</sup> 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."<sup>58</sup> 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."<sup>59</sup> 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 unlikely or noncompliant patients, including a man described as "hugely

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

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

56. See Jones, *supra* note 2, at 18-21; see also Hunter et al., *supra* note 1, at 789 ("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."); McLellan & Jones, *supra* note 1, at 109; James S. Terry & Edward L. Gogel, *Poems and Patients: The Balance of Interpretation*, 6 LITERATURE & MED. 43 (1987); Banks, *supra* note 24, at 35-36 (arguing that the training a medical student needs to read literature properly is training that is extremely useful in medical practice).

57. 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").

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

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

drunk—toxic, fuming, murderous—a great mythic beast broken loose in the city<sup>60</sup> and a potentially diphtheric child who refuses to allow the doctor to look at her throat.<sup>61</sup> Importantly, the works of literature that provoke moral reflection need not be “about” a physician or medicine to be useful. Dante’s *Divine Comedy*,<sup>62</sup> for example, may be used to teach students how to live a good life and how to engage in the ethical practice of medicine.<sup>63</sup>

Today, the aesthetic and ethical approaches appear to have merged under the rubric of *narrative ethics*.<sup>64</sup> 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.<sup>65</sup> In narrative ethics, readers “provide an (aesthetic) analysis of the parts that explains how the whole achieves its (ethical) meaning.”<sup>66</sup> Narrative ethics thus requires physicians to know the principles of medical ethics<sup>67</sup> and to understand the life of a particular patient in all of its moral complexity.<sup>68</sup>

In an ideal form, narrative ethics recognizes 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 voices and stories.<sup>69</sup> Proponents of narrative ethics argue that narrative competence improves ethical delib-

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60. SELZER, *supra* note 44, at 60.

61. See WILLIAMS, *supra* note 43, at 57.

62. DANTE ALIGHIERI, *THE DIVINE COMEDY* (John Ciardi trans., 2003) (circa 1321).

63. See Jones, *supra* note 45, at 254, 254 n.13 (citing Anne Hunsaker Hawkins, *Charting Dante: The “Inferno” and Medical Education*, 11 LITERATURE & MED. 200 (1992)).

64. 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.”).

65. 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., 1994).

66. 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.”).

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

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

69. Jones, *supra* note 45, at 255.

erations by helping individuals to identify and formulate the ethical problem, select a reasonable interpretation among those available, and validate the chosen interpretation.<sup>70</sup>

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.<sup>71</sup> "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."<sup>72</sup> As the field of literature and medicine developed, the focus of teaching shifted "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."<sup>73</sup>

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;"<sup>74</sup> however, recent statistics reported by the Association of American Medical Colleges show that many medical school students have very little training in the humanities.<sup>75</sup>

70. See Charon, *supra* note 65, at 261. Narrative ethics has been explored in detail by Rita Charon, Anne Hudson Jones, and Kathryn Montgomery Hunter. See generally KATHRYN MONTGOMERY HUNTER, *DOCTORS' STORIES: THE NARRATIVE STRUCTURE OF MEDICAL KNOWLEDGE* (1991); Charon, *supra* note 65, at 260-83; Kathryn Montgomery Hunter, *Narrative, Literature, and the Clinical Exercise of Practical Reason*, 21 J. MED. & PHIL. 303 (1996); 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 45, at 253-56.

71. See Hunter et al., *supra* note 1, at 788.

72. *Id.*

73. McLellan & Jones, *supra* note 1, at 110. See also Hunter et al., *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.").

74. Harvard Medical School, *Frequently Asked Questions*, <http://hms.harvard.edu/admissions/default.asp?page=admissions> (last visited Mar. 21, 2009).

75. Assoc. of Am. Med. Colls., Table 18: MCAT and GPAs for Applicants and Matriculants to U.S. Medical Schools by Primary Undergraduate Major, 2008, available at <http://www.aamc.org/data/facts/2008/mcatgpabymaj08.htm> (reporting that 1,023—or less than 6%—of the 18,036 medical school matriculants in 2008 majored in the humanities).

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. 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.<sup>76</sup>

### B. *The Field of Law and Literature*<sup>77</sup>

Until the Civil War, individuals who practiced law in the United States generally were men of letters.<sup>78</sup> 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.<sup>79</sup> Langdell reportedly “did much to undermine the relationship between law and other disciplines, including literature.”<sup>80</sup> Late nineteenth and early twentieth century law school casebooks, which contained cop-

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76. Hawkins & McEntyre, *supra* note 1, at 8.

77. 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); 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 . . . .”); 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 . . . .”); 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, 31 (1995) (referring to 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) (“[T]he Law and Literature Movement . . . .”); 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.”); 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) . . . .”). Without limiting any of these important distinctions, I will refer to law and literature as a field.

78. See Baron, *supra* note 77, at 1074.

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

80. Schemmel, *supra* note 79, at 50.

ies of judicial opinions and very little other material,<sup>81</sup> 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 curriculum.<sup>82</sup> "[L]egal 'realists' began to question whether legal principles alone [should] dictate or explain outcomes,"<sup>83</sup> and literature was identified as one field that could be used to supplement, enrich, or correct legal principles.<sup>84</sup> In 1908, the Illinois Law Review published an article by John Wigmore entitled, *A List of Legal Novels*.<sup>85</sup> Wigmore, frequently identified as the founder of the law and literature field, 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.<sup>86</sup>

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*.<sup>87</sup> Fourteen years later, Seventh Circuit Court of Appeals Judge Richard Posner confirmed the law's decline as an autonomous discipline.<sup>88</sup> The 1989 arrival of the *Yale Journal of Law and*

81. Even today, many law students have only one casebook per class.

82. Marijane Camilleri, *Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury*, 39 CATHOLIC 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.").

83. See Baron, *supra* note 77, at 1074.

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

85. *Id.* at 1060 n. 4.

86. See David R. Papke, *Law and Literature: A Comment and Bibliography of Secondary Works*, 73 LAW LIBR. J. 421, 421-22 (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.'").

87. See, e.g., JAMES BOYD WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (1973); see also Craft, *supra* note 77, 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, 136 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* (1984); *HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW* (reprint ed., 1989); *JUSTICE AS TRANSLATION: AN ESSAY IN CULTURE AND LEGAL CRITICISM* (1990); *ACTS OF HOPE: CREATING AUTHORITY IN LITERATURE, LAW, AND POLITICS* (Univ. of Chicago Press 1995).

88. See generally Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962-*

*Humanities* and the *Cardozo Studies in Law and Literature* (re-named *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 were published,<sup>89</sup> and some law schools established law and humanities institutes<sup>90</sup> as well as annual law and literature lecture series.<sup>91</sup>

Out of the growing relationship between law and literature emerged three sub-categories of coursework, scholarship, and analysis: law-in-literature, law-as-literature (sometimes referred to as literature-in-law), and “legal imagination.”<sup>92</sup> The law-in-literature approach used literature to focus on the “workings and developments of law, lawyers, legal themes, and theories.”<sup>93</sup> Under the law-in-literature approach, literary texts were analyzed for what they said about the law, how legal issues worked in 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

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1987, 100 HARV. L. REV. 761 (1987).

89. See, e.g., ROBERT A. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* (1984); RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988); 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 WEISBERG, *THE FAILURE OF THE WORD: THE PROTAGONIST AS LAWYER IN MODERN FICTION* (1984); RICHARD WEISBERG, *POETHICS AND OTHER STRATEGIES OF LAW AND LITERATURE* (1992). In addition, Elizabeth Villiers Gemmette has edited a series of books identifying legal themes in drama, novellas, and short stories. See generally *LAW 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).

90. E.g., Chicago-Kent College of Law, Institute for Law and the Humanities, <http://www.kentlaw.edu/ilh/> (last visited Mar. 21, 2009).

91. Loyola University Chicago School of Law, Alumni Relations: Lecture Series, [http://alumni.luc.edu/site/PageServer?pagename=Law\\_Learn\\_LectureSeries#Literature](http://alumni.luc.edu/site/PageServer?pagename=Law_Learn_LectureSeries#Literature) (last visited Mar. 21, 2009).

92. Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. L. REV. 665, 668 (1995).

93. Teree E. Foster, *But Is It Law? Using Literature to Penetrate Societal Representations of Women*, 43 J. LEGAL EDUC. 133, 133 (1993); see also Shawn E. Tuma, *Law in Texas Literature: Texas as Justice – Judge Roy Bean Style*, 21 REV. LITIG. 551, 553-55 (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).

literary features of statutes, regulations, judicial opinions, contracts, and other forms of legal or jurisprudential writings.<sup>94</sup> A third approach was the “legal imagination” approach, which relied on James Boyd White’s 1973 work and addressed literary language and style.<sup>95</sup> A fourth, novel approach views “literature as law” and applies law to literature and literary themes to further legal study and analysis.<sup>96</sup>

Scholars now argue that the false dichotomy between the law-in-literature and the law-as-literature approaches has broken down.<sup>97</sup> Scholars do, however, continue to identify with different strands, topics, divisions, forks, and/or purposes within the field of law and literature.<sup>98</sup> Without limiting any

94. Foster *supra* note 93, at 133-34 (distinguishing law *as* literature from law *in* literature). See generally GUYORA BINDER & ROBERT WEISBERG, LITERARY CRITICISMS OF LAW (2000); RONALD DWORKIN, *How Law is Like Literature*, in A MATTER OF PRINCIPLE 146 (1985); Mark Kingwell, *Let's Ask Again: Is Law Like Literature?*, 6 YALE J. L. & HUMAN. 317 (1994) (examining whether law is, indeed, like literature); Lenora Ledwon, *The Poetics of Evidence: Some Applications from Law & Literature*, 21 QLR 1145, 1164-72 (2003) (examining the tone, theme, voice, style, characters, heroes, plot structure, and genre of the Federal Rules of Evidence); 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). In 1982, the Texas Law Review devoted an entire volume to exploring the implications that literary interpretation could have for legal interpretation. Symposium, *Law and Literature*, 60 TEX. L. REV. 373 (1982).

95. William Domnarski, *Law and Literature*, 27 LEGAL STUD. F. 109, 109 (2003).

96. Cynthia G. Hawkins-León, *“Literature as Law”: The History of the Insanity Plea and a Fictional Application within the Law & Literature Canon*, 72 TEMPLE L. REV. 381, 383 (1999) (“This Article intends to take a novel tack and view ‘literature as law.’”).

97. Richard Weisberg, Commentary, *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.”).

98. John D. Ayer, *Aliens Are Coming! Drain the Pool!*, 88 MICH. L. REV. 1584, 1585 (1990) (book review) (identifying four “disparate topics” within law and literature); Baron, *supra* note 77, at 1063 (identifying three “strands” within law and literature); Kingwell, *supra* note 94, at 320-21 (identifying several “forks” within law and literature); Thomas Morawetz, *Ethics and Style: The Lessons of Literature for Law*, 45 STAN. L. REV. 497, 497-99 (1992) (book review) (identifying four “interdisciplinary paths” 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 “[h]umanities in the law school curriculum;” (5) presenting legal issues (including “Finding the Truth, Obedience to the law, Equality, Theories of Punishment, Justice, etc.”) 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



of the important distinctions among the foregoing, I will describe 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.”<sup>99</sup> This humanist approach also is referred to as the “moral uplift” approach.<sup>100</sup> 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.”<sup>101</sup> Nussbaum further argues that literature helps readers to recognize and share the experiences of different types of people<sup>102</sup> and to respond to issues that might be difficult to confront.<sup>103</sup> Hirshman argues that literature teaches individuals how to make moral decisions by giving them the skills to engage in “reflection, consciousness, choice, and responsibility.”<sup>104</sup> Couch argues that literature turns the abstract into the concrete.<sup>105</sup> All three scholars probably would agree that literature offers law students

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 92, at 671-72.

99. Baron, *supra* note 77, at 1064; accord 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* 725 (Ephraim London ed., Simon and Schuster 1960).

100. *Id.*

101. MARTHA NUSSBAUM, *CULTIVATING HUMANITY: A CLASSICAL DEFENSE OF REFORM IN LIBERAL EDUCATION* 13-14 (1997).

102. MARTHA NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 5-6 (1995).

103. *See id.*

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

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

additional information about human nature,<sup>106</sup> invites the use of emotional or intuitive reasoning in addition to abstract reasoning,<sup>107</sup> and provides training in moral decision making.<sup>108</sup>

The second, hermeneutic, approach to law and literature focuses on the need for law students and lawyers to read literary theory.<sup>109</sup> 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.<sup>110</sup> Authors such as Derrida, Foucault, Heidegger, and Wittgenstein are popular among hermeneutic law and literature scholars.<sup>111</sup>

The third approach to law and literature focuses on narratives and stories told by clients, lawyers, judges, juries, witnesses, and legal doctrine itself.<sup>112</sup> Narrative law and literature scholars focus on the use of narratives and stories as a persuasive technique<sup>113</sup> for evidentiary purposes, including how the law actually functions in real life,<sup>114</sup> and for epistemological purposes, such as demonstrating how different individuals can tell inconsistent stories about the same series of events and to question whether just one "truth" really exists.<sup>115</sup> Some

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

107. See Baron, *supra* note 77, at 1063-64.

108. See *id.*

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

110. 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-lits 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.

111. 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-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.").

112. See Baron, *supra* note 77, at 1066.

113. See *id.*

114. See *id.*

115. See *id.*; see also Judy Scales-Trent, *Using Literature in Law School: The Importance of Read-*

scholars further divide narrative law and literature into "'Trials and Storytelling,' 'Outsider Storytelling,' 'Rhetoric and Storytelling,' 'Storytelling and Cognition,' 'Evidence In Literature/Evidence As Literature,' 'Narrative Structure and Evidence,' [] 'Popular Culture and Evidence', . . . ('Statutory Interpretation and Literary Theory') . . . [and] ('Teaching Evidence Using Narrative')."116

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.<sup>117</sup> 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 Brontë's *Jane Eyre*, to humanize law students.<sup>118</sup> Current law and literature scholarship addresses topics such as pedagogy, storytelling, and the law and literature canon.<sup>119</sup>

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.<sup>120</sup> Feminist scholars argue that the law and literature canon does not include voices of women.<sup>121</sup> Questions 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

*ing and Telling Stories*, 7 BERKELEY WOMEN'S L. J. 90, 91-92 (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").

116. See Ledwon, *supra* note 94, at 1151.

117. See Baron, *supra* note 77, at 1067.

118. See *id.*

119. See Gemmette, *supra* note 92, at 672-92.

120. See Baron, *supra* note 77, at 1067.

121. See, e.g., Foster, *supra* note 94, at 134 (noting that neither the law in literature nor 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 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, 545 (2004).

might be an intentionalist.”<sup>122</sup> Law and literature scholars also disagree regarding the interpretation of particular literary works.<sup>123</sup> For example, Robin West and Richard Posner differ in their interpretations of “the implications of the works of Franz Kafka on the core tenets of law and economics.”<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup> 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.”<sup>127</sup> In the next two sections, Tom Mayo and Jennifer Bard discuss how they use literature to reach and engage the next generation of attorneys and physicians.

## II. TEACHING “LAW, LITERATURE, & MEDICINE” TO LAW AND MEDICAL STUDENTS

### A. History

It all started out innocently enough. In the fall semester, following my first year of teaching law, I was visited in my office, first by one former Civil Procedure student, and then by an-

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122. Baron, *supra* note 77, at 1068 (internal citations and references omitted).

123. *See id.* at 1070, 1070 n.54.

124. *Id.*

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

126. *See id.* at 1071.

127. Daniel J. Kornstein, *A Practicing Lawyer Looks Back on Law and Literature*, 10 CARDOZO STUD. L. & LITERATURE 117, 118 (1989) (“The greatest shortcoming in Law and Literature to date has been its failure to reach and engage the ordinary practicing lawyer.”).

other. Both students had the same complaint: they were miserably unhappy at the prospect of another year of law school. I didn't have the heart to point out that they actually had two more years to go. It would not have improved their moods at all.

After some discussion, and entirely by coincidence, it turned out that they had been English majors in college and had abandoned all recreational reading during their first year of law school. This is a common response to the stresses of law school and one that seems wrong in so many ways. The corrective seemed obvious: read something "just for fun" every week.

During these discussions, I recalled many happy days spent in a "law and literature" class with Professor Judy Koffler during my third year of law school at Syracuse. I then made a bold offer to my two former students. We could organize a reading group,<sup>128</sup> we would meet every week to discuss what we had read, and, at the end of the semester, they would write a research paper. The students were amazed that "law and literature" had been an established academic legal specialty at least since the appearance of James Boyd White's *Legal Imagination* text,<sup>129</sup> and quickly agreed to try my proposed experiment.

We picked a standard legal theme—civil disobedience—and began our readings with *Antigone*. We read Thoreau and a handful of others, and devoured Hannah Arendt's *Eichmann in Jerusalem*. As luck would have it, John Irving had just published *The Cider House Rules*—an epic exploration of, among other things, the nature of the rules (including pre-*Roe v. Wade* anti-abortion laws) we claim to be governed by and the circumstances under which one might have a duty to disobey those rules—and I added the novel to our list.<sup>130</sup>

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128. My law school allows ad hoc collaborations for academic credit under the rubric of "directed studies," which require faculty approval. I elected to fly under the radar and organized the reading group as two independent studies projects (which we call "directed research" and require no one's approval except the teacher's), where both students just happened to be reading the same texts and just happened to meet with me during the same two-hour block once a week.

129. See *supra* note 87 and accompanying text.

130. I was encouraged to include *The Cider House Rules* by an enthusiastic front-page review in the Sunday *New York Times Book Review* written by my college Shakespeare professor. See Benjamin DeMott, *Guilt and Compassion*, N.Y. TIMES, May 26, 1985, at A1 (book review). More on Professor DeMott later.

Despite the Judy Garland-Mickey Rooney<sup>131</sup> origins of this mini-reading course, it worked. The immediate goal—to persuade two unhappy law students that the law was a large enough intellectual enterprise to embrace and reinforce their love of literature—was easily accomplished. Something else, however, was equally evident. Our discussions of quite traditional legal and jurisprudential issues were the best I could remember ever having. The stories propelled our imaginations, made the general and theoretical more concrete and immediate, and disciplined our discussions with the facts of the stories (some true, some fictional) we were reading.

Word spread around the law school, and the next year I was approached by a group of students who wanted to know if I was planning to conduct another reading class. Flattered, I said yes, and the group immediately grew to eight or nine students. This scenario repeated itself for a number of years, and, as my interests changed, the readings also changed. When I began teaching Bioethics and Law, the reading course turned into a “Bioethics, Law, and Literature” course. To cut down on demand, I limited the group to third-year students only. One year, we were joined for the entire semester by the medical director of the pediatric ICU at Children’s Medical Center of Dallas. Another year, a retired Episcopal priest sat in. And, as in that first experience with two frustrated law students, the discussions were always far more engaging and energetic than in any of my other classes.

A few years later, a colleague on a local hospital ethics committee and I were talking about the course after one of our monthly committee meetings, and a second-year medical student, who was also on the committee, overheard the discussion. She commented that medical students might be interested in taking such a course. I asked if she would be willing to work with me on a syllabus that would be attractive and useful to medical students. She agreed, and we worked through the summer and into the fall putting together a set of readings that we thought would be engaging to medical students and law students alike.

Emboldened by this medical student’s enthusiasm,<sup>132</sup> I pro-

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131. Cf. *BABES IN ARMS* (MGM Studios 1939) (Mickey to Judy: “Hey, my dad’s got a barn. Let’s put on a show!”).

132. Enormous credit is due to this student, Dr. Angie Denietolis. After shaping my initial

posed the course to the Curriculum Committee of the University of Texas–Southwestern Medical School. There was a little skepticism,<sup>133</sup> but it was not serious or consistent enough to derail the proposal. Along with approval for what would be UT-Southwestern’s first medical humanities course came an adjunct appointment in Internal Medicine<sup>134</sup> so that I could give grades to the medical students. At the same time, I finally proposed the course to my colleagues at the law school, who also gave their approval.

The course is currently limited to last-semester law students and fourth-year medical students and has been offered every year since 1992. There are some logistical hassles when students from the two schools are involved,<sup>135</sup> but the benefits of

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thinking about the course, she enrolled in it as a third-year student (which I would have thought was physically impossible during one’s clinical year), sat in as a fourth-year student, and joined as my co-teacher when she returned to Dallas after completing her internal medicine residency in Omaha. At each stage, Angie’s input added enormously to the next iteration of the course. My other co-teachers—the late Dr. Edwin Ide Smith, Jr., Dr. Patty Hicks, and my current partner, Dr. Robert McClelland—have also been marvelous collaborators who have contributed significantly to the development of this course.

133. One of the more memorable questions about the course was, “If we approve this course, which clinical or academic medicine course are we going to remove from the curriculum?” Happily, others on the committee did not see this as a zero-sum game.

134. The Department of Internal Medicine was a logical choice from any number of perspectives, not least that it was the largest department at the medical school and the one to which students would most likely look for a humanities elective. Also, the head of the department at the time (and one of the three champions for the course proposal) was Dr. Daniel Foster, who would later become a member of the President’s Council on Bioethics. See The President’s Council on Bioethics, Council Members, <http://www.bioethics.gov/about/members.html> (last visited Mar. 1, 2009). Dr. Foster’s predecessor as department chair was Dr. Donald W. Seldin, who served on the first national bioethics commission, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. See *THE STORY OF BIOETHICS: FROM SEMINAL WORKS TO CONTEMPORARY EXPLORATIONS* 17-18 (Jennifer K. Walter & Eran P. Klein eds., 2003). The curricular offerings in medical humanities may have been slender at this time, but the medical students walked among giants.

135. One administrative difficulty is the location of the seminar. SMU and UT-Southwestern are located a number of miles apart. In the early days we alternated class locations every week; now, all classes are scheduled for the SMU campus. It turns out that late Friday afternoon (which is when the course is always offered), relatively few medical students are coming to the class from the medical school campus, so SMU is at least as convenient as UT-Southwestern would be. Predictably, campus parking is a challenge for non-SMU medical students, but, over time, I’ve managed to lick that problem (thanks to a dean who is willing to pay for the medical students’ parking passes for fourteen weeks). Of even greater significance, the law students and medical students inhabit very different universes from January to April of their last year of formal schooling. While the law students are expected to be “in residence” at their school, many of the medical students are flying around the country interviewing for residencies in January and heading off to exotic locales (e.g., Honduras, Kenya, Amarillo) for practicums of one sort or another in later months. Thus, attendance policies need to

including both law and medical students at the end of their years of formal study far outweigh the administrative difficulties. Those benefits are described in the next two sections of this Article.

### B. Structure

The course reading list will receive its due in the next section, but content is of secondary importance, as I see it, to the structure of the course. That is, I am far less concerned with the weekly *readings* than I am with the way the course *works*. The main reason for this can be gleaned from the “prospectus” for the course,<sup>136</sup> which focuses on professionalism, the delineation of professional values (especially those that are shared by law and medicine), the fostering of mutual respect

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be tailored for each student group, and every twist and turn of the course needs to be posted to the internet so that traveling students can keep up with reading assignments. Medical students are graded pass-fail, while the law students receive letter grades, which translates into somewhat different expectations and grading criteria for the two groups. One major administrative hassle was avoided when the course was approved by both schools. This avoided the all-but-insoluble problem of cross-enrolling students from one school to the other and working out the tuition payments (one is a state school, the other private), financial aid arrangements, and the transfer of credits.

136. See LawLitMed: prospectus, [http://tom.mayo.googlepages.com/lawlitmed\\_syllabus](http://tom.mayo.googlepages.com/lawlitmed_syllabus) (last visited Mar. 1, 2009):

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. More specifically, the goals of this course include:

- to give future lawyers and doctors some insight into one another's profession, as well as to give them a chance to develop their own ways of talking to one another;
- to give each group a chance to gain insight into their own profession's values by taking a look at another profession;
- to introduce students to the study of literature as a way of gaining exposure to human experience and the ethical dilemmas of daily practice through the writings of master story-tellers;
- to underline the importance of a humane and humanistic professional education and outlook—to develop students' sensitivity to the human dimension of their professional lives;
- to introduce students to the notion that most of the information they will deal with in their professional lives is organized and transmitted in narrative form—judicial opinions, client and patient stories (in the form of complaints, histories, etc.), and practical clinical information (what worked the last time it was tried—in court or with a type of patient). In that vein, it is useful for students to sharpen their narrative skills by reading and discussing great stories; and
- to introduce students to a form of professional, case-based moral reasoning that resembles casuistry (as distinct from the dominant traditions of reasoning from first principles (deontology), consequentialism, and virtue ethics). We will consider the strengths and weaknesses of this approach through a variety of literary sources.



for the students' respective professions, and the development of strategies for working out job-induced "moral distress."<sup>137</sup> Precisely what is meant by these goals, and how these goals are promoted by the course structure, are the subjects for this part of the Article.

### 1. *The Hand-shake*

Each class begins with everyone walking around the room and shaking everyone else's hand. Pleasantries are exchanged. The past week is briefly reviewed, or the next week is previewed. Everyone gets a chance to remember everyone else's name. I am a believer in the personal touch. It helps to break down barriers and facilitate mutual respect. It burns five minutes of precious class time, but if it is good enough for the justices of the Supreme Court of the United States,<sup>138</sup> it is good enough for the participants in "Law, Literature, and Medicine."

### 2. *Law-Medical Student Pairings*

Throughout the semester, students choose readings for which they volunteer to lead the class discussion. For most assignments, this means reading a forty-to-fifty-page segment from one of our anthologies and selecting five or six readings for class discussion. On the first day of class, the students are asked to volunteer for two such assignments. One medical student pairs with one law student, and every effort is made to avoid pairing the same students twice. The result of this requirement is that law and medical students spend hours outside of class discussing the readings for their weeks, expressing their preferences, and smoothing out their differences. If they are doing this right, they work out goals for the class and strategies for achieving those goals that are mutually accept-

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137. I am indebted to Dr. Pauline Chen for this term, which captures perfectly the tension between professional and personal values that my course tries to identify and develop strategies—through literature, self-reflection, and teamwork—to address. See Pauline Chen, *When Doctors and Nurses Can't Do the Right Thing*, N.Y. TIMES, Feb. 5, 2009, available at [http://www.ny-times.com/2009/02/06/health/05chen.html?\\_r=1](http://www.ny-times.com/2009/02/06/health/05chen.html?_r=1).

138. See Supreme Court Historical Society, *How the Court Works—The Justices' Conference*, [http://www.supremecourthistory.org/03\\_how/subs\\_how/03\\_a09.html](http://www.supremecourthistory.org/03_how/subs_how/03_a09.html) ("Five minutes before conference time, 09:30 A.M. or 10:00 A.M., the Justices are summoned. They exchange ritual handshakes and settle down at the long table.") (last visited Mar. 1, 2009).

able. Then, of course, they get to lead the discussion as a team. They will be working in teams for the rest of their lives, some as small as the two-person student pairs, some as large as the twenty-student seminar. For our fourteen weeks together, the students have many opportunities to deal with group dynamics.

### 3. *Journals*

All students are required to keep a weekly journal. They can write about anything that relates to the course: the readings, the class discussion, or something that happened in the ambulatory care or criminal defense clinic that made them think of William Carlos Williams or Harper Lee. The content is not important. The goal here is to extend the readings and class discussion beyond the four walls of the classroom and to connect them with the students' "real" lives. We can talk about making that extension and connection in class, but it is much more powerful when the students have to extend and connect on a personal level.<sup>139</sup>

### 4. *Writing Assignments*

In the last few years, the students have been required to write, at approximately four-week intervals, a poem, a second poem, and a set of three dramatic monologues. All of the assignments have to deal with some aspect of the course. At the end of the course, I collect all the writings in a single volume that each student receives at the class dinner.

For the poems, the students receive suggestions to get them started. None of the prompts are substantive in nature, but instead each one poses a writerly task and invites the students to come up with a writerly solution. For example:

Write a short poem that begins and ends with the same line. The reader should feel differently about the line the second time he or she encounters it because of what happened in the poem.

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139. I collect the journals at the end of the semester simply to make sure they were done. Everyone who turns in a journal passes this portion of the course. The journals are then returned to the students or destroyed in accordance with their instructions.

Describe a pair of shoes in such a way that a reader will think of a lawyer or a doctor. Do not mention lawyers or doctors in the poem.<sup>140</sup>

Why do this? It is not to turn the students into competent poets. The assignments are intended to instill some respect for the craft of poetry. Throughout the semester, the class talks about *craft*, about respecting the tools of one's trade and the importance of honing one's skills across an entire career. I intone, "The first kindness is competence."<sup>141</sup> We try to put craft and competence in context.

The monologues have a complicated set of instructions,<sup>142</sup> but the central goal is simply to produce three monologues, one of which is by a doctor or lawyer, about a death. It can be a death that we read about in class, one that is plucked from the pages of the *Dallas Morning News*, or one that is imagined. What matters is that the speaker in each monologue should be identifiable from his or her own words—vocabulary, syntax, diction, etc. In this exercise, the students have an opportunity to consider how language shapes identity and vice versa, as well as the impact of language upon the listener. The students get a chance to develop their "narrative competency," and to consider the impact of language and perspective upon the narratives that are constructed around a single event.

### 5. Final Projects

Law students are required, and medical students are strongly encouraged, to create a final project.<sup>143</sup> They are discour-

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140. The two sets of poetry "prompts" are here: Law, Literature, and Medicine, <http://tom.mayo.googlepages.com/poetryassignment1.pdf> (last visited Mar. 1, 2009) and Law, Literature, and Medicine, <http://tom.mayo.googlepages.com/poetryassignment2.pdf> (last visited Mar. 1, 2009). Many of these prompts were taken, and others were adapted, from poetry workshops and work-books. When I could remember the source, I have acknowledged my debt. In all other cases, I hereby thank the unnamed poetry workshop directors and poets for their contributions to "Law, Literature, and Medicine."

141. The phrase comes from the beginning of a long-lost poem by Dr. David Schieder-mayer. Dave—who cannot remember the poem, either—tells me he is sure he lifted the idea, and possibly the words themselves, from the writings of Dr. Edmund Pellegrino, the current chair of the President's Council on Bioethics. I hereby thank both of them for their contribution to "Law, Literature, and Medicine."

142. See Law, Literature, and Medicine, <http://tom.mayo.googlepages.com/essayassignment.pdf> (last visited Mar. 1, 2009). This assignment is lifted (and lightly edited) from WHITE, *supra* note 87, at 34-37.

143. There are two reasons for the differential treatment. It seems somewhat fair that, if

aged from writing traditional research papers or, indeed, any papers at all. Instead, they are asked to create some kind of work of art. The projects have been astonishing in their range, including a French horn concerto (composed and performed) on the five stages of grief; an interpretive tap dance (also on the five stages of grief); collections of poems, short stories, and one-act plays; children's books (written and illustrated) on death and loss; a crazy quilt, with an annotated "reader's guide" to the various design elements, appliqués, and the like; oil paintings; mosaics; sculptures; and a memorable symphonic representation (recorded on Moog synthesizer) of a myocardial infarction from the initial onset of symptoms to the patient's death after attempted resuscitation.

Final projects are presented at the class dinner, traditionally held the evening of the last class, with readings, demonstrations, and performances by the student-*artistes*. Some are quite remarkable, while others are a little less so. All are greeted with applause and cheers, and warm feelings are everywhere.

The point of the final projects is obviously not to turn medical and law students into accomplished artists. Some have amazing talents, while others are dipping their toes into artistic expression for literally the first (and possibly the last) time in their lives. In any event, I am not qualified to judge the artistic merit of such a diverse collection of projects.<sup>144</sup> Instead, the goal is to extend the range of the students' empathic abilities.

There is a lively debate about whether law or medical students can become better human beings—better listeners, more caring and thoughtful in their professional relationships, more understanding of their clients' and patients' situations—through their exposure to literature and art. For my part, I believe students with a shred of empathy can develop that shred

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the law students are going to receive grades of A, A-, B+, etc., they be required to do more than the medical students who take the course pass/fail. Also, experience has shown that when medical students are required to create an artistic project for this course, registrations plummet. Once they take the plunge, however, at least half of the medical students create a final project.

144. The grading criteria have mostly to do with effort, thoughtfulness, originality, and the connection to themes explored in the course. I also look for some indication that the student has observed the "craft" elements of creation, that is, used the materials and media creatively, thoughtfully, and respectfully.

into something larger and more useful, while others who seem to lack the gene for empathy probably cannot be effectively schooled to become more empathic. But this is a debate that I do not really care much about. My goal with these final projects is simply to reproduce or approximate an empathic moment; to mirror or mimic empathy in the students themselves, for whatever it is worth.

Artists have their own artistic sensibilities, but at some point in the process they must regard their creation from the perspective of The Other. The process of creating art requires the artist to see through the viewer's eyes, to hear through the listener's ears, and, occasionally, to feel through the observer's sense of touch. This experience gets to the core of what I understand about *empathy*: shedding, if only for a few moments, one's own identity (however intrinsic or constructed it may be) and getting into the head of The Other.<sup>145</sup>

### C. Content

The course readings have changed over time, with the exception of *The Cider House Rules*, which has been the sole constant since the very first, embryonic year of this course. What follows is the current reading list for the 2009 version of "Law, Literature and Medicine," with some commentary about the way the different pieces work *in situ*.<sup>146</sup>

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145. The final projects produce some other benefits as well. The students often prove to themselves that they have an artistic streak they previously doubted was there. Some have told me years later that they are still painting or writing poetry "just for fun." Good for them. Others tell me they have their painting or sculpture or mobile hanging in their office and are reminded of the course and what they experienced there. Good for them (and their patients and clients).

146. Among the major pieces that have been used to good effect but are, for one reason or another, missing from the current version of the course, are: NORVAL MORRIS, *THE BROTHEL BOY AND OTHER PARABLES OF THE LAW* (1992); WILLIAM SHAKESPEARE, *MEASURE FOR MEASURE* (Arden 2d ed. 1967) (1623); PERRI KLASS, *OTHER WOMEN'S CHILDREN* (1992) (out of print); *LAW IN LITERATURE: LEGAL THEMES IN SHORT STORIES* (Elizabeth Villiers Gemmette ed., 2000); *TRIAL AND ERROR* (Fred R. Shapiro & Jane Garry eds., 1998). There are other excellent anthologies that are in the queue but that I have not yet used in class, including: THOMAS MORAWETZ, *LITERATURE AND THE LAW* (2007); *A LIFE IN MEDICINE: A LITERARY ANTHOLOGY* (Robert Coles & Randy Testa eds., 2002); *THE MORAL OF THE STORY: AN ANTHOLOGY OF ETHICS THROUGH LITERATURE* (Peter Singer & Renata Singer eds., 2005).

### 1. *First Class*

The readings are three essays and three poems. The course generally shies away from essays out of what may be an excessive fussiness about the distinction between fiction and nonfiction, especially didactic nonfiction pieces. For the first class, however, there are some specific reasons for reading and discussing some essays.

We begin with Dr. Rita Charon's *Narrative and Medicine*.<sup>147</sup> This is the most eloquent and efficient exposition of "narrative competencies" I have found. Dr. Charon makes the case for attention to language, the inevitability of narrative-construction (for good or for ill), and the use of stories in medicine.

We next consider an excerpt from James Boyd White's essay, *Legal Knowledge*.<sup>148</sup> This piece gives medical students an insider's view of what the law attempts to achieve (truth: not necessarily; justice: yes). For both sets of students, it seems helpful to expose them to White's distinctive approach to rhetoric and law. In what sense are lawyers story-tellers? How does "narrative competency" fit into the skill-set of the lawyer or the judge?

The first two pieces are offered to make the case to both the law students and the medical students that exposure to literature just might have some relevance to the practice of their chosen professions. The third essay is Ben DeMott's *English and the Promise of Happiness*,<sup>149</sup> and it serves a quite different purpose. I am not a literary scholar, but I run a class that is built around literature. Therefore, in addition to my medico-legal goals for the course, I have certain literary goals as well. The classroom should be one where students understand their obligation to move their reactions to a piece of writing from the private sphere to the public through participation in class discussion. Students should be willing to step outside of their carefully constructed professional personae and encounter the works we read in the spirit of honesty, openness, and generosity. Their willingness to do this depends upon my ability to create a safe space in which students can let their guard down.

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147. Rita Charon, *Narrative and Medicine*, 350 NEW ENG. J. MED. 862 (2004).

148. James Boyd White, *Legal Knowledge*, 115 HARV. L. REV. 1396, 1396-1402 (2002).

149. Benjamin DeMott, *English and the Promise of Happiness*, in *TEACHING WHAT WE DO: ESSAYS BY THE AMHERST COLLEGE FACULTY 1-11* (1991).

DeMott addresses all of these issues in his essay, and it has always seemed a good idea to put them on the table early in the course so that my expectations of the students (and their expectations of me) are explicit.

We finish the class with three poems. Poetry plays a large role in "Law, Literature, and Medicine." A few of the reasons for this are practical. More than half of the readings in the medical anthology we use<sup>150</sup> are poems, undoubtedly because one of the editors—the late John Stone, M.D.<sup>151</sup>—was an outstanding poet (and cardiologist) in his own right. Most of our poems are short (less than two pages), which allows us to read each poem out loud and to cover a wide range of subjects very efficiently.

Another reason for our heavy reliance on poetry did not occur to me until after I made the commitment. There are few things on this planet that will strike more fear in the hearts of most medical and law students than a poem. Faced with the task of leading a discussion of a poem, our students shed their veneer of professional competence and immediately look around the table for help. It has never been easier to create a collaborative learning environment than by throwing a poem into the middle of the room and watching the students reach out for assistance.

Almost any poem will do for this first class, but I have settled on these three: *Introduction to Poetry* by Poet Laureate Billy Collins,<sup>152</sup> John Stone's *The Truck*,<sup>153</sup> and the classic *The Lawyers Know Too Much* by Carl Sandburg.<sup>154</sup> Collins invites readers to play with a poem, to look at it from various angles and per-

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150. See generally ON DOCTORING: STORIES, POEMS, ESSAYS (Richard Reynolds & John Stone eds., 3d ed. 2001).

151. In addition to being an accomplished poet and essayist, John Stone was a good friend of the "Law, Literature, and Medicine" course. He was always willing to scrounge up copies of his book for my students when it was between editions and out of print, and he loved hearing about this odd course in Texas that had law and medical students reading his book together. I also appreciated his willingness to read and comment on some of the student poems that I thought were particularly good. John died late last year. Cf. Rachel Pomerance, *John Stone, Doctor with Poetic Talents*, ATLANTA J.-CONST., Nov. 11, 2008, at 5B, available at [http://www.ajc.com/metro/content/metro/obits/stories//2008/11/11/John\\_Stone\\_obituary.html](http://www.ajc.com/metro/content/metro/obits/stories//2008/11/11/John_Stone_obituary.html). His voice and his heart will be much missed.

152. BILLY COLLINS, *Introduction to Poetry*, in *SAILING ALONE AROUND THE ROOM* 16 (2001).

153. JOHN STONE, *The Truck*, in *IN ALL THIS RAIN* 14-15 (1980).

154. Carl Sandburg, *THE LAWYERS KNOW TOO MUCH* (1922), reprinted in *LAW LIT: FROM ATTICUS FINCH TO THE PRACTICE* 171-72 (Thane Rosenbaum ed., 2007).

spectives, and gently chides those who want to “tie the poem to a chair with rope/and torture a confession out of it.” Stone’s poem is a slightly challenging read (no punctuation and irregular spacing within lines), and it is about a serious topic (death), but its conversational tone and final joke are a winning combination. We spend some time considering how the poem “works” as a technical matter, and the poem also gives us a chance to think out loud about the differences between poetry and prose. Class ends with Sandburg’s old chestnut (“tell me why a hearse horse snickers hauling a lawyer’s bones”), an early example of a lawyer joke that is good as far as it goes and gives the class a chance to talk about what life would be like if all lawyers and the rule of law disappeared.

## 2. *The Rest of the Semester*

*The Cider House Rules*.<sup>155</sup> None of the remaining readings is necessarily a permanent part of the course, although *The Cider House Rules* has always been on the list and I see no reason to drop it any time soon. In addition to being a glorious piece of writing, the novel has a deeply moral purpose through its multifaceted exploration of life in America at a time when abortions were illegal. On one level, John Irving shows us the rules we write for public consumption<sup>156</sup> (almost every one of which we see broken over and over again) and the rules by which we actually lead our lives. The book also poses the question of whether someone (Homer) with special skills (abortionist) has an obligation to violate the law as long as his services are needed and, because of legal prohibition, are scarce, expensive, and dangerous to obtain. The students predictably resist the logic of Dr. Larch’s argument, which is far from fool-proof. What follows, however, is an energetic discussion of Dr. Larch’s argument in the context of the current prohibition (except in Washington and Oregon) against physician-assisted suicide.

*On Doctoring*.<sup>157</sup> This is a strong collection of stories, poems,

155. JOHN IRVING, *THE CIDER HOUSE RULES* (1985).

156. *See id.* at 272 (“Please don’t go up on the roof [of the cider house] if you’ve been drinking – especially at night.”).

157. *ON DOCTORING*, *supra* note 150.



and essays on, well, doctoring. The students pick the readings for class discussion from a forty-to-fifty-page block of material. I am eager for them to enjoy the experience of reading great literature for its own sake, but the students inevitably relate to the readings through their own experiences. I make no serious effort to tamp down the sidebar discussions, many of which are attempts to work through the “moral distress” they have experienced during their training. Despite the medical focus, law students find much here to which they can relate based upon experiences in the classroom, live client clinic, or summer clerkships.

*Law Lit.*<sup>158</sup> After years of assembling and copying law-related readings, I have started to rely increasingly upon anthologies. *Law Lit* is my current choice, but many others are available and attractive options.<sup>159</sup> The goal for these readings is to devote as much class time to issues of legal professionalism as we do to the medical side. For example, we compare the closing arguments of the lawyers in *To Kill a Mockingbird*,<sup>160</sup> *A Time to Kill*,<sup>161</sup> *Native Son*,<sup>162</sup> and *A Lesson Before Dying*.<sup>163</sup> All four raise interesting issues of race and the law, as well as the moral limits (if any) that should apply to the duty of zealous advocacy. In an ideal world, the legal anthology would touch regularly upon medical topics as well as thorny legal issues. I have found only one book that does this (and does it brilliantly)—Norval Morris’s *Brothel Boy*<sup>164</sup>—but the students eventually tire of the historical and social milieu in which the stories are set (pre-independence Burma), notwithstanding the thoroughly modern concepts and dilemmas that are delivered through Morris’s spot-on personification of Eric Blair.

*Wit.*<sup>165</sup> When I first heard of this off-Broadway play about a John Donne scholar dying of metastatic ovarian cancer, I could not resist. With the help of the author (who later was awarded the Pulitzer Prize for Drama for this, her first (and so far only) play), I obtained the script and fell in love with the story.

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158. LAW LIT: FROM ATTICUS FINCH TO *THE PRACTICE* (Thane Rosenbaum ed., 2007).

159. See sources cited *supra* note 146.

160. LAW LIT, *supra* note 158, at 3-5.

161. *Id.* at 45-46.

162. *Id.* at 14-19.

163. ERNEST J. GAINES, *A LESSON BEFORE DYING* 7-8 (1993).

164. NORVAL MORRIS, *THE BROTHEL BOY AND OTHER PARABLES OF THE LAW* (1992).

165. EDSON, *supra* note 38.

Eventually, the script was published in book form, and, a few years ago, Mike Nichols and Emma Thomson adapted it for the screen.<sup>166</sup> The play is useful for a number of discussion points, not all of which arise each year. End-of-life decision-making is a key plot point, of course, primarily in connection with the patient's decision to agree to a DNR order. The "therapeutic misconception" is also relevant (and not a concept with which most law students are familiar), and that leads to a discussion of informed consent (which the play portrays in woefully inadequate terms). There are few doctrinal points beyond these, but the play still works extremely well in a course like mine that is equally concerned with developing a sensitivity to the experiences of patients and co-workers. In recent years, we have watched the film in class and discussed it in the remaining half-hour and the beginning of the next class. Before the film was released, we did readings of favorite scenes and discussed them. Both approaches worked well, though the film does deliver a more powerful emotional impact than did our roundtable readings.

*Whose Life Is It, Anyway?*<sup>167</sup> This play, about a "high quad" who wants to leave the hospital and die in peace, was one of the earliest works with a "right to die" theme at its core. It first appeared as a television play for the BBC in 1972, approximately four years before the New Jersey Supreme Court's landmark decision in the Karen Ann Quinlan case,<sup>168</sup> and it later opened on the London stage in 1978 and on Broadway the next year. It is easy to dismiss this play as a relic. The central character, Ken Harrison, would meet anyone's criteria for decision-making capacity, and have we not settled the legal and ethical question of a competent patient's right to refuse even life-saving and life-sustaining treatments? Yet, I continue to use this play because it serves a number of purposes. First, we can cover the basics of the right to die. Second, the play shows lawyers, judges, physicians, and patients working through a medico-legal dilemma in their own characteristic ways. And finally, despite all of the legal and ethical developments since 1972, the type of case represented by Ken Harrison's request to die is still one of the most diffi-

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166. WIT (HBO Films 2001).

167. BRIAN CLARK, WHOSE LIFE IS IT, ANYWAY? (1978).

168. See *id.* at vii-viii. See generally *In re Quinlan*, 355 A.2d 647 (N.J. 1976).

cult and perplexing encountered by any of the ethics committees on which I serve. The crux of the problem is usually the worry that the patient is depressed, and therefore lacks the decision-making capacity to refuse treatment. This leads to a generally useful discussion of different types of depression and the standards by which we allow patients to make certain kinds of decisions.

*All the Rest.* The remainder of the readings varies rather significantly from year to year. Some past favorites have already been mentioned. The rest of the readings for 2009 are set out below.<sup>169</sup> Two are particularly worthy of note. We read the Carver short story (about a couple whose child is injured by a car and eventually dies in the hospital) and the Klass excerpt (about the debate over whether to write a DNR order on a five-year-old AIDS patient) in connection with our one field trip each semester: a walkabout in the pediatric ICU at Children's Medical Center. Both authors expertly describe the struggles of families and providers in extreme medical circumstances. The walkabout gives the students a chance to experience the sights, sounds, and smells of the ICU first-hand, making the gravity of the work that goes on there even more immediate and real.

### III. TEACHING HEALTH LAW TO LAW STUDENTS THROUGH LITERATURE

This Article, which originated in a presentation at the 2008 Health Law Professor's Conference sponsored by Drexel University, is intended to assist other professors interested in teaching such a course, as well as anyone interested in learning about health law through literature, by explaining the choices I made in developing a curriculum and teaching the course for the first time in the spring of 2008. I taught the course again in the spring of 2009, and I hope that this process of reflecting on what worked, and what didn't, has benefitted this year's students, and will benefit my future students. The

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169. They are: *Villanelle*, in *THE NEW PRINCETON ENCYCLOPEDIA OF POETRY AND POETICS* 1358 (Alex Preminger & T.V.F. Brogan eds., 1993) (used in connection with Dylan Thomas's *Do Not Go Gentle Into That Good Night*); RAYMOND CARVER, *A SMALL GOOD THING* (1983); PERRI KLASS, *OTHER WOMEN'S CHILDREN* (1990) (excerpt); JANE KENYON, *The Sick Wife*, in *COLLECTED POEMS* 297 (2005); DONALD HALL, *The Ship Pounding*, in *WITHOUT* 15-16 (1998); JOHN DONNE, *Holy Sonnets VI, IX, X*.

course that I teach at Texas Tech University School of Law includes mostly contemporary works of fiction, as well as some non-fiction, that I use to allow law students to be immersed in the kind of medico-legal situations that they have not yet experienced. While few of these works may last as general examples of literary excellence, all provide the class with a common vocabulary with which to apply specific legal doctrines in the context in which they arise.

In Part A, I will place my course within the context of both the legal “law and literature” movement as well as the fields of “Narrative Medicine” and “Medical Humanities.” In Part B I will describe my reasons for developing the course as one focusing on teaching health law through literature. In Part C, I will describe the materials I used. This includes not just the primary works of literature, but also the other materials, guest speakers, articles, cases, texts, and films that I use to help law students build a knowledge base about medical science. For example, it is probably unnecessary to spend much time explaining to medical students the implications of the discovery that disease is caused by germs. When I have medical students in my law courses I make similar efforts to develop materials that will inform them about the United States’s legal system. Finally, in Part D, I will report on how the course worked and what I would recommend for anyone interested in teaching a similar course. Because no essay can address all of the specific questions that professors developing courses on their own may have, I start by making myself available to speak or correspond directly with anyone interested.

### A. Context

Professor Tovino’s introduction ends with a call for engagement.<sup>170</sup> Unlike caselaw, which is intended to instruct and direct its readers, literature seeks to engage them. Few authors have the luxury of a captive audience in the same way that appellate courts or legislators do. Because law students are likely to be unfamiliar with the world of medicine, literature brings the issues close to the surface where the light is good and shapes are visible, rather than down in the depths of structure or narrative, where words and sentences may be

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170. See *supra* note 127 and accompanying text.

seen alone, rather than as part of a recognizable story. Those who study law as literature or literature that happens to be about law may well protest that the emphasis I place on plot shifts the class's focus outside the academic field. That is not true. In one of the earliest books about the then emerging field of "Law and Literature," Judge Richard Posner created a taxonomy of the field by identifying five of what he described as "[t]he most important connections between law and literature."<sup>171</sup> These were, in paraphrase:

- (1) Literature with legal themes, such as *The Trial* or *To Kill a Mockingbird*;<sup>172</sup>
- (2) Interpretation of legal texts using literary methods;<sup>173</sup>
- (3) Reading legal texts as works of literature;<sup>174</sup>
- (4) Study of the law, such as "copyright, obscenity, and defamation" pertaining to literature;<sup>175</sup>
- and (5) The law, in particular trials, as theater.<sup>176</sup>

In doing research for this Article, I have discovered that others have also turned to literature not "to analyze legal literature or make comparative analyses between literature and law . . . [but] [r]ather . . . to accomplish something beneficial and pragmatic in an innovative way of conducting" a class about another subject.<sup>177</sup> My project has been to develop a course based on the first of Posner's categories.<sup>178</sup> My goal is to teach law students the law pertaining to the health care industry by reading literature that takes as its subject matter the intersection between the two fields. While it is certainly true that we discuss how the authors chose to present their themes—what words they use, what they tell us and don't tell us—in many respects what we are doing is reading literature for plot. We are interested in what happens to the characters as they navigate both the medical and legal systems. More specifically, we

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171. POSNER, *supra* note 89, at 5-6.

172. *Id.* at 7.

173. *Id.* at 8.

174. *Id.* at 9.

175. *Id.*

176. *Id.*

177. Karin Mika, *Innovative Teaching Methods and Practical Uses of Literature in Legal Education*, 18 WHITTIER L. REV. 815, 816 n.4 (1997) (describing an appellate advocacy course taught through literature) (citing Teree E. Foster, *But Is It Law? Using Literature to Penetrate Societal Representations of Women*, 43 J. LEGAL EDUC. 133 (1993) & Philip N. Meyer, *Convicts, Criminals, Prisoners, and Outlaws: A Course in Popular Storytelling*, 42 J. LEGAL EDUC. 129, 130-31 (1992)).

178. *Id.*

are interested in what role the law plays when people are confronted with sickness.

### B. *Motivation*

The contemporary study of law is through reading decisions written by judges to explain, or justify, their resolution of legal disputes.<sup>179</sup> An appellate judge who has never seen the litigants and certainly never heard from any witnesses almost always writes the opinion. While an occasional highly skilled stylist, such as Judge Posner or Justice Scalia, can breathe some life into an appellate opinion, they are by definition concerned with legal disputes, not factual ones. Transcripts of actual trials are little better at conveying the feelings or emotions of the participants because trials are highly stylized and formal presentations of past events rather than the contemporary and often first-hand accounts of literature.

My interest in teaching law students about health law through literature arose through the need to bridge the gap between the necessarily limited experiences of young law students and the intense, emotional crises that sickness brings to families. In developing a curriculum, however, I wanted to do more than develop an awareness of the kinds of suffering caused by medical crises—I wanted to develop what Martha Nussbaum<sup>180</sup> has described as “compassion” that is beyond “empathy”<sup>181</sup> and not at all the same as “sympathy.”<sup>182</sup>

Professor Nussbaum asserts that one of the most important features of education to make students better citizens is the

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179. See *supra* note 81 and accompanying text.

180. Martha Nussbaum recently took the opportunity to revisit “[her] views about law-and-literature in the wider context of [her] views concerning education for democratic citizenship.” Martha Nussbaum, *Reply to Amnon Reichman*, 56 J. LEGAL EDUC. 320, 320 (2006). Amnon Reichman’s article asserts that “the benefit of literature as a learning tool is not that it makes readers judge empathetically; rather literature teaches one to withhold judgment so that when judgment is ultimately rendered it is more profound and meaningful.” See Amnon Reichman, *Law, Literature and Empathy: Between Withholding and Reserving Judgment*, 56 J. LEGAL EDUC. 296, 297 (2006).

181. MARTHA C. NUSSBAUM, *UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTION* 301-04 (2001).

182. *Id.* at 302 (“But, ‘sympathy,’ as standardly used today, is very different from ‘empathy’: a malevolent person who imagines the situation of another and takes pleasure in her distress may be empathetic, but will surely not be judged sympathetic. Sympathy, like compassion, includes a judgment that the other person’s distress is bad.”).

cultivation of “narrative imagination,”<sup>183</sup> which she describes as “the ability to think what it is like to be in the shoes of someone else, to appreciate the thoughts, wishes, and desires such a person might have.”<sup>184</sup> She notes that the study of literature in law school is important:

Even though undergraduate education allows a lot more free time to cultivate the literary imagination, it cannot be simply taken for granted in law school. The imagination of human predicaments is like a muscle: it atrophies unless it is constantly used. And the imagination of human distress and desire is an important part of a lawyer’s equipment. It is very common to encounter in law school quick, competitive young people in whom this ability is underdeveloped or temporarily quiescent.<sup>185</sup>

Given the need to remind law students of the importance of imagining “human distress and desire,”<sup>186</sup> she argues that “literature promotes valuable types of empathy and compassion.”<sup>187</sup> It is here that she stresses, however, that “empathy” is not on its own enough because “[e]mpathy by itself . . . is ethically neutral. A good sadist or torturer has to be highly empathetic to understand what would cause his or her victim maximal pain.”<sup>188</sup> Instead, she argues that literature plays an important role in the education of law students because it can teach the need for not just empathy, but also the “complex ethical evaluations” necessary for true compassion.<sup>189</sup> To quote again, Nussbaum argues that “[c]ompassion . . . involves at least three beliefs, directed at another person’s suffering: (1) that the suffering is significant and not trivial; (2) that it was not (primarily) caused by the person’s own fault; and (3) that this person is important somehow to me in my scheme of goals and ends.”<sup>190</sup>

Thus, Nussbaum cautions that while “[l]iterary works of all

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183. Nussbaum, *supra* note 180, at 322.

184. *Id.*

185. *Id.* at 324.

186. *Id.*

187. *Id.* at 325.

188. *Id.*

189. *Id.* at 326.

190. *Id.*

sorts promote empathy . . . only some promote compassion, and only some of those promote an ethically valuable type of compassion.”<sup>191</sup> Although it would seem unlikely that a work of pornography or torture would find its way into the curriculum of a law and literature class, indeed there is a danger that by exposing students to situations and people that they feel are very foreign to themselves they will recognize the human emotions felt by the individuals involved without being able to feel any compassion or even respect for these feelings. “Cultural Competence” does not come naturally, and like other skills, it must be taught.<sup>192</sup> This is demonstrated most strongly in the first book we read, *The Spirit Catches You and You Fall Down*, the story of a disastrous clash between a Hmong family and a modern medical center.<sup>193</sup> It is hard to understand how the child’s parents can watch her get sicker and sicker yet still fail to cooperate with the doctors’ orders.<sup>194</sup> In recalling the family many years later, one of the doctors involved still remembers that this family did not “show[] their doctors the kind of deference reflexively displayed by even their most uncooperative American patients.”<sup>195</sup> Yet by the end of the book, it becomes increasingly unclear whether or not the child’s chances of recovery would be any different under the Hmong medical regime, which emphasizes banishing evil spirits, and the American one, which requires increasing

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191. *Id.* at 327.

192. OFF. OF MINORITY HEALTH, UNITED STATES DEP’T OF HEALTH & HUM. SERVS., NATIONAL STANDARDS FOR CULTURALLY AND LINGUISTICALLY APPROPRIATE SERVICES IN HEALTH CARE: FINAL REPORT 3 (2001), available at <http://www.omhrc.gov/assets/pdf/checked/finalreport.pdf>. The report states:

Cultural and linguistic competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. ‘Culture’ refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. ‘Competence’ implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.

*Id.* at 4 (quoting TERRY L. CROSS ET AL., TOWARDS A CULTURALLY COMPETENT SYSTEM OF CARE: A MONOGRAPH ON EFFECTIVE SERVICES FOR MINORITY CHILDREN WHO ARE SEVERELY EMOTIONALLY DISTURBED, VOL 1 (1989)).

193. See ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD, HER AMERICAN DOCTORS, AND THE COLLUSION OF TWO CULTURES* (1997).

194. *Id.* at 78-81.

195. *Id.* at 57.



doses of toxic and not very effective medications.<sup>196</sup>

It is hard for young doctors to understand why patients would reject what contemporary science has identified as their best treatment options and for young lawyers to understand why their clients do not always follow excellent legal advice.<sup>197</sup> One of the reasons, I think, that Jehovah's witnesses have played such a disproportional role as examples of autonomy in medical decision making is that their rejection of blood products even when faced with death makes absolutely no sense to those who do not share their religious beliefs.<sup>198</sup> When weighing risks and benefits, the risks associated with a contemporary blood transfusion are minor compared to the likely death if such a transfusion is refused. In this situation, it is not enough to understand that the Witness truly believes that death is preferable to life with another person's blood. It is as important that the young doctor or lawyer respects the decision and understands that those with these religious beliefs are more similar to the uncomprehending young doctor or lawyer than they are different. They too love their children and will grieve their death. These religiously motivated passions are particularly hard to understand when they are not matched by any equivalent overarching beliefs on the part of the doctor or lawyer.<sup>199</sup> One of the things I try to emphasize when we encounter a character who makes what appears to be bad decisions is that we have all, at one time or another, failed to do something that others strongly believed we should.

What puts my course squarely in Judge Posner's first category of studying literature with legal themes<sup>200</sup> is that I am looking for teachable stories with strong plots involving both legal and medical issues which are not necessarily what schol-

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196. *Id.* at 254-58.

197. Antoinette Sedillo López, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL'Y 37, 60-61 (2008) (describing how students in clinic can benefit from learning how culture affects client decision making).

198. Another more practical reason is that, unlike groups that shun science-based medicine, Jehovah's Witnesses draw attention because they seek out medical care, but have strict limits on what they will accept from it.

199. It is always interesting for me in trying to achieve compassion and empathy that my own religion makes preservation of life primary. There is no doctrine, precept, teaching or practice that must, or indeed can, be followed if the result is risking loss of life or, in the case of many of the dietary laws, lack of hospitality.

200. POSNER, *supra* note 89, at 5-8.

ars or critics would call great literature. The title of my talk at Drexel was “The New Canon” because I found that the traditional reading lists of medicine and literature classes were not well suited to my goal of teaching health law through books, as opposed to teaching about books with health law subjects. As a result, the books I used are very different from the classics of either law and medicine<sup>201</sup> or law and literature.<sup>202</sup> We read neither Richard Selzer<sup>203</sup> nor Charles Dickens. There was no Kafka and no Camus. Yet, it is one thing to reject a Canon and another to develop an alternative.

As I wrote earlier, one of the things that inspired me to develop this course was Martha Nussbaum’s theory of law and literature as a way of inspiring law students’ “narrative imagination[s].”<sup>204</sup> With this goal in mind, I looked for books that would draw the students into the lives of people who they might see as very different from themselves and who were experiencing situations the students had never encountered or imagined. I did not realize it at the time, but in writing now about the books we read, I see that almost all the books had a young professional—someone starting his or her career—as hero or heroine. Perhaps the enthusiasm with which the students entered these worlds was because they could see themselves in these young doctors and scientists. The students related to the protagonist, and, then, turned to their own strengths and legal analytical skills in the context of the novel factual situation before them. It is no surprise that the books shared this structure. The plot of the young person leaving home to seek his or her fortune is one of the oldest in literature.<sup>205</sup> These books accomplished the task of drawing law students into unfamiliar situations that they will soon face.

Choosing the books was hard work. An early question that arose was how to define “literature.” Here, again, Judge Posner provides assistance. Citing John Ellis, he explains that:

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201. See *supra* notes 20-52 and accompanying text.

202. See *supra* note 111 and accompanying text.

203. See *supra* note 44 and accompanying text.

204. Nussbaum, *supra* note 180, at 322-23.

205. Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey*, 29 SEATTLE U. L. REV. 767, 790-800 (2006) (describing common plots).

There is no set of texts that come labeled as literature — no definitional procedure for deciding whether a comic strip, or Lincoln's second inaugural address, or Pepys' diary, or Gibbon's *Decline and Fall*, is literature. According to Ellis, literature is the label we give to texts, of whatever character or provenance, that are taken to have a meaning that is independent of the specific context in which they were created.<sup>206</sup>

What he means by "independent of the specific context" is that we read literature for our own purposes rather than those of the author. Posner uses the Gettysburg Address as an example: "Lincoln made a political address; we who may have no interest in the political setting and purpose of the speech value it for its imagery and cadence."<sup>207</sup> I decided that I would define literature in both the negative and the positive. Literature for the purpose of this class was not cases and not statutes. Literature was defined as work written by authors whose primary goal was to engage the reader in a story.

While it is possible to look for legal issues in any book with a medical or scientific theme, my goal for this course was to choose stories in which the characters were explicitly confronting both issues. As many books as there are with legal or medical themes, few contain both themes within one story. This alone required me to exclude many staples of medical humanities courses, including the works of doctor-authors, who perhaps by dint of their degree, make up the core of most medical school classes incorporating fiction.<sup>208</sup> Also, just because there are legal and medical issues does not mean that the author is interested in portraying the realities of either medicine or law. Judge Posner highlighted this lack of concern with legal specifics in much of what is traditionally called legal literature when he wrote that "[t]he frequency with which trials and other legal phenomena crop up in literature reflects both the criteria of literary distinction and the nature

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206. POSNER, *supra* note 89, at 75.

207. *Id.*

208. These included Anton P. Chekhov, John Keats, Sir Arthur Conan Doyle, William Carlos Williams, A.J. Cronin, W. Somerset Maugham, and Mikhail Bulgakov. Literature, Arts, and Medicine Database, Authors, <http://litmed.med.nyu.edu/People?roleId=6&action=list> (last visited Mar. 21, 2009).

and methods of literature."<sup>209</sup> What he means is that when law is the subject of a work of fiction, it is not there because the author has a particular interest in legal issues or in portraying them accurately, but rather because law is "a metaphor for something else."<sup>210</sup> In other words, authors are using the setting of a trial or other legal event to write about universal human concerns. His observations are equally true of authors who set their stories in a medical context. This lack of concern by authors with explaining, or even knowing, the specific legal or medical issues puts a special burden on the professor who intends to teach health law through the lens of literature to provide supplemental material that provides accurate, current information about both law and medicine. Making this supplemental material available to students makes it possible to use books like *Cobra Event*, which make only passing reference to the role of law or lawyers.<sup>211</sup>

It seems appropriate for an essay about teaching a course in studying stories to tell the story of how the course came about. My first job in legal academe was at the University of Texas Medical Branch's Institute for the Medical Humanities where I introduced the teaching of literature to medical students. I was struck by how quickly students could become involved in the events of a story and how those stories led to productive and interesting discussions about situations, such as the death of a child, that they had not experienced. As discussed by Professor Tovino, the Medical Humanities have gained a firm hold in U.S. medical schools.<sup>212</sup> Although it has evolved into an academic discipline of its own—in that people hold doctorates in the Medical Humanities<sup>213</sup>—to many medical educators its role is to literally humanize what has become an increasingly scientific and technology-based medical education. Regarding the place of the medical humanities in medical

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209. POSNER, *supra* note 89, at 71.

210. *Id.*

211. In *Death of the Good Doctor*, for example, Kate Scannell refers to her concerns about the possible legality of decisions made by her or others, but makes no mention of seeking legal advice or hearing from a lawyer. See KATE SCANNELL, *DEATH OF THE GOOD DOCTOR: LESSONS FROM THE HEART OF THE AIDS EPIDEMIC* (1999).

212. See Stacy Tovino, *Incorporating Literature into a Health Law Curriculum*, 9 MICH. ST. U. J. MED. & L. 213 (2005).

213. See UTMB, The Institute for the Medical Humanities, <http://www.utmb.edu/imh/> (last visited Jan. 20, 2009).

schools, Johanna Shapiro, Ph.D., a professor in the Department of Family Medicine and the Director of the Medical Humanities Program at the University of California Irvine School of Medicine wrote:

I do not think that, at this moment, we have agreement on what should comprise this essential humanities core. But it is clear to me at least that the great, unique power of the humanities lies in their capacity to engage the emotions as well as the intellect, to move the heart while provoking the mind. In this regard, the humanities are supremely relevant to the education of physicians, because this balance of intellectual steadiness and emotional tenderness (in the words of Jack Coulehan) is exactly what is required of them in every single clinical encounter. Emotionally connecting with (as opposed to simply intellectually comprehending) issues of multiple perspectives, ambiguity, complexity, failure, suffering, commitment, and devotion (to mention only a few) cannot be avoided in medicine, and can only be learned through engagement with the humanities in some form or other.<sup>214</sup>

When I made the switch to legal academe, I was interested in seeing if law students could be engaged in discussion of the problems that occur in the practice of health care law by reading works of literature.

I make no claim to have been the first person to do this. Professor Tom Mayo has taught such a course at Southern Methodist University (SMU) for many years, and other health law professors have incorporated literature into their classes. Moreover, by 2005, when I started developing this course, the field of "law and literature" was mature and courses were offered in almost every law school. The course, as taught at the Texas Tech University School of Law followed a very traditional path of using fiction to teach ethics and professionalism.<sup>215</sup> I started slowly by adding the book *My Sister's Keeper*<sup>216</sup>

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214. Posting of Johanna Shapiro to <http://medhum.med.nyu.edu/blog/?p=87> (Dec. 22, 2007, 15:22 EST) (citing John L. Coulehan, *Tenderness and Steadiness: Emotions in Medical Practice*, 14 LITERATURE & MED. 222 (1995)).

215. See generally Renee Newman Knake, *Beyond Atticus Finch: Lessons on Ethics and Morality from Lawyers and Judges in Postcolonial Literature*, 32 J. LEGAL PROF. 37 (2008).

216. JODI PICOULT, *MY SISTER'S KEEPER* (2005).

to my bioethics course. That book, which I will discuss in detail below, starts with an eleven year old going alone to an attorney's office to ask him for help in preventing her from being forced to donate a kidney to her dying sister. Although the author, Jodi Picoult, is not a lawyer and this book is not about law, it is well researched and the issues it raises are real ones. The students liked the book very much and, like the medical students I observed, were quickly engaged in the character's problems.

### 1. *My Qualifications for Teaching the Course*

A question professors need to ask themselves before developing a new course is whether they have sufficient knowledge and experience to make the experience worth the students' while. I was well aware that most of the people teaching medicine and literature in medical schools in the United States have doctorates in English, Comparative Literature, or related fields. Equally, many of the law professors offering these courses also come with a doctorate or other degree in literature or writing. I did not. Although I was an English major and certainly considered going on to graduate school, the focus of study in the early 1980's was criticism, not literature. I had some experience teaching literature to high school students through the Wellesley-MIT Upward Bound Program, and was briefly a member of a book group, but I was well aware that my knowledge base was health law, not literature. Since my primary goal was to teach law rather than analyze literature, I was concerned that a colleague from the English Department who would approach the material without an understanding, or interest, in the law would become a distraction rather than an assistant. Now that I am more comfortable with the course, I will probably seek out an expert in studying texts to join the class for one or two of the books.

### 2. *Who Took the Course*

As is always the case, I had to develop my course within the context of the resources available to me. Although I have had great success in inviting medical students to all my health law classes, unlike Professor Mayo, I did not have the structure in place to assure that the same group of law and medical stu-

dents met on a regular basis throughout the semester.

I also was not in a position to limit the class to students with a background in health law. Therefore, I needed to develop a class that would have sufficient legal content to engage a room of law students interested in, but not very knowledgeable about, either health law or medicine. These conditions resulted in a class quite different from both Professor Mayo's and from the medicine and literature curriculums with which I was familiar from teaching in a Medical Humanities Program.<sup>217</sup>

My mission was to:

- Introduce law students to the primary challenges of health law through the medium of literature and film;
- Encourage analysis and discussion regarding how fictional lawyers addressed professionalism issues; and
- Show how the careful reading they had been applying to cases over the past three years could translate to literature.

### 3. *Materials*

My library helped me to an extensive literature review of everything written about "law and literature" and "medicine and literature." I did not want to turn this course into all death and dying all the time. I was concerned about asking law students to do something so different from their usual tasks. Medical schools routinely teach at least one course in the medical humanities during which students read works of literature about medicine. One reason I could not just adopt this list was that I needed books not just about medicine, but about law and medicine. Another was that, frankly, I do not like short stories. Also, I wanted to remove all barriers that less accessible works—like *Arrowsmith*<sup>218</sup> or *The Plague*<sup>219</sup>—might

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217. Tovino, *supra* note 212.

218. SINCLAIR LEWIS, *ARROWSMITH* (1925).

219. ALBERT CAMUS, *THE PLAGUE* (Stuart Gilbert trans., Random House, Vintage International Edition 1991) (1948).

present. I wanted the students to be directly immersed in the world of contemporary people facing situations where there were both legal and medical issues. I wanted to remove all traces of whatever trauma had incurred in high school English or (worse) college level English courses. Although, of course, we discussed style, presentation, and symbolism, our primary concern was plot.

Many of these differences go directly to what I see as the core of what is different about the practice of medicine and the practice of law. While medical science has advanced to almost unimaginable levels in the last 2000 years, it is still bound by an immutable paradigm: eventually everyone dies and whatever the average lifespan, there will be people who die prematurely. To the extent that the dying are attended by people who claim an expertise in healing, those individuals will be left behind after the death to face both the grieving family and their own sense of frustration and failure.

For that reason, the human dynamics of the doctor patient relationship is remarkably similar now as it was in Pharaoh's court or in 1830s England or 1930s America. Even as doctors gain tools to fight death, rather than simply attend the dying, they face the limits of mortality. Most efforts to teach literature to medical students take this similarity for granted and assign works by long-dead physician-authors like Chekov and Williams.<sup>220</sup> Although nothing is said, it is as if any doctor-author, regardless of how long ago he practiced, has more to tell future doctors than a contemporary author who is not a doctor. Indeed, these works show us that it would be a mistake to think that doctors, who could do very little to alter the course of sickness, felt any less frustrated than those today with the most modern technology.

First, no human society we know of took death lightly. Any reading of an ancient text or a walk through an old graveyard, from ancient Greece to the colonial United States, shows us that death was not felt less when it was more common. But second, although we have more written material about how people felt about death than we do about how doctors felt, there is still enough evidence to conclude that doctors have always seen themselves at battle with death. The best example

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220. See *supra* notes 43-45 and accompanying text.



of this is the continued relevance of the Hippocratic Oath.<sup>221</sup> For these reasons, literary accounts by physicians of their experiences are equally universal.

When it comes to using literature with law students, however, the situation is somewhat different. Human expectations of justice and fairness are much more culturally determined than those of grief and frustration. In order to provide law students with realistic models from literature, it is more important to use contemporary material. It is for this reason that when I took on the project of teaching law students about health law through literature I found it important to revisit and eventually revise the Canon that developed from teaching medical students. In describing her decision to incorporate literature into one of her doctrinal classes, Professor Beryl Blaustone explains that:

After teaching evidence for four years, I decided to expose my students to narratives as an additional means of reviewing doctrine covered in class. My decision to incorporate storytelling into my teaching of evidence was an outgrowth of my individual foray into the field of learning theory which, among other things, has included attention to the mental processes of retention and recall. I posit that to adequately digest a body of legal doctrine, the mind should be operating in a creative mode to recreate the structures and constructs of the doctrinal analysis.<sup>222</sup>

If it could be any clearer that my course is about health law, not literature, it does not replace my school's long untaught "law and literature" course.<sup>223</sup> The goals and objectives of the course are stated in the syllabus as follows:

1. To understand the role law and lawyers play in the intersection of law and medicine.
2. To understand the specific laws and regulations that regulate health care in the United States.

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221. Although doctors frequently say an edited and updated version, the issues it raises are still relevant.

222. Beryl Blaustone, *Teach Evidence: Storytelling in the Classroom*, 41 AM. U. L. REV. 453, 458, n.19 (1992).

223. Texas Tech University, Texas Tech University School of Law Catalog 2008/2009, available at <http://www.depts.ttu.edu/officialpublications/pdfs/CurrentLawCatalog.pdf>.

3. To recognize that issues of ethics and professionalism are pervasive in the intersection of law and medicine and to identify these issues when they arise.
4. To analyze specific fact situations in which the above issues arise and to express your analysis clearly in written and oral form.
5. To develop an understanding of what it means to be in the role of a professional rather than as a participant in the event or as a lay observer.
6. To appreciate that different people have very different perspectives and viewpoints about situations where law and medicine intersect and that no progress can be made or dispute resolved until the attorney identifies (but not necessarily agrees with) the premises under which all the participants are operating.
7. To acquire substantive knowledge about how medical issues are regulated in the United States and to apply this knowledge to the literature read in this course.<sup>224</sup>

None of the books we read have achieved, or in most cases are likely to achieve, the status of literary classics.<sup>225</sup>

#### 4. *Why Movies?*

I have learned to assume nothing about law students' background in human biology. That said, I am always aware of my limitations and maintain strict boundaries between what I am an expert in—quarantine law—and what I am not—the infectious organisms that create the need for quarantine. I always have medical experts visit my health law classes to answer questions, and I am fortunate that the local medical community is interested in doing this. I have had people ask me how it is possible to teach these courses without a medical degree or a medical expert available at all times, and my answer is that it is no different than my colleagues who teach oil

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224. Law, Medicine, and Literature Syllabus (on file with author).

225. See EDSON, *supra* note 38; MYLA GOLDBERG, WICKETT'S (2005); ALLEGRA GOODMAN, INTUITION (2007); PICOULT, *supra* note 216; SCANNELL, *supra* note 211.

and gas law without being geologists, or banking law without being bankers. We, as lawyers, need to understand enough about medicine to appreciate the context in which the law acts, but we do not need to become medical experts.

That said, there is a lot of ground to cover. For law students who have probably not taken a science course since high school, and who are famously math and science phobic, a docudrama that conveys the excitement of Pasteur's discovery and the risks inherent in Jenner's early efforts to vaccinate against smallpox can be the most direct and effective way to explain the frustrations of doctors in the late 1980s when they were first confronted with a highly infectious disease that appeared out of nowhere, responded to no known medical intervention, and killed almost everyone who contracted it. Using films that convey information about vaccine development or virus eradication also helps to counter a frequent problem in all health law classes, which is the presence of law students who are, indeed, experts.<sup>226</sup> As much as I emphasize that all the students are starting at the same point when it comes to the law we will be studying, it is easy to be intimidated when a doctor or nurse or research scientist begins explaining how "things really are." These films and other supplementary material give the students a common vocabulary.<sup>227</sup> The final advantage of documentary films is that they take the professor out of the role of "know it all" by sharing the task of transmitting information with other sources. It is neither helpful nor interesting to become a medical "Wikipedia" on legs.

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226. See *A PARALYZING FEAR* (First Run Features 2005); *IN SEARCH OF THE POLIO VACCINE* (The History Channel 2005); *INFLUENZA 1918* (PBS Home Video 2006); *INVESTIGATIVE REPORTS: BIOTERRORISM* (A&E Home Video 2006); *THE NEXT PLAGUE* (The History Channel 2006). One of the side-benefits of the polio films is that they help students understand mechanically assisted breathing. They know the legal controversy around "pulling the plug," but, until, they see the iron lung they don't really understand what it means to be dependent on a machine. See *Doctors Lounge, Mechanical Ventilation*, [http://www.doctorslounge.com/chest/procedures/mechanical\\_ventilation.htm](http://www.doctorslounge.com/chest/procedures/mechanical_ventilation.htm) (last visited Mar. 21, 2009).

227. Some good medical history websites include: United States Nat'l Library of Med., National Institutes of Health, <http://www.nlm.nih.gov/> (last visited Mar. 21, 2009); Int'l Museum of Surgical Sci., <http://www.imiss.org/> (last visited Mar. 21, 2009); and Health Heritage Research Servs., Polio History, <http://www.healthheritageresearch.com/PolioHistory.html> (last visited Mar. 21, 2009).

### C. *The Books*

I divided the course into topics and grouped reading the books and studying the related law.

#### 1. *Juveniles*

*The Spirit Catches You and You Fall Down.*<sup>228</sup> This book has become a classic. It is read widely in colleges and graduate schools because of its sensitive portrayal of a clash between two cultures over the medical care over a child with a seizure disorder. Lee Ling's parent's are among the millions of Hmong who were resettled to the United States because they were being persecuted for their support of the U.S. during the Vietnam War.<sup>229</sup> The Hmong are a rural, mountain people who were, with very little support, brought in the millions to a few cities in the United States.<sup>230</sup> Unaccustomed to urban life, they frequently clashed with what they saw to be an alien culture. When the Lee's infant daughter Lia began having seizures, they brought her to the emergency room in Merced, California.<sup>231</sup> From the very first visit, where without access to a translator they were unable to explain that she had suffered a seizure, their encounters with the medical system were often ineffective and frustrating for both sides. The frustration culminated in their physician bringing a petition for medical neglect on the grounds that the family was not giving Lee the prescribed doses of anti-seizure medication.<sup>232</sup> The child's foster parents noticed almost immediately that the medications were causing serious side-effects but, unlike what happened when the parents complained, the doctors listened and changed doses.<sup>233</sup> Eventually, Lia was returned to her family where she continued to have seizures.<sup>234</sup> Each episode resulted in further damage to her brain from lack of oxygen, until she descended into a permanent vegetative state.<sup>235</sup> Faden

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228. FADIMAN, *supra* note 193.

229. FADIMAN, *supra* note 193, at 167-70, 181.

230. *Id.* at 167-70.

231. *Id.* at 23.

232. *Id.* at 58-59.

233. *Id.* at 87-88.

234. *Id.* at 116-17.

235. *Id.* at 140-53.

is a journalist who went to Merced to interview everyone involved about ten years after the events in the book.<sup>236</sup> She went with a translator to the parents and learned that in Hmong culture epilepsy was seen as a curse imposed by evil spirits, which could only be treated effectively by traditional healers or Shamans.<sup>237</sup> She spoke to the doctors who she found to be caring and competent but, for the most part, ignorant of the Lee's perspective.<sup>238</sup>

Although Faden is clearly impressed by the Lee's family love for Lia and by the richness of their culture, she tries hard to present all the participants' points of view. The result is a beautifully written book that shows the effects of cultural misunderstandings and the dangers of judging those who do not share our beliefs in Western Medicine as ignorant or backward. Our study of this book was enhanced by a visit to the class by the chief of translation services of our local hospital, who impressed us all with not only how hard she worked to not just provide translation but also to honor the culture of the patients.<sup>239</sup> From the perspective of law, we also learned how the American with Disabilities' Act's requirement that hospitals provide skilled translators has changed the experience of non-English speakers in U.S. hospitals. *The Spirit Catches You and You Fall Down* has become a classic because it does its job of showing the clash between cultures in health care so well. While it is unlikely that I would ever drop this book from the Law, Medicine, and Literature class, it is likely that I will incorporate it into my other health law classes.

*My Sister's Keeper*.<sup>240</sup> The novel, by Jodie Picoult, published in 2005, begins in a lawyer's office where a thirteen year-old girl is asking a lawyer to protect her from donating her kidney<sup>241</sup> to her older sister who is dying of cancer.<sup>242</sup> Soon it is

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236. *Id.* at viii.

237. *Id.* at 95, 100.

238. *Id.* at 112.

239. Irma Rubio, RN, BSN, Interpreter/Translator Specialist, Cultural Integration, Human Resources Department, Covenant Health Systems, Lubbock, Texas.

240. PICOULT, *supra* note 216. See generally Michele Goodwin, *My Sister's Keeper?: Law Children, and Compelled Donation*, 29 W. NEW ENG. L. REV. 357 (2007) (analyzing the legal issues in the novel).

241. See Sally Satel, *Desperately Seeking a Kidney*, N.Y. TIMES MAGAZINE, Dec. 16, 2007, at 62, available at <http://www.nytimes.com> (typing "Satel" and "Kidney" into the "search" box retrieves the article).

242. PICOULT, *supra* note 216.

revealed that her parents undertook in-vitro fertilization after the older sister's diagnosis and implanted the embryo, which was the perfect genetic match.<sup>243</sup> This was Anna.<sup>244</sup> The story is told in the voices of the characters—Anna, her sister, her brother, her mother, her father, her lawyer, the Guardian Ad Litem appointed by the Court, and sometimes an omniscient narrator.<sup>245</sup> Each voice is different and, as narrators shift, so do our judgments of these characters. As the story progresses towards a trial, there are strong opportunities to discuss the ethics of representing a juvenile and of tracing the lawyer's growth throughout the story. *My Sister's Keeper* fits only the broadest category of literature—it is a work of fiction.<sup>246</sup> No one is going to be surprised this book—a very soapy romance—did not win the Pulitzer Prize (or any other literary prize), but it puts the reader into the situation of a conflicted family in which one child is needed to save the life of another. It raises hard questions about the relationship between parents and children, such as whether it is possible for parents to separate their own interests from the best interests of their children, and, if not, who should make the distinction?

## 2. Research.

**Intuition.**<sup>247</sup> Few students following the normal path to law school have experienced the life of a research scientist. Without an understanding of what motivates scientists and what pressures are inherent to the profession, it can be hard to understand the circumstances leading to scientific misconduct such as research fraud or abuse of human subjects. *Intuition* draws us into the world of a Harvard affiliated basic science lab in which a group of very human and highly intelligent people have devoted their lives to studying basic science.<sup>248</sup> The character of Marion presents the classic scientific personality—she is uncomfortable with verbal confrontation and extremely cautious.<sup>249</sup> Sandy, a practicing cancer physician, is

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243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. GOODMAN, *supra* note 225.

248. *Id.*

249. *Id.*

the son of a car salesman and is motivated by results, not the accumulation of knowledge.<sup>250</sup>

I allowed the students to choose which books would be the subject of their long essays and many chose *Intuition* because they identified with the young scientists whose careers hung on what seemed to be the whims of their mentors. At one point, the dispute over what happened in the experiment results in a government hearing.<sup>251</sup> The author chose to portray the legal aspects of the story very broadly and the students found it frustrating.

Here are two excerpts from student essays:

*Intuition*, while an effective portrayal of life inside a researcher's world, likely would have had a different outcome if attorneys had been included earlier in the whistle blowing saga. As I read about Robin seeking advice from her mentors and neighbors in the scientific world, I couldn't help but wonder how the story would have turned out had Robin first sought the advice of an attorney.

Out of all the books we have read so far, *Intuition* was the most frustrating to read from a lawyer's point of view because the author failed to provide the facts that a lawyer would want to know in order to analyze a response. For example, what actually occurred during the appeal process to overturn the suspicions of the NIH's ethics board? What evidence was presented? . . .

It was also frustrating to see events unfold that are not within a lawyer's control such as Cliff's altering his notes because they were sloppy . . . . However, a client's past actions are not within a lawyer's control and our only recourse is to mitigate the past and advise clients on their future actions.

They were very interested in learning the actual law governing research misconduct and how the legal aspects of a similar case would be managed. This year, I anticipate having the director of research compliance for our medical school come as a guest expert for that discussion.

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250. *Id.*

251. *Id.*

I mentioned earlier that things came up in the course that I did not anticipate. Two good examples of this happened during our reading of *Intuition*. First, when some of the students were upset at the casual “sacrifice” of the lab mice who were the subjects of the research study, I found it necessary to quickly develop some materials on animal law, and we spent time discussing the legal protection, or lack thereof, of laboratory animals.<sup>252</sup>

### 3. *Death and Dying*

*Wit*.<sup>253</sup> I made the choice to first read the script and then watch the movie<sup>254</sup> starring Emma Thompson. It worked out well because the dialog of the movie is almost exactly that of the play, but the fact the characters are being portrayed by skilled actors gives different meaning to the words on the page.

*Wit* is probably the most traditional work I used for the course because almost every medical student has seen it at some point in his or her first two years of training. Emma Thompson plays an unmarried and seemingly friendless university English professor, a John Donne scholar,<sup>255</sup> who is di-

252. See Health Research Extension Act of 1985, Pub. L. No. 99-158, § 495, 99 Stat. 820, 875-77 (law governing use of federal funds for animal research); University of Minnesota, Regulatory Affairs, Laws and Policies Governing Care and Use of Animals, <http://www.research.umn.edu/regaffairs/animal/laws.html> (last visited Mar. 21, 2009); The Humane Society of the United States, General Information on Animal Research, [http://www.hsus.org/animals\\_in\\_research/general\\_information\\_on\\_animal\\_research/](http://www.hsus.org/animals_in_research/general_information_on_animal_research/) (last visited Mar. 21, 2009); People for the Ethical Treatment of Animals, <http://www.peta.org> (last visited March 21, 2009); Texas Tech University, Animal Care and Use Committee, <http://www.depts.ttu.edu/iacuc/> (last visited March 21, 2009); American Psychological Association, Committee on Animal Research Ethics, <http://www.apa.org/science/resethicsCARE.html> (last visited March 21, 2009); U.S. Department of Health and Human Services, Office of Laboratory Animal Welfare, <http://grants.nih.gov/grants/olaw/olaw.htm> (last visited March 21, 2009).

253. EDSON, *supra* note 38.

254. WIT, *supra* note 166.

255. An unexpected event was a question by a student about the appearance in both *Wit* and *Intuition* of the 17th century poet, John Donne. Students noticed his presence in *Intuition* where one of the main character's daughters is interested in literature and in *Wit* where the main character is a professor of English Literature specializing in John Donne. While most had heard the phrases, “no man is an island,” or “for whom the bell tolls,” they didn't know who he was or what he had to do with these two books we had read. There are many excellent websites providing Donne's biography, see, e.g., Works of John Donne, <http://www.luminarium.org/sevenlit/donne/donnebib.htm> (last visited Apr. 1, 2009), but in the exigency of the moment, I wrote a short essay explaining Donne's significance. I wrote, in part:

You will all notice (when you get to it) that John Donne is making another appearance in



agnosed with a serious and aggressive cancer, and she finds herself being treated by one of her former students—a young man she does not remember.<sup>256</sup> Those experiencing the play as entertainment rather than instruction will focus on the irony of a college professor dying of cancer who cares more for ideas than people, yet discovers as she is dying that people are far more important to her. *Wit* is by no means a case study created for the classroom. When being interviewed in 1999 by Jim Lehrer after winning the Pulitzer Prize for Drama,<sup>257</sup> playwright Margaret Edson described the play saying:

It's a play about love and knowledge. And it's about a person who has built up a lot of skills during her life who finds herself in a new situation where those skills and those great capacities don't serve her very well. So she has to disarm, and then she has to become a student. She has to become someone who learns new things.<sup>258</sup>

It is neither written nor performed to instruct future doctors. Its themes of what makes life important are universal and touching. The teacher who is at the end of her life and the young doctor at the beginning of his are both caught up in

our course when we read the book *Intuition* by Allegra Goodman . . . .

This is not coincidence. John Donne is a 17th Century Poet and you already know some of his best lines “no man is an island unto himself”; “Do not ask for whom the bell tolls, it tolls for thee”; “Death be not Proud, though some have called you so.” He also wrote a lot—a huge volume of his work is available to us.

That doesn't answer the question, though, of why . . . is he in two of our books . . . . He was a poet who wrote about death and for that reason he has been adopted by almost everyone who has written about death since then. It is therefore not surprising that he turns up in a lot of medical literature. In a way, it is a kind of a cliché that the professor in “Wit” studied Donne—the death poet. She could just have easily studied Chaucer or Shakespeare or Wordsworth. It is forgivable, I think, because whether she was a Donne scholar or not, most people with an English literature background would be thinking about Donne when they are terminally ill . . . . One of his basic questions is “does death win?” or is there a way to lead your life so that it doesn't. Another theme is about what is the point of life if the end for everyone is death. One big thing that is the same now as it was 400 years ago is, indeed, that everyone dies and you have to find a way to live your whole life with that knowledge.

Jennifer Bard (unpublished essay, on file with author).

256. *WIT*, *supra* note 166.

257. The Pulitzer Prizes, The 1999 Pulitzer Prize Winners, Drama, <http://www.pulitzer.org/citation/1999%2CDrama> (last visited Mar. 21, 2009).

258. Online NewsHour: A NewsHour with Jim Lehrer Transcript, Love and Knowledge, Apr. 14, 1999, [http://www.pbs.org/newshour/bb/entertainment/jan-june99/edson\\_4-14.html](http://www.pbs.org/newshour/bb/entertainment/jan-june99/edson_4-14.html) (last visited Mar. 21, 2009).

their jobs and disdain human feelings and emotions as unprofessional. I think it is shown to medical students in order to humanize their patients—so they can sort of see this is a real person, not just a liver cancer. Anecdotally, I have heard that many medical students feel that the young doctor is unfairly portrayed as unfeeling when his devotion to pure science is likely to save many lives—even though he cannot help this particular individual.

Lawyers, in my opinion, see the movie differently. Much of the professor's suffering involves her participation in the trial of a very toxic regime of chemotherapy. The initial conversation with her senior doctor—in which he assumes, rather than asks, that she will want to participate—is a very powerful evocation of the trust patients put in their doctors and how dangerous that can be. One of the things we discuss is that from the doctor's perspective, she has given informed consent and should this be questioned in court, he is likely to be outraged. After all, she could have said "no." Yet, it is equally clear to an observer that she is operating under the misconception that the chemotherapy is a treatment from which she might benefit. Also interesting is that as she becomes sicker and sicker and as it becomes clearer that she is achieving no benefit from the therapy, no one discusses the option of stopping.

We study in class whether the doctors treating the professor meet contemporary legal standards of informed consent for participation in a research study with many burdens and increasingly few benefits.

#### 4. *Bioterrorism*

*The Cobra Event.*<sup>259</sup> This thriller is based on the premise of a genetically engineered virus deliberately released in New York City.<sup>260</sup> Robert Preston does a superb job of getting the science right and his story telling is so clear that everyone leaves with a good understanding of how easy it would be to create a bioweapon. Unfortunately, although the book's science is still good, its law is not. The heroine of the story is a brave and talented Centers for Disease Control and Prevention (CDC) epidemiologist whose greatest frustration is mak-

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259. RICHARD PRESTON, *THE COBRA EVENT* (1998).

260. *Id.*

ing her case that the outbreaks of infectious disease are linked, and may well be bioterrorism.<sup>261</sup>

Everyone, from the CDC to the post office, has a much higher awareness of bioterrorism following the 2001 anthrax attacks on political and media figures. CDC investigators today would approach an outbreak of an unknown deadly infectious disease as presumptively bioterrorism, until proven otherwise. In yet another unexpected event, one student responded to my statement by saying anyone could get the materials necessary to create a deadly organism and fax it to an accomplice, who could introduce it in the United States by going on eBay and compiling the material to replicate and distribute a deadly virus. He did not receive any visits from government agents during the semester, but he is probably forever on some sort of watch list, and I will preempt this activity when I teach the course again.

This difference in awareness is legally significant because it means that officials are much quicker than they were before 2001 to impose quarantines or to arrest people suspected of involvement with bioterrorism. There are several thrillers that portray the current environment, although they do not do as good a job teaching the science.

### 5. *Viruses*<sup>262</sup>

*Wickett's Remedy*.<sup>263</sup> This is a charming but quirky story of a woman in living in Boston in the early 1900s who faces the flu pandemic. She volunteers as a nurse at an actual clinical trial conducted on Deer Island in Boston Harbor in which military deserters were used as subjects to test the transmission of the flu virus.<sup>264</sup> The historical research portrayed in the story is absolutely accurate. Following the book, the students saw a film about the 1918 Flu.<sup>265</sup> When I taught the course in 1997, I also used the book with my class in Clinical and Legal issues in Research. Although the students in both classes liked the book, I thought the sub-plot about one of the charac-

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261. *Id.*

262. Viruses were a continuing presence from the 1918 Flu to Polio to AIDS. Students are universally unfamiliar with what they were and why they were dangerous.

263. GOLDBERG, *supra* note 226.

264. *Id.*

265. INFLUENZA 1918, *supra* note 226.

ter's struggles to get royalties for a soft drink invented by her late husband was distracting and have not used it this year.

## 6. AIDS

*And the Band Played On.*<sup>266</sup> One of the first things I learned when I started teaching public health law in 2002 is that almost none of the law students had known a time without AIDS. It has always been a fact in their lives. I am in the process of conducting research about what students actually know about public health, but it is almost universally the case that before essentially the year of their birth, no one had ever heard of a disease like AIDS. They are desensitized to AIDS's threat (a problem in and of itself), but certainly are completely aware that it cannot be caught through casual contact and that there are effective treatments. They also, I learned, have understood the public health message that antibiotics are useless for a cold caused by a virus to mean that viral illnesses are less dangerous.<sup>267</sup> The result of their belief system is that they have no appreciation or understanding of the fear and panic engendered by AIDS when it emerged in the United States in the mid 1980s. An understanding of this panic is essential to an understanding of recent legal history. For example, in the early days of the panic, most states passed AIDS-specific laws, which they later repealed when AIDS became just another infectious disease. Even more so, however, an understanding of AIDS panic is essential to planning for public reaction to the next epidemic whether it be Bird Flu or Mad Cow Disease. It is easy enough to shrug off the fears of parents who would not let their children go to public swimming pools for fear of polio in the 1940s, but much harder to watch Ryan White's house being stormed by parents who did not want him attending school with their children. While they were born in the mid-1980s, they recognize it as a time within the memory of people, like their law professors, who are not recalling it from rocking chairs in retirement communities. I remember vividly when I first understood that this was a disease that could not be prevented, detected, or treated, and which killed everyone who caught it.

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266. *AND THE BAND PLAYED ON* (HBO Home Video 2001).

267. Cf. Luis P. Villareal, *Are Viruses Alive?*, 291 SCI. AM., Dec. 2004, at 101.

*And the Band Played On*<sup>268</sup> does a good job of illuminating the recency of the AIDS outbreak. This movie is very powerful with a terrific cast—very quickly it puts you in that time when people first became aware of AIDS and then began to see so many young people die. Many of us over forty assume that the shameless conduct of the blood industry in dragging their feet to test blood for HIV is common knowledge, but it is not. Over the course of three class periods we all lived, or in my case relived, the horror of those days. Students were shocked and angry at the prejudice. They had never heard of Ryan White—and had no idea of Michael Jackson’s heroism in being photographed hugging him—or of the shock people felt seeing Princess Diana picking up and cuddling a baby with AIDS.

### 7. Malpractice

*The Lazarus Case: Life and Death Issues in Neonatal Intensive Care*.<sup>269</sup> John Lantos’s *The Lazarus Case: Life and Death Issues in Neonatal Intensive Care*<sup>270</sup> is about a medical malpractice lawsuit brought against a neonatologist who was allegedly too slow in resuscitating a premature infant born not breathing. This adds the whole topic of malpractice to the class and because Dr. Lantos was the expert witness for the defense, it provides a good opportunity to see the differences between how lawyers and doctors see the same events.

If I teach the course a third time, I may add a “classic” such as Sinclair Lewis’s *Arrowsmith*<sup>271</sup> or even Camus’s *The Plague*.<sup>272</sup> I haven’t decided as I write this whether I can successfully introduce poetry. If I do, it will probably be the work of Sharon Olds who is a contemporary poet with a strong interest in how humans face sickness.<sup>273</sup>

268. AND THE BAND PLAYED ON, *supra*, note 266.

269. JOHN LANTOS, *THE LAZARUS CASE: LIFE AND DEATH ISSUES IN NEONATAL INTENSIVE CARE* (2001).

270. *Id.*

271. LEWIS, *supra* note 218.

272. CAMUS, *supra* note 219. There is a rich literature of the Medical Humanities that can only be introduced here. See, e.g., Anthony L. Suchman, *Story, Medicine, and Healthcare*, 16 *ADVANCES IN MIND-BODY MED* 193 (2000). Other classic works studied in medical schools include: ANTON P. CHEKHOV, *A DOCTOR’S VISIT* (Bantam Classics 1988) (1898) and MARY WOLLSTONECRAFT SHELLEY, *FRANKENSTEIN* (Penguin Books 2003) (1818).

273. See Poets.org: From the Academy of American Poets, Sharon Olds, <http://www.poets.org>

*D. Reflections*

In conclusion, I am very proud of the course I created, but I am equally confident that readers of this Article will create as good or better courses of their own. Many of the choices I made were based on my own preferences. I do not like short stories and we did not read any even though they are a staple of law or medicine and literature courses because it is so much easier to discuss a work as a whole than to slog through it section by section. I am not comfortable with personal narratives of illness—pathographies—but they are a compelling and effective in letting the reader feel what the patient does. I have no training in the visual arts, which meant we neither looked at paintings nor created them. The list could go on. I hope this essay inspires its readers to look for ways of learning and teaching the law that can engage the learner beyond the dry recitation of facts in most appellate opinions. I look forward to hearing what you do.<sup>274</sup>

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ets.org/poet.php/prmPID/205 (last visited Mar. 21, 2009).

274. Please contact me at Jennifer.Bard@ttu.edu if you would like a copy of the syllabus or other materials to help you teach a similar course.