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# Introduction—Law and Literature: A Collection of Essays on John Grisham's *The Rainmaker*

DONALD J. POLDEN\*

The following essays provide an interesting look at several issues presented to readers in John Grisham's novel, *The Rainmaker*. As a general matter, best-selling novels are not the grist of law review articles, which tend to the more technical and analytic treatments of topics of law, legal practice, and public policy. However, the usual menu in law reviews is sometimes graced by articles and essays on topics suggested by novels, such as law's roles in culture, lawyers as literary characters, conceptions of justice in society, and interpretation of texts.<sup>1</sup>

This collection of essays started with the thought that many of the contemporary issues of a cultural perspective on law and lawyers (for example, the depiction of lawyers in literature, public dissatisfaction with lawyers and legal processes) and issues of substantive law (bad faith litigation, ethical norms) could be explicated through the insights of a novel. There were two things which made *The Rainmaker* a good vehicle to explore these issues: First, the novel involved an intriguing matrix of topics including discovery practices in civil litigation, popular perceptions of lawyers' ethics, insurance companies treatment of insureds, conceptions of the adequacy of legal training of law students, and others. Second, the central figure, a young

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1. For an interesting treatment of the relationships between law and literature, see RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATIONSHIP* 5-14 (1988).

man named Rudy Baylor, attends (and later graduates from) a mythical law school at Memphis State University.<sup>2</sup>

These essays reflect a broad range of perspectives from the novel and pose interesting issues about the modern practice of law, lawyers as cultural figures, and the ability of literature to develop popular insights into legal rules and institutions. And, the collection of essays intends to advance our thinking about the roles that lawyers play in modern fiction and the power that fiction plays in shaping contemporary thought.<sup>3</sup>

Amy Mashburn and Dabney Ware in their essay describe an uncomfortable disjunction between the reality of law practice—as described in relatively clear terms in the novel—and the professional mythology of law practice extolled by bar association leaders, legal educators, and legal scholars.<sup>4</sup> According to Mashburn and Ware, *The Rainmaker* presents a “relatively accurate, and therefore troubling, account of a civil lawsuit,”<sup>5</sup> but this description of a legal culture is fundamentally different from the depiction of lawyering and law practice portrayed by insiders. Developed through the eyes of Rudy Baylor (first as a law student, later as a novice lawyer), we learn that the rhetoric of professionalism and selfless service to clients and the public does not resonate with either novelist

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2. The name of Memphis State University was changed to The University of Memphis by act of the Tennessee Legislature in 1995. The author of *The Rainmaker*, John Grisham, practiced law in north Mississippi, close to Memphis, for several years prior to becoming a successful novelist and, according to legend and credible reports, frequently used the law school’s library. In fact, some descriptions of the physical facility in the novel accurately describe places in the law school, but much of the description of the law school bears no close resemblance to The University of Memphis School of Law. The law school does have an Elderly Law Clinic which was started after the publication of the book. And the law school did enjoy the services of a faculty member named James Smoot, who now teaches at another law school. The real Professor Smoot, whose only resemblance to the fictional Professor Smoot is a slight physical similarity, did not teach in the Elderly Law Clinic or any courses connected with elderly law.

3. See LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW (Peter Brooks & Paul Gewirtz eds., 1996); RICHARD WEISBERG, THE FAILURE OF THE WORD: THE PROTAGONIST AS LAWYER IN MODERN FICTION (1984).

4. Amy R. Mashburn & Dabney D. Ware, *The Burden of Truth: Reconciling Literary Reality with Professional Mythology*, 26 U. MEM. L. REV. 1257 (1996).

5. *Id.* at 1258.

Grisham's imagery of lawyer's work or the reality of law practice today.

Many commentators have been suspicious of the ability of law schools to prepare students for the legal profession, and, more narrowly, whether or not legal educators know what they are doing in educating and training law students for the responsibilities of the modern practice of law.<sup>6</sup> And, as Mashburn and Ware point out, there is considerable doubt that the contemporary practice of law is really anything but a business enterprise.<sup>7</sup> But the essayists, through a thoughtful examination of the character Rudy Baylor, find grounds for optimism for law students and new lawyers. Their hope springs from the possibility of a more realistic, honest articulation of the lawyer's lot in contemporary life and more modest expectations about lawyers' work from legal educators and bar leaders.

Jeffrey Harrison and Sarah Wilson introduce us to the connection between writing fiction and writing judicial opinions in their essay.<sup>8</sup> The connection, involving as it does advocacy and connivance, illustrates the conjuncture of purpose, emotion (for example, empathy, antipathy, etc.) and function. We learn about "the advocacy of characterization"—the process of creating a character who acts in a way authentically convincing to readers—and, through three characters in the novel, we learn the author's use of characters to form the story. Harrison and Wilson capably develop the notion that creation of characters is "the critical element of advocacy" and find comparable purpose in judicial opinion writing.<sup>9</sup>

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6. See, e.g., David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 CAMPBELL L. REV. 61 (1994); Kissam, *The Decline of Law School Professionalism*, 134 U. PA. L. REV. 251 (1986).

7. Mashburn & Ware, *supra* note 4, at 1267.

8. Jeffrey L. Harrison & Sarah E. Wilson, *Advocacy in Literature: Storytelling, Judicial Opinions, and The Rainmaker*, 26 U. MEM. L. REV. 1285 (1996).

9. Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writing*, 62 U. CHI. L. REV. 1371, 1386-90 (1995); POSNER, *supra* note 1, at 9 ("Many legal texts, especially judicial opinions, resemble literary texts in being highly rhetorical rather than coolly expository. Judges and other lawyers resemble literary artists in the close attention they pay to the choice of words in which to express themselves, as well as in [their] fondness for metaphors and similes . . .").

Jim Elkins explores in his essay the central character's decision to go to law school and his attitudes toward his law school teachers.<sup>10</sup> Drawing into the calculus the professional musings of Charles Reich,<sup>11</sup> Elkins exposes Baylor's reasons for attending law school. He also describes Baylor's ambivalent, at times chaotic, attitudes towards law school, legal education, and law professors who view lawyers as instruments of good deeds and social change. Meanwhile, the protagonist explicates a cynical view of lawyers' values and the commercial underpinnings of the lawyer's life. Rudy Baylor's ambivalence and cynicism about his law school experience is apparently shared by other "real" law students, as revealed in several, almost apocalyptic treatments of law school.<sup>12</sup>

Elkins observes "a growing disjuncture between traditionalists and contemporary law teachers" and what each has to offer legal education and the students it attempts to train.<sup>13</sup> This disquieting schism between realistic and traditional perspectives on teaching professional values to law students is experienced and replicated in other aspects of the legal profession.<sup>14</sup>

Amanda Esquibel draws from the novel some lessons about legal ethics.<sup>15</sup> She extracts a "nub" of professional morals, replicated in rules of ethical conduct, from a character in the novel, Deck. Those morals are to fight for the client, "refrain from stealing money," and "try not to lie."<sup>16</sup> Esquibel expands these basic constraints into the contemporary practice of law where pressures are great and lines become blurred. Grisham's novel challenges the received notion of professional ethics be-

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10. James R. Elkins, *Troubled Beginnings: Reflections on Becoming a Lawyer*, 26 U. MEM. L. REV. 1303 (1996).

11. CHARLES REICH, *THE SORCERER OF BOLINAS REEF* (1976).

12. See DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (1983); Barbara Glesner, *Fear and Loathing in the Law Schools*, 23 U. CONN. L. REV. 627, 628-30 (1991).

13. Elkins, *supra* note 10, at 1323.

14. MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1994); ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).

15. Amanda K. Esquibel, *Be Led Not into Temptation: Ethics Lessons from The Rainmaker*, 26 U. MEM. L. REV. 1325 (1996).

16. *Id.* at 1328-29.

cause it paints a vision of professional reality abhorrent to lawyers. Esquibel informs us that solving the “problem” of professional ethics requires an identification of economic incentives and a realignment of those incentives with desired ethical behavior.<sup>17</sup> And, while Rudy Baylor leaves the practice of law at the end of the story, clearly the rest of us—lawyers, ethicists, legal educators, and scholars—cannot leave. Rather, we must rediscover the ideals and values which will reestablish public esteem for the legal profession.

*The Rainmaker* presents a disturbing, yet realistic, view of the institutions that govern health care in the United States and the consequences of inadequate access to medical care. Two essays delve into this complicated set of legal and public policy issues. *The Rainmaker* makes us confront the human dimensions to the medical and moral aspects of these more jurisprudential issues. Novels are proven instruments to explore social and moral issues. The immensely compelling novel by James Gould Cozzens, *The Just and the Unjust*, exposed readers to issues of jury nullification and the felony-murder rule through the eyes of a young lawyer, Abner Coates. Coates develops from an idealist to a realist and becomes a more complete person and public servant through the novel’s text. Rudy Baylor does not follow the same path, but rather leaves the practice of law in disgust. Both novels describe the development of young lawyers while exploring contemporary issues appropriate and ripe for public consideration and debate.

In his essay, Robert Jerry describes the significant public policy issues implicated by health insurance company decisions to refuse a claim for coverage.<sup>18</sup> These decisions reside at the very heart of the novel’s dramatic interaction of legal principles and human emotion. Conceding that health insurance companies often have legitimate, and understandable, reasons for denying coverage claims, Jerry demonstrates that none are applicable to the situation involving Donny Ray Black. Indeed, the evidence

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17. *Id.* at 1345.

18. Robert H. Jerry, II, *Health Insurance Coverage for High-Cost Health Care: Reflections on The Rainmaker*, 26 U. MEM. L. REV. 1347 (1996).

gleaned from the text is clear that Great Benefit Life had no permissible reason to refuse coverage; a conclusion that surely inflamed the jury. But Jerry's point is equally dramatic: the very human depiction of the consequences of making coverage decisions presents some fundamental issues confronting the health care system. The issues—about the availability of health care resources and the allocation of those resources—are being addressed, and must be resolved, in contemporary literature and in legal text.

Alan Widiss, on the other hand,<sup>19</sup> uses the novel's litigation about insurance coverage to explore an interesting, and increasingly controversial, area of insurance law. He describes the development of the law governing refusals by insurance companies to pay claims made by insureds. This law is applied to the novel's storyline, and readers are brought to a much clearer understanding about the relevance of theories of tort liability and punitive damages to punish pernicious corporate behavior. However, Widiss pushes us deeper into the paradoxes presented when corporations are punished because of actions of officers and corporate shareholders and employees are injured along with the plaintiff. He asks the readers to consider another approach to the imposition of punitive damages in "bad faith" cases, taking us beyond Rudy Baylor's emotional and self-interested view of the case and into the realm of a more coherent public policy.<sup>20</sup>

The essays presented in this collection may not provide easy, "pool-side" summer reading, as the novel perhaps does. However, they do demonstrate the power of a piece of fiction to make us think about contemporary issues and problems in deeper, more profound ways. And, they may give us an opportunity to understand how the lawyer as a literary figure is informed by the process of educating young lawyers and the challenges of the modern practice of law.

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19. Alan I. Widiss, "Bad Faith" in *Fact and Fiction: Ruminations on John Grisham's Tale About Insurance Coverages, Punitive Damages, and the Great Benefit Life Insurance Company*, 26 U. MEM. L. REV. 1377 (1996).

20. *Id.* at 1402-03.