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A TRIBUTE TO MENTORS

Jesse A. Goldner[†]

I SUSPECT THAT few health law students have given much thought to who taught their teachers. Nor, I imagine, have students considered how those teachers have had an enormous impact on the careers of current professors. So much of what we, as professors, do in the classroom, as well as in our writings and other work in various public arenas, can be directly linked to their influences. Some of the material in this essay may serve to provide a small piece of history. Much of what is presented is designed to recognize and thank my own mentors in the field. On a broader level, however, these comments are also meant to illustrate the very special role that mentoring has played within the academic health law community.

In other parts of my own academic life, including experiences that led to my early work as a clinical and family law teacher, mentors were critical to my development.¹ But, for present purposes, I will restrict these comments to those who gave me a health law legacy. A few of these individuals undoubtedly never thought of themselves as “health law teachers,” perhaps because, at the time of our interaction, “health law,” at least as a formal discipline, did not exist. Others probably would not view themselves as mentors, if for no other reason than that they would see me as a contemporary. Yet, I suspect other authors for this issue and many more in our field have all been mentored. Moreover, we have sometimes been mentored in important ways that become apparent only when we give the question the kind of thought that it deserves, but rarely gets. My associations with truly great teachers have been a blessing to me.

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¹ But I must recognize Professor Gary Bellow (Harvard Law School) and David Lander, Esq. (now a partner in the St. Louis law firm of Thompson Coburn, and formerly a colleague at Saint Louis University). In their own way, they contributed much to teaching me how to be a lawyer, a critical part of being a clinical teacher. Professor Frank E. A. Sander (Harvard Law School) had a similar influence on my work in the family law area.

I. THE HARVARD LAW SCHOOL HERITAGE

As with many of my own generation,² I came to health law by a rather circuitous route and with very different perspectives.³ Harvard Law School, which I attended in 1970-1973, provided a remarkably rich background for someone with my interests.

My principal entry into "health law" largely was through the world of law and psychiatry and my relationship with Alan Stone, M.D. Alan, who is a psychiatrist, not a lawyer, had been a member of the law school faculty since 1969. At the beginning of my third year, in 1972, he was appointed Professor of Law and Psychiatry in the Faculties of Law and Medicine.⁴ One might say that I "majored" in Alan Stone, taking courses in Psychoanalytic Theory and the Law, Mental Abnormality and the Law, and Human Relations and the Law with him, as well as a Family Law course he co-taught with Professor Frank E.A. Sander. In addition, I served as one of his research assistants during my third year, working with Alan on a number of articles he wrote, replying to another psychiatrist, Thomas Szasz, M.D. Dr. Szasz' articles and books, including *Law, Liberty and Psychiatry*⁵ and *The Myth of Mental Illness*,⁶ made him a hero to some, but a controversial figure in the world of law and psychiatry. Alan (who later became president of the American Psychiatric Association) felt duty bound to respond to some of Dr. Szasz' less orthodox views.

Alan was a mentor in so many ways. In the work we did in response to Dr. Szasz, Alan, probably more than any of my other law school professors, pushed me to try to articulate, clearly and passionately, views with which I might not agree. Through his contacts at the Massachusetts Mental Health Center, McLean Hospital, and the Cambridge Court Clinic, he arranged a variety of experiences (akin to the more formal externship placements we often now provide to our law

² This is my thirtieth year of law school teaching.

³ See, e.g., Sylvia A. Law, *Introduction, Teaching Health Law: A Symposium*, 38 J. LEGAL EDUC. 485, 485 (1988) ("People teaching health law in American law schools today come to the subject with sharply different perspectives.").

⁴ Currently he is the Touroff-Glueck Professor of Law and Psychiatry at Harvard.

⁵ THOMAS S. SZASZ, *LAW, LIBERTY, AND PSYCHIATRY: AN INQUIRY INTO THE SOCIAL USES OF MENTAL HEALTH PRACTICES* (1963) (arguing that we should not sacrifice liberty for mental health, and warning against the dangers of mental health legislation).

⁶ THOMAS S. SZASZ, *THE MYTH OF MENTAL ILLNESS: FOUNDATIONS OF A THEORY OF PERSONAL CONDUCT* (1961) (arguing that mental illness is a myth, but that psychotherapy is an effective method for helping people to learn about themselves and not to recover from an illness).

students), that first exposed me to the clinical side of medicine in general and psychiatry in particular.

These put me in good stead when, on joining the faculty at Saint Louis University School of Law in 1973, I was asked to develop, as part of the school's initial foray into a substantial academic credit clinical course, a civil clinical law program at Malcolm Bliss Mental Health Center, an acute care psychiatric facility in St. Louis. I also began teaching Law and Psychiatry and Alan's imprint there too is immeasurable. His ability, in a variety of settings, to force me to think about the role that psychodynamics, and particularly that of the workings of the unconscious, play in all sorts of human endeavors has had enormous effects on me. It contributed tremendously not only to how I have taught my law students and psychiatric residents and fellows in law and psychiatry, but also to my clinical and family law teaching, and even, to some extent, to other areas as well. Our frequent discussions about the significance and parameters of the concept of confidentiality, not merely in the area of psychiatry, but in the rest of medicine as well, remain with me today.

Last, but by no means least, Alan undoubtedly played a substantial role in my obtaining my faculty position at Saint Louis University. In the early 1970's, he was active in an organization called the Group for the Advancement of Psychiatry (GAP), an association of liberal psychiatrists involved in a variety of public policy issues related to mental health. When I arrived in Saint Louis for my faculty interview, Dr. Edward Auer, the chairman of the Department of Psychiatry at the University's School of Medicine, and a GAP colleague of Alan's, was sitting in the office of the law school dean to greet me. I suspect that I may well be the only member of an American law school faculty to have been interviewed by a psychiatrist as part of the hiring process!⁷

Harvard Law School also offered a number of courses taught by William J. Curran. In the spring of 1972, I enrolled in his "Health Law, Public Policy, and Consumer Protection in the Health Field," an interdisciplinary course offered at Harvard's Medical Center. Bill held the Frances Glessner Lee Chair as Professor of Legal Medicine at Harvard and had a joint appointment in two Schools. The Law School was not one of them, perhaps because the "medico-legal field" as it

⁷ Ed, in his own way, became another mentor, introducing me not only to many wonderful colleagues in psychiatry, but also, more generally, to our School of Medicine. Through his efforts and interest, I received a secondary appointment in his Department. Over the years my relationships with colleagues and students in the departments of the University where I hold faculty appointments have proven to be a source of great satisfaction and have greatly enriched my law school teaching.

was then viewed, was not seen by a place like Harvard Law School, as warranting that much credibility. Bill's chaired appointment was in Harvard's Schools of Medicine and Public Health. At the Law School, his title, similar to that of other adjunct instructors, was "Lecturer in Law." Students from those three disciplines, as well as economics and public policy, were enrolled. The following fall, I enrolled in Bill's "Medicolegal Relations and Forensic Science" offered at the Law School. In both courses we used *Law, Medicine, and Forensic Science*, then in its second edition and edited by Bill and E. Donald Shapiro.⁸

In all candor, my recollections of the courses are less than stark. In part, I suspect, because Bill had a rather uniquely gentle touch in the classroom unlike what occurred in so many of the other courses of that era. Terror did not reign supreme in those days of the "Paper Chase." Grades in each were based on papers in which we were required to identify a recent case, statute, or other event that was relevant to the materials covered in the course and that would later serve to help update the text.⁹ In many ways so much of what we now consider to be within the purview of health law first appeared in the Curran and Shapiro casebook. The materials not only covered "Forensic Science," but they examined what was then known about medical malpractice, licensing and regulation of health care professionals and facilities, public health, bioethics, reproductive health, human experimentation, organ transplants, the legal definition of death, international health issues, and even the use of computers in medicine.

II. ONE OF YALE'S GREAT ONES

A friend had arranged for me to spend my third year at Yale Law School, because, in part, she believed it would be wise for me to work with Professor Jay Katz. I declined the offer in order to pursue some of the opportunities Alan had arranged for me in Boston. Thus, I never was a formal student of Jay's. Nonetheless, he very much was one of my teachers and my debt to him is enormous.

In the late 1970's, I was asked to join Saint Louis University's Institutional Review Board (IRB), and as I result, I became acquainted with Jay and his work. The entire issue of human experimentation

⁸ WILLIAM J. CURRAN & E. DONALD SHAPIRO, *LAW, MEDICINE AND FORENSIC SCIENCE* (Little Brown, 2d ed. 1970). The current iteration of that classic is now in its sixth edition. MARK HALL ET AL., *HEALTH CARE LAW AND ETHICS* (Aspen, 6th ed. 2003).

⁹ At the end of each class, Bill did give an exam, a "Bar Exam" as he called it, which only required that students come to his house prepared to imbibe.

and particularly the legal and ethical issues which it presents, have fascinated me ever since. Of course, his 1972 book on the subject¹⁰ served for me, and no doubt for literally hundreds if not thousands of others, as a seminal guide to thinking about these questions. I remained on the IRB for nearly a decade, until I was unceremoniously removed, largely because of my efforts to put into practice some of the lessons that book and Jay's other early works on the issue had taught me. Subsequently, however, I was asked to return to the IRB some six years ago and have been chairing it for the last five, albeit in a very different regulatory environment.

In 1993, Jay graciously accepted my invitation to serve as the keynote speaker at a conference on human experimentation, sponsored by our Center for Health Law Studies. It was an enormous success and one of the good things that emerged from it was the fall, 1993 symposium issue of the Saint Louis University Law Journal devoted to the topic. Jay's article, based on his keynote address,¹¹ was a wonderful contribution in itself.

Jay taught me much that I have tried to apply, albeit not nearly as successfully as I would like, to my own IRB work. For example, he was adamant in his belief in the existence of what has come to be called the "therapeutic misconception:" the fact that so many subjects are not likely to readily comprehend that the research in which they are being asked to participate, might not be beneficial to them.¹² This is particularly problematic where the subject's treating physician is the individual making the overture to become a research participant in

¹⁰ JAY KATZ, *EXPERIMENTATION WITH HUMAN BEINGS: THE AUTHORITY OF THE INVESTIGATOR, SUBJECT, PROFESSIONS, AND STATE IN THE HUMAN EXPERIMENTATION PROCESS* (1972).

¹¹ Jay Katz, *Human Experimentation and Human Rights*, 38 ST. LOUIS U. L.J. 7 (1993) (discussing the ethical conflict that faces physicians when they are involved with research using human subjects).

¹² The term was first coined in Paul S. Appelbaum et al., *The Therapeutic Misconception: Informed Consent in Psychiatric Research*, 5 INT'L J.L. & PSYCH. 319, 327-29 (1982). A more general discussion of the concept appears in Paul S. Appelbaum et al., *False Hopes and Best Data: Consent to Research and the Therapeutic Misconception*, 17 HASTINGS CENTER REPORT 20, 23 (April 1987). The authors explain their findings as follows:

Most people have been socialized to believe that physicians (at least ethical ones) always provide personal care. It may therefore be very difficult, perhaps nearly impossible, to persuade subjects that *this* encounter is different, particularly if the researcher is also the treating physician, who has previously satisfied the subject's expectations of personal care. Further, insofar as much clinical research involves persons who are acutely ill and in some distress, the well-known tendency of patients to regress and entrust their well-being to an authority figure would undercut any effort to dispel the therapeutic misconception. *Id.*

his or her own research. Jay's partial solution to the dilemma posed by this problem was to focus on what he believed should occur as part of the informed consent process. He wrote:

To obtain a "morally valid consent [which] aims at true consent," is an inordinately difficult task. The physician-investigators must disclose to their subjects at least the following information: (1) that the subjects are not only patients and, to the extent to which they are patients, that their therapeutic interests, even if not incidental, will be subordinated to scientific interests; (2) that it is problematic and indeterminate whether their welfare will be better served by placing their medical fate in the hands of a physician rather than an investigator; (3) that in opting for the care of a physician they may be better or worse off and for such and such reasons; (4) that clinical research will allow doctors to penetrate the mysteries of medicine's uncertainties about which treatments are best, dangerous, or ineffective; (5) that clinical research may possibly be in the patient's immediate best interest, perhaps promise benefits in the future, or provide no benefit, particularly if the patient is assigned to a control (placebo) arm of a study; (6) that research is governed by a research protocol and a research question and, therefore, his or her interests and needs will yield to the claims of science; and (7) that physician-investigators will respect whatever decision the subject ultimately makes. Conversing with patient-subjects in such a manner which will give them a clearer appreciation of the difference between clinical research and therapy is a daunting assignment.¹³

Jay also inspired me to write a response in that issue to his own contribution, in an effort to set out the legal context and the then current state of human experimentation regulation, as well as to suggest how that would be altered if Jay's critique was actually adopted.¹⁴ I have continued in that vein, with some of my writings and other editorial work being directed to human experimentation and related concerns.¹⁵

¹³ Katz, *supra* note 11, at 34.

¹⁴ Jesse A. Goldner, *An Overview of Legal Controls on Human Experimentation and the Regulatory Implications of Taking Professor Katz Seriously*, 38 *St. Louis U. L.J.* 63 (1993).

¹⁵ *E.g.*, Jesse A. Goldner, *Dealing with Conflicts of Interest in Biomedical*

III. THE ST. LOUIS TEACHERS

Moisy Shopper, M.D., was one of the members of the Saint Louis University's Department of Psychiatry, who, like Ed Auer, served as another early mentor in that particular world. A few years after my arrival, he invited me to co-teach a course for family lawyers in Child Development Issues in Custody and Divorce, offered at the St. Louis Psychoanalytic Institute. At times we also jointly participated in various sessions with our child psychiatry fellows. Moisy's approach was almost classically Socratic, and he could give any self-respecting law school professor a run for his or her money in that respect. In many ways Moisy has carried on where Alan Stone left off. His keen interests not only in law and psychiatry but also in a variety of public policy issues concerning relationships between physicians, lawyers, and children continue to serve as a spark to my own thinking and writing. He is passionate about protecting the rights of children in a broad array of arenas. His frustrations caused by some of the methods we use to deliver needed mental health services to them was partially responsible for generating an article that described the relationship between managed care and the legal system in delivering mental health services, as well as the part that relationship plays in erecting barriers to the effective delivery of such care.¹⁶

One of the joys of teaching at a place like Saint Louis University School of Law, which for over twenty-five years has had health law as a major area of academic concentration,¹⁷ has been the ability to learn from a large and diverse group of colleagues. Though each of them is junior to me in longevity at the School, many have mentored me more than I them. Without reviewing the contributions of all of these folks

Research: IRB Oversight as the Next Best Solution to the Abolitionist Approach, 28 J.L. MED. & ETHICS, 379 (2000); Jesse A. Goldner, *Institutional Review Boards and Hospital Ethics Committees in the United States*, ETHICS COMMITTEES IN CENTRAL AND EASTERN EUROPE, 251 (2000); Jesse A. Goldner, *The Unending Saga of Legal Controls Over Scientific Misconduct: A Clash of Cultures Needing Resolution*, 24 AM. J.L. & MED. 294 (1998).

¹⁶ Jesse A. Goldner, *Mental Health and Managed Care: Clinical Perspectives and Legal Realities*, 35 HOUS. L. REV. 1437 (1999).

¹⁷ The School's Center for Health Law Studies was established in 1982, when Professors Sandra Johnson, Nic Terry, Michael Wolff (now a member of the Missouri Supreme Court) and I sketched out its details on a napkin over sandwiches at lunch at a local dive! The School had a joint degree program, offering the J.D./M.H.A., since 1976 and Mike had taught our first Health Law course in 1977. The initial edition of the Saint Louis University Law Journal's annual Health Law issue was published in 1978, including, among others, articles authored by Don Shapiro, John Blum (for many years the director of Loyola University Chicago's Institute for Health Law) and Almeta Cooper (the current president of the American Health Lawyers Association).

to my own development, one of the more senior of the group deserves special recognition. Sandra Johnson¹⁸ originally came to health law and bioethics through her interest in law and the elderly. She went on to co-author with Barry Furrow, Tim Jost, and Rob Schwartz, a casebook, now in its fourth edition, which I have used most happily in teaching our basic Health Law course for many years.¹⁹ In addition to swapping the obligations of directing our school's Center for Health Law Studies on a number of occasions,²⁰ I have had the privilege of endless hours of talking with Sandy about practically every health law subject I have encountered and collaborating with her on a number of pieces. The depth and breadth of her knowledge is enormous and her sensitivity to the more subtle issues in bioethics is astounding.

IV. THE OBLIGATION TO MENTOR

The mentoring that is done to us carries with it a burden, but one that can be a joyous one to bear: the responsibility to mentor those that follow us, our students as well as our younger colleagues. I have often been struck by the particular interest that health law teachers, at my own school and elsewhere, have in our students who pursue health law as a career. This applies, I might add, not merely to those of us in full-time teaching, but often to our adjunct instructors as well. I see it too with my former students, outside academia, who by now have

¹⁸ Sandy currently is the holder of the Tenet Chair in Health Care Law and Ethics at Saint Louis University, sharing her time between the School of Law and the University's Center for Health Care Ethics. In 1991, she won the Distinguished Health Law Teacher Award from the American Society of Law & Medicine and in 1997, she was the recipient of the cherished Outstanding Achievement Award from the American Society of Law, Medicine & Ethics, and served as that organization's president in 1995-96.

¹⁹ BARRY R. FURROW ET AL., *HEALTH LAW: CASES, MATERIAL AND PROBLEMS* (4th ed. 2001). The story of how the work came to be is an interesting one. Barry, Rob, Tim Jost and Sandy participated in a Law and Economics program for law faculty at Dartmouth University during the summer of 1985. In much the same way as Saint Louis' Center for Health Law Studies developed, with some jottings over a meal, the casebook that continues to dominate the field was born, except that this was over a lobster lunch at the Hanover Hotel. The discussion apparently began with the proposition that there really could not be a "Health Law" course because there was so little agreement on what its overriding theme or contents might be. Similarly, the initial thinking was that even if such a course could be developed, any text for it would have to be in a loose-leaf format, because the area changed so rapidly. Nonetheless, those in attendance set out to write the casebook.). Subsequently, my Saint Louis University colleague, Tim Greaney, joined the group as an additional co-author.

²⁰ Sandy was the founding director, and served in that capacity in 1982-85 and 1988-91.

undertaken the mantle of being senior partners in their firms or highly experienced lawyers who practice in government or industry settings. This is most apparent as I consider what regularly occurs in discussions at professional meetings. I regularly teach in areas outside of health law, and at times have participated in bar activities in those areas as well; but I simply have not witnessed the same phenomenon of active mentoring, at least to an even remotely similar extent, in other legal disciplines.

In another sphere, the health law teaching community has been rather unique in the ways in which we have gone about bearing those joys of mentoring younger colleagues who join us in academia. I think back to my many years of attending the Health Law Teachers Conference held each June and organized by the American Society of Law, Medicine and Ethics (ASLME) co-sponsored by a rotating group of law schools. On the one hand, what particularly strikes me about the meeting is the percentage of colleagues who appear year after year. It is truly astonishing. The substantive presentations are better than most that are offered at other professional meetings I attend. The ability to maintain friendships and network with those who share our interests is outstanding. But, what to me most seems to set this group of health law teachers apart has been its long-standing commitment to mentoring those new to the field.

This past October, ASLME, together with our own Center for Health Law Studies at Saint Louis, again sponsored a Young Scholars Workshop, which has proven to be an enormously successful venture. Plans already are underway for a third such Workshop, to be held in the fall of 2004. Organized by my colleague Professor Sidney Watson, a group comprised of health law teachers from a variety of schools serves as a screening committee, reviewing abstracts of papers submitted by those who have been in teaching less than five years. Then, a number of these newer scholars are invited to St. Louis, where they present works in progress in a "safe" environment, and receive feedback from a number of experienced health law teachers from across the country, as well as our own health law faculty.

In closing, I will comment on one more phenomenon that regularly occurs at the June ASLME Conference, and it is something that has truly set this group of teachers apart. It, too, is related to mentoring, albeit in a very special, unique way. Each year there is a plenary forum on the "pedagogy" and challenges of teaching health law. While he was alive, Jay Healy²¹ always led these gatherings. He did

²¹ Joseph (Jay) M. Healy was Professor and Head of the Division of Humanistic Studies at the University of Connecticut Schools of Medicine and Dental Medicine. His untimely death in 1993 at the age of 45 was a great loss to the health law

so with style, grace, and incredible perceptiveness. Typically they were held late on Saturday afternoon, as the meeting came to a close. The room invariably was packed and the discussion lively. Few would leave the conference early, lest they miss a most vibrant interchange. During these sessions Jay constantly confronted us with the need to consider how our own personal values influenced our teaching. He also reminded us of the importance of putting ourselves as well as our students in situations that most closely approximated that of our clients and patients, "to see the world through someone else's eyes."²² George Annas fittingly described Jay as "the spiritual leader of the nation's health law teachers" and "a teacher's teacher."²³

In a letter to Jay's family after his death, a physician who had been one of Jay's medical students observed that Jay "helped us to teach each other."²⁴ That same physician's letter also noted that when he was confused about the best way to help his patients, he would look to Jay for guidance, and remember a Chinese proverb, one that seems particularly apt in the present context: "To have a true teacher for a day is to have a parent for a lifetime."²⁵

What is now the "Joseph M. Healy Forum on Health Law Teaching" continues to take place at the annual ASLME Health Law Teachers Conference. This is part of Jay's own legacy, as these sessions provide us with still one more opportunity to mentor, to teach, not merely to those new to the group, but also to each other.

teaching community. He had been honored with the Health Law Teachers Award in 1990, which, after his death, was then renamed in his memory. See George J. Annas, *Dedication*, 20 AM. J.L. & MED. 353, 353-54 (1994).

²² Anthony E. Voytovich, *Jay Healey: A Memorial Tribute*, U. CONN PHYSICIAN, Spring 1994, at 14, 15.

²³ Annas, *supra* note 21, at 354.

²⁴ Gerald J. "Trip" Hansen in *Jay Healey: A Memorial Tribute*, *supra* note 22, at 16.

²⁵ *Id.*