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FOCUS ON GENETICS . . .

SECOND GENERATION GENETIC TESTS IN THE COURTROOM

The field of health law is driven in part by new medical technologies and scientific discoveries such as innovative diagnostic tests and treatments. Some of the most significant advancements in medicine over the last two decades have been in the field of genetics. As the field has developed, we have had the opportunity as health law teachers and scholars to look at ways that advances in genetics have affected or may affect the legal system and suggest ways that the law should change to accommodate this relatively new field of technology.

Advances in genetics have been fueled by the Human Genome Project. Started in 1990, the Human Genome Project was a 13-year effort coordinated by the U.S. Department of Energy and the National Institutes of Health to identify all of the approximately 20,000-25,000 genes in human DNA and determine the sequences of the 3 billion chemical base pairs that make up human DNA. Originally, researchers predicted that mapping the human genome would take 15 years but rapid technological advances allowed scientists to complete the mapping in 2003. The Project was primarily designed to improve our understanding of health and genetic disease and to improve the quality of life for individuals who would otherwise be debilitated by disease. Based on information gathered by the Human Genome

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FROM THE DIRECTOR

In this issue of the Law & Health Care Newsletter we focus on how our faculty, students, and graduates have contributed to the legal and policy debates raised by new advances in genetics through their scholarship, legislative advocacy and work with government agencies. We report on recent faculty scholarship on the use of health-related genetic tests in court proceedings and on the unique collaboration between our faculty and graduates now working at the National Human Genome Research Institute. Finally, we proudly share the accomplishments of a number of our health law certificate recipients as they begin their careers in health law.

Diane E. Hoffmann, JD, MS

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Second Generation Genetics

Cont. from p. 1

Project, genetic tests have been developed to assist in diagnosis, treatment, and prevention of physical disease. These tests can identify diseases and conditions before they appear and have the potential to indicate, among other things, individual susceptibilities to certain behaviors and addictions. If we think of DNA tests for identification purposes (in criminal trials and paternity suits) as the “first generation” of genetic tests, these health-related, post-Human Genome Project tests can be thought of as the “second generation” of genetic tests and, just as first generation tests had a revolutionary effect on the legal world in terms of criminal and paternity proceedings, second generation tests promise to leave their mark on the legal world.

Almost 20 years ago, in 1988, the first reported appellate discussion of the admissibility of DNA testing to prove identity took place.¹ Since that time, courts have enthusiastically embraced DNA tests for the purpose of identifying, or excluding from consideration, the perpetrator of a crime or the father of a child.² Although there were early controversies and challenges regarding the validity of these tests, over the past two decades they have become routine and are overwhelmingly accepted by courts.³ There are over 200 published court opinions supporting the admissibility of DNA tests in the courtroom.⁴ This widespread acceptance went hand-in-hand with the development of DNA testing standards and the blossoming of DNA laboratories across the county.⁵

While the Human Genome Project was designed for therapeutic purposes, some lawyers have seized upon a distinctly non-therapeutic use for genetic tests – to introduce evidence of disease susceptibility and

behavioral conditions to support various propositions in court proceedings. Courts are already being faced with requests to admit various types of genetic tests in different contexts and, looking forward, it is easy to imagine numerous other legal situations in which the use of genetic information might be attractive to litigants. How genetic information is used in the courts may determine, among other things, whether individuals 1) are compensated for their medical costs and pain and suffering (in malpractice, product liability, or toxic tort litigation); 2) will be hired to perform a job; 3) will adopt a child or obtain child custody after divorce or separation; or 4) will be held criminally responsible.⁶

For the last four years, we have studied the use of second generation genetic tests in the courtroom. We began our research by undertaking an empirical study of state and federal trial court judges in Maryland to better understand how judges make (or would make) decisions about whether to compel or admit genetic tests. The study focused on how health-related genetic information actually comes before the trier of fact. Inclusion of genetic test results in a trial depends both on judges’ attitudes toward such tests and what is scientifically admissible at trial. To better understand judicial attitudes, we designed our survey around a series of hypothetical criminal and civil cases. In a number of those cases, judges had significant differences of opinion on whether a genetic test should be admitted or compelled. For example, in a criminal case, 54% of the state and 38% of the federal judges said they would admit a positive genetic test for schizophrenia to show that the defendant did not have the necessary intent to commit the crime. The judges were more reluctant to order a similar test in the sentencing phase of a trial. Only 18% of the state and 15% of the federal judges said they would

compel a defendant to be tested for a condition that brings on bouts of rage in order to show the defendant's potential for violence. In meetings with groups of judges about these results, they commented that, even though there are fewer privacy concerns and constitutional matters at the sentencing stage of a trial, they were reluctant to order a test that might brand or stigmatize a defendant.⁷

In general, we found that the judges, in their decisions about whether or not to admit or compel the tests, evidenced a sophisticated understanding of the complex issues at stake. In part, we were surprised by the results as they did not reflect the widespread acceptance that DNA tests for identification have received in the courtroom in the context of criminal and paternity cases. Our findings also led us to question whether our results were representative of Maryland trial court judges as well as whether we would find similar results in other jurisdictions. Our response rate was quite good – 72% of circuit court judges and 64% of federal district court judges completed our survey. We attribute this in large part to the assistance and support of Chief Judge Robert Bell of the Maryland Court of Appeals and the close relationship between the law school and the Maryland judiciary. While the response rate leads us to believe our results may be representative of the Maryland judiciary, it is not clear whether they are representative of the responses we would receive in other jurisdictions. A number of members of the Maryland judiciary and Maryland federal district court judges have had a significant interest in the use of genetic tests in the courtroom and have attended a number of judicial education programs devoted to this topic. The

Maryland judiciary has also recently established a program to educate a group of judges about scientific and medical issues so that they may be more informed in adjudicating cases

In general, we found that the judges, in their decisions about whether or not to admit or compel the tests, evidenced a sophisticated understanding of the complex issues at stake.

based on scientific or medical evidence.⁸

The results of our survey were first published in October 2005 in an issue of the journal *Science*. Our empirical research led us to write a longer piece on the implications of our findings for the legal system. That article will be published this fall in a forthcoming issue of the *Maryland Law Review*.⁹ In the article, entitled “Judging Genes: Implications of the Second Generation of Genetic Tests in the Courtroom,” we point out that the introduction of these second generation genetic tests in litigation has been relatively slow.¹⁰ There have been few judicial opinions regarding the admission or compelling of genetic tests for the purposes of providing health information about one of the parties. The majority of these cases are in the torts area, specifically medical malpractice cases involving birth injury. This has most typically occurred in cases where a physician introduces evidence of a genetic disorder to rebut a claim that the physician acted negligently during labor and/or delivery.¹¹ Genetic tests have also been used in a small number of reported toxic torts/product liability cases – most often by defendants to argue that the plaintiff's injuries are genetically based and not the result of exposure to a harmful substance or product.¹² In a few toxic tort cases, parties have sought to use biomarkers (tests that indicate the

presence and severity of specific disease states) to help determine the impact of a toxic exposure on an individual's development of a disease or to introduce evidence showing chromosomal damage due to chemical exposure. Courts have responded inconsistently to requests to admit these tests.¹³

In addition to their use in proving or disproving causation, it is conceivable that genetic test results could play a role in the damages portion of a civil case, especially in the area of projected mortality. Information regarding a plaintiff's genetic profile, specifically information regarding conditions that might shorten a plaintiff's lifespan, could influence a final damages award.

Although relatively few judicial opinions exist in which the admission of genetic tests has been in question, in a review of judicial settlements and verdicts between 1995 and 2005, we uncovered 127 cases in which genetic information was a factor.¹⁴ Of those 127 cases, 55% were in the context of medical malpractice, 16% involved child lead poisoning, 21% involved negligence and, 8% were miscellaneous cases. Overall, we were able to determine that genetic tests were actually performed in slightly over one quarter of the cases (27.6%).

In terms of criminal cases, although the use of genetic tests to establish identity is commonplace, there are almost no reported cases where health- or behavior-related genetic tests have been used. Nonetheless several commentators have hypothesized the use of such tests in a variety of contexts, including 1) proving or disproving *mens rea* by introducing evidence that indicates whether a defendant has or does not have a particular condition or behavioral trait and 2) predicting “future

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THE LAW & HEALTH CARE PROGRAM AND THE NATIONAL HUMAN GENOME RESEARCH INSTITUTE: A UNIQUE RELATIONSHIP

The work of several faculty members at the University of Maryland School of Law on genetics issues has led to a unique affiliation between the Law & Health Care Program and the National Human Genome Research Institute (NHGRI) in Bethesda, Maryland.

NHGRI is one of the 27 institutes and centers that make up the National Institutes of Health (NIH). It was established in 1989 to represent NIH in the international Human Genome Project. The NHGRI is part of the international effort to study the human genome and, in addition, sponsors research exploring the potential ethical, legal, and social consequences of the genetics revolution in medicine. NHGRI Director Francis Collins, a noted physician-geneticist, is known for his commitment to tackling the difficult ethical questions that surround genetic research and testing.

In addition to Dean Karen Rothenberg's work with the genetics community at NIH, Professors Deborah Hellman and Lawrence Sung have had close professional ties with the Institute. Sung has been a consultant to NHGRI on matters relating to public access to genomic database information, and Hellman served for four years on the Ethical, Legal, and Social Implications Peer Review Committee which reviewed proposals for NHGRI funding.

Law & Health Care Program students have benefited greatly over the years from these faculty relationships with NHGRI and from NHGRI's proximity to the law school campus. Barbara Fuller, who graduated from the law school in 1996, has been at NHGRI since 1998. She began as a Senior Policy Analyst and is now Assistant Director for Ethics. In her current position, she



**Barbara Fuller and Francis Collins,
Director of NHGRI**

manages the Institute's professional ethics program, which includes such issues as financial disclosure, conflicts of interest, standards of conduct, political activity, and procurement integrity requirements. Fuller is past Chair of the Foundation for Research and Education and past President of the American Health Information Management Association. While Fuller was at the law school, she worked closely with then Professor, now Dean, Karen Rothenberg on scholarship relating to genetic research. They co-authored an article entitled "Privacy in Genetics Research" which appeared in the August 1999 issue of *Science*. In fact, Fuller attributes her successful transition from law school to NHGRI to her research with Dean Rothenberg.

Barbara has remained close to the Law & Health Care Program over the years – speaking to Health Law Practice Workshop students and supervising student externs. While Branch Chief of the Policy and Program Analysis Branch, she supervised Steve Hudson, a 2001 graduate of the law school. Steve, an

MD/law student with an interest in the intersection of science and ethics, developed an exhaustive catalog of all state laws regarding genetic discrimination during his time at NHGRI.

Another law school alum, M. Katherine (MK) Holohan '03, has been a Senior Health Policy Analyst at NHGRI since 2005. Her main duties are legislative in nature, working closely with Congressional staff, preparing Congressional testimony on behalf of NHGRI witnesses, and attending hearings and markups of health-related legislation. She has been extensively involved with the development of H.R. 493, the Genetic Information Nondiscrimination Act of 2007 (which passed the House on April 25). She works closely with Director Collins, briefing him on legislative activities and developing policies related to genomic medicine, intellectual



MK Holohan

property, and privacy protections of genetic information, among other things. Prior to joining NHGRI, MK worked for Wickwire Gavin P.C., a private law firm in Vienna, Virginia on regulatory, rulemaking, and government contracting issues.

MK believes that law students should take advantage of the

law school's externship program, which she credits with developing her interest in legislative issues and helping her secure her current position. In her second year in law school, she externed for the House Committee on Government Reform, Subcommittee on the District of Columbia. She was working for the

HEALTH LAW & BIOTECHNOLOGY – WORKING AT THE INTERSECTION OF HEALTH LAW AND INTELLECTUAL PROPERTY

Committee when the terrorist attacks occurred on September 11, and had the unique opportunity to help organize a critical emergency preparedness hearing that the Committee scrambled to put together after the attacks. Her advice to students is to do as many externships and to make as many contacts as possible during law school. The connections she made during law school have led to several job offers since graduation – the best being her current position at NHGRI.

Christine Norris, a third year student at the law school, worked with MK last year as a Legislative Research Assistant. She had the opportunity to research issues relating to genetics in state, federal, and international law and to comment on pending legislation relating to genetic employment and insurance discrimination, human subject research, stem cell research, and genomics and personalized medicine. Her externship led to an independent research paper on genetic discrimination that will be published in the forthcoming edition of the *University of Maryland Law Journal of Race, Religion, Gender and Class*.

On her time at NHGRI, Christine commented, “the experience was fantastic because it allowed me to apply my scientific background in proteomics and genomics to the law. It was a dream to help make an impact on the cutting edge issues that NHGRI works on. I believe the work of the Institute will help bring the science of genomics to health care practice and everyday people and, at the same time, protect citizens from serious problems that could arise from the genomic era.”

Students like Joanne Hawana (see story page 14) come to the University of Maryland School of Law looking to combine a focus on health law and intellectual property law. These students often have advanced degrees in science or engineering. The School of Law’s strong programs in health law and intellectual property law allow them to pursue their interest at the intersection of both fields through the school’s Intellectual Property Law Program (IP Program) and the Law & Health Care Program. Intellectual property law and health law intersect most notably in the field of biotechnology – in areas such as genetics, pharmaceuticals, medical technologies, personalized medicine, and toxicogenomics – and it is in this area that the school’s IP Program provides unique opportunities for health law students.

These opportunities are enhanced by the prominence of the State of Maryland in the area of biotechnology development. Maryland tops the nation in research and development technology spending. *Entrepreneur Magazine* recently ranked TEDCO (Maryland’s state-created technology transfer and development corporation) first in the nation for the largest number of investments in start-up/seed or early-stage companies for the fourth consecutive year. Specific to health-related biotechnology, in addition to state initiatives, Maryland is home to a number of federal research laboratories and agencies including the National Institutes of Health (NIH), Food and Drug Administration (FDA), and the U.S. Army Research Laboratories.

Maryland is also home to the Human Genome Project research sponsors (NIH and the U.S. Department of Energy) as well as to major research projects relating to the genome – the National Human Genome Research Project, the Institute for Genomic Research, and Celera Genomics. In addition, the state boasts three universities with renowned health sciences programs – University of Maryland, the Johns Hopkins University, and the Uniformed Services University of Health Sciences.

A unique feature of Maryland’s IP Program is the Program’s legal resource center, which is designed to place students directly into the center of Maryland’s biotechnology wave. The Maryland Intellectual Property Legal Resource Center (MIPLRC) was established in February 2002 to provide low-cost intellectual property services and other legal assistance to start-up technology companies and to explore emerging ethical, legal, and policy issues in the field of high-technology and intellectual property. The Center is a collaborative project of the law school and the Montgomery County Department of Economic Development (DED), which is located in the technology-rich business corridor of Montgomery County. The MIPLRC provides legal services through several “incubators” located at DED’s headquarters in the Maryland Technology Development Center in Rockville, Maryland and the University of Maryland, Baltimore BioPark. Students can work at the incubators for academic credit as clinic students.

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The Director of the IP Program, faculty member Lawrence Sung, brings years of experience in the area of intellectual property law to his position.

Sung received his PhD in Microbiology from the U.S. Department of Defense, Uniformed Services University. He has published extensively in the area of intellectual property law on issues including biotechnology and technology transfer. He is the author of PATENT

INFRINGEMENT REMEDIES (BNA Books 2004 & Supplements 2005-2006) and annual volumes of THE PATENT LAW HANDBOOK (Thomson/West 2003-2006). Prior to joining the law school, Sung was a registered patent attorney



Lawrence Sung

specializing in biotechnology patent litigation with several national law firms, including as a partner at Nixon Peabody LLP. Sung also served as a consultant to the National Human

Genome Research Institute under the direction of Francis Collins, Director of the Institute.

Sung's recent scholarship includes a proposal for the enactment of a statutory elective basic research right to use patented technology. The proposal would amend the patent laws

to exempt from liability the use by an academic or non-profit research institution of any patented technology, where the entity serves notice on the patent holder of a research plan that details who will be involved in the

research that incorporates the patented technology and how the patented technology will be used. In return, the entity would have the ability to use the patented technology royalty-free for activities within that research plan. The "research use exemption" is designed to alleviate concerns among researchers about the chilling effect on their work that patents pose and encourage a freer dissemination of ideas and more collaborative research efforts.

Sung also teaches the Biotechnology and the Law Seminar, which explores the legal and ethical issues surrounding biotechnology research and development. In the seminar, Sung discusses ownership and use issues relating to genetic data (including genomics, bioinformatics, and genetic data privacy) and genetic manipulation (gene-based research tools, pharmaceutical and agricultural products, and medical therapies).

TRANSLATING SCHOLARSHIP INTO POLICY: AN INTERVIEW WITH DEAN KAREN ROTHENBERG ON HER RESEARCH INTO THE SOCIAL, ETHICAL AND LEGAL IMPLICATIONS OF GENETIC RESEARCH

Dean and health law scholar Karen Rothenberg has been writing about the legal and ethical implications of genetic research for over fifteen years, and is still actively involved in raising awareness of the potential dangers genetic research can have on individuals and populations. In this article, Virginia Rowthorn, Managing Director of the L&HCP, and a former student of Rothenberg, interviews Rothenberg about her extensive scholarship in this area.

When did you first become interested in genetic research?

In 1991, when I was an Associate Professor here at the law school, I spent a sabbatical visiting at the NIH Institute

for Child Health & Human Development. At that time, certain genetic tests were becoming the standard of care for pregnant women and I became very interested in the legal and ethical issues surrounding reproductive genetic testing. From the beginning, I always felt that genetic tests carry with them ethical implications that are different and potentially more serious than other medical tests. While I was at NIH, I co-authored an NIH workshop statement on the impact of reproductive genetic testing on women. In that piece, we argued that every woman should have an opportunity to have access to genetic services in a way that will improve her control over her

reproductive life *but* such testing must be conducted within a framework that is sensitive to her needs and values and minimizes the potential for coercion.

What led you to move beyond research that was focused primarily on gender issues to issues relating to religion and ethnicity?

I was actually back at NIH as Special Assistant to the Director of the Office of Research on Women's Health from 1995 to 1996 just after scientists discovered the BRCA gene mutations that increase the risk of breast and ovarian cancer in women of Ashkenazi Jewish descent. It concerned me that commercial tests

to detect the mutation were coming on the market, and that makers of the tests were targeting Jewish women even before research on the precise cancer risk had been completed and before the social consequences of wide-scale testing could be evaluated. Thinking about the explosive effect BRCA testing was having on Jewish women pushed me to consider the unique way that genetic testing can affect ethnic and racial populations as well as individuals.

What kind of empirical research have you done in this area?

After focusing on the BRCA test, I became interested in the implications of all types of genetic research for the Jewish community. In the late 1990s, several colleagues and I conducted a multi-year study on attitudes of the Jewish population to the use of stored DNA for genetics research. We found that most of the respondents thought that researchers and doctors should get written informed consent before research samples are taken from an individual. But more interesting was our finding that respondents understood that genetic tests fall on a continuum in terms of their potential for creating stigma. Individuals were much less willing to participate in research that examined stereotypical and potentially stigmatizing behavioral traits as opposed to research that examined medical illnesses.

How did you become interested in the implications of genetic research on religious and ethnic minorities beyond the Jewish community?

Because of my interest in this area, I was asked to help plan a Fred Friendly PBS Seminar Series called *Our Genes/Our Choices*. I participated in one of the programs – *Genes on Trial* – which was designed to look at the intersection of genetics, behavior, and the law. Along with 15 other participants, we played assigned roles in various scenarios designed to tease

out issues for discussion. In one of the scenarios, we adopted roles relating to a hypothetical ethnic group – Tracy Islanders – who have a higher incidence of alcoholism as well as a higher incidence of the gene variant that makes it more likely that someone will become an alcoholic. A lot of issues were raised by the program but one in particular pushed me in the direction of my current research. As part of the Tracy Island scenario, a young man gets drunk, engages in a bar fight, and kills an off-duty policeman. The young Tracy Islander's lawyer wants to use his genetic predisposition toward alcoholism as a defense. Use of behavior-related tests in the courtroom raises difficult issues relating to group stigma.

How can individual genetic tests, which are usually anonymous or confidential, result in group stigma?

Individual genetic test results may be anonymous but they are not anonymous with respect to the ethnicity of the participants. My concern has been this lack of group anonymity and the fact that genetic research often reveals susceptibilities and traits within religious or ethnic groups. These traits, depending on what they are, could lead to stigmatization and discrimination. This is easy to imagine in the case of genetics research into a person's intelligence or propensity for violence. Because these group traits are discovered by scientists outside the individual patient context where informed consent may be obtained, there has been no clear mechanism to discuss group risks and no clear process to give consent on the part of an entire group. That troubles me.

Does genetic research into group traits have the potential to disproportionately affect ethnic and religious minorities?

Yes. After the PBS special, I co-authored an article with a colleague,

Alice Wang, called “The Scarlet Gene: Behavioral Genetics, Criminal Law, and Racial and Ethnic Stigma,”¹ which explores this phenomenon. First, genetics research tends to focus on discrete and insular populations that share a common ancestry and that often overlap with socially constructed racial or ethnic minority groups. Second, the study of genetic differences between racial or ethnic groups appeals to the persistent impulse in our society to explain racial and ethnic differences in biological terms. Finally, because racial and ethnic minority groups are disproportionately represented in the criminal justice system, any effort to analyze the DNA of criminals will inevitably be skewed toward these groups. Going back to what I was saying about genetic tests falling along a continuum of potential for misuse, I think genetic tests for behavioral traits such as criminality have a great potential for stigma because these traits involve a strong element of individual choice. They are more closely associated with fault, even if they are deemed genetic. This racial or ethnic stigma is even more powerful when the behavior associated with the gene coincides with preexisting stereotypes about a racial or ethnic group.

What are you studying now?

My colleague Diane Hoffmann and I have been working on a project on the introduction of health- and behavior-related genetic tests in the courtroom (see article, page 1). That project has stimulated me to think about what will happen when these types of genetic tests are used with increasing frequency in the courtroom. As discussed in the “Scarlet Gene” article, as one moves toward the behavioral end of the spectrum, the genetic influence on a trait becomes more uncertain and difficult to isolate, while the stigma associated

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Interview with Dean Rothenberg

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with such influence becomes more significant. Widespread use of these tests in court proceedings could have a negative impact on the perception of ethnic and religious minorities.

Given that new genetic tests, including tests that uncover behavioral traits, are continuing to be developed, how can we limit the harm they may do to religious and ethnic minorities?

I've long believed that genetics research should only be conducted after a thorough review of the implications of the research on individuals, the family, the

community and society. There must be a strong scientific justification to support research focusing on a religious or ethnic minority group. Research into discrete populations should be undertaken only because it's scientifically necessary, and, in some cases, maybe not at all.

Where do you see your research moving in the future?

The ethical and legal questions surrounding genetic testing are far from solved. I've been struggling with these issues for 15 years and, in fact, in the most recent issue of the

Journal of Law, Medicine & Ethics, other legal and bioethics scholars are struggling with these issues too. We all have more work to do in this area. Diane Hoffmann and I have organized a roundtable at the law school to begin a discussion among scientists, judges and other academics about the implications of our work on the future use of behavior-related tests in the courtroom for law and public policy.

Note

¹ LAW AND CONTEMPORARY ISSUES, Vol. 69, Nos. 1 and 2, Winter/Spring 2006.

ROTHENBERG TESTIFIES ON GENETIC NONDISCRIMINATION ACT OF 2007

Earlier this year, Karen Rothenberg, Dean and Marjorie Cook Professor of Law at the University of Maryland School of Law, testified before the U.S. House of Representatives' Subcommittee on Health, Employment, Labor, and Pensions as it considered H.R. 493, the Genetic Information Nondiscrimination Act of 2007 (which passed the House on April 25). The bill, which is awaiting Senate approval, is the latest in a series of bills appearing before Congress that are designed to protect individuals from discrimination in health insurance and employment on the basis of genetic information. Her most recent committee testimony came more than ten years after she first testified before Congress on the same issue. Then, as now, Rothenberg expressed her view that the federal government, as a matter of public policy, must provide a comprehensive approach to protection of genetic information.

Rothenberg has been involved in writing and promoting legislative approaches to genetic privacy since the early 1990s. Her earliest work in the field involved research regarding state



Dean Karen Rothenberg

legislative approaches to genetic privacy. This work at the state level led to her inclusion in several working committees formed to put together a framework for federal legislative proposals relating to genetic privacy and nondiscrimination in health insurance and employment. She co-authored a series of legislative

recommendations relating to genetic discrimination that were published in the journal *Science*. These recommendations formed the basis of Rothenberg's testimony at a number of Congressional briefings and hearings in 1996-97. In addition to genetic privacy and discrimination issues, Rothenberg has also testified before Congress on the regulation of the genetic testing market and human cloning.

In addition to her legislative work, Rothenberg has worked and published extensively on the legal and social implications of genetic testing. Among others, she has served on NIH's Recombinant DNA Advisory Committee; the Heredity Susceptibility Gene Working Group for the National Action Plan on Breast Cancer; the Blue Ribbon Panel on Genetic Technologies for the National Conference of State Legislators; and the Maryland Stem Cell Commission.

HEALTH LAW SCHOLAR MARK ROTHSTEIN VISITING AT UNIVERSITY OF MARYLAND SCHOOL OF LAW

Mark Rothstein, a prominent scholar in the field of health law, bioethics, and genetics, is visiting at the School of Law this semester. Professor Rothstein is teaching the Genetics and the Law Seminar and a first year torts class. When not in Baltimore sharing his wealth of knowledge with Maryland law students, Rothstein is at the University of Louisville where he holds the Herbert F. Boehl Chair of Law and Medicine and is Director of the Institute for Bioethics, Health Policy and Law at the University of Louisville School of Medicine.

Fifteen second and third year law students eagerly enrolled (and several stayed on the waiting list) for Professor Rothstein's genetics course, anxious to take the class from a recognized national expert in the field. In the seminar, students explore the intersection between law and genetics and the ethical, legal, and social implications arising from genetic technologies. Topics touched on in the class include genetic research, ownership of genetic material, reproductive genetics, clinical genetics, behavioral genetics, DNA forensics, and genetic privacy and confidentiality. The course was first taught by Dean Karen Rothenberg, then by Adjunct Faculty member Gail Javitt, a policy analyst at the Genetics and Public Policy Center and a research scien-

tist at the Berman Bioethics Institute of Johns Hopkins University.

Professor Rothstein is a leading authority on the ethical, legal, and



Mark Rothstein

social implications of genetics, privacy, occupational health, employment law, and public health law. He is Chair of the Subcommittee on Privacy and Confidentiality of the National Committee on Vital and Health Statistics, the statutory advisory committee to the Secretary of Health and Human Services on health information policy, including the privacy regulations of the Health Insurance Portability and Accountability Act. He is also a member of the Board of Directors of the American Society of Law,

Medicine and Ethics. He is the author or editor of 19 books. His latest book is GENETICS: ETHICS, LAW AND POLICY (with Andrews & Mehlman) (Thomson/West 2d ed. 2006). His current scholarship includes work on the legal and ethical issues in transgenerational environmental epigenetics, the allocation of scarce health care resources in an influenza pandemic, and privacy and confidentiality in electronic health records and networks.

Rothstein has many long-time friends and colleagues at the University of Maryland, including Dean Rothenberg. According to Rothstein, "spending a semester with them and collaborating on research should be very rewarding. Also, being here will give me the opportunity to spend time with my daughter Lisa, a graduate of the UMD School of Social Work, who lives in Baltimore." Rothstein's wife, Laura Rothstein, is former Dean and Professor of Law at the University of Louisville. His other daughter, Julia, although a law school graduate herself, is currently working as an actress in Los Angeles.

In addition to teaching, Rothstein will discuss his scholarship in the area of genetics at a brown bag lunch for students sponsored by the Student Health Law Organization in November.

LAW & HEALTH CARE PROGRAM FACULTY STUDY PUBLIC HEALTH LAW ACCESS AT THE LOCAL LEVEL

A few years ago in my role as public health officer, I was told there was an outbreak of the noro virus in one of the dorms at the local university that was housing summer campers, and that several campers had been sent to the local Emergency Department because they had been vomiting. We determined that someone had left the camp (probably the sentinel case) before we had a chance to act, but the virus was rapidly spreading among the remaining campers. We discussed the possibility of quarantine with the County attorney and the University attorney, but discovered that none of us had a very good understanding about what we could or could not do with the campers. We requested voluntary compliance, but the camp director failed to comply. There were other consequences to be considered than just the ill campers. Students would be returning to the campus within the next 30 days and because of the risk of contracting the virus, the professional sports team that was to come to the campus the following week, cancelled. This was a significant economic loss for the community. After it was really too late, I learned that as the local health officer I have significant authority to act in this type of situation. I would have handled it differently if I knew legally what I could have done.

This vignette, which illustrates the difficulty that local health officials often have because they did not have access to adequate legal advice, comes from an interview Diane Hoffmann, Director of the Law & Health Care Program, and Virginia Rowthorn, Managing Director of the Program, conducted as part of their research for a paper they were commissioned to write on building public health law capacity at the local level. The paper is one of three commissioned by the Public Health Law Association (PHLA), which

received grant funding from the Robert Wood Johnson Foundation to study the issue of how best to increase knowledge and use of public health law at the local health department level. The genesis for the paper is PHLA's belief that:

The successes and failures of public health practice are immediately apparent in our towns, cities and counties. On a daily basis, this is where contagious diseases are tracked, water is fluoridated, and many other public health initiatives are implemented. It is in these localities, however, where public health legal capabilities are the weakest. All too often, there is minimal legal support provided to local health officials. Public health staff may work for years having little or no access to an attorney . . . Where access to legal services does exist, counsel is rarely conversant with public health capabilities or the relevant public health case law.

PHLA is an association of scholars, practitioners, and attorneys working in the area of public health. The organization was established to promote 1) the view that law is fundamental to the origin, understanding and delivery of public health services and 2) the concept that law improves the likelihood that residents of local, state, national, tribal, and international communities can lead healthy, long, and productive lives. PHLA staff and committees publish educational materials and work collaboratively with other organizations on conferences and teleconferences. Two of PHLA's present leaders, Marty Wasserman, MD, JD (President of PHLA and Executive Director of MedChi, the Maryland

State Medical Society) and Dan O'Brien, JD (Immediate Past President of PHLA and Principal Counsel, Maryland Department of Health and Mental Hygiene) are School of Law alumni.

Hoffmann and Rowthorn interviewed local health officials and municipal attorneys across the country, as well as officials in state and national organizations that represent the interests of these local players such as the National Association of County & City Health Officials (NACCHO), the Association of State and Territorial Health Officials (ASTHO), and the International Municipal Lawyers Association (IMLA). The interviews, along with research on public health law infrastructure at the local level, informed their critique of possible models for increasing the public health law capacity at local health departments, as well as mechanisms for delivery of legal information and advice to local health officers and their attorneys. Based on their analysis, Hoffmann and Rowthorn recommended a mechanism for delivery of public health legal services that combines state-based academic legal resources centers and a national organization to coordinate the work of the state centers.

Hoffmann and Rowthorn, along with the authors of the other two commissioned papers, Jason Smith (Associate Executive Director of the Public Health Advocacy Institute at Northeastern School of Law) and Ross Silverman (Associate Professor at Southern Illinois School of Medicine), will present the results of their study at a November Summit organized by PHLA during the American Public Health Association Meetings in Washington, D.C.

PROFESSOR TOM PÉREZ APPOINTED MARYLAND SECRETARY OF LABOR, LICENSING, AND REGULATION

On March 15, 2007, former Law & Health Care Program faculty member Tom Pérez was chosen by Maryland's Governor Martin O'Malley to serve as Secretary of Labor, Licensing, and Regulation. Pérez was an Associate Professor at the law school and served as Director of the Clinical Law Program from 2001 to 2003. Prior to joining the law school, Secretary Pérez was Director of the Office of Civil Rights at the U.S. Department of Health and Human Services.

Despite his new duties, Pérez is still involved in a number of health care-related advocacy projects and will continue to teach as an adjunct in the Law & Health Care Program. Most recently, Pérez co-authored a study commissioned by the W.K. Kellogg Foundation entitled, "Health Professions Accreditation and Diversity: A Review of Current Standards and Processes." The study, released this year, sought to capture the connection between accreditation and a culturally and ethnically diverse workforce. The report provides observations on the existing accreditation process and recommendations for how to produce a health care workforce that is racially and ethnically diverse and culturally competent. The report calls accreditation, "a potentially important catalyst for change whose full potential has yet to be realized." Two former Law & Health Care Program students, Deepti Kulkarni and Brooke Courtney, helped Pérez and the other authors with research for the report.

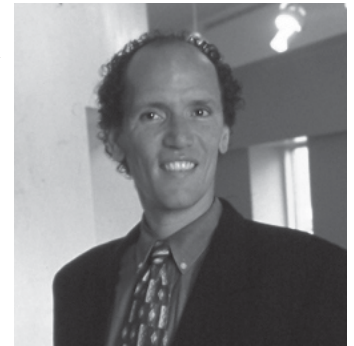
The Kellogg Foundation study was the latest in a series of reports and articles Pérez has authored on health disparities. In 2002, Pérez was commissioned to author a paper that

was part of the Institute of Medicine's landmark *Unequal Treatment* report. He used this research to effect changes at the national level as a member of the Sullivan Commission on Diversity in the Healthcare Workforce. In September of 2004, the Commission released a report entitled, "Missing Persons: Minorities in the Health Professions," that includes numerous recommendations as to how to increase the number of minorities in the health care workforce.

Pérez is also a member of the Kaiser Commission on Medicaid and the Uninsured and chair of a national selection committee for the Robert

Wood Johnson Foundation that will review proposals from across the

country to fund roughly a dozen projects designed to expand the capacity of non-profit organizations to advocate for long term solutions to issues of access to healthcare for vulnerable people.



Tom Pérez

IN REMEMBRANCE OF JOAN O'SULLIVAN

In May, the Law & Health Care Program lost one of its former outstanding faculty members. Joan O'Sullivan passed away on May 19, 2007. She died at home with her family after an extended illness. Joan came to the law school in 1993 where she developed, and then taught, clinical courses on elder law and health law. She was very popular with her students and devoted to the elderly clients served by the clinic.

Prior to coming to the law school, Joan worked for the Maryland Legal Aid Bureau's Senior Citizens Law Project in Annapolis as managing attorney from 1977 to 1993. She represented thousands of low-income seniors, conducted hundreds

of community and professional education programs, promoted collaborations with the local bar, and served as mentor to less experienced legal services advocates around the state. In addition, Professor O' Sullivan co-founded the Anne Arundel County, Maryland Representative Payee Project, an alternative to guardianship for individuals unable to manage their Social Security or other government benefits and was a founding

member of the Maryland State Bar Association Elder Law Section. Joan authored a number of books, including *THE MARYLAND GUARDIANSHIP BENCH BOOK*; *NURSING*



Joan O'Sullivan

Cont. on page 12

In Remembrance of Joan O'Sullivan

Cont. from p. 11

HOMES: WHAT YOU NEED TO KNOW; ASSISTED LIVING IN MARYLAND: WHAT YOU NEED TO KNOW; and THE GUARDIANSHIP HANDBOOK: A GUIDE TO ADULT GUARDIANSHIP AND GUARDIANSHIP ALTERNATIVES IN MARYLAND.

Over the course of her career, Joan was recognized by her peers for her outstanding contributions to elder rights advocacy. She was the recipient of the Maryland Legal Services Corporation Distinguished Service Award, the Maryland Bar Foundation Award for Legal

Excellence and, in 2004, the National Aging and Law Award.

Her colleagues at the Law School described Joan as an outstanding teacher who inspired her students through her own work. She was skilled at guiding her students as they struggled to understand the law and represent clients in the Elder Law Clinic. She guided them with a light touch, displaying understanding and compassion. She recognized when students lacked confidence in their abilities and bolstered their confidence when they needed

it. She also helped them learn and grow from their mistakes. Because of their experience in the Elder Law Clinic, a number of her students went on to practice elder law after they graduated from law school in law firms and in advocacy organizations.

Joan will be remembered for her tireless work aimed at preserving individual rights of the elderly, and missed as a friend to many at the law school and in the elder law community.

L&HCP STUDENTS . . .

FOCUS ON EXTERNSHIPS . . . UNIVERSITY OF MARYLAND SCHOOL OF LAW STUDENT AT THE ABA COMMISSION ON LAW AND AGING

University of Maryland School of Law student Monica Sethi was chosen by the ABA Commission on Law and Aging to serve as its 2007 Borchard Foundation Center on Law and Aging Intern. This prestigious summer position in Washington, D.C. proved to be a wonderful experience for Monica, a rising third-year student who is pursuing the health law certificate. Monica worked closely with ABA Commission Director Charlie Sabatino to review surrogate decision-making and advance health care directive statutes in all 50 states. In addition, Monica synthesized all 50 states' legal positions on medical futility as the basis for writing an article comparing each state's stance on medically futile health care. Her findings will be published in an article entitled "Patient's Right to Direct Own Health Care vs. Physician's Right to



Monica Sethi

Decline to Provide Treatment," which will appear in a forthcoming issue of *Bifocal*, the Commission's newsletter.

Of her internship, Monica commented, "[a]n attractive part of working at the Commission is that everyone in the office is an expert in his or her field and is always willing to take time out to talk to interns

about law school, careers, and anything else. The attorneys value their interns and give substantive assignments that are both challenging and interesting. The most exciting part of the internship was keeping abreast of important issues in elder law by attending numerous Congressional hearings and briefings in both the House and Senate. Working with the ABA Commission was a great opportunity that I recommend to other students interested in health policy and elder law."

In addition to pursuing the health law certificate, Monica is an associate editor for the school's *Journal of Health Care Law & Policy* and is a contributing writer of health articles for the law school's newspaper, *The Raven*. She also served as a law clerk after her first year in law school in the in-house counsel's office at Maxim Healthcare Services in Columbia, Maryland.

MD/PhD STUDENT WINS APHA AWARD FOR LAW SCHOOL SEMINAR PAPER

In Spring 2006, Shayna Rich, a University of Maryland School of Medicine MD/PhD candidate, enrolled in a new seminar offered at the law school entitled “Legal and Policy Issues in End-of-Life Care.” Students in this multidisciplinary seminar, taught by Law & Health Care Program Director Diane Hoffmann, and Assistant Attorney General Jack Schwartz, examined the last three decades of legal developments in the law governing decision making about the use of life-sustaining medical treatments. The course encompassed the leading cases from *Quinlan* through *Schiavo* and focused on challenges that continue to confront patients, families, health care providers and policy makers in improving end-of-life care. Students were required to write a research paper evaluating current legal and policy frameworks

for decision making and medical treatment at the end-of-life.

Shayna decided to take the course because of her interest in hospice and end-of-life care issues and because she had taken another interdisciplinary course at the School of Law – Critical Issues in Health Care with Professor Hoffmann. In the end-of-life course, Shayna conducted research and wrote about eligibility requirements for hospice under the Medicare program. She submitted her paper to the American Public Health Association’s (APHA) Gerontological Health Section’s annual manuscript competition. In August, she learned that her paper, “Policy Issues Related to the Six-Month Prognostic Standard for Eligibility in the Medicare Hospice Benefit,” was awarded Honorable Mention for the 2007 Laurence G.

Branch Doctoral Student Research Award. The Gerontological Health Section (GHS) of APHA was created to stimulate public health activities to improve the health, functioning, and quality of life of older persons and to call attention to their health care needs. In pursuing this mission, the GHS makes a number of awards to scholars in the area of gerontology, particularly for research and advocacy aimed at reforming governmental health care programs such as Medicare and Medicaid. Shayna will present her paper at the American Public Health Association annual meeting on November 6.

After graduation from both programs, Shayna is planning to pursue a combined clinical and research career with a focus on issues related to hospice and palliative care.

2007 HEALTH LAW CERTIFICATE AWARDEES

At a breakfast reception held on May 16, 2007 at the School of Law, Professor Diane Hoffmann, Director of the Law & Health Care Program, and Virginia Rowthorn, Managing Director of the Program, awarded the Health Law Certificate to 25 graduating students. This ceremony marked the 10th year that the Law & Health Care Program at the School of Law has been awarding the Health Law Certificate to those students who have concentrated their legal studies in the area of health law. The certificate awardees, in addition to all of the requirements to graduate from law school, also fulfilled the rigorous requirements for the concentration

in health law, which include health law seminars, an experiential learning component, and a writing requirement. Many of these students went far beyond the minimum requirements to earn the certificate. Many completed more than one health law externship and virtually all of them took part in non-curricular health law activities such as participating in Health Law Moot Court, working on the *Journal of Health Care Law & Policy*, and participating in the Student Health Law Organization.

The certificate recipients this year are representative of the law school’s wonderfully diverse student body. Some of them are older students and have families

and children. Others have had extensive work experience, coming to law school from prior careers in health care such as nursing or health policy. Some have accepted positions in the federal government, others in health law practices in prominent private law firms, others will work in health-related non-profit organizations. Each of the certificate awardees are special in their own way and all of them will be invaluable ambassadors for the Program as they start their legal careers. Below, we focus on five certificate students whose various backgrounds and career aspirations highlight the breadth of health law and its (future) practitioners.

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Rachel Grunberger

Rachel came to the law school from the University of Maryland, College Park with a B.A. in Psychology and English. After her first year of law school, Rachel was a summer associate at Gallagher, Evelius & Jones in Baltimore and after her second year, was a summer associate at Covington & Burling in Washington, D.C. She won the Best Journal Petition Award in 2005, earned a spot on the *Maryland Law Review*, and, in her third year, served as its Executive Notes and Comments Editor. In addition, Rachel was a Legal Writing Program Fellow during her second year. Her written work has been published twice. The first piece, entitled, “*Johnson v. California: Setting a Constitutional Trap for Prison Officials*,” appeared in the *Maryland Law Review* and the other, “*Civil Legal Needs of Individuals in Drug Treatment*,” which she co-authored, appeared in the *Journal of Substance Abuse Treatment*.

Rachel took a number of health law courses. Adjunct Professor Lisa Ohrin, who taught Rachel in her Long Term Care Seminar, called Rachel “one of those students who, although you do not have enough time to get to know them very well, you hope that you cross paths later as colleagues. She is bright, energetic, and simply a delightful person. A big part of lawyering is connecting to your clients, and Rachel will score high marks in that department.”

Rachel is the envy of the other health law certificate students. Not for her law school accomplishments — which are many — but because her first position out of law school will be a clerkship with Judge Alan Kay of the U.S. District Court for the District of Hawaii in Honolulu.

Joanne Hawana

Joanne brought a wealth of experience to her law school career. After graduating with a B.S. in Biology from the College of William & Mary and an M.S. in Molecular Genetics & Microbiology from the University of Medicine & Dentistry of New Jersey, Joanne was a science policy and research reporter for *The Blue Sheet: Health Policy and Biomedical Research*, a weekly publication for the biomedical research community. As part of her “beat,” she covered science agencies, private research groups, and Capitol Hill. Joanne arrived at the law school in 2004 as a Leadership Scholar and has translated her background in science into twin pursuits at the law school — intellectual property law and health law.

In terms of intellectual property law, Joanne served as Co-President of the Maryland Intellectual Property Student Association, as a student attorney in the Intellectual Property Law Clinic, and as a Fellow at the Office of Biotechnology Activities at the National Institutes of Health.

In terms of health law, Joanne served as treasurer of the Student Health Law Organization and Manuscripts Editor for the *Journal of Health Care Law and Policy*. She was instrumental in soliciting and choosing the well-regarded articles that comprise the 10th anniversary issue of the *Journal*.

Joanne externed in Washington, D.C. at BIO, the national biotech trade organization, where she had an opportunity to work on the biotech issues that she’s written about as a journalist and studied at the law school. She also served as a Research Assistant for both Professors Diane Hoffmann and Michael

Greenberger, Director of the Center for Health and Homeland Security at the law school. This fall, Joanne will begin work as an associate at Arent Fox in Washington D.C. in their Life Sciences practice.

Dawn Rock

Dawn earned the health law certificate as an evening student while juggling a family and a full-time job as the Director of Corporate Compliance at the Johns Hopkins Health Care Corporation. In her position (which she still holds), she drafts compliance plans and codes of ethics, investigates allegations of fraud and abuse, and monitors compliance with HIPAA regulations. Before her time at Hopkins, Dawn worked for the Kaiser Foundation Health Plan of the Mid-Atlantic States as Clinical Compliance Coordinator and, before her life in the world of health care compliance, Dawn worked as a paralegal for several years. She graduated from the University of Maryland Baltimore County in May 2000.

Despite her impressive schedule, Dawn managed to complete an externship during law school by cobbling together vacation and leave time. In the summer of 2006, Dawn clerked in the Office of the Maryland Attorney General’s Medicaid Fraud and Abuse Division. Her supervisor, Rich Bardos, was delighted to have an intern with health care experience on hand. He commented that Dawn “brought a caring and intelligent real-life perspective to our practice. Dawn used her experience in fraud detection to be creative in solving the confusion that arises from the maze of regulations that surround the Medicaid program. And she is just plain fun to work with.”

Professor Jaime Doherty, who was Dawn's professor for Legal Issues in Managed Care, said "Dawn was a challenging student because she came to my class with a much more sophisticated understanding of legal issues in managed care than many of the other seminar students, due to her experience as a paralegal at Kaiser Permanente. It was very hard for me to get away with making broad professorial generalizations! Boy I hate that."

While Dawn decides what her next step will be, she will continue her work at Johns Hopkins for the near future.

Marc Snyder

Marc arrived at the law school having graduated *summa cum laude* from Clark University in Worcester, Massachusetts where he majored in Computer Science. For two years in a row, he was given the Outstanding Academic Achievement in Computer Science Award and received high honors on his paper, "The Pebble Algorithm and Other Topics in Bioinformatics." He also worked as a research assistant in both a biology and biochemistry lab and his publications include a work entitled "Automated Phylogenetic Taxonomy: An Example in the Homobasidiomycetes" which appeared in *Systematic Biology*.

Marc dove into health law from the minute he had the opportunity

to take an elective at the law school. He took the Insurance Law Seminar; Health Care Law & Policy; Children's Health, Violence and the Law; and the Civil Rights of Persons with Disabilities Clinic with Professor Charmatz. Professor Charmatz commented that he enjoyed working with Marc because he worked tirelessly on behalf of his clinic clients, including a difficult case in which a child was refused medical treatment because of his parents' disability.

Marc was a summer associate after his second year in law school at the law firm of Fried, Frank in Washington, D.C. and is beginning his career there as an associate this fall.

Arianne Spaccarelli

Arianne was another of the law school's stellar evening students. While attending school, Arianne worked as an Administrator and Policy Analyst at the Office of Youth Violence Prevention in Baltimore where she managed grant development for programs with a combined annual budget of over \$2 million. Before that, she was a KidStat Coordinator for the Mayor of Baltimore's Office of Children, Youth and Families where she developed strategies to enhance program compliance for juvenile offenders served by the program. Arianne graduated in 2000 from Harvard University with a *cum laude*

degree in Modern European History and while there, earned the Robert C. Byrd Scholarship four years in a row for academic and extracurricular achievement.

Arianne took the Tobacco Control Seminar with Professor Kathleen Dachille who called Arianne "an articulate and bright young professional. Her contributions demonstrated critical thinking and earnest internal analysis. Similarly, Arianne's seminar paper was excellent; her analysis and research were far above the norm." Diane Hoffmann, who got to know Arianne in the Spring of 2005 in her Critical Issues in Health Care class, noted that "Arianne stood out as one of the brightest students in the class. Her comments were always on point."

In her final semester of law school, Arianne interned for Dan O'Brien, the Chief Attorney of the Maryland Department of Health and Mental Hygiene, where she performed legal research and assisted in litigation preparation for Medical Assistance hearings and enforcement actions by professional boards. O'Brien called her "one of the best [interns] we've seen. We're certain she will have a great career." In the summer of 2005, she was a teaching assistant for Professor Michael Greenberger, Director of the Center for Health and Homeland Security, where she is now working as a Fellow.

FROM THE LAW SCHOOL TO THE EXECUTIVE BRANCH . . .

The Law & Health Care Program will be well represented in Washington D.C. this year as three 2007 Health Law Certificate awardees begin their careers as Presidential Management Fellows. Aparna Sriram, Fran Huber and Brian Kehoe begin their two-year Fellowships this fall.

The Presidential Management Fellowship (PMF) is a leadership development program designed to attract outstanding men and women from a variety of academic disciplines to federal government service. Candidates must express a clear interest in, and commitment to, excellence in the leadership and management of public policies and programs. The two-year paid Fellowship includes 80-hours of formal classroom training each year, challenging work assignments, accelerated promotions, developmental learning, and networking opportunities. Fellows apply to, and are hired directly by, federal agencies. During the Fellowship, students can remain in a single department or rotate throughout other federal agencies or affiliates of the government, such as the U.S. Congress or national organizations such as the National Governor's Association.

Fran Huber, who was an evening law student, served as Director of Academic Affairs and Post-Professional Programs at the Department of Physical Therapy and Rehabilitation Science at the University of Maryland School of Medicine while studying law. Prior to entering academia, Huber worked as a licensed Physical Therapist for several years in New Jersey,

Pennsylvania, and West Virginia. Her research in the area of physical therapy has been published in several peer-reviewed publications including the *American Journal of Sports Medicine* and *Orthopedic Clinics of North America*. During her time at the law school, Huber was a member of the Moot Court Executive Board and the winner of the "Best All Around" award in the Fall 2004 Moot Court Competition. She also externed during her last semester of law school for the U.S. Senate Committee on Health, Education, Labor and Pensions as part of Senator Barbara Mikulski's staff.

Huber dreamed of working in a government agency after law school because of her long-standing interest in health policy. She applied to, and was accepted as a Fellow in the Office of Medical Policy within the Social Security Administration (SSA). She commented that "[t]his is a great opportunity to get physical therapists more involved in making determinations about disability, a particularly strong interest within my profession." She was also drawn to the work culture at SSA. "They

work hard and do very important work, but still encourage their employees to have balance in their lives — very important for me after four years of full-time work and evening school!"



Aparna Sriram

Brian Kehoe, who graduated from the University of Rochester (New York) with a degree in Microbiology in 2002, has had a long-time



Brian Kehoe

interest in health law and biomedical research. During college, he worked as a student intern in two University of Rochester laboratories and before law school, worked for AstraZeneca and Millennium Pharmaceuticals. Brian came to the law school as a Leadership Scholar and during his time here, externed in the FDA Office of Legislation (an experience that was profiled in the Spring 2007 newsletter). When he learned that he had been chosen as a Fellow, he applied to work in the same office. His supervisor told the School of Law that she is delighted to have him back for at least part of his two-year Fellowship — and maybe permanently. Fellows are guaranteed a position in the federal government when their Fellowship is completed.

Aparna Sriram graduated from Northwestern University in Evanston, Illinois with a B.S. in Communications. Prior to law school, she worked as a certified mediator at the Harford County Community Mediation Program facilitating resolution of tort and contract disputes. During law school, she completed three

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2007 LAW & HEALTH CARE PROGRAM CERTIFICATES

*Deepti Aranake
Lauren Michelle Cohen
Rachel Cohen Grunberger
Allison Guillen
Joanne Samir Hawana
Deborah Eve Herman
Frances E. Huber
Brian Kehoe
Ricki Heather Kleinman*

*Jennifer Lee Martin
Erica S. Mellick
Joslin Elizabeth Monahan
Dawn Denise Rock
Michelle Elise Saffan
Meaghan Leigh Shepard
Amy F. Siegel
Marc Steven Snyder*

*Arianne Michelle Spaccarelli
Aparna Vijayalakshmi Sriram
Melissa Jeanne Sviatko
Andrea Joie Vaughn
Meghan Lynne Vince
DeYvonne Monique Whitehead
Tamiya Nicole Baskerville Wilkes
Jennifer Lynne Zonarich*

PHOTOS FROM THE 2007 HEALTH LAW CERTIFICATE AWARD BREAKFAST



*(l-r) L&HCP Director Diane Hoffmann,
Rachel Grunberger, Professor Kathleen Dachille,
Melissa Sviatko*



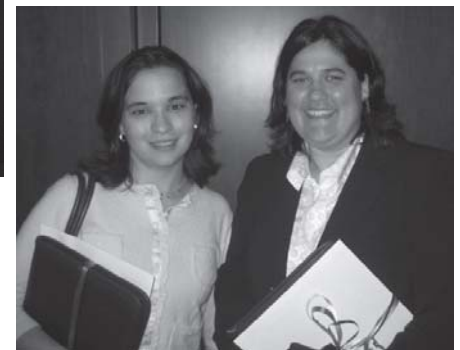
*(l-r) Jennifer Martin, Joanne Hawana,
Marc Snyder*



*(l-r) Dawn Rock, Dean Karen Rothenberg,
Dawn's son Justin Jennings*



*(l-r) Meaghan Shepard, Erika
Mellick, Deborah Herman*



*(l-r) Arianne Spaccarelli,
Fran Huber*

LAW SCHOOL'S JOURNAL OF HEALTH CARE LAW & POLICY ELECTS NEW EDITOR-IN-CHIEF

The University of Maryland School of Law's *Journal of Health Care Law & Policy* has chosen Deepti Kulkarni, a rising third year health law student, to serve as its new Editor-in-Chief for 2007-08. Deepti brings a strong academic background and a deep interest in health law and policy to her new position.

Deepti came to the law school from the University of Maryland College Park with a B.S. in Business Marketing and General Business. She is pursuing the health law certificate and has already completed two health law-related internships – one at the Public Justice Center in Baltimore where she researched issues relating to health care, privacy laws, and federal Head Start regulations and the other at the Center for Medicare & Medicaid Services (CMS) where she reviewed and responded to public comments regarding proposed amendments to physician self-referral regulations. Last Spring, Deepti served as a research assistant for former Professor Thomas Pérez (now Secretary of Labor, Licensing and Regulation for the State of Maryland. See story on page 11) whom she assisted in completing a report for the Kellogg Foundation regarding workforce diversity in the field of health care. This fall, Deepti will intern for Judge Andre Davis of the U.S. District Court for the District of Maryland.



Deepti Kulkarni

In addition to her role on the *Journal*, this year Deepti is also the Volunteer Chair of the Student Health Law Organization, Director of the University of Maryland Domestic Violence Hotline Project, and Outreach Coordinator for the Students Supporting the Women's

Law Center group. For her outstanding academic and charitable pursuits at the law school, she has received many awards including the Albert Schweitzer Fellowship for 2007-08, a scholarship from the Women's Bar Association of Montgomery County for 2007-08, and the

University of Maryland School of Law Dean's Award for 2007-08.

On her new position, Deepti commented that the *Journal* board, "hopes to continue the *Journal's* charge of providing a forum for the discussion of current and interesting issues in health law, policy, and bioethics." The next issue (11:1) will focus on articles stemming from presentations made at a recent symposium co-hosted by the School of Law's Center for Tobacco Regulation, Litigation & Advocacy and the Law & Health Care Program. The symposium, entitled "'Safer' Tobacco Products: Reducing Harm or Giving False Hope?," featured discussions regarding the history of tobacco product development and

regulation, the science behind risk reduction products, smokeless tobacco as a viable reduced harm product, legal issues raised by the cigarette manufacturers' expansion into the smokeless tobacco market, regulatory policy for reduced harm tobacco, and the impact of the marketing of reduced risk tobacco products. Currently, the *Journal* is making plans for issue 11:2 and is soliciting articles on a variety of health law topics that illustrate both the wide range of issues in the field of health law and the diverse topics addressed in the *Journal*.

Second Generation Genetics

Cont. from p. 3

dangerousness" based on evidence of genetic conditions that predispose individuals to violence.¹⁵

Our empirical research indicated that judges weigh multiple factors simultaneously when asked to admit or compel a genetic test. Conceptually, they seem to apply a framework that initially distinguishes between a criminal or civil setting. In each of those contexts they considered a number of issues. We used our survey results to construct a decision matrix that might be used by judges to evaluate these complex cases. The decision matrix contemplates three sets of questions placed along three axes: 1) judicial questions (whether the court is being asked to admit or compel a test); 2) questions regarding the purpose of the genetic informa-

tion (i.e., culpability, causation, or consequence); and 3) genetic factor questions (e.g., the scientific value of the test; the nature of the genetic trait/condition for which an individual is being tested; psycho-social issues; genetic determinism; and acceptance of the test).

The survey results and comments of the judges also illuminated for us a number of doctrinal and policy tensions that surface in existing criminal, evidence, constitutional, and tort law when these second generation tests are used (or efforts are made to use them) in judicial proceedings. One area in which this is particularly apparent is in the context of proving causation in tort litigation. For example, in toxic tort cases, plaintiffs, as an initial matter, need to show that the toxic exposure was “more likely than not” the cause of the plaintiff’s disease or condition. A genetic test might be requested by the defendant to show that the plaintiff had a genetic susceptibility to the toxic substance. While most courts in such a case would adopt the well known tort doctrine that one takes his victim as one finds him – some courts have accepted a defendant’s argument in products liability cases that its product was not “defective or unreasonably dangerous” if the plaintiff had a rare, idiosyncratic, and unforeseeable reaction to the product. The question of whether this latter doctrine will apply to cases where a product harms an individual with a genetic susceptibility has yet to be resolved. However, it raises the question as to where, in these cases, the burden should fall – on the innocent victim or the product manufacturer.

In addition to the challenges that these genetic tests will bring to the court room, we believe that their widespread use in the courts may have broader societal implications and argue that it is critically important that judges, legislators and policymakers look beyond the use of genetic tests in individual cases to the broader public policy implications of using such tests routinely in court. Such implications may include reluctance of individuals to obtain genetic tests in a clinical setting, even if they may be of medical benefit or reluctance to participate in genetic research.

In order to further explore the implications of our findings for the judiciary and society more broadly, we are collaborating with the National Human Genome Research Institute to bring together a group of 20–25 judges, social scientists, geneticists, and legal and other academics with expertise in the issues raised by genetic tests. The purpose of the meeting is to provide a forum for discussion of the types of cases we included in our research by a multidisciplinary group of experts and exploration of the need for modifications to evidentiary rules or legal doctrines to accommodate these new genetic tests.

Among others, participants in the roundtable will include Dr. Francis Collins of the NHGRI, Professor Mark Rothstein, Director of the Institute for Bioethics, Health Policy and Law at the University of Louisville School of Medicine (who is visiting the law school this semester), Professor Richard Boldt, University of Maryland School of Law, Professor Nita Farahany, Vanderbilt University Law School, Judge Barbara Rothstein, Director,

Federal Judicial Center, and Dr. Mark Frankel, Director of the Scientific Freedom, Responsibility and Law Program at the American Association for the Advancement of Science.

— Diane Hoffmann, Professor of Law, Director Law & Health Care Program and Karen Rothenberg, Dean and Marjorie Cook Professor of Law

(Endnotes)

¹ *Andrews v. State*, 533 So. 2d 841 (Fla. Dist. Ct. App. 1988).

² Diane E. Hoffmann and Karen H. Rothenberg, *Judging Genes: Implications of the Second Generation of Genetic Tests in the Courtroom*, MD. L. REV. (forthcoming 2007).

³ See, e.g., <http://www.ncjrs.gov/pdffiles/jr000234.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ Hoffmann and Rothenberg, *supra* note 2, at 5.

⁷ *Id.*, 16–31.

⁸ ASTAR (Advanced Science and Technology Resource) is a consortium of judges and judicial organizations that builds capacity within the judicial system in the areas of technology and science. See www.einshac.org/index.html.

⁹ Hoffmann and Rothenberg, *supra* note 2.

¹⁰ Hoffmann and Rothenberg, *supra* note 2, at 8.

¹¹ Hoffmann and Rothenberg, *supra* note 2, at 10.

¹² *Id.*

¹³ *Id.* at 10, note 21.

¹⁴ *Id.* at 12.

¹⁵ *Id.* 13–15.

From the Law School to the Executive Branch

Cont. from p. 16

different externships. In the Spring of 2006, she clerked for the Honorable Lynne A. Battaglia, a judge on the Court of Appeals of Maryland. In her last semester in law school, she did two externships simultaneously – one at the Education, Health and Environment Committee of the Maryland General Assembly and one at the Centers for Medicare and Medicaid Services in the Office of the General Counsel.

Sriram chose the PMF program because “it provided a wonderful opportunity to dabble in law, policy, and management with various agencies and branches of the federal government.” She was attracted to federal government service for the opportunity it provides to do meaningful work on behalf of others and because of the family-friendly culture she encountered during the Fellowship interview process. Sriram interviewed with several agencies, received offers, and accepted her first-choice.

Like Huber, she will be working at the Social Security Administration in Baltimore. Sriram will work on a team that promulgates rules regarding disability determinations. She is looking forward to the opportunity to become a specialist in a body system (such as neurology, mental health, musculoskeletal, etc.) in order to draft effective law-making rules. Sriram is thrilled with having been chosen as a Fellow. She commented that, “the position meets my professional expectations in every way.”

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