

LAW & HEALTH CARE

Volume XI

Number 1

Focus on . . .

SCHOLARSHIP ON THE CUTTING EDGE

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The field of health law offers a multitude of issues for thought-provoking scholarship ranging from whether or not to allow human cloning or whether to regulate IVF and genetic testing, to issues of financing, the regulation of managed care, health insurance and fraud and abuse. Faculty at the University of Maryland School of Law have written on many of these issues and continue to pursue research and scholarship on new and emerging issues in health care, public health and bioethics. In some cases, the issues arise from their clinical practice, in others it may come out of a project in which they participated as a task force member or consultant, and for some it may be a direct result of their teaching experience. While much of the scholarship is based on traditional analysis of legal reasoning and policy, a good

amount of faculty scholarship is based on empirical research and draws from other disciplines including economics, philosophy and sociology. The vast array of health law and policy issues on which University of Maryland faculty are working, how they became interested in a particular topic, and some of the issues they are planning to pursue in the coming year are the focus of this feature article.

Research Spotlight: Professor Irving Breitowitz

While he is primarily known at the Law School for his teaching in the area of commercial law, Professor Irving Breitowitz's scholarship has focused extensively on issues of medical ethics.

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FROM THE DIRECTOR

This issue of our Newsletter is devoted to faculty scholarship. Our L&HCP is enriched by the wide ranging areas of research pursued by our faculty. Not only are faculty working on issues in bioethics and genetics, Medicare and fraud and abuse, but they are also exploring issues in public health, international health, and intersections between health law and family law. In addition to our feature article, we share news of several interdisciplinary courses and upcoming events, spotlight one of our most popular adjuncts, and let you know what our Student Health Law Organization is up to. We hope you find the issue informative.

Diane Hoffmann, JD, MS
Director

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There are a number of law school faculty
who contribute to the diversity of the Law
& Health Care Program through their
teaching and scholarship.

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Karen Czapskiy, JD

Kathleen Hoke Dachille, JD

I. Michael Greenberger, JD

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Professor Breitowitz, who is also a rabbi at the Woodside Synagogue in Silver Spring, Maryland, has recently published articles about the ways that Jewish Law can guide difficult decisions presented by newly developed reproductive technologies. Although Jewish law is not a legally enforceable system anywhere in the world, it is a system of law and ethics that thousands of people worldwide consider binding.



In his article, "Halakhic Alternatives in IVF-Pregnancies: A Survey," which appeared in *The Jewish Law Annual*,¹ Breitowitz discusses the ethical dilemmas that have been created by proliferated use of IVF technologies. In the article, he examines how Halakha, a religious system premised on subservience to divine will, may provide answers to the moral quandaries presented by disposition of fertilized ova, implementation of some or all pre-embryos, destruction of pre-embryos and donation of pre-embryos to other women for surrogacy.

Professor Breitowitz has also devoted some of his recent scholarship to the issue of human cloning. In one article, titled "What's So Bad About Human Cloning?" featured in the *Kennedy Institute of Ethics Journal*,² Breitowitz analyzes the religious and ethical issues surrounding cloning for reproduction. This article challenges the assumption that reproductive cloning is a dangerous phenomenon that is morally repugnant. Breitowitz argues that from the perspective of the Jewish

tradition, reproductive cloning may have positive benefits.

Footnotes

¹ *The Jewish Law Annual*, Vol. XIV, p. 30 (April 2003).

² *Kennedy Inst. of Ethics J.* 2002 Dec;12 (4):325-41.

Professor Kathleen Hoke Dachille

Professor Dachille is the Director of the Tobacco Control Center at the University of Maryland School of Law. She also directs the Tobacco Control Clinic, which provides law students with hands-on experience in bill drafting, legislative advocacy and litigation in the tobacco control arena.



Professor Dachille's academic scholarship is currently focused on the authority of family courts to stop parents from exposing children to secondhand smoke. She is working to complete an article on the family courts' activity with respect to prohibition of parent smoking.

Her research in this area is based, in part, on two recent family court decisions in which the judges prohibited parents from smoking in their home or personal vehicle to protect a child subject to an order of custody and visitation.

The New York case, *DeMatteo v. DeMatteo*, 749 N.Y.S. 2d 671 (October 9, 2002), originated when 14-year-old Nicholas filed a complaint seeking to enjoin his mother from smoking in his presence during court-ordered visi-

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tation. According to Nicholas, his mother smoked in her apartment and car when he was present. His mother, however, denied exposing the child to secondhand smoke. Ms. DeMatteo also contested the court's interim decision to take judicial notice of the fact that secondhand smoke poses significant health risks to nonsmokers, presenting evidence in opposition to that finding.

The court conducted its own research and review of scientific data and analysis on secondhand smoke. Based on the results of that research and on the fact that the New York state legislature in 1989 passed a law recognizing the dangers of secondhand smoke, the court took judicial notice of the fact that secondhand smoke is a carcinogen that can cause lung cancer in otherwise healthy nonsmokers. The court also took notice that children of smoking parents suffer increased incidence of respiratory infections and diminished lung capacity.

As a result of its findings, the court ordered that Nicholas' home with his father be smokefree and that the boy's mother not smoke in her apartment when Nicholas is present or for twenty-four hours in advance of a scheduled visit. The order also prohibits both parents from smoking in a car when Nicholas is present. The court considered it to be in Nicholas' best interest to limit the boy's exposure to secondhand smoke.

An Ohio court similarly used the best interest standard to reach a comparable decision in *In re Julie Anne*, 2002 WL 2022117 (August 27, 2002). In that case, the Court of Common Pleas of Ohio issued a restraining order prohibiting Julie Anne's parents from smoking, or allowing others to smoke, in the child's presence. In addition, the court independently raised the issue of the dangerous effects of childhood exposure to secondhand smoke during a routine visitation hearing. The court

was clear in its opinion that family courts have the unqualified duty to consider the harm caused by secondhand smoke to children subject to a custody or visitation order.

In reaching its decision, the court examined numerous scientific studies finding a causal relationship between exposure to secondhand smoke and health problems in children. Concluding that secondhand smoke is a human carcinogen, responsible for more than 3,000 lung disease deaths annually in the United States, the court looked at the specific harm faced by children exposed to secondhand smoke and noted that every independent scientific study on secondhand smoke has concluded that exposure causes and aggravates numerous diseases and illnesses in children, including bronchitis, pneumonia, asthma, chronic respiratory problems, and middle ear infections. Also persuasive to the court were studies showing that children are more likely to become smokers when exposed to their parents' smoking. Because of the egregious harm to Julie Anne from her parents' or others' tobacco use in her presence, the court ordered that her parents not smoke and not allow others to smoke in the child's presence.

The court not only determined that such an order was appropriate in this case but stated that, "... a family court that fails to issue orders restraining persons from smoking in the presence of children within its care is failing the children whom the law has entrusted to its care."

Just as there have been an increased number of jurisdictions that regulate smoking in the workplace and in public places, it is possible that there will be an increase in the number of family court custody and visitation orders protecting children from exposure to secondhand smoke in the home. According to Professor Dacheille, given the significant number of children sub-

ject to court-ordered custody and visitation, a trend in that direction could have a profound impact on the health of our children and those in the generations to come.

Professor Deborah Hellman

Professor Deborah Hellman teaches the "Principles of Bioethics Seminar" at the School of Law and has focused some of her scholarship on issues at the intersection of health law and philosophy. She recently published two health law related articles. In one piece, "Evidence, Belief and Action: The Failure of Equipose to Resolve the Ethical Tension in the Randomized

Clinical Trial," published in the *Journal of Law, Medicine & Ethics* in 2002,¹ Hellman argues that the concept of equipose is unable to dissolve the ethical tension inherent in the randomized



clinical trial [RCT]. Traditionally the RCT is understood as involving an ethical conflict between the interests of the patients in the trial who seek the best available treatment for their disease and the interests of society and future patients in gaining reliable information reasonably quickly about what treatments are best for the disease in question. It is often argued that this tension is illusory or can be alleviated in those situations where it is not known which treatment is best. When the scientist conducting the trial, the physician enrolling patients in the trial and the medical community as a whole don't know which of the treatments offered in an RTC really is best (equi-

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poise), then perhaps patient interests are not compromised in order to produce a societal benefit as all patients get equal care.

In the article, Hellman argues that this standard defense of RCTs is conceptually flawed. While others have critiqued the equipoise standard in important ways, her article offers a new and more basic critique of the ability of equipoise to alleviate the ethical tension in clinical trials. Equipoise is a standard that relates to *belief*. One is in equipoise about which treatment is best if one doesn't have reason to believe that treatment A is better, all things considered, than treatment B. But for a sick person considering treatment, the question is not what to believe, it is what to *do*. This is important because the criteria for answering each question (what should I believe and what should I do) are significantly different. For example, for a very sick person for whom no good treatments are available, it may well make sense to try a therapy she doesn't have good reason to believe will work. Conversely, for the healthy volunteer, it makes sense to require a very high degree of confidence that a drug or other intervention is safe before trying it.

In a second health-related article, Hellman assesses the moral and policy arguments for legislation forbidding genetic discrimination. That article, "Is Genetic Discrimination Exceptional?" recently appeared in the *American Journal of Law & Medicine*.² The issue is timely. Many states have passed laws, which vary in scope and in strength, that forbid genetic discrimination. As the academic literature has matured, the question that has come to dominate that literature is whether genetic discrimination is meaningfully different from discrimination on the basis of health status more generally.

Those who think that genetic discrimination is not meaningfully different from general health status discrimination often argue that any protections from discrimination should be "generic" rather than "genetic"—so that no one who is sick can be denied insurance, employment or others benefits on that basis. Others continue to maintain that there is something meaningfully different about genetic discrimination that differentiates it from health-based discrimination and thus that the special protections from genetic discrimination that have been enacted are justified.

Professor Hellman's article enters the debate at this point. It canvases the familiar arguments that have been offered in support of the view that genetic discrimination is different and argues that most of these are unpersuasive. The article then goes on to evaluate two arguments for genetic exceptionalism (as this position has been called) that have been largely neglected. The first asserts that genetic discrimination is different and warrants special protection in order to safeguard the health enhancing potential of the Human Genome Project. Perhaps people's fears of discrimination will keep them from participating in research involving genetic testing. If so, research that will promote health will be thwarted. In the article, Hellman asserts that this is an important argument for special genetics legislation but that its soundness depends on the answers to several empirical questions that require further investigation. In particular, even if people say they fear genetic discrimination, the types of discrimination that people actually fear must be examined. If people fear that they will be unable to get life insurance or long-term care insurance, then a law that forbids genetic discrimination in health insurance will have little effect. In addition, we need to know how significant a role these fears play in

people's decisions regarding whether to undergo testing in order to know whether laws forbidding genetic discrimination will have the desired effect.

Second, Hellman explores the argument that genetic discrimination ought to be forbidden because of what it expresses. Here the claim is that the social meaning of genetic discrimination is different from health-based discrimination because of the unfortunate history of the misuse of genetics in this country and in Europe for eugenic purposes. In her view, this argument underlies much of the commentary on genetic discrimination but has not yet been clearly articulated and defended. Professor Hellman's article adds to the debate by providing an in-depth exploration of this defense of genetic exceptionalism.

Footnotes

¹ 30 *J. OF LAW, MED. & ETHICS* 375 (2002).

² 29 *Am. J. of Law & Med.* 77 (2003).

Associate Dean Diane Hoffmann

For the last six years, Dean Hoffmann has been a Mayday Scholar, focusing much of her research and scholarship on legal and policy obstacles to the adequate treatment of pain. The Mayday Scholars Program is funded by the Mayday Fund, which is dedicated to alleviating the incidence, degree and consequence of human physical pain. In the course of that time, she has completed articles on insurance and managed care and how they influence the provision of pain treatment, gender bias in the treatment of pain, and, most recently, on the attitudes and practices of state medical boards regarding how they balance the need for adequate pain treatment with concerns about drug diversion and inappropriate prescribing.

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In addition, as an outgrowth of a two year project that included several studies regarding obstacles to pain management in Connecticut, funded by the Donaghue Medical Research Foundation, Hoffmann became interested in the use of hospice services by long term care facilities. It appeared that nursing homes, at least in Connecticut, made very little use of hospice services for their terminally ill residents.



Upon subsequent research, Hoffmann found that this was generally true across the country, and began to consider the possible reasons for the low utilization rate. This led her to consider relatively recent fraud alerts and opinions by the OIG regarding nursing home-hospice contractual relationships and whether they might have had a negative impact on the willingness of nursing homes to contract with hospices. As a result, Hoffmann undertook an empirical study of nursing homes and hospices in Maryland to determine the primary obstacles to their contractual relationships. She recently completed the study, which was funded by the Borchard Foundation on Law & Aging, and hopes to have it published in a forthcoming issue of a health policy and law journal.

Another area in which Dean Hoffmann has focused some of her scholarship is human subjects research, particularly as it deals with incapacitated subjects. This interest and scholarship was the result of participation on a task force appointed by the Maryland Attorney General to develop guidelines and proposed legislation for research with this population. This interest led her, during

the past year, to coauthor an article with her colleague, Dean Karen Rothenberg, on research with children. The article focused on the implications of the Maryland Court of Appeals' decision in the case of *Grimes v. Kennedy Krieger*, for public health research and the duty, as a legal matter, of public health researchers. In the article, Hoffmann and Rothenberg assert that the opinion of the Court of Appeals seems to confuse the research intervention with the living/housing conditions of the plaintiffs, resulting in a duty to disclose risks related to lead based paint which were arguably not a result of the research intervention but of which the researchers were aware. They argue that this broad based duty may have negative repercussions for public health research and for society at large, which benefits from such research findings.

Hoffmann is now on sabbatical, and her sabbatical project is leading her into a somewhat new area of research. She will be looking at how courts are using genetic test results for purposes of determining the health status of one of the parties. While the use of genetic tests by courts has been well established in criminal and paternity cases as a way to determine "identity," there are a handful of cases reported in the literature where courts have compelled genetic tests or admitted them into evidence for the purpose of determining someone's current or future health status. Most of these cases have been in the torts area, a few have been in family law. Hoffmann became interested in the issue after having been asked to speak at conferences sponsored by the Alpha-1 Foundation and the University of Rochester Medical Center on non-therapeutic uses of genetic information and, in particular, how genetic information is being used by the courts. Whether or not courts admit or compel such information is largely determined in the context of

unreported evidentiary motion decisions. As a result, part of the study will include interviews with trial court judges about whether they have been asked by one or more parties to admit into evidence, or compel, genetic tests for the purpose of determining health status. The study is part of a larger research question that has interested Hoffmann, that is, how courts deal with new medical technologies and when they consider them relevant as a matter of evidence. For example, do they consider the specificity or sensitivity of the test results? Do they consider the invasiveness of the test and the privacy concerns of individuals in having the test performed or admitted? Hoffmann believes that the issue has broad ramifications for the use of certain diagnostic tests. As regards genetics, how courts decide the issues may significantly affect the privacy, not only of parties, but also of their family members, and may affect the number of individuals who seek genetic tests for therapeutic purposes.

Professor David Hyman

Professor David Hyman teaches Health Care Regulation at the School of Law and is currently serving as Special Counsel at the Federal Trade Commission (FTC). Over the last several years, Professor Hyman's scholarship has focused on the regulation and financing of the health care industry. His work at the FTC has given him the opportunity to coordinate a wide-ranging set of hearings on competition law and policy in the health care marketplace. The hearings have been jointly sponsored by the FTC and the Department of Justice. In June, Professor Hyman made a presentation at these hearings entitled "Mandated Benefits: A Behavioral Economics/Comparative Institutional Perspective."

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While his work at the FTC has taken up most of his time during the past year, and will continue to do so in the coming year, Hyman has kept up his scholarship in a number of areas. In February, he participated in a symposium on Law and Human Dignity at Notre Dame Law School and spoke as part of a panel that addressed issues related to "Technology, Ethics & Human Dignity." The panel members discussed the challenges that political communities face when attempting to craft legal responses to advances in technology and how society's increased reliance upon technology shapes our views of human dignity. The article that Professor Hyman presented at this symposium, entitled "Does Technology Spell Trouble With a Capital T?: Human Dignity and 'The Relief of Man's Estate,'" will be published in a forthcoming issue of the *Harvard Journal of Law & Public Policy*.

In March, Professor Hyman participated in a symposium on the "Future of Medicare" at Washington & Lee University School of Law. His remarks explored the political and policy dynamics of reforming the Medicare program. The article that Professor Hyman presented at this symposium, "Medicare: Did the Devil Make Us Do It?," will be published in a forthcoming issue of the *Washington & Lee Law Review*.

Professor Hyman is currently working on several projects, including articles on medical malpractice, the complexities of translating economic analysis into competition policy, and an empirical study of the no-duty-to-rescue doctrine.



Professor Thomas Pérez

Professor Pérez leads the "Access to Health Care for Vulnerable Populations" Clinic at the School of Law. Before coming to the law school in 2001, Pérez served as Director of the Office of Civil Rights at the United States Department of Health and Human Services. This work led him to focus his research and scholarly activities at the law school on issues at the intersection



of health care and civil rights, in particular, efforts to eliminate racial and ethnic disparities in health status. Professor Pérez' article, "The Civil Rights Dimension of Racial and Ethnic Disparities in Health Status," appeared in the seminal Report issued by the Institute of Medicine in 2002: *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*. Earlier this year, he authored a paper for the American Institutes of Research (AIR) on the "Legal and Regulatory Landscape Surrounding the Obligation of Health Care Providers To Ensure Meaningful Access To Health Care For People with Limited English Proficiency." This paper was prepared in connection with a grant that AIR received from the Office of Minority Health of the United States Department of Health and Human Services to address cultural competency in health care delivery.

Along with his research and scholarship on reducing disparities in health care, Professor Pérez has been very active in efforts to increase racial and ethnic diversity in the health professions. He views this work as a critical strategy for addressing the disparities challenge. In this effort, he collaborated with the Association of American

Medical Colleges (AAMC) on their initiative to revamp the definition of "Underrepresented Minority." This definition is used by medical schools across the country in their efforts to enhance diversity. The AAMC recently approved the revised definition following a multi-year process. In addition to his work with AAMC, Pérez was recently appointed to the Sullivan Commission on Diversifying the United States Healthcare Workforce. The Commission was established by the Kellogg Foundation to develop a blueprint for increasing racial and ethnic diversity in the health professions. The Commission is conducting field hearings across the United States and will issue a report in the spring of 2004.

Pérez is also currently a finalist for a Robert Wood Johnson Investigator Award in Health Policy Research. His research proposal focuses on developing new strategies for increasing diversity in the health professions in light of the recent Supreme Court decisions upholding the constitutionality of race-conscious admissions policies in higher education.

Dean Karen Rothenberg

Karen H. Rothenberg is the Dean of the law school and the founding Director of its Law & Health Care Program. During the last decade, Rothenberg has focused her research and scholarship on the integration of her two primary interests: women's health and genetics.

In 1995, while on sabbatical from teaching at the School of Law, she served as the Special Assistant to the Director of the Office of Research on Women's Health at the National Institutes of Health (NIH). Though Rothenberg has written extensively about a variety of health law topics, such as AIDS, the right to forego treatment and emergency care, her experience at NIH fueled her interest with respect to the possibility of dis-

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crimination against specific racial or ethnic groups based on the results of genetic testing.

Research breakthroughs that occurred in the 1980s and 1990s permitted scientists to identify genes that were believed to cause inherited diseases. Rothenberg recognized that, along with their great potential for treatment and cure of diseases, the results of genetic testing, especially if focused on a particular racial or ethnic group, could lead to the stigmatization of members of these groups.

By the mid-nineties, researchers had demonstrated that a genetic mutation linked to breast and ovarian cancers (BRCA1 and BRCA2) may occur with greater frequency among Ashkenazi



Jews. As a result of this finding, many Jewish women volunteered to participate in research related to the BRCA1 and BRCA 2 gene. With the findings of these two genes Rothenberg identified a need to re-focus attention on the risks and benefits of genetic research performed on specific ethnic or racial groups. She realized that if identifiable ethnic groups are predisposed to develop a disease, it is likely that members of these groups could be stigmatized or discriminated against in the workplace or with respect to insurance.

Rothenberg's research in this area raises complex issues regarding the benefits of targeted genetic research. Although scientists will be better able to research diseases that disproportionately impact certain ethnic groups, Rothenberg argues that we must consider the countervailing concern that the participant ethnic group members will experience stigmatization and

discrimination.

Over the last five years, Rothenberg has published a number of articles in this area, including the findings of her empirical study on attitudes about genetic research in the Jewish population. The study found that most research subjects would be willing to provide consent for future testing on their tissue if the research was related to curing preventable diseases, such as heart disease, but less willing to consent to research on behavioral traits.

Rothenberg's current research traces the historical evolution of the use of genetic information and the Jewish community from the eugenics movement at the turn of the century, to the discovery and expansion of Tay-Sachs testing, to the current marketing of genetic testing for the predisposition to disease. Rothenberg will present this research at the American Society for Bioethics and Humanities/Canadian Bioethics Society joint conference in Montreal in October 2003. She hopes to further stimulate bioethicists and health law attorneys to work together with the research community on considering new approaches to the evaluation of the risks and benefits of genetics research on racial and ethnic groups.

Professor Allyn Taylor

Professor Taylor is an adjunct professor in residence at the School of Law and a member of the adjunct faculty at the Johns Hopkins Bloomberg School of Hygiene and Public Health. For the past nine years she has also served as a Health Policy Adviser to the World Health Organization. She teaches a seminar on "International Public Health Law" at the School of Law. This past summer, Professor Taylor was involved in a variety of scholarly projects that revolve around her interest in the impact that international law and institutions have with respect to the advancement of global public health.

One of her projects is the development of "case studies" that demonstrate the application of international health law in various contexts as well as projects that consider overarching issues in global health governance. For example, Professor Taylor recently completed a chapter on the proposed UN convention on reproductive cloning for a forthcoming book, *Biotechnology, Intellectual Property and Ethics: An Interdisciplinary Reader*, edited by Jensine Andreson, to be published by Cambridge University Press. The chapter examines the strengths and limitations of international law and the international legal process in promoting a global ban on human reproductive cloning. Taylor attended the cloning negotiations as the legal adviser for the World Health Organization (WHO) and was asked to contribute the chapter following her participation in a conference at Boston University on biotechnology and intellectual property last year that was organized by Professor Andreson.

Taylor is also working on a short piece about the origins of the WHO Framework Convention on Tobacco Control (FCTC) that was adopted by the World Health Assembly in May. She developed the idea of a framework convention approach to tobacco control as part of her doctoral dissertation almost ten years ago and was the senior WHO legal advisor for the negotiation process. This piece, written with Professor Ruth Roemer, adjunct professor emeritus at the UCLA School of Public Health, and Jean LaRiviere, the Canadian delegate to the World Health Organization, provides an historical account of the origins of the FCTC and examines the way in which the idea gained momentum globally.

In addition to examining specific treaty processes, Professor Taylor has become increasingly interested in the role of international law and institutions in contemporary global health governance. One of the most interesting

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projects in which she is currently involved is the World Bank/NIH/WHO Disease Control Priorities Project. The articles produced as a result of this extraordinary project, which involves 80 teams of authors, will be published by Oxford University Press. As part of this effort, Taylor is co-authoring a chapter on priorities for future international health lawmaking. She is excited to have the opportunity to work with an interdisciplinary team of economists and epidemiologists on this project which has the potential to impact future global public health policy.

Taylor also recently completed an article entitled, "Governing the Globalization of Public Health," for the *American Journal of Law, Medicine & Ethics*. This article was a solicited piece for a special theme issue on emerging issues in health law. The article examines how globalization is a driving force behind the burgeoning field of international health law. It also considers how the contemporary international organizational framework poses a severe challenge to the rational development of an effective international health law regime.

Finally, during the past summer, Professor Taylor and Professor Roberto Andorno, a leading bioethicist and the Argentinean delegate to the UNESCO Bioethics Commission, prepared a proposal for a book, *International Biomedical Law: Theory and Practice* that has recently been accepted for publication by Transnational Publishers. Taylor's contribution to this book will bridge her interests in specific treaty processes and in the management of international health law generally. She will examine the role that UNESCO, WHO and the UN take with respect to the advancement of international cooperation in various realms of biotechnology.

Professor Ellen Weber

Professor Weber leads the Drug Policy and Public Health Strategies clinic at the School of Law. Her current scholarship builds on her work of promoting policies that address alcoholism and drug dependence as a health, rather than criminal justice, issue and expand access to community-based treatment services. Professor Weber is completing an article that examines the challenges of establishing community-based treatment services and the various legal, educational and advocacy strategies that can be used to overcome community opposition to siting programs. The article asserts that the siting dilemma grows out of a number of factors including the lack of integration of alcohol and drug treatment services into the primary health care delivery system, the limited education among health care providers about these diseases, the lack of public understanding about the origins, progression and treatment of these medical conditions, and the emphasis in national and local policy-making on punitive rather than public health solutions to alcoholism and drug dependence. Weber contends that lack of public awareness at the community level compounds the stigma associated with alcoholism and drug dependence and thus opposition to treatment services persists, regardless of the location that is selected for a program, the treatment modality or the credentials of the provider.

Professor Weber's research and hands-on work to address discriminatory zoning practices suggest that

multiple short and long-term strategies are needed to overcome opposition to treatment programs. She believes that better education about these medical conditions and their treatment, stricter enforcement of civil rights laws that prohibit discrimination against persons with disabilities, increased collaboration between service providers and communities to address local needs, and better integration of treatment services within the primary care system will decrease opposition to treatment programs.

Over the past year, Weber has become increasingly interested in the integration of treatment services into the primary health care system as a result of her participation on an Institute of Medicine/National Academy of Sciences committee that studied immunotherapies for drugs of addiction. Immunotherapies are now being developed that could enable persons with drug dependence to receive medication-based therapy in a primary care setting with linkages to other counseling and supportive services. The use of these medications, while holding great promise, raises a host of ethical and legal dilemmas, particularly when considered for use among vulnerable populations, such as pregnant and parenting women and adolescents. Protocols for the appropriate use of immunotherapies among such populations will need to be developed to protect against inappropriate or coercive use. Weber hopes to conduct future research in the area of immunotherapy use, specifically focusing on the chief concerns about the use of these drugs by pregnant and parenting women.



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Professor Deborah Weimer

Professor Weimer leads the School of Law's HIV clinic. Her clinical work with HIV+ pediatric and adolescent patients and their families has guided her academic research priorities which are focused on medication adherence and alleged medical neglect.



Through her practice, Weimer found that physicians and social workers with whom the clinic students worked would, on occasion, file reports with protective services alleging parental neglect in hopes that system support and assistance would help at-risk patients and their families adhere to difficult medication regimens used to treat HIV illness. Based on the insights that she and her students gained while representing parents in these cases, Professor Weimer recently published an article entitled "Medical Treatment of Children with HIV Illness and the Need for Supportive Intervention: the Challenges for

Medical Providers, Families and the State."¹ The article argued that an alternative system would be better able to address the needs of these families. Her thesis is that there is a need for a system that focuses on preventing harm to children, rather than making a legal determination of whether neglect is "indicated." Because of this focus on whether neglect had occurred, the Maryland Department of Social Services would often not intervene until the harm to the child had already happened, e.g., resistance to a whole class of medications had developed.

Professor Weimer is currently in the process of researching the degree to which the quality of the physician/patient relationship is a determinant in medication compliance. She is developing an interdisciplinary project to meet the needs of children and families at risk. As part of this project, she plans to establish a research arm which will look at the role that racial, cultural and class differences between the physician and the family play in a family's willingness to adhere to the prescribed regimen.

During the previous academic year, Professor Weimer and her clinical students were involved in a collaborative project with the Schools of Social Work

and Nursing to provide services to families consisting of grandparents with grandchildren who are HIV positive. A small grant supported this work. Professor Weimer and the clinic students submitted a grant proposal to continue the interdisciplinary project. The proposal included a research piece that would examine the role that access to legal services plays in stabilizing these families. In the proposed project, families would be randomly assigned to different levels of service, and a variety of criteria would be used to assess impact.

Finally, Professor Weimer is working on questions of consent to enrollment in clinical trials for HIV+ adolescents, many of whom do not have a parent or guardian available to consent on their behalf. Issues she will be addressing include the factors that should be considered in determining what is an appropriate alternative mechanism to protect the interests of these adolescents. She had been working with a medical clinic that serves HIV+ adolescents that is a site for a clinical trial. The goal of the medical clinic is to improve medication adherence among HIV+ adolescents.

Footnotes

¹ *Juvenile and Family Court Journal*, Vol. 54 #1 (Winter 2003).

Robin F. Wilson Joins Faculty as Visiting Professor

The L&HCP welcomes Professor Robin F. Wilson, who is visiting at the law school this semester. Professor Wilson comes to Maryland from the University of South Carolina School of Law, where she has been a member of the faculty since 1998. This fall she is teaching one of the core health care law courses, "The Patient-Provider Relationship," along with a course on insurance law.

Professor Wilson received her BA and JD from the University of Virginia and upon graduation from the School

of Law, clerked for the United States Court of Appeals for the Fifth Circuit. After clerking, Wilson worked in the Houston law offices of Fulbright & Jaworski and Mayor, Day, Caldwell and Keeton. While in private practice, she worked in the field of health care law.

At the University of South Carolina, Wilson has served as the faculty advisor to the Health Law Society. She also directs the "Students Assisting Seniors" project, an interdisciplinary endeavor that involves students from



Robin F. Wilson

the Schools of Law, Medicine, Nursing, Social Work and Public Health. Students involved with the "Students

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Associate Dean Hoffmann Takes Hollywood

On August 20, 2003, Associate Dean Diane Hoffmann participated in a Hollywood writer's roundtable on pain management at Universal City, California. The roundtable was sponsored by Progress on Pain, an educational activity of the Mayday Fund, a foundation dedicated to alleviating the incidence, degree and consequence of physical pain. Progress on Pain works with the entertainment industries to encourage the accurate depiction of chronic pain and modern methods of its relief in film and television. The organization's work is based on research indicating that a large percentage of Americans get most of their health care information from these media.

Invitees to the August 20th meeting included experts in the field of pain

management and over 30 writers from such popular television shows as *ER*, *Law & Order*, *Strong Medicine*, *Judging Amy* and *The Practice*. Each



of the expert panelists spoke about his/her work in the field of pain management. Hoffmann spoke about "Pain and the Law," in particular, the criminal arrest and prosecution of physicians who have prescribed large dosages of opioid analgesics (which are highly regulated under the Federal

Controlled Substances Act). Hoffmann has been a Mayday Scholar for several years, focusing much of her research on legal and financial obstacles to adequate pain treatment (see article page 10). Other experts included David Borsook, MD, PhD, founder, Descartes Therapeutics, Inc., and Associate Professor at Harvard Medical School, who spoke on "Pain and the Brain"; Maryland Pao, MD, National Institutes of Mental Health, who discussed "Children and Pain"; and Virginia Sun, MSN, RN, Research Specialist, City of Hope National Medical Center, who shared results of a study about how patients describe their pain.

The Mayday Foundation hopes that

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Robin F. Wilson

Cont. from page 9

Assisting Seniors" program work to increase South Carolina seniors' awareness of, and enrollment in, the Medicare program.

Much of Wilson's scholarship has been about issues at the intersection of health law and family law. In 2002, Wilson's article "The Cradle of Abuse: Evaluating the Danger Posed by a Sexually Predatory Parent to a Victim's Siblings," was published in the *Emory Law Journal*. In addition, in that same year, her piece "Fractured Families, Fragile Children: The Sexual Vulnerability of Girls in the Aftermath of Divorce," appeared in the *Child and Family Law Quarterly*. In this article, Wilson surveyed the sociological literature on child sexual abuse and argued that young girls are at elevated risk of being sexually abused after their parents divorce. Most recently, Wilson published an article in the *American Journal of Law & Medicine* on surrogacy.¹ In the article she argued that the requirement imposed by many states that intended parents (in surrogacy arrangements) be infertile may be protective of the resulting children, despite the fact that it was imposed to

decrease the number of couples entering into surrogate parenting arrangements.

Recently, Wilson has been traveling around the world presenting some of the results of her research. This past July she spoke on "Making Child Abuse Research Work to Protect Kids," at the meeting of the Commission on Anthropology of Children, Youth and Childhood, International Union of Anthropological and Ethnological Sciences, in Florence, Italy. In August, Wilson presented her research on the threat posed by sexually abusive parents to the Ninth Regional European Conference on Child Abuse and Neglect of the International Society for the Prevention of Child Abuse & Neglect in Warsaw, Poland. Wilson also presented these findings to the 2003 Annual Convention of the South Carolina Trial Lawyers Association in Hilton Head Island, South Carolina in August.

In her current academic research, Wilson is focusing her attention on issues relating to the scope of consent given by patients at academic medical institutions prior to surgeries performed under anesthesia. Her own

research and that of others found that at many medical schools, students are permitted to perform pelvic exams on women who are under anesthesia for purposes of training without the women's consent. This summer, Wilson testified at the Federal Trade Commission and the Department of Justice Hearings on Health Care and Competition Law and Policy with regard to "Unauthorized Practice: The Use of Anesthetized and Deceased Patients Without Consent to Train Medical Professionals." Wilson's testimony at the hearing was featured in *CNN Headline News* and *Good Morning America* segments and was the subject of an article that appeared in the June 25, 2003, *Chicago Tribune*. This fall, she plans to hold a meeting at the School of Law on how Schools of Medicine are responding to this criticism. Welcome Professor Wilson!

Footnotes

¹Robin Fretwell Wilson, "Uncovering the Rationale for Requiring Infertility in Surrogacy Arrangements," 29 *American Journal of Law & Medicine* 337 (2003).

Spotlight on Adjuncts: Professor Lewis Noonberg, JD

by Allison Guillen, LD2

Lewis Noonberg, a 1962 graduate of the School of Law, has taught the “Antitrust in Health Care,” seminar at the law school for over 15 years. As a partner in the Washington, DC office of Piper Rudnick, LLP and Chair of Piper Rudnick’s Antitrust Practice Group, he brings decades of experience to the classroom. Professor Noonberg began teaching at the School of Law in 1967, at which point he taught classes such as federal jurisdiction and antitrust. Mr. Noonberg began to teach “Antitrust in Health Care” when a significant portion of his antitrust practice shifted to the health care sector.

“Antitrust in Health Care” focuses on the effects of antitrust law on the delivery, quality, and efficiency of the American health care system. The seminar considers the tension between institutional and individual providers, as well as between third party payors, and consumers. In addition, Professor Noonberg examines the policy questions raised by the application of traditional antitrust principles to the health care industry.

Throughout his years of teaching this course there have been tremendous changes in antitrust enforcement and health care. Antitrust enforcement priorities have focused on different industries at different times. In the 1970s, antitrust enforcement focused for the first time on the real estate industry; however, by the early 1990s, antitrust enforcement focused on the securities industry. Historically, antitrust enforcement did not cover professional services, but this began to change in the late 1970s. In 1984, Justice Stevens wrote the majority opinion in *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 104 S.Ct. 1551, holding that a hospital’s contract with a firm of anesthesiologists, requiring all anesthesiological services for the hospitals’ patients to be performed by



Lewis Noonberger

that firm, was subject to the Sherman Act, which prohibits contracts that restrain trade. This decision led the way for the increased application of antitrust principles to the health care industry.

Furthermore, during this time, as competition increased it became common for hospitals to merge with one another, focusing sustained antitrust attention on the industry. Even today mergers remain commonplace in the health care industry, despite relatively low rates in other industries. Similarly, many non-profit hospitals have recently begun to merge. These mergers raise questions about the application of antitrust law to true non-profit health care entities. In *U.S. v. Long Island Jewish Medical Center*, 983 F.Supp. 121, the court held that antitrust principles can, in fact, be applied to non-profit institutions. Application of antitrust principles to not-for-profit hospitals is just one of the interesting recent legal developments that Professor Noonberg discusses with his students in the seminar.

Professor Noonberg believes that many antitrust legal developments have extremely important public policy

implications. For example, in 1984, Judge (now Justice) Breyer, writing for the First Circuit became the first court to hold that the third party payor is the surrogate for the consumer, and its downward pressure on prices was pro-competitive. *Kartell v. Blue Shield of Massachusetts, Inc.*, 749 F.2d 922 (1st. Cir. 1984). This finding has repeatedly been upheld and led the way for much debate on the policy implications of allowing third party payors to “speak” for consumers. Professor Noonberg finds the “third party payors as consumers” principle to be one of the most fascinating developments in health care antitrust and concentrates on this interplay in the classroom.

Throughout the years that Professor Noonberg has taught at the School of Law, he has routinely been impressed with the caliber of students that enroll in “Antitrust in Health Care.” He finds that the course attracts students with interesting backgrounds. Prior to coming to law school, many of the students worked as physicians, nurses, or hospital administrators. Through the students’ backgrounds, the class gains insight into the practical issues in health care antitrust. For example, it is often difficult to measure the power of hospitals in the market because, as opposed to other industries, many different factors are at work. The students, through their backgrounds, are able to identify in the real world the factors at stake. In addition, Professor Noonberg remains impressed that his students can still raise issues that he had not considered. He finds teaching “Antitrust in Health Care” to be a wonderful adjunct, in the truest sense of the word, to his professional career.

Fall Happenings

L&HCP Interdisciplinary Courses

Since 1990, Professor Diane Hoffmann has offered a multidisciplinary course called "Critical Issues in Health Care" to students from the Schools of Law, Medicine, Nursing, Pharmacy, Dentistry and Social Work. The popularity of this course led the School of Law to recently establish two new multidisciplinary courses with a health law focus.

New Course on Homeland Security

This fall, Professor Michael Greenberger, the Director of the University of Maryland Center for Health and Homeland Security (CHHS), is offering a one-credit course entitled: "Homeland Security: The Interdisciplinary Study of Crisis and Health Consequence Management Policy in the Era of Counterterrorism." Half of the class is comprised of students from the School of Law and the other half are from the School of Medicine.

Sadly, terrorist activities that have taken place domestically have created the need for a collaborative plan that connects health care and law enforcement professionals. That is, both "crisis management," the law enforcement response to terrorist threats or acts of terrorism, and "consequence management," the measures taken to protect public health and safety after a terrorist threat or attack, require that law enforcement officials, legal professionals, first responders and other health professionals collaborate to effectively assist citizens in the event of an attack. Professor Greenberger's course seeks to bring together students from health care and legal educational programs to ensure that future crisis responders are well-prepared to protect the nation's infrastructure and safety of its citizens.

Students in Greenberger's course will examine the definition of terrorism,

the underlying issues that motivate terrorists to act, weapons used by terrorists and theories of crisis and consequence management. Assigned readings include a combination of periodical articles, law review articles and legal cases that discuss current issues in homeland security. Guest lecturers from each of the University of Maryland-Baltimore professional schools will discuss their perspectives and will share their research as it relates to threats to the safety of the nation. Dr. Jim Campbell, a clinical vaccine trial specialist at the University of Maryland School of Medicine's Center for Vaccine Development and Dr. Colin Mackenzie, the Director of the School of Medicine's National Study Center for Trauma and Emergency Medical Systems, will address Professor Greenberger's class. In addition, outside health policy and homeland security experts including Jason Sapsin, a faculty member at the Department of Health Policy and Management at the Johns Hopkins Bloomberg School of Public Health, and Dr. Ellen Gursky, a Senior Fellow for Biodefense and Public Health Programs at the Advancing National Strategies and Enabling Results (ANSER) Institute for Homeland Security in Arlington, Virginia will also participate as guest lecturers. Professor Greenberger has no doubt that these health and policy experts will enrich the students' understanding of the complexities facing medical and legal professionals as the United States faces unanticipated health and security challenges.

New Course on Conflicts in Health Care

Professor Roger Wolf, Director of the School of Law's new Center for Dispute Resolution, is offering a new interdisciplinary course this fall on "Conflicts in Health Care."

While Wolf took the lead in bringing the course together, the course is being team taught by faculty from the Schools of Law, Medicine and Nursing who have taught conflict resolution or managed conflicts as part of their professional role. These faculty members include Mary Etta Mills, Chair of the Department of Education, Administration, Health Policy and Informatics at the School of Nursing; Nancy Lowitt, Associate Dean in the Office of Graduate and Continuing Medical Education at the School of Medicine; Diane Hoffmann, Associate Dean and Director of the Law & Health Care Program at the School of Law; Joseph Proulx, Professor at the School of Nursing; Michael Rolnick, Assistant Professor of Surgery at the School of Medicine; and Mary Tilbury, Assistant Professor in the Department of Education, Administration, Health Policy and Informatics at the School of Nursing.

This unique course will examine theories of conflict management, sources of conflict, and various methods of managing conflicts in health care settings. Students in the multidisciplinary course will focus their study on disputes that occur between medical professionals, patients and staff, as well as disputes that take place at the institutional level, i.e., issues resulting from regulation and reimbursement. The class will provide interactive opportunities for a cross-section of professional students to enhance their conflict management styles through simulations and case studies. In addition to improving the students' ability to address conflicts after they occur, the course also seeks to help students identify the early indicators of conflicts, so that appropriate interventions take place to avoid disputes. Professor Wolf believes that by bringing together future health care professionals and future health policy makers, collaboration and avoidance of conflict can be achieved in health care settings.

Fall Happenings

Medical Malpractice Roundtable at the School of Law

The School of Law's Center for Dispute Resolution and the Law & Health Care Program, in conjunction with the University of Maryland Schools of Medicine and Nursing will sponsor a roundtable discussion about issues relating to medical malpractice insurance in Maryland on October 28, 2003, at the School of Law. Invited participants include approximately 50 individuals representing physician groups, insurers, trial attorneys, legislators, academics and consumer groups to discuss the ways in which increased malpractice insurance premiums impact the delivery of health care services in Maryland.

The high cost of medical malpractice insurance has reached crisis proportions in many states. In New Jersey and West Virginia, doctors have gone on strike to protest the cost of malpractice premiums. High malpractice

insurance rates forced the University of Nevada Medical Center to discontinue trauma care. In addition, malpractice premiums in specialties that are perceived to be high-risk now regularly exceed \$100,000 per year. Costly medical malpractice premiums in high-risk specialties force specialists to make decisions that adversely affect patients, such as relocating their practices to states that have lower medical malpractice premium rates, eliminating patient services, retiring or postponing the purchase of new equipment.

In Maryland, several malpractice insurers have withdrawn from the market and insurers that remained in the market have increased malpractice premiums substantially. Further, among the University of Maryland School of Medicine's 2003 graduates,

not one student selected a residency in obstetrics/gynecology, a high-risk specialty whose doctors are often subject to lawsuits.

The first part of the program on October 28 will include a presentation of the history of medical malpractice issues in Maryland, as well as data on trends in malpractice cases and insurance premiums. Speakers will include Susan Russell, Maryland Legislative Services, Frank Clemente, Public Citizen, Randall Borbjerg, The Urban Institute, Tom Metzloff, Duke University Law School, and Rick Kidwell, Johns Hopkins Health System. The roundtable discussion that will follow will examine proposed solutions to the medical malpractice premium increase in Maryland.

Lisa Ohrin Accepts New Job

First the Good News . . . Lisa Ohrin, who has served as the Coordinator of the Law & Health Care Program and Director of its Externship and Practicum Program for the last three years, has accepted the position of Legal Counsel with the Office of General Counsel at Beth Israel Deaconess Medical Center. In this position, Ohrin will primarily focus on payment and reimbursement matters as well as other legal issues. This is a fantastic opportunity for career advancement for Ohrin.

Now the Bad News . . . Beth Israel is located in Boston! Ohrin's last day with the Law & Health Care Program was September 2nd. She has been a great counselor to students in the Program, providing them with advice about courses, externships, and jobs. She will be sorely missed. Though she will be in New England, Ohrin will continue to stay in touch with students and friends here at Maryland. We wish her the best of luck in her future endeavors!



Lisa Ohrin

Focus on . . . STUDENTS

Student Health Law Organization (SHLO) News

by Allison Guillen, LD2,
President, SHLO

The Student Health Law Organization (SHLO) works closely with the nationally ranked Law & Health Care Program to provide University of Maryland law students with many opportunities to enhance their knowledge of health law issues and to introduce them to area practitioners. SHLO has more than seventy-five members and began the 2003-2004 school year with several activities. The SHLO Executive Board's first task was to welcome the first year students and to provide them with information about SHLO at the annual Student Organization Fair held on August 20th. SHLO's first meeting of the school year was held on September 17th, at which students warmly welcomed Robin Wilson, who is visiting this year at the School of Law and who is teaching one of the L&HCP core courses, The Patient-Provider Relationship. (See article on page 9.)

In addition, on September 17th SHLO commenced its annual "Brown Bag Lunch Speaker Series." This lunch-time speaker series allows students to learn about contemporary health care law issues in an informal, small setting. The first scheduled speaker was Roberta Ward, '82, Privacy Officer and Senior Counsel, California Department of Health Services. Ward spoke with students about the challenges of HIPAA compliance for government health plans. On September 22nd, SHLO hosted a meeting of the Maryland State Bar Health Care and Elder Law Sections. At this meeting, students were able to network with practicing attorneys in various areas of health care and elder law. Martha Ann Knutson, the General Counsel of Upper Chesapeake Health, moderated a discussion about *In Re: Sophia Foley*, 373 Md. 627, a recent Maryland Court



The 2003 - 2004 SHLO Executive Board members are (from left to right): Rachel Melby, Vice President, Annie Garibaldi, Fundraising Chair, Allison Guillen, President, and Samantha Elena Freed, Secretary. Not pictured: Michelle Valenti, Treasurer and Sabrina Chase, Liaison to AHLA

of Appeals decision that addressed the legal tensions between the powers of a health care agent and a petitioner for guardianship contesting the agent's actions. Jack Schwartz, the drafter of the amicus brief submitted by the

Attorney General, as well as Mike Davis and Mitch Mirviss, the attorneys who argued the case before the Court of Appeals, participated in the panel discussion.

In addition to these activities, on Sept. 21-23rd, SHLO members had the opportunity to volunteer at the American Health Lawyers Association's (AHLA) conference on fraud and compliance as part of SHLO's ongoing affiliation with AHLA. On October 23, SHLO will hold the third annual "What is Health Law?" panel, at which several health law practitioners will speak to students about various professional opportunities within the field of health care law.

Throughout the school year SHLO will hold several other programs. All of SHLO's programs are intended to educate students about health law and to assist them in navigating through the extensive array of health related courses and opportunities offered by the Law & Health Care Program.

The Journal of Health Care Law & Policy (JHCL&P)

This fall, the JHCL&P begins its seventh year of operation.

The 2003-2004 editorial officers are:

Editor-In-Chief: Kristine L. Callahan

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The JHCL&P is calling for articles on current issues in health law and policy for the Spring 2004 edition of the *Journal*. Articles should be submitted to JHCLP@law.umaryland.edu by December 15, 2003.

Focus on . . . STUDENTS

NSHLA: Partnering with AHLA to Prepare Future Health Lawyers

During the past year, Maryland's Student Health Law Organization (SHLO), in conjunction with the American Health Lawyers Association (AHLA), began to organize a national student health law interest group. Members of SHLO have routinely sponsored programs at the law school that allow students interested in health law to meet and interact with local health law attorneys and have attended local AHLA conferences, often volunteering to work a shift at the conference in exchange for being able to attend other conference sessions. The organization's leaders realized that additional benefits could come from working with AHLA on the formation of a similar student group at the national level.

The idea was in large part borrowed from a similar organization that exists for students in environmental law. SHLO members saw that the National Association of Environmental Law Societies, a student group that held its annual conference at the University of Maryland School of Law in March 2003, served as an invaluable educational resource for students interested in environmental law. SHLO members believed that a national student health law interest group could also provide an educational and professional resource to law students.

SHLO contacted several health law faculty members at law schools with prominent health law programs and the faculty members then recommended student leaders to participate on the

HEALTH LAW PRACTICUMS AND EXTERNSHIPS: National Cancer Institute

by Jonathan Locker

This past summer I worked as a research assistant for the National Cancer Institute in the division of Epidemiology and Population Studies. I, along with another law student from Maryland, was given the task of doing research for a paper on how Federal Courts use epidemiological evidence in making their decisions. The goal of this paper was to see if epidemiological evidence was being improperly used in tort cases.

I worked in the corporate world for three years before starting law school, and wanted to experience something different from a standard office environment. I was attracted to the NCI for its noble purpose and unique role in the war against cancer. Guessing that whatever I would end up doing at the NCI would be quite different from what I would see at a law firm, I decided it would be a good first experience with the law outside the classroom.

The NCI is composed mostly of physicians who research causes of and cures for various forms of cancer. In this environment, creating ideas takes priority over creating dollars. During the practicum I was encouraged to attend lectures that would benefit my education, but would not advance my project. The lecture I attended on the ethics of medical trials showed how inadequate the law can be when it deals with ethical issues. For example, I was surprised to learn that there is no federal statute requiring patient consent to medical trials. The requirement is achieved through a patchwork of tort law and federal regulations. Needless to say I was surprised and wondered how many legal puzzles remained out

there in the world.

In between schmoozing with the myriad of doctors and attending lectures, I conducted legal research. Specifically, I searched through 500 federal cases that had used the Supreme Court's 1993 *Daubert* standard with respect to admissibility of scientific evidence. My task was to find cases that analyzed how epidemiological evidence is used by the courts to establish causation in toxic tort cases. After whittling the number of relevant federal cases to 145, I then examined whether the respective courts' analyses could be applicable to NCI studies.

At the outset of my research, my cynical nature led me to believe that most courts would allow any evidence to be used as long as an "expert" with a bunch of letters behind his name said it was scientific proof. However, the analysis showed that courts do not admit "junk science," and that judges have become increasingly sophisticated about scientific evidence. It would seem that judges are quite wary of allowing unsubstantiated scientific evidence into the courtroom. I must say I was surprised and proud that my chosen profession was not succumbing to "junk science."

At the end of the summer, after going over more than 500 cases and reworking the cases that would be used for the paper, I was relieved to be finished with the work. I did, however, enjoy the people and the atmosphere at the NCI, and found that working in a government environment can have its advantages. Overall, NCI was an excellent place to get a taste of the law outside of the world of large law firms.

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Hollywood

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as a result of these roundtables, writers and producers whose work is distributed in mass media outlets will use the information that they learned about pain and will develop future storylines that illustrate the impact that pain has on the lives of individuals, obstacles to adequate pain treatment and how pain can be successfully treated. Hoffmann stated that the experience was informative and fun. She found that the writers and producers were intrigued by the recent breakthroughs in the diagnosis and treatment of pain and looks forward to seeing an upcoming episode of *Law & Order* or *ER* that incorporates one of the stories that she or the other panelists shared.

National Student Health Law Association

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steering committee for the national group. Linda Batten from the Indiana University School of Law-Indianapolis, Melissa Bezet from the University of Houston, Lisa Daley from the University of Maryland, Joe Hudzik from St. Louis University, Melissa January from Loyola University, and Heather Meade from the University of Washington, volunteered to participate in the formation of the National Student Health Law Association (NSHLA). In March 2003, these students discussed the aims and structure of a national health law interest group via conference call.

During the AHLA Annual Meeting, held in San Antonio, Texas from June 29-July 1, 2003, many of the student members of the NSHLA steering committee met to further elaborate plans for NSHLA. With the help of AHLA, the students outlined future plans to provide the most current

health law information and programming for students interested in health law. In addition, the students discussed ways that NSHLA could improve collegiality among law students interested in health law and made plans to increase membership in the organization by contacting other law schools with health law programs.

In November 2003, NSHLA hopes to host the first of a series of regional conferences during AHLA's Fundamentals of Health Law conference in Chicago. Law students from around the country will be invited to attend presentations about developments in the health law arena. NSHLA and AHLA hope that the Chicago conference will be the first of many opportunities to develop strong connections between future health law practitioners and seasoned health law attorneys, thereby ensuring that law students entering the marketplace are well-prepared to tackle the challenges presented by a rapidly evolving area of the law.

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