

## INTRODUCTION

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The essays printed here reflect the work of ten health law professors and are important to all law professors working to integrate experiential learning in their curriculums. The essays originated from a panel presentation I designed for the Section of Law, Medicine, and Health Care at the 2012 meeting of the American Association of Law Schools. It was entitled, "Health Law Professors Engaging in the Real World," and my goal as incoming chair was to inform not just those who heard it live in Washington, D.C., but to a broader readership of teachers who wanted to reach out beyond the classroom without taking on the daunting task of running a live-client clinic. Having myself come into academe after a career in private practice and government service followed by two years teaching at a medical school, I knew how much contact with the real world of health care and health law could benefit both students and faculty. I have written elsewhere of the lessons legal and medical education can learn from each other, but

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the primary difference between the two is that medical students benefit from an extended apprenticeship which allows them to turn the knowledge they learned in the classroom into the skills they need for real life.<sup>1</sup> This is possible because medical graduate education is funded by the federal government.<sup>2</sup> Lacking this kind of training subsidy, we in legal education must make the best use possible of the three years we have to help students become competent, compassionate and ethical lawyers. This cannot be achieved by sitting in a lecture hall.

Although the Panel was a terrific success,<sup>3</sup> its lasting legacy will be the writings of these innovative health law professors. In reading their work you will be inspired, as I am, to see new possibilities for bringing into your classes the real world where health care law is not just studied, but where it is practiced.

In looking for ways that health law professors are engaging with (again broadly defined) the people who face the legal issues we teach, I realized that on the one hand there were many existing models and on the other that it was a project far beyond the scope of a single AALS panel. I also realized that identifying the activities of a "health lawyer" were as difficult as defining "health law."<sup>4</sup> Health lawyers practice in many different areas including mental and physical disability, family, non-profit taxation and antitrust.<sup>5</sup> So given the impossibility of giving any kind of comprehensive overview of the subject matter, I took a step back and looked for programs which could engage those of us teaching health law, and our students, in many different ways.

The essays in this issue reflect only a fraction of the creativity in health law teaching today. They take us from food insecure neighborhoods in Chicago and Indianapolis to rural villages in Eastern Ethiopia. They are written by both clinicians and doctrinal scholars. They span the gamut from some of the most experienced and respected health law professors in the United States to law professors only a few years out of school. What they

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1. See Jennifer S. Bard, "Practicing Medicine and Studying Law": How Medical Schools Used to Have the Same Problems We Do and What We Can Learn From Their Efforts to Solve Them, 10 SEATTLE J. FOR SOC. JUST. 135 (2011).

2. *Id.* at 136.

3. Frank Pasquale, *AALS Panel on Teaching Health Law: A Tour de Force*, HEALTH REFORM WATCH (Jan. 14, 2012), <http://www.healthreformwatch.com/2012/01/14/aals-panel-on-teaching-health-law-a-tour-de-force/> (reviewing the panel and concluding that "[t]he health law section at AALS put on a truly outstanding program").

4. See generally M. Gregg Bloche, *The Emergent Logic of Health Law*, 82 S. CAL. L. REV. 389, 396 (2009) ("[T]he law of health care provision and the health care system itself are best understood and acted on as emergent systems.").

5. These essays do not reflect the growing interest in providing experiential learning for health law students in transactional work. See Jonathan Todres, *Beyond the Case Method: Teaching Transactional Law Skills in the Classroom*, 37 J.L. MED. & ETHICS 375 (2009) (pointing out that health law classes, like most law school classes, are overly weighted towards litigation).

share is a passion for teaching and for using law to solve the difficult legal issues which arise when people seek to deliver and receive health care. My hope is that these essays will inspire you to develop your own programs to interact with the real world outside of our classrooms and will give you strong tools with which to do so.

## I. BACKGROUND: HOW A PANEL BECAME A SYMPOSIUM

These essays are both from law professors who spoke on the panel in Washington, D.C. and those who responded to a call for papers but were not on the panel. Because the response to the call for papers generated three times as many proposals as there were slots on the panel, I approached the editors of the *Indiana Health Law Review*, who had already agreed to publish the proceedings of the panel, if they would extend their offer to include papers by those who submitted proposals describing a program fitting the panel's theme of bringing health law teaching outside of the classroom.<sup>6</sup> They graciously agreed, although it doubled their workload, and this volume is the result.

All of us in the AALS Section on Law, Medicine and Health Care owe a debt of gratitude to the generous and skillful help of the editors of the *Indiana Health Law Review*, especially its editor-in-chief Courtney Campbell, in bringing this project to publication.

Each of the essays below represents the distillation of considerable creativity and hard work. They are arranged in two groups. The first group includes those who spoke at the panel in Washington, D.C., on January 7, 2012. The second comes from a class of papers that generated three times as many proposals as could be accommodated on a single panel.

## II. THE PANELISTS

### A. *Wendy Parmet*

The oldest and most comprehensive program of involving law students and law professors with the world of their clients is the Co-op Program at Northeastern University in Boston, Massachusetts. Professor Wendy Parmet, Associate Dean for Academic Affairs and George J. and Kathleen Waters Matthews Distinguished University Professor of Law, not only has taught health law at Northeastern for more than twenty-five years, she herself has been directly involved in landmark health law litigation while at the same time carrying on her duties as a professional. Professor

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6. There were many excellent submissions that did not directly describe a program. Each deserves to be the subject of a presentation or law review article. Moreover, not all of those proposing to speak about their program on the panel chose to write an essay for this issue.

Parmet writes about the particular benefits of a co-op program for health law students noting that “Perhaps because many students in a health law course will have either just finished working on a health law co-op or are in the process of looking for one, our health law students tend to be extremely engaged participants in classroom discussions.” In addition to writing about her students’ experiences with co-op,<sup>7</sup> she also writes about how co-op has enriched her experiences as a faculty member. Recounting how she became co-counsel in the landmark civil rights case *Bragdon v. Abbott*,<sup>8</sup> she writes that she became involved “after a student who had worked on the early stages of the case on a co-op with the AIDS Law Project at Gay and Lesbian Advocates and Defenders” introduced her to his supervisor, Bennett Klein, with whom she went on to bring the case to the Supreme Court of the United States.<sup>9</sup>

### B. Charity Scott

Charity Scott, Catherine C. Henson Professor of Law and Director for the Center for Law, Health & Society, at Georgia State University’s College of Law in Atlanta, Georgia, created and is the director of the Center for Law, Health & Society. Because in 2009 it hosted a conference titled “Interdisciplinary Collaborative Education: Partnerships Between Law Schools and the Health Professions,” I knew she would serve as a rich resource. In fact, her presentation consisted of outlining ten separate categories of engagement. The article Professor Scott has written expanding on her talk, *Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching*, is a wonderful resource for those who seek to step out of the classroom.<sup>10</sup> It also, however, gives her an opportunity not just to describe ways that health law professors can step outside of the classroom into the real world, but why they should. She writes,

[R]eal-world collaborations can mix up the law classroom routine and get students’ attention, a first step in improving their learning. When students see real problems or real people, their motivation to engage with them constructively is significantly enhanced. Real-world collaborations also offer authentic learning opportunities, which can deepen learning and make it lasting. Students are not the only ones who

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7. Wendy Parmet, *Beyond Externships: Health Law Co-ops*, 9 IND. HEALTH L. REV. 399, 400 (2012).

8. *Bragdon v. Abbott*, 524 U.S. 624 (1998).

9. Parmet, *supra* note 4, at 406.

10. Charity Scott, *Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching*, 9 IND. HEALTH L. REV. 409 (2012).

benefit from such collaborations: they can promote your own professional engagement and development and may even further your law school's mission.<sup>11</sup>

Professor Scott also addresses directly the reluctance that some of us may feel in stepping past the podium:

Classroom professors do not need to become clinical professors or start teaching lawyering skills courses. Instead, they can collaborate with clinical professors, practicing lawyers, and other professionals outside their classrooms in settings that relate to their doctrinal fields. Such collaborations can effectively draw on others' expertise and skills to extend and deepen their students' learning and thereby better prepare them for real-world practice.<sup>12</sup>

### C. Marshall Kapp

Marshall Kapp, Director, Florida State University Center for Innovative Collaboration in Medicine & Law; Professor, FSU College of Medicine Department of Geriatrics; Courtesy Faculty, FSU College of Law in Tallahassee, Florida, approaches engagement between the legal and medical community not as an issue incorporated into the curriculum but as a curriculum in itself. Professor Kapp bridges the fields of legal and medical education. Before being hired by FSU to start the Center he was the Garwin Distinguished Professor of Law and Medicine at Southern Illinois University Schools of Law and Medicine. He also is professor emeritus from Wright State University School of Medicine and served for more than twenty years as a member of the adjunct faculty at the University of Dayton School of Law. He writes in *A Collaborative Center in Medicine and Law: Lessons from a Disruptive Innovation*,<sup>13</sup> that "the Medicine-Law Center has since its inception tried to operationalize its mission by slowly developing, on a trial-and-error basis, a portfolio of activities with real world connotations that is intended to capitalize on potential areas of shared interests and values between physicians and attorneys."<sup>14</sup> In describing the programs he has launched he provides an inspirational model for law professors interested in building meaningful ties with the health care community. Although, as he points out, an effort on the scale of his center requires a substantial

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11. *Id.* at 454.

12. *Id.* at 414.

13. Marshall Kapp, *A Collaborative Center in Medicine and Law: Lessons from a Disruptive Innovation*, 9 *IND. HEALTH L. REV.* 455 (2012).

14. *Id.* at 458.

financial endowment, “[o]perationalizing within an academic center an active, ongoing, synergistic interaction between the medical and legal professions is a challenge, but one whose ultimate objectives—for both the public and members of the respective professions—are well worth the necessary investment of time, treasure, and energy.” While few of us have the resources to build a center as he has, all of us can learn how to reach out to our colleagues in health care.

*D. JoNel Newman*

My initial inspiration for the panel came from attending the impressive presentation by Professors JoNel Newman and Melissa Swain at the 2011 SALT Teaching Conference in which they described the Health and Elder Law Clinic which is a Medical Legal Partnership with the Miller School of Medicine. Professor Newman is the director of this clinic, and Professor Swain the deputy director at the University of Miami School of Law in Coral Gables, Florida. Professor Newman, who is currently an associate professor of clinical legal education, brought with her to academe a distinguished record as a civil rights attorney, so her teaching is always informed by her own real world experience. Newman’s article *Miami’s Medical-Legal Partnership: Preparing Lawyers and Physicians for Holistic Practice*<sup>15</sup> describes how their clinic’s clients are patients facing a panoply of legal problems related either to their efforts to pay for health care or for the hurdles of daily living for those living well under the poverty line such as land lord tenant disputes.

The growing number of medical legal partnerships at law schools across the country presents an opportunity for collaboration between colleagues who identify themselves primarily as clinical professors who are supervising a health law clinic and for lack of a better word, non-clinical professors whose work so far has not involved this task.<sup>16</sup>

In addition to representing clients, Prof. Newman has developed a program where law students and medical students work in a team with the law students accompanying the medical students on rounds and the medical students attending client meetings. Both benefit from getting a greater understanding of the clients and patients for whom they will be working, but just as important they learn more about each other.

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15. JoNel Newman, *Miami’s Medical-Legal Partnership: Preparing Lawyers and Physicians for Holistic Practice*, 9 IND. HEALTH L. REV. 471 (2012).

16. Jane R. Wettach, *The Law School Clinic as a Partner in a Medical-Legal Partnership*, 75 TENN. L. REV. 305 (2008); Amy Ken, *Helping Clients at the Intersection of Law and Medicine*, 33 PA. LAW. 38 (2011).

*E. Sallie Thieme Sanford*

Professor Sallie Thieme Sanford of the University of Washington School of Law in Seattle, Washington, who recently came into academe after a distinguished career as an assistant attorney general representing the University of Washington's Medical Center, has brought health law not just out of the classroom, but out of the country. In her talk, *Teaching Health Law in Rural Ethiopia: Using a PEPFAR Partnership Framework and India's Shanbaug Decision to Shape a Course*, Professor Sanford describes a month-long intensive health law and policy course she taught at Haramaya University College of Law in Eastern Ethiopia. In her essay, she offers assistance to others who would like to offer a similar course by providing an outline as well as suggested source material for teaching in what she describes as "in low-income countries with rapidly expanding health systems."<sup>17</sup>

III. PROPOSALS

*A. Michele Mekel*

In *Putting Theory into Practice: Thoughts from the Trenches on Developing, a Doctrinally Integrated Semester-in-Practice Program in Health Law and Policy*,<sup>18</sup> Professor Michele Mekel of Southern Illinois School of Law in Carbondale, Illinois, describes how she and her colleagues embraced experiential learning by developing the SIU Health Law & Policy Semester-in-Practice Program, which is a full-time, semester-long student immersion in a designated health law and policy practice setting. The program is remarkable because it follows the advice of the Carnegie Report to not merely teach mechanical skills but also merges both the hands-on experience of a full-time externship with the in-class components of a doctrinal course. As she describes it, "the Program features a full-time health law and policy field placement coupled with a robust classroom component and concurrent courses in substantive health law."

*B. Emily Benfer*

Emily Benfer, a Clinical Professor of Law at Loyola University of Chicago School of Law and the founder and Director of the Health Justice

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17. Sallie Sanford, *Teaching Health Law in Rural Ethiopia: Using a PEPFAR Partnership Framework and India's Shanbaug Decision to Shape a Course*, 9 IND. HEALTH L. REV. 485, 499 (2012).

18. Michelle Mekel, *Putting Theory into Practice: Thoughts from the Trenches on Developing, a Doctrinally Integrated Semester-in-Practice Program in Health Law and Policy*, 9 IND. HEALTH L. REV. 503 (2012).

Project, writes in *The Health Justice Project: A Collaborative Commitment To Solving Real World Problems*<sup>19</sup> about taking a holistic, rather than purely legalistic, approach to confronting the issues of poverty, food insecurity and ill health of the Chicago community in which the law school is located. The project, which grew from a single clinic, “united the surrounding community, attracting partners from the medical, social work, public health and legal professions, including Erie Family Health Center, Northwestern University Family Medicine Residency Program, Equip for Equality, Lawyers Committee for Better Housing, and AIDS Legal Council of Chicago” with Loyola’s own School of Law’s Beazley Institute for Health Law and Policy legal clinic (named, Health Justice Project) and the School of Social Works’ Institute on Aging and Intergenerational Study and Practice. In addition, the Health Justice Project hosts Loyola University Masters of Public Health students “who study the effect of the partnership on patient health and Schweitzer Fellows who select a discrete public health project in the community and collaborate with partners to develop solutions.” Together they have joined forces to pool their skills and talents of a community to address that community’s most pressing problems. She writes that

Since taking its first patient/client in 2010, the Health Justice Project has served over 400 patients of Erie Family Health Center, contributed pro bono hours that are the equivalent of over \$2 million in attorneys’ fees, and obtained reimbursement of medical expenses to Erie Family Health Center after winning Medicaid denial appeals. In the case of just one patient, the reimbursement was valued at over \$25,000. To further the interdisciplinary partnership, students regularly train over seventy health care providers in the social determinants of health and work on interdisciplinary teams to address policy issues. Together, they have commented on federal and local rulemaking related to public health, met with local policy makers and board of education members, worked with national non-profits, and visited Capitol Hill to educate legislators on the collaborative model.<sup>20</sup>

### C. Christine Nero Coughlin

Christine Nero Coughlin, Director, Legal Analysis, Research & Writ-

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19. Emily Benfer, *The Health Justice Project: A Collaborative Commitment To Solving Real World Problems*, 9 IND. HEALTH L. REV. 521 (2012).

20. *Id.* at 529.

ing Professor of Legal Writing at Wake Forest University School of Law in Winston Salem, North Carolina, who also has appointments in the Wake Forest University Graduate School of Arts and Sciences and the Wake Forest University School of Medicine's Translational Science Institute, is directly confronting the divide between doctors and lawyers, which is making it so difficult for us to join forces in solving the problems of health care delivery. She writes in *Legal Methods for Medical Professionals Year 2: Shifting Negative Attitudes*<sup>21</sup> that "Last year, Wake Forest University School of Medicine began offering fourth-year medical students a month-long rotation in legal education housed at the Wake Forest University School of Law. One primary goal was to shift some of the negative attitudes that may exist between physicians and lawyers."<sup>22</sup> Prof. Coughlin addresses the logistical and cultural issues which can make it difficult for law students and medical students to interact in meaningful and sustained dialog. She reports that while only in its first year, the program was successful in creating opportunities for engagement and dialog. She writes that "We discussed the fact that with many medico-legal issues there are actually more than two sides to the story. We had a heated discussion on the role that religion, spiritual beliefs, socioeconomic concerns and political preference may play on a political response, or lack thereof."<sup>23</sup> In the evaluation, one student wrote,

[I]t's easy to come into the class having stereotypical thoughts regarding lawyers—ruthless, ambulance-chasing, etc. Learning more about the law and the intricacies involved, knowing that its very easy to have two, three, four sides to a story gives the [legal] profession a lot more credibility in my eyes. Things are not always black and white, and ethical and moral dilemmas really require lawyers for the public good.<sup>24</sup>

*D. Dea. C. Lott*

Dea C. Lott, Clinical Adjunct Professor of Law & Director of Outreach Indiana University Robert H. McKinney School of Law Health and Human Rights Clinic in Indianapolis, Indiana, directs the Health and Human Rights Clinic ("HHRC") which has entered in a Medical-Legal Partnership (MLP) with a specific health care provider, the Wishard Hospital, which "operates Westside Health Center ("Westside") . . . and provides the

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21. Christine Nero Coughlin, *Legal Methods for Medical Professionals Year 2: Shifting Negative Attitudes*, 9 IND. HEALTH L. REV. 533 (2012).

22. *Id.* at 537.

23. *Id.* at 543.

24. *Id.* at 544.

HHRC with access to [its facility.]”<sup>25</sup> Like Professor Benfer’s clinic in Chicago, the HHRC serves primarily the low income area approximately two miles west of the law school’s campus. Professor Lott writes that because the clinic is directly associated with a healthcare setting, “there have been several requests for drafting of advance directives for disabled or terminally ill clients. There has been a consistent stream of uninsured or underinsured patients seeking assistance in determining eligibility for and appealing denials or terminations of government programs that provide health care and disability benefits.”<sup>26</sup> In addition to their own representation of clients, the clinic has worked to expand access to legal services by launching “a pilot *pro bono* program . . . designed to establish a system of outreach and coordination for *pro bono* attorneys.”<sup>27</sup> She writes further that although the “program was created to assist newly admitted attorneys with the transition from law school to practice while providing *pro bono* representation to impoverished and underserved populations throughout the Indianapolis area.”<sup>28</sup>

*E. Kathleen Noonan and Sarah Davis*

Finally, Professors Kathleen Noonan and Sarah Davis write about two clinical programs at the University of Wisconsin Law School that provide experiences to students interested in health law: the Center for Patient Partnerships (“CPP”), and the Government and Legislative Clinic (“GLC”), which bring law students in direct contact with the real world. The CPP is one of a few law school clinics which actively integrates not just law students but also medical, pharmacy, public affairs, public health, and other disciplines. Since health care is by its nature multi-disciplinary, they are teaching students within the context that they will practice. The GLC is well—but not uniquely—suited to the law school’s location in Wisconsin’s capital city. Students get experience working with government clients on legal issues with policy significance. Because most state representatives work with little or no staff, it is likely that this kind of relationship could be arranged even if a law school were not actually in the same city as the capital.

I hope you find the work of these professors as inspiring as I have and wish you all great success in developing your own programs.

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25. Dea Lott, *Teaching Holistic Justice: Medical-Legal Partnerships in the Clinical Setting*, 9 IND. HEALTH L. REV. 547, 551–52 (2012).

26. *Id.* at 553.

27. *Id.*

28. *Id.*