

BIOETHICS BULLETIN

A JOINT PUBLICATION OF



Volume 10, Number 1

Spring 2011

WELCOME FROM AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON BIOETHICS AND THE LAW AND THE HEALTH LAW INSTITUTE OF DEPAUL UNIVERSITY COLLEGE OF LAW

ROBYN S. SHAPIRO, JD
CHAIR, SPECIAL COMMITTEE ON BIOETHICS AND THE LAW

NANETTE R. ELSTER, JD, MPH
DIRECTOR, HEALTH LAW INSTITUTE

We are thrilled to welcome readers back to the *Bioethics Bulletin*! The *Bulletin's* re-emergence is stronger and richer because of its launch as a priority project of the partnership between the ABA Special Committee on Bioethics and the Law and the Health Law Institute of DePaul University College of Law. The excellent reputation, impressive accomplishments, and strong commitment to health law, bioethics and service make the Health Law Institute and the ABA Special Committee on Bioethics ideal partners— and our plan for collaboration will certainly keep us busy! In addition to packing the *Bulletin* (which will be published triannually) with cutting-edge articles, calendars of events, and highlights of

ABA and Health Law Institute activities, we will sponsor teleconferences and symposia for which CLE will be available, and develop resource materials on issues related to bioethics and the law.

Our collaborative efforts to address issues that arise in bioethics and the law are critical because since the emergence of the discipline of bioethics in the 1970s, bioethics and law have been intimately connected. For example, the establishment of regulations governing human subjects research in the United States, as well as judicial recognition of patients' rights to refuse unwanted medical treatment, are landmark events in the development of the bioethics field in this country. Today, in the context of global health disparities, terrorism, public health pandemics, and breathtaking scientific and technologic advances, a myriad of complicated and controversial questions fall squarely in the intersection of bioethics and the law. We struggle to address questions such

CONTINUED ON PAGE 5

CONNECTING BIOETHICS AND SOCIAL JUSTICE TO HEALTH REFORM: IMPERATIVES TO REDUCE HEALTH DISPARITIES

STEPHEN OLUFEMI SODEKE, PhD, MA

I want to thank the organizers of this meeting for inviting me to be part of the panel of discussants. I also want to take this opportunity to publicly thank Dr. Kayhan Parsi, my professor at Loyola for all he did to help me while I was studying for the Master of Arts degree in Bioethics and Health Policy. I want you to know however, that because of where we are situated at Tuskegee, and because of the kind of life-challenges that those we serve face our perspective of bioethics has been decidedly broad in interpretation, scope,

and practice. This perspective that is informed by social justice, is more inclusive, and is beyond clinical ethics or biomedical ethics.^{1,2,3,4} Thus, the mission of the Tuskegee University National Center for Bioethics in Research Health Care is to promote equity and justice in health and healthcare for African Americans and other underserved populations. Therefore, the remarks that follow will be consistent with the mission of the Center.

Cases of health disparities have been present with us in the United States for decades. Because the **ultimate aim of**

CONTINUED ON PAGE 3

INSIDE...	BIOETHICS, HISTORY AND HEALTH DISPARITIES: LEARNING FROM THE PAST	PAGE 2
	ABOUT THE SPECIAL COMMITTEE AND THE HEALTH LAW INSTITUTE	PAGE 6
	CALENDAR OF BIOETHICS RELATED ACTIVITIES AND EVENTS	PAGE 7
	SOCIAL MEDIA & HEALTHCARE: THE GOOD, THE BAD, & THE UGLY	PAGE 8



740 FIFTEENTH STREET, NW
WASHINGTON, DC 20005
202.662.1694
BIOETHICS@AMERICANBAR.ORG

Special Committee on
Bioethics and the Law



HEALTH LAW INSTITUTE
25 EAST JACKSON BOULEVARD
CHICAGO, IL 60604
312.362.7271

BIOETHICS, HISTORY AND HEALTH DISPARITIES: LEARNING FROM THE PAST

KAYHAN PARSİ, JD, PHD

Bioethics as a field has come late to the issue of health disparities. As a field, we tend to focus on issues related to clinical or research ethics, traditionally ignoring justice issues. Recently, however, a groundswell of interest in social justice issues in bioethics has emerged. A recent contribution by physician-ethicist Howard Brody is a case in point. In *The Future of Bioethics*, Brody recounts a series of issues that he predicts will occupy the time and energy of bioethicists.¹ One of them is health disparities. Brody surmises that there are two reasons why bioethics has shown little interest in health disparities. One reason is that if individuals are being discriminated against because of their race or ethnicity, this is simply wrong and does not require a sophisticated ethical analysis. Another reason is that studying health disparities and its effects on health outcomes requires empirical survey skills that most bioethicists lack. Therefore, our field leaves the study of health disparities to others more qualified to do this work.

I argue here that it's important for bioethics to be engaged with issues related to health disparities and justice, as it goes to some of the core issues of our field. Bioethics and medical humanities have to dig deeper beyond the current challenges and must study the historical antecedents of what we have inherited. Thus, I will briefly recount the history of disparities in this country.² This is instructive, as it suggests that historical progression does not take a linear path to ever greater understanding, but, rather, is sometimes fragmented. We may make some progress here, but see some stagnation or even regression elsewhere.

First, a definition of health disparities is useful. Dell and Whitman cite the work of Paula Braveman, who has defined health disparities as "group differences that are unnecessary, preventable and unjust."³ Dell and Whitman recount a number of historical developments that have left their mark in the development of the health disparities movement. Looking at data on the eve of the civil war, there was a belief that the black race would eventually become extinct because of low birth rates and high levels of infant and maternal mortality. This is a fascinating and frightening observation: fascinating, because it seems to counter the belief among nativists several decades later who were concerned about the growth of non-white immigrant populations; frightening, because health outcomes among African Americans in the area of infant and maternal health still lag far behind white populations. In the face of such fears, Dell and Whitman observe the positive development of black colleges and hospitals during Reconstruction and thereafter (Howard Hospital was created in 1867 and Meharry Medical was created in 1876).

Dell and Whitman recount other examples where the myth of progress was unfortunately undermined. The famous 1896 Supreme Court case *Plessy v. Ferguson* formalized the notion of separate but equal, ushering in a long era of Jim Crow legislation in the South. Frederick L. Hoffman, a statistician who worked for Prudential

CONTINUED ON PAGE 7

2010-2011

CHAIR

ROBYN S. SHAPIRO
MILWAUKEE, WI

MEMBERS

KIRK L. DOBBINS
NORTHBROOK, IL

PROFESSOR BARBARA J. EVANS
HOUSTON, TX

GEORGE ANDREW FRANK
PHILADELPHIA, PA

ANDREW T. HAHN
NEW YORK, NY

PROFESSOR CAROL A. HEIMER
PRINCETON, NJ

ARTHUR E. JUSTICE, JR.
FLORENCE, SC

PROFESSOR KRISTINE KNAPLUND
MALIBU, CA

LARISA R. LACIS
LAKE BLUFF, IL

GILDA I. MARIANI
NEW YORK, NY

NANCY N. QUAN
NORTH HILLS, CA

WALTER THOMAS SMITH
GAINESVILLE, FL

STEVEN H. SNYDER
MINNEAPOLIS, MN

PROFESSOR JONATHAN TODRES
ATLANTA, GA

HON. RICARDO M. URBINA
WASHINGTON, DC

HUGH BUTLER WELLS
ROANOKE, VA

BRUCE L. WILDER, M.D.
PITTSBURGH, PA

LIAISONS

CHARLES EPPOLITO III
PHILADELPHIA, PA

HON. HARRIS L. HARTZ
ALBUQUERQUE, NM

CARLOS A. RODRIGUEZ-VIDAL
SAN JUAN, PR

IMMEDIATE PAST CHAIR

HON. ELLEN F. ROSENBLUM
SALEM, OR

DIRECTOR

ELIZABETH M. YANG
WASHINGTON, DC

PROGRAM ASSISTANT

JINNY U. CHOI
WASHINGTON, DC

2010-2011

CHAIR

SUSAN HANNIGAN
CHICAGO, IL

MEMBERS

ERICKA ADLER
LINCOLNWOOD, IL

LAUREL BREITKOPF
NORTH CHICAGO, IL

CATHERINE BREMER
CHICAGO, IL

CAROLYN CLIFT
CHICAGO, IL

LINDA FAIRCHILD CUSHMAN
GLENCOE, IL

BARBARA DUNLAP
DEERFIELD, IL

ARTHUR ELSTER
CHICAGO, IL

THOMAS FAHEY
CHICAGO, IL

SAMANTHA FIELDS
CHICAGO, IL

SCOTT FILER
WARRENVILLE, IL

MARC GINSBERG
CHICAGO, IL

CAMILLE GOURDET
CHICAGO, IL

ELESE HANSON
CHICAGO, IL

GARY HARPER
CHICAGO, IL

MOLLY IACOVONI
LIBERTYVILLE, IL

DIANE JACOBY
HARVEY, IL

MICHELLE KAVOOSI
EVANSTON, IL

WILLIAM A. KLING
ELMHURST, IL

LAURA MERTEN
DEERFIELD, IL

THOMAS MIRABILE
WHEATON, IL

DAVID PRITCHARD
WAUKEGAN, IL

CATHERINE REITER
CHICAGO, IL

KATHERINE SCHOSTOK
CHICAGO, IL

ROBERT SPADONI
OAK PARK, IL

MICHAEL STAAB
DEERFIELD, IL

PREYA TARSNEY
LIBERTYVILLE, IL

CARY WINTROUB
CHICAGO, IL

MICHAEL ZARSKI
CHICAGO, IL

DIRECTOR

PROFESSOR NANETTE R. ELSTER
CHICAGO, IL

PROGRAM ASSISTANT II LAW CENTERS

RHEA ALEXIS M. BANKS
CHICAGO, IL

EDITORIAL POLICY

THE *BIOETHICS BULLETIN* IS JOINTLY PUBLISHED BY THE ABA SPECIAL COMMITTEE ON BIOETHICS AND THE LAW AND THE HEALTH LAW INSTITUTE OF DEPAUL UNIVERSITY COLLEGE OF LAW. THE VIEWS EXPRESSED IN ARTICLES APPEARING HEREIN ARE THOSE OF THE AUTHORS AND DO NOT REPRESENT THE VIEWS OF THE AMERICAN BAR ASSOCIATION, THE SPECIAL COMMITTEE ON BIOETHICS AND THE LAW, THE HEALTH LAW INSTITUTE, OR DEPAUL UNIVERSITY COLLEGE OF LAW, UNLESS EXPRESSLY STATED AS SUCH.

WE WELCOME ARTICLES, ISSUE PAPERS AND COMMENTS FROM OUR READERS.

COPYRIGHT © 2011 AMERICAN BAR ASSOCIATION.
ALL RIGHTS RESERVED. REPRODUCTION OF MATERIAL WITH FULL ATTRIBUTION TO COPYRIGHT OWNER.
ISSN No. 0163-359

bioethics worldwide is to ensure the **well-being** of all people, it is **concerned** that socially disadvantaged groups have borne the brunt of health disparities without the necessary and deserving attention. These underserved groups tend to lack access to life-enhancing resources, have poor health that further puts them at risk and reduce their chances of enjoying health as a right. **Inequitable distribution of critical resources** such as health care, power, money, and other social determinants of health **across populations** have been blamed. Correction of this inequity is a social justice matter that is long overdue. Although Congress is still not in one accord regarding details, the Patient Protection and Affordable Care Act, signed into law by President Obama on March 23, 2010 is **one bold attempt** at redress.⁵ The Act aims to transform our “sick care system” into a “real health care” system that works for everyone.

As we join forces to make the best of the Care Act and perhaps go beyond it, **let us be guided** by the words of two champions of liberty, justice and health for all. These giants include The Late United States Supreme Court Justice Thurgood Marshall and The Late Rev. Dr. Martin Luther King, Jr.

The Supreme Court Justice Thurgood Marshall once said *“The legal System can force open doors, and sometimes, even knock down walls. But it cannot build bridges. That job belongs to you and me. Afro and White, rich and poor, educated and illiterate, our fates are bound together. We can run from each other, but we cannot escape each other. We will only attain freedom if we learn to appreciate what is different, and muster the courage to discover what is fundamentally the same.”*⁶

The Rev. Dr. Martin Luther King, Jr., commenting on the dismal health situation of African Americans once said *“Of all the forms of inequality, injustice in health care is the most shocking and inhumane.... And injustice anywhere is a threat to justice everywhere.”*⁷

It is with this sober but hopeful spirit that I want to say that I applaud your organization for sponsoring this meaningful conversation, and for inviting me to participate.

Bioethics, correctly understood, is about understanding life issues that reach into the core of our being; it is about raising pertinent questions about these issues, and acting to make a difference.^{8,9} So, **having set the stage** let me make haste to challenge all of us with four (4) **imperatives** to reducing health disparities that I want us to consider, and also raise some questions.

Imperative Number 1: Treat health care as a right and not a privilege

The 1946 Constitution of the World Health Organization as well as the 1948 United Nation General Assembly Universal Declaration on Human Rights treat **health as a right**. A commitment to this binding customary international law of health as a right means that **each nation state** such as the United States of America is to strive to provide “the highest attainable standard of physical and mental health” for its people by ensuring availability, accessibility, and quality of the care required.^{10,11,12} One could argue that what we are observing as disparities in health across our U.S. populations

are avoidable and is, therefore, a human rights issue. In this regard, the United States government is **yet to live up to its declarative** “truth” that is “self evident” to affirm healthy lives for its citizenry;^{10,11,12,13,14} the presence and use of public safety net programs such as Medicare, Medicaid and CHIP partly set up for this purpose notwithstanding.

The Patient Protection and Affordable Care Act of 2010 extend coverage to most of the uninsured people, not to everyone. The Act contains the essential benefits package that includes preventive services, basic medical services, chronic disease management, pharmaceutical services, and mental health services.¹⁵ This is great for starters, but if “all men are created equal, and are endowed by their creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness”, it will require good health to fully exercise these rights. And it will be prudent to assist and encourage everyone to attain good health.^{16,17} Although coverage is mandatory, the Care Act has it that if you cannot afford coverage, it will be subsidized; this is supposed to be one way of assisting.¹⁵ However, some worry that there are no penalties for unhealthy behavior. Here are some **typical questions that have been asked**: “Should there be an incentive for keeping fit or an increased premium for continuing to engage in risky behaviors? We know that pre-existing conditions can no longer be a reason to deny health insurance coverage, but what if there is a genetic predisposition to any health issue? Should someone have to still be penalized for it? How much?”¹⁸ I know that the Genetic Information Non-Discrimination Act exists, but to what extent will that be applied unilaterally? How shall we monitor compliance? **Other questions include the following**: “Does everybody get everything? We know if we get everything we will never be able to pay for it. Do we need to change our expectation about what we can expect to get from the health care system? Who should pay if we are not able to pay for everything we get? Should it be shared responsibility? What is my responsibility for solving this problem? What is yours?”^{18,19} In my opinion, some of these are questions tainted with presuppositions about people. When asked this way, the questions tend to separate people into winners and losers, the ugly and the beautiful, the freeloaders and the contributors.

But since we cannot expect to solve the problems of the current system by using the same kind of thinking that created them in the first place, we need to change our mindset and reframe the questions in more helpful ways. Should a Universal Health Care System which will be mainly supported through taxes be considered at this time or in the near future? Are we our brother’s keeper? Are those of us that are well-off willing to pay a little more to support health equity for the worse-off?²⁰

Imperative Number 2: Work for health equity as an attainable goal

There are good reasons to believe that health equity will be attainable if the social determinants of health that are life-enhancing such as food supply, decent housing, economic and social relationships, transportation, equitable education and health care are made accessible and available. The distribution of these finite resources across populations has been known to effectively determine length and quality of life. Indeed, one objective of the “Healthy People 2020” is to attain health equity for all through this avenue.^{19,20}

I feel the need here to reinforce what I just said by noting that health care is only one of those determinants of health which can make health equity attainable. But, it is an important determinant of health which we cannot do without. And if health care is a right then the society has an obligation or duty to fulfill that right. **But one could argue that** it is not ethically wrong not to fulfill an obligation if one does not have the ability or the means to do so. However, as the richest country in the world, the United States has the means to fulfill that obligation, therefore, it is morally wrong not to do so.

Imagine a world in which the critical, but finite resources are fairly distributed. When these are doled out according to needs, everyone will have the opportunity to attain their full health potential, and no one will be disadvantaged from achieving this potential because of their social position or other socially determined circumstance.^{21,23} **But, you may ask:** How shall we do this? Who should decide? How shall we decide? These are great questions that warrant intensive discussions and obviously demand legitimate answers that good data can supply. While we discuss and formulate answers, one thing should be kept in mind, and that is that **it will be problematic** to use the Utilitarian calculus or any instrumental or external value to set the criteria for providing health care needs of those that are particularly less well-off. Such a move will be an assault on human dignity – a demeaning of what make us human. I would argue that compassion and the common humanity that we share should compel all of us to treat one another with grace.^{21,22, 23}

Imperative Number 3: Gather useful data to inform policy.

Perhaps some of the questions that I have raised are currently being discussed with answers unfolding. My speculation is that this organization is sold on the need for accurate data that should inform policy. And the collection of the kind of data that is needed will warrant involving all the stakeholders interested in education, law, tax revenue, insurance, community buy-ins—to achieve the desired end for the haves and the have-nots alike. No doubt this is a huge task. But, rather than feeling overwhelmed by the enormity of the task, I want to suggest that **in the spirit of solidarity** we can start where we are with the arduous task. I suppose that is one purpose of organizing this discussion by the Special Committee on Bioethics and the Law. That is why I am so thankful for having been included in the conversation. I hope many more like it will be sponsored around the country and appropriate data gathered.^{24,25}

Imperative Number 4: Pay significant attention to the self-identified needs of underserved communities

The next phase of implementation of the Care Act must be informed by a social justice orientation if we are to transform the current structure that have been less responsive to those disadvantaged whether by dint of race, gender, class or sexual orientation, into one that is efficient, effective and serves the needs of everyone, particularly those of the worse-off. We should, therefore, make significant effort to engage them. They understand and can identify their needs more accurately than anyone can; they can help figure out possibilities that we may not have thought about; and **it will not be in their best interest and a travesty** to exclude them from important discussions of this nature

whether advertently or inadvertently. And just as all politics is local, so all health care implementation efforts should be local, and be characterized by grass-root, community organizing through collaboration with the State governments, their units, businesses, community based organizations, religious and non-governmental organizations. Folks we must connect humanely and become informed about the several provisions of the health reform law in order to create a health system that works for everyone.^{23,24,25,26}

As I bring my remarks to a close, there is **one good question to ponder:** How representative of those who could potentially benefit from our honest efforts is the audience present here today? **I rest my case!** Thanks for your attention.

Notes

1. Sodeke, S. O. (2003). "Protecting Vulnerable Populations: Tuskegee University Center for Bioethics in Research and Health Care is helping pioneer participatory methods", *Protecting Human Subjects*, U.S. Dept. of Energy, Office of Biological and Environmental Research, 9:8-9.
2. Sodeke, S.O. (2002). "Building a Resource: Tuskegee's National Center for Bioethics in Research and Health Care," *Protecting Human Subjects*, U.S. Dept. of Energy, Office of Biological and Environmental Research, 2002; 7: 10.
3. Gamble VN. *Trust, Medical Care, and Racial and Ethnic Minorities*. In *Multicultural Medicine and Health Disparities*, eds. Satcher, D., Pamies, R.J. New York: McGraw Hill, 437-448, 2005.
4. Daniels N. *Equity and Population Health: Toward a Broader Bioethics Agenda*. The Hastings Center Report, Vol. 36, No. 4. (July – August, 2006). pp. 22-35.
5. *Ted Kennedy's Letter to Obama*. Political HotSheet, September 9, 2009. <http://cbsnews.com>. Accessed 1/11/2011.
6. Thurgood Marshall. Liberty Medal. Acceptance Speech July 4, 1992. National Constitution Center, Independence Hall, Philadelphia, USA. http://constitutioncenter.org/libertymedal/recipient_1992_speech.html Accessed 1/19/2011.
7. King ML. Jr. Presentation at the Second National Convention of the Medical Committee for Human Rights, Chicago, 25 March 1966.
8. Being Human: Readings From the President's Council on Bioethics, December 2003.
9. Fox MW. *Bioethics: Its Scope and Purpose*. <http://www.twobitdog.com/drfox>. Accessed 9/24/2010.
10. WHO Constitution 1946. http://whqlibdoc.who.int/hist/official_records/constitution.pdf. Accessed 1/19/2011
11. United Nations General Assembly. The Universal Declaration of Human Rights, 1948 <http://www.un.org/en/documents/udhr/index.shtml>. Accessed 1/19/2011
12. Sodeke, SO. "Racial and Ethnic Health Disparities: Is it a Human Rights Issue?" Keynote Address: 2009 Symposium for the National Black Leadership Initiative on Cancer,

as

Do the human rights of the very poor require the affluent to help alleviate the global health crisis?

With respect to public health (e.g., in deciding how to distribute vaccines in the face of a flu pandemic), how do we appropriately balance human-rights duties owed to individuals “as individuals” against the duties to owed to individuals “as members of the population”?

And many more issues arise with each new advance in medical technology and each change in health care delivery.

Through initiatives of the partnership between the ABA Special Committee on Bioethics and the Law and the Health Law Institute of DePaul University College of Law, we will tackle these and many other interesting and important issues – and the *Bioethics Bulletin* will be a crucial venue for these discussions. Stay tuned.

As partners we can combine our strengths and provide educational and topical information about the cutting edge issues that are at the intersection of bioethics and law, and we hope to engage all of you in these important discussions.

ROBYN S. SHAPIRO, JD IS A HEALTH LAW PARTNER AT DRINKER BIDDLE & REATH, LLP, AND REGIONAL PARTNER IN CHARGE OF THE FIRM'S MILWAUKEE OFFICE. HER PAST POSITIONS AS THE URSULA VON DER RUHR PROFESSOR OF BIOETHICS AND THE DIRECTOR OF THE CENTER FOR THE STUDY OF BIOETHICS AT THE MEDICAL COLLEGE OF WISCONSIN COMPLEMENT HER BROAD-BASED HEALTH LAW PRACTICE.

NANETTE ELSTER, JD, MPH, IS THE DIRECTOR OF THE HEALTH LAW INSTITUTE OF DEPAUL UNIVERSITY COLLEGE OF LAW. SHE TEACHES BIOETHICS, BIOTECHNOLOGY & THE LAW; GENETICS & THE LAW; PUBLIC HEALTH LAW; AND ASSISTED REPRODUCTION & THE LAW, AMONG OTHER SUBJECTS, AND IS VICE PRESIDENT OF SPENCE & ELSTER PC, A CHICAGO-AREA LAW FIRM FOCUSING ON FERTILITY LAW.

CONNECTING BIOETHICS AND SOCIAL JUSTICE TO HEALTH REFORM: IMPERATIVES TO REDUCE HEALTH DISPARITIES, SODEKE, CONTINUED FROM PAGE 4

Marriot Downtown Hotel, Atlanta, GA. September 22, 2009.

13. Schuftan C. *The Human Right to Health*. Center for Research on Globalization January 11, 2011. <http://www.globalresearch.ca/index.php?contxt=va&aid>. Accessed 1/11/2011.
14. Friedman, EA and Adashi EY. The Right to Health as the Unheralded Narrative of Health Care Reform. *Journal of American Medical Association* 2010; 304(23): 2639-2340. doi: 10.1001/jama.2010.1845
15. National Association of County and City Health Officers. *NACCHO Recommendations for Health Reform Implementation*. <http://www.naccho.org/advocacy/healthreform/index.cfm?&render>. Accessed 1/12/2011.
16. Donohue L. *Health Care Reform – A Moral Issue of Social Justice*. <http://blog.seattlepi.com/larrydonohue.archives/179155.asp>. Accessed 1/11/2011
17. Murray TH. Values: The Heartbeat of Health Reform. The Hastings Center Media Sponsor: Health Affairs. The Values and Health Reform Connection 2009. <http://valuesconnection.thehastingscenter.org/index.php>. Accessed 1/11/2011.
18. Bodaken B. Health Care Reform and Social Justice. Podcast. Markkula Center for Applied Ethics. <http://www.scu.edu/ethics/practicing/focusareas/medical/health-care>. Accessed 1/11/2011.
19. Silverman S. *Health Care Reform: Pain or Gain for Employers?* Webcast, January 25, 2011.
20. Britt, T and Sodeke, SO. “Health Reform Musing with a Call to Action” African American Perspectives, Winter 2010, 42-44.
21. Jennings B. *Liberty: Free and Equal*. Connecting American Values with Health Reform. Hastings Center for Humans and Nature. <http://>

valuesconnection.thehastingscenter.org/index.php.

Accessed 1/11/2011.

22. Braveman P. *Health Disparities and Health Equity: Concepts and Measurement*. *Ann. Rev. Public Health* 2006, 27: 167-94.
23. Barnidge EK, Baker EA, Motton F, Fitzgerald T, and Rose F. *Exploring Community Health Through the Sustainable Livelihoods Framework*. *Health Education Behavior* 2011 Feb; 38(1):80-90.
24. Sage WM. *Solidarity: Unfashionable, But Still American*. Connecting American Values with Health Reform. The Hastings Center Media Sponsor: Health Affairs. The Values and Health Reform Connection. <http://valuesconnection.thehastingscenter.org/index.php>. Accessed 1/11/2011.
25. Maher M. *Thinking Collectively about Health Care*. The Hastings Center Media Sponsor: Health Affairs. The Values and Health Reform Connection 2009. <http://valuesconnection.thehastingscenter.org/index.php>. Accessed 1/11/2011.
26. *Implementing Health Care Reform*. Center for Policy Analysis. August 5, 2010. <http://www.centerforpolicyanalysis.org/index.php/2010/08>.

STEPHEN OLUFEMI SODEKE, PHD, MA IS A BIOETHICIST AND PROFESSOR OF ALLIED HEALTH AT TUSKEGEE UNIVERSITY NATIONAL CENTER FOR BIOETHICS IN RESEARCH AND HEALTH CARE, TUSKEGEE, ALABAMA.

**NEW PARTNERSHIP:
SPECIAL COMMITTEE AND HEALTH LAW INSTITUTE**

The **Special Committee on Bioethics and the Law** has entered into an exciting new partnership with the **Health Law Institute of DePaul University College of Law**.

Together, the Special Committee and the Institute will work together to develop programming and publications of bioethical interest to the Association and the public at large.



http://www.americanbar.org/groups/public_services/bioethics.html

The **Special Committee on Bioethics and the Law** was created in 1991 to foster coordination, communication and partnerships among ABA entities working in the field of bioethics and the law. The Committee's primary aim is to serve as the focal point for Association activities related to bioethics. The Committee disseminates information on ABA bioethics programs and activities and related undertakings by outside bioethics organizations, serving as an ABA information clearinghouse on bioethics topics.

The Special Committee is a unique entity in that it is comprised of four At-Large members and representatives of 16 Association entities. Both the At-Large members and the representatives of the ABA entities are deeply involved in the field of bioethics and are considered experts in the nexus of bioethics and the law. The unique perspectives and expertise which entity representatives bring to the Special Committee

help to assure a rich and thorough analysis of the many bioethics issues of importance and mutual interest. The composition of the Committee also ensures that the Special Committee's efforts do not reflect a particular subject matter perspective that may be attributed to various Sections.

The Special Committee continues its tradition of distinguished contributions to the Association. Since it was established over ten years ago, the Committee has become increasingly active. It has sponsored and co-sponsored continuing legal education programs, produced informational publications, and provided a forum for discussion of various policy resolutions focusing on bioethics and the law.

The Special Committee is part of the ABA's Division for Public Services, an ABA department dedicated to applying the knowledge and experience of the legal profession to promotion of the public good.



http://www.law.depaul.edu/centers_institutes/health_law/

Established in 1984 and directed by the **Health Law Institute (HLI) of DePaul University College of Law**, DePaul's health law program has consistently ranked among the top in the nation. HLI offers students coursework that reflects the diversity of health law from community health to high-tech health care, making DePaul a leader in the education of future generations of health law partners, policy makers and critical thinkers.

HLI responds to contemporary ethical, legal and moral challenges in the health care field through systematic, innovative approaches that influence policy development. To fulfill this mission, HLI engages in community and business related programming, groundbreaking research, legislative issues, collaborative work with local and national leaders, and efforts to eliminate social barriers in health care. Through such initiatives, HLI has earned a strong local reputation and has gained national and international attention for its work.

April 5th

Adding Elder Law to Your Practice: The Basics

Sponsored by the American Bar Association Commission on Law and Aging

Website: <http://apps.americanbar.org/cle/programs/t11aey1.html>

Location: Webinar/Teleconference

May 11th-13th

The 21st Annual National Institute on Health Care Fraud

Sponsored by the American Bar Association Criminal Justice Section, Health Law Section, Young Lawyers Division and the Center for Continuing Legal Education along with the

National Association of Medicaid Fraud Control Units, Health Law Section of the Florida Bar Association and the Miami Beach Bar Association

Website: <http://apps.americanbar.org/cle/programs/hcf/>

Location: Miami Beach, FL

June 16th

Physician-Legal Issues Conference 2011

Sponsored by the Health Law Section

Website: http://www.americanbar.org/groups/health_law/events_cle.html#

Location: Chicago, IL

BIOETHICS, HISTORY AND HEALTH DISPARITIES: LEARNING FROM THE PAST, PARSİ, CONTINUED FROM PAGE 2

Insurance, reinforced the prevailing racist view of the inferiority of African Americans, citing health statistics, and concluded that ending the institution of slavery did not improve African American lives. Countering the views of people like Hoffman, however, were intellectuals such as W.E.B. DuBois, who claimed that health disparities were not “a racial disease but a social disease.” Such a conclusion was an early example of viewing race as a social construct and that differences between races were not inherently biological but rather socially based.

Dell and Whitman cite other positive developments—the creation of the National Medical Association, which offered people of color an opportunity to be part of a national medical society, and the development of Negro Health Week in 1915, which was positively embraced by Booker T. Washington as a model for other communities and eventually organized under the auspices of the US Public Health Service.

After decades of Jim Crow, change finally started to occur in the 1950s and 1960s. Dell and Whitman cite the groundbreaking Supreme Court decision of *Brown v. Board of Education* in 1954, which struck down the legal doctrine of separate but equal. The Hill-Burton Act which was the catalyst for the growth of hundreds of new hospitals formally prohibited racial discrimination. Later, the case of *Simkins v. Moses Cone Memorial Hospital* struck down the legal doctrine of separate but equal health care facilities.

The most significant piece of social legislation in the last 50 years was the creation of Medicare and Medicaid in 1965. This followed on the heels of the Civil Rights Act of 1964. The former created a safety net for some of our most vulnerable populations—the elderly and the very poor. During the 1970s and 1980s, more attention was being paid to disparities. Secretary Califano in the Carter Administration called for greater efforts on health prevention. Secretary Hackler under Reagan co-authored a report (the Malone-Hackler Report) that cited the startling statistic of 60,000 excess deaths suffered by African Americans. This was met with some mixed reactions; some believed too great a focus was on individual behavior as opposed to systemic issues.

By the late 1990s, the rhetoric became stronger; Surgeon General David Satcher under Clinton called for the elimination rather than just the reduction of health disparities. And despite the publication of Healthy People 2000, Healthy People 2010, and now Healthy People 2020, there still

remains significant health disparities among racial and ethnic groups. In fact, according to the 2008 National Healthcare Disparities Report, disparities are actually increasing in areas such as HIV/AIDS, where minority communities experience a disproportionate burden.

Scholars such as Dell and Whitman have done an important public service by highlighting the history as well as the ongoing pernicious effects of health disparities. As they bluntly ask: “Can a society prosper if one-half of its members suffer ill health because of discrimination and racism?”⁴

Considering that the work of health disparities inherently involves the issue of social justice, it’s imperative that scholars working in bioethics take up the challenge that such an issue poses. Just as social justice figures prominently in public health, so too should social justice figure prominently in bioethics. Studying our history reveals important insights as to where we’ve been and where we are currently. Santayana’s famous aphorism “those who cannot remember the past are condemned to repeat it” is apt here. Perhaps a corollary is even more instructive: those who cannot remember and learn from the past are condemned to repeat it.

Notes

1. H. Brody. *The Future of Bioethics*. (Oxford Univ Press, 2009). pp. 146-154.
2. J. Dell and S. Whitman. “A History of the Movement to Address Health Disparities” in Steven Whitman, Ami M. Shah, Maureen Benjamins. *Urban Health: Combating Disparities with Local Data*. (Oxford, 2011). This chapter provides a helpful historical overview; much of my historical comments here are drawn from this work
3. J. Dell and S. Whitman. “A History of the Movement to Address Health Disparities”
4. Dell and Whitman. p. 25.

KAYHAN PARSİ, JD, PHD, IS AN ASSOCIATE PROFESSOR OF BIOETHICS & HEALTH POLICY AT THE NEISWANGER INSTITUTE FOR BIOETHICS AND HEALTH POLICY, LOYOLA UNIVERSITY CHICAGO STRITCH SCHOOL OF MEDICINE, HAVING JOINED THE FACULTY IN JANUARY, 2002. HE IS THE GRADUATE PROGRAM DIRECTOR OF THE ONLINE MASTER’S AND DOCTORAL PROGRAMS IN BIOETHICS.



PRESENT

SOCIAL MEDIA & HEALTHCARE: THE GOOD, THE BAD, & THE UGLY

8:30 AM - 12:30 PM
WEDNESDAY, APRIL 6, 2011
DEPAUL UNIVERSITY COLLEGE OF LAW
25 EAST JACKSON BOULEVARD

KEYNOTE ADDRESS:

RONALD PETROVICH
MANAGER

MAYO CLINIC, CENTER FOR SOCIAL MEDIA, MEDICAL EDGE, ROCHESTER, MN

SPEAKERS:

BARBARA DUNLAP, JD
SENIOR ATTORNEY, EMPLOYEE RELATIONS
WALGREENS, DEERFIELD, IL

KAYHAN PARSİ, JD, PHD
ASSOCIATE PROFESSOR OF BIOETHICS & HEALTH POLICY
NEISWANGER INSTITUTE FOR BIOETHICS AND HEALTH POLICY,
LOYOLA UNIVERSITY CHICAGO STRITCH SCHOOL OF MEDICINE, CHICAGO, IL

ERIC SWIRSKY, JD, MA
CLINICAL ASSISTANT PROFESSOR
BIOMEDICAL AND HEALTH INFORMATION SCIENCES, UNIVERSITY OF ILLINOIS AT
CHICAGO, CHICAGO, IL

CO-SPONSORED BY:

