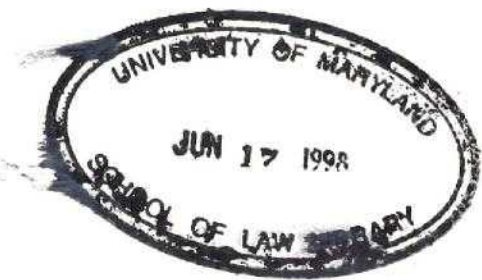


LAW & HEALTH CARE

N E W S L E T T E R

Volume IV

Number 4



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Up in Smoke: Coming To Terms With The Legacy of Tobacco

On April 24, 1998, the Law & Health Care Program and the Environmental Law Program co-sponsored an all-day symposium, "Up In Smoke: Coming to Terms with the Legacy of Tobacco," to address a number of health and environmental law issues emanating from the proposed tobacco settlement.



H. Russell Smouse

For more than three decades, the Surgeon General has alerted the public to the health risks associated with the use of tobacco products. Until recently, private causes of action against the tobacco industry for injury caused by smoking have found only unsympathetic juries. Revelations by industry insiders coupled with an unprecedented groundswell of litigation brought by at least 40 attorneys general have revealed the industry's knowledge and exploitation of the addictive aspect of nicotine.

The first federal class action lawsuit against the tobacco industry was filed in

From the Director

As the L&HCP completes another successful academic year, the Spring issue of our newsletter is the vehicle we use to measure our accomplishments. Presenters at the *Up in Smoke* conference (see article at left) will provide the papers for the third issue of our Journal of Health Care Law & Policy; our Program has once again been ranked in the top five health law programs in the nation by U.S. News & World Report; we continue to bring highly respected experts on health law to our school to speak; and our faculty, our clinic and our Student Health Law Organization are all active and productive.

We hope that you enjoy the issue and that you have a wonderful summer. As always, we welcome your comments.

Diane Hoffmann
Acting Director

March of 1994. In May 1994, Mississippi filed the first of many state lawsuits for recovery of Medicaid costs. Following months of negotiations, several tobacco companies and state attorneys general agreed to a \$368.5 billion settlement proposal. Some states, including Mississippi, settled

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Law & Health Care
Newsletter

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Director:

Karen Rothenberg, JD, MPA
(on sabbatical Spring 1998)

**Associate Director and
Acting Director (Spring 1998):**
Diane E. Hoffmann, JD, MS

There are a number of law school
faculty who contribute to the
diversity of the Law & Health Care
Program through their teaching and
scholarship. We share some of these
faculty's selected publications,
presentations, and appointments in

Faculty Notes:

Taunya Lovell Banks, JD
Richard Boldt, JD
Deborah S. Hellman, MA, JD
Stanley S. Herr, JD, DPhil
David A. Hyman, MD, JD
Susan Leviton, JD
Max Stul Oppenheimer, JD
Joan O'Sullivan, JD
Rena I. Steinzor, JD
Deborah J. Weimer, JD, LLM
Roger C. Wolf, JD

Adjunct Faculty (1997-1998)

Ellen Callegary, JD,
Callegary & Steedman
James Doherty, Jr., JD,
New American Health LLC
Lewis Noonberg, JD,
Piper and Marbury
Frank Palumbo, PhD, JD, University
of Maryland School of Pharmacy
Carol Rubin, JD, Fisher & Winner

Program Coordinator/Editor:

Nancy Zibron, MA

Administrative Assistant:

Victoria Ndiaye

Comments and letters should be
forwarded to the above address.

Congressman Cardin Speaks About Health Law Issues

The Student Health Law
Organization and the L&HCP
welcomed Congressman Ben-
jamin Cardin to the law
school on April 6, 1998.

Cardin, a Maryland
law alumnus, has
represented Maryland's
Third Congressional
District as a democrat
since 1987 and is
currently a member of
the Ways and Means
Committee and its
Health Subcommittee.
He has won several
awards for his efforts
supporting health care
and environmental policy.

As the nation struggles to establish a
well-designed health care system,
Cardin's remarks centered on Congress'
efforts to deal with health care issues
such as problems with Health Maintenance
Organizations (HMOs), health
care expenditures, child welfare,
nursing homes, and the elderly. Cardin

sponsored a recently enacted law to
amend certain titles of the Social
Security Act to assure access to

emergency medical
services under the
Medicare and Medicaid
programs, and a bill
(now in Congress) which
would assure such
access under all health
insurance plans, particu-
larly managed care
plans. Additionally, he is
the sponsor of a bill
supporting President
Clinton's proposal to
reserve budget surpluses
for Social Security.



Congressman Ben Cardin

Approximately seventy-five people
attended the presentation. Donald
Gifford, Dean of the law school, stated,
"Cardin is respected by both parties
with regard to health care issues, and is
an extraordinary individual . . . and an
outstanding speaker."

Excerpted from *The Raven*, March 18, 1998

Program in Top Five in U.S. News & World Report Survey

Once again, the University of
Maryland School of Law's
Law & Health Care Program
has placed in the top five health law
specialty programs in the annual
survey conducted by *U.S. News &
World Report*. The Program has
earned a top five ranking three years in
a row (the magazine did not rank
Health Law Programs in 1997), tying
for fourth place this year.

In addition to its health law ranking,
The University of Maryland School of
Law has two other specialty programs
in the survey's top ten—Clinical Law
and Environmental Law.

Additional information on the
rankings can be found at the *U.S.
News & World Report* website: [http://
www.usnews.com/usnews/edu/
beyond/gradrank](http://www.usnews.com/usnews/edu/beyond/gradrank).

Up in Smoke
Cont. from page 1

independently from the general agreement. Others, like Minnesota and Maryland, are proceeding with litigation. The terms of the settlement were quickly attacked as not stringent enough, especially regarding regulation by the Food and Drug Administration. (The settlement is currently being renegotiated.)

About seventy-five participants attended the symposium, and ten noted experts served as members of the faculty, including H. Russell Smouse, Head of General Litigation for The Law Offices of Peter G. Angelos, who spoke on Maryland Medicaid Litigation. Additionally, John P. Coale, Esq. of Coale, Cooley, Lietz, McInerney & Broadus, P.C. spoke on the private litigants' role in the Attorneys General's settlement; Patricia Davidson, Esq., Tobacco Control Resource Center, Inc., spoke on the link between tobacco advertising and female adolescent smoking; Professor Donald Garner, Southern Illinois School of Law, spoke on the impact of the tobacco settlement on smokers; and Gary V. Hodge, Executive

Director of the Tri-County Council of Southern Maryland spoke on the impact of the settlement on tobacco farmers. Other symposium faculty included Professor David Hyman of the University of Maryland School of Law, whose area of expertise is the economics of

smoking; Burton H. Levin, Esq. of the Baltimore City Department of Law, who spoke on the Baltimore Billboard Ordinance; Adam Levy, a journalist with the Bloomberg Press in Atlanta, Georgia and co-author of the book



Burton H. Levin of the Baltimore City Department of Law speaks on the Baltimore Billboard Ordinance.

"People vs. Big Tobacco," who spoke on the Attorneys General's Settlement; Robert Levy, Esq. of the CATO Institute, who presented a critique of the Attorneys General's Settlement; and Cassandra Yutzy, Director of Advocacy

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No. ____ "Conducting Medical Research on the Decisionally Impaired," 1998 (late Spring)

No. ____ "Testing and Telling?: Genetic Privacy, Family Disclosure and the Law," Spring/Summer 1998

No. ____ "Up in Smoke: Coming to Terms with the Legacy of Tobacco," Winter 1999

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for the American Lung Association of Maryland, who spoke on tobacco control advocacy.

The purpose of the symposium was to provoke discussion beyond the obvious health risks related to the use of tobacco products. Practical considerations regarding the economic, social and personal impacts of any settlement were addressed as well, and speakers critiqued the right to recover Medicaid costs and the new social perception of smokers as victims.

Papers from the conference will be published in a Winter 1999 symposium issue of the *Journal of Health Care Law & Policy*.

L&HCP Faculty Notes . . .

PROFESSOR KAREN ROTHENBERG

Publications:

"Cancer Genetics Susceptibility Testing: Ethical and Policy Implications for Future Research in Clinical Practice," (with B. Wilford, E. Thomson, & C. Lerman) 25 *Journal of Law, Medicine and Ethics* 4 (1997)

Selected Presentations:

"The Chosen People: Genetics Research and Its Implications for the Jewish Community," Jewish Leadership Meeting on Genetics, Washington, DC (1998)

"Social Implications of Genetic Testing," Keynote Speaker, Bowles Symposium on Genetic Technology and Underwriting, Georgia State University, Atlanta, GA (1998)

"Predictive Genetic Testing and Health Insurance: A Legal Frontier," 54th Annual Meeting, American Academy of Allergy, Asthma & Immunology, Washington, DC (1998)

"Research Use of Human Biological Materials," Public Testimony before the National Bioethics Advisory Commission, McLean, VA (1998)

"Genetics Information Nondiscrimination in Health Insurance Act of 1998," Testimony before the Maryland House of Delegates and Maryland Senate, Annapolis, MD (1998)

"Perspectives on the Impact of Genetics on Society," University of Louisville, Louisville, KY (1998)

"Forum on Genetic Testing and its Use and Misuse in the Workplace," US Congress, Washington, DC (1998)

Appointments:

National Advisory Child Health and Human Development Council of the National Institutes of Health (1997-)

ASSISTANT PROFESSOR DIANE HOFFMANN

Publications:

"Proxy Consent to Participation of the

Decisionally Impaired in Medical Research—Maryland's Policy Initiative," 1 *J. of Health Care, Law & Policy* 123 (1998)

Selected Presentations:

"Care of the Dying: The Law and the Reality," Maryland Gerontological Association 16th Annual Conference, Baltimore, MD (1998)

"Genetic Testing in the Research Setting: To Disclose or Not Disclose Findings to Research Subjects," Gerontology Research Conference, Baltimore, MD (1998)

"Ethics Committees, the Law and the Courts," Federal Judicial Center Conference on Health Care and the Legal System, Atlanta, GA (1998)

"Ethics Committees and Models of Consultation: Structures and Process," Conference on Contemporary Challenges and Controversies for Nurses: The Interface of Ethics Law and Policy, Baltimore, MD (1998)

ASSISTANT PROFESSOR DEBORAH S. HELLMAN

Publications:

"Trial and Error," *The New Republic*, p.14 (1998)

"Trials on Trial, Report from the Institute for Philosophy and Public Policy," Vol. 18. No. 1-2, pp. 13-18 (1998)

Selected Presentations:

"Cancer Risk Counseling—Ethical and Legal Issues," Berlex Oncology Foundation, Second Annual Genetics in Oncology Workshop, Orlando, FL (1998)

"Consumer Protection in Genetic Testing," National Dialogue on Genetics, Howard University, Washington, DC (1998)

PROFESSOR STANLEY S. HERR

Selected Presentations:

"Beyond Compassion: People with Mental Retardation and the Law,"

Keynote Address, 21st Annual Mental Health & the Law Symposium, Institute of Law, Psychiatry and Public Policy, University of Virginia Law School, Charlottesville, VA (1998)

"Aging and Waiting Lists: Points of Progress, Points of Remembrance," Keynote Address, YAI/National Institute for People with Disabilities, NY, NY (1998)

Appointments:

President, American Association on Mental Retardation (1998-)

Chair, Editorial Advisory Board, ABA Mental and Physical Disability Law Reporter (1998-)

ASSOCIATE PROFESSOR DAVID A. HYMAN

Publications:

"Lies, Damned Lies, and Narrative," 73 *Indiana L. J.* 799 (1998)

"Patient Dumping and EMTALA: Past Imperfect/Future Shock," 8 *Health Matrix* 27 (1998)

Selected Presentations:

"Hospital Conversions: Fact, Fantasy and Regulatory Follies," Who Owns America's Healthcare Institutions, Duke University School of Law Health Law Society and Duke University Center for Health Policy Research and Education, Durham, NC (1998)

"A Third Opinion on Second Opinions," John M. Olin Program in Law and Economics and the Virginia Law Review Conference on Law and Economics of Lawyering, UVA School of Law, Charlottesville, VA (1998)

PROFESSOR

SUSAN P. LEVITON

Appointments:

Department of Health and Mental Hygiene Task Force to Develop Standards for Case Management of Children with Special Health Care Needs (1998-)

Cont. on page 6

IN THE HEALTH LAW CLINIC

The law school offers, as part of its regular curriculum, a clinical law program in which faculty members who are practicing attorneys supervise law students in the representation of actual clients. For those students with a general interest in health law, the clinic represents clients in cases involving health care for children, legal issues of the handicapped, mental illness, AIDS and the elderly.

by Joan O'Sullivan, JD

Law students come to the Health and Elder Law Clinic from many different backgrounds, but seldom are they prepared for the complications poverty produces in the lives of their clients. The students' initial relationship with those clients is often difficult, for several reasons: it is the first time the students have been in a position of authority as a lawyer. It is the first time they define the limits of a lawyer's power. It is the first time students act as a spokesperson, a "mouthpiece," for another, suppressing their own beliefs or impulses to advance those of their client. Often, it is the first time students apply the law to hard facts to achieve a solution for a client. And it is often the first time students experience how the lives of the poor differ from their own.

Students are often surprised at the intertwining and unending legal, financial, and social problems that pervade the experience of our clients. As we finish the school year, they struggle to untangle legal issues they can resolve from innumerable troubles hovering close by, about which they can do nothing.

Sometimes we call them tip-of-the-iceberg cases, cases which initially appear simple, but which grow ever larger as we go deeper into the presenting problem. A recent example started

with an isolated legal problem, with discrete issues of fact and law: our client was charged with an alleged overpayment of food stamps. She had ignored all previous communications about the overpayment and only came to us when the state announced its intention to attach her income tax refund, on which she was depending to buy her prescription drugs. During the course of interviewing the client, the student attorney discovered papers which stated his client was being sued for \$10,000 for damages incurred in an auto accident. Our client had been driving a friend's uninsured car, was involved in an accident, and had a court date in two weeks. Should we take this case on, unrelated as it was to health law? We debated the effect of a \$10,000 judgment against the client's only asset, her home. Wouldn't it be a health problem if she lost her house and had nowhere to live? We took the case.

The student attacked both problems, and won a postponement in the accident case. For a time after that, he could not reach his client. His client finally surfaced and told her student attorney that she had been charged for driving while intoxicated after her murdered son's funeral. She was embarrassed to tell her lawyer about this charge, so she avoided all contact until the DUI case went to trial and was settled.

We found other legal issues lurking in the depths: although she was 79 years old, this very vigorous woman worked when she could find a job. She recited numerous instances of being turned down for jobs because of her age—blatant age discrimination. Did she want to pursue this? No, because she had found a temp agency that would hire her, and she had more pressing concerns. Besides, she was afraid to work again until the auto accident case was resolved, because if she lost, she feared the plaintiff would take all her wages.

She often appeared at our office in the company of her seven year old grandson, who lived with her. Was she interested in applying for Social Security benefits for the boy? No, because the child's drug addicted mother received welfare benefits for him, and it was her only income. This prompted a discussion in class about welfare fraud and provided a fine example of the protection that attorney-client confidentiality affords clients. We could not disclose this apparent violation of welfare rules unless our client consented. She, of course, would not.

On the day of the auto accident case, our client was late. The student attorney worried, because his client was usually very prompt. Has something happened to her? She finally arrived, with a strong odor of liquor on her breath, re-activating the students' suspicion of her alcoholism. She had needed liquid courage to overcome her fear of the judicial system, and she clung to her student lawyer like a drowning woman clinging to a life raft.

Then a small miracle occurred. The opposing attorney wanted to drop the case! In fact, he was pressing his client not to pursue it. In a world where attorneys are vilified for being heartless

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Student Health Law Organization (SHLO) News

by Chris Coffin, 2D

The Student Health Law Organization has just completed a very eventful spring semester. April was the big month—on April 4th, members of the SHLO traveled to American University to participate in an ABA-sponsored Health Law Student Conference. The conference was an all day event that featured mini-seminars conducted by health law practitioners. At the conclusion of the day, students were able to interact with the practicing attorneys and other students attending the conference. Students from other law schools were eager to hear about the wealth of opportunities that the University of Maryland's Law & Health Care Program offers its students.

United States Congressman Benjamin Cardin spoke at the School of Law on

April 6th. The SHLO sponsored the event which was a tremendous success. Congressman Cardin, a University of Maryland Law alumnus, spoke about managed care and the changing health care system (see article on page 2.)

Also in April, the SHLO presented its annual Health Law Career Fair. There were approximately twelve health law practitioners from various backgrounds who attended this year's fair. The practice areas represented included private law firms, government agencies, and private health care organizations. Students had the opportunity to talk with the practicing attorneys and ask them questions about health law in the real world. Many students and potential employers were able to make valuable contacts.

The last major event of the spring semester was the SHLO's selection of next year's student officers. Elections took place on April 30, 1998, and the following members of the organization were chosen as the leaders for the 1998-99 school year:

President: Dan Gaskill

Vice President: Tracy Silverman

Treasurer: Dawn Lanzalotti

Secretary: Julia Langston.

As this successful academic year comes to a close, the SHLO thanks the Law & Health Care Program and members of the health law community for their continued support. The organization looks forward to another year of cooperative success in the 1998-99 school year.

Faculty Notes

Cont. from page 4

VISITING ASSISTANT

PROFESSOR JOAN O'SULLIVAN

Publications:

"Managed Care and the Elderly,"

Maryland Bar Journal, Vol.31, (1998)

Selected Presentations:

"Nursing Home Legal and Advocacy Issues," Law Day '98 for Older Adults, Wheaton, MD (1998)

"The Man Who Would Not Eat: Medical and Ethical Implications," Panelist, Baltimore Veteran's Administration Medical Center Geriatric Treatment Team, Baltimore, MD (1997)

"Do Not Resuscitate: A Legal/Medical Dialogue," Panelist, The Legal Aid Bureau of Montgomery, Prince George's and Howard Counties, Upper Marlboro, MD (1997)

Honors and Awards:

Award for Legal Excellence in the Advancement of Public Understanding of the Law, Maryland Bar Foundation (1998)

Maryland Healthcare Ethics Committee Network Formed

With a broader mandate and a heavier emphasis on providing education for its members, during the past year the Baltimore Area Ethics Committee Network was reformed and renamed the Maryland Healthcare Ethics Committee Network (MHECN). Professor Diane Hoffmann helped to organize the new Network and is a member of the organization's Executive Board.

The reformed Network, in connection with the L&HCP, was recently awarded a grant from The Greenwall Foundation to conduct a study of the level of education and training for bioethical consultation among members of ethics committees in Maryland. Anne O'Neil, Phd, RN, Network Coordinator, is working with Hoffmann as project

coordinator for the study.

In addition to securing funding, the Network has accomplished several important objectives since its reformation, including developing a brochure, and establishing membership levels, benefits, dues and a membership application form, and sponsoring several meetings for the purpose of publicizing the Network and/or educating its members.

A half-day meeting, "Life and Death—Whose Decision Is It Anyway?" is scheduled for Saturday, May 30, 1998 at the Anne Arundel Medical Center. For additional information, contact Anne O'Neil at 410-706-4485.

Spotlight on . . .

HEALTH LAW PRACTICUMS AND EXTERNSHIPS: The National Institutes of Health Office of the General Counsel

by David S. Pang

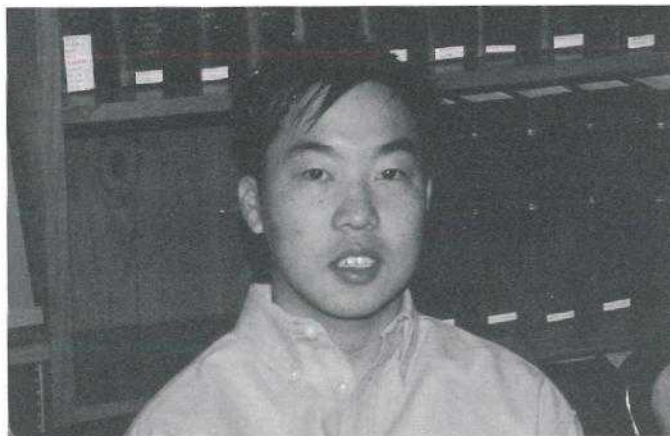
As a soon-to-be-graduating third year student looking back at my three years of law school, I realize that I have been the beneficiary of an extraordinary legal education. During my time at the University of Maryland School of Law, I learned a great deal in the classroom from my knowledgeable professors and classmates, but my education here was not bound by the law school walls.

Through a unique program coordinated by our nationally ranked Law and Health Care program, I was able to do an externship last summer in the Office of the General

Counsel (OGC) at the National Institutes of Health (NIH). The experience ended up ranking as one of the most instructive and fulfilling experiences I had as a law school student and a future attorney.

As a former liberal arts (history) major in college, the appeal of health care law for me lies primarily in the diversity and breadth of issues found in the specialty. My supervising attorneys at NIH willingly satisfied my appetite for a variety of cases. In my two and a half months at NIH, I worked on a number of different problems. I wrote memoranda dealing with an animal rights petition, research grant fraud, international human fetal tissue research agreements, and informed consent issues.

As my assignment load partially indicates, the eight attorneys and two support staff members at the Office of the General Counsel deal with every imaginable aspect of NIH affairs. These include day to day hospital affairs, public comments and petitions, research grants, intellectual property, technology transfer,



David S. Pang

computer law, real property, and even parking and vending issues.

As a section of the Department of Health and Human Services (HHS), the OGC works closely with the other branches of HHS such as the Food and Drug Administration. Attorneys also routinely work with the Department of Justice when they are litigating certain cases.

Although not readily apparent, the attorneys at NIH appear to have a measure of influence when it comes to important national policy decisions on cutting edge scientific issues. Because much of the newest technology and research information comes out of NIH labs, the NIH Clinical Center, or out of NIH funded research, OGC attorneys are among the first to encounter the problems

The Law & Health Care Program's Health Law Practicum Program provides an opportunity for students interested in health law to obtain credit by working for organizations and government agencies dealing with health care issues. Students spend 10 to 20 hours at their placement and additional hours throughout the semester in the classroom participating in The Health Law Practice Workshop. Placements have included the American Nurses Association; FDA; Johns Hopkins Hospital, Office of the General Counsel; Med-Chi of Maryland; Medlantic Healthcare Group; National Health Law Program; NIH; U.S. Senate Special Committee on Aging; University of Maryland Medical System, Office of the General Counsel; and the Office of the Attorney General, General Litigation Unit and Medicaid Fraud Unit.

The Program has also offered seven full semester externships—The National Health Law Program externship in Washington, D.C.; The University of Maryland externship, located in University Hospital's General Counsel's office; Blue Cross/Blue Shield of Maryland (BCBSM), The Federal Trade Commission, The Health Care Access and Cost Commission; the NIH General Counsel's Office; and the Women's Legal Defense Fund in Washington, D.C.

that always seem to arise in this dynamic and ever-changing research environment. Because NIH is such a major player in the national and international scientific landscape, the advice that OGC attorneys give to the leaders of NIH and HHS ultimately has worldwide implications.

Seeing cases that I was familiar with from the office on the evening news and *60 Minutes* added to my sense of pride in the importance of the work that I was a part of at the OGC. Being at NIH also gave me the opportunity to attend seminars on many of the most cutting

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In The Health Law Clinic

Cont. from page 5

and greedy, this lawyer could not stomach suing a 79 year old, indigent defendant struggling to hold on to her one asset, a run down row-house. The insurance representative refused to dismiss, worried that her superiors would disapprove.

"Make us an offer, any offer," the attorney all but begged. We huddled, and came up with an offer our client thought she could afford: a \$1,000 judgement, payable at a rate of \$10 a month. The plaintiff accepted. We entered the settlement into the record, and our client floated out of the courthouse, having averted disaster one more time.

On the way back to the law school, the student attorney said he hoped the written order from the court would come soon. "Why?" I asked. "So we can close this case before she develops another

legal problem," he said.

One goal of clinical legal education is to sensitize students to the great need for legal assistance to the poor, to teach them that to achieve equal justice for all, all citizens must have access to a lawyer. The idea is that if students learn how desperately poor people need lawyers, they will provide pro bono legal services throughout their careers. The cases that come to the law school clinic, often the law firm of last resort, illustrate in bold terms how complicated the lives of our indigent clients are, and on what thin ice they skate.

I ask my students at the end of each semester to think of one of their clients, and to imagine what would have happened to the client if they had not had the legal assistance of our clinic. They always get the point.

Spotlight On

Cont. from page 11

edge scientific issues and to attend high level meetings downtown with HHS VIPs. Although working at NIH had a lot of perks, the very best thing about the OGC was the people who worked there. Even though everyone was extremely busy and hardworking, they all made sure that I felt welcome to ask a question (no matter how stupid it was) or tag-along with them to a meeting with a client at any time.

Not surprisingly, my externship experience solidified my goal of becoming a health care attorney in the federal sector. No matter where I eventually wind up, my summer at NIH will be one that definitely will be long remembered.

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