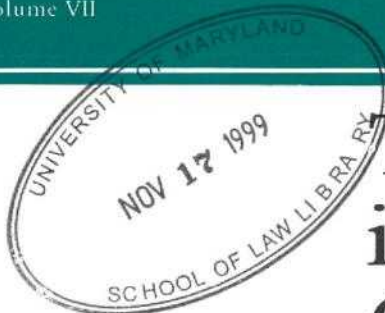


# LAW & HEALTH CARE

N E W S L E T T E R

Volume VII

Number 1



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## The Crisis in Health Care

### City Health Commissioner to Speak on Why We Need Health Care Reform in Maryland

On November 11, 1999, Dr. Peter Beilenson, President of the Maryland Citizens' Health Initiative Education Fund, Inc. (MCHIEF) will speak at the School of Law on MCHIEF's controversial but attention-getting proposal to initiate a single-payer-system for health care reimbursement in Maryland.

Beilenson, who is also Commissioner of Health for Baltimore City, is one of the founders of the Initiative, a group of public health advocates whose mission is to change the face of health care in Maryland.

MCHIEF endorses a comprehensive health care system which would guarantee quality health care for all Marylanders. This system, "Health Care for All," would be administered and financed through an independent agency governed by health professionals and consumers.

In late August of this year, Beilenson's group conducted a state-wide poll which indicated that Marylanders were greatly dissatisfied with

## From the Director

In this issue of our Newsletter, we highlight some of the many ways in which our faculty and students use their expertise in research, lawyering and advocacy to make a difference in the "real world"—whether it be providing technical assistance to legislators in drafting legislation, negotiating a settlement with the state Medicaid agency, or representing AIDS patients to obtain necessary benefits. Through their work in our many specialty legal clinics—health care, representation of individuals with AIDS or disabilities—or in the context of our health law practicums and externships, students have numerous opportunities to use what they are learning in the classroom to affect the making of public policy as well as representing both institutional and individual clients. In turn, these real world experiences are brought back into the classroom to enrich student discussions of legal theory and application.

Other newsworthy events featured are the appointment of L&HCP Director Karen Rothenberg as Interim Dean of our law school (p. 2) and the law school's recent move to temporary quarters as we begin construction of a new facility on the original law school site. (p. 11)

As always, we hope you enjoy our newsletter and that your Fall 1999 semester, like ours, is proving to be both exciting and challenging.

Diane Hoffmann  
Acting Director

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Newsletter

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Joan O'Sullivan, JD  
Acting Associate Director, L&HCP

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 publica-  
tions, presentations, and appointments in

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*Comments and letters should be  
forwarded to the above address.*

# Karen Rothenberg Named Interim Dean

On August 16, 1999, University of Maryland President David J. Ramsay appointed L&HCP Director Karen Rothenberg Interim Dean of the Law School. She will serve as Interim Dean until a permanent successor is found for former Dean Donald Gifford, who resigned in July.

Rothenberg has been a professor at the law school for the last sixteen years. She founded the nationally ranked Law & Health Care Program in 1987 and has taught many of the Program's courses. She is also a past recipient of the Joseph Healey Health Law Teacher's Award from the American Society of Law, Medicine and Ethics, serves on the American Bar Association's Coordinating Group on Bioethics and the Law, and the Advisory Council to the National Institute of Child Health and Human Development.

In appointing Rothenberg, Ramsay said, "Professor Rothenberg frequently contributes to today's national dialogue about health policy and has testified before Congress on the regulation of cloning and on discrimination and privacy issues related to genetic information. Her scholarship



*Interim Dean Karen Rothenberg*

and expertise have earned her the respect of colleagues and students. She will be an asset to the law school during the University's search for a new dean."

This change in the school's administration comes at a critical time as the law school moves forward on ambitious plans for a new facility (see article on page 11.)

During Rothenberg's tenure as Interim Dean, Professor Diane Hoffmann will serve as Acting Director of the Law & Health Care Program and Professor Joan O'Sullivan will serve as Acting Associate Director.

## Coming . . .

"Is There a Pink Slip in Your Genes?"

The Stuart Rome Lecture

*to be held at the*

University of Maryland School of Law

*presented by*

Paul Miller

Chairman of the

U.S. Equal Opportunity Commission

*Sponsored by the Law & Health Care Program - Date TBA*



# Genetics Legislation Signed Into Law

Under the leadership of Maryland Delegate Michael J. Finifter and Senator Jenny Forehand, a group of state legislators introduced the Genetic Information Nondiscrimination in Health Insurance Act into the Maryland House and Senate earlier this year. The initiative was spawned by a desire to improve the current state of Maryland law that addresses genetic privacy and discrimination.

These legislators sought the help of Interim Dean Karen Rothenberg who over the last several years has devoted much of her time and expertise to research and advocacy on this topic. Rothenberg provided the legislators with guidance and technical assistance in drafting the bill which expands current legal prohibitions against genetic discrimination in the issuance and application of health insurance.

Specifically, the new legislation prohibits an insurer, nonprofit health service plan or HMO from using genetic information to reject, limit or affect the terms of a health insurance policy. The legislation also prohibits a carrier from using genetic information to determine whether or not to issue or renew health insurance coverage.

Current law prohibits a carrier from using genetic information to affect the terms of a health insurance policy and prohibits requesting or requiring a genetic test to determine whether or not to issue or renew a policy. With



*Interim Dean Karen Rothenberg and Abby Brandel, former Legislative Officer in the Office of the Governor of Maryland and a recent Program graduate (standing, fifth and sixth from left), attend the signing of the Genetic Information Nondiscrimination in Health Insurance legislation.*

the passage of this new law, insurance carriers will not be able to release certain genetic information to any person who is not an employee of the carrier or a participating health care provider without the written authorization of the individual from whom the information was obtained. What's more, disclosure of genetic information can only be made for the purpose of providing medical care or for conducting federally-approved research. Authorization is required for each disclosure and the authorization must describe both those parties making the disclosure and those parties to whom the disclosure is made.

Rothenberg says, "This legislation is significant in the level of support it

received from the legislature. Maryland is now one of the only states in the nation that provides both privacy and antidiscrimination protection against the use of all genetic information, whether or not it was generated from a genetic test. However, we still need to continue to strive to pass federal comprehensive legislation to protect all citizens."



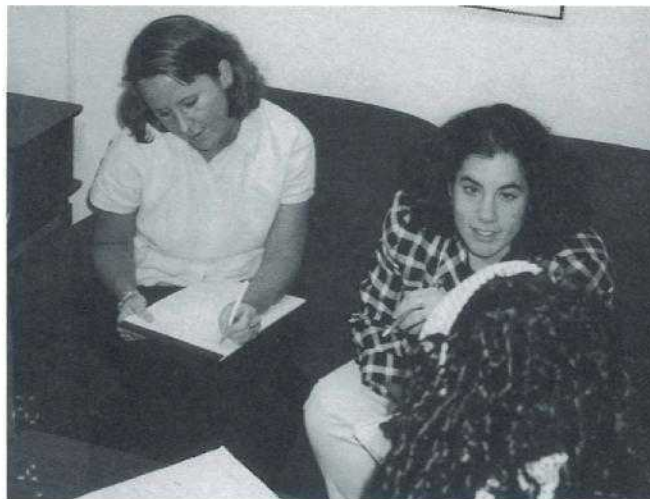
## AIDS, Ethics and the Law: Law Students Advocate for Clients in a Complex Landscape

**T**he adoptive parent of an eight year old boy with AIDS takes time off from her job to care for her son. Her employer, a national clothing store, fires her. Now, in addition to caring for an ill child, she is also deprived of her source of income.

Each semester law professor Deborah Weimer, Director of the AIDS Legal Clinic, oversees a group of student attorneys representing clients like the one above. These student attorneys help low-income, HIV+ clients deal with the legal ramifications of their illness.

Fortunately, one of these students was able to intervene on behalf of the parent of the child with AIDS. The parent was paid \$8,500 in lost wages. In addition, in order to comply with the Family Medical Leave Act (FMLA), the store for which the parent worked agreed to educate its managers about the right of employees to take intermittent leave to care for seriously ill family members. The employer also agreed to modify its employee manual and, even more significantly, employees of this store (many of whom are the working poor, making minimum wage or slightly more) both in Maryland and throughout the country will be educated about their rights to take such leave under the FMLA.

At the end of 1998, 18,430 people had been diagnosed with AIDS in Maryland. It is estimated that there are ten times as many people—or 184,000 people—who are HIV+ but not yet diagnosed with an HIV-related illness.



*From left: Erin Meyers (May 1999) and Lisa Voso (3D) at work in the AIDS Clinic (file photo).*

Parents and children with HIV disease are populations in particular need of legal representation. They face increasing challenges in qualifying for SSI or disability benefits, are vulnerable to discrimination in employment, school, insurance and health care, and often require assistance with custody or guardianship to insure continuity of care for children whose parents or custodial grandparent are too ill to care for them.

Twenty student attorneys participated in the AIDS Legal Clinic during the year-long period ending June 30, 1999. The students handled over 100 cases, seeing clients in the clinical law office, as well as at off-site locations.

Weimer says, "Many HIV+ people, especially those with children, are overwhelmed by their illness and poverty and unlikely to make it to a law office. Our student attorneys meet new clients at the outpatient HIV

clinics at University of Maryland Hospital, and they also make home or hospital visits to clients who are too ill to come to our offices."

The cases handled in the AIDS Clinic are diverse, ranging from employment cases under the Family Medical Leave Act and the Americans with Disabilities Act (ADA), to social security disability benefits appeals, and

family law cases involving Children In Need of Assistance (CINA), guardianship, custody and adoption.

Like the case of the adoptive parent of the child with AIDS, there are a number of cases that stand out in both the students' and the professors' memories.

One such case involved a mother who was reported to Protective Services by her child's physician when she repeatedly failed to get her eight year-old daughter to take medication the physician had prescribed for the child's HIV illness.

After meeting the parent, it soon became evident that this was not simply a case of an irresponsible or overburdened parent. The client proudly described how her HIV positive daughter had just received an award for perfect attendance for the

*Cont. on page 10*



## Welfare to Work: Student Lawyers Force State to Make Good on Medical Assistance Promise

Lawyers and students working together in the Family Investment Program (FIP) Legal Clinic have finally obtained the medical assistance promised under welfare reform to families that left welfare to take jobs. Many of these families were dropped from Medical Assistance as they moved from welfare to work. The FIP clinic threatened to sue the state for inappropriately dropping these families from Medical Assistance, and as a result of an agreement reached last Spring, the state is now providing many of these families with temporary medical assistance worth up to \$22 million.

The Medical Assistance issue was raised by lawyers and students involved in a joint project of the Homeless Persons Representation Project and students in a Legal Theory and Practice course taught by law school professors Karen Czapanskiy and Marla Hollandsworth. The FIP Legal Clinic provides low-income families with free legal services obtaining government assistance and transitioning off welfare.

The Clinic first alerted the State to widespread denial and termination of Medical Assistance in December 1998. From January through April 1999, law students addressed the problem by fighting to restore individual clients' Medical Assistance while researching the issues and preparing a class action lawsuit. Only after the FIP Legal Clinic threatened legal action did the State stop the illegal Medical Assis-

tance terminations and discuss corrective action.

Czapanskiy says, "Continuing health insurance coverage for these families is critical to the success of Maryland's welfare reform. These actions are important first steps in fixing how

Maryland helps families make the transition from welfare to work."

Between January 1997, when welfare reform was implemented nationally, and May 1999, when the State changed its procedures to make sure families got the Medical Assistance to which they were entitled, thousands of families were denied access to Medical Assistance after leaving or being denied welfare.

As many as 140,000 children and adults may have lost access to Medical Assistance during the past three years. Maryland has become one of the first states in the country to address this widespread health-care crisis among former welfare recipients.

Recognizing that the State improperly terminated thousands of Maryland families' health benefits, the Maryland



*Professor Karen Czapanskiy*

Department of Health and Mental Hygiene temporarily restored Medical Assistance benefits to some of the affected families. In October, these families received temporary Medical Assistance cards that can be used to obtain medical care during the months of November and December. The

State will also be contacting thousands of families to offer them the opportunity to use an abbreviated form to reapply for Medical Assistance. In addition, the State has agreed to take pro-active measures to correct this problem.

"Everyone in Maryland should be proud of their state's law students. It was the students' tireless work representing these families that forced the State to acknowledge it had a Medicaid crisis on its hands," said Czapanskiy.



## Children and Health Law: Medicaid Benefits Guidelines Amended

Clinical law professor Susan Leviton and former Law & Health Care Program student Anne Langley (May 1999) worked for two years trying to assure that chronically disabled children who are receiving Medicaid get a fair deal when it comes to health care benefits. The struggle, though long and complicated, was well worth the effort.

Leviton says, "Effective November 1, 1999, the Maryland Department of Health and Mental Hygiene revised the Medicaid Managed Care Program Benefits guidelines allowing physical therapy, speech therapy, occupational therapy, and audiology services to be provided on a fee-for-service basis for these children."

A past legal aid lobbyist to the Maryland General Assembly, Leviton founded Advocates for Children and Youth, a statewide child advocacy group. She also writes extensively on children's issues and represents children in special education proceedings and the juvenile court.

Langley earned twelve credits for her work in Leviton's Juvenile Law Clinic, which satisfied the experiential requirement of the L&HCP's Concentration in Health Law.

"The problem with the Medicaid Managed Care Benefits Program prior to this change, was that children were not getting the therapy they needed," Leviton explains.

"A chronically disabled child who has difficulty learning to speak needs to get speech therapy at an early age and that therapy has to be continuous for it to be effective."

Now that the benefits are provided on a fee-for-service basis the children whose health care is affected by these

regulations are more certain to get the help that they need.

As part of her stint in the Clinical Law Program, Langley worked with Leviton to try to resolve this issue through the Maryland Legislature. The fact that the Department of Health and Mental Hygiene agreed to revise the guidelines effective this year was, in large part, the result of legislative pressure and was, according to Leviton, ". . . a significant victory."



*Professor Susan Leviton*

## 2000 By 2000

### Third Year Law Student Ruben Chavez Works to Garner Support for the Maryland Citizens' Health Initiative Education Fund, Inc. (MCHIEF)

L&HCP student Ruben Chavez (3D) has joined The Maryland Citizens' Health Initiative Education Fund, Inc. to assist the organization in its effort to sign up 2000 supporters by the year 2000. (The Initiative hopes to establish a single-payer health system in Maryland—see article on page 1.)

Chavez, who is part of the group's Mobilization subcommittee, says the Initiative is attempting to enlist the support of special interest groups like the AARP, as well as other political, religious, educational and civic organizations. They hope to gain enough support to make their Declaration of Health Care Independence: "Health Care For All," a political issue during the next gubernatorial election in Maryland. Chavez' subcommittee, which is headed by MCHIEF's Executive Director,

Vincent DeMarco, authored the Declaration.

The law student found out about the Maryland Health Initiative while he was working at a placement at Advocates for Children and Youth, a statewide child advocacy group, on CHIP issues (the Children's Health Insurance Program). The placement was part of Associate Dean Diane Hoffmann's and Professor Joan O'Sullivan's *Health Care for the Poor* seminar. The placement's health director invited him to attend a meeting and Chavez has been a supporter ever since.

"Right now, the Initiative's main concern is to educate both individuals and organizations about our mission," Chavez says, "and to teach people how to talk about what we are trying to do so that they can tell others."



## Guardianship of the Person: An Alternative Resolution

In keeping with the legal trend to resolve disputes outside of the court, Professor Joan O'Sullivan and health law student, Kevin Gerold, are working with the Maryland Alternative Dispute Resolution Commission to address the problem of obtaining medical treatment for incompetent patients who have no surrogate.

When an incompetent patient needs major medical attention, his/her health care provider has two choices: s/he can look for a surrogate decision maker, or s/he can seek guardianship of the person. The first solution is used most often, but at times the patient has no family member or friend to act for the patient. In that case, someone must petition the Circuit Court to appoint a guardian to consent to or refuse care.

The guardianship process is expensive, time consuming and often complicated. The cost includes fees for two attorneys, as well as court costs, service and filing fees. For the patient with no family or friend, there may be no one willing to petition the court. For those in nursing homes, group homes and institutions, the hurdles to filing for guardianship result in the patient being treated without informed consent, or the patient not being treated until her condition becomes an emergency and she is sent to the hospital emergency department where she can be treated without consent.

Several years ago, a subcommittee of the Maryland Department of Aging Guardianship Task Force concerned with the rights of the disabled, wrote a bill which would divert these decisions away from the court. The idea languished for a number of years, but has



*Professor Joan O'Sullivan*

been revived as a form of alternative dispute resolution.

The Task Force proposes to address the problem of medical treatment for incompetent patients who have no surrogate by establishing an alternative to guardianship—a panel of volunteers who would act as surrogate decision makers for the patient.

The group is proposing a pilot project to "test out" the idea. The design of the pilot project is based on a similar program which has operated in New York for ten years. Under this proposal, panels composed of three volunteers will meet to consider the health care provider's request for medical treatment and to provide or refuse consent to the treatment. The panel will be drawn from a pool of volunteers, one third of whom will be health care professionals, one third who will be attorneys and one third who will be advocates, friends or relatives of the elderly or disabled. The program will employ a part time administrator, who will receive the

hearing request, call together a panel, set a hearing date no later than two weeks from the date of the request, prepare a summary of the case and handle other administrative matters. The patient would have the same due process rights as a person in a guardianship proceeding. The Maryland proposal would apply to patients in all living situations, such as nursing homes, acute care hospitals, assisted living facilities and in private homes.

The panel would meet at a local agency office or at the institution requesting the treatment to hold a hearing. The panel will issue a decision about the proposed treatment at the conclusion of the hearing, or within three days of the hearing. The panel would not have the authority to make decisions about treatment for a mental disorder, reproductive rights, or life sustaining treatment.

The decision of the panel would be appealable to the Circuit Court. There will no charge to the patient for the hearing, and perhaps only a small fee to the petitioner to cover administrative costs.

A typical case might be a request from a nursing home administrator for a decision about performing a biopsy of a suspicious lump discovered in the breast of an incompetent resident. The panel would consider whether to authorize performance of the biopsy as well as whether to authorize follow up surgery and post surgical care if the results of the biopsy indicate the need for further treatment.

*Cont. on page 10*



## Spotlight on . . .

### HEALTH LAW PRACTICUMS AND EXTERNSHIPS: Office of Senator Tom Harkin, Capitol Hill

by Hilary Martinson, 3D

After spending my summers working in a small plaintiff's law firm and at the Maryland office of the American Civil Liberties Union, I was excited at the prospect of working in a legislative setting. I was interested both in disability issues and in exploring a less traditional legal setting; the health law practicum in Senator Tom Harkin's office is a wonderful match.

I spend 15 hours a week working with the Senator's counsel on disability policy. Because I started my placement while Congress was recessed, I was able to become acclimated to this new environment before things became more hectic.

Working in a U.S. Senator's office is hectic—both fast-paced and exciting. Everyone is extremely busy. Each staff member has a television broadcasting continual live Senate coverage. The Congressional Record, which includes the entire transcript of the previous day's testimony in both the Senate and House, is delivered each morning. I never lose sight of the fact that I am working in a senator's office.

I have been able to attend meetings related to disability and other legislative issues, including a meeting with



Hilary Martinson

the Senate Legislative Counsel on the Developmental Disabilities Act reauthorization. I plan to attend the hearing on the Developmental Disabilities Act, and to spend a day on the Senate floor listening to debate on a health care or disability issue.

My practicum duties also include research—on the Individuals with Disabilities in Education Act (IDEA), the Americans with Disabilities Act (ADA) and shortly, I will be researching personal assisted services for long term care for individuals with disabilities.

It is interesting for me to see what a legislative lawyer does, and how the

*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 Bar Association; 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; University Physicians, 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.*

style and methods of operating differ from a traditional law firm.

I feel fortunate to have an opportunity to actually participate in the federal legislative process through the Law & Health Care Program's practicum experience.



# From the Classroom to the "Real World" . . .

## Spotlight cont.

This semester, as part of the L&HCP's Health Law Practice Workshop class, I have had the chance to observe Congress in action. Health care reform is once more a top priority for Congress. Managed care has brought tremendous change to the health care industry, and the 106th Congress spent the second week in October heatedly debating the issue. A sweeping new bill was passed by the House providing a broad array of protection for patients. In addition to expanding the right to sue in state court, the bill established patient safeguards such as access to emergency care and to medical specialists.

The AMA and 300 other health and consumer groups supported the Norwood-Dingell bill. This bill coincided with the recent report by the Census Bureau stating that over 43 million Americans do not have health insurance coverage. These health care policy concerns provide a perfect example of the types of issues a student might encounter when working with a legislative staff office for the House of Representatives.

My personal experience working in the Office of The Honorable Benjamin Cardin (3rd District, MD), has given me the opportunity to conduct research on a health care reform bill presently before Congress. My mentor, a legislative assistant to the Congressman, is the resident health policy expert and is an invaluable resource for me as I attempt to understand the workings of Congress and the health policy issues at stake.

My mentor helped me to identify the legislative agenda and goals of the congressional staff, so that when I began my research, I was better equipped to attain an end product that would be useful to the staff.

### HEALTHLAW PRACTICUMS AND EXTERNSHIPS: Office of Congressman Benjamin Cardin

*by Margaret Webster, 3D*



*Margaret Webster*

I have learned that one of the first steps when conducting research on a proposed bill is to log onto <http://thomas.loc.gov/>, the comprehensive official web site for Congress. This web site is both informative and a valuable tool. I knew that as part of the research, I needed to be aware of the bill's current sponsors, legislative action, committee meetings and testimony given in support or opposition of the proposed legislation.

I have also learned that when analyzing a piece of proposed legislation for a Congressman it is important to be attentive to the "policy reasons" behind the bill as well as the constituencies and interest groups supporting

and opposing the legislation. My job in analyzing the Quality Health Care Coalition Act was to look at how consumers, in particular, would be affected, and also to consider how the bill would affect the health care industry in Maryland—would it affect goods and services, would it provide better efficiencies and cost containment than the current system or better integration of health services?

Ultimately, the legislature must provide equitable solutions for health care reform. The costs, needs, and rights of consumers are part of a delicate balancing act for Congress. These

issues often have far-reaching effects and can even influence next year's presidential and congressional elections.

Before coming to law school I worked as a nurse for 13 years. While I felt I had a good understanding of the health care system from my prior experience, my stint on Capitol Hill has offered me the opportunity to see the system from a myriad of other perspectives and to understand why reform is such a difficult and contentious matter.



# From the Classroom to the "Real World" . . .

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## **AIDS, Ethics and the Law**

Cont. from page 4

semester. After meeting with a student social worker over a period of months, she and the social worker were able to identify the real barriers to compliance.

The client was in denial about her own illness as well as daughter's. She was not ready to administer the complex drug regimen prescribed by the physician for her daughter, and while the child appeared to be in good health, it was hard for her to accept that such a regimen was necessary. The AIDS Clinic's involvement in the situation helped to give her a voice, and she and her daughter's physician were able to reach a compromise on what medication would be used. The threat of removing her child to foster care was lifted, and as a result, the neglect proceeding was terminated.

Just in the last few weeks AIDS clinic students successfully settled another case under the FMLA. The clinic had represented the client for over a year, helping her maintain employment with a large grocery store after her employer began harassing her about taking too much sick time. The harassment grew worse when she disclosed to them her HIV status, but student attorneys convinced the employer that the FMLA covered her situation. The store could not fire her for medically necessary absences. The employer finally found a pretext to fire her, and student attorneys assisted the client in filing a discrimination complaint with the Maryland Human Relations Commission. A demand letter was also sent to the company

detailing the FMLA violations that occurred. In a session facilitated by an EEOC mediator, the parties arrived at a settlement that included \$6,000 in back wages for the client.

Another student attorney took on the case of an HIV+ mother of two young daughters. Despite the mother's diagnosis of HIV wasting syndrome, kidney disease and depression, this woman was repeatedly denied social security disability benefits. The student attorney did an excellent job of translating the physician's diagnosis into social security's evaluation scheme and the mother was awarded full benefits including a \$9,000 award for back benefits.

With the advent of new and more powerful drugs to treat HIV disease in infants and young children, clinic students are seeing more cases alleging medical neglect which raise complex ethical and legal questions. These cases are being addressed in collaboration with social workers and medical professionals.

AIDS Clinic student, Jennifer Schwartzott, 2D, is learning a lot about the FMLA and employment discrimination in general, particularly as it applies to people with HIV disease.

"Interaction with clients not only teaches us how to apply the law to case-specific facts, but it also gives us some practice in sensitivity. My clients' main concerns may not be about the case, but about their kids or their illness," Schwartzott says.

Dana Weinstein, a May 1999 graduate who worked on the medical neglect case mentioned earlier, says that while her law school courses taught her

about legal reasoning and writing, the clinic gave her an excellent foundation in the practical skills necessary to be a lawyer.

Weinstein adds, "I feel fortunate to have had Professor Weimer as a mentor. She encouraged growth in those areas where we needed it the most. For that reason, I feel that my lawyering skills are at a far more advanced level than they would have been if I had not had the AIDS clinic experience."

## **Guardianship**

Cont. from page 7

The advantages of the program are that decisions would be made more quickly, for less expense, without court involvement, by a panel of knowledgeable practitioners. The person with disabilities would be more comfortable in an informal setting, and providers of services would not have to hire an attorney to get permission to treat a patient who is incompetent. The disadvantages are the cost of administering the program, and that some may use this system when a guardian would be more appropriate.

The plan would benefit the patient, the courts, and the state. Given the growing population of elderly citizens, it is important to streamline the health care decision making process now.



# UM Law School Breaks Ground for New Building

Facility Blends a Stately Gothic Exterior with State-of-the-Art Technology

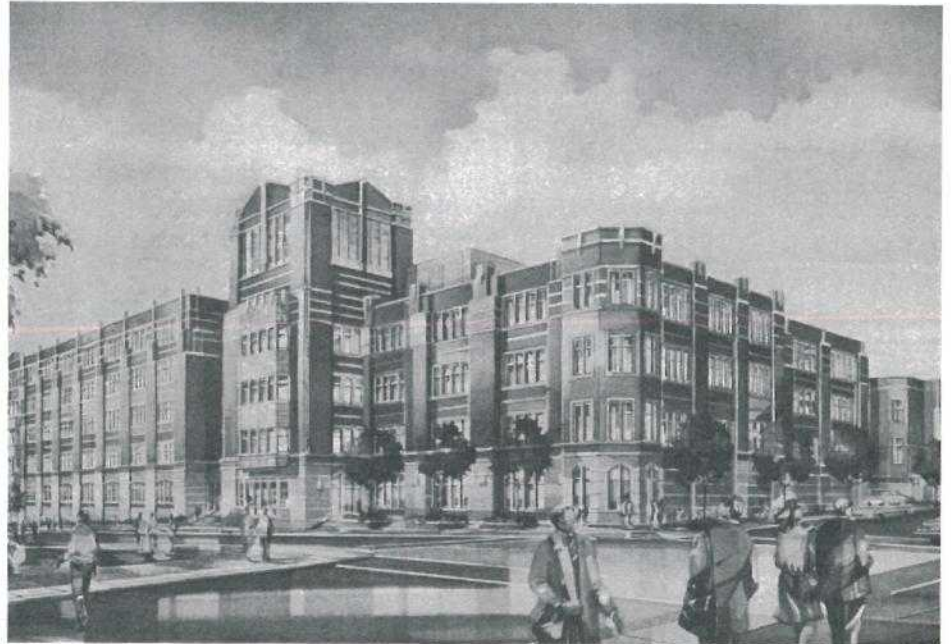
This fall, the law school broke ground for a new five-story facility to be constructed on the site of Lane Hall, the existing school building located at Paca and Baltimore Streets. This site is part of UM's Baltimore city campus which is also home to the schools of medicine, dentistry, nursing, pharmacy and social work, as well as University Hospital. The law school's prime location on UM's "campus of the professions" enhances the interdisciplinary emphasis placed on many of its courses and activities.

In June, faculty and staff of both the school and the Thurgood Marshall Law Library were temporarily relocated to a building a few blocks from the Lane Hall site. The school will operate in its temporary quarters until the new building is completed in Spring 2002.

Lane Hall was built in 1965, and a wing was added in 1980 to house the Thurgood Marshall Law Library. Despite a number of renovations, the law school's function has outgrown the 34-year old two-story office building and its attached four-story classroom and clinic "L." Additionally, the necessity of keeping up with 21st century technological learning innovations made construction of a new building the most cost effective choice.

Plans for the new facility blend a stately Gothic exterior with the latest high-tech instructional aids—enough electrical connections and dataports to accommodate student laptop hook-ups, video equipment, and increasingly popular distance learning tools.

"We have designed a building that will allow us to shape our curriculum



*Architectural rendering of the law school's new building.*

to provide the best legal education for the 21st century," says Interim Dean Karen Rothenberg.

She adds, "It will be conducive to innovative learning and will promote a sense of community for the students, faculty and staff."

Lane Hall and the law library occupy about half of a city block on the northeast edge of the University campus. Westminster Hall, a church built in the gothic style of architecture in 1852, and a burial ground that is the final resting place of Edgar Allen Poe, occupy the second half of the block. Westminster Hall has been renovated and is currently used as meeting space for both University and outside events. Plans for the law library call for it to be renovated to blend with the law school's brick and stone gothic

exterior. The law school, the library, and Westminster Hall all border a treed central courtyard used—in both the current building and the new building—as a student gathering area.

The new 240,000 square foot building, designed by the architectural firms Hartman-Cox of Washington, D.C. and RCG, Inc., of Baltimore, will provide nearly twice the square footage of the existing building. The facility will provide for additional space and access to the latest technological learning enhancements for the Law & Health Care Program's faculty, staff and students, as well as the Student Health Law Organization and the *Journal of Health Care Law & Policy*.



# L&HCP Faculty Notes . . .

## **PROFESSOR KAREN ROTHENBERG**

### **Selected Publications:**

"Being Human": Cloning and the Challenges for Public Policy, 27 *Hofstra L. Rev.* 639 (1999)

"Privacy in Genetics Research," (co-authored with B.P. Fuller, et al), 285 *Science* 1359 (1999)

"The Social Implications of the Use of Stored Tissue Samples: Context, Control, And Community" (edited by C. Long), *Genetic Testing and the Use of Information* 84 (1999)

### **Selected Presentations:**

"Medical Advocacy....My Life, My Privacy, My Dignity," Hadassah's 85<sup>th</sup> National Convention, Washington, DC (1999)

"Violence Against Women & HIV Diagnosis: Testing Decisions and Serostatus Disclosure," CDC Workshop Conference on Violence & Reproductive Health, Atlanta, GA (1999)

### **Appointment:**

American Bar Association, Health Law Section Liaison to the Coordinating Group on Bioethics and the Law (1999-)

## **PROFESSOR DIANE HOFFMANN**

### **Selected Presentations:**

"Controversial Issues in Biomedical Research: Regulating Research with Individuals Lacking Decision-making Capacity," Annual Health Law Teachers Conference, St. Louis University School of Law, St. Louis, MO (1999)

"Maryland's Ethics Committee Legislation: A Leading Edge Model or a Step into the Abyss?" American Society for Bioethics and Humanities Annual Meeting, Phila. PA (1999)

### **Awards/Grants:**

Mayday Foundation, A 2nd Mayday Scholar Award to conduct research on institutional barriers to adequate pain management (1999)

### **Appointments:**

Associate Dean for Faculty and External Affairs (1999)

Acting Director, Law & Health Care Program (1999)

## **PROFESSOR KAREN CZAPANSKIY**

### **Selected Presentations:**

"Getting Medicaid to Former Welfare Recipients in Maryland," The National Health Law Forum, Washington, DC (1999)

## **PROFESSOR STANLEY S. HERR**

### **Publication:**

"Special Education Law and Children with Reading and Other Disabilities," 28 *J. of Law and Education* 337-389 (1999)

### **Selected Presentations:**

"Legal Protections for People with Disabilities in the U.S. and Israel," Trump Institute, Beit Issie Shapiro, Ra'anna, Israel (1999)

"Vocational Rehabilitation and Human Rights," National Association of Rehabilitation, Hertzilyah, Israel (1999)

"The New Three Rs: Risks, Rights, and Remedies for Older People with Developmental Disabilities," International Conference on Down Syndrome, Jerusalem (1999)

## **PROFESSOR DAVID A. HYMAN**

### **Selected Presentations:**

"Regulating Managed Care: What's Wrong With A Patient Bill Of Rights," University of Texas School of Law Faculty Colloquium (1999)

"Conversion of Nonprofits," and "Managed Care Regulation," Annual Health Law Teachers Conference, American Society of Law, Medicine & Ethics, St. Louis University, St. Louis, MO (1999)

### **Appointment:**

Visiting Professor, University of Texas School of Law (Fall, 1999)

## **PROFESSOR SUSAN LEVITON**

### **Award:**

Child Advocacy Award, Maryland Interdisciplinary Counsel for Children and Adolescents (1999)

## **ASSISTANT PROFESSOR**

### **JOAN O'SULLIVAN**

### **Publication:**

"Adult Guardianship Bench Book" (with Andrea Imredy Saah), Judicial Institute of Maryland, Baltimore, MD (1999)

### **Selected Presentations:**

"Alternatives to Guardianship," Judicial Institute of Maryland, Annapolis, MD (1999)

"Adult Guardianship—when Is it Necessary?," Kennedy Krieger Institute, Baltimore, MD (1999)

"Informed Consent and People with Mental Retardation," and *Olmstead V. LC*, American Association on Mental Retardation 123<sup>rd</sup> Annual Meeting, New Orleans, LA (1999)

"Key Legal Issues in the Cognitively Challenged," Symposium on Cognitive Functioning in Adulthood: Assessing Challenges and Enhancing Resources, Geriatric Research, Education and Clinical Center, Baltimore, MD (1999)

"Consent and People with Mental Retardation," American Association on Mental Retardation Training Institute, Arlington, VA and Chicago, ILL (1999)



# 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*

Our clients often suffer from life threatening disabilities, and are frequently young and desperate. Clients are denied Medicaid benefits so that they are unable to purchase drugs on which their lives depend. Others contact us to plan for their children's futures because they fear they will not live to see them to adulthood. When the client and the student are in the same life stage, these cases can be especially difficult for student attorneys who have been successful in everything they have done, who feel they have their whole lives ahead of them, and who see only good things in their futures.

Equally difficult for students who come from loving families are the cases in which families exemplify man's inhumanity to man. We see clients whose children turn against their parents, or who cause elderly parents financial risk and hardship. In one early case, a daughter's boyfriend had used her phone card to run up large bills. Our client, an elderly man living on a fixed income, was responsible for the bills when his daughter stopped paying for her boyfriend's extravagance. The student negotiated with the credit company and arranged a payment plan for her client to stave off legal action. A money judgment against him would have put his small house in jeopardy. The client is now slowly saving the funds to pay for his daughter's bill. The student, from a close family in which everyone supports each other, was astounded that the daughter would treat her father in that manner, and that the father would not insist on the daughter making the payments herself.

It is not unusual for our clients to have sad family stories. There are

husbands who will not pay the wife's nursing home bill, keeping her income for himself so that the nursing home resident is at risk of an involuntary discharge. There are elderly clients who have not heard from or seen their children for many years, and who depend on the kindness of a next door neighbor to get by. Some young parents struggle to raise their children alone when the other parent is addicted to drugs or alcohol. Parents abandon children to strangers when they cannot kick an addiction.

For many students in the clinic, these stories are eye-opening experiences. To students fresh from college, who have always been supported in all that they do, it seems impossible that people can treat each other in this fashion. One common impulse is for the student to feel that she or he must fix all the problems of the client's life, that they must help their client in ways not related to the practice of law. Students may spend long hours on the phone counseling the client about everything under the sun. Students may think they should give the client a ride to the doctor for a medical exam, or stop by the store to get groceries on the way to see the client. Some are drawn in by lonely people who just want someone to talk to, and the entrance into their lives of an intelligent, sensitive law student who wants to help them is a wonderful event.

We talk in class about the emotions associated with the practice of poverty law. We discuss ways to inure oneself against feeling that we must rescue our clients from all of their hardships. We discuss how their best tool is their knowledge of the law, and how they must use that tool to reach the client's goals in a particular case. We talk about ways to relieve the feelings that

The practice of poverty law is a difficult business. In the Health and Elder Law Clinic, we represent those who have no money to hire a lawyer, and who, without our representation, would go without an attorney. In the first semester of practice, one of the most difficult tasks for student attorneys is to come to terms with the concept that life is not fair.

We see a variety of clients, referred from various social and legal agencies. This year, one student's first client was a 26 year old man with a rare degenerative disease who had been denied SSI disability benefits. This man struggled against his illness and was trying his best to raise his 3 year old daughter with the help of his parents. When we met the client for the first time the contrast between the client and the student attorney, who are about the same age, was startling. The client had trouble walking, was unable to sit or stand for any length of time, and was in constant pain. The student handling the case is a bright, focused, fit and healthy former lacrosse player for an Ivy League school. No discussion was necessary to emphasize the unfairness of the hands life had dealt these two people. The student handling the case did an excellent job preparing for a hearing on short notice, and her client was awarded disability benefits.

*Cont. on page 14*



# Student Health Law Organization News

The 1999-2000 officers of the Student Health Law Organization (SHLO) are:

President- Jayson Slotnik (2D)  
VP- Matthew Parra (3D)  
Secretary- Mindy Caplan (2D),  
Treasurer- Lisa Hesse (2D)  
Publicity Chair- Sai Deepa Saggare (2D)  
Events Chair- Denise McNair (2D)  
Outside Affairs Chair- Lucy Shum (1E)

At their first general meeting, the group discussed 17 potential goals and

voted to immediately pursue the following (among others):

- ◆ Begin planning for an expanded Health Law Career Fair (currently scheduled for the week of January 31, 2000);
- ◆ Develop a "speaker of the month" series to bring health law attorneys and policymakers to the law school to speak on a regular basis;
- ◆ Establish a plan to identify students to participate in the National Health Law Moot Court Competition;

- ◆ Participate in the Maryland Association of Health Care Executives' events including the annual State and Federal legislative update; and
- ◆ Revise and update the SHLO constitution.

In related news, three of SHLO's officers, Jayson Slotnik, Matt Parra and Lisa Hesse are participating in this year's National Health Law Moot Court Competition at the University of Illinois. During the summer, Slotnik and Parra were selected to attend the University of Utah's School on Alcoholism and other Drug Dependencies for a one-week session.

## In The Clinic

Cont. from page 13

sad and seemingly hopeless cases can produce, about talking to other clinic students and to their supervisor, about living a balanced life, about not investing too much of themselves into their profession. Some students are better at this than others; for some, the line between them and their clients is clear from the start. Others deeply feel the pain of their clients, feel they are not being treated fairly, and are angry at the opposing attorney for taking such a hard stance against a defenseless client.

But attorneys are not magicians, and students come to realize that all they can do is solve their clients' legal problems, and that their clients must go on as best they can. One student, Carla Williams, while sympathizing with her clients and working hard to solve their legal problems, said this, "What I like about clinic is the knowledge that without us, our clients would have no representation at all. I have seen how my client struggled without an attorney or knowledge of the law before she came to us. And I can see how I can help her immensely when I represent her in court and make valid legal arguments on her behalf. That makes me feel good."

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# Making Health Care Decisions for Others

Maryland Department of Aging and Health  
Law Faculty Collaborate on Brochure

Professor Joan O'Sullivan, head of the L&HCP Health Law Clinic, recently authored a brochure being distributed by the Maryland Department of Aging that instructs family and friends how to make health care decisions for those who are mentally or physically incapacitated. The brochure provides an easy-to-read guide for the lay person that describes the types of medical decisions that can be made by others and the consequences of becoming a decision-maker for another person.

Under Maryland law, when an incapacitated patient has not named an agent in an advance directive, a relative or a friend—known as a surrogate—can make medical decisions for that person. The brochure describes the order of priority for surrogates (spouse, adult child, parent, adult sibling, and close relative or friend) and provides a form for friends or more distant relatives to sign when becoming a surrogate decision-maker.

The standards that surrogates should adhere to—substitute judgement and best interest—are covered in detail,

answering many of the questions a surrogate might have about these two legal terms.

Professor O'Sullivan also discusses the liability of surrogates, nursing home admissions, and when it is necessary to apply for guardianship.

The Department of Aging provided the funding for production of the brochure and will distribute it through their local offices.

## Wright vs. Hopkins: How Does This Decision Affect Maryland Hospitals?

A Discussion by the Maryland Healthcare  
Ethics Committee Network

In July 1994, 33 year-old Robert Wright was admitted to Johns Hopkins hospital for treatment of symptoms related to end-stage AIDS. He had previously completed a living will and a durable power of attorney for health affairs. According to his attorney, Wright had also made it known to his health care providers on several occasions that he did not want to be resuscitated if he had a cardiac arrest.

After receiving a blood transfusion Wright was found unresponsive and without a pulse. Cardiopulmonary resuscitation (CPR) was initiated. Life-sustaining treatments were withdrawn the day after Wright's arrest. He died

nine days later. Wright's mother filed suit against Johns Hopkins hospital, claiming that Hopkins breached a duty to Wright to withhold resuscitation.

The trial Court ruled in favor of Hopkins on a motion for summary judgment. On April 20, 1999 the Court of Appeals upheld the decision of the lower court citing insufficient evidence in the case of a legally binding directive to withhold CPR.

On November 18, 1999 the Maryland Healthcare Ethics Committee Network (MHECN) will hold a dinner meeting that will include a panel discussion of this case. Rick Kidwell, JD of The Johns Hopkins Health Systems will present the legal and medical facts of

the case. Brian Childs, PhD, of Shore Health Systems will look at how this decision will affect healthcare organizations in Maryland. Eugene Grochowski, PhD, MD, FACP will speak to how it may affect physician practice.

L&HCP Acting Director Diane Hoffmann will moderate the discussion. Hoffmann was one of the founders of the MHECN and is a member of its executive board. She is also editor of the Mid-Atlantic Ethics Committee Newsletter, published by the organization.



## The Crisis in Health Care

Cont. from page 1

current managed care plans. The situation is made worse by the fast-rising tide of uninsured in the State.

Eighty-eight percent of those surveyed believe the present system has major problems or is in crisis; over three-quarters agreed that everyone in Maryland is entitled to health coverage and 87 percent said they would support such coverage. Statistics show that about 700,000 of Maryland's 5 million residents are without health insurance.

Beilenson's group believes that the existing health care insurance system is "structurally flawed" and that it is increasingly bureaucratic and wastefully expensive. He says that the single-payer system envisioned by the Initiative would use the billions of dollars of profit and administrative costs built into commercial health insurance to provide coverage for the uninsured.

The Declaration of Health Care Independence authored by MCHIEF promises quality health care for all, freedom to choose doctors, a comprehensive, age-specific, quality health benefits package and providers who practice according to professional standards without undue interference from third-party decision makers.

Not everyone agrees with Beilenson. Private health insurers believe that the problem can be addressed by looking at accessibility and affordability issues. John Colmers, Executive Director of Maryland's Health Care Commission (MHCC), a state health regulatory commission, will be responding to Beilenson's remarks. Colmers has noted the significant barriers states face in instituting a single-payer plan.

(Also see "2000 By 2000" article on page 6.)

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