Editor's Note

Evidence: Its Meanings in Health Care and in Law

Evidence is the apple pie of analysis and decision making. Who could be against it? Public policies should be predicated on the best information that is available—the optimal evidence. We want our elected officials and public bureaucrats to be informed decision makers. Physicians should diagnose our ailments and launch appropriate treatments based on the most advanced knowledge derived from well-recognized evidence. There is much that our medical providers do not know, simply cannot know thus far, but surely they should act on what they do know. Courts should adjudicate disputes—including between patients and providers—guided by the most compelling credible expertise that is relevant to the case and controversy that has been brought to trial. Science, and law, albeit through contrasting means, are advertised as pursuits of truth, a search for evidence and its proper application. The devil, of course, is in the details. And the interpretation.

For the past several years we have been experiencing a revolution in medicine, manifest in many forms and along myriad dimensions. It is most readily recognized in the transformation toward a system of competing managed care plans, but that itself rests on the emergence and increased sophistication of evidence-based medicine, at least implicit cost-effectiveness analysis, and clinical practice guidelines that are supposed to summarize the current state of knowledge and evidence. Kindly Marcus Welby, M.D., for all his anecdotal experience, patient knowledge, and accumulated wisdom, gets supplanted by medical data gathering and

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algorithms not so prone to idiosyncratic bias and untested norms. Simultaneously, the courts in the United States have undergone a related transformation, although perhaps more in the articulation of contemporary jurisprudence than in actual practice. Following the U.S. Supreme Court's 1993 *Daubert v. Merrell Dow Pharmaceuticals* decision, judges and juries are to have more regard for science and established evidence than can be ascertained through the dueling dialog of competing experts as hired guns.

This issue of the *Journal of Health Politics, Policy and Law* explores these concomitant changes in the role of evidence in health care and law. It focuses in particular on whether the courts have been, show signs of, or are capable of incorporating the methods of modern medicine and health care organization into the standards and procedures of judicial determination. And, perhaps, whether they should. Despite *Daubert*, medicine and law, not to mention science and law more generally, tackle questions of fact, information, and interpretation in quite disparate ways. The relevant institutions, the participants, the norms, the procedures, and the standards applied stand in sharp contrast to one another. As a number of the articles and commentaries in this special issue also suggest, in both medicine and law, politics, interests, and the social construction of ideas play a role. One can readily see how this topic combines the three analytical pillars of this journal—politics, policy, and law—although in this instance, roughly in reverse order.

This special issue grows out of an April 2000 workshop jointly organized and sponsored by the U.S. Agency for Healthcare Research and Quality (AHRQ) and the Institute of Medicine (IOM) at the National Academy of Sciences. The idea for this workshop was spawned by John M. Eisenberg, the director of AHRQ, whose characteristic intellectual energy and entrepreneurial spirit brought it to full fruition. Clark Havighurst, a member of the planning committee and long associated with *JHPPL*, recognized the potential value of a collaboration with the journal and invited me to participate in the workshop. The papers originally presented at the workshop by Cynthia Mulrow, Daniel W. Shuman, Peter D. Jacobson, and Arnold J. Rosoff, with the addition of Susan Haack's essay that served as background reading for the meeting, were extensively revised by the authors (with the addition Kathleen Lohr and Matthew L. Kanna as coauthors along the way), subjected to *JHPPL* peer review, and revised further. John Eisenberg at both the workshop and here, offers his summary perspective on bridging the differences between medicine and the law. Anonymous to the authors at the time of review,

Troyen A. Brennan and Marc Rodwin served as the outside referees and also contributed insightful commentaries for this issue (Troy Brennan being joined by Michelle M. Mello). They did marvelous work in little time. Drummond Rennie, David M. Eddy, and E. Haavi Morreim have graciously contributed additional commentaries that enrich this collective study of evidence in health care and in law. I would also like to express my gratitude to Wilhelmine Miller at IOM and Jacqueline Besteman at AHRQ for their assistance in making this project possible. Anyone who knows the mechanics of academic publishing understands how difficult it is to go from initial drafts of conference papers to final publication in the space of one year. I appreciate all the authors, reviewers, and commentators did, with the help of Miller and Besteman, to keep us on schedule.

Two additional treats await you in this issue. First, James A. Morone engages in a lively and constructive exchange with Amitai Etzioni over the latter's recent book, *The Limits of Privacy*. Although Etzioni's book covers broad and diverse territory, at its core there is direct relevance for the other issues addressed in this special issue. Since much of modern medicine and the financing of health care services find their way into both public and private databases, and so much of the practice of evidence-based medicine depends on widespread use of advanced information technologies, sensitive questions of privacy rights versus community benefits are never far below the surface. Needless to say, there, too, the courts reemerge as well. Second, Ellen Wright Clayton offers a review essay on two books that touch the core of the modern medical revolution—genetic research and testing. Questions about evidence and its meaning for health care and law are certain to be affected instrumentally by what we know about genes and how we use it.

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