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## **In the Beginning: A Tenth Anniversary History of The Journal of Contemporary Health Law and Policy**

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## IN THE BEGINNING: A TENTH ANNIVERSARY HISTORY OF THE JOURNAL OF CONTEMPORARY HEALTH LAW AND POLICY

*George P. Smith, II\**

Around 1980, shortly after Steven P. Frankino became Dean of the Law School, we had a conversation about the startling new emergence of Health Law as a field of scholastic endeavor and learning and we both concluded that a professional law school journal that would, in turn, tap into this interest and help structure the field would provide an excellent “clinical” opportunity for our law students. To succeed, however, the Dean was of the opinion that it not only needed a strong faculty commitment to its development—and someone in the law faculty to assume Faculty editorial leadership—but an equally solid commitment by the students. While I had resolved to carry through at the professional level to start the project, there was negligible interest among the students. Wisely, the Dean cautioned when there was a strong reservoir of student interest and support, he would in turn support vigorously the establishment of such a Journal.

In the Autumn of 1983, as I began to prepare for my sabbatical leave to England and Australia, that heretofore unfocused student interest for a journal dealing with Health Law became focused and much planning and correspondence ensued during my absence from campus later in the Spring. The subsequent Fall of 1984, the Law Faculty gave provisional approval for *The Journal of Contemporary Health Law and Policy* to be established.

The approval, as noted, was provisional. Not only was the Faculty of one unified mind that a Faculty Editor-in-Chief (as opposed to a mere Faculty Advisor used by the *Catholic University Law Review*) had to serve—without compensation or a release from teaching duties—but they wanted a full accounting of the new journal’s progress at the conclusion

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\* Founding Faculty Editor-in-Chief, *The Journal of Contemporary Health Law and Policy*, 1984-1994.

of a two year period. Partial academic credit was not conferred until the completion of volume two. With volume three's publication, full credit was conferred. Thus, the students working at various levels of industry to complete the first volume received no credit. In order to compensate for this, they were all recognized as Assistant Editors instead, in subsequent issues, as Senior Staff or Members.

Full faculty approval of the *Journal of Contemporary Health Law and Policy* was granted in the Spring of 1986, with volume one not meeting its hoped-for publication date of the Spring of 1985 until the Autumn of that year. Largely because of finances, it was decided to publish the Journal but one each school year and to have it distributed by Graduation Day around the end of May. By and large, this publication date has been met. The Journal is supported mainly, as with the *Catholic University Law Review*, from the Law School Budget (that is in turn derived mainly from student tuition fees). The subscription base, numbering approximately five hundred fifty, serves to help underwrite—in a modest way—the contribution made from the Law School budget itself. Volume one of the Journal numbered two hundred and fourteen pages. The average pagination of the last five volumes has been five hundred and twenty pages. Because of limited library budget funds in most law schools as well as law firms, it was decided to charge a subscription price of only \$10.00 for domestic subscribers and \$12.00 for international ones. Given the size of the recent volumes of the Journal, these prices are, without doubt, a bargain. In time, as printing expenses begin to rise, these prices may have to be adjusted upward.

In selecting the Journal's name, much careful thought was given to designing a title that would not be so narrow and confining to delimit the thrust of student scholarship and professional solicitations. Thus, "Contemporary"—as used in the title—was chosen because it would reference Bioethics, Law and Medicine, Nursing, Forensic Medicine as well as Public Health Law. "Policy," as a word of art, was used in the Journal's title to include Environmental Law, Social Policy and Philosophy.

*The Journal of Contemporary Health Law and Policy*, then, was designed in focal direction to be a scholarly forum for investigating all facets of modern concern with Health Law. As such, the Journal, by its very existence, affirms a distinctive legal subject matter. And the purpose of the Journal, as stated in its inaugural issue, is, "to discover, impart, and apply truth and values from all perspectives."<sup>1</sup> We pledged to "seek to

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1. J. CONTEMP. HEALTH L. & POL'Y 1 (1985).

explore objectively—with a spirit of Christian humanism—the varied aspects of social justice in an effort to chart and to participate in both law reform and current social movements,” and to “encourage a diversity of views in our pilgrimage to discover truth and to disseminate it.”<sup>2</sup> The Cumulative Index to the Journal that appears in this tenth anniversary volume shows clearly and forcefully that we have to date fulfilled our self-directed mandate and our originally perceived purpose. We remain challenged to continue to meet these goals over the years ahead.

There have been some conflicts, perhaps misunderstandings is a better word choice, over the years with various Student Editorial Boards of the Journal about the role of a Faculty Editor-in-Chief. These difficulties have arisen, in large part, because of the unique status of the Journal's organization and its frequent unavoidable student comparisons with the *Catholic University Law Review*. The Law Review is an autonomous organization and selects its Editor-in-Chief by vote of the entire student editorial board. The Faculty Advisor to the *Review* is just that: an Advisor.

The central reason why the Dean and the Faculty insisted upon a Faculty Editor for the *Health Law Journal* was because of the complex and sophisticated nature of the field of Health Law, itself. Continuity and expertise were needed and simply could not be built upon by one student board and then “transferred” upon graduation to a new board—at least for some years. It was both felt and understood that at the conclusion of an operational period of ten years an historical base would be in place for a transfer of authority and student autonomy and the Faculty Editor-in-Chief and the Faculty Editors would become Faculty Advisors. Indeed, with the publication of Volume 11 of the Journal and the recognition of the Journal's professional independence, the sole responsibility for its subsequent publication will rest with the Student Editorial Board with Faculty involvement being relegated to a purely advisory role.

During these past ten years, however, the Faculty Editor-in-Chief has been empowered by the Faculty—with the advice and consent of the two Faculty Editors—to appoint the Student Editor-in-Chief. That individual has been allowed to select student editorial board members of his or her own choosing. The Faculty Editor-in-Chief and the Faculty Editors have exercised their authority to select all professional articles for publication in the Journal. In practice, that authority has been shared with the Student Editor-in-Chief and the Articles Editor. Together with the two

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2. *Id.*

Faculty Editors, an initial review is made of all submissions of professional articles—with the student editorial board presenting their evaluations of the submissions. Oftentimes, the student views have carried the day and manuscripts have been accepted or refused for publication in the *Journal* based upon their advocacy. It is also the responsibility of the Faculty Editor-in-Chief and the Faculty Editors to solicit actively lead article manuscripts. Both in the development, recruitment and actual submission of lead article authors, the Board of Professional Editors of the *Health Law Journal* has provided significant and, indeed, invaluable services.

Student submissions for publication in the *Health Law Journal* are reviewed, evaluated and selected for publication by the student editors. Those decisions are rarely challenged by the Faculty Editors although, from time to time—as faculty reviewers—strong suggestions are made for necessary revisions. Friction has developed when the Faculty Editor-in-Chief is of one opinion regarding a student or professional submission and the Student Editor is of a contrary view. These difference of opinion have always been resolved in as much of a professional manner as possible. Publishing a Journal is obviously a give and take operation.

Various student editorial boards have—regardless of stated policies regarding their limited role in editing professional submissions—been too eager to edit so extensively that, in essence, a re-write of the original submission has occurred. This, in turn, has caused some lead authors to become so upset that their manuscripts have been withdrawn from further consideration by the *Journal*. Student input is—to be sure—very important; and it is through this level of participation that the students learn. Yet, the average student does not really have the level of expertise in the field of authorship and must learn to defer, except in cases of obvious error, to the wishes of the professional author. If honest, substantive questions—as opposed to those of stylistic tone—arise, then they must be raised and answered. But issues of style are beyond the student editors' marking pencils.

In 1986, Professor Raymond B. Marcin agreed to become a Faculty Editor of the *Health Law Journal*. His sound professional judgment and expert knowledge of the Harvard Citator were indispensable to the Journal's fledgling existence. Much gratitude is owed to him for his loyalty at this critical juncture in the development of the Journal. He relinquished that post in 1988, and Professor Raymond C. O'Brien succeeded him. Professor Mary Jean Flaherty, presently Dean of the Catholic University School of Nursing, also agreed in 1986 to become the other Faculty Edi-

tor. Her service over the years has provided a vital inter-disciplinary link for use and she has provided tone and vision to the *Journal*. Special mention must be made here of Fr. O'Brien's extraordinary commitment to the smooth day-to-day operation of the *Journal*. Always the skilled and diplomatic negotiator, his winning manner has carried the day on many an occasion. His skill as a fund raiser has also gone a long way in helping the *Journal* stabilize itself financially.

It was decided that each volume of the *Journal*, at least through volume fifteen, would be dedicated to men and women who have made significant contributions to Law, Science and Medicine. Certainly as with this volume's dedicatee, Dean Guido Calabresi of the Yale Law School, we are honored to be able to acknowledge during life, instead all too often only at retirement or death, the professional contributions of our honorees. Accordingly, it pleases me to be able to list the following individuals whom the *Journal* will honor with dedications over the succeeding five years: Professor Margaret Somerville, McGill University Faculties of Law and Medicine, Volume 11; Professor Harry Krause, University of Illinois College of Law, and Professor Dieter Giesen, Faculty of Law Free University of Berlin, Germany, Volume 12; Professor John C. Fletcher, University of Virginia Medical School, Volume 13; Professors Ian Kennedy and Andrew Grubb, Faculty of Law, King's College, University of London, England, Volume 14; Professor George Annas, Boston University Health Schools of Medicine, Public Health and Law, Volume 15.

The physical workplace for the *Journal* was very limited originally. In fact, volume one was put together in my office, outside of it in a small alcove, in the secretarial pool and in the photo copying room. A three room suite of editorial offices was obtained in St. John's Hall (a former student residence now demolished) for volume two. Re-painted, the accommodations were not all that bad. With a number of desks, an old electric cardex typewriter given by the law firm of Covington and Burling (still in use, I might add!), and a small refrigerator, the work of the *Journal* was undertaken. The main problem with this location was that it was about a good block's distance from Leahy Hall—the central Law School building where the Law Library is housed. After cite-checking and pulls were done in Leahy, the St. John's office space was not a convenient place for the students to go and work. The office at St. John's were used more often for editorial board meetings and as a study hall than as day-to-day working office. Under these conditions, it was difficult for the *Journal* to build a sense of cohesiveness.

With volume four's production during the 1987-88 school year, the Law

School obtained more space for its administrative office and student organizations in Keane Hall. After much persuasive effort by the Student Editor-in-Chief, the law school administration was persuaded to relocate the Student Bar Association's large one room office in Leahy Hall to Keane Hall and—in turn—allow the Health Law Journal to occupy that space. At last, the Journal had a permanent home! These quarters are adequate—although rather crowded. The important result of this move was the obvious change in attitude and *esprit* among the student members of the Journal. They now had central access to the Law School library and a place to meet and proof manuscripts and “hang out;” a place where easy associations within the social grouping itself could occur. With occupation of the new law school building set for August, 1994, the Health Law Journal will finally have a luxurious home in a state of the art building.

During the first three and one-half years of the Journal's operation, it had no word processing units. Rather, all work was done by a very limited law school secretariat. The editors were more often than not, forced into learning word processing just a matter of survival! Many was the day (and evening) I remember seeing the Student Editor-in-Chief for volume four, Jim Prenetta, working away in the secretarial area of Leahy Hall on the second floor on Journal manuscripts. Other editors were forced to “borrow” time on the computer terminals in the law offices where they were clerking. With monies it had accrued from its subscriptions, the Journal purchased its own word processor in the Spring of 1988. In the Fall of 1990, it obtained a second one.

Membership on the *Journal* was, with the first issue, as it is now, achieved through one of three ways: by being ranked academically in the top ten to twenty percent of the first year day class (or second year for evening division students); by participating in an open, anonymously identified and graded writing competition designed and coordinated exclusively by the Student Editorial Board of the Journal and made available to any first year day (or second year evening division) student at the conclusion of examinations in the Spring term; or by presenting a course, seminar or supervised writing project to a supervising professor who—upon concurrence as to the high quality of the work by the Faculty Editor-in-Chief—may in turn submit the paper to the Student Editor-in-Chief for ultimate acceptance or rejection. This third approach to membership is patterned essentially after what the *Yale Law Journal* has followed for selection of its members. Originally, for the first five years of the Journal's existence, the Faculty Editor-in-Chief and the two Faculty

Editors assumed the unilateral authority to select those student research papers nominated by faculty colleagues. As the number of submissions and the quality increased, it became increasingly difficult to select members this way. Obviously the quality control measures were high, but oftentimes total agreement was difficult to reach regarding acceptance or rejection. With volume six, the procedure was accordingly modified—thus bringing the Student Editor-in-Chief into the deliberative process and thus making it more democratic.

After selection, before full membership on the Journal is conferred, each student must—during the probationary year—not only write a comment, case-comment or case note of publishable quality, but must also perform citation verifications or cite and source “pulls” to footnotes of the lead articles—as well as subsequently accepted student pieces—and blue booking with the Harvard Citator together with other editorial assignments. It is rigorous training for a rigorous profession that demands much of its members; for the only way to learn how to write, analyze and “do legal research” is by undertaking it whenever the opportunity is presented. *The Health Law Journal* is an indispensable adjunct to the total learning experience here at the Catholic University Law School. In a way, it is truly a “clinical” experience wherein students meet “head on” real “cutting edge” legal problems that are addressed and resolved within the scholastic frame of analysis.

While Steven P. Frankino was the igniting force for *The Journal of Contemporary Health Law and Policy* as its founding Dean, it has remained for Ralph J. Rohner to be its strong advocate and, indeed, stabilizing force for continued existence and vitality. Both men have shown their commitment to excellence in legal education and enhanced opportunities for student participation in legal scholarship by investing limited budgetary funds in this scholastic enterprise we call the *Health Law Journal*. Both men are equally committed to the concept of law reform that has been a goal of our Journal since its inception. The success of the student contributions that have been uncovered and addressed, and—as such—advanced and promoted current issues in law making, together with the legal writing opportunities created for them as well in this Journal, are in no small measure due to the strength and the loyalty of these two Deans. Ultimately, the only real ethical justification for an enterprise such as the Journal is, in the words of Lord Bacon, “the relief of man’s estate.”<sup>3</sup> We thank Dean Frankino and Dean Rohner for believing in our

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3. FRANCIS BACON, *THE ADVANCEMENT OF LEARNING* 35 (G.W. Kitchen ed. 1965).

ability to be a vital force in shaping the values and principles, as well as developing an agenda for enhancing the standards of contemporary health care delivery and thus thereby relieving man's estate.

In describing the *Journal's* quality and impact, Mr. Justice Michael D. Kirby, President of The Court of Appeal, Supreme Court of New South Wales, Australia, himself a contributor, acknowledged that, "The *Journal* is uniquely international in its outlook. Many United States Law Journals appear to colleagues in the common law to be unduly provincial and introspective. The subject matters of this Journal are basically international: so is its outlook. I hope this perspective endures." Erwin N. Griswold, the former Dean of the Harvard Law School and Solicitor General of the United States, commenting on volume nine of the *Journal* observed that, "there is an amazing amount of important material in this issue. . . ."

Each of the ten Student Editors-in-Chief and their Editorial Boards and staffs have contributed to the Journal's growth in important and unique ways. Rather than ask each of these Student Editors to write reflections of their particular volumes, three have been invited to share their experiences (e.g., accomplishments and disappointments) as they worked to put out their respective issues. Each of them had a critical role to play at important junctures in the Journal's life and each displayed personality traits that in turn showed strength and tenacity in leadership as well as persistence, imagination and patience—with the latter quality being much appreciated personally because so much of it was shown to me.