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Professor King and the Health Law Curriculum

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Swift tells us that "vision is the art of seeing things invisible." According to Justice Holmes, the cosmos is interrelated: "To be master of any branch of knowledge, you must master those which lie next to it; and thus to know anything you must know all." The line between law and medicine has always been distinct and has seemingly hardened and grown bolder over the centuries. But vision is not only the art of seeing the invisible; it is the art of dispelling the visible, and Professor Josephine Y. King is a pioneer in demonstrating that this line is in part an illusion.

It is not easy to make changes in a law school curriculum. As in other institutions, a law school has its own conventions, and tradition is a form of inertia that does not respond quickly to the force of logic or circumstance. Lawyers and judges like the predictable and are comfortable with tradition. Making changes interrupts this pleasant world; it is disconcerting to face the unfamiliar, and it is tempting to hold to a practice because it is a groove already cut in a trackless plain. It is especially hard to introduce change into the health law curriculum, a field steeped, so it would initially appear, in the discipline of an age and tradition similar to law, and founded and overseen by professionals of the medical arts.

There are, for instance, superficial parallels in the development of professionalism in law and medicine during the last 400 years. The English bar was organized early, by terms of function, into barristers and solicitors. English doctors at almost the same time were divided also by function—into physicians who only observed, speculated, and prescribed, and surgeons who engaged in manual treatment and also prescribed; the surgeons belonged to the same guild as barbers. Moreover, lawyers and doctors adhered to ethical rules of conduct imposed by the profession by which not only competence to perform, but also devotion to the client's or patient's interest beyond profit, were recognized as predominant objectives. In time, both professions became regulated by licensing procedures established by the state.

* Associate Justice, New York Supreme Court, Appellate Division (retired).
4. C. Chapman, supra note 3, at 77.
5. Admission to the bar has been traditionally supervised by the court system. On the
Each profession, too, enjoys a testimonial privilege granted to the clients or patients involved in litigation.

For many years the two professions were allied in a field of study defined as forensic medicine, particularly dealing with the reception of opinion evidence and the proper inferences to be drawn from the results of scientific tests and analyses—tests of ever-increasing importance and complexity.\(^6\) Even more significantly, the advances in medical treatment concerning the conception of life and the prevention of death have necessarily linked doctors and lawyers in a myriad of social and ethical problems.\(^7\) At the same time that these movements thrust the two professions into closer proximity, the marked acceleration of medical malpractice actions in the past twenty years has caused a growing hostility in doctors toward lawyers. The return of large verdicts and the concomitant rise in insurance premiums (or in some instances, the refusal of carriers to provide protective policies at all) have contributed heavily to that resentment,\(^8\) culminating in appeals by the medical profession for legislative relief.\(^9\)

Thus, the comfort of tradition has been penetrated by the demands of rigorous necessity. All of this sharpens the need for the study of these issues in the law school. What has not been encompassed in the traditional sphere of forensic medicine is the recent and overwhelming surge of health care enterprise in our culture. The influence of Social Security, Medicare, Medicaid, and the practice of medicine in a clinical or corporate setting, or in the laboratory or experimental milieu, pervades our lives. The business of the delivery of medical and medically related services is measured in billions of dollars. Consequently, questions of the fair cost and extent of services rendered within the governmental programs and private insurance sources inevitably have appeared.

Professor King was among the first to perceive the effects of these develop-

\(^6\) See, e.g., People v. Taylor, 75 N.Y.2d 277, 552 N.E.2d 131, 552 N.Y.S.2d 883 (1990) (addressing the admissibility of expert testimony relative to "rape trauma syndrome" exhibited by the victim of the assault).

\(^7\) See, e.g., Delio v. Westchester County Medical Center, 129 A.D.2d 1, 516 N.Y.S.2d 677 (1987) (deciding whether court may permit removal of feeding tube from patient in vegetative state); see also Patterson, Health Care Choice and the Constitution: Reconciling Privacy and Public Health, 42 Rutgers L. Rev. 1, 16 (1989) (considering whether there are constitutional restraints on the Government's role in making health care decisions for patients).

\(^8\) Annas, Doctors and Lawyers and Wolves, 29 Jurimetrics J. 437 (1989).

\(^9\) Patterson, supra note 7, at 5.
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ments, bordering on a quiet revolution, on the curriculum of a law school. “Making a single complex industry the focal point of a law school course is something of a pedagogical innovation.”

The breadth of this innovation becomes evident when examined against the backdrop of the purpose of a law school. Should it be a place simply to train lawyers or a place to gather knowledge, through scholarly research, for the improvement of the law? Should the law school shape its curriculum by differentiating between the art of counseling and the art of advocacy? It has been suggested that there are five standards to determine the curriculum of a law school—the Practice Model, the Rules Model, the Principles Model, the Policy Model, and the New Vision Model, each commanding the support of a segment of the profession.

Whatever the attempts to rationalize curricular changes may claim to justify, the changes do not come at once. Sixty years ago, when I was attending Columbia Law School, the courses were fairly well stratified according to the areas of common law: Torts, Contracts, Procedure, Bills and Notes, Sales, Real Property, Trusts, and Estates. The course offerings did not materially differ from the curriculum of sixty years before my attendance. True, there were certain curricular innovations in my day: Development of Legal Institutions, devoted to a history of the common law, Legislation, reviewing the influence of statutes and the mechanics and art of drafting governmental law and regulations, and Ethics, dealing with the requirements for enforcement of standards of conduct for the profession. There were no courses addressed to forensic medicine. Here, curiously, the curriculum of 1870 was more advanced, evidenced by a course in Medical Jurisprudence, taught by the physician and attorney John Ordronaux. Of course, in 1930 the philosophy of legal realism, promoted by Karl Llewellyn, was strongly entrenched at Columbia. This dynamic concept of the law, as both a mirror and a self-

11. See Barnhizer, The University Ideal and the American Law School, 42 Rutgers L. Rev. 109, 111-13 (1989) (discussing the law school as a “hybrid institution”).
14. I have in my possession a copy of the notes of James H. Donaldson, a student at Columbia Law School in 1873, given to me by the Honorable Dorothea Donaldson, a relative of Mr. Donaldson. His notes, carefully composed and written in a clear copperplate script, reflect the curriculum determined by Theodore Dwight, an innovator of his day.
15. J. GOEBEL, A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 60-61 (1955). At that time students attended for two years, using text books supplemented by lectures.
adjusting mechanism to meet contemporary needs, was a true progenitor of the new health law curriculum.\textsuperscript{16}

Pace Law School was established in 1976, and Professor King joined the faculty within a short time thereafter. She early remarked the rapid and accelerating rate of growth and the power of health care institutions throughout our society. In 1983, at her urging, a course called Law and Medicine was first offered at Pace, focusing primarily on medical malpractice. Professor King soon discerned that such a narrowly concentrated view did not correspond to the broader issues of policy and the definition of rights arising from the contractual and statutory structures introduced by the insurance coverage and social security expansion during the last thirty years. She proposed to the faculty in April, 1984, that a program concerned with health care as a regulated industry should be presented in the curriculum, leading to an award of a certificate.\textsuperscript{17}

A certificate program calls for the earning of credits within a prescribed cluster of courses, and though it does not alter the degree ultimately to be awarded, it represents a distinction in a specialty.\textsuperscript{18} In Professor King's proposal to the faculty, she outlined three areas of specific study: (1) financing and payment for health care, singly or together by governmental sources, insurance protection, private funds or charitable provenance, (2) assigning responsibility to the parties making choices for required medical care, and how those choices should be made when medical care is lacking, and (3) evaluating the quality of care to be offered, even though cost may be a factor.

The faculty approved the program in November, 1984. In May, 1986, the issuance of a certificate was sanctioned by the state educational authorities. Since that time seven certificates have been awarded. Presently, the health law program comprises twelve courses, covering both, generally, the health care system and, specifically, various aspects of the system.\textsuperscript{19} Certain courses are taught in the graduate Department of Public Administration at Pace University, relating in particular to the organizational framework and

\textsuperscript{16} Llewellyn considered legal realism, in its emphasis on current practice, as the ultimate source of legal meaning and opposed the idea of formalism based on a few abstract principles. See Patterson, Book Review, 90 COLUM. L. REV. 575, 577-78 (1990) (reviewing K. LLEWELLYN, THE CASE LAW SYSTEM IN AMERICA (1989)).

\textsuperscript{17} A certificate program in New York must be approved by the Commissioner of Education and the Board of Regents. See N.Y. EDUC. LAW §§ 226(9), 210, 215 (McKinney 1988); N.Y. COMP. CODES R. & REGS. tit. 8, §§ 52.1, 52.2(7-c) (1989).

\textsuperscript{18} A certificate requires the completion of 12 credits within the health law sequence with an average grade of B and no grade below C. Students must maintain an overall average of 2.5.

\textsuperscript{19} The curriculum is described in the Appendix.
methods of public and private health agencies, as well as past and current alterations within the agencies.

A Council of Advisors, composed of attorneys and legislators, is attached to the program. This body assists in the critique of the courses and helps to anticipate necessary changes in the health law curriculum, arising from problems created by gaps in the services provided.

Conferences directed toward special areas of health law have been sponsored by the law school under the aegis of the program. Moreover, in order to bring the public, the students, and the law school in closer communication with the actual happenings in the delivery stages of health care, students have been placed as externs in the legal departments of hospitals and medical centers in the greater New York area. The students are supervised by professionals who are expected to render monthly reports with respect to the students' work, and at the semester's end to submit an evaluation of each student's performance. Thus, the program is calculated to meet the objectives of training students in the practice of law and of fostering the study of present day conditions to improve the law.

Health law courses appear to be organized around three broad subdivisions: (1) access to health care, (2) the quality of that care, and (3) the financing and cost containment of the care provided. To my untutored eye, the menu at Pace Law School, designed by Professor King, satisfies all these goals. In addition, it seems to me that the program furnishes an excellent base for an assessment of the degree to which the health care system both succeeds and fails, together with the opportunity to formulate improvements which could rectify those flaws presently existing. It is in the academic climate that the ideal and the practice can be scrutinized and compared—an occasion of singular importance to the student and the professional.

Francis Bacon said that time is the greatest innovation, implying that the individual can do little to anticipate the future by his own actions. In Bacon's time perhaps this was true; it is not true today. "Pioneer" is not a word to be used lightly, but in my mind it suits Professor King and reflects her accomplishments in devising a sound health care curriculum. The complexity of the field of health care is bewildering, yet she has detected the common elements and reduced the complexity to an understandable form. O pioneer, we salute you!

APPENDIX

The curriculum consists of the following:

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Health Law and Policy I—The Health Care System.

This is a basic course focusing on the goals of accessibility, quality and economy within the health care system, covering both state and federal levels. Among the topics discussed are health care institutions, malpractice issues, antitrust regulation, and financing and payment for health care.

Health Law and Policy II—Health Care Practice.

This course considers the delivery of services from the viewpoints of the client and the practitioner, directed toward the functions and characteristics of current medical practice.

Health Law and Policy III—Financing the Health Care Delivery System.

This seminar examines financing and third party reimbursement modes, Medicare and Medicaid, tax issues, and payments to physicians.


This course concerns the relation of health law to environmental law, particularly in the areas of risk assessment, clean air and water, and toxic waste disposal.

Health Law and Policy V—Hospital Organization and Management.

Taught in the graduate Department of Public Administration in the Dyson College of Pace University, this course deals with the style of organization and administration in a hospital, the roles of the medical staff and board of directors, and regulatory functions exercised by public agencies.


This course is also taught in the graduate Department of Public Administration and stresses preventive approaches to health care, including the history of public health, environmental concerns, and disease control.


This course examines decisionmaking by health care providers, clients, the public, and scientists regarding fetal therapy, organ transplants, resuscitation, genetic engineering, surrogate parenting, and bioethics.

Health Law and Policy VIII—Food and Drug Law.

This course involves federal regulation, both statutory and administrative, using case law and agency decisions.
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Health Law and Policy IX—Health Insurance.

This course addresses the law with respect to insurance provided by private corporations, Blue Cross and Blue Shield, ERISA, indemnity, peer review, subrogation, and scheduled benefits and limitations.


This seminar presents the necessary practice skills required to deal with administrative agencies in connection with benefits available under governmental programs to aid the disabled, the ill, the aged, and the needy.

Health Law and Policy Practicum.

This course allows the student to work twelve hours weekly with in-house medical counsel under the supervision of experienced health law practitioners.

Health Law Seminar.

This seminar involves a study of a selected subject in depth. Students are expected to follow developments in health law and to submit research papers on significant problems.