

Case Law-Med

The Law-Medicine Center at Case Western Reserve



From prioritization of care to vaccination mandates,
CWRU law faculty shape conversations on the
LEGAL AND ETHICAL ISSUES OF COVID-19



SCHOOL OF LAW

CASE WESTERN RESERVE
UNIVERSITY

First Health Law Center
in the Country



About the Center



The original logo for the Law-Medicine Center, the nation's first health law program.

When Case Western Reserve University launched its Law-Medicine Center in 1953—the first law school in the country to create a program dedicated to the field—the field of health law effectively began. Our top-ranked health law program offers students a unique opportunity to play a pivotal role in emerging areas of law. Students engage with faculty in researching legal, ethical and policy issues raised by advances in human genetics, electronic medical records, artificial intelligence, biomedical research, novel threats to public health, new reproductive technologies, and historic changes in the regulation of government and private health care programs.

Outstanding campus resources support the health law program. Case Western Reserve is a leading research university, with a top-25 medical school and renowned health policy and bioethics programs. Collaborations with peers from our graduate schools of medicine, social sciences and management include shared courses, lectures, symposia and research teams.

The law school is close to multiple major hospital systems—Cleveland Clinic, University Hospitals, Louis Stokes VA Medical Center, MetroHealth Medical Center and Summa Health—which provide opportunities to work and learn in hospital legal environments.

Health Matrix Journal

Our students gain experience writing, editing and publishing scholarly work in our top-rated health law journal, *Health Matrix*. Each issue includes articles by national scholars as well as student notes, written under the supervision of a faculty member. The journal also features articles that grow out of a symposium on a significant health law topic, such as corporate wellness programs, reproductive rights, health disparities and medical big data.



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MAKING H

Between Oct. 1, 2020, and Sept. 30, 2021, **eight** Case Western Reserve University School of Law faculty members appeared in **570+** news articles on health-law topics across a variety of international, national and local media outlets. Here are a few highlights of their insights:



"Police touch people. Imagine having a child in the car who's not vaccinated. People would want to know if a police officer coming to their window is protected."

—Sharona Hoffman to The Washington Post on the risk unvaccinated police officers may bring to the public



"Participants gained insight into the incredible toll this heinous crime takes on its victims, and observed the difference that can be made by providing survivors with access to legal and social services."

—Laura McNally-Levine to a Cleveland ABC affiliate (picked up by news stations nationally) on CWRU law students' work on a statewide human trafficking sting



"This is a very big problem that Congress needs to address now because it's a matter of trust. If you are a perfectly healthy person and you are going to vaccinate for the good of the community, the community should be there, have your back and support you, if you are in fact injured as a result of that act of taking that vaccine."

—Katharine Van Tassel to USA Today on how limiting information about COVID-19 vaccine injury claims could lead to future distrust

8 CWRU School of
Law faculty in
570+
news articles

EADLINES



"This is what it actually looks like for people who are in the transgender community who have experienced human trafficking. Without access to appropriate and sensitive services, it is next to impossible to reintegrate into society."

—Maya Simek to Psychology Today on the challenges transgender victims of human trafficking face if imprisoned



"Keep in mind we have seat belt laws. We have speed limits. I think if we want to accept the benefits of living in a society, we also have to accept there are some constraints on individual liberty."

—Jessica Berg to USA Today on yielding personal freedom to the public good



"Basically, the White House said, 'We will not fund [the World Anti-Doping Agency] and [the U.S. Anti-Doping Agency] unless you put [marijuana] on the list to help us on the anti-drug program. Not because of any performance enhancement concerns.'"

—Maxwell Mehlman to Politico following the suspension of sprinter Sha'Carri Richardson from the Olympics after testing positive for marijuana



"Anti-abortion legislatures are just watching what happens in Texas, and if Texas gets away with this, absolutely they're going to start passing them all over the country."

—Jessie Hill to CBS News on the Justice Department's challenge to Texas' six-week abortion ban

As mentioned...

Our faculty have also appeared in recent months in prominent news sources such as:

Bloomberg Law

Christian Science Monitor

CNBC

CNN

Conde Nast Traveler

Fast Company

Forbes

HuffPost

Kaiser Health News

Los Angeles Times

Mashable

MSN

National Geographic

NPR

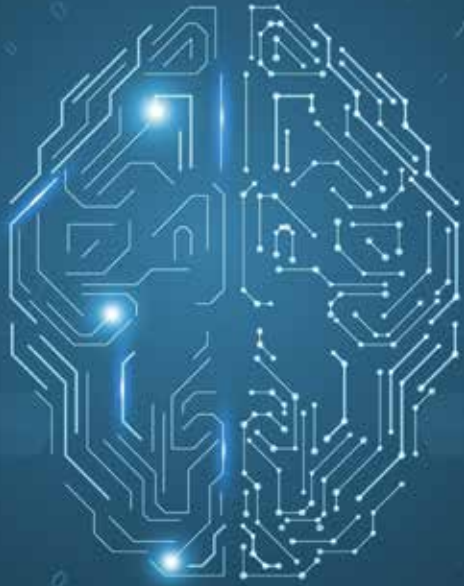
Philadelphia Inquirer

ProPublica

VOX

Wall Street Journal

Yahoo News



Center co-director publishes on artificial intelligence and discrimination

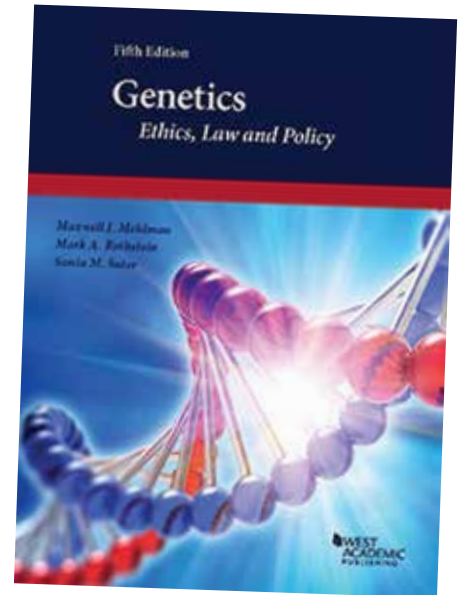
As the proliferation of artificial intelligence compounds ethical issues across fields, Professor Sharona Hoffman (SJD '17), co-director of the Law-Medicine Center, published "Artificial Intelligence and Discrimination in Health Care" in the *Yale Journal of Health Policy Law and Ethics* (2020).

Hoffman's article argues that "algorithmic discrimination in medicine can violate civil rights laws ... when it exacerbates health disparities or perpetuates inequities." She urges that algorithmic fairness be a key element in designing, implementing, and validating AI and writes that both legal and technical tools must be deployed to promote fairness.

CENTER CO-DIRECTOR RELEASES NEW EDITION OF **LAW AND GENETICS** TEXTBOOK

Professor Maxwell Mehlman, co-director of the Law-Medicine Center, the Arthur E. Petersilge Professor of Law and a Distinguished University Professor, published the fifth edition of his acclaimed textbook, *Genetics: Ethics, Law and Policy* (Thompson/West, 2020).

The book, co-authored with University of Louisville's Mark Rothstein and George Washington University's Sonia Sutter, is the only law school textbook on the topic of law and genetics. It addresses ethical, legal, and policy issues of contemporary significance, including the regulation of genetic research, prenatal testing, gene therapy, intellectual property rights, and the use of genetic information by law enforcement, insurers and employers.



Adjunct professor earns top health law award



In recognition of her edited book, *Family Murder: Pathologies of Love and Hate* (2019), Adjunct Professor Susan Hatters Friedman, MD, earned the American Psychiatric Association/American Academy of Psychiatry and the Law's 2020 Manfred S. Guttmacher Award. The award-winning book delves into each of the types of murder that can occur within families, from killing of newborns to elderly mercy killings.

Hatters Friedman, the Phillip J. Resnick Professor of Forensic Psychiatry at Case Western Reserve University School of Medicine, is president of the American Academy of Psychiatry and the Law and deputy editor of the *Journal of the American Academy of Psychiatry and the Law*.



Faculty members' paper published in *New England Journal of Medicine*; research featured at conference and in forthcoming book

The accelerated development of COVID-19 vaccines brought a sense of relief to many. But two Case Western Reserve University School of Law faculty members raised concerns about the shortcomings of the system for compensating anyone who suffers vaccine injuries and the potential for resulting exacerbation of health and economic disparities.

Katharine Van Tassel (NUR '80, LAW '86), visiting professor of law and interim executive director of graduate programs in compliance and risk management, and Sharona Hoffman (SJD '17), the Edgar A. Hahn Professor of Law and co-director of the Law-Medicine Center, co-authored an article with Harvard Law School's Carmel Shachar, titled "Covid-19 Vaccine Injuries — Preventing Inequities in Compensation."

Published in March in the *New England Journal of Medicine*, the paper analyzes how the injury-compensation system that operates during public health emergencies can especially burden low-income people.

Van Tassel also presented a paper on the topic at a virtual conference hosted by Harvard and Yale law schools in February. The conference led to a forthcoming book, to be published by Cambridge University Press, titled *COVID-19 and the Law: Disruption, Impact and Legacy*. Van Tassel and Hoffman co-authored a chapter, "Vulnerable Populations and Vaccine Injury Compensation: The Need for Legal Reform."

Learn more about their work on p. 10.

First-year students gain wide-ranging health-law experiences through fellowships

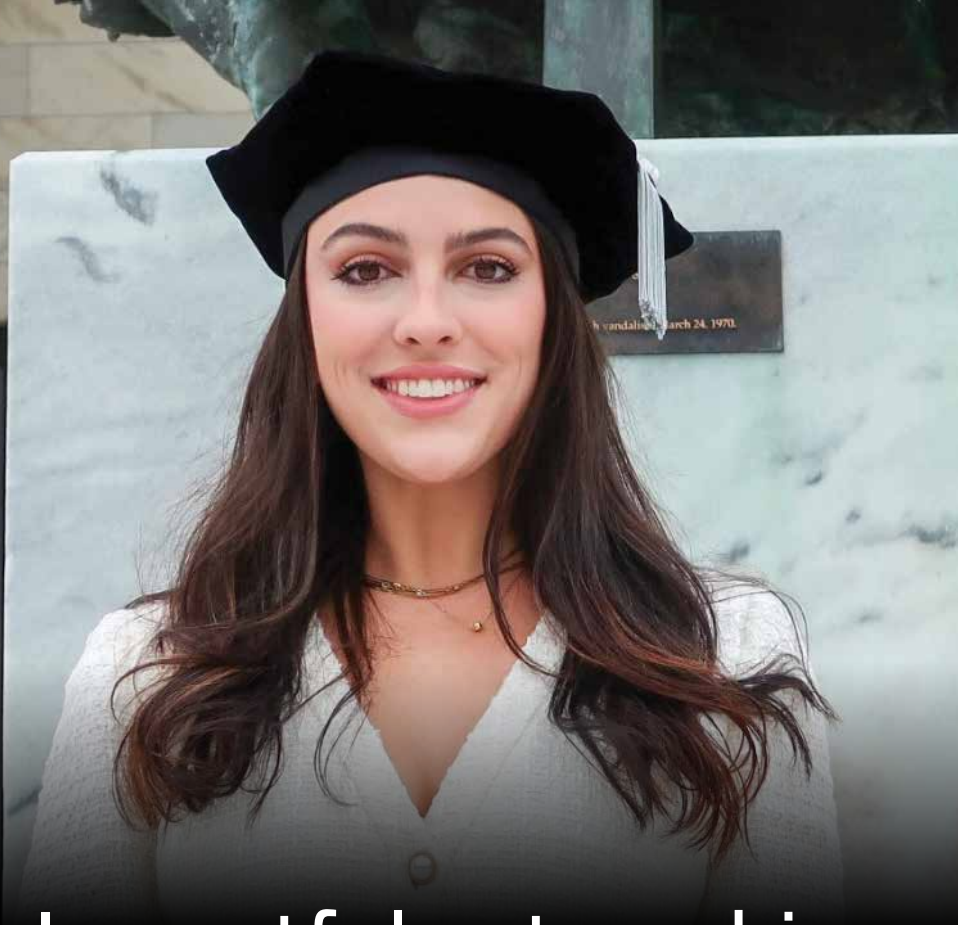
From an analysis of the history of drug importation to the creation of a proposal for a law clinic supporting veterans, a select group of Case Western Reserve University School of Law students completed wide-ranging and important health-law projects in their first year.

The seven Gerber Law-Medicine Fellows who are part of the Class of 2023 undertook in-depth research and analysis of cutting-edge issues, culminating in project presentations at the end of their first year.

Get an overview of the students' work, completed under the guidance of Katharine Van Tassel (NUR '80, LAW '86), visiting professor of law and interim executive director of graduate programs in compliance and risk management:

- **Shelby Conklin** researched the history of drug importation, the roles of the Food and Drug Administration (FDA) and Department of Health and Human Services (HHS) in importation, and the drug supply chain. She then wrote an in-depth post for *HealthLawProf Blog* on a lawsuit filed against the FDA and HHS arising out of their Final Rule, which allows states to import drugs from Canada.
- **Kennedy Dickson** researched the public health concerns arising from the significant growth of the medical use of marijuana over the past five years through the liberalization of state laws. She then completed a draft of a law review article, titled "Medical Marijuana: A Matter of Interpretation."
- **Melanie Fuenmayor** wrote two in-depth posts for *HealthLawProf Blog*. The first covers the FDA's policy modification that allows food manufacturers to alter ingredients without any label changes during the COVID-19 pandemic and analyzes the policy's potential implications for allergy sufferers. The second details the recent success of the Bee Better initiative, which incentivizes food manufacturers to engage in pollinator conservation efforts.
- **Joseph Matts** researched and drafted an extensive proposal for a CWRU law school clinic supporting veterans with less-than-honorable discharges (often because of events caused by trauma suffered during military service, such as post-traumatic stress disorder or traumatic brain injury) who are unable to access health care benefits available to other veterans.
- **Owen Migdal** used his experience in health sciences and knowledge from his dual-degree JD/MD curriculum to create a proposal for a one-credit elective course that would teach law students how to read medical records.
- **Teddy Truta-Modovan** wrote an in-depth memorandum on the appeal process for denial of veterans' health care and disability benefits. In the memorandum, he highlighted the difficulty many veterans have in navigating the complex system and discussed how law students could assist such clients.
- **Victoria Neikam** created an extensive outline for a law review article on the No Surprises Act of 2020—a law that requires that insured patients seeking out-of-network, non-emergency services be provided with a "good faith" cost estimate 72 hours prior to the rendering of services.

Each year, approximately **10 Gerber Law-Medicine Fellows** with outstanding academic credentials and an interest in pursuing careers in health law are awarded **scholarships covering at least 75% of their tuition**, plus additional stipends for work on health law projects during the academic year.



Impactful externship

The biggest learning experience from my 2021 externship was seeing how attorneys can contribute to policy in the pursuit of justice for their clients. Working for the Capital Habeas Unit at the Federal Public Defender for the Northern District of Ohio, I participated in a subcommittee focused on analyzing a new Ohio bill that created exemptions from the death penalty for individuals with serious mental illness. This unique experience showed me how client advocacy can also advance criminal justice and mental health issues.

—Rachel Lamparelli (LAW '21), who is now a Master of Public Health student at Johns Hopkins University and a health policy intern for the U.S. House of Representatives Committee on Oversight and Reform, focusing on prescription drug pricing and gender health equity issues

Growing demand leads to new master's, certificate programs in compliance

As the volume of laws, regulations, standards and guidelines governing health care-related businesses dramatically increases, so too does demand for individuals with expertise in compliance.

That's why Case Western Reserve University School of Law launched a new master's degree and certificate program in health care compliance and risk management in the fall of 2021. With just a month of marketing, nine students are enrolled in the new program, which Co-Dean Michael Scharf described as "an incredible start."

"The roles of compliance and risk management officers are gaining importance in most health care businesses," said Katharine Van Tassel (NUR '80, LAW '86), a visiting professor of law and interim executive director of the law school's graduate compliance programs.

And, as the regulatory state has expanded to reach well beyond traditional corporate compliance to include activities such as clinical care, quality of care, billing and health information management, Van Tassel said governance, risk management and compliance has become a "major new field of expertise" with its own methods of critical thinking, risk assessment and managerial sociology.

The law school's programs in compliance and risk management is one of only a few such graduate programs in the country—and the only master's degree of its kind in Ohio.

PARADOXES OF THE PANDEMIC

Armed with historical knowledge and legal expertise, our faculty are helping shape conversations and drive change in an uncertain world

By Emily Mayock and Mark Oprea

"I think it is important for people to recognize that the choices they make in this context have real life-and-death consequences for other people, and I think the governor's point is simply to say, 'You really need to do this. This isn't an optional kind of thing. It means that your choice not to wear a mask is someone else's life.'"

—Jessica Berg to a local ABC affiliate on mask mandates in Ohio

For 20 months, the COVID-19 pandemic has come in waves, albeit with a continuous, steady and dangerous undertow. And with each crash comes an outpouring of legal and ethical questions that demand solutions—often, fast.

In the beginning, pressing problems surrounded life-or-death matters: Who should get access to scarce personal protective equipment? What about limited numbers of intensive care unit beds or lifesaving ventilators? What criteria should front-line workers use to assess which patients get priority care?

As weeks and months progressed, the questions shifted: When can employers require workers to return to the office—and what if they feel unsafe? Can masks be required in airplanes, restaurants, shops, and places of worship? And what about schools: Does the risk of the novel coronavirus outweigh the reward of children learning in person?

By summer 2021, as COVID-19 vaccines became widely available in the U.S., the tide turned toward the legality of vaccine mandates by employers, the government or even restaurant operators.

As such legal and ethical questions continue to evolve, Case Western Reserve University School of Law faculty have been at the center of the discussion—guiding policy and promoting public understanding of increasingly complex concerns.

"COVID-19 has raised fascinating legal and ethical questions with which scholars and policy makers will grapple for years to come," said Sharona Hoffman (SJD '17), co-director of the Law-Medicine Center and the Edgar A. Hahn Professor of Law at the law school and a professor of bioethics at Case Western Reserve University School of Medicine. "It is a privilege for our faculty to be at the forefront of many of these contemporary debates and to help analyze what went right and wrong in the pandemic response and what improvements need to be made in the future."



LEARNING FROM HISTORY

Long before the current pandemic, the U.S. dealt with legal and ethical issues in public health, said Maxwell Mehlman, co-director of the Law-Medicine Center and the Arthur E. Petersilge Professor of Law.

In World War II, for example, limited doses of penicillin were, based on new military policy, triaged to hospitalized soldiers with venereal disease rather than those wounded from battle. And in the 1960s, “God Committees” (hospital bioethics boards comprising public citizens) gathered to prioritize dialysis patients for treatment based on variables such as age, wealth, marital status—even “emotional stability.”

“You’ve got to be very careful” in public health policy making, said Mehlman, also a professor of bioethics in Case Western Reserve’s School of Medicine. Nuance, he said, is paramount when it comes to the myriad either/or decisions that have arisen during the COVID-19 pandemic, and the U.S. is a difficult country for which to prescribe a solution as a whole.

Citing the Tenth Amendment, which delegates most public health issues to the states, Mehlman believes it’s critical to uphold the principles of the U.S. Constitution.

States are at the vanguard of grappling with ethical inquiries addressing topics such as vaccine mandates, mask-wearing in schools or quarantines during a COVID-19 spike.

But Mehlman also worries about state powers: “Should Idaho be allowed to do whatever it wants at the risk of many people dying?” he asked. “Or should the federal government be able to step in and say no?”

Mehlman, for his part, has long stood by lawmakers’ ability to mandate vaccination. In August 2020, months before the first COVID-19 vaccines gained emergency use authorization in the U.S., he and two School of Medicine colleagues penned an op-ed in *USA Today* supporting penalties for those who refuse vaccination and suggesting the creation of a vast immunization database.

“These measures might seem draconian and would be costly,” the trio wrote, “but ensuring universal vaccination is a negligible sacrifice compared with the costs, deaths and social upheaval that a sustained pandemic is having on our country.”

More than 14 months later, the death toll in the United States alone has topped 715,000, and a universal mandate is nowhere in sight.

“While this is unquestionably an aggressive use of OSHA authority, it does not represent a dramatic departure from the sorts of things OSHA has done over the past fifty years, and does not raise quite the same specter of an agency without unlimited authority that the CDC moratoria did. This doesn’t mean the standard should or will survive legal challenge, but it does indicate the issues are somewhat different.”

—Jonathan Adler, writing on *The Volokh Conspiracy* about President Biden’s announcement that the Occupational Safety and Health Administration (OSHA) will require large employers to mandate vaccination or testing of their employees


“This is a whole uncharted territory—does the parent have a religious right essentially to override the child’s religious beliefs? We have this big question mark about whether parents, especially when the minor is considered mature and able to make their own decisions ... still have a right, at that point, to exempt them on religious grounds.”

—Jessie Hill to *The Washington Post* on children’s abilities to overrule their parents to get vaccinated



In March 2021, Case Western Reserve opened a COVID-19 vaccination site serving the Cleveland and university communities.

Photos from the vaccine site by Angelo Merendino.



Mask mandates, temperature checks, COVID-19 testing and vaccination requirements are among the many changes businesses and other institutions—both public and private—made amid the pandemic to slow the spread.

A MORAL IMPERATIVE

The pandemic has highlighted the heightened—and sometimes deadly—effects of disparities in health care. For example, statistics have shown that racial and ethnic minorities are more than twice as likely to die from COVID-19 as white people, and mortality rates increase in high-poverty areas over wealthier ones. Taken together, it becomes clear that there is an urgent need to quickly vaccinate minority and low-income populations, both of which are often communities with high levels of vaccine hesitancy.

Yet the system in place to compensate people who face adverse reactions from vaccinations is highly unjust amid a pandemic, especially for individuals with low incomes, according to research by Professors Sharona Hoffman and Katharine Van Tassel (NUR '80, LAW '86) along with a colleague from Harvard Law School, Carmel Shachar. Their concerns were detailed in a *New England Journal of Medicine* article in early 2021, shortly after the rollout of emergency-use COVID-19 vaccines began.

For typical FDA-approved vaccines, individuals can receive compensation for their physical injuries under the National Vaccine Injury Compensation Program (VICP). In addition, they can receive up to \$250,000 for pain and suffering and they can have their attorney and travel fees covered. Since 2015, the fund has paid out an average total

of \$216 million annually, with about 615 claimants each year receiving compensation.

But the Countermeasures Injury Compensation Program (CICP), which goes into effect during federally declared public health emergencies, such as pandemics or security threats, through the Public Readiness and Emergency (PREP) Act, is highly unjust when compared to the VICP, they said. It compensates for only the most serious injuries, has a one-year statute of limitations and caps awards for damages. Plus, the burden of proof is far higher: while 70 percent of VICP claims have been approved, nearly 90 percent of CICP claims have been rejected.

In general, the CICP process is lengthier, more difficult and more expensive than the VICP process, Van Tassel, Hoffman and Shachar wrote. And all of these factors add up to a system that would “especially burden low-income people, who have limited financial resources to obtain medical care, weather any resulting job loss, and pursue compensation, and who are disproportionately non-white.”

Hoffman, Van Tassel and Shachar argue for what they believe is a much-needed, two-pronged fix to the system: Amend the PREP Act so those who follow the government’s guidance and receive vaccines while an emergency declaration is still in



About a year into the pandemic, Naomi Gahyun Kim (LAW '21) got hands-on experience navigating

the possibilities and pitfalls of vaccine mandates. During her third-year capstone externship at Case Western Reserve University School of Law, Kim worked at the U.S. Centers for Disease Control and Prevention’s Public Health Law Program, where she focused on state vaccination laws and researched the constitutional and civil rights implications of potential vaccine mandates.

place can have claims processed through the VICP rather than the CICP and are not disadvantaged. And second, impose a 75-cent excise tax on all vaccines to finance the VICP’s reserves.

To Van Tassel, including COVID-19 vaccines in VICP is a moral imperative, especially if the government wants to require citizens to become vaccinated.

“If you’re going to take one for the team,” Van Tassel told Kaiser Health News, “the team has to have your back.”

A passion for trying to right a wrong

ONE ALUMNUS' FIGHT TO END THE OPIOID EPIDEMIC

By Carey Skinner Moss



PHOTO CREDIT:
Roger Mastroianni

Native Clevelander Peter Weinberger (LAW '75) has worked with Spangenberg Shibley & Liber LLP since 1988—an experience he calls one of the “great joys of his life.”

In 2017, after almost three decades with the firm, he stepped down from managing partner to of-counsel status, and planned to slowly reduce his caseload while he and his wife of nearly 50 years, Laurie, transitioned to retired life in Naples, Florida.

Yet his extensive experience in multidistrict litigation and decades of successful medical malpractice cases led to an unexpected request: He was asked to serve as the plaintiffs’ co-liaison counsel in the National Prescription Opiate Multidistrict Litigation case in the Northern District of Ohio Federal Court.

Four years later, Weinberger’s anticipated “somewhat-limited” involvement in the case has been a “24/7, more than full-time job.”

HOW IT ALL BEGAN

The basis of the case dates back to the 1990s, when Purdue Pharma began marketing the timed-release synthetic opioid OxyContin to doctors as a safer alternative to morphine for pain management.

The marketing campaign, which made unsubstantiated claims of a lower risk of addiction than morphine, was highly successful. Before long, people became dependent and abused the narcotic—crushing the pills to snort them or liquifying them for injection. When a tamper-proof version of the drug was released in 2011, people turned to street drugs to satisfy their addiction.

Today, the opioid epidemic rages on in the United States, now with a deadly combination of prescription opioids, heroin and fentanyl.

The Centers for Disease Control and Prevention reported that drug-related deaths quadrupled between 1999 and 2019, with nearly 500,000 people dying from opioid overdose. Epidemiological evidence shows that approximately 75% of people who overdose on illicit drugs or who have an opioid use disorder started on prescription opioids.

So far, the litigation—a consolidation of approximately 2,500 cases around the country—has resulted in either multibillion-dollar settlements or bankruptcy filings by several major wholesale drug companies to resolve claims.

WHAT’S NEXT

At the time of the interview in early October, Weinberger was just days away from the next phase of the litigation. This time, he is challenging three national retail pharmacy chains—CVS, Walgreens and Walmart—and one regional chain, Giant Eagle. The plaintiffs argue the pharmacies must create internal systems controlling misuse and preventing drug diversion into illegal markets, as stated in the 1971 Controlled Substances Act.

“This is a perfect example of a simple case of saying to defendants: ‘You created a public nuisance. You created this epidemic, and we’ve suffered societal harms,’ Weinberger said. “Now you should pay for whatever it takes to abate this epidemic in our communities.”

In this bellwether case, Weinberger represents Ohio’s Lake and Trumbull counties, where the four defendants reportedly distributed up to 36 million pills from 2006 to 2018. “These communities were flooded with pills,” said Weinberger.

Data shows the epidemic has worsened because of COVID-19. Lack of access to counseling and treatment during the pandemic has led to a rise in depression, making those suffering from addiction more likely to relapse.

Weinberger said the desired outcome of this trial is injunctive relief—to change the way the defendants do business. “[The goal is] to prevent the marketing of opioid drugs,” he continued, “and to abate the epidemic

“Trying to use the law to remedy a man-made epidemic. ... It’s an amazing opportunity and an important responsibility.”

—Peter Weinberger

through funding for foster care, treatment centers, medical-assisted treatment drugs and a wide range of other things.”

Weinberger’s 71st birthday is around the corner, and his wife is ready for his retirement to truly begin.

“I’m going to see [the litigation] to the end as much as I can,” said Weinberger, who is on the advisory committee of the Case Western Reserve Law-Medicine Center and, as a two-time cancer survivor, has become heavily involved as chair of the advisory panel for the Case Comprehensive Cancer Center. “Will I try another case? That remains to be seen.”

While this litigation has been stressful and time consuming, Weinberger said it has also been stimulating and energizing, and enabled him to work with some of the greatest lawyers in the country.

“It’s a passion for trying to right a wrong,” said Weinberger. “Being part of that, trying to use the law to remedy a man-made epidemic. ... It’s an amazing opportunity and an important responsibility. It’s what gets me up in the morning every day.”

A look back at our 2020–21 Events

The past year was an opportunity to expand events at Case Western Reserve University School of Law and bring virtual programming to audiences around the globe. The Law-Medicine Center presented 10 health-law events between Oct. 1, 2020, and Sept. 30, 2021—a 43% increase over the prior two years of events, and 100% growth over 2017–18.

Missed an event? Watch recordings online—and see what's next on the schedule—at case.edu/law/law-med. Most archived event videos and upcoming events are available for CLE credit.

Universal Immunization Against COVID: What Law and Society Can Do Oct. 1, 2020

Two months after their widely shared *USA Today* op-ed on the need for universal COVID-19 immunization, Case Western Reserve faculty members Maxwell J. Mehlman, a Distinguished University Professor, the Arthur E. Petersilge Professor of Law, co-director of the Law-Medicine Center and professor of bioethics; Michael Lederman, professor emeritus of medicine; and Stuart J. Youngner (MED '70), professor emeritus of bioethics, discussed potential COVID-19 vaccination policies. The three looked at the topic from medical, law and bioethics angles—including the safety, efficacy and health benefits; the scope of the government and private sector to require vaccination; and the ethical principles involved in universal vaccination.

Practicing Law During a Pandemic Oct. 29, 2020

What has been the pandemic's effect on law—and especially on the judicial system? Co-Dean Jessica Berg (GRS '09, public health) moderated an alumni panel featuring Rebecca Dallet (LAW '94), a justice on the Wisconsin Supreme Court; Michelle Earley (LAW '99), presiding judge of the Cleveland Municipal Court; and Edmund A. Sargus Jr. (LAW '78), a judge on the United States District Court in the Southern District of Ohio, to discuss the wide-ranging impacts of the public health emergency on their work.

Health Equity During the COVID-19 Pandemic: Legal Implications and the Need for Policy to Effect Change Nov. 18, 2020

The COVID-19 pandemic brought about nearly warp-speed technological changes—but such rapid adjustments also led to socioeconomic, educational and demographic disparities. Tammy Boyd, chief policy officer and counsel for the Black Women's Health Imperative, discussed health disparities and the problem of access to new technology. She also offered suggestions for legal actions and policies needed to effect change and ensure access to quality health care for people of color.



School of Law Co-Dean Jessica Berg (pictured here at a previous event) moderated an alumni panel on practicing law amid a pandemic.

2020 National Opioid Leadership Summit Dec. 8–9, 2020


Case Western Reserve's law and medical schools sponsored the Public Health Institute and University Hospitals' virtual experience, in which attendees collaborated on solutions to the opioid crisis that bridge criminal justice, health care and public health sectors. Over two days, attendees discussed successful models and policies and how they can be tailored for individual communities through a variety of TED-style talks, keynotes and interactive breakout sessions.

After the Inauguration: Abortion Law in 2021 Jan. 28, 2021

Kicking off the new year and new presidential administration, Jessie Hill, the Judge Ben C. Green Professor of Law and associate dean for research and faculty development, moderated a panel of speakers to discuss what abortion access looks like with and without federal protection. Speakers—Farah Diaz-Tello, senior counsel at If/When/How: Lawyering for Reproductive Justice; Julia Kaye, staff attorney with the American Civil Liberties Union's Reproductive Freedom Project; Rachel Rebouche, interim dean and the James E. Beasley Professor of Law at Temple University Beasley School of Law; and Ushma Upadhyay, professor in the Bixby Center for Global Reproductive Health at University of California San Francisco—examined how abortion access could change and what challenges remain during the pandemic.

Artificial Intelligence and Discrimination in Health Care Feb. 18, 2021

Though artificial intelligence (AI) holds great promise for improved health care outcomes—analyzing tumor images, helping doctors choose among treatment options and combatting the COVID-19 pandemic—it also poses hazards, including discrimination. Sharona Hoffman, co-director of the Law-Medicine Center, the Edgar A. Hahn Professor of Law and a professor of bioethics, discussed various forms of AI bias and their implications. Central to her presentation: Algorithmic discrimination in medicine can violate civil rights laws when it exacerbates health disparities or perpetuates inequities, but there are legal and technical interventions that can be implemented to promote algorithmic fairness.

A photograph of Maxwell J. Mehlman, a man with grey hair and glasses, wearing a dark blue suit and a blue patterned tie. He is standing at a wooden podium with a microphone, gesturing with his hands while speaking. In the background, there is a blue banner with a logo and a screen displaying text.

Military Use of Biomedical Performance Enhancements: Ethical, Legal, and Policy Concerns

Feb. 24, 2021

Biological interventions to improve performance, such as amphetamines, have a long history of military use and, in the future, may include more advanced biotechnologies. Maxwell J. Mehlman, a Distinguished University Professor, the Arthur E. Petersilge Professor of Law, co-director of the Law-Medicine Center and professor of bioethics, examined the ethics of using biomedical enhancements in the military and the three principles that can guide the ethical use of bioenhancements: proportionality, paternalism and fairness.

Though in years past, Law-Medicine Center events brought speakers to campus, the switch to virtual conferences and panels in 2020–21 allowed the center to expand its offerings.

Murder in the Family: Perpetrators, Motives and Prevention

March 9, 2021

Susan Hatters Friedman (CWR '96, MED '99), MD, the Phillip J. Resnick Professor of Forensic Psychiatry at Case Western Reserve University School of Medicine and an adjunct professor in the School of Law, discussed various types of family-related murders, ranging from infanticide to elderly partner homicide. She described common characteristics among perpetrators and their motives, as well as how the law should address the dangers of such murders and how they might be prevented.

The Role of Managed Care in Today's Healthcare System

Sept. 20, 2021

Nearly 70% of Medicaid beneficiaries nationally are enrolled in comprehensive managed care plans, which play a critical role in responding to the COVID-19 pandemic and in addressing health care cost concerns. Vince Daniele, an attorney in CareSource's Office of General Counsel, discussed his views of the impact of Medicaid Managed Care on the U.S. healthcare system. He detailed characteristics of managed care plans, managed care payments, and managed care's potential effects on medical outcomes and social determinants of health and discussed the future of managed care. A lively discussion followed his talk.

The Mess with Texas: What's Going on With Texas's Abortion Laws?

Sept. 8, 2021

Following Texas' ban on abortions at six weeks, Jessie Hill, the Judge Ben C. Green Professor of Law and associate dean for research and faculty development, explained the recent law and its implications. She analyzed potential litigation theories that could be used to challenge the law, and discussed what may happen next. Hill researches, litigates and consults extensively in the field of reproductive rights law.



FACULTY BRIEFS

Publications by our health law faculty

JONATHAN H. ADLER

"The Legal and Administrative Risks of Climate Regulation," 51 *Environmental Law Reporter* 10485 (2021).

B. JESSIE HILL

"Look Who's Talking: Conscience, Complicity, and Compelled Speech," *Indiana Law Journal* (forthcoming 2022).

"The Geography of Abortion Rights," 109 *Georgetown Law Journal* 1081 (2021).

SHARONA HOFFMAN

"Cognitive Decline and the Workplace," *Wake Forest Law Review* (forthcoming 2022).

"Professional Speech at Scale," *U.C. Davis Law Review* (forthcoming 2022) (with Cassandra Burke Robertson).

Aging with A Plan: How A Little Thought Today Can Vastly Improve Your Tomorrow, Second Edition, First Hill Books (an imprint of Anthem Press) (forthcoming 2021).

"Artificial Intelligence and Discrimination Based on Prediction of Future Illness" in *Deep Diving into Data Protection 1979-2019: Celebrating 40 Years of Privacy and Data Protection at the CRIDS* 365-79 (Larcier 2021) (with Mariah Dick).

"The Emerging Hazard of AI-Related Health Care Discrimination," 51 *Hastings Center Report*, 8-9 (2021).

"The Limited Reach of the HIPAA Security Rule," *The Regulatory Review*, Aug. 16, 2021. "Race and Gender Bias in Medical AI," *Wiley*, March 10, 2021.

"Biased AI Can Be Bad for Your Health – Here's How to Promote Algorithmic Fairness," *The Conversation*, March 9, 2021.

MAXWELL MEHLMAN

"Genetics" in *Oxford Handbook of Comparative Health Law* (Hervey and Orentlicher, eds. Oxford University Press (forthcoming 2021) (with Suter and Harlev).

"Governance of Non-Traditional Biological Experimentation" in *Consumer Genetics: The Ethical and Legal Considerations of Consumer Genetic Technologies*, Cambridge University Press (forthcoming 2021) (with Ronald Conlon).

"Predictive Genetic Testing by the U.S. Military: Legal and Ethical Issues," *Military Medicine*, January 2021 (with Efthimios Parasidis).

KATHARINE VAN TASSEL

International Encyclopedia of Laws: Medical Law, United States of America (Wolters Kluwer, forthcoming 2022).

Food and Drug Administration (4th Ed., 2014) (with James T. O'Reilly) (Spring and Summer 2021 volumes).

KATHARINE A. VAN TASSEL and SHARONA HOFFMAN

"Covid-19 Vaccine Injuries — Preventing Inequities in Compensation," 384 *New England Journal of Medicine* e34 (March 11, 2021) (with Carmel Shacher).

"Vulnerable Populations and Vaccine Injury Compensation: The Need for Legal Reform," in *COVID-19 and the Law: Disruption, Impact and Legacy* (I. Glenn Cohen et al., eds. Cambridge University Press) (forthcoming 2022).

Meet our health law faculty

JONATHAN H. ADLER

Johan Verheij Memorial Professor of Law and Director of the Center for Business Law & Regulation



Jonathan Adler joined the faculty in 2001; prior to that he worked at the Competitive Enterprise Institute and clerked for the Honorable David B. Sentelle on the U.S.

Court of Appeals for the D.C. Circuit. He is the author or editor of seven books, a contributing editor to *National Review Online* and a regular contributor to the popular legal blog "The Volokh Conspiracy." He frequently writes on health law topics, including the Affordable Care Act and e-cigarette regulations. He has testified before Congress a dozen times, and his work has been cited by the U.S. Supreme Court.

JESSICA BERG (GRS '09, PUBLIC HEALTH)

Dean; Tom J.E. and Bette Lou Walker Professor of Law; Professor of Bioethics & Public Health



Jessica Berg has been a member of the faculty since 1999 and has been the co-dean since 2013. Berg previously served as the director of academic affairs and secretary of the Council

on Ethical and Judicial Affairs and section director of professionalism at the American Medical Association. Her research spans a variety of areas including public health, medical decision-making, research with human subjects, confidentiality, reproductive law and ethics, genetic enhancement, end-of-life care, professionalism and e-medicine.

JESSIE HILL

Associate Dean for Faculty Development and Judge Ben C. Green Professor of Law



Jessie Hill joined the faculty in 2003 after practicing First Amendment and civil rights law with the firm of Berkman, Gordon, Murray & DeVan in Cleveland. Hill also

worked at the Reproductive Freedom Project of the national ACLU office in New York, litigating challenges to state-law restrictions on reproductive rights, and she served as law clerk to the Hon. Karen Nelson Moore of the United States Court of Appeals for the Sixth Circuit. Her scholarship focuses on constitutional law, law and religion, and reproductive rights.

SHARONA HOFFMAN (SJD '17)

Edgar A. Hahn Professor of Law, Professor of Bioethics, Co-Director of the Center for Law and Medicine



Sharona Hoffman joined the faculty in 1999 and is the co-director of the Law-Medicine Center at Case Western Reserve University School of Law. Previously she was a senior trial attorney

at the U.S. Equal Employment Opportunity Commission, a litigation associate at O'Melveny & Myers, and a clerk for U.S. District Judge Douglas W. Hillman. Hoffman has lectured nationally and internationally on civil rights and health law topics and has published over 70 articles and book chapters as well as two books: *Aging with a Plan: How a Little Thought Today Can Vastly Improve Your Tomorrow* (Praeger 2015) and *Electronic Health Records and Medical Big Data: Law and Policy* (Cambridge University Press 2016). She was elected to the prestigious American Law Institute in 2017.

LAURA McNALLY-LEVINE

Associate Dean for Experiential Education, Director of the Milton A. Kramer Law Clinic Center, and Professor of Law



Laura McNally-Levine joined the CWRU School of Law faculty in 2005. She has focused her practice and research in the areas of poverty law, disability rights, children's rights and

health law. Recently, she established interdisciplinary collaborations with local hospitals, medical centers and community organizations to provide legal representation and engage in systemic advocacy regarding legal issues that impact community health. McNally-Levine is committed to experiential education and has held positions with the Clinical Legal Education Association and the AALS Section on Clinical Legal Education.

MAXWELL J. MEHLMAN

Arthur E. Petersilge Professor of Law and Professor of Bioethics, School of Medicine; Co-Director of the Law-Medicine Center; Distinguished University Professor



Maxwell Mehlman joined the faculty in 1984 and has been the co-director of the Law-Medicine Center since 1986. Previously, he practiced health law with Arnold & Porter

in Washington, D.C. He is the author or coauthor of over 80 articles and book chapters, and the author, co-author or co-editor of eight books, including *Access to the Genome: The Challenge to Equality*; *Encyclopedia of Ethical, Legal and Policy Issues in Biotechnology*; *Genetics: Ethics, Law and Policy*, the first casebook on genetics and law, now in its fifth edition; and *Transhumanist Dreams and Dystopian Nightmares: The Promise and Peril of Genetic Engineering*, published by Johns Hopkins University Press.

Adjunct Faculty

MAYA SIMEK (SAS '07)

Director, Human Trafficking Project



Maya Simek brings her experience as a licensed social worker and attorney to her work, representing clients of the human trafficking program. She teaches the Health

& Human Trafficking Clinic and uses a trauma-informed approach in representing members of the LGBTQ+ community, human trafficking victims, refugees, and individuals with mental health and/or substance abuse problems. Simek also serves as the managing legal director of Equality Ohio.

KATHARINE VAN TASSEL (NUR '80, LAW '86)

Visiting Professor of Law; Interim Executive Director of Graduate Programs in Compliance and Risk Management



Katharine Van Tassel joined CWRU School of Law in 2019, after serving as dean of San Francisco Law School. She previously served as the associate dean of academics and

professor of law at Concordia University School of Law, as director of health law programs and professor of law at Creighton University School of Law, clerked for U.S. District Court Judge William K. Thomas and was a litigation associate with Squire Sanders & Dempsey (now Squire Patton Boggs). Her co-authored book, *Food and Drug Administration*, has been cited by the U.S. Supreme Court and numerous federal district courts and courts of appeal. She also is the co-author of *Litigating the Nursing Home Case*, author of the *International Encyclopaedia of Laws: Medical Law, United States of America* (Wolters Kluwer - Kluwer Law International, 2022) and editor of *HealthLawProf Blog*. Van Tassel co-chairs the American Bar Association's Food & Drug Law Committee and has served on multiple American Association of Law Schools executive boards.

ROMNEY CULLERS (LAW '90)

Partner, The Becker Law Firm

SUSAN HATTERS-FRIEDMAN (CWR '96, MED '99)

Phillip J. Resnick Professor of Forensic Psychiatry, CWRU School of Medicine; Director of Forensic Psychiatry, University Hospitals Cleveland Medical Center

LINDA MITTLEMAN

(GRS '70, NUTRITION; LAW '86)

Risk Management Consultant

KIRK NAHRA

Partner, WilmerHale

STEPHEN NOFFSINGER

Professor of Psychiatry, CWRU School of Medicine; Program Director for Forensic Psychiatry, University Hospitals Cleveland Medical Center

Center co-director among top 10 most-cited health law faculty in the U.S.

Sharona Hoffman (SJD '17), co-director of the Law-Medicine Center and the Edgar A. Hahn Professor of Law at Case Western Reserve University, recently ranked No. 9 on the list of most-cited health law faculty in the United States.

According to Sisk data from 2016 to 2020, Hoffman's work was cited 160 times—a tie with faculty from Boston, Stanford and Temple universities.

Hoffman has published over 70 articles and book chapters on health law and civil rights issues. She has developed particular expertise and a national reputation in the area of health information technology. Her work has appeared in the *Georgetown Law Journal*, *William & Mary Law Review*, and *Boston College Law Review*, among many other journals. She is the author of two books: *Aging with a Plan: How a Little Thought Today Can Vastly Improve Your Tomorrow* (Praeger 2015) and *Electronic Health Records and Medical Big Data: Law and Policy* (Cambridge University Press 2016).

In addition to academic citations, Hoffman also regularly appears in traditional media outlets; from Oct. 1, 2020, to Sept. 30, 2021, she was quoted in more than 140 news articles.

THE POWER OF PERSUASION

From moot court arguments to health law journal editing, effective communication skills open doors for third-year student Bailey Kadian

By Julie Evans

Bailey Kadian never intended to follow so closely in her father's footsteps. Yet she and her father, Mark Kadian (LAW '91), both chose Case Western Reserve University School of Law after receiving undergraduate degrees in English from the University of Michigan.

"Many people think I wanted to be a lawyer because of my father. But he never pushed law school," recalled Kadian, a third-year student. "It really was through writing that he had the most influence. Growing up, he wanted us to know how to express ourselves and would say, 'I don't care what you decide to do, but you have to know how to write and communicate effectively.' "

Now, Kadian has combined her passion for writing and editing with her interest in law as editor-in-chief of the law school's *Health Matrix: The Journal of Law-Medicine*—ranked second among all specialty journals in the fields of health, medicine, psychology and psychiatry law. Her note on the COVID-19 pandemic and its legal implications for special education programs will appear in the spring 2022 issue of *Health Matrix*.

Kadian, who taught English for a year to sixth-grade students in American Samoa as part of the WorldTeach program, has a personal affinity for education law—including matters related to students with



disabilities. But her interest in health law developed as she edited challenging journal content while under the guidance of her *Health Matrix* faculty advisor, Sharona Hoffman, who described Kadian as "responsible, respectful, communicative, and a pleasure to work with, both as a seminar student and as editor-in-chief of *Health Matrix*."

"Professor Hoffman has been an influence and invaluable resource, even beyond my work at the journal," Kadian said.

Kadian also has discovered a passion for litigation. In spring 2021, she won the Dean Dunmore Moot Court Competition, an intramural appellate advocacy tournament

in which second- and third-year students compete in an NCAA bracket-style competition judged by faculty members, local judges and experienced practitioners.

Kadian said she registered for the year-long appellate litigation course not knowing whether she would enjoy it.

"I'm as surprised as anyone that I went so far in the class," she said. "But I'm a theater kid. ... I may have borrowed from my acting background as a way to engage in the competition."

In January, she will begin preparing for the ABA Moot Court team, which competes in the spring.

In addition to her full-time studies and journal responsibilities, Kadian works remotely for the education and municipal law group of Clark Hill, an international firm with offices near Kadian's family home in Detroit, where she hopes to settle after graduation.

It may be a lot to juggle, she conceded, but for now, Kadian plans to enjoy every opportunity that comes her way.

"My three years here have no doubt presented challenges, but this training has been incredibly rewarding," she said. "I look forward to what is to come."

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Hands-On Experience

Within the school's Milton and Charlotte Kramer Law Clinic, our Health Law Clinic operates like a law firm, allowing students to apply skills they have developed in their coursework to cases for real clients. On any given day, students may be conducting an examination of a medical expert in a Social Security disability claim, drafting an advanced health care directive for an ailing client, or working on any number of other projects.

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