

Case Law-Med

The Law-Medicine Center at Case Western Reserve

Battle for Ohio

Jessie Hill, Law-Medicine Center faculty,
fights for reproductive rights in Ohio



SCHOOL OF LAW
CASE WESTERN RESERVE
UNIVERSITY



About the Center



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

Case Western Reserve University School of Law's 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 healthcare 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.

Inside this issue

- 4** Message from the co-directors
- 5** Physician fidelity
- 6** Newsworthy expertise
- 8** Expanding practice and reassessing ethics
- 10** Meeting demand
- 12** Series of events
- 14** Battle for Ohio
- 17** Appointed to serve
- 19** Prolific professor
- 20** Externship experience
- 21** A vital community service
- 22** Championing diversity and patient rights through policy



Case Law-Med

EDITOR/DIRECTOR OF PUBLICATIONS
Lauren Marchaza

WRITERS/EDITORS
Julie Evans
Emily Mayock
Mark Oprea
Carey Skinner Moss

DESIGN
Academy Graphic Communication Inc.

PHOTOGRAPHERS
Roger Mastroianni
Angelo Merendino
Dan Milner
Matt Shiffler

Case Law-Med is published annually by Case Western Reserve University.

SEND CORRESPONDENCE AND INFORMATION TO:
University Marketing and Communications
Case Western Reserve University
10900 Euclid Ave.
Cleveland, OH 44106-7017
lauren.marchaza@case.edu
216.368.4400
case.edu/law

© 2022 Case Western Reserve University.
All rights reserved.

ON THE COVER:
Jessie Hill, the Judge Ben C. Green Professor of Law at Case Western Reserve University School of Law.

Health Law Principal Faculty:

Sharona Hoffman
Co-Director, Law-Medicine Center
sharona.hoffman@case.edu

Maxwell J. Mehlman
Co-Director, Law-Medicine Center
maxwell.mehlman@case.edu

Jonathan Adler
jonathan.adler@case.edu

Jessica Berg
jessica.berg@case.edu

B. Jessie Hill
jessie.hill@case.edu

Laura McNally-Levine
laura.mcnally@case.edu

Maya Simek
maya.simek@case.edu

Katharine Van Tassel
katharine.vantassel@case.edu

HEALTH LAW AT CASE WESTERN RESERVE UNIVERSITY

MESSAGE FROM THE CO-DIRECTORS



Sharona Hoffman
Co-Director, Law-Medicine Center

The field of health law effectively began with the creation of Case Western Reserve University's Law-Medicine Center—the first in the country—in 1953. Today, our health law program continues to offer students unique opportunities in one of the world's preeminent healthcare hubs.

Because we are part of a leading research university, our students benefit from collaborations with peers at our top-25 medical school and its renowned health policy and bioethics programs. Our expert faculty members engage critical legal issues involving health and medicine in both their scholarship and their public commentary.

Over the past year, our distinguished faculty have been quoted in hundreds of media stories by local, national and international media outlets.

Our health law professors also have authored recent articles appearing in the *New England Journal of Medicine*, *Journal of the American Medical Association*, *Yale Journal of Health Policy, Law and Ethics*, *U.C. Davis Law Review* and other journals—with one named among the most-cited experts in the field of health law.

We invite you to read this latest issue of *Case Law-Med* magazine, where you'll discover how our Law-Medicine Center continues to shape the field of health law.



Maxwell J. Mehlman
Co-Director, Law-Medicine Center

Sharona Hoffman

Edgar A. Hahn Professor of Law
Co-director of the Law-Medicine Center

Max Mehlman

Distinguished University Professor, Arthur E. Petersilge Professor of Law
Co-director of the Law-Medicine Center



Health law students at the "Restoring Medical Professionalism: Physicians as Advocates for Their Patients" conference in March.

PHYSICIAN FIDELITY

New project aims to protect doctors who advocate for their patients

Physicians' ability to advocate for their patients is an essential aspect of their professionalism, and critical for patient trust and well-being. Scholars and practitioners of modern medicine recognized this by stating, at the outset of the first modern code of medical ethics, that patient welfare depended on physicians' "skill, attention and fidelity," and the law accordingly regards physicians as fiduciaries for their patients.

But pressure from employers and others can limit physicians' ability to fulfill this vital obligation. One response might be to punish physicians who succumb to these pressures, but a better solution would be to support physicians who resist them, according to **Max Mehlman**, Distinguished University Professor, the Arthur E. Petersilge Professor of Law and co-director of the Law-Medicine Center at Case Western Reserve University.

On March 25, the Law-Medicine Center hosted the interdisciplinary conference, "Restoring Medical Professionalism: Physicians as Advocates for Their Patients." Speakers and attendees explored ways in which physicians can be supported when they advocate for their patients' welfare.

Mehlman moderated the event. Speakers included Robert Bitonte of the American Academy of Legal Medicine; Sarah Scher, chief executive officer at Cooperative American Physicians; Mark Hall, professor of law and public health at Wake Forest University; Stuart Bussey, president of the Union of American Physicians and Dentists; and Milan Markovic, professor, Presidential Impact Fellow and co-convener, Program in Law and Social Science at Texas A&M University School of Law.

At the conclusion of the conference in March, attendees created the Fidelity Project.

Overseen by Mehlman at Case Western Reserve, the project aims to:

- Create a reimbursable health insurance billing code for physician patient advocacy;
- Persuade states and the federal government to enact whistleblower protections for physicians when they advocate for their patients;
- Convince states and the federal government to prevent third-party payers from requiring step drug therapy when the physician maintains that the prescribed drug is medically necessary;
- Provide patient advocacy training to medical students and residents, and continue medical education patient advocacy training programs for physicians; and
- Prevent private-equity ownership of physician practices.

This year's conference was supported by a grant from the Cooperative of American Physicians, and was organized with the assistance of Robert Bitonte.

The Fidelity Project is seeking funding from foundations and other sources to support its activities. Interested in getting involved? Contact Max Mehlman at mjm10@case.edu.

NEWSWORTHY

Health law faculty quoted as experts on timely topics

Case Western Reserve University's Law-Medicine Center faculty are frequently sought by regional, national and international media for their views on hot topics in health law. Take a look at what our legal scholars have said about salient news issues over the last year.



"The majority of essential workers, who had to be vaccinated quickly, were individuals with low income, people of color, your most vulnerable populations—and they are the very people who will not have access to the VICP."

—Katharine Van Tassel in *The British Medical Journal* regarding the U.S. Department of Health and Human Services' Vaccine Injury Compensation Program



"It's not necessarily altruistic. It also makes some sense for companies to not have a bunch of employees that are highly distressed because they have unwanted pregnancies and have to carry the child to term."

—Sharona Hoffman to *USA Today* about employers covering abortion-related travel costs for their employees



"There is a group of advocates that is working very diligently to try and get things moving. One of the bills we're looking at re-examines how trauma impacts individuals and what kind of affiliated crimes can be included when we're looking at expungement or record-sealing. Every little bit helps create a space in which individuals will feel better about coming forward and telling their stories."

—Maya Simek about pending state legislation in Ohio to help human trafficking victims during a local NPR panel discussion

EXPERTISE



"The doctor has a legal duty to take reasonable steps to preserve the life and health of the patient. If they don't, in the most egregious situations, this has led to criminal prosecutions. The doctor is between a rock and a hard place."

—Max Mehlman to Politifact on doctors' legal responsibility to their patients in the post-Roe era



"In states where abortion is banned, it's all banned. There's also a lot of uncertainty within these states about the health exceptions or the medical necessity exceptions in these bans on abortion. Providers and others will be extra cautious because you're going to want to err on the side of not exposing yourself to criminal liability. Which won't help women who need care, because the reality is that uncertainty often translates into a kind of chilling effect on provision of care."

—Jessie Hill in The Christian Science Monitor about the aftermath of the U.S. Supreme Court's decision to overrule Roe v. Wade



"[The ruling suggests] self-insuring employers could pick and choose what they want to cover based on religious objections to certain types of coverage."

—Jonathan Adler to Axios on a federal court ruling in Braidwood Management Inc. v. Becerra that employers cannot be required to cover HIV prevention medication



EXPANDING PRACTICE AND REASSESSING RESEARCH ETHICS

Law-Medicine Center co-director collaborates on two new healthcare projects

Max Mehlman, Distinguished University Professor, Arthur E. Petersilge Professor of Law and co-director of the Law-Medicine Center at Case Western Reserve University, has been awarded two grants to advance research in healthcare law and ethics.

Nudging participation in human experiments

What if we could “nudge” people in their decision-making—without them ever realizing it?

That’s just what Nobel laureate Richard H. Thaler (ADL ’67, HON ’03) and legal scholar Cass Sunstein proposed in their 2008 book, *Nudge: Improving Decisions About Health, Wealth, and Happiness*. These “nudges,” the authors proposed, could lead people to act in a certain way that would improve their overall health and happiness—such as calorie counts on fast food menus and salad bars placed at the beginning of cafeteria lines.

A more controversial example would be nudging people to become human subjects in clinical trials. These “recruitment nudges” include administering initial surveys that predispose participants to give consent to additional studies, asking patients to hypothetically take part in a trial before making the actual enrollment request, and, rather

than asking individuals to opt in to studies, presuming consent and requiring subjects to opt out of participating if they do not wish to do so. In all these cases, subjects would not be informed that nudges were being used.

The legal and ethical issues surrounding the use of recruitment nudges, especially in studies that expose human subjects to significant risks—are the focus of a new \$1.6 million, four-year grant from the National Center for Advancing Translational Sciences at the National Institutes of Health. Mehlman is co-principal investigator of the study, and is supported by an interdisciplinary research team at the University of Utah and Case Western Reserve, including School of Law Co-Dean and Professor of Law and Bioethics **Jessica Berg (GRS ’09, public health)**.

The study aims to better understand the types and effectiveness of recruitment nudges, as well as participants’ reactions when they learn that nudges were used. Mehlman and his team eventually will analyze the ethical implications of the project findings and make policy recommendations regarding the use of nudging in clinical research.



"Following claims in the 1950s that subliminal advertising could be used to induce moviegoers to buy popcorn and Coca-Cola, the U.S. Supreme Court held that subliminal advertising was not protected by the First Amendment," Mehlman explained. "The Federal Communications Commission then declared that its use by broadcasters was grounds for revoking broadcast licenses.

"If it's legally suspect to manipulate people into buying soda and popcorn," he continued, "it seems at least ethically questionable to use similar techniques to get them to serve as subjects in biomedical research."

Nurses as a solution

The growing demand for healthcare in the United States continues to rise, and to meet that demand, a promising approach is to allow more advanced practice registered nurses (APRNs) to provide primary care, just like physicians.

While some states have already embraced this approach, many have not—or they have coupled it with a requirement of burdensome physician collaboration or supervision. Mehlman and a team led by Case Western Reserve University Frances Payne Bolton School of Nursing's Joyce Fitzpatrick (MGT '92) hope to change that.

In June, the team received a \$400,000 grant from the Diana Davis Spencer Foundation to further their work toward broadening APRNs' scope of practice. Through the grant, the faculty members are conducting empirical research on the impact of this concept on healthcare costs and patient access to—and quality of—care. In addition, Mehlman, co-investigator on the grant, and Fitzpatrick, the Elizabeth Brooks Ford Professor of Nursing and a Distinguished University Professor, are researching and preparing white papers in support of the initiative, planning a workshop for the spring of 2023. Together, the research and workshop will help prepare advocacy groups to convince state legislatures to give APRNs—who have earned at least a master's degree—the same full scope of practice in primary care as physicians.

"Permitting APRNs to provide the same full scope of primary care as physicians is likely to be the best solution to the growing shortage of primary care physicians," said Mehlman, "especially for underserved populations."

MEETING DEMAND

Program trains students in growing field of risk management and compliance



Katharine Van Tassel
(Photo by Angelo Merendino)

With the number and types of laws and regulations that organizations need to follow changing and growing daily in the U.S., the demand for regulatory compliance professionals is too. In fact, the Bureau of Labor Statistics projects more than 120,000 new compliance and risk management jobs over the next decade.

That's why, in 2021, Case Western Reserve University School of Law created the Compliance and Risk Management (CRM) program, which includes master's degree and certificate options, either of which can be completed in less than a year.

The Master of Compliance and Risk Management provides students with legal and regulatory knowledge that is particular to the healthcare industry.

Because it is one of only a few such programs in the country—and the only one in Ohio—**Katharine Van Tassel, MPH (NUR '80, LAW '86)**, professor of practice and director of the program, anticipated a decent level of interest. The number of applicants, however, exceeded her expectations. After just one year, there are 41 students enrolled in the program. "The demand we have seen for education and training in this area reflects the fact that compliance and risk management officers are gaining importance in most healthcare businesses," said Van Tassel, who recently became a

full-time professor of practice at the School of Law following a visiting appointment.

"And in many cases," she added, "they directly report to the chief executive officer or board of directors, and have a seat at the table during critical policy discussions."



Dre Mitrache

For many students, the program serves as an alternative to the more traditional paths of litigation and transactional law.

Andrea (Dre) Mitrache, a Case Western Reserve JD student, enrolled in the CRM program last year when she realized

the typical law school curriculum didn't focus enough on compliance for her career goals.

"When I saw the new CRM program, I immediately enrolled because I hope to be a chief compliance officer for a healthcare



Katharine Van Tassel with CRM program students in September.

organization,” Mitrache said. “The program has been everything I had hoped for and more.”

Fellow JD student **Theo Russell** agreed, and added that the program will give him and his peers a competitive edge in the job market. “The CRM program has given me the knowledge I need to excel in an internship, and to launch my career helping research institutions and drug and device manufacturers navigate the heavily regulated area of human subject research,” he said. “It’s been transformational for me.”



Sally Enoch

long-term goals.

“I can now see how the use of compliance and risk management theory will help me operationalize much-needed systemic changes that will improve both the quality

Sally Enoch, who will complete the program this fall, appreciates the inclusive approach taken by faculty, as well as opportunities to hear from industry leaders. Most importantly for Enoch, though, was that the experience could be customized to fit her

of—and access to—healthcare,” Enoch said. “Being a part of this program has truly been one of the best experiences of my life.”



Eathan Radatz

The program is also designed to help professionals shift their careers to compliance or risk management, or to help those in the field take their careers to new levels. **Eathan Radatz**, a clinician in the mental health and substance use industry, came to the program with the goal of becoming a compliance officer at a psychiatric hospital or mental health organization. He’s already completed two internships—including one with Centene Corp., the largest Medicaid managed-care organization in the country—and is confident the program can help him and others make career pivots into healthcare management.

Looking ahead, Van Tassel expects interest in the program—much like the field itself—to continue expanding.

“Regulatory compliance and enterprise risks for healthcare organizations, providers and

product manufacturers reach well beyond traditional corporate compliance to include activities such as clinical care, quality of care, billing and health information management,” she said. “Demand for professionals trained to manage these complex risks is likely to continue to increase for the foreseeable future.”

Learn more about the CRM program by visiting bit.ly/cwru-law-med-CRM.

Law-Medicine Center speakers address critical health law topics

From abortion to public health, systemic racism to healthcare tech, a number of pressing issues have arisen in health law over the past year—and Case Western Reserve University School of Law’s Law-Medicine Center tackled many of them through eight in-person and virtual events this year. Here are highlights from a few of the events, which featured experts in constitutional law, drug safety, public health law and healthcare law.

Visit case.edu/law/law-med to watch event recordings and to see a list of upcoming events.

FDA Approval of Aducanumab for Alzheimer’s Disease Oct. 4, 2021

After the Food and Drug Administration approved the drug aducanumab for treatment of Alzheimer’s disease in June 2021, Michael Carome, MD (MED ’86), director of Public Citizen’s Health Research Group (HRG), shared his organization’s advocacy work opposing the decision and efforts to hold the agency accountable. Carome, whose expertise includes drug and medical device safety, FDA regulations, and the protection of human research subjects, called the close collaboration between the FDA and drugmaker Biogen to approve the drug “unprecedented, inappropriate and dangerous.”

Teaching Public Health Law and Inequality March 23, 2022

At Widener University’s Delaware Law School, John Culhane, the H. Albert Young Fellow in Constitutional Law and co-director of the Family Health Law and Policy Institute, and Joseph Farris, assistant dean of diversity, equity and inclusion, co-teach a course that explores how public health law and policies affect marginalized communities. In their virtual presentation, they described how topics such as vaccinations, environmental justice, taxation, tort law and global climate change should be part of public health law education. “Diversity, equity and inclusion issues can be integrated organically and seamlessly into a public health law course,” said Culhane, “and it’s incumbent upon us to come up with content like this.”



Max Mehlman introducing an event at the School of Law.

New Commitment Pathway for Offenders with Serious Mental illness: Expedited Diversion to Court-Ordered Treatment

March 30, 2022

Richard J. Bonnie, the Harrison Foundation Professor of Medicine and Law and director of the Institute of Law, Psychiatry and Public Policy at University of Virginia, presented his idea of a formal statutory diversion process for offenders with serious mental illness. As a civil commitment proceeding accompanied by dismissal of criminal charges, his proposed Expedited Diversion to Court-Ordered Treatment could be invoked even if the defendant lacks trial competence. The new pathway, including mandated compliance with outpatient treatment and judicial supervision, may enable diversion of many offenders with serious mental disorders into a treatment system that could provide acute services, discharge planning and problem-solving management in the community.

A Conversation About Dobbs v. Jackson Women's Health Organization

Sept. 13, 2022

What happens now that abortion is no longer a constitutionally protected right in the United States? Case Western Reserve's Jonathan Adler, the Johan Verheij Memorial Professor of Law, and Jessie Hill, the Judge Ben C. Green Professor of Law, discussed the watershed 2022 Supreme Court decision, *Dobbs v. Jackson Women's Health Organization*. Hill explained that, in the absence of federal protection, states will now have the authority to determine the legality of abortion for themselves. Providing historical perspective, Adler pointed out that the decision to overturn *Roe v. Wade* was years in the making. Hill and Adler—both constitutional law experts—debated whether other rights, including rights to contraception and marriage equality, are now vulnerable.

Accessible Health Tech

Sept. 22, 2022

The use of technology in healthcare has vastly improved access and delivery for most patients. The exception, argued Jessica L. Roberts, director of the Health Law & Policy Institute and the Leonard Childs Professor in Law at University of Houston, is patients with disabilities. A specialist in how the law intersects with genetics, health and disability, Roberts explained that people with disabilities face barriers in healthcare technology—such as virtual appointments, patient portals and remote patient monitoring—because the developers who create these systems do not prioritize accessibility. She posited legal, economic and structural reasons for designing technologies in accessible ways, and said law and policy makers should act now to ensure all patients can use health tech, regardless of ability.

Battle for Ohio

JESSIE HILL, LEADING LITIGATOR OF THE STATE'S REPRODUCTIVE RIGHTS MOVEMENT, MEETS THE BIGGEST LEGAL FIGHT OF HER LIFE

By Mark Oprea

The U.S. Supreme Court's June 24 ruling that abortion is not a constitutional right prompted celebration from some—and outrage among others.

Jessie Hill, the Judge Ben C. Green Professor of Law at Case Western Reserve University School of Law, is one of the latter. Besides her role as a law professor, Hill leaned into her litigation expertise the evening *Roe v. Wade* fell. Merely minutes after the decision came down, Ohio Attorney General Dave Yost asked Southern District Judge Michael Barrett to remove the injunction on 2019's "heartbeat" bill—which limits abortions to when fetal cardiac activity is detected, typically at about six weeks of pregnancy. Barrett lifted the injunction that evening at 6 p.m., and the bill was codified into Ohio law.

That's when Hill's phone started ringing.

"It was absolute chaos," said Hill. "I had to give our clients the bad news and help them figure out how to comply with the law. At the same time, I was getting nonstop press calls, as well as thoughtful, supportive texts from friends and colleagues."

While the ban didn't come as a surprise, the swiftness of it taking effect did. "We were expecting him to file that motion, but we were not expecting the judge to give us only two hours to respond to it," Hill recalled. "We thought we would have a bit more time to prepare, and for our clients to prepare."

"All these women had abortions scheduled," Freda Levenson, legal director at the American Civil Liberties Union of Ohio, said. "Perfectly legal abortions that they were relying on and planning. And they suddenly were told, 'You can't have your abortion.'"



Jessie Hill (Photo by Angelo Merendino)



Becca Kendis

Five days later, on June 29, Hill, Levenson and **Becca Kendis (LAW '19, SAS '19)**, a reproductive rights fellow at the law school since 2020, filed in the Ohio Supreme Court a lawsuit they'd been working on since last November. They were joined by others—a team of

attorneys from the national headquarters of the ACLU and Planned Parenthood, as well as the law firm Wilmer Hale—in their filing. In their 44-page complaint, the Hill-led coalition requested that the Ohio Supreme Court recognize that, as Hill said in an interview, “the Ohio Constitution protects the right to abortion, even though the U.S. Constitution does not.”

In September—and then, again, on Oct. 7—a judge agreed. Judge Christian Jenkins of Hamilton County issued a preliminary injunction, blocking the “heartbeat” abortion ban indefinitely.

For Hill, the ruling to restore abortion access in Ohio brought relief. “It’s particularly important for women in the southern part of the state,” she said, “given that West Virginia and Kentucky have both banned abortion.”

Decades before Hill adopted the lead litigator role for Ohio’s pro-choice advocates, she was a student at the all-girls St. Ursula Academy preparatory school in Cincinnati, where she grew up.

This was the 1980s and, for Hill, the world of legal matters was somewhat distant. Her family was politically quiet, and her neighborhood mostly conservative. Upon graduating from high school, Hill fulfilled her goal of attending an out-of-state university and was beginning her “rebellious streak.” Twelve years of Catholic schooling, Hill recalled with a grin, contributed to her 180-degree view on reproductive rights.

“I kind of feel like Jesus would have been pro-choice,” Hill said. “I can’t see how the empathetic answer to anyone’s suffering is to force them to have a child.”

As an undergraduate at Brown University, Hill was intrigued by the social justice tendencies of French feminist writing and opted to study comparative literature. She pursued similar post-graduate work at Yale

The state, however is expected to appeal. “We are almost certain that the law will ultimately end up in the Ohio Supreme Court, so this case won’t be over any time soon,” said Hill. “But we aren’t going anywhere and will keep fighting as long as it takes.”

In the post-Roe era, about 14 states are mired in a political and legal battles on abortion. This is a culmination of 43 years of litigation for many. For Hill, who has counseled or co-counseled on nine major Ohio reproductive rights cases in the past 11 years, today’s legal context represents her greatest challenge—and opportunity—to make a difference in the fight for reproductive freedom.

“Oh, she’s in the fight of her life,” Levenson said, regarding the group’s lawsuit, *Preterm-Cleveland v. David Yost*.

In 2019, Hill served as counsel in *Planned Parenthood v. Hodges*, arguing that clinics couldn’t lose medical licenses due to “arbitrary transfer rules,” or patient transfer agreements with local hospitals. In 2017’s *Preterm-Cleveland v. Himes*, she argued before Ohio’s Sixth Circuit court of appeals against a ban on Down syndrome abortions.

After President Donald Trump took office in 2017, Hill and her colleagues knew

Trump’s long-promised appointment of conservative U.S. Supreme Court justices could put abortion access in jeopardy. In September 2020, a year after Hill battled Yost’s support of the “heartbeat” bill, liberal Justice Ruth Bader Ginsburg died; two months later, conservative Justice Amy Coney Barrett replaced her.

That fall, Kendis said, Hill’s team “immediately started researching legal theories under the Ohio Constitution.”

For a year and a half, Hill became entrenched in Ohio law, in between symposium talks, phone-call counseling, coursework and penning academic papers such as “The Geography of Abortion Rights.” By the time June 20, 2022 arrived, Hill felt herself armed to argue against Ohio’s six-week abortion ban with an array of supporting evidence: the risk of death during childbirth is about “13 times higher” than with abortion, and people have “threatened to commit suicide” when “denied care,” according to data in the writ of mandamus. (One woman, according to the report, said she would “drink bleach” if forced to remain pregnant.)

“This lawsuit,” Hill said, “has been a very long time in the making.”

University until dropping out in 1996—having been “too removed from the real world”—and earned her Juris Doctorate at Harvard University in 1999. Hill passed the bar in both New York and Massachusetts, and litigated trial-level cases with constitutional insight for the ACLU’s Reproductive Freedom Project in New York. Soon after, she relocated to Cleveland and passed the Ohio bar in 2002. The following year, she began working as an associate for Berkman, Gordon, Murray & DeVan, then started teaching at Case Western Reserve University two years later.



Jessica Berg

Jessica Berg (GRS '09, public health), co-dean of the School of Law, has observed Hill’s dedication to teaching, research and litigation since Hill became an assistant professor in 2004. “We knew she was a very talented attorney, extremely smart and really had a

good sense of scholarship,” Berg said. “And she had even said at the time she was not going to stop the practice side of things. And, well, she didn’t.”

As the Ohio abortion debate intensified, Hill’s writing became more philosophically complex, as did her courses. Hill highlighted the religious underpinnings in abortion law in her coursework, while writing law review articles linking Christian morality to First Amendment issues, such as 2013’s “(Dis)Owning Religious Speech” and 2020’s “Reconsidering the Takeover of Religious Organizations.”

There is a theme linking reproductive choice, religious liberty and free speech, Hill noted in a 2019 article. “That unifying thread,” she wrote, “is the concept of deliberative privacy.”

The goal of the astute litigator, Hill said, is to first know the defendant’s argument just as well as your own. ►

It's a well-known tactic embraced by many attorneys, but Hill has perfected this strategy. "You don't want to present a caricature of the other side," Hill said. "Because if you go into court with some caricatured idea of what your opponent's argument is, then you can't respond to it effectively."

In 2016, right after earning a Distinguished Research Award from CWRU, Hill started the school's Reproductive Rights Lab—where students produce memos and briefs for, as she explained, "actual, real-life repro cases." She wanted to bring her students closer to casework. Whether examining legal theories to challenge Ohio House Bill 598—the 2021 "trigger bill" that would prohibit abortion from the moment of conception if signed—or arguing for the constitutionality of keeping a six-week ban legal, Hill's lab is intended to be a deep dive into cases playing out in state and federal courthouses.

For **Kairra Brazley**, a third-year law student, the lab was a precursor to her summer work at Friedman & Nemecek, a Cleveland law firm. Though Brazley defines herself as leaning pro-choice, she sees the Reproductive Rights Lab as a preparatory



Kairra Brazley

In early August, a day after Indiana's legislators voted to ban abortion without exceptions for rape or incest, Hill sits at her desk. Around her are hundreds of books on legal philosophy next to boxed figurines of *Breaking Bad* characters and the late Ruth Bader Ginsburg. Above them are framed photos of her two teenage daughters.

It's a reality Hill said she's confronted more than ever since June: How will Ohio's future of reproductive rights in a post-Roe environment impact her family? After all, Hill believes that, if the Ohio courts and legislature lean Republican in November,

"Your whole job as a lawyer and a law professor is to teach students to see the other side of arguments. No law school classroom should ever present just one side of an issue. And I think that's what makes you a better lawyer."

— Jessie Hill

extension away from stiff legal theory. "She would introduce us to stuff not in the book," Brazley recalled.

Alex Brown (LAW '16), now an associate attorney at Meyer Darragh Buckler Bebenek & Eck in Pittsburgh, remembers Hill's constitutional law class—one of his favorites—as "accessible to anyone, regardless of their views."



Alex Brown

Even when those views are the "polar opposite" of Hill's, as was often Brown's situation. "I never felt that I was treated differently because I had a different

related reproductive healthcare issues—the legality of emergency contraception, birth control and in-vitro fertilization, for example—"are on the chopping block."

Potential bans, she suggested, that are pertinent to young Ohioans. "My daughters, they're very pro-choice, too, but I don't think that this has really hit them the way it's hit me," Hill said. "It's them that I'm doing this for, in a lot of ways. Right? It's their future."

As the legal lodestar of Ohio's pro-choice culture, Hill said she never bemoans her endless schedule—about 25 grant-funded

philosophical background. We could freely exchange ideas and have a dialogue without feeling like we were going to be judged for that," Brown said. "I think that is a really important lesson for society today, across the board."

And when tensions occasionally rose as students' personal perspectives seeped into classroom discussion, Hill consistently managed to calm them. "Professor Hill kept the peace," Brazley said.

Which isn't always easy for her. Anyone reviewing her resume would quickly grasp Hill's stance on issues like reproductive rights. Hill refers to herself as "very pro-choice," and says she "obviously falls on the liberal side."

But even in the midst of litigating *Preterm v. Yost*, Hill draws a clear line between her role as a strong legal advocate—and an even-handed educator. In other words, she knows the importance of providing students all perspectives on legal questions, not simply her own.

"Your whole job as a lawyer and a law professor is to teach students to see the other side of arguments," she said. "No law school classroom should ever present just one side of an issue."

"And I think that's what makes you a better lawyer."

hours a week these days, in addition to her teaching duties—or any dread of impending legislation.

"It is a lot," she said, exhaling. "I've been exhausted and I can't even tell you—the past month has been so hard. But I also feel like I'm really lucky to be here right now doing this work, because ... if I weren't?"

Appointed to serve

Co-directors of CWRU Law-Medicine Center recruited for national roles



Sharona Hoffman (SID '17), the Edgar A. Hahn Professor of Law and co-director of the Law-Medicine Center at Case Western Reserve University School of Law, spent last spring as a visiting scholar at the National Institutes of Health (NIH) Department of Bioethics in Washington, D.C.

During her sabbatical from teaching, Hoffman researched and wrote about the legal and ethical challenges of cognitive decline among healthcare providers, as well as about privacy and data security. Hoffman, who is also a professor in the bioethics department at Case Western Reserve's School of Medicine, participated in all department activities, including teaching, commenting on colleagues' works in progress and attending bioethics workshops and seminars.



Maxwell Mehlman, a Distinguished University Professor, the Arthur E. Petersilge Professor of Law, co-director of the Law-Medicine Center and a professor of bioethics, was appointed bioethics reviewer for the Department of Defense Traumatic Brain Injury and Psychological Health Research Program. There, he reviewed research applications for nine clinical areas served by the program and evaluated their impact on study participants, how risk is minimized, and issues of privacy, confidentiality and informed consent. According to Mehlman, the program "is a recognition by Congress that much more research needs to be done to address the mental health problems suffered by service members, veterans and their families due to traumatic brain injury and other adverse experiences while serving in the military."



FACULTY BRIEFS

Publications by our health law faculty

JESSIE HILL

Judge Ben C. Green Professor of Law and associate dean for research and faculty development



- "Response to Wasserman and Rhodes: The Texas SB 8 Litigation and 'Our Formalism,'" *72 American University Law Review* (forthcoming 2022).
- "Due Process, Delegation, and Private Veto Power," *108 Iowa Law Review* (forthcoming 2023).
- "Look Who's Talking: Conscience, Complicity, and Compelled Speech," *97 Indiana Law Journal* 913 (2022).
- "Uprooting Roe," *12 Houston Law Review Online* 50 (2022) (with Mae Kuykendall).

SHARONA HOFFMAN

Edgar A. Hahn Professor of Law and co-director of the Law-Medicine Center



- *Aging with A Plan: How A Little Thought Today Can Vastly Improve Your Tomorrow*, Second Edition (First Hill Books, 2022).
- "Physicians and Cognitive Decline: A Challenge for State Medical Boards," *108 Journal of Medical Regulation* 19 (2022).
- "Cognitive Decline and the Workplace," *57 Wake Forest Law Review* 115 (2022).
- "Professional Speech at Scale," *55 UC Davis Law Review* 2063 (2022) (with Cassandra Burke Robertson).
- "Sharing Clinical Notes Potential Medical-Legal Benefits and Risks," *327 Journal of the American Medical Association* 717 (2022) (with Charlotte Blease and I. Glenn Cohen).
- "Vulnerable Populations and Vaccine Injury Compensation: The Need for Legal Reform," (with Katharine Van Tassel) in *COVID-19 and the Law: Disruption, Impact and Legacy* (I. Glenn Cohen et al., eds. Cambridge University Press 2022).

MAXWELL MEHLMAN

Distinguished University Professor, Arthur E. Petersilge Professor of Law and co-director of the Law-Medicine Center



- "Ethical and Legal Implications of Advances in Genetics," *Oxford Handbook of Comparative Health Law* (Orentlicher and Hervey eds. Oxford University Press 2022) 919 (with Suter and Hartlev).

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

Professor of Practice



- *Food and Drug Administration* (2022-23 Supplements) (Thomson Reuters) (with James T. O'Reilly).
- *International Encyclopaedia of Laws: Medical Law, United States of America* (Wolters Kluwer - Kluwer Law International, 2022).
- "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 2022) (with Sharona Hoffman).

PROLIFIC PROFESSOR

Law-Medicine Center co-director has banner year

Sharona Hoffman (SJD '17) loves what she does.

"An academic career is a good fit for me," she said. "I love everything about it."

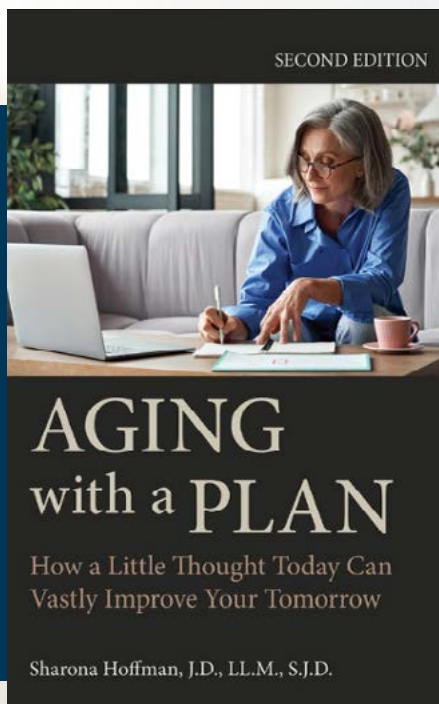
And it shows.

Hoffman is the Edgar A. Hahn Professor of Law, a professor of bioethics and co-director of Case Western Reserve University School of Law's Law-Medicine Center. She thrives in the classroom and as faculty advisor to student editors of the law school's highly regarded *Health Matrix: The Journal of Law-Medicine*.

Last year, Hoffman earned honors and appointments, published a book and articles and was hailed as the ninth most-cited professor in the field of health law, according to the 2021 Leiter/Sisk report.

A prolific writer, Hoffman has published over 70 articles and book chapters on health law and civil rights issues. These include the second edition of her book, *Aging with a Plan: How a Little Thought Today Can Vastly Improve Your Tomorrow* (see sidebar), a book chapter and four articles (see p. 18)—all published within the last year. Her work has appeared in the *Journal of the American Medical Association*, *Georgetown Law Journal*, *William & Mary Law Review* and *Boston College Law Review*, among many others. In recognition of her accomplishments, Hoffman was awarded CWRU's Faculty Distinguished Research Award last winter.

CWRU School of Law Co-Dean **Michael Scharf** said her contribution was clear: "Hoffman is undoubtedly, in no small part, responsible for the law school's significant national reputation in the field of health law," citing its No. 13 ranking in the field by *U.S. News and World Report*.



SECOND EDITION

Sharona Hoffman recently published the second edition of her book, *Aging with a Plan: How a Little Thought Today Can Vastly Improve Your Tomorrow* (First Hill Books, 2022), which is a comprehensive resource for readers approaching middle age and beyond who face the prospects of their own aging and of caring for elderly loved ones. It addresses legal planning, retirement savings and expenses, long-term care, end-of-life decisions, navigating the healthcare and insurance systems, driving, retirement communities and more.

"Everyone is going to face challenges as they age, and little in life prepares us for many of them," Hoffman said. "It is often very difficult to make good decisions when you are in the midst of a crisis that you did not anticipate. This book tries to provide people with the tools they will need to help themselves and others."

EXTERNSHIP EXPERIENCE

To fulfill their experiential education requirement, Case Western Reserve University health law students complete an externship in their second or third year. With the help of the School of Law's Career Development Office, students find practical training at law firms, hospitals, nonprofit organizations and more. Take a look at where students found their externships over the last year.

- Akron Children's Hospital, Office of General Counsel (Akron, Ohio)
- The Albert Law Firm (Pepper Pike, Ohio)
- Bristol Myers Squibb (Lawrenceville, New Jersey)
- CareSource (Dayton, Ohio)
- Cleveland Clinic Innovations (Cleveland)
- Community Health Law Project (Elizabeth, New Jersey)
- Community Legal Aid: HEAL Project (Akron, Ohio)
- Disability Rights Maine (Augusta, Maine)
- Medical Mutual of Ohio (Cleveland)
- MetroHealth General Counsel (Cleveland)
- Health Law Clinic, Milton and Charlotte Kramer Law Clinic Center, Case Western Reserve University School of Law (Cleveland)
- Reminger (Cleveland)
- Summa Health (Akron, Ohio)
- University Hospitals (Cleveland)
- University of Pittsburgh Medical Center (Pittsburgh, Pennsylvania)



"Working with [the Legal Services Department at University Hospitals] was an invaluable experience because it allowed me to apply everything that I learned in a real healthcare setting...It reignited my passion for patient advocacy and left me with a better understanding of how healthcare systems work."

—Alexandra McLaughlin King, 3L



"I was incredibly lucky to work with a brilliant team of lawyers [at The MetroHealth System] who kept me very busy with interesting and important work all summer. I highly recommend this experience to other students who have an interest in health law and are passionate about equity in healthcare."

—Benjamin Foote-Huth, 3L



"[This experience] gave me the opportunity to network with leaders in the life sciences field while doing substantive legal work that had a meaningful impact on the company and its patients. My mentors at Bristol Myers Squibb helped me grow personally and professionally and supported me in ambitious projects that helped me develop as a law student."

—Maggie O'Connor, 2L



"[This] was one of the most meaningful experiences of my life, inspired by my younger brother who has autism. I was exposed to a variety of legal tools that contributed to both immediate client needs and to [Disability Rights Maine's] broader mission."

—Maxwell Rom, 2L



"One of my favorite parts [about externing at University Hospitals] was the variety of work I did, especially surrounding transactional law, which most law students do not get exposure to during their 1L year. I learned so much about health law and got a better idea about my own interests in such a short time!"

—Rose Carlyon, 2L



(From left) Ester Khaykin and Naomi Tellez at the Neighborhood Family Practice Community Health Center.



Through the Health Law Clinic, CWRU law students helped people create essential legal documents like wills.

A VITAL COMMUNITY SERVICE

Students combine theory with practice to help others

At Case Western Reserve University School of Law—which *National Jurist's preLaw* magazine ranked fifth in the nation for practical training—all third-year law students complete an externship or a capstone in one of the school's nine law clinics. Last spring, students in the school's Health Law Clinic got that practical experience while increasing access to legal services in the community.

Ester Khaykin (LAW '22) and **Naomi Tellez (LAW '22)**, for example, gave pediatric medical providers at the Cleveland-area Neighborhood Family Practice (NFP) Community Health Centers an overview presentation on the eligibility requirements for parents applying for Supplemental Security Income for their children. The students explained medical providers' roles in supplying medical proof of the child's disability and described the resources available to children and their families in applying for SSI and transitioning into adulthood.

"The presentation was a success, and we hope to see many more partnerships with NFP in the future," said **Laura McNally-Levine**, director of the law school's Milton and Charlotte Kramer Law Clinic.

The Health Law Clinic also hosted its first Pop-up Wills Clinic, helping more than 30 community members obtain wills, powers of attorney and other important legal documents. Students worked with clients directly, walking them through the process to completion.

"We are very proud of the work our students did in planning and participating in the inaugural wills clinic," said Milton and Charlotte Kramer Law Clinic fellow **Jessica Edelstein (LAW '18)**. "Our students identified an essential legal service that our clients and others in the community did not have easy access to and rose to the occasion to address that need."

Championing diversity and patient rights through policy

Dual alumna Saliha Moore works behind the scenes of stem cell research

By Carey Skinner Moss



Saliha Moore

At first glance, Google Ads' latest "Speculative and experimental medical treatment, cell therapies, and gene therapies" policy update prohibiting the promotion of speculative stem cell treatments seems like a step in the right direction. But upon closer inspection, the policy's allowance for the distribution of materials "exclusively educational in nature" provides a loophole for companies seeking to disseminate false or misleading information about unproven therapies.

Fortunately, experts like **Saliha Moore, JC (LAW '21; GRS '21, bioethics)** are also reading the fine print to protect consumers from the dangers of misinformation.

Moore is the manager of policy at the International Society for Stem Cell Research (ISSCR). She works as a facilitator between stem cell researchers and regulatory agencies—such as the U.S. Food and Drug Administration and the National Institutes of Health—to address policy and ethical issues that may impact research integrity as well as public perception.

"One of the ISSCR's main policy goals is to prevent the promotion of unproven stem cell therapies," said Moore. "There have been hundreds of documented reports of adverse events—such as bacterial or blood infections, partial or complete blindness, tumors and organ damage or failure—linked to unapproved stem cell and regenerative medicine treatments. These treatments are generally offered by private clinics or businesses outside of clinical trials, which endangers patients."

Policy advocacy wasn't initially on the young lawyer's radar, but it presented a unique opportunity to speak up for patients of

color, who are vastly underrepresented in medical research. Moore works as a staff liaison with the society's ethics committee, where an important point of discussion is increasing the genetic diversity of stem cell research.

"Current stem cell lines are most commonly based on the lineage of white males, which can affect treatment outcomes for those with different genetic backgrounds," she explained. "I'm happy to be part of changing that."

While Moore didn't plan on working in policy advocacy, she is grateful for the experience, and said her dual education in law and bioethics at Case Western Reserve University prepared her for the job.

"I really enjoyed the writing and research I did at CWRU," said Moore, "and now I'm using those skills to develop materials that help the general public understand the science and ethics behind critical research. Not only is my work fun, but I also get to be part of advancing medicine."

One of the Nation's Top Schools for Health Law

Our Curriculum

Our curriculum is highly interdisciplinary and integrates ethical, legal, social and public policy perspectives.

Our classes include:

- Bioethics and Law
- Discrimination in Employment
- Food, Drug and Biotech Law
- Genetics and the Law
- Governance, Risk Management and Compliance
- Health Law
- Healthcare Controversies
- Healthcare & Human Rights
- Healthcare Organizations, Finance and Regulation
- Hospital Risk Management
- Information Privacy Law
- Pretrial Practice: Medical Malpractice
- Psychiatry & Law
- Public Health Law
- Reproductive Rights Lab/Seminar
- Workers Compensation

Plus, our students can take courses taught by Case Western Reserve's medicine, management and social sciences faculty and professionals from Cleveland's nationally ranked healthcare organizations, in areas such as:

- Critical Issues in Research Ethics
- Death and Dying
- Ethical Issues in Genetics/Genomics
- Health Economics

We also offer a Health Law Concentration, dual-degree programs with our university's other specialties, master's and certificate programs in compliance and risk management, and a Doctor of Juridical Science in Health Law—the most advanced law degree in the health law field.

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 healthcare directive for an ailing client, or working on any number of other projects.

Learn more at case.edu/law/law-med.



SCHOOL OF LAW

CASE WESTERN RESERVE
UNIVERSITY

The Law Medicine Center
10900 Euclid Ave.
Cleveland, Ohio 44106-7148
case.edu/law/law-med

WHAT MAKES US STAND OUT

One of the nation's top health-law programs

A+: Rating of our Health Law Program (*preLaw* magazine)

1st in the nation to establish a health law program (1953)



SCHOOL OF LAW