

Case Law-Med

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The Law-Medicine Center at Case Western Reserve University



Cognitive decline and the law

How the Law-Medicine Center is tackling
the legal implications of aging brains



CASE WESTERN RESERVE
UNIVERSITY
School of Law



About health law at CWRU

Case Western Reserve University School of Law's top-ranked health law program offers students unique opportunities to play pivotal roles in emerging areas of law. Students engage with faculty in researching and studying 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 public health and bioethics programs. Collaborations with peers from our graduate schools of medicine, social sciences and management include shared courses, lectures, symposia and research teams. We also offer a variety of dual degree programs including a JD/MBA, JD/MA (Bioethics), JD/MPH (Public Health), JD/MNO (Nonprofit Organizations) and more.

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

Health Matrix: Journal of Law Medicine

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 reproductive rights, health disparities, medical big data and legal implications of cognitive decline.

Compliance and Risk Management Program

CWRU School of Law offers a cutting-edge program in compliance and risk management with a specialty in health law. The master and certificate program at the Law School provides lawyers and non-lawyers with the knowledge and analytical skills needed to assist institutions in complying with health laws and regulations. This Program also prepares students to work as consultants and regulators in the compliance field. The Master in Compliance and Risk Management can be completed in one calendar year, and the Certificate in Compliance and Risk Management can be completed in half that time. The Program currently has more than fifty enrolled students, and it has a 100 percent placement rate.

Professor **Eric C. Chaffee**, the Peter M. Gerhart Distinguished Research Scholar, serves as Director of the Program. Explaining the program's origins, he noted that "Case Western has a history of being a leader in the field of health law, which is a natural result of the outstanding reputation of the University in the healthcare industry." He continued, "The Compliance and Risk Management Program with a specialty in health law is a natural outgrowth of that tradition. It demonstrates that CWRU evolves with the needs of the healthcare industry in ways that provide meaningful training and job opportunities to students."

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MESSAGE FROM THE CO-DIRECTORS



Co-Directors of the Law-Medicine Center, Sharona Hoffman and Max Mehlman (Photo by Angelo Merendino)

Seventy-one years ago, a lawyer and a forensic pathologist at Western Reserve University teamed up with a Cleveland coroner to do something unprecedented: create the first center for the study of health law in the United States.

These individuals—Alan Moritz, Oliver Schroeder and Samuel Gerber—established the Law-Medicine Center at what is now Case Western Reserve University. Today, under our leadership, the health law program continues to offer students unique opportunities in Cleveland, one of the world’s preeminent healthcare hubs. Because Case Western Reserve is a leading research university, our students benefit from collaborations with peers elsewhere in the institution, such as at our top 25 medical school and our renowned health policy and bioethics programs. Our expert faculty members play pivotal roles in many emerging areas of health law. Over the last few years, they have been quoted in hundreds of media stories by local, national and international news outlets. Their work has been published in the *New England Journal of Medicine*, *Journal of the American Medical Association (JAMA)*, *Yale Journal of Health Policy, Law, and Ethics*, *U.C. Davis Law Review*, *Washington University Law Review*, *Iowa Law Review*, *Georgetown Law Journal*, *Indiana Law Journal* and others. We are proud to continue to help shape the field of health law and educate its next generation of leaders. We hope you’ll enjoy reading about the Law-Medicine Center and its accomplishments in this issue of the *Case Law-Med* magazine.

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

NEWSFLASH

Law School Faculty are frequently featured in regional, national and international media to showcase their legal expertise on timely health law issues. Here are some hot takes recently attributed to our faculty members.



Cleveland.com

“Patients have to be able to trust their doctors. ... If the information to be disclosed [to third parties] is about toenail fungus, that’s maybe not a big deal, but if it’s about an STD or abortion, that’s very high stakes.”

—Sharona Hoffman, Edgar A. Hahn Professor of Law and Co-Director of the Law-Medicine Center, discussing the laws that protect confidentiality for doctors and lawyers



Law360

Opioid litigation “has already pushed the law in new directions and now, having exhausted claims against the original targets, it’s only natural to look around and see who else might bear some liability. ... [Pharmacy benefit managers] are a relatively recent phenomenon in our pharmaceutical supply chain. Now they’re just entrenched because of the way the industry works. But there’s a price to be paid for that, potentially.”

—Andrew S. Pollis, Professor of Law and Director of the Appellate Litigation Clinic in the Milton and Charlotte Kramer Law Clinic, regarding the next wave of opioid lawsuits targeting PBMs after significant settlements with drug manufacturers



Associated Press

“These century-old laws are really having a tangible impact on women’s lives today, and they’ve really contributed to the post-Dobbs uncertainty across America.”

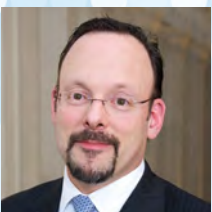
—Jessie Hill, the Judge Ben C. Green Professor of Law and Associate Dean for Research and Faculty Development, responding to Arizona’s use of a 160-year-old law to uphold the ban on abortion



Ohio Capital Journal

“If we’re looking at how to make progress and protect public health and our environment, that shouldn’t be a political issue.”

—Miranda Leppla, Director of the Environmental Law Clinic, responding to gerrymandering in Ohio



Washington Examiner

“I think it is valuable to have justices be part of the conversation about whether a given proposal is actually wise or workable.”

—Jonathan Adler, Johan Verheij Memorial Professor of Law, on whether or not Supreme Court justices should opine about pending legislation, such as President Joe Biden’s sweeping Supreme Court reform proposals

Research roundup

The faculty at Case Western Reserve University School of Law are well-known and widely published in the field of health law. Here are some highlights of our recent publications and research grants over the last year.

“Nudging” in clinical trials

Maxwell Mehlman, JD, Distinguished University Professor, Arthur E. Petersilge Professor of Law, and Co-Director of The Law-Medicine Center at CWRU School of Law and Professor of Bioethics at CWRU School of Medicine



In 2022, Professor **Maxwell Mehlman** received a \$1.6 million grant from the National Center for Advancing Translational Sciences at the National Institutes of Health for a four-year study investigating the use of “nudging” to encourage participation in clinical trials. Nudging refers to techniques that lead people to act in certain ways, often without their knowledge.

With assistance from the bioethics department at CWRU School of Medicine and researchers at the University of Utah, Mehlman’s project is investigating which nudges are being used by clinical trial recruiters, how effective they are, how participants view their use and whether they are ethical.

In the first two years, Mehlman and his co-investigators interviewed and surveyed recruiters, who reported using nudges such as creating personal relationships between recruiters and potential subjects, emphasizing the amount of financial compensation, minimizing the risks of the study while maximizing the potential benefits and highlighting the benefits for individuals in the future.

In the coming year, the team will examine the effectiveness of nudging to recruit healthy adults into a minimal risk interview study. In the final year, the researchers will analyze the normative, legal and ethical aspects of recruitment nudging and propose recommendations.



Speech regulation and tobacco harm reduction

Jonathan H. Adler, JD, Johan Verheij
Memorial Professor of Law and
Director of the Coleman P. Burke
Center for Environmental Law at
CWRU School of Law



Professor **Jonathan Adler** recently paired up with Jacob James Rich, a policy analyst at the Reason Foundation and a doctoral student at CWRU School of Medicine, to publish an article in the peer-edited *Journal of Free Speech Law* as part of a symposium on Information as Medicine. In this article, “Speech Regulation and Tobacco Harm Reduction,” they argue that the FDA’s regulatory constraints on vaping products are hampering public health efforts, with potentially deadly consequences. This article follows prior work that Adler and Rich have co-authored on how the FDA may be contributing to ignorance around the relative risks of various tobacco products.

Additionally, Adler has written extensively about the Supreme Court case, *Alliance for Hippocratic Medicine v. Food & Drug Administration*, concerning the FDA’s regulation of the abortion medication, mifepristone. At least one of the arguments Adler made in his blog series for the Reason Foundation has been cited in some of the official case briefs. Adler plans to follow up this coverage by developing a paper on “Standing to Sue the FDA.”



Public health

Cassandra Burke Robertson, JD, MA, MPA, John Deaver Drinko - BakerHostetler Professor of Law and Director of the Center for Professional Ethics at CWRU School of Law



Professor **Cassandra Burke Robertson** has penned several recent health law articles.

In “Speech as Public Choice Remedy,” which was accepted for publication in a forthcoming symposium edition of the *Houston Journal of Health Law & Policy*, Robertson and her co-authors explore the regulation of speech within the context of public health. They propose a refined approach to regulating health-related speech by distinguishing between false versus scientifically validated information to guide public policy and behavior.

Robertson also co-authored an article with **Sharona Hoffman, JD, LL.M, SJD**, the Edgar A. Hahn Professor of Law and Co-Director of The Law-Medicine Center at CWRU School of Law, that will appear in a forthcoming issue of *UC Irvine Law Review*. Their article, “Patient Autonomy, Public Safety, and Drivers with Cognitive Decline,” recommends a framework for enhanced medical and regulatory protocols to navigate the intricate challenges of driving with cognitive decline, as discussed in the cover story on page 16.

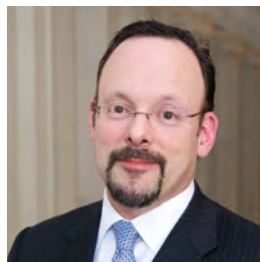
Another article recently accepted for publication, “Causation’s Constitutional Dimensions,” will appear in the *Texas A&M Law Review*. The paper, co-authored with Charles W. “Rocky” Rhodes, the Charles Weigel II Research Professor of Federal and State Constitutional Law and Professor of Law at South Texas College of Law Houston, discusses the issue of “innovator liability,” or holding brand-name drug manufacturers liable for harm caused by a competing generic medication using the same warning label developed by the innovating company. Ultimately, they suggest that causation may have constitutional dimensions with far-reaching implications.

Additionally, Robertson was part of a team that recently received a grant from the National Science Foundation to hold a conference about biomedical technological innovations. Specifically, the workshop will explore how research-intensive universities can leverage biotechnology to enhance the accessibility, affordability and practicality of innovations in educational settings—bridging the gap between technological advancements and real-world applications for people with disabilities.

Faculty briefs

Law-Medicine Center faculty publish scholarly articles, briefs, chapters and books that help shape the field of health law.

Here are some of their most recent publications.



Jonathan Adler
Johan Verheij Memorial
Professor of Law

- “Speech Regulation and Tobacco Harm Reduction,” 5 *Journal of Free Speech Law* (2024 forthcoming) (with Jacob James Rich)
- “The Delegation Doctrine,” *Harvard Journal of Law & Public Policy Per Curiam* (Summer 2024)
- “Standing without Injury,” 59 *Wake Forest Law Review* 1 (2024)
- “Uneducating Americans on Vaping,” *Regulation*, Summer 2023 (with Jacob James Rich)



Jessie Hill
Judge Ben C. Green
Professor of Law

- “The Right to Life and Medical Authority,” 104 *Boston University Law Review Online* 67 (2024)
- “COVID-19 and Abortion in the Ohio River Valley: A Case Study of Kentucky, Ohio, and West Virginia,” *Perspectives on Sexual & Reproductive Health* 178 (Aug. 12, 2023) (with Mikaela H. Smith, Molly Broscoe, Payal Chakraborty, Robert Hood, Michelle McGowan, Danielle Bessett and Alison H. Norris)



Sharona Hoffman
Edgar A. Hahn
Professor of Law

- “Employers and the Privatization of Public Health,” 65:7 *Boston College Law Review* (forthcoming 2024)
- “Patient Autonomy, Public Safety, and Drivers with Cognitive Decline,” 15 *UC Irvine Law Review* (forthcoming 2025) (with Cassandra Robertson)
- “The Patient’s Voice: Legal Implications of Patient-Reported Outcome Measures,” 22 *Yale Journal of Health Policy, Law, and Ethics* 1-59 (2023) (with Andy Podgurski)
- “Balancing Autonomy and Public Safety: A Call For Medical and Regulatory Oversight of Drivers With Cognitive Decline,” *Health Affairs Forefront*, Jan. 2, 2024 (with Cassandra Robertson)
- “Key Considerations for Patient-Reported Outcome Measures,” *The Bill of Health* (a Harvard Law School blog), November 3, 2023



Maxwell Mehlman
Arthur E. Petersilge
Professor of Law,
Distinguished
University Professor

- “Defusing the Legal and Ethical Minefield of Epigenetic Applications in the Military, Defense, and Security Context,” 10 *Oxford Journal of Law and the Biosciences*, July-December 2023 (with Dalpe and others)
- “Governing Nonconventional Genetic Experimentation,” 10 *Oxford Journal of Law and the Biosciences*, January-June 2023 (with Conlon and Pearlman)



Cassandra Robertson
John Deaver Drinko-
BakerHostetler
Professor of Law

- “Causation’s Constitutional Dimensions,” 13 *Texas A&M L. Rev.* (forthcoming, with Charles W. “Rocky” Rhodes)
- “Patient Autonomy, Public Safety, and Drivers with Cognitive Decline,” *UC Irvine Law Review* (forthcoming 2025) (with Sharona Hoffman)
- “Litigating Partial Autonomy,” 109 *Iowa Law Review* 1655 (2024)
- “Speech as Public Choice Remedy,” *Houston Journal of Health Law & Policy* (forthcoming) (symposium edition) (with Irina D. Manta and Zoe Robinson)

Legal insights

Welcoming a broad spectrum of legal insights from experts across the country, The Law-Medicine Center hosts a series of seminars, symposiums and educational events throughout the year. Tackling hot topics in health law ranging from public health and global pandemics to reproductive rights and healthcare financialization, these ongoing lectures advance the field by diving deeper into current issues.

Here are some highlights of the presentations that graced the stage of the Law-Medicine Center this year.

The Schroeder Lecture (October 5, 2023): Dr. Amy Acton Offers Insights from the COVID-19 Pandemic

Former Director of the Ohio Department of Health, **Amy Acton, MD, MPH**, served as the Law-Medicine Center's 2023 Schroeder Scholar-in-Residence. In her Schroeder Lecture, Dr. Acton shared a firsthand account of her critical role during the early months of the COVID-19 pandemic, when she gained national prominence for her unscripted daily briefings alongside Gov. Mike DeWine.

Dr. Acton's lecture unveiled the backstory behind Ohio's early policy decisions during the unprecedented health crisis, as she discussed the legal quandaries associated with issuing emergency public health orders. "There's nothing [like] a global zoonotic pandemic to show how absolutely interdependent every system we have is," Acton said, emphasizing the role of clear communication and collective action in solving public health problems.

Closing with a message of resilience, Acton urged law students to closely examine the policies spawned by the pandemic to better prepare for future crises. "We have got to learn from all we've endured," she said. "There's so much great scholarship to be had."



**Watch Acton's
Lecture**



Left to right: Sharona Hoffman, Amy Acton and Max Mehlman



Erin C. Fuse Brown, JD, MPH

The Elena and Miles Zaremski Law Medicine Forum (February 8, 2024): Private Equity and the Corporatization of Healthcare

Private equity investments in healthcare have ballooned by 2,000 percent over the last two decades. This financialization trend comes with serious implications, as investors' quests for quick revenue generation threaten to increase costs, lower care quality and contribute to physician burnout.

To examine the threats presented by healthcare corporatization, The Law-Medicine Center hosted The Elena and Miles Zaremski Law Medicine Forum featuring **Erin C. Fuse Brown, JD, MPH**, the Catherine C. Henson Professor of Law and Director of the Center for Law, Health & Society at Georgia State University College of Law.

In her presentation, Fuse Brown identified the regulatory loopholes that allow practices like "surprise medical billing," and unpacked the legal and policy levers available to address these harms. "If we can identify the revenue playbooks that are pulling investors into a particular market segment," she said, "we can fashion a policy response to close the loophole."



Watch the presentation



Naomi Cahn



Sonia M. Suter

The Elena and Miles Zaremski Law Medicine Forum (April 1, 2024): IVF and Abortion—Two Sides of the Same Coin

In February of 2024, the Alabama Supreme Court issued a controversial decision—finding that frozen embryos should be treated as children, and holding those who destroy embryos liable for wrongful death.

To analyze the potential implications of this decision, The Law-Medicine Center invited two nationally-recognized reproductive rights experts to the stage. **Naomi Cahn**, the Justice Anthony M. Kennedy Distinguished Professor of Law and the Armistead M. Dobie Professor of Law at the University of Virginia School of Law and co-director of UVA Law's Family Law Center; joined **Sonia M. Suter**, the Henry St. George Tucker III Dean's Research Professor of Law, the Kahan Family Research Professor of Law, co-director of the GW Health Law and Policy Program, and Founding Director of the Health Law Initiative.

In this presentation, Cahn and Suter compared abortion access to assisted reproductive technologies like in vitro fertilization (IVF) as they explored the broader social issue of reproductive justice.



Watch the presentation



Wendy E. Parmet

The Elena and Miles Zaremski Law Medicine Forum (April 16, 2024): Judicial Review of Public Health Laws—From Deference to Indifference

U.S. courts have historically granted significant deference to public health officials, justified by the court's respect for scientific expertise and the high value placed on public health. However, the traditional judicial deference to public health authorities eroded during the COVID-19 pandemic as courts heard countless challenges to public health orders and, in many cases, replaced deference with deep skepticism and even indifference.

Building on her recent book, *Constitutional Contagion, COVID, the Courts, and Public Health*, **Wendy E. Parmet** delivered a lecture

to review this shift. The George J. and Kathleen Waters Matthews Distinguished Professor of Law and Professor of Public Policy and Urban Affairs at Northeastern University, where she is the faculty director of the Center on Health Policy and Law, Parmet posed the question of what this new judicial era may mean for public health.



Noteworthy

Andrew McGirty (3L) wins second place in AUWCL National Health Law Writing Competition

By Brooke Bilyj

When considering potential topics for his writing requirement during his second year at Case Western Reserve University School of Law, **Andrew McGirty** stepped outside the classroom to pull an idea directly from current health law proceedings.

In November 2023, McGirty volunteered at the American Health Law Association's Fundamentals of Health Law Conference in Chicago, where he had the opportunity to attend presentations and chat with practitioners about current legal issues impacting healthcare providers. One talk that piqued his interest provided an update on circuit courts' continued struggles to interpret the causal standard connecting the Anti-Kickback Statute (which prohibits incentives for referring patients for medical services that are reimbursable by federal healthcare programs like Medicare and Medicaid) and the False Claims Act (which imposes liability for submitting false or fraudulent claims for government payments).

The session left McGirty "teeming with thoughts on both sides of the ripe and unexplored disagreement," he said. Plus, practitioners predicted that, "given the magnitude of the issue on the everyday decisions in healthcare, the Supreme Court would likely address it within the next five years." McGirty decided he "had the perfect topic to write about."

McGirty, who earned a bachelor's degree in Health Information Management and Systems from The Ohio State University in 2022, leveraged his understating of the healthcare industry to approach each sides' arguments with a "focus on their

real-world workability among healthcare providers and legal practitioners, rather than reiterating age-old critiques of the litigants' statutory interpretation."

In an effort to "further develop his conclusions" and "explore new impacts," McGirty looked to several healthcare and life sciences attorneys at Jones Day, where he served as a summer associate. "They not only confirmed the soundness of my reasoning," he said, "but also forecasted the costs of ambiguity on this causal standard that far exceeded what I conservatively anticipated."

McGirty submitted a truncated version of his paper, titled "Cracking Causation: The Need for a Workable Link Between

the Anti-Kickback Statute and False Claims Act," for several writing awards—so far, landing second place in the American University Washington College of Law (AUWCL) National Health Law Writing Competition.

"The quality of Andrew's legal analysis and writing really stood out," said a representative of the competition, which recognizes scholarly papers demonstrating exceptional research and writing skills and

a sophisticated understanding of pressing health law issues.

"I am extremely grateful to AUWCL for choosing my note for this award," McGirty said. "Delving into a circuit split happening in real time has been an extremely intellectually challenging task—and will continue to be so, as more circuits decide on the issue central to my note soon."

McGirty's complete, updated paper will be published in *Case Western Law Review* Vol. 75, Issue 1, in 2025.

"Delving into a circuit split happening in real time has been an extremely intellectually challenging task."

—Andrew McGirty (3L)

TOP RANKED: awards & accolades

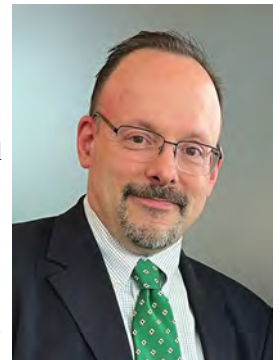
Consistently recognized as one of the top law schools in the nation, both for its quality of teaching and the scholarly impact of its faculty, Case Western Reserve University School of Law is proud of its commitment to provide exceptional legal education. Here are some recent awards, rankings and other achievements that celebrate our dedication to cutting-edge scholarship.

A+ in health law

CWRU School of Law recently earned an A+ in *preLaw Magazine's* national rankings of Health Law Leaders. *PreLaw's* 2024 Health Law Honor Roll, which showcases outstanding academic programs across the country, grades law schools on the breadth of their curricular offerings in this specialty—recognizing the Law-Medicine Center's dedication to excellence.

ACUS appointment

Jonathan H. Adler, JD, the Johan Verheij Memorial Professor of Law and founding Director of the Coleman P. Burke Center for Environmental Law at CWRU School of Law, was recently appointed to the Administrative Conference of the United States (ACUS). ACUS is an independent federal agency charged with improving the procedures by which federal agencies protect the public interest and perform essential governmental functions.



"I am honored to receive this appointment and look forward to working with other members of the conference to enhance the administrative procedures upon which so many depend," said Adler, who will serve a two-year term.

Adler's appointment to ACUS "is a testament to his outstanding scholarship, deep expertise in administrative law and his commitment to advancing thoughtful, effective governance," said dean **Paul Rose**. "We take great pride in our faculty's national and international impact, and his appointment is a reflection of the excellence we strive for in all that we do."

10th faculty leader joins ALI

Jessie Hill, JD, the Judge Ben C. Green Professor of Law and Director of the Reproductive Rights Law Initiative at CWRU School of Law, was recently elected to the American Law Institute (ALI). Founded in 1923, the mission of ALI is "to clarify, modernize, or otherwise improve the law" to promote better administration of justice.



"I'm truly honored to be selected to join this esteemed group of scholars, judges and practitioners, and I look forward to engaging in the important work of the Institute in shaping our legal system," Hill said.

Following Hill's selection to ALI, CWRU School of Law now has 10 faculty members elected to the prestigious organization.

AAPL Distinguished Achievement Award

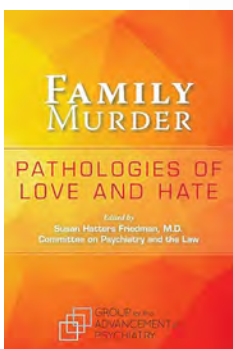
Susan Hatters Friedman, MSt, MD, DFAPA, the Phillip Resnick Professor of Forensic Psychiatry at CWRU School of Medicine, received the 2023 Seymour Pollack Distinguished Achievement Award from the American Academy of Psychiatry and the Law (AAPL). The award, named for one of the academy's founding members, honors exemplary contributions to the teaching and education of forensic psychiatry.

"I was deeply honored to receive this award for my work at the intersection of psychiatry and the law," Friedman said. "Throughout my career, I have sought to teach others about this critical intersection."

Friedman's work specializes in forensic psychiatry, focusing primarily on its intersection with maternal mental health. In addition to her endowed professorship in forensic psychiatry, she is a professor of pediatrics and reproductive biology at the School of Medicine and an adjunct professor at the School of Law.

While earning her degree at CWRU School of Medicine, Friedman took a class called 'Criminal Law and Psychiatry,' taught by Dr. Phillip Resnick at the School of Law. "The course was the start of my desire to make my career in forensic psychiatry," she noted. "I am honored to now co-teach 'Psychiatry and the Law' at the law school."

Friedman is a past president of the AAPL, as well as a past chair of the Psychiatry and the Law section of the Group for the Advancement of Psychiatry. She recently led the AAPL's task force to develop practice guidelines for reproductive forensic psychiatry.



She serves as deputy editor of the *Journal of the American Academy of Psychiatry and the Law*. She has authored hundreds of articles on forensic psychiatry and lectured nationally and internationally on criminal and civil issues. She was previously awarded the Manfred Guttmacher Award from the American Psychiatric Association for the book *Family Murder: Pathologies of Love and Hate*.







Cognitive decline and the law

How the Law-Medicine Center
is tackling the legal
implications of aging brains

By Brooke Bilyj

“As a society, we need to think about the social, policy and legal implications of our aging population.”

*—Sharona Hoffman,
Edgar A. Hahn Professor of Law,
Professor of Bioethics,
Co-Director of Law-Medicine Center,
CWRU School of Law*



Sharona Hoffman

As the American population ages, challenges stemming from cognitive decline could impact every facet of society. By 2034, seniors will comprise more than 20 percent of the population, and with every passing year, they face increasing risks of cognitive impairment that could affect their ability to work, drive, make important decisions and engage in other activities of daily living.

As the challenges of cognitive decline become more prevalent, legal experts and policymakers have much to consider. Through the dedicated efforts of **Sharona Hoffman, JD, LL.M., SJD**, CWRU Law-Medicine Center is leading the way to tackle the legal aspects of cognitive decline.

“As a society, we need to think about the social, policy and legal implications of our aging population,” said Hoffman, the Edgar A. Hahn Professor of Law and Co-Director of The Law-Medicine Center at CWRU School of Law. “We’re going to have people with cognitive decline in the workplace, on the

roads and in leadership positions, so how do we address the risks that the disability poses? We need to think about how we regulate in this area without overregulating, while continuing to appreciate that older people make invaluable contributions to society.”

To strike the delicate balance between preserving the autonomy of America’s aging population and protecting people from harm, Hoffman is spearheading efforts to explore this issue from every angle. Now, her mission to understand the legal side of cognitive decline is drawing support from other faculty members and legal scholars across the country.

Navigating the challenges of aging

Hoffman’s personal interest in cognitive decline grew out of her own experience, as it does for many who are impacted by the inevitable challenges of aging.

10 percent of seniors over 65 face dementia and an additional 22 percent are battling mild cognitive impairment, which means that 25-50 percent of people with mild to moderate dementia continue to operate vehicles.

"It is a very personal topic for me," Hoffman said. "I've had several relatives who lived good, long lives, but experienced cognitive decline near the end. That was extremely difficult to navigate as a family."

Hoffman endured a particularly trying time about 10 years ago. Within the span of just 18 months between 2013 and 2014, she lost both of her parents and her mother-in-law, and then her husband was diagnosed with Parkinson's disease at age 55.

That traumatic time inspired Hoffman to write a book called, *Aging with a Plan: How a Little Thought Today Can Vastly Improve Your Tomorrow*, which was published in 2015. "It was partly my effort to find answers for myself and digest what was going on," she said, "but I also wanted to use my personal and professional experiences to help others."

A self-help manual for growing older, Hoffman's book addresses aging and caregiving from legal, financial, medical, social and other perspectives. Now in its second edition, *Aging with a Plan* combines thorough research with compelling personal anecdotes and an abundance of practical advice.

The book spurred Hoffman to study the legal implications of aging brains. She realized, for example, that the topic of driving with dementia "needed a lot more attention than a single chapter in a book." This prompted her to start exploring how different states and other countries were handling the risks of cognitive decline behind the wheel.

Expanding the scope of research

To enrich her research into the risks and repercussions of cognitive decline, Hoffman began drawing on the expertise of colleagues like **Cassandra Burke Robertson, JD, MA, MPA**, the John Deaver Drinko - BakerHostetler Professor of Law and Director of the Center for Professional Ethics at CWRU



Cassandra Burke Robertson

School of Law. Robertson's focus on transportation policies for people with disabilities, particularly related to autonomous vehicles and assistive driving technologies, provided the perfect complement to Hoffman's research.

"I really appreciate that Sharona takes such a broad view of her research, and that she can see connections and carryovers with other people's work," Robertson said, "and because of that, we've been able to collaborate to expand her research in cognitive decline."

Their collaborative research revealed that more than 91 percent of seniors aged 70-80 and more than 69 percent of seniors older than 85 still maintain driver's licenses. Moreover, 10 percent of seniors over 65 face dementia and an additional 22 percent are battling mild cognitive impairment, which means that 25-50 percent of people with mild to moderate dementia continue to operate vehicles. These statistics represent potentially grave risks to public safety, while also illustrating how vital driving can be to the well-being and independence of older adults.

Together, Hoffman and Robertson have co-authored several articles on this topic. Their piece, "Balancing Autonomy and Public Safety: A Call for Medical and Regulatory Oversight of Drivers with Cognitive Decline," appeared in *Health Affairs Forefront* in January 2024. In it, they argued that state licensing laws should address these risks by requiring physicians to order driving assessments for patients diagnosed with cognitive decline.

A more extensive co-authored article on the topic, titled "Patient Autonomy, Public Safety, and Drivers with Cognitive Decline," will appear in a forthcoming issue of *UC Irvine Law Review*. Their research also gained attention in *The Regulatory Review*, in an article outlining their proposed changes to protect the public while ensuring that seniors maintain their independence as long as possible.

"This is an important issue, and Professor Hoffman is clearly the leading scholar on this issue in the country," Robertson said. "Through her work, Case is really taking a primary role."

Drawing national attention

As Hoffman's cognitive decline research progressed, she explored the topic from other angles, as well. She has written articles about how cognitive decline affects the workplace in general and the physician workforce in particular. In one article, she argued that state medical boards should take a more active role in identifying physicians with cognitive impairment and determining whether they are qualified to continue working.

The deeper she dove into the topic of cognitive decline, the more Hoffman realized it was an area ripe for discussion on a larger stage to encompass a wider range of perspectives. To that end, she organized the Law-Medicine Center's 2024 annual national conference around this pressing issue, inviting prominent legal and medical scholars across the country to speak at CWRU School of Law last March.

Representing disciplines as diverse as neurology, public health, elder law and other health law specialties, the full-day conference drew more than a dozen national experts to the stage. Presenters discussed decision-making support and guardianship as well as the legal implications of cognitive decline in prisons, politics, job performance, telemedicine and other settings.

"No other conference I've seen has attacked this issue from so many angles, so I thought we could bring attention to this topic much more comprehensively," said Hoffman, who presented her research on driving concerns and workplace challenges during the symposium. "It was unique because it was so broad, and it tackled so many problems that can arise from cognitive decline in all contexts."

This fresh approach filled the auditorium to capacity, with over 100 people in attendance and several dozen more who tuned



"No other conference I've seen has attacked this issue from so many angles, so I thought we could bring attention to this topic much more comprehensively."

*—Sharona Hoffman,
Edgar A. Hahn Professor of Law, Professor of Bioethics,
Co-Director of Law-Medicine Center, CWRU School of Law*

in online. Hoffman was "delighted" with the turnout, and the speakers were equally excited to bring this critical topic into the national spotlight. In fact, five of the speakers are contributing articles to the upcoming 2025 volume of the law school's *Health Matrix* journal.

"These speakers were really eager to present different angles on this topic," Hoffman said. "Hosting the conference was an important step, and hopefully more will grow out of it."

Promoting a multi-pronged approach

Through wide-ranging conference presentations and contributed articles as well as collaborative research, Hoffman emphasizes that interdisciplinary coverage of cognitive decline is critical to pursuing effective solutions.

"There has to be a multi-pronged approach to address these issues," Hoffman said. At the legislative level, this includes policies and regulations that balance personal autonomy and public safety, as she proposes in her published research. But it also depends on families and caregivers "who deal with these problems at the individual level," she said. This is why she wrote her book (and released an updated second edition in 2022) to prepare people for the inevitabilities of aging.

As Hoffman continues to investigate the legal challenges of cognitive decline, she sees more opportunities for other scholars and law students to get involved in shaping the policies that will support the country's aging population.

"Through the conference, my ongoing scholarship and the articles in *Health Matrix*, we're trying to provide as much education and exposure to these issues as possible," Hoffman said. "Students need to be thinking about this area of law, especially as the population continues to age. This is an issue that cannot be ignored."

Extended coverage of cognitive decline

On March 1, 2024, The Law-Medicine Center hosted its annual national conference, which was devoted to the theme of Cognitive Decline and the Law. Leading legal and medical scholars from across the country discussed topics ranging from medical decision-making and guardianship to driving concerns, workplace challenges, dementia among politicians and prisoners, and much more.

To supplement the symposium's comprehensive overview of this issue, several speakers are contributing articles to the school's top-rated health law journal, *Health Matrix*. The forthcoming Volume 35 of *Health Matrix*, to be published in 2025, will focus largely on the topic of cognitive decline, with articles including:

- "Cognitive Decline and the U.S. Presidency: The Case of Joe Biden" by Mark J. Fisher, MD, Professor of Neurology, University of California, Irvine School of Medicine
- "Planning for Cognitive Decline: Combining Formal Supported Decision-Making Agreements and Healthcare Power of Attorney" by Megan Wright, Professor of Law, Medicine, Sociology, and Bioethics, Penn State Law
- "Applying a Human Rights Framework to Decision-Making with Cognitive Decline: Moving Beyond Agreements to a Broader Range of Supports" by Rebekah Diller, Clinical Professor of Law, Cardozo School of Law
- "Protecting Older Adults Who are Incarcerated: Does the 8th Amendment Work?" by Jalayne Arias, Associate Professor in Health Policy and Behavioral Sciences, Georgia State University School of Public Health
- "Advancing Virtual Care Practices Across the Cognitive Impairment Continuum" by Tara Sklar, Faculty Director, Health Law & Policy Program, University of Arizona College of Law; and Kathryn Huber, Professor of Practice in Law, University of Arizona College of Law

Watch archived
webcast content
from the
conference





UNWAVERING ADVOCACY

**The Reproductive Rights
Law Initiative at Case
keeps fighting for freedom**



“We’re the only law school-based program focused on reproductive rights outside of the coasts.”

—Jessie Hill, JD, the Judge Ben C. Green Professor of Law and Director of the Reproductive Rights Law Initiative

By Brooke Bilyj

As Ohio’s battle for reproductive rights has unfolded since the U.S. Supreme Court overturned *Roe v. Wade*, advocates at Case Western Reserve University School of Law have expanded their approach to fighting the legal disputes resulting from the landmark *Dobbs* decision.

The Law-Medicine Center’s focus on this issue dates back more than two decades, stemming from the personal passion and litigation expertise of **Jessie Hill, JD**, the Judge Ben C. Green Professor of Law, who worked at the American Civil Liberties Union’s (ACLU) Reproductive Freedom Project and practiced civil rights law before joining the CWRU faculty in 2003.

Hill’s longstanding dedication to this field keeps the Law-Medicine Center on the frontlines of reproductive rights work in Ohio—culminating in the creation of the Reproductive Rights Legal Initiative (RRLI), a concentrated effort that’s gaining momentum while making a remarkable impact.

“Case is unique in that we have an amazing medical school and a phenomenal law program, so we have a strong and meaningful law-medicine connection.”

—Jessie Hill, JD, the Judge Ben C. Green Professor of Law and Director of the Reproductive Rights Law Initiative

Expanding efforts

Hill planted the seeds for the RRLI decades ago when she began teaching a reproductive rights seminar at CWRU. As the topic gained more attention, Hill saw an opportunity to expand the program beyond the classroom.

“As the political climate started to change in Ohio, with more legislation affecting abortion rights,” Hill said, “I became a resource, both for national groups and for local advocacy organizations and providers who needed help understanding the laws.”

To keep up with this rapidly evolving legislative landscape, Hill shifted her seminar into a lab, “which gave students the opportunity to work on some of these real-life issues directly,” she said. When she

relinquished the role of Associate Dean for Academic Affairs in 2019, she decided to get even more involved in reproductive rights, and began seeking grant funding to support her work.

Now, Hill’s efforts have formalized into the RRLI, as additional funding enabled her to hire a full-time team in 2023, which now comprises two staff attorneys and a program manager. The RRLI hired its first full-time student extern during the summer of 2024 (see page 26 to hear about their extern’s experience), and Hill plans to hire “at least one more fellow,” while “continuing to involve students in paid research.”

Blocking the ban

As part of the School of Law, the RRLI’s purpose is balanced between legal action and education.

“Obviously, we’re legally focused. We provide legal counseling to empower people working in this space, and we challenge laws and other legal barriers they face,” Hill said. “Another part of our mission is to bring students into that work, and train a future generation of advocates for reproductive freedom.”

Through a combination of consultation, litigation, education and other programming (see sidebar), the RRLI is striving to fulfill “the ultimate goal and vision, where every individual has the legal right and access to make their own reproductive healthcare decisions,” Hill said. “You might think that’s already been accomplished with Issue 1, but it hasn’t.”

The Supreme Court’s landmark ruling in *Dobbs v. Jackson Women’s Health Organization* (2022) removed federal protections, making abortion access a state-by-state decision. This triggered the Heartbeat Act in Ohio, which banned abortions after six weeks of pregnancy. Professor Hill instantly sprang to action, leading a coalition that included the ACLU, Planned Parenthood and other advocacy partners in a lawsuit challenging the act and effectively blocking the ban. The case, *Preterm-Cleveland v. David Yost*, ended up in the Ohio Supreme Court in September 2023.



Jessie Hill with Becca Kendis (LAW, SAS '19) and Freda Levenson (legal director of the ACLU of Ohio).

Then, in November 2023, voters approved Issue 1, The Right to Reproductive Freedom Amendment, which Hill precipitated by helping to craft the ballot language. This essentially nullified the six-week abortion ban, allowing individuals to make their own reproductive decisions.

“That has been hugely consequential for Ohio,” Hill said, “not just because we’ve preserved access for Ohioans, which is a big deal, but we’ve also kept clinics from shutting down and providers from moving away. That’s a really big deal.”

Making an impact

But the battle is far from over. Hill and her team “have worked nonstop since the amendment passed,” she said, noting that many restrictions and bureaucratic requirements still remain. To cut through this red tape, they have brought lawsuits challenging Ohio’s 24-hour waiting period and in-person informed consent requirements for abortion, along with laws restricting access to the abortion medication, mifepristone, while continuing to fight pending lawsuits set in motion before the amendment passed.

Although abortion access has been a big focus, the RRLI tackles other reproductive rights, too, including legal issues related to in vitro fertilization (IVF), birthing centers and doulas. As these legislative challenges continue to evolve, the RRLI is perfectly positioned to make a significant impact.

“Cleveland has both a sophisticated legal community and a



Jessie Hill

sophisticated medical community, so that’s a real advantage to being here,” Hill said. “Case is unique in that we have an amazing medical school and a phenomenal law program, so we have a strong and meaningful law-medicine connection.”

Beyond those built-in opportunities for collaboration with the surrounding medical and legal communities, the school’s strategic location presents another advantage for the RRLI. Situated in the seventh most populous state, and “a really red state” at that, Hill sees abundant need for reproductive reform in Ohio.

“We’re the only law school-based program focused on reproductive rights outside of the coasts,” she said. “We’re in Ohio, doing the work where the work needs to be done, and that’s profoundly important.”

“Intellectual infrastructure”

In April of 2024, the Reproductive Rights Law Initiative at CWRU School of Law hosted a symposium titled “Religious Liberty Arguments for Abortion Rights.” The interdisciplinary conference brought together lawyers, scholars, religious leaders, historians and theologians from across the country to tackle the topic of abortion rights from multiple perspectives.



Watch the
presentation

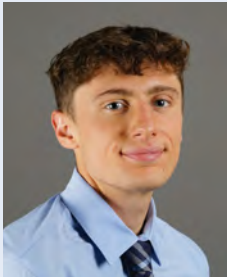
Additionally, the initiative is planning future programming geared toward law students, including career-focused webinars to highlight real-world opportunities in the field of reproductive rights.

This “intellectual infrastructure” at Case “is an essential part of any social movement,” said Jessie Hill, JD, the Judge Ben C. Green Professor of Law and Director of the Reproductive Rights Law Initiative. “The opportunity to marry that legal scholarship with the chance to make real change—that’s my dream.”

Experiential education

To fulfill their experiential education requirement, health law students at Case Western Reserve University School of Law participate in practical externships at law firms, hospitals and other organizations. Here's how a few of them honed on-the-job legal skills over the last year.

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Noah Perrin (2L)

*The Health Law Clinic at CWRU's
Kramer Law Clinic (Cleveland)*

“This internship gave me the opportunity to apply what I've learned to real cases. I gained invaluable education on the social security system and put it to use for individuals experiencing health issues—even giving an opening statement at a social security hearing.

In my personal statement for law school, I emphasized my desire to represent individuals with disabilities, and I was grateful to have an opportunity to assist with a disability case so early in my education. The externship provided a learning experience that you can't really get in a classroom. It gave me insight I hope to bring to my career as a social worker and lawyer.”

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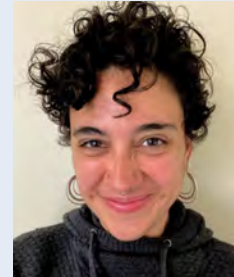


Andrew McGirty (3L)

Jones Day (Columbus)

“Working at a large law firm provided me with invaluable experience in highly complex health law matters, including national health system mergers and acquisitions, False Claims Act and Anti-Kickback Statute litigation and the formation of accountable care organizations.

Each project challenged me to develop critical thinking and writing skills that go beyond what is typically covered in law school. Despite being part of a large firm, the small office setting in Columbus fostered close relationships with the attorneys. This intimate environment has given me the confidence to produce high-caliber work as I start my legal career there.”



Vincent Romero (2L)

MetroHealth (Cleveland)

“This experience exposed me to the complexity of working in-house for a hospital system, and solidified my desire to work in this context after graduation. I have always wanted to pursue health law, and this externship helped me narrow that focus to in-house counsel.”

Adrienne Pohl (3L)

*The Reproductive Rights Law
Initiative at CWRU School of
Law (Cleveland)*

“Digging into the legal questions that our clients had gave me a new understanding of the reality faced by reproductive healthcare providers and the difficulties faced by those seeking their assistance. The real-life impact a team of dedicated attorneys can have on an enormous number of people is staggering, and it was a privilege to observe the intense preparation that went into successfully removing a single barrier to Ohioans' ability to access reproductive care.

This experience showed me the value of hard work and long-term planning. It took the efforts of many individuals coming together, but it is possible to achieve important, practical changes via the legal system.”

“



Melinda Week, MPH (2L)

MetroHealth (Cleveland)

“My favorite aspect of the externship was being able to experience all of the different practice areas, which included employment, supply chain, litigation risk, regulatory matters and more. I came into law school without really knowing what I wanted to practice, so working at Metro gave me an excellent sneak peek into what health law looks like in practice, and specifically what I do and do not like. This was very rewarding as a young lawyer, especially as someone who isn't quite sure what they want to practice post-graduation.”

”

Joining the team

Law-Medicine Center hires new Cowen Fellow

The newest Cowen Research Fellow to join the Case Western Reserve University School of Law, **Lucas Katz, JD**, didn't initially plan on pursuing a legal career. But after graduating from Columbia University with an economics degree during the peak of the pandemic, his plans suddenly shifted. When he wound up working as a paralegal in his hometown of Anchorage, Alaska, Katz realized law was a perfect fit.

"I enjoyed the research, the reasoning, and helping clients solve their problems," Katz said. "That felt like meaningful work, so I decided to apply for law school."

Drawn to Case's excellent reputation, Katz landed in Cleveland to earn his degree. "I didn't have a strong sense of what I wanted to specialize in," he said, "but I found that focus when I joined Case's *Health Matrix: Journal of Law Medicine*."

By his third year, Katz was pursuing a concentration in health law through Case's Law-Medicine Center. "I appreciate the variety within the health law field," said Katz, who earned his Juris Doctor in May of 2024. "There are a lot of different areas of law you can work with and learn about."



Lucas Katz, JD

"Professors Hoffman and Mehlman are both very accomplished scholars in their fields, and I'm excited to get a closer look at how they work," Katz said. "I'm also happy to spend another year at the law school with the excellent students and faculty I've come to know over the past three years. While I'm here, I hope to improve the skills I built during my time as a student and expand my knowledge of health law."

Looking ahead, Katz has already accepted a position to serve in the Navy JAG Corps once he completes his yearlong fellowship. "I'm sure the knowledge I learn here will be very useful," he said, "both as a JAG and over the course of my legal career."

—Brooke Bilyj

"I'm sure the knowledge I learn here will be very useful, both as a JAG and over the course of my legal career."

—Lucas Katz, JD, CWRU School of Law
Cowen Research Fellow

To explore multiple facets of the legal field, Katz gained real-world experience through internships at University Hospitals, the Cuyahoga County Department of Law, the Alaska Public Defender's Office, the Supreme Court of Ohio and the Army Judge Advocate General's (JAG) Corps. "All of these internships helped me build fundamental research and writing skills," he said. "Those will certainly be useful at the fellowship, and as an attorney."

As the newest Cowen Fellow, Katz will continue his immersion in health law by assisting faculty members—particularly the Law-Medicine Center's co-directors, Professors **Sharona Hoffman** and **Max Mehlman**—with research, writing and teaching duties.

The Dean Lindsey Cowen Research Fellowship—endowed by former School of Law administrator, Pat Ferry—is awarded to CWRU School of Law graduates with a strong record of academic achievement and a demonstrated interest in health law.



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