

**CASES**

**For the**

**TWELFTH**

**INTERCOLLEGIATE ETHICS BOWL**

**TAKING PLACE AT**

**THE ANNUAL MEETING OF THE**

**ASSOCIATION FOR PRACTICAL AND  
PROFESSIONAL ETHICS**

**IN**

**JACKSONVILLE, FLORIDA**

**ON THURSDAY MARCH 02, 2006**

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## Case 1

The *Project BioShield Act of 2003* (BioShield I) was a \$ 5.6 billion comprehensive effort to engage the pharmaceutical industry into developing diagnostic tools, effective drugs and specific vaccines that would successfully respond to and protect the American public from bioterrorist attacks. The project incorporated three major foci: 1. a permanent funding authority that would ensure through the purchase of therapeutic agents and vaccines the development of countermeasures by the private sector; 2. new National Institutes of Health (NIH) authority to speed research and development of promising areas of medical countermeasures and 3. an FDA emergency use authorization to permit use of such treatments in emergency situations, even if these have not completed the required formal FDA review process.

Despite the incentives provided by Bioshield I to the pharmaceutical industry to invest in research and development relative to new therapeutic modalities for responding to bioterrorism, the industry has been reluctant to do so, partly due to concerns about liability. Therefore, in January 2005, Senator Judd Gregg (R-NH) introduced the *Protecting America in the War on Terror Act of 2005* (S.3) (Bioshield II), which “eliminates additional barriers to better protect and strengthen our domestic public health infrastructure”. Some of these barriers are reflected in the expansion of the definition of “qualified countermeasures” to include detection technologies and research tools; additional tax-based incentives and grants; and immunity from safety-related lawsuits from the use of these products. Furthermore, the Act provides for “a wild-card patent extension” up to 18 months for drugs unrelated to bioterrorism, including blockbuster medications, to companies that develop bio-defense products.

The proposed legislation has provoked widespread criticism. Some opponents focus on the tremendous profit potential from patent-protected drugs, which - as generics- could help decrease health-care spending: according to the Generic Pharmaceutical Association a 1% increase in the use of generic drugs would result in savings of 4 billion dollars. Senator Charles Schumer (D-NY) has said that the “outrageous” patent extension would help the pharmaceutical industry more than it would help the American public.

Yet another criticism is raised by organizations focusing on research for cures for other diseases. They claim that the US government is heavily slanted towards bioterrorism defense research while such global conditions as AIDS, malaria and tuberculosis are neglected, as the government is not investing in making those diseases a research priority for the pharmaceutical industry. To counter this, the bill’s sponsor(s) propose to extend its incentives to companies that deliver treatments against neglected diseases that pose a global threat.

In October 2005 Senator Richard Burr (R-NC) sponsored legislation that provides for the creation of a new biodefense agency within the Department of Health and Human Services funded by unspent monies from the Bioshield legislation. The agency, termed

Biomedical Advance Research Defense Agency (BARDA), would quickly fund high-risk, high-payoff projects that might not pass the peer review selection process in other agencies. BARDA would fund research on terrorism countermeasures (biological, chemical and nuclear agents) and also coordinate research on bio-defense and infectious diseases across the federal government. BARDA's conception has various scientific organizations on edge: at a time of severe budget cuts, scientists are concerned about possible duplicate research efforts among BARDA and such federal institutes as The Centers for Disease Control and Prevention (CDC) and the National Institute of Allergy and Infectious Diseases (NIAID). Moreover, contrary to the operation procedures of most research federal agencies, BARDA would be exempt from the Freedom of Information Act (FOIA) and open meeting laws.

## Case 2

Chloe is excited to begin preschool, but her start is being delayed as she has not been immunized. Shortly after her older brother Brett was vaccinated, he became increasingly withdrawn and was eventually diagnosed as autistic. Chloe's parents are convinced that the shots Brett received are responsible for his autism, despite assurances from their pediatrician that no evidence supports this belief. They refuse to have Chloe immunized.

Under state law parents can appeal for an exemption to the mandated vaccinations for medical, religious, or philosophical reasons. Chloe's doctor does not support a claim for a medical exemption, and so Chloe's parents have retained a lawyer to explore an exemption based on religious or philosophical grounds. The school district has informed them that even if the exemption is accepted, if there is an incidence of a vaccine-preventable disease in the school or community, Chloe may be required to stay at home until the disease is no longer present for her own safety and that of others. Her parents think this is excessively cautious, and are concerned about the quarantine policy's effect on Chloe's academic success in grade school.

Despite the great success of mandatory vaccination for children in improving public health, controversy and contradiction surround the issue. Controlling vaccine-preventable diseases in school-age children has been proven to be the most effective way to prevent epidemics, as the highest incidence of vaccine-preventable disease occurs in children. As a result, the federal Public Health Service Act requires immunization of children, but allows for state-sanctioned exemptions. Most states require immunization for school enrollment, but allow exemptions for medical, religious, or philosophical reasons. Exceptions are also made for children for whom vaccination is contraindicated (for example, some cancer patients) — as the risks outweigh the potential benefits to them, and they are protected from exposure to diseases by the immunization of those around them.

Opponents of mandatory immunization cite the occurrences of serious adverse effects, constitutional protection of religious and other freedoms, and the right of parents to make health decisions for their children. They cite the lack of a consensus in scientific research available on adverse effects of vaccines. In particular, opponents point out the lack of large, longitudinal studies of diverse populations on the long-term effects of immunization and its correlation with numerous diseases. Parents are concerned that pediatricians are not giving them the complete information required for informed consent to medical procedures, but downplaying the risks or failing to mention them at all. Civil rights advocates raise concerns about legislators practicing medicine by substituting their judgment for that of qualified physicians. Other opponents question the use of governmental power to restrict the liberty of uninfected and unvaccinated individuals to associate with others, where in the past quarantine was used to isolate infected individuals from others to prevent the transmission of disease.

The courts have repeatedly ruled that mandatory immunization is not unconstitutional.

### Case 3

Dwayne Kirk had a long and excellent relationship with his mentor, Charles Arntzen of Arizona State University, Tempe...until he discovered large sections of his first publication copied word for word in a book by Arntzen. Arntzen excused his use of Kirk's work without his knowledge or consent, claiming that this is common practice in science, using another researcher's work, he said, is "a way to conserve energy". Arntzen further argued that since Kirk worked on his research team they had a history of sharing materials, and because the book was not peer-reviewed his unauthorized use of Kirk's work was acceptable. When Kirk complained, Arntzen removed him from research projects. Other students who challenged their mentors' or professors' use of their work, have suffered retribution, such as: failure to defend their dissertations successfully, poor recommendations, removal from research teams, loss of teaching positions, professional ostracism, and blacklisting.

Many colleges and universities have severe penalties - including failure, suspension, and expulsion -for plagiarism. Although institutions vary slightly in their definition of plagiarism, it is universally understood to be taking credit for another's work without acknowledging the source. Some schools expect students to acknowledge anyone with whom they have discussed their ideas: Harvard requires students to credit others in their papers if they have had conversations with them that significantly influenced their ideas. Lawrence University students are expected to affirm the honor code on all written work, for example, acknowledging if they used a tutor. To ensure proper credit is given, Presbyterian College requires the writing center to report to teachers the names of students who have sought help. Some feel this is extreme: in a survey at the college, one professor argued against such stringent requirements, suggesting that seeking assistance in learning how to write is a normal part of the educational process.

Less strict standards appear to apply generally for faculty in academia. Some lab directors are routinely included as authors on all publications coming out of their labs, although they may have done little of the research and none of the writing. Some professors assign students to write articles or chapters for them, without acknowledging the students' contributions in the publication. Other teachers use excerpts from student papers in their own work, justifying their actions with the argument that these are not the students' original ideas, but are an expansion of the teacher's ideas. Professors also complain about intellectual theft by colleagues: ideas stolen in the peer-review process, or delaying a review to allow another colleague to publish first. Sometimes failure to cite appropriately is blamed on the pressure to publish to preserve a career, or charged to inadvertent oversight in the rush to meet publishing deadlines, or to confusion when trying to write multiple papers at once.

In the past few years, several prominent professors and scientists published as their own work excerpts from the work of other authors. When exposed, they frequently excused their actions by blaming their students for oversights, protesting that they were unaware of the plagiarism - e.g. quotation citations accidentally missed by research assistants, or material inserted by research assistants that the professor did not intend to

be in the text. Some excuse their actions on other grounds. Laurence Tribe, a Harvard Law professor, acknowledged that he used (unattributed) work of Henry Abraham in his book, "God Save This Honorable Court", but claimed he was attempting to write a book for lay readers, without footnotes that can be so intimidating. He also cited the tradition in law of relying on law clerks to do much of the lawyer's writing, suggesting that this makes the rules of plagiarism murkier for lawyers.

Not all believe it is appropriate for professors to claim credit for their students' work. Richard Lewontin, Harvard Professor Emeritus calls the practice dishonest, and decries the culture of academia that gives those in authority exploitative power over their students ... "much as a lord had unchallenged property rights in the products of serfs..."

## Case 4

Hurricane Katrina left Gretna, a city of 17,500, without food, water, electricity, sewer facilities, or communication. A ship had damaged its levee, the town was flooding, fuel from an impaired tanker was pouring into the streets, and many buildings were damaged. For three days following the hurricane, Gretna welcomed evacuees fleeing over the Mississippi River bridge that separated the two cities. Gretna city officials transported over 5,000 New Orleans residents to a FEMA evacuation site where food, water, and further assistance were available.

As supplies and transportation were depleted in New Orleans, and as sewage-laden water filled the streets, New Orleans police directed groups to cross the bridge into Gretna where they were promised food, water, shelter and buses to take them to safety. There had been no communications between the cities about how to handle the evacuation, either before or while it took place. Gretna was overwhelmed by the needs of thousands of evacuees fleeing New Orleans: its pleas to FEMA for assistance were ignored. Rumors, fueled by national media and New Orleans city officials' reports of rapes, murders, gang violence, and snipers in New Orleans, exacerbated tensions. Most of Gretna's residents had evacuated the town, but fears of looting and lawlessness increased after roving gangs held up people in their homes, demanding money and car keys. Snipers fired on Gretna police. Nine stores in the town's mall were looted and set on fire. With Gretna's resources depleted, and officials unable to transport more people to safety, a joint decision to close the bridge was made by the city of Gretna, the Jefferson Parish Sheriff's Office, and the Crescent City Connection Police (a division of the State Department of Transportation. Police backed up by sheriff's deputies blocked the bridge, closing access to Gretna.

As New Orleans evacuees attempted to escape the devastation of Hurricane Katrina, thousands – some on crutches or in wheelchairs, some bearing guns or other weapons – were turned back on the bridge between New Orleans and Gretna. Gretna police, backed up by dogs, fired over the heads of evacuees to prevent them from entering the town.

In the midst of the controversy surrounding these events, the Gretna City Council passed a resolution supporting the action. Mayor Ronnie Harris defended the police, saying that their primary responsibility was to protect the citizens of Gretna. New Orleans Mayor C. Ray Nagin saw the situation differently. As reported in the Los Angeles Times, Nagin said, "We allowed people to cross ... because they were dying in the Convention Center ... we made a decision to protect people. ... They made a decision to protect property." Police Chief Arthur Lawson, who proposed the blockade, defended the decision, saying: "I realized we couldn't continue manpower-wise, fuel wise."



## Case 5

Developed nations—Australia, Canada, the United Kingdom (UK), and the United States (US) are currently facing a nursing shortage. Australia's nursing shortage is projected to rise to 31,000 by 2006 (currently 218, 615 nurses are licensed in the country). The UK will need 35,000 more nurses by 2008. In the U.S. the deficit is expected to reach 275,000 by 2010 and 800,000 by 2020 (currently 2.4 million nurses are licensed in the US).

The importance of registered nurses in avoiding negative health outcomes is well documented. The more care a patient receives from a registered nurse (RN), the less likely s/he is to experience urinary tract infections, pneumonia, shock, or cardiac arrest. Increased RN care also shortens length of hospital stay.

In an attempt to alleviate this shortage, many health care institutions recruit foreign-born nurses. According to the U.S. Census Bureau, of the 2.4 million U.S. registered nurses, 11.5% received their education outside the U.S. In the UK, 8.34% of 645,000 nurses are foreign-born, as are 7% of approximately 33,000 Canadian nurses. In addition to recruitment to meet general demands for RNs, countries with significant immigrant populations often target RNs from those same populations; for example, US states with large Latino populations recruit heavily from Mexico in the hope of attaining RNs who can both communicate with and understand cultural particulars of Latino patients. Great Britain employs a disproportionate number of Indian RNs, especially in urban areas with a large Indian population.

Nurses emigrate for the same reasons as other persons: better educational and working conditions; to join family members; to escape adverse environments in their home countries. Economic advancement is a particularly compelling motive to emigrate from an underdeveloped to an industrialized country. In India, for example, the average salary for a hospital nurse is \$2,029—compared to \$36,596 in the UK. An RN working in a Mexican hospital makes \$4,200/year—compared to \$43,476 in the US.

The World Health Organization (WHO) has noted that the flight of nurses (and other health care professionals) from Africa severely compromises that continent's ability to respond to its HIV/AIDS epidemic, and to deal with endemic infectious diseases (e.g., tuberculosis, malaria,). Moreover, countries that heavily subsidize the education of their nurses lose the return on these intellectual investments when nurses emigrate. Furthermore, as the WHO has documented, nurses provide the vast majority of health care in developing nations:

In many countries nurses, midwives and allied health personnel are the main providers of health care, particularly in rural and remote areas where vulnerable populations reside. In Guyana these providers deliver as much as 80% of health care; in Chile 92% of child health visits are by nurses; in Colombia more than 75% of consultations for expectant mothers are by nurses; in Kiribati nurses are

the only health workers in the rural and remote areas; in Samoa 99.5% of all health care is provided by nurses; and in Indonesia the use of community midwives increased antenatal coverage from 74% to 88%.

Residents of developing countries desperately need their nurses. Without nurses, underserved populations are unlikely to receive health care at all; at the least, access and quality will suffer. Sub-Saharan countries will need 620,000 nurses in this decade to meet the profound health crises posed by infectious diseases that disproportionately affect their impoverished populations; yet Zimbabwe (for example) lost roughly 30% of its 2001 graduating nurses to the UK. In 2000 twice as many nurses left Ghana as graduated that year from Ghanaian nursing schools. The UN has estimated that each migrant African health professional (not limited to nurses) represents a loss of \$184,000.

## Case 6

With a heavy Polish accent, Sonia Jelenek refuses to allow the paramedics to transport her to the hospital. The 69-year-old resident of the Elmwood Assisted-Living Community was discovered on the floor of the chapel after having fallen. Although she has lived in the U.S. for nearly 30 years, she and her husband (now deceased) resided in a predominantly Polish neighborhood on the southwest side of the city where even the local stores, restaurants and banks conducted much of their business in Polish.

Only after considerable resistance and negotiation, does Mrs. Jelenek reluctantly allow the two paramedics to lift her onto the gurney and bring her to nearby St. Benedict Hospital and Medical Center. Elmwood social worker, Judy Carlson, LCSW, rides along in the ambulance with Mrs. Jelenek and the paramedics. Attempting to shed some light on Mrs. Jelenek's reluctance to accept care, Judy explains she had never been treated by a physician until she came to the United States. She also reveals that Mrs. Jelenek's husband died from internal bleeding and infection after surgery for an ulcer. Since then, Mrs. Jelenek has adamantly refused to consent to any suggestion of medical care.

When they arrive at the emergency room, an X-ray confirms a hip fracture that will likely require a series of surgeries. After getting her pain under control, Mrs. Jelenek is told that she will need surgery to repair her hip. She begins to cry and demands to be discharged from the hospital. Eventually, Judy Carlson is able to calm her down, and convinces her that she is in no condition to return to Elmwood. She later makes another failed attempt to persuade Mrs. Jelenek to consent to the necessary surgery.

Later that afternoon, Mrs. Jelenek is visited by a young surgical resident, Dr. Roman Dzabia. To her delight, Dr. Dzabia struggles through a few phrases in Polish. As it turns out, he grew up a few blocks away from the Jeleneks. Dr. Dzabia reminisces with a somewhat sedated Mrs. Jelenek for nearly an hour before he is called to attend to another patient. Before he leaves, she grabs his hand and asks him to come and see her later. As he walks out the door, Mrs. Jelenek smiles to Judy, and remarks on how much Dr. Dzabia reminds her of son, Jare, who was killed in active service in the Persian Gulf.

In a few hours, Dr. Dzabia returns to Mrs. Jelenek's hospital room, carrying a few Polish magazines and a local newspaper in Polish. Dr. Dzabia seizes an opportunity in their conversation to revisit her decision about the surgery. He eventually helps her understand that she needs to undergo the proposed surgeries if she hopes to be able to do the things she most enjoys, such as cooking and gardening. She finally agrees with Dr. Dzabia and promises to make him a traditional Polish meal when she's back on her feet again.

The surgery goes well, although Mrs. Jelenek is in extreme pain when she regains consciousness. Inadvertently, she receives 5 mg of dilaudid instead of 5 mg of morphine. The nurse quickly notices this and she is given an appropriate Narcan which reverses the overnarcotization. Mrs. Jelenek sleeps through the night and awakens with Judy at her

bedside. Judy has been made aware of the mistake involving the dilaudid. Soon after, Dr. Dzabia stops in. He looks over the notations on her chart and seats himself on the corner of her bed. She smiles at the doctor. He returns the smile and says “good morning” in Polish. Mrs. Jelenek then complains of nausea. Dr. Dzabia assures her that although the surgery went well, nausea is common. He agrees to provide her with some anti-nausea medication.

Dr. Dzabia leaves the room and instructs a nurse, Jennifer Ramirez, RN, to give Mrs Jelenek X for her nausea. “Did you tell her about the dilaudid and the Narcan, Dr. Dzabia?” she asks. Dr. Dzabia pauses and looks at the Nurse Ramirez. “No. Are you kidding me?” Dr. Dzabia responds. Nurse Ramirez continues, “Shouldn’t she know? Doesn’t she have a *right* to know?” Dr. Dzabia lowers his voice and responds again, “After all we’ve been through with this patient, are you honestly suggesting that we tell her about something that was really of no consequence at all? Keep in mind that there is more work to be done on her so that she can get back to some kind of a normal life. I don’t think we should jeopardize that.” Nurse Ramirez nods and walks away. Nurse Ramirez bumps into Judy Carlson heading toward Mrs. Jelenek’s room. She mentions her conversation with Dr. Dzabia. Judy agrees with the doctor that there’s no good reason to tell Mrs. Jelenek about the mistake with the dilaudid.

## Case 7

5 ½-month-old Kyle Horning was unresponsive when he was rushed to the emergency room of the local hospital. The death of their 5 ½ -month-old son, Kyle, was a profound loss to Keith and Jessica Horning of Vassar, Michigan. However, the Hornings were presented with an opportunity to give some meaning to their tragedy. Upon being approached by the Gift of Life Foundation of Michigan, the Hornings made the decision to donate Kyle's organs so that other lives might be saved. Indeed, after Kyle was declared brain dead, his organs saved the lives of three people. His kidneys went to a 42-year-old man whose kidneys were failing due to therapy he had following a heart and lung transplant. His liver went to a 5-month-old boy and his heart to 4-month old girl.

The window of time in which organs remain viable is often quite short, so every effort is made to procure the organs as soon as possible and to proceed quickly. This brief window of time, along with a genuine scarcity of organ donors, represents a serious problem for those waiting for organs. Indeed, most people on transplant waiting lists die waiting. At the time of Kyle Horning's death, in the state of Michigan, 2,808 people had been waiting for one kind of organ transplant or another. Of those 2,808, only 492 had received organ transplants, and 77 died waiting. It is for this reason, that Michigan governor Jennifer Granholm recently signed a new law that would require medical examiners to delay their autopsies until after organs have been procured for transplant. Hence, in those circumstance in which patients or their families consent to organ donation, Michigan medical examiners will now have to wait until organs have been removed for transplantation before they can begin their autopsies.

While many applaud the new law as a way to save lives that would be lost if the organs were not immediately taken after the death of the donor, medical examiners are concerned that the law will interfere with effective death investigations. In specific reference to the death of Kyle Horner, Saganaw County Medical Examiner, Kanu Virani, complained "This baby came in unresponsive for reasons that weren't clear. Only a complete autopsy on Kyle's body can determine the underlying reason for unconsciousness. This could be a trend. Michigan could be an open sanctuary for committing murder and getting away with it."

## Case 8

By a vote of 6-3 the U.S. Supreme Court ruled in June of 2005 that patients who use marijuana for medical purposes are not immune from federal prosecution. In *Gonzalez v Raich* the Court decreed that patients who possessed marijuana were liable to criminal prosecution by federal law enforcement personnel, even if the drug has been prescribed by a physician practicing in a state whose laws permit such prescriptions.

Currently 11 states have laws that allow physicians to prescribe marijuana for seriously ill patients. The laws protect doctors and other care providers, as well as patients, from prosecution if the drug is prescribed/used to control pain and suffering. Most physicians who do prescribe marijuana report doing so after more traditional drugs have failed to provide relief. The medical use of marijuana has gained favor among patients with chronic nausea or anorexia (e.g., AIDS patients, patients undergoing cancer chemotherapy), chronic pain (e.g., glaucoma, migraine headaches), and muscle spasticity (e.g., multiple sclerosis and other neurological conditions). Patients who use marijuana to alleviate these symptoms typically report significant relief of pain and suffering, as well as an improved ability to live more normal lives. Such marked improvement, they argue, demonstrates that marijuana is a legitimate medical treatment that, like any other medical treatment, is the business of—and only of—patients and physicians.

*Gonzalez v Raich* concerned two California women, Angel Raich and Diane Monson, who suffered from diverse serious medical problems, and had both used marijuana for several years, on their doctors' recommendations, to alleviate symptoms of their conditions. (Angel Raich's doctor expressed the opinion that without access to marijuana Ms Raich would experience excruciating pain that could prove fatal.) Ms Raich was provided marijuana at no charge by two of her caregivers, and Ms Monson cultivated her own marijuana plants. In 2002 agents from the federal Drug Enforcement Administration (DEA) enforced the 1970 federal Controlled Substances Act (CSA) against Ms Raich and Ms Monson, even though local (county) law enforcement officials had concluded that their use of marijuana was entirely legal under California law. In this regard, in 1976 California had enacted, by referendum, a law known as the Compassionate Use Act, designed to assure that severely ill patients have access to marijuana for medical purposes.

There was one legal issue presented to the Supreme Court in *Gonzalez v. Raich* – whether the enforcement of the CSA against Ms Raich and Ms Monson by DEA agents was constitutional under the commerce clause of the U.S. Constitution (Article 1, section 8), which confers upon Congress the power to regulate interstate commerce. Based upon a review of its prior cases interpreting the commerce clause, the Supreme Court concluded, by a 6-3 vote, that the DEA agents had acted within the scope of their legitimate legal authority. In announcing this conclusion, however, the Court also stated the following words, which describe the case as both “difficult” and “troubling”:

[This] case is made difficult by [Ms Raich's and Ms Monson's] strong arguments

that they will suffer irreparable harm.... {M}arijuana does have valid therapeutic purposes. The question before us, however, is not whether it is wise to enforce the [CSA] in these circumstances; rather, it is whether Congress' power to regulate interstate markets for medicinal substances encompasses the portions of those markets that are supplied with drugs produced and consumed locally. Well settled law controls our answer. The CSA is a valid exercise of federal power, even as applied to the troubling facts of this case.

## Case 9

The University of North Dakota (UND) is among 18 colleges and universities targeted for loss of postseason NCAA (National Collegiate Athletic Association) play because of its use of a Native American name (Fighting Sioux) and image (Sioux warrior) for its athletic teams. UND and other schools that already have scheduled post-season tournaments must cover or remove all Native American images from facilities and from team, cheerleader, and band uniforms. UND's hockey arena has 3000 images of the logo built into the structure: removal would cost hundreds of thousands of dollars.

The NCAA maintains that use of Native American mascots, nicknames, or imagery by athletic teams creates a hostile or abusive environment. Native Americans, however, are divided on the issue. In July 2001, the Intertribal Council of the Five Civilized Tribes, representing 400,000 Native Americans, called for the elimination of American Indian names and mascots for athletic teams. They stated that the use of these images and names is derogatory, creates a hostile learning environment, contributes to stereotyping, negatively impacts the self-image of Indian children, denigrates and misrepresents cultural identity, and desecrates ceremonial and religious symbols. Yet some tribal members take pride in the use of Native American names and images and, as a way to promote cultural awareness, create interest in learning about Native American culture, and provide positive images of strength, discipline, and perseverance for Native American children.

Two years before the NCAA demanded that UND drop its logo, the NCAA recommended that universities determine for themselves whether their use of Native American imagery was offensive. NCAA President Myles Brand observed, "We know that some Native American groups support the use of mascots and imagery and some do not." Recently, as exemplified by the UND decision, the NCAA decided to reserve judgments of offensiveness for itself. The NCAA enforces the ban inconsistently, however. North Carolina-Pembroke may continue to use its nickname—the Braves--as it enrolls a high percentage (20%) of Native American students. Conversely, the NCAA determined that the use of the nickname "Braves" is hostile when used by Alcorn State, Bradley and Chowan College. Florida State University received permission to continue using the name "Seminoles" for its athletic teams. (The Seminole Tribe in Florida supports the use of the name, although Seminole tribes in other states do not.)

Three North Dakota Sioux tribes and the Board of Directors of the United Tribes of North Dakota oppose the "Fighting Sioux" nickname. However the Spirit Lake Tribe, the Sioux tribe closest to UND, formally approved UND's use of the name and image of a Sioux Warrior as its logo, despite requests from other tribes for the Spirit Lake tribe to withdraw approval. In a letter denying UND's appeal to use the name and logo, the NCAA referred to "the hostile or abusive environment that the nickname and logo create" at UND. UND contends that it uses the nickname, "Fighting Sioux", and the logo depicting a Sioux warrior with pride and respect. The logo was designed by Bennett Brien, a UND alum who is a respected Native American artist. UND offers or administers 25 Native American programs (including medicine, law, research, and the arts) and



programs of cultural awareness. It has eight publications and seven student organizations related to Native Americans. It has a policy of zero-tolerance for racism. Twenty percent of all US Native American physicians are graduates of UND Medical School. Eight tribal college presidents are graduates of UND's Educational Leadership Program. UND President Kupchella points to UND's \$12 million annual expenditures on programs to benefit Native Americans and an additional \$500,000 for tuition waivers for Native American students as further proof of UND's respect for Native Americans. UND has a greater percentage of Native American students than any college in the region.

The NCAA does not itself appear to follow its own policies: its tournament sponsors include Pontiac, Coca Cola (maker of Chippewa Water) and Kraft (maker of Calumet Baking Soda).

## Case 10

Searching for solutions to stop crime and deal with its underlying causes, new kinds of courts has been developing in the US. Called “problem-solving courts,” they are designed to allow options besides incarceration to treat offenders while still considering victim and community safety. Begun in Miami in 1989 as a way to get drug addicts into treatment and out of overcrowded jails and courtrooms, hundreds of local communities have set up a variety of problem-solving courts.

Such a court in New York orders community service and alternative career training to prostitutes instead of jail time. In a mental health problem-solving court, the judge may use supervised medicine administration or living situations instead of incarceration for defendants who are mentally ill. In the Bronx, a problem-solving court deals exclusively with landlords and tenants with the express purpose of reducing homelessness. The judge focuses on the underlying problems that lead to eviction, such as mental illness, language problems, and lack of job skills. Delinquent tenants may be sent to the welfare office or enrolled in a homelessness prevention program and landlords are held to their responsibilities.

Problem-solving courts work with other criminal justice institutions and across disciplines to design appropriate interventions and to address underlying issues that result in criminal behavior. Judges add to their traditional roles aspects of social work, therapy, and fact-finding. In these courts, judges typically talk directly to the defendant, rather than talking through legal counsel. Communities often receive financial support from the US Department of Justice and from non-governmental agencies to set up the courts.

But, critics worry about the problem-solving courts. Over the years, sentencing in traditional courts has been so uneven that strict guidelines were imposed to restore consistency. Seeming to ignore that trend, problem-solving courts give judges not less, but more, discretion. There is also concern that the mostly middle-class and often politically-connected judges are imposing their values on people from different backgrounds. Judges in these courts are much more involved in defendants’ lives than in regular courts.

In order to have their cases heard in a problem-solving court, defendants sign a waiver. Critics worry whether defendants fully understand their options and wonder if they are truly “knowing, voluntary, and intelligent.” Further, choosing the problem-solving court seems to presume guilt, bypassing the possibility of innocence. Other worries relate to attorney roles – both defense and prosecution - and appeal options with these courts. The public has been most critical of the apparently lenient handling of offenders in domestic violence problem-solving courts.

## Case 11

Amy, 28, returned to school to complete her graduate degree after many successful years as an independent businesswoman. Beautiful, talented and self-assured, she worked for many years as an exotic dancer, an occupation she loved. “It allowed me to perform, travel and amass a small fortune! I suppose I would be still performing if my curiosity hadn’t led me to something else.” She subsequently began and grew a highly-successful photography business that she continued to run in spite of the daunting challenge 18 credit hours each semester represented. Once married, and after a string of episodic relationships with men of education and success she moved in with her new fiancé.

By her own account, Amy was bored. In the final year of her studies, she used the last of her elective credits to take an introductory course in a different college of the University, where new ideas and unfamiliar faculty reenergized her. The challenge of the unfamiliar coursework found Amy behind and frequently in the office of her young professor hoping to catch up with her work and still graduate on time. Her instructor, Ben—an excellent teacher by all accounts—was always generous with his time, believing, in spite of the facts, that his teaching was responsible for the struggles of his underperforming students.

Ben, 40, was struggling both with pre-tenure pressures and a commuter marriage, common among academics, where his spouse lived and worked some distance from their home and his university. This left only occasional weekends for him to enjoy her many charms. The intervening days were filled with mornings teaching, nights working on manuscripts for colleagues he believed were unable to appreciate them, and afternoons with students, each, it seemed, demanding the special attention that Ben provided.

As time passed, Amy and Ben spent fewer minutes of their office conversations on course material. She could make him laugh and he provided her with the intellectual stimulation her mostly younger classmates rarely did. Intellectual conversation was something Amy claimed, almost from the beginning, she missed while “endlessly meeting with, and photographing the weddings of, young couples blindly in-love.” Eventually, office hours together were something to look forward to for both of them. Breaking the illusion of a typical professor/student relationship, Amy eventually suggested meeting at a local restaurant to work through the material that was continually giving her trouble.

Ben hesitantly acted on Amy’s suggestion, but only after consulting a close colleague, Richard, about its appropriateness. Richard indicated to Ben that he would not be in violation of any university policies, and that he (Richard) also met sometimes with students out of the office. “Sometimes,” Richard explained, “a different environment is less threatening to students and can help you be more effective as an advisor and teacher.” Ben initially saw Amy at the faculty club and then at restaurants near campus where he frequently took his meals. Predictably, the conversation rarely turned to

coursework, academic progress or career. Eventually their relationship became physical and their days often included trysts. At the end of the semester, with great difficulty, Ben did not grant Amy a passing grade.

Amy and Ben's relationship continued well after the semester. It saw Amy married, and accepted into Ben's department for graduate study—a decision about which Ben had no input—and Ben's tenure award. As far as they both know, no one at the University ever knew the extent of their relationship and neither ever shared with the other, or anyone else for that matter, the arrangements and understandings they may, or may not, have had with their spouses.

In subsequent years, although he would have liked to do so,, Ben refused to offer Amy a graduate fellowship or work as his research assistant because more capable students applied. He did, however, supervise work on her thesis. After a kiss on the cheek at the end of the department commencement party shortly after she received her diploma, Ben went home. He never again saw Amy.

## Case 12

On 15 December 1791, ratification of the Bill of Rights was completed, which included the 5<sup>th</sup> Amendment to the U.S. Constitution. It reads, in part, "...nor shall private property be taken for public use, without just compensation." This passage, known as "the takings clause" was extended to the states during reconstruction on 9 July 1868 with final ratification of the 14<sup>th</sup> Amendment to the U.S. Constitution.

Over the course of U.S. history, cases at all levels of government challenging the power of eminent domain—the right of a government to seize private property for public use, in exchange for payment of fair market value—hinged on the courts' interpretation of the term "public use." In 1925, the U.S. Supreme Court ruled in *Berman v. Parker* that government may dispose of property obtained through eminent domain to a private developer, and in 1984 the Court held in *Hawaii Housing Authority v. Midkiff* that deference to the legislature's "public use" determination is required "until it is shown to involve an impossibility." Through *Midkiff* and other cases, the Court broadened the definition of public use over the decades since *Berman* to include nearly all purposes that states can plausibly put forth as "public." These include growth management, aesthetics, historic preservation, rural and agricultural preservation, urban revitalization and transferable development rights.

In February 2005, the U.S. Supreme Court heard its latest case concerning the definition of "public use"—*Kelo et al. v. City of New London et al.* The City of New London, Connecticut approved a development plan that, in the words of the Supreme Court of Connecticut, was "projected to create in excess of 1,000 jobs, to increase tax and other revenues, and to revitalize an economically distressed city, including its downtown and waterfront areas." In assembling the land needed for this project, the City's development agent purchased property from willing sellers and proposed to use the power of eminent domain to acquire the remainder of the property from unwilling owners in exchange for just compensation. The question presented in this case is whether the City's proposed disposition of this property qualifies as a "public use" within the meaning of the takings clause. By precedent, the seizure of blighted property for redevelopment is, and has long been, considered constitutional. Federal urban renewal programs of the latter half of the 20<sup>th</sup> century rested on this finding. Would, however, this precedent be extended by the Court to apply to properties in areas not considered blighted?

Susette Kelo, the named party in the case, has lived in the Fort Trumbull neighborhood of New London—part of the redevelopment area—since 1997. She made extensive improvements to her house, which she prizes for its water view. Wilhelmina Dery, who was also a party in the case, was born in her Fort Trumbull house in 1918 and has lived there her entire life. Her husband Charles has lived in the house since they married some 60 years ago. In all, the nine parties in the case own 15 properties in Fort Trumbull. Ten of the parcels are occupied by the owner or a family member and the other five are held as investment properties. There is no allegation that any of these

properties is blighted or otherwise in poor condition. Rather, they were condemned only because they happen to be located in the development area.

On 23 June 2005, the Court delivered its opinion in *Kelo*, ruling in favor of the City. The Court reaffirmed *Midkiff*, deferring again to state legislatures. It ruled that redevelopment, ostensibly only to increase the local tax base, fell under the wide rubric of “public use”.

The public response was immediate. It seemed many, even those who traditionally champion an expanded role for government, were shocked by the opinion. Had the court failed to protect the few from the tyranny of the many (in this case the citizens of New London)? Subsequently, and with a swiftness rare by Congress, the House of Representatives passed the Private Property Rights Protection Act that will prohibit any state or municipality from using federal funds for any project in which economic development is used as a justification for exercising eminent domain

### Case 13

Tucked into a deep depression between two canals, railroad tracks and the Mississippi River, lays the Lower Ninth Ward neighborhood of New Orleans. Historically, it was one of the last regions of the city to be occupied because of its poor drainage system and its position on what was originally a cypress swamp. Those who settled here were mainly poor African-Americans and immigrant laborers with no other place to go. According to the 2000 US census, the Lower Ninth Ward has a poverty level of 36.4 percent. A quarter of households have an annual income of less than \$10,000, while half live on less than \$20,000.

Hurricane Katrina came ashore near New Orleans on Sunday, 28 August. The next day, Monday, a levee on the 17th Street Canal ruptured, flooding much of the City. Water continued to rise throughout Tuesday and showed no signs of stopping. Late on Tuesday a second levee on the Industrial Canal bordering the Lower Ninth Ward burst, increasing the flow of water into the City. Water as high as 20 feet inundated the Lower Ninth Ward and hundreds of people were rescued from their rooftops. Many others, however, were left stranded for several days.

In spite of an enormous traffic backlog, most residents with transportation were able to get out before the storm hit. A large population of low-income residents did not own cars, though, and were left stranded when the untested emergency public transportation system failed. After the flooding, the slow response of government agencies to provide basic necessities and public order left those remaining in the city to fend for themselves. In the ensuing days, law enforcement officials, concentrating on rescue efforts, looked on as widespread looting took hold in the City.

Looters helped themselves to bottled water, perishable and non-perishable foodstuffs and medications from food stores and pharmacies in the City. Additionally, there were widespread reports of looters leaving commercial areas with other items such as beer, television sets and firearms. In the end, no store or commodity in the flood zone seemed spared.

Answering questions from reporters, residents with armfuls of products justified their actions in many ways. Some insisted, “we’ve only took what we had to have,” while others claimed that they were taking back what others once took from them. One man, brandishing a brand new shotgun said he was scared. “There is no longer order. I have to protect my family from armed gangs that would even take the little food and water we have left.”

A local television camera caught a middle-aged woman taking in the scene, not sure whether to join in the looting at a sporting goods store. “My mother taught me to be better than that, but this parade of looters makes me feel more and more like a real sucker.”

## Case 14

For the past three years Dave Odell, Ethel Harris, and Mark Goldstein have been collaborating upon a book that deals with ethics and values for organizational development consultants. Organizational development (OD) is a field that involves application of research in organizational psychology and sociology to a broad and diverse array of problems that can impede the effectiveness of organizations. Dave, a practitioner in the OD field with twenty-five years experience, has worked as an in-house consultant for two Fortune 500 companies, and also has considerable experience in external consulting with many different kinds of organizations. He has a strong interest in the subject of ethics as it relates to OD consulting practice, and for the past five years, has worked actively on a committee of major OD professional organizations to draft a statement of ethics and values for OD consultants. Ethel is a philosophy professor who specializes in ethics. Mark, who formerly taught courses on OD in the college of business in the university where Ethel is a faculty member, now works as Director of Educational Research for a large private foundation.

The book, which was originally Mark's idea, will be the first of its kind. The plan is for the book to have two main parts. Part one, which will take up approximately one fourth to one third of the book's text, will have three chapters. Chapter one, to be written by Mark, will discuss the concept of a profession, as it relates to the field of OD. Chapter two, to be written by Ethel, will provide an overview discussion of philosophical theories of ethics, with the aim of introducing various concepts for thinking about ethical issues in connection with organizational development consulting. Chapter three, to be written by Dave, will describe and discuss the statement of ethics and values for OD professionals he has worked on developing for the past five years. Part two of the book, which will take up the remaining two thirds to three fourths of the text, will be a collection of twenty case studies, prepared by Dave, Ethel, and Mark. Each case study will be followed by at least two commentaries written by various scholars and/or OD practitioners. Mark, Ethel, and Dave estimate the completed book will have a text of five hundred to six hundred pages.

In working on their book over the past three years Dave, Ethel and Mark have all read, reviewed, and proposed editorial revisions of each other's contributions. They have also all edited the contributions of the commentators, most of which (thirty out of forty) have now been received. This procedure, which requires sending large amounts of text back and forth among the three co-authors, is very time consuming, but they all regard it as indispensable to assure the quality and coherence of the final text of the book. Every six weeks Dave, Ethel, and Mark confer by way of a telephone conference call (they live in different cities) to discuss editorial matters.

Working relationships among the three co-authors have been harmonious, productive, and efficient. Hardly any disagreements, and no major ones, have yet arisen. For the past two months, however, Ethel has put off dealing with an issue she fears will be very troubling. Three months ago Dave suggested, in reviewing the latest draft Ethel had



written, in connection with the chapter dealing with ethical theory, that the chapter be expanded to include a substantial amount of material written by himself. This material of Dave's sets out a model of a seven-step procedure for analyzing critical issues when making an ethical decision. Ethel has big problems with this. She has strong philosophical grounds for doubting that ethical reasoning can be thought of usefully in terms of a discrete step by step decision making model. Furthermore, she believes that the reasons for her philosophical doubts are implicit in the material she has written for the ethical theory chapter. Ethel thinks, for this reason, that including Dave's material in the ethical theory chapter would not only inject philosophically dubious ideas (from her standpoint) into the chapter, but also make the chapter intellectually disjointed in virtue of containing two lines of thoughts on the same subject that seem to move in opposed directions.

It's clear to Ethel that Dave very much wants his model of a seven step procedure for ethical decision making to appear in the book. Ethel's problem is not that she would consider this a gross embarrassment. She realizes that reputable OD scholars and practitioners, who are not trained in philosophy, view the kinds of ideas underlying Dave's model as intellectually respectable. Her problem, rather, is that, in her opinion, these ideas are fundamentally mistaken from a philosophical standpoint. Ethel has expressed some mild reservations to Dave and Mark about including Dave's material in the ethical theory chapter, but she hasn't forcefully expressed to them the full extent of her dissatisfaction in this regard.

The next scheduled conference call meeting between the co-authors is next week.

## Case 15

In December of 2005 the National Academy of Science (NAS) issued a report, which contended, in strong terms, that advertising of junk foods poses a grave threat to the health of young children. The NAS Report was requested by Senator Tom Harkin (D-Iowa), who has introduced legislation calling upon the FTC to monitor closely food marketing to children.

The Report's authors, respected nutritionists, educators, psychologists, and lawyers, urged Congress to consider restrictions upon the marketing of junk food to children if food companies don't implement them on their own, "Current marketing practices are putting the diet related health of children and youth at great risk," says May Strong, Professor of Epidemiology at the University of Minnesota School of Public Health., a co-author of the NAS Report. However, if food companies use their extensive marketing know-how to market healthier foods to children, Professor Story said, "the food industry and food marketing can play a vital role in turning this around."

Several other co-authors indicated that before looking into the matter in connection with preparing the Report, they had not grasped full the extent of marketing and research targeting children by the food industry. "The industry is so much further ahead in [its] understanding [of marketing food products to children] than anything going on in a university," remarked co-author Leroy Kolbe, Professor of Health Sciences at Indiana University. Such expertise, the NAS Report concluded could be put to use to bring about positive changes in children's diets. "We want the [industry] to use [its] tremendous creativity to market healthier foods," said co-author Sarah Calvert, Director of the Children's Digital Media Center at Georgetown University. "They have two years to do [so]," she continued, "or else we have asked Congress to take action."

The above conclusions of the NAS Report coincide closely with the following outlook, stated more than thirty years ago by Francis Moore Lappe in her book Diet for a Smail Planet:

When they advertise are General Foods and Coca Cola exercising their First Amendment rights? A lot of Americans would agree that they are. But ... should we include in the definition of "free speech" the capacity to dominate national advertising? Isn't there something amiss in this definition of rights?

.... Once we realize that advertising is a privilege, not a right, isn't it reasonable to grant that privilege only on certain conditions? An obvious condition would be that T.V. advertising – with its proven power to influence – not be used to promote products that threaten our well being. Society has already banned cigarette advertising on T.V. There is virtually unanimous opinion that high sugar, low nutrition foods – those which monopolize T.V. advertising – threaten our health. So why not ban advertising of candy, sugared cereals, soft drinks, and other sweets?

