

CASES

For the

FOURTEENTH

INTERCOLLEGIATE ETHICS BOWL

TAKING PLACE AT

THE ANNUAL MEETING OF THE

ASSOCIATION FOR PRACTICAL AND PROFESSIONAL ETHICS

IN

SAN ANTONIO, TEXAS

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CASE 1

Angela sat numbly as her sentence was read, chilled with the same sinking feeling that gripped her when she and Kate had been arrested. 30 days in jail!

What they did was just so stupid. They'd gone out for a couple of drinks after their last final, before leaving college for the summer. They were hungry, and Kate suggested going someplace really nice for dinner. Neither one could afford it, but that wasn't going to be a problem. They ordered dessert after the meal. Kate excused herself, and when dessert came, Angela told the waiter she'd better check on her friend, who might have had too much to drink. Angela slipped out the door and into the parking lot where Kate was waiting with the car's motor running. They took off, giggling over their escapade. To their dismay, two waiters and the manager blocked the exit, and shortly after, the police arrived.

Kate's parents hired a good lawyer for her, but neither Angela nor her parents had that kind of money. Kate and Angela were tried separately, and although they were charged with the same offense, their sentences were quite different. Kate's lawyer was aware of California's Pay-to-stay jail program, and had come to court prepared with a pre-arranged acceptance letter from the jail to use in the event of a conviction and jail sentence. The lawyer had made arrangements by phone by providing the charges, court, judge and case number, and contact information for Kate's employer. Kate paid \$108 cash per night for a room pretty much like her college dorm room, certainly cleaner and safer than the overcrowded and sometimes violent regular cells. Even if Angela had been aware of the Pay-to-stay program (information about the program is not universally publicized nor offered: it often must be requested by the attorney), she could not afford it. Angela was assigned a barred cell that she shared with another prisoner.

The difference between the sentences was not limited to the type of cell. Because Kate was in the Pay-to-stay program, she was allowed to leave jail during the day for work release, able to keep her summer job and continue earning income. She did have to return to jail at night, but she returned to relative quiet and privacy. Kate was able to have her laptop and mp3 player, so she could watch movies and listen to music. Angela was not allowed to leave jail at all during the 30 days, and unfortunately, lost her job because she was gone from it for a month. She wasn't allowed a computer, mp3 player, or cell phone. She was able to get a book from the library cart a few days after she was incarcerated, but before that she mostly spent her time lying on her bunk with nothing to do. The constant noise and lack of both privacy and cleanliness were stressful, but Angela's greatest source of distress was feeling unprepared to defend herself from gangs and prison violence. She didn't know how she could go a month without bathing, but she was terrified of the communal showers.

The cost per day of keeping a person in jail varies significantly from one locale to another, but runs into the tens of thousands of dollars per inmate per year. California has about a dozen "Pay-to-stay" jails that have been in operation for the past several years, purportedly providing a source of revenue for programs that benefit all prisoners.

CASE 2

Glen and Joy Stiller had lived in their neighborhood—Placid Park—for fifteen years before Blair and Belle Clanghorne built a house on the lot next door and moved in. For a full year before they arrived, the builders had been banging and sawing away at odd hours, seeming to prefer working only on nights and weekends. The Stillers had hoped the noise level would drop when the construction was complete, but they were mistaken. In July, the Clanghorns arrived with their five children and two nervous dogs, and proceeded to celebrate their new house every weekend during August.

Placid Park is a rural subdivision just outside the recently incorporated village of Forest Green, Texas, which is thirty miles away from any town and sixty miles from any city. When the Stillers first arrived, Forest Green had only one stoplight. Now there were four. Fifteen years earlier, Forest Green had not even been a township, only a loose collection of houses, retail stores, and retirement communities. But as more people discovered the joys of living closer to nature and away from the hassles of the city, the village grew. Eventually the residents voted to incorporate. Only a few laws were on the books at the time the Clanghorns arrived - and nothing similar to a nuisance ordinance, so the Stillers knew they could not turn to the village for help.

The lots in Placid Park are big enough to ensure a certain amount of privacy: nothing smaller than two acres is permitted. Nevertheless, sound travels far in rural areas. The PP Property Owners' Association had passed several deed restrictions, but those only covered the appearance and the upkeep of property, not the noise level. The Stillers decided to wait and see if their neighbors quieted down when the novelty of the new house wore off.

The Clanghorns did not just happen to pick the house next door from among all the vacant lots: they particularly wanted that one. The lot, as well as that of the Stillers, lay on the perimeter of Placid Park. Their back yards bordered on a sixty-acre tract of land, entirely outside the subdivision, owned by Mrs. Clanghorne's parents. The Stillers had frequently heard, to their irritation, loud noises from an unmuffled recreational four-wheeler that the various Clanghorns enjoyed racing up and down a hill in the sixty-acre lot just beyond the property lines.

On Labor Day, the Stillers suffered through two hours of unbearable racket as friends of the Clanghorns brought over three more four-wheelers and tore around the neighborhood, doing wheelies and racing up and down the once peaceful streets. Finally fed up, the Stillers approached their neighbors and asked them not to make so much noise. Belle Clanghorne said, "I can sort of understand your feelings, but one of the reasons we moved out to the country was so we could do this sort of stuff. You know, they won't let you have these things in the city. We're just thinking about buying another four-wheeler, and our friends have brought them over for us to try out." Glen Stiller replied, "This isn't the country. This is a neighborhood. You're not the only ones who live here. Please show a little respect for everyone else." Soon, the noise stopped, but

within twenty minutes started up again, only this time in the sixty acres just behind their houses. The noise continued for another two hours.

The next morning, on wild hunch, Glen Stiller went online and googled the phrase “directional speakers.” To his grim satisfaction, he discovered a small company with a revolutionary product that “up converted” audible sound waves into ultrasound, and beamed them in a focused ray that could not be heard. When the ray struck an object, like a wall, or a window, the waves “down converted” back into audible sound and effectively turned the object itself into a loudspeaker. A person actually standing in the beam would hear the sound as though it came from inside his or her head. The device was intended for use as a cheap substitute for a loudspeaker in places where a traditional sound system would be too difficult or expensive to install. But Glen suspected the Clanghorne’s dining room window would make a nice loudspeaker for a really obnoxious racecar video game he had just bought. It wouldn’t have to be too loud, not loud enough to bother anyone but the Clanghornes.

CASE 3

Vicki Marks is a rural Michigan veterinarian who practices among the ever more pricey and prevalent vacation homes nestled along Lake Huron. These days she comes home from her animal hospital troubled—more so than ever before for a professional who must routinely treat disease and injury with euthanasia. Increasingly, her clients are seeking care to prolong the life of deeply loved, yet critically ill or injured pets, with little concern for money and, in some cases, the potential suffering of their wards. Dr. Marks' training taught her to recognize pain in animals that their owners often are unable to discern. Unexpressed pain is especially common with dogs, as they are pack animals and avoid displaying overt signs of pain so not to disturb the pack or weaken their position in it. Some pets conceal suffering when they sense the distress of their owners.

Even when she feels reasonably certain that she can adequately treat pain and discomfort, Marks is reluctant, even loath, to take extraordinary measures to prolong the life of a pet. A few years back, she treated a failing Siamese cat with two rounds of chemotherapy, providing a few extra months of companionship for its owner, even though chemotherapy in animals is indicated for easing symptoms rather than prolonging life. “When I look back on it, I can't believe I agreed to do it. It was crazy. Six-months and \$6,000 later, even my client, Ms. Park, confided she really should have let him go sooner. Did I take advantage of my client? I'm sure that's what some outside observers might conclude.” At \$2.9 billion, the pharmaceutical market for small animals exceeded that for farm animals for the first time in 2005. Venality aside, veterinarians like Marks find it difficult to square their complicity in a bloated pet pharmaceuticals market with their anguish over the millions of lost and unwanted animals they euthanize each year.

Suzanne Njaal, a South African veterinarian, sees the issue of prolonged care in larger terms that run to the heart of her profession. When she began her practice three decades ago, veterinarians concentrated on keeping farm animals healthy to protect the human food supply. Instead of treatment, doctors quickly sacrificed very sick animals to save the herd. Pets typically remained outside, sheltered in out buildings and rarely provided with medical care beyond the most basic. Today, she points out, veterinary practice is overwhelmingly the preserve of small animal practitioners, with almost three-quarters of general practice veterinary incomes in the developed world stemming from the treatment of domestic animals. Consequently, the profession places its main economic and social emphasis on this sector, and research and teaching are similarly redirected. “This shift has led us away from what we profess our concerns to be—the needs of patients, and the safety of the public,” protests Njaal. “Our priorities need to change.”

Marks, too, is pessimistic. “I realize clients willing to shell out extraordinary sums for extraordinary measures sounds ideal from a business perspective, but I worry about what is becoming of the ethics of my profession, and I wring my hands over what to do. I signed on to serve animals and society, not just wealthy pet owners.”

Concerned practitioners face a difficult task in changing the attitudes of clients when it comes to end of life care for pets. New professional orientation of veterinarians and the expanding market for pharmaceuticals reflects societal upheaval. In an affluent society where traditional social institutions are frayed and mobility severs family ties, pet owners are comforted by the unquestioning love of their animals, and the intense bond between them and their pets. A 2002 survey for the American Veterinary Medical Association found that 47% of people viewed their pets as family members.

Today, Vicki Marks took a difficult step. A distraught young gentleman of obvious means brought his cat, Bob, to her clinic. Bob was suffering from advanced kidney failure. Bob's owner had done his homework and asked about the viability of dialysis and other options. Dr. Marks refused to consider these treatments. In the end, after doing her best to be compassionate, she sent him away.

CASE 4

From 1980 to 1990, the sleepy rural town of Palmdale, just outside of Los Angeles experienced record growth from 12,000 to 68,000 residents. In the 1990s, anticipating population growth that would rival that of the fastest growing cities in the United States, the community annexed nearby rural areas. In the years leading up to 2006, Palmdale rapidly expanded as a bedroom community for commuters who work in Los Angeles.

Despite having a population of approximately 589,000 in 2007, and being the fourth largest city in the Mojave Desert (surpassed only by the three cities which make up the Las Vegas metropolitan region), nearly 40% of the city's land is vacant, rural land. To cope with this growth, Palmdale has extended the reach of city codes and regulations to the annexed areas, including regulations regarding the ownership and housing of domesticated animals.

In January of 2006, Linda Papineau, a landowner and resident of Palmdale since 1986, was cited for running an illegal dog kennel. Local code enforcement officers who were sent to her residence to serve a warrant for having too many dogs on the property found that Papineau had 104 dogs. They also found her home to be in generally uninhabitable condition.

Upon closer inspection, one of the officers saw that the animals were emaciated. Large amounts of fecal matter had accumulated both in the yard and inside the house, and a powerful stench of urine emanated from inside the home. The house suffered from the additional code violations of having shattered windows, a damaged roof, and broken pipes. A local Building and Safety Inspector posted a sign on Papineau's property, declaring it uninhabitable until repaired.

Of the 104 dogs, Los Angeles County Animal Care and Control officials impounded 59 of the dogs that were found to be unsuitable for adoption, having no or minimal socialization. Papineau was ordered to find new homes for the remaining 45 dogs. She was allowed to return to her home, where the remaining dogs were staying, to care for them, but was not permitted to sleep in the house due to its uninhabitable condition.

That the dogs were emaciated seemed unusual, since code officers found plentiful supplies of dog food. Papineau maintained throughout the investigation that she had rescued the animals - in rough physical and emotional condition and in general ill health when she found them, and brought them home. Explaining the condition of the animals, she maintained that it takes some time to recover from abuse and malnourishment.

In her defense, Papineau asserted that when she bought her 2 1/2 acres in 1986, her property was outside of existing city limits, and was zoned for agriculture. The old

zoning laws permitted kennels. It was only after the land was annexed by the city that the area was rezoned, and dog owners were limited to no more than 2 animals.

CASE 5

In 1999, Anna Mae He was born prematurely to parents Shaoqiang and Qin Luo He. Because of Anna Mae's premature birth, Shaoqiang and Luo struggled to provide for her medical needs with inadequate health coverage.

Friends from church, Jerry and Louise Baker, with four of their own children, agreed to take in three-week-old Anna Mae. The Hes arranged a 90-day foster care placement with the Bakers through a local agency. During this time, the Hes' financial situation deteriorated dramatically, both now having to work at local restaurants to make ends meet. Shaoqiang was accused by a fellow student of sexual assault, and lost his research position at the university. Though the charges were dismissed, Shaoqiang did not return to work and study at the university. This turn of events made an extension of Anna Mae's placement with the Bakers the best option for the child. When the initial 90-day term ended, both couples agreed to continue the arrangement, and the Hes signed papers agreeing to grant the Bakers custody.

The Hes visited Anna Mae weekly until the relationship between the families deteriorated. Because Shaoqiang's student visa was now expired, the couple faced deportation proceedings, which would force the family to return to China. They refused to leave without Anna Mae. The conflict between the families peaked in 2002 when the Bakers called police after the Hes again requested that Anna Mae be returned to them. Believing they would be arrested if they tried to visit Anna Mae again, their visits stopped, as did the child support they had been paying the Bakers for Anna Mae's care. Four months later, the Bakers filed for termination of the Hes' parental rights, a necessary precursor to legal adoption of Anna Mae.

Responding to the Bakers' claim that the child no longer had any connection to her biological parents, Chancery Court Judge Robert Childers of Memphis terminated the Hes' parental rights, ruling that they had abandoned their daughter. In his ruling, the judge characterized the couple's fight for their daughter as selfishly motivated by their fear that they would be deported and their assumption the child (a United States Citizen) could provide them with a claim to remain in the United States. Childers agreed with the Bakers' claim that it was in Anna Mae's best interest to remain in the US because her life would be endangered if she were taken to China, citing a high infant-mortality rate for girls and China's 'one child' policy.

According to a report in the Los Angeles Times (February 17, 2005), when they heard the decision, Shaoqiang said, "We couldn't even speak. We couldn't even breathe."

In January 2007, ruling on the Hes' appeal, the Tennessee Supreme Court said Judge Childers wrongly terminated the couple's parental rights. According to the ruling, the Supreme Court concluded, "Financial advantage and affluent surroundings simply may not be a consideration in determining a custody dispute between a parent and a non-parent." The ruling included an order to reunite the child with her biological parents.

Commenting on the Supreme Court Ruling in the same Los Angeles Times report, “It’s not the job of the court to find a better set of parents for a child,” said Christina A. Zawisza, associate professor of clinical law at the University of Memphis. “The state doesn’t have the right to second-guess parents unless the child would be in danger.”

The Bakers’ subsequent appeal to the US Supreme Court has since been refused. The now 8-year-old Anna Mae will be required to leave the only family she has ever known and return to her biological parents. According to an Associated Press report from January 24, 2007, Larry Parrish, the Bakers’ attorney, claims Anna Mae “has not wanted to have any conversation about it. She will close up her ears and run in another room. It’s just how you make the best of the worst situation.”

Responding this turn of events, Shaoqiang (quoted by the Associated Press on January 24, 2007) said, “We want our child to remember their kindness and their love.” The Hes had two more children during this period. “When she wakes up each morning, she’ll wake up and see her mother and daddy and her brother and sister, and we’ll all have the same faces she has.”

CASE 6

Julia lives in a modest working class residential neighborhood of single-family homes, where she raised her three children and enjoys visits from her grandchildren. Signs of wear gradually crept into the neighborhood since Julia and her husband moved in with their young family thirty years ago. She is grateful that taxes have stayed low, allowing her to remain in her home, but has watched with some concern the consequences of defeated ballot measures: lack of street repairs; delayed maintenance on public buildings; and a poor rating for the local school due to downsized curriculum, elimination of extracurricular activities, and classroom overcrowding. Today, another issue of overcrowding is on her mind as Julia and three of her neighbors are discussing over coffee one of the houses on their street.

“There are at least eighteen that I know have been living there for the past seven months”, stated Diane. “That house has the same floor plan as mine, and I was in it often before Kristen and her family moved away. There are only three small bedrooms, and a partial basement. There’s an attic, but it’s not tall enough to stand in, and it’s reached by a trap door in the ceiling. I can’t imagine how all those people can live there!”

“Diane, how do you know there are eighteen?” asked Ann.

“ At least eighteen. There were so many it made me curious enough to actually keep track. There are three men, six women, and at least nine kids for certain. I don’t think it should be allowed!”

“Why not?” asked Julia. “They seem like nice, hard-working people who are just trying to make a living”.

“The house needs paint, the roof looks bad, and the screens are torn. It’s probably a mess inside, if the outside is any indication. There are all these junky cars parked in the street, and by garbage day the cans are overflowing. I don’t think illegal aliens should be allowed here at all, let alone so many crowded into one tiny house,” Karen responded heatedly.

Ann asked, “Do you know for sure they’re here illegally? Are you assuming that because they struggle with English that they are not legal residents? They might just as easily be family or friends who are having trouble making ends meet and need to live together to have a roof over their children’s heads. Don’t you remember when Danny and his family stayed with me, and Tim and his family stayed with our other brother? When the mill closed in my hometown, both my brothers lost their jobs. As people moved away, housing prices crashed. They couldn’t stay because there was no work, they couldn’t sell their homes, and they had no money to leave. Affordable housing is such a problem. It was nearly impossible for my brothers either to rent or buy anything. So many communities have housing restrictions, and builders prefer to cater to the wealthy market rather than build affordable housing. That’s understandable as they’re in business, but we don’t have social programs to address the housing need. A newspaper article I

read said that many people pay over half their income for mortgages and that people on minimum wage have trouble renting even a two-bedroom apartment. It also said that it is impossible for someone working full-time making the increased minimum wage to rent a small two-bedroom apartment anywhere in the country. And I'm hearing about more and more people who are losing their homes in foreclosures. ”

“What really worries me is safety,” said Diane. “Kristen always complained that the furnace wasn’t very good, and they had to use space heaters sometimes. As they added hairdryers and audio equipment and other electronics, the fuses blew regularly. She was always worried about fire.”

“I think we should report our concerns to the city, or start a petition,” said Karen. “People in the neighborhood are getting upset with how overcrowded and run-down the place is. And all these kids that are overwhelming the school!”

“I disagree!” said Ann firmly. “I don’t care if they are here legally or not, and I don’t understand why that matters to you. I agree with Julie that they seem to be good people trying to make a living and make a better life for their children. I know how hard you worked to give your kids a future, and what a difference it made to my brothers that Michael and I could help them. Can you imagine how traumatic it would be for our neighbors to be targeted or investigated, especially with limited language proficiency and worrying about the children?”

Julia didn’t know what she thought. Families should help each other. She was very worried about the safety of all those people in that tiny house, especially with a cold winter approaching. If they reported their concerns, the families could be investigated and forced into an even more hazardous situation. On the other hand, if there were a fire and anyone was hurt, she would never forgive herself. If they did report their concerns, would the consequences be safety or harassment?

CASE 7

The Bay Delta, formed at the confluence of the Sacramento and San Joaquin Rivers, is the largest estuary on the West Coast, covering 738,000 acres or a 1,250-square-mile expanse of farmland, sloughs, and marshes connected to San Francisco Bay. Much of the land is below sea level and relies on more than 1,000 miles of levees for protection against flooding.

The agricultural belt of the Central Valley, which is the backbone of the California economy, depends on fresh water pumped from the delta to the various agricultural regions via a system of sloughs and aqueducts. Agriculture is a \$30 billion industry in California, providing approximately 15-20% of the nation's agricultural products, and employing over 500,000 agricultural workers (24% of the workforce) from Redding in the north, to Bakersfield in the south.

The Central Valley includes the community of Fresno, which in 2006 was credited with the nation's worst poverty. At 43.5%, Fresno leads the nation in the percentage of poor residents; a trend exacerbated over the last 30 years as a result of a six-fold growth in the city's immigrant population, a population that is almost entirely dependent upon farm labor as a source of employment. Fresno is not the only poor community in the area, however. The Central Valley has the state's worst poverty, educational attainment, and health statistics. Yet it is home to a variety of vibrant, hard working communities, which are economically dependent upon agriculture, either directly or indirectly.

Agriculture uses approximately 40-50% of the state's total annual water resources. The two major pumping stations, located near Tracy, at the southern tip of the delta, transfer several trillion gallons of water from the delta annually, and are powerful enough that, when operating at capacity, they have the effect of reversing the normal flow of water in the delta.

The delta is also the only habitat for the Delta Smelt. Once the estuary's most abundant species, it is now on the brink of extinction. In 1993, the two inch long blue-green fish, which smells like cucumber, was declared endangered and subject to the protection of both the California and Federal Endangered Species Acts. The smelt's short life span and need for both brackish and fresh water habitat make it an environmentally sensitive species. It is widely believed that the smelt are a barometer for other sensitive species. As the smelt go, so do other species, worry area scientists, environmentalists and sport fishers.

In 2005, California Department of Fish and Game declared that pumping fresh water from the delta would not threaten the fish population. However, a coalition of anglers, commercial fishermen, Indian Tribes, and environmental justice advocates disagreed and pursued the matter through the courts, trying to force the state to mitigate the impact of the pumps on the fish population.

Federal District Court Judge Oliver Wanger, who mandated on May 25th, 2007 that the pumps be brought into compliance with the Endangered Species Acts, agreed, expressing frustration with the government's inability to manage California's water without putting fish at risk of extinction. In a June 23, 2007 Oakland Tribune article, Judge Wanger made the enormity of the problem clear, "What can we do to remedy that in a way that won't cause a whole swath of destruction? We have allowed the government to address these issues and it simply hasn't worked."

Some characterized California's reluctance to act as being in a state of denial, while others expressed uncertainty that these efforts would ensure the smelts' survival.

On May 31st, the state Department of Water Resources took the dramatic step of shutting down the delta pumps. Originally, the shutdown was to last 7-9 days, but ended up lasting almost three weeks. Disappointed by the drastic action, Assemblywoman Nicole Parra issued a press release on June 14th, in which she said, "The magnitude of a continued shut down or severely curtailed operations should not be underestimated. The curtailed delivery of water... would have significant impacts upon the Central Valley, the state's overall economy, and food supply and costs across the nation. Farmers and ranchers render decisions months in advance about what crops to plant and grow. They engage in such decision-making by knowing that a water source will be available and when that water will be available."

In a June 14th editorial in *The Fish Sniffer*, Bill Jennings, chairman of the California Sportfishing Protection Alliance, clarified the "battle to save the Delta smelt is not a fish versus people issue. It's a case of fish and the West Coast's biggest and most important ecosystem versus subsidized crops. We may be witnessing the first ever extinction of a species deliberately caused by the Bureau of Reclamation and Department of Water Resources."

CASE 8

Heroin and cocaine addiction are rampant in the United States. It is estimated that there are three million cocaine users in the United States, and one million habitual heroin users. Heroin use is rapidly overtaking cocaine use, as poppies are easier to grow than cocaine, and opium is easier to smuggle and is more profitable than cocaine. Most of the opium that finds its way to the United States comes from Colombia or Mexico, while Afghanistan supplies most the European drug market. Even so, Afghanistan's opium trade significantly impacts the United States.

In accordance with Islamic law, the Taliban in Afghanistan initially fought the opium trade. The Taliban reversed its stance in recent years, and now protects and taxes Afghanistan's opium business, using drug profits to support its activities. Some success in eradicating opium poppies has been achieved by paying farmers to plant legal agricultural crops instead of poppies, but this is not a great incentive. An acre of poppies produces up to 500 times the income of agricultural products. Despite a \$420 million effort by the US government in 2006 to eradicate Afghanistan's opium trade by plowing poppy plants under or trampling them underfoot, the 2006 Afghanistan poppy harvest surpassed the previous year's record crop, producing a heroin supply so abundant that it exceeded the demand of the world's addicts. The use of mycoherbicides offers another option that could be used to eradicate illegal drug crops.

Mycoherbicides are living organisms that invade plants, introducing a toxin that sometimes kills the plant; or if the plant lives until harvest, the toxin may cause illness and death when ingested by humans or animals. Farmers and foreign government leaders oppose defoliation, claiming that along with destroying drug crops, spraying harms people, destroys legitimate agricultural crops, pollutes waterways, and is detrimental to livestock and other animals. Every United States government agency that has studied mycoherbicides has concluded the organisms are pernicious, can be genetically unstable and mutate rapidly, and may have a disastrous impact on the environment. Although international consensus on the danger of mycoherbicides is lacking, many countries consider their use to be a form of biological warfare. Experiments have been conducted to extract and intensify mycoherbicide toxins for this use.

The United States House of Representative has twice passed Resolution 2829, the Office of National Drug Control Policy Reauthorization Act, although both times the legislation stalled in the Senate. One of the act's provisions requires "a plan to conduct, on an expedited basis, a scientific study of the use of mycoherbicide as a means of illicit drug crop elimination...in a major drug producing nation" (HR 2829, Section 6n). In the past, the United States has tied foreign aid money to mycoherbicide spraying.

CASE 9

Every day, 110 people join the list of people in the United States waiting for organs. They increasingly seek live donors for livers and kidneys, as there are not nearly enough donations from deceased donors to meet the skyrocketing demand for organs. To the relief of individuals waiting for organs, many are finding donors among the living. Nearly half of those who donated organs in the United States in 2004 were living donors.

When her niece Patty needed a liver transplant, Brigid Higgins figured that she was the right person to volunteer to be a live donor: she was 32, healthy, childless, and had the summer free from teaching duties to recover. Patty's sister, Molly, also offered to be a donor, but because Molly was still a teen-ager, everyone agreed that Brigid's maturity made her a more appropriate choice.

Brigid wasn't released from the hospital when expected, however, as she continued to experience complications following surgery. Nearly a month after donating part of her liver to Patty, Brigid was feverish, vomiting, in intense pain, and suffering from multiple infections. Her liver, lungs, and kidneys no longer worked properly.

Only after the donation did Brigid realize that she had not been fully informed of the risks of live donation, primarily because that information is just not available. Every transplant recipient is tracked over the long-term. People waiting for organs can find a myriad of data on complications, survival rates, and morbidity and mortality risks. This is not the case for donors. In contrast to the situation for organ recipients, no money is included in the federal health budget to track outcomes for all donors. The medical community doesn't know how big a risk living donors face, and appears to have little interest in longitudinal studies of organ donors. Because of the resulting lack of information, no one knows how many donors have suffered complications or have died because of their donation.

"I felt prepared," said Brigid. "I asked so many questions, except the ones I should have asked: 'What evidence is there of long-term consequences and adverse outcomes for living donors, and how reliable and extensive are these data?'"

More distressing to Brigid than the impossibility of informed consent – the desire to help Patty was so strong that, even knowing the risks, she would have accepted them to save her niece's life - was learning that there is no uniform process for deciding who is an appropriate donor. The elderly, minors, and even the psychologically fragile, may act as living organ donors, and because they may be overly trusting, not able to appreciate fully the potential risks, not know what questions to ask, be easily coerced, or think it is impossible for anything to go wrong, they are particularly vulnerable. It deeply troubled Brigid every time she reflected that it might have been Molly going through the medical nightmare she was now experiencing. Brigid also felt isolated, unable to discuss her medical problems with her family. The last thing she wanted was to diminish their joy over Patty's successful transplant by giving anyone the impression that she regretted her donation.

The National Organ Act of 1984 does not address specifics of living donation. Many transplant surgeons oppose instituting formalized guidelines on the grounds that organ transplantation is still a developing field where progress is made by doing the seemingly impossible, and imposing formalized standards would impede progress and cost lives. Although the Health Resources and Services Administration (the federal agency charged with organ transplants oversight) could regulate the system, it often defers to the recommendations of institutions and professional groups.

Advocates for living donors are concerned that the transplant system revolves around recipients to the detriment of live donors. Because patients waiting for organs are very ill, often near death, the transplant team gets to know them better, and invests more in their care. The success rates of transplant surgeons reflect outcomes of organ recipients; the rates don't consider donor outcomes. Consequently, advocates fear that the doctor-recipient relationship takes precedence over the doctor-donor relationship. This imbalance may be exacerbated as the recipients' insurance pays the bills. All of this may lead some doctors to advocate, unaware, for the welfare of the recipient over that of the donor.

CASE 10

Employers, government, and insurance companies have tried various techniques to control health care costs and to improve quality of care, including pay-for-performance (dubbed P4P for short). Under P4P for doctors, physicians are paid more if their performance measures up to some preset benchmarks, or less if it fails to meet the standard. Physicians may get a year end bonus (or financial penalty if they fail to meet objectives) if they, for example, document that 75% of female patients received mammograms; use electronic medical records; see a set number of patients per day; order 10% fewer MRI's; or if their diabetic patients make 20% fewer visits to the emergency room. Few good scientific studies have been conducted to discover if P4P actually does increase quality.

Payer frustration, spiraling costs, and little progress in improving outcomes or decreasing medical errors, have made quality and cost top health care priorities. Proponents of pay-for-performance medicine point to the well-respected financial reward for corporate executives whose companies do well. In recent years, a variety of quality control measures have been unsuccessful in overcoming the lack of incentives in American health care for quality and cost control. Payments to US doctors and hospitals, traditionally based on provider costs, provided few incentives to improve quality and efficiency. Although the US spent \$2 trillion on health care in 2005, over 40 million Americans do not have health insurance.

Experts disagree on whether the standards should be actual outcomes of care (did the patient get better, survive, etc.) or a list of processes to be followed. Critics and supporters alike ask who should determine criteria and whether performance should be publicly reported. Employers, health plans, quality organizations, physician group practices, and the government currently sponsor over 100 very different P4P schemes, with nearly that many sets of criteria for determining performance quality. All agree that data collection and processing is expensive and that adequate programs for analysis are not yet available. Where should the funds to pay provider bonuses come from? Medicare and Medicaid and private insurance companies insist that they must come from existing funds (to avoid tax or premium increases), but this prospect leads to concern that all of health care will be negatively affected if regular payment to physicians is cut back to fund P4P.

Critics of P4P fear that doctors may be forced to pit their own financial well-being against what is medically best for the patient. Clearly some criteria (increased screening, immunization, education) could improve care for patients. However, other criteria might have the opposite effect (limiting services, seeing more patients), even while they decrease system cost and increase efficiency. Doctors may avoid patients who threaten their 'performance' (e.g., non-compliant, non-paying, or medically complex patients) thereby limiting access to care. If diabetic patients' emergency room visits depress performance scores, doctors might decide not to treat diabetic patients. The doctor-patient relationship may be affected if patients know treatment decisions may impact doctor

compensation adversely. Keeping a bonus in mind, will the doctor decide the MRI is unneeded?

In some plans, the incentive is not just a bonus (about which patients might never know) but also involves a public reporting of the doctor's performance score. One plan noted in its network list which doctors had received good performance scores, in this case based to a great extent on practice efficiency. In addition to raising concerns about fairness, accuracy, and objectivity, this practice can adversely affect performance scores that don't take into account the complexities of individual cases. For example, the performance outcomes of a hospital that specializes in difficult pregnancies and neonatal medicine may have a much higher rate of complications and mortality, despite extremely competent medical care, because the patients present with complicating conditions.

In an article in American Medical News, Dr. Edmund Blum, an internist from Brooklyn, argues that P4P "involves an 'irresolvable conflict' with the ethical standards of the medical profession." He quotes Dr. Faith Fitzgerald who said, "We must not servilely accept gratuities for doing our duty."

CASE 11

Dr. Lyle Johnson's last patient left at 6:30PM but he had to call several others before he could lock up his office and go home. In the sixteen years he had been out of medical school, practicing medicine had changed from being fulfilling to feeling like drudgery. Insurance reimbursement for seeing his family practice patients had changed so that he needed to spend more hours working, and to see more patients to maintain his income. He hated keeping his eye on the clock, discouraging long conversations with patients, and, most particularly, missing time with his family. He loved being a doctor but thought it was telling that he found himself envying older colleagues who took early retirement.

As he drove home, hoping to get there in time to see his daughter off on her first date, he contemplated a possible change in his life. For some time he had been considering converting to what is called a 'boutique' or 'concierge' practice. He had read extensively about these arrangements whereby the practice is comprised of a very small number of patients who pay the physician a monthly or annual retainer. In exchange for this 'membership' fee, the patients are guaranteed same-day or next-day appointments, easy access to the doctor (by phone, email, pager), ample and flexible appointment times, and other amenities that might include newsletters, wellness programs, home visits, physicals, etc. Some physicians he read about had completely opted out of dealing with any health insurance and charged very large annual fees (\$20,000) to provide all services to their patients. Lyle was not comfortable with that arrangement, feeling it would surely be too expensive for many of his current patients. He also felt it would be less risky for him to allow insurance to cover services delivered and simply charge a \$1000-\$1500 annual fee that would make up for what he would lose by seeing far fewer patients.

Lyle found himself smiling at the prospect of being able to have lengthy discussions with patients, getting to know them again and understanding the context of their medical problems. On the other hand, several issues kept nagging at him. He did not worry about being able to have sufficient patients since the majority of his patients were modestly wealthy. He fretted, however, about whether he could feel right about forcing patients who could not afford the fee to find another physician, even if he helped them find another doctor. He felt some moral obligation to serve at least some of the many indigent patients in his community. Although a report from the AMA's counsel concluded that retainer medicine was unlikely to become a very large phenomenon, Lyle still worried about critics' predictions that if many physicians followed this route, America would end up with a two-tiered medical system: one for the rich, and one for the poor. Lyle had grown up in a family with a strong sense of social responsibility and lived this value in his work and life. He had a vague sense of unease with the idea that he would be charging patients more to get the kind of medical service everyone deserved.

Lyle had studied guidelines for such practices outlined by the AMA Council on Ethical and Judicial Affairs and he felt he could abide by them.

Turning onto his street, he saw his daughter riding away with her date. He vowed to talk to his wife about making this change.

CASE 12

Shi Tao, 37, was a journalist and the head of the news division at the Dangdai Shangbao (Contemporary Business News) in Changsha, Hunan Province, prior to his arrest. Shi had also written essays for overseas Internet forums. In an essay posted in April 2004, entitled "The Most Disgusting Day," Shi criticized the government of the People's Republic of China (PRC) for the detention the previous month of Ding Zilin, an activist for the Tiananmen Mothers, whose 17-year-old son was killed during the June 1989 crackdown of the democracy movement.

On 20 April 2004, Shi attended a staff meeting at the Contemporary Business News where the contents of a Chinese Communist Party Central Propaganda Bureau document about security concerns and preparation for the upcoming 15th anniversary of the crackdown were discussed. That evening, from his office, Shi used his personal Yahoo! email account to send his notes about this meeting to the New York-based website Democracy Forum.

Shi was detained that November, and tried under Article 111 of the PRC Criminal Law for "illegally providing state secrets overseas" the previous April. He was sentenced to 10 years imprisonment; his appeal was denied a few weeks later.

Reporters Without Borders, an international media watchdog group, said Yahoo!'s Hong Kong office helped China link Shi Tao's e-mail account and computer to a message containing the information. Reporters Without Borders accused Yahoo! of becoming a police informant to further its business ambitions.

Yahoo! is hardly alone among Western technology firms hit with bad publicity for their complicity in aiding China's curtailment of individual liberties and human rights. Google recently revealed that it was entering the Chinese market with a censored search product, tweaked according to government specifications. Microsoft announced new policies that would enable it to honor the Chinese government's demand to shut down a citizen's blog within China while still keeping the blog visible outside of China.

As reported in the February 6, 2006 New York Times, Bill Gates took another tack at a Microsoft-sponsored conference in Lisbon, claiming, "the ability to really withhold information no longer exists." In other words, Microsoft may agree to censor or filter some content, but, in the end, censorship is no match for human ingenuity and the endless ways for the Internet to provide workarounds. "You may be able to take a very visible Web site and say that something shouldn't be there," Mr. Gates said, "but if there is a desire by the population to know something, it is going to get out."

At an upcoming hearing by the House subcommittee on Global Human Rights, observers expect executives from Cisco, Yahoo!, Google and Microsoft to claim that they must abide by the laws of the countries in which they operate, maintain that practical considerations preclude them from imposing American values regarding censorship on

business relationships in China, and assert that if American Internet companies don't do business in China, change will never come there. What cost change?

CASE 13

In May 2007, Google unveiled its latest offering in the map category: Google Street View. Google Street View is street-level photographic mapping, currently available for certain cities. When first announced, only five cities were included (Denver, Las Vegas, Miami, New York City, and San Francisco), but within half a year the number of cities increased to fifteen. The images, while not real-time, capture the look of a city. Google users anywhere in the world can take their own virtual tours down the same streets and see the same sights.

To prepare a map section for Street View, a specially equipped car drove up and down streets, taking 360-degree pictures of whatever happened to be there at the time. It captured panoramic, photographic imagery from specific streets within selected cities. Later, using Street View, someone can drop down to just above eye level and ride virtually through the streets, zooming in on buildings, faces, cars, and other sights of interest.

The images are stitched together, so that the representations of buildings, and occasionally of cars or of people, are distorted in odd and sometimes amusing ways. Numerous web sites have sprung up to display funny or interesting images “scraped” from street view. One image shows a man breaking into an apartment. Another is of a man urinating on the side of the road. Hit-and-run accidents, drug deals, groping, nose-picking, sunbathing, you name it, whatever people do on or near the street when they think no one is looking can be found on the Internet.

Predictably, some people have been upset to find themselves displayed in awkward, funny, or embarrassing positions. Some parents are not at all happy to have pictures of their children standing on street corners. Some authorities in New York have expressed concern about images from inside various tunnels. One woman was unnerved to see her house on Street View with her favorite cat sitting in the front window. In fact, sometimes the images are so clear that faces are easily identified, license plates are clearly visible, and the interiors of some houses and stores can be seen. Some websites solicit sightings of attractive women.

Google has taken several steps, both anticipating and responding to privacy concerns. Before the release of images for a city, Google contacts women’s shelters and drug rehabilitation centers and removes images from their maps. While in Street View, users can click on “Street View Help,” and find instructions on how to report an inappropriate image. Those caught on camera may request to have their images reviewed and removed or obscured from Street View.

But many privacy advocates say this is not enough. They insist that Google should obscure the faces and license plates of everyone on Street View, and not require people to ask Google to obscure their images. To have an image removed, one has to see it first, by which time many others have seen it as well. The process is cumbersome and time-consuming, as Google's proposed solution requires people to search through *all* the

available video footage to see if their pictures are visible or if the images infringe their privacy. It's not simply a matter of searching for a name, as people's images are anonymous: the database is not readily searchable. Furthermore, the removal process is not automatic. The image must first be reviewed, and even then Google does not guarantee that it will be removed.

CASE 14

In September of 2006, James Kirby started a company, Redux Beverages, to manufacture and distribute a caffeinated energy drink called "Cocaine." Redux advertised Cocaine as "A legal alternative" and their advertisements played up on the name. Phrases like "Speed in a Can," "Liquid Cocaine," and "Cocaine--Instant Rush" appeared in their advertisements. In fact, the drink contained no cocaine (drug) or any other illegal substance, but was just a highly caffeinated soft drink. One 8.2 oz. can contained 280 mg of caffeine, roughly the caffeine in two cups of coffee.

As one might expect, a controversy developed almost immediately. A councilman from Queens, New York, tried to organize a boycott of the product, claiming that the manufacturer was either ignorant of the tragedy of addiction, or indifferent to the value of human life compared with the value of money. Mayor Michael Bloomberg of New York strongly criticized Redux Beverages for glorifying a product that capitalizes on a destructive narcotic, given the extensive problem of drug abuse and addiction. In reply to his critics, Kirby said that he chose the name because controversy sells, rebelliousness is appealing, and the wordplay is ironic fun. He credited consumers with being able to distinguish between an energy drink and an addictive drug. Kirby reportedly denied that his drink would encourage drug use, but did not deny that the drug might encourage consumption of his drink. Sales increased rapidly.

Meanwhile, Michael H. Davis, a professor at Cleveland State University's College of Law needed an extracurricular project for students in his Copyright, Patent, and Trademark class. After a class discussion of trademarks that could be refused for being "immoral or scandalous," someone mentioned the new drink and Davis soon found five student volunteers to file a trademark opposition against Redux in his name. In their filing, made on October 10, 2006, the students also represented the nonprofit organizations Americans for Drug Free Youth and the Progressive Intellectual Property Law Association. Their filing opposed the trademark for the name, "Cocaine," on the grounds that it was "immoral and scandalous," and furthermore it was "deceptively misdescriptive" since the drink did not in fact contain the drug cocaine.

As a result of the students' filing, the trademark examining attorney, Michael Engel, who had tentatively approved the application for federal trademark, changed his mind and asked for a remand for refusal. On Dec. 6, the United States Patent and Trademark Office turned down Redux's application for the trademarked name, "Cocaine."

The New York Times (December 18, 2006) quoted Professor Davis as saying, "My interest was just the legal interest, to get some experience for the students." He added that they were "far more anti-drug than I'd expected."

In May 2007, Redux pulled Cocaine from the market and initially announced they were changing the name to "Censored." Redux settled on "No Name," as a temporary measure. At the time of the writing of this case, the product contained a blank space where the name should appear with the instructions, "Insert Name Here." Kirby explained

the name change as an opportunity to promote the brand's fun spirit and empower consumers to call the drink whatever they like. As an aid to customers, store displays contain stickers with suggested names they can put on the can, including, "Banned-by-the-man," "Screwed," and "Censored."

According to the company's official website, "In the coming year we're going to release a few new surprises to the market.... So stay tuned. This party's just getting started."

CASE 15

Direct-to-consumer (DTC) advertising of prescription drugs through mass media such as newspapers and magazines, radio and television, the Internet, and billboards has increased dramatically since 1997 when the U.S. Food and Drug Administration (FDA) loosened its policies. Since then, prescription drug advertising has been one of the fastest-growing portions of healthcare spending in the United States.

This advertising is not without controversy, however. In fact, it is legal in only two developed countries: the United States and New Zealand. Gary Ruskin, Executive Director of Commercial Alert, testifying at a November 2005 U.S. Food and Drug Administration (FDA) hearing on DTC advertising, said, “Pharmaceutical companies have conflicts-of-interest that keep them from presenting unbiased information about their products” because their first obligation is to make money for their stockholders. The FDA does impose rules on advertising content. Most people have seen the required pages of information that accompany print ads. These are presented in very small font, written in medical jargon requiring a college level of reading ability for comprehension (about 25% of Americans have a college degree), and represent the advertised drug as the only treatment option. Broadcast media are relieved from including such extensive information by FDA rules that are more lenient.

Scott Lassman of the Pharmaceutical Research and Manufacturers of American (PhRMA) testified, at the same FDA hearings, that ads result in better-educated patients and increased compliance. Drug companies point to studies confirming that advertisements raise awareness about certain underdiagnosed conditions, such as depression, resulting in earlier discussions with physicians as well as earlier diagnosis and treatment.

Supporters of DTC advertising suggest that, in light of the increasing impersonality of medical care and the limits on time doctors can spend with patients, informed consumers are at an advantage and can take more personal responsibility for their care.

Some doctors welcome the increased participation and knowledge their patients have, but virtually all dislike the pressure to prescribe at all or to prescribe a particular drug. Physicians report that consumers have unreasonable expectations of advertised drugs, focusing on the benefits without knowledge of the risks and alternatives. Many physicians resent the intrusion into the doctor-patient relationship and the questioning of their advice. Little empirical research has documented that communication is better or that health outcomes are improved as a result of ads. Doctors also report that many consumers assume incorrectly that ads have been approved by a government agency and must be truthful.

Critics decry the ‘medicalization’ of many conditions like obesity or normal aging (that might be better resolved by lifestyle changes) and the creation of false hope that there is a drug for every situation. Use of emotional images, actor ‘doctors,’ celebrities,

and fear techniques are not educational, according to detractors. Considered especially noxious is advertising to adolescents (weight reduction remedies, acne medication, etc.).

Without doubt, advertising increases demand. The Kaiser Family Fund (KFF) reports that a 10% increase in DTC advertising spending results in a 1% increase in sales for the class of drug (not necessarily for the specific drug advertised). KFF studies also found that doctors write prescriptions more for the most heavily advertised drugs, though exact cause-and-effect relationship has not been established, because marketing to physicians is usually increased concurrently. The KFF also determined that for every \$1 spent on DTC advertising in 2000, sales increased by \$4.20. Studies indicate that the ads encourage switching from older, cheaper drugs to newer, more expensive options that may be less well established in regard to efficacy and risks. The latter effect causes insurers and policy makers to worry about 'demand pull' that undermines cost control and utilization limits.

In 1998, the American College of Physicians supported DTC advertising in principle, but recognized the need for careful regulation to assure accuracy. The American Medical Association issued guidelines for DTC advertising, and in 2006 the House of Delegates called for a moratorium on advertising new drugs so doctors would have time to learn about a drug before their patients ask for it. Expressing general support for DTC advertising, the American Pharmaceutical Association called for enforcement of regulations and suggested that pharmacists receive pre-release knowledge of ads.