

# UNIVERSITY OF MEMPHIS SCHOOL OF LAW

## Law 490: Bioethics & the Law

Spring 2007

Professor Thaddeus Pope

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**Time and place:** Monday 10:00 – 11:50 a.m. Room 301

**Paper Due:** Email by 11:59 p.m. on Friday, May 4, 2006

### I. Course Description

The problems tackled in this course are interesting and current. The course will provide you with the opportunity to observe the legal system's response to novel and important issues of great public interest. And you not only will learn some substantive law but also will gain a greater appreciation for the operation of legal process, as you see how the system attempts to come to grips with novel and complex issues.

Much of bioethics is biomedical ethics, which focuses on an individual patient's or research subject's experience with health care (*e.g.* access to health care, physician-assisted suicide, reproductive technologies). But a growing and increasingly important component of bioethics focuses on public health issues. Public health is concerned less with any particular individual's health and more with the health of populations or communities. In this course we will focus on public health bioethics. In particular, we will examine where the line should be drawn between the state's ability to protect the public health and an individual's liberty to act (and create risks) as she pleases.

The primary requirement of this seminar is that you research and write a scholarly legal paper on the approved bioethics topic of your choice.

### II. Course Objectives

- A. Develop both your legal and interdisciplinary research skills.
- B. Enhance and hone your legal writing skills.
- C. Develop your oral presentation skills.
- D. Develop your ability to recognize, analyze, and critically evaluate bioethical issues.

- E. Prompt your self reflection and provide experience in communicating and listening to moral viewpoints.

### **III. Required Materials**

- A. EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, AND SEMINAR PAPERS* (2d ed. Foundation 2005).
- B. Select bioethics and writing advice materials, identified in Section X below. All these materials will be posted to the course TWEN site.

### **IV. Recommended Materials**

- A. ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS* (3d ed. Thomson 2005).
- B. MARY B. RAY & JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* (3d ed. West 2000).
- C. Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445-54 (1986).
- D. A good style guide

### **V. Class Schedule**

- A. The class will meet on Mondays from 10:00 to 11:50 a.m. in Room 301.
- B. The class will meet neither on January 15<sup>th</sup> due to Martin Luther King Day, nor on March 5<sup>th</sup> due to Spring Break. The last class is on Monday, April 23<sup>rd</sup>.
- C. I will prepare written feedback on your drafts. Shortly after you have had a chance to review this feedback, please schedule a one-on-one meeting to review and discuss it. If at any time you're struggling, please talk to me.

## VI. Seminar Paper -- Deadlines

- A. By the last class in January (Monday, January 29<sup>th</sup>), you and I will agree upon a paper topic.
- B. By the last class in February (Monday, February 26), you must submit a written outline that: (i) includes a tentative title, (ii) includes a thesis statement, (iii) describes all the major topic areas and subtopics, and (iv) includes a preliminary bibliography of sources you have used and plan to use. The outline will comprise 5% of your grade.
- C. By the last class in March (Monday, March 26), you must submit a substantive rough draft and schedule an individual conference to discuss the drafts. The rough draft will comprise 5% of your grade. More significantly, without a substantial rough draft, I will be unable to provide the feedback necessary to ensure that your final paper will be adequate.
- D. By the end of the exam period (May 5, 2006), you must submit a complete and polished paper. In accordance with Academic Regulations section 10.10, I am willing to consider granting time extensions.

## VII. Seminar Paper - Requirements

- A. **Length:** Your paper must contain between 5000 and 6000 words (or 25 pages) (exclusive of footnotes).
- B. **Standards:** I will evaluate the papers using three primary criteria:
  - 1. *The quality of research:* How complete is your examination of the relevant ethical/medical/legal sources? To what extent have you adequately uncovered and documented the information necessary to sustain your thesis?
  - 2. *The quality of analysis:* To what extent have you provided a well-structured argument in support of your thesis? How adequate is the evidence offered for each premise of this argument?
  - 3. *The quality of presentation:* To what extent does your paper's organizational structure effectively communicate its thesis? To what extent does your paper conform to the rules of grammar and style? To what extent has your paper been proofread?
- C. **Format:** Both the first draft and the final paper must be double-spaced with 1½ margins all around. The main text must be in 12-point Times font. The footnotes must be in 9-point Times font and in Bluebook form.

- D. **Grading:** The final paper will constitute 60% of your course grade.
- E. **Publication:** Students should be able to place the better papers for publication in general or specialized law reviews. In addition, there are paper competitions for law students writing in bioethics.

### **VIII. Oral Presentation**

- A. During each of the last six class sessions (March 19, March 26, April 2, April 9, April 16, and April 23), you must make a 20-minute presentation on the topic of your paper.
- B. One week prior to your presentation, you must distribute to the class (through either email or posting to the TWEN site):
  - 1. A one-page outline of your presentation
  - 2. A suggested reading list of the most important five or six sources
  - 3. 15-20 pages of reading material -- whether from your own paper or a published source -- that will provide both the class and me with a sufficient background to best provide you with constructive feedback.
- C. You will be graded on: (i) the teaching effectiveness of your presentation, (ii) your responses to questions, and (iii) the content of the presentation. The oral presentation will constitute 10% of your grade. We will discuss guidelines for the oral presentation later in the semester.
- D. The rest of the class must be prepared to ask informed, tough questions of the presenter. Prepare for and pay attention to the presenter as if it was a presentation by the person you most respect.

### **IX. Attendance, Preparation, and Participation**

- A. Part of the benefit of a seminar is the collaborative work that occurs in the discussions. Since the course will be taught in an interactive seminar format, preparation and participation in class is required. Meaningful class participation will constitute 20% of your grade.

- B. For participation, I will subjectively evaluate both your contributions to class dialogues (in class and on TWEN) and comments to your peers about their papers. Constructive contributions to discussions about your peers' presentations will be very highly weighted. Similarly, disrespect, inattention, or non-constructive comments to your peers about their presentations will be costly to your participation grade.
- C. Pursuant to Academic Regulations section 9.1, I will take attendance at each of our fourteen class sessions. Any absences will obviously affect your class participation score. But in any case, you may not miss more than three classes.
- D. The topics in this class are constantly in the news and in the plot lines of movies and broadcast shows. If you notice a story that illustrates or discusses a class topic, please drop me a note or bring it up in class.

**X. Grading**

- A. Components of the Course Grade:
 

1. Class Participation	20%
2. Outline & bibliography	5%
3. Substantive rough draft	5%
4. Oral presentation	10%
5. Final paper	60%
- B. Through completion of this course, you can satisfy the law school's research requirement for graduation. *See* Academic Regulations § 16.1(c). But please note that you must earn a grade of "C" or better **both** in the seminar **and** on the research paper. *See* Academic Regulations § 12.5(b). So, while a student may receive a grade of "C" or better in a seminar by receiving points based on class participation, drafts, and oral presentation, that student will not satisfy the research requirement if the research paper itself is not satisfactory.

## XI. Office Hours

I look forward to talking to you outside class. There are several means of doing this:

- A. After class: I will remain in the classroom after each class for all trailing questions, until or unless we are kicked out by another class.
- B. Office: I can typically be found in my office after class. If this is not a convenient time, just let me know in class or by email and we can make an appointment with each other. You are welcome to drop in my office anytime, but it is best to confirm a particular time in advance.
- C. Email: Feel free to e-mail me at tmpope@memphis.edu if you are unable to come by in person.
- D. Lunch: I have found that grabbing a quick lunch is a good way to get to know each other. If you and one or two other students want to share a bite, please let me know. In general, it would be best to suggest in advance a few proposed dates, so we can match our schedules.

## XII. Course Calendar

<b>January 8</b>	<b>CLASS 1: COURSE OVERVIEW, INTRODUCTIONS, SYLLABUS, RESEARCH TOOLS, AND THE SCOPE OF BIOETHICS</b> <ul style="list-style-type: none"><li>• VOLOKH 5-32 &amp; 60-66 (choosing a topic and claim)</li><li>• VOLOKH 52-54 &amp; 76 (budgeting your time)</li><li>• Handouts in class: Bioethics research pathfinders; Pre-assembled lists of bioethics paper topics; RAY &amp; RAMSFIELD 329-31</li></ul>
<b>January 15</b>	<b><i>No Class: Martin Luther King Day</i></b>
<b>January 22</b>	<b>CLASS 2: PUBLIC HEALTH VERSUS INDIVIDUAL LIBERTY</b> <ul style="list-style-type: none"><li>• Lawrence O Gostin, <i>Law and Ethics in Population Health</i>, 28 AUSTR. &amp; N.Z. J. PUB. HEALTH 7 (2004), reprinted as <i>Health of the People: The Highest Law</i>, 32 J. L. MED. &amp; ETHICS 509-14 (2004).</li><li>• Lawrence O. Gostin, <i>Public Health Law in a New Century: Part I: Law as a Tool to Advance the Community's Health</i>, 283 JAMA 2837-41 (2000).</li><li>• Lawrence O. Gostin, <i>Public Health Law in a New Century: Part III: Public Health Regulation: A Systematic Evaluation</i>, 283 JAMA 3118-22 (2000).</li><li>• Ronald Bayer, <i>Ethics of Health Promotion and Disease Prevention</i>, ETHICS AND PUBLIC HEALTH MODEL CURRICULUM, Module 6, at 147-56.</li><li>• VOLOKH 68-72 (research)</li><li>• Mortimer Adler, <i>How to Mark a Book</i>, in MORTIMER J. ADLER &amp; CHARLES VAN DOREN, HOW TO READ A BOOK (rev. ed. Simon &amp; Schuster 1972).</li></ul>

<b>January 29</b>	<b>CLASS 3: QUARANTINE</b>
	DUE: Declare your paper topics
	<ul style="list-style-type: none"> <li>• <i>Wong Wai v. Williamson</i>, 103 F. 1 (C.C.N.D. Cal. 1900).</li> <li>• <i>Addington v. Texas</i>, 441 U.S. 418 (1979).</li> <li>• <i>City of Newark v. J.S.</i>, 652 A.2d 265 (N.J. Super. 1993).</li> <li>• <i>In re J.A.D.</i>, 492 N.W.2d 82 (N.D. 1992).</li> <li>• Lawrence O. Gostin et al., <i>Ethical and Legal Challenges Posed by Severe Acute Respiratory Syndrome</i>, 290 JAMA 3229 (2003).</li> <li>• Lawrence O. Gostin, <i>International Infectious Disease Law</i>, 291 JAMA 2623 (2004).</li> </ul>
<ul style="list-style-type: none"> <li>• VOLOKH 209-17 (academic ethics)</li> <li>• Suzanne E. Rowe, <i>Unblock Writer's Block</i>, OR. ST. BAR BULL., Oct. 2006, at 37.</li> <li>• RAY &amp; RAMSFIELD 414</li> </ul>	
<b>February 5</b>	<b>CLASS 4: BIOTERRORISM</b>
	<ul style="list-style-type: none"> <li>• Lawrence O. Gostin, <i>The MSEHPA: Public Health and Civil Liberties in a Time of Terrorism</i>, 13 HEALTH MATRIX 3 (2003).</li> <li>• George J. Annas, <i>Blinded by Terrorism: Public Health and Liberty in the 21<sup>st</sup> Century</i>, 13 HEALTH MATRIX 33 (2003).</li> </ul>
	<ul style="list-style-type: none"> <li>• VOLOKH 32-48 &amp; 76 (organizing your paper)</li> <li>• Hamilton College Nesbit-Johnson Writing Center Handouts</li> </ul>
<b>February 12</b>	<b>CLASS 5: TOBACCO</b>
	<ul style="list-style-type: none"> <li>• B.J. Fox, <i>Framing Tobacco Control Efforts within an Ethical Context</i>, 14 TOBACCO CONTROL (Supp. II) ii38-ii44 (2004).</li> <li>• <i>City of North Miami v. Kurtz</i>, 1995 Fla. LEXIS 568 (Fla. 1995).</li> </ul>
	<ul style="list-style-type: none"> <li>• VOLOKH 56-60 (choosing a title)</li> </ul>
<b>February 19</b>	<b>Class 6: OBESITY (PART ONE)</b>
	<ul style="list-style-type: none"> <li>• INSTITUTE OF MEDICINE, <i>THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21<sup>ST</sup> CENTURY</i> 76-79 (2002).</li> <li>• Marion Nestle and Michael F. Jacobson, <i>Halting the Obesity Epidemic: A Public Health Policy Approach</i>, 115 PUBLIC HEALTH REP. 12 (Jan.-Feb. 2000).</li> <li>• Michelle M. Mello et al., <i>Obesity – the New Frontier of Public Health Law</i>, 354 NEW ENG. J. MED. 2601-10 (2006).</li> </ul>
	<ul style="list-style-type: none"> <li>• VOLOKH 101-44 (using empirical research)</li> </ul>
<b>February 26</b>	<b>Class 7: OBESITY (PART TWO)</b>
	DUE: Submit your outline, tentative title, and preliminary bibliography
	<ul style="list-style-type: none"> <li>• <i>Pelman v. McDonald's Corp.</i>, 237 F. Supp. 2d 512 (S.D.N.Y. 2003) (read 519-20 and Parts II.B.2, III, and IV).</li> <li>• <i>Int'l Dairy Foods Ass'n v. Amestoy</i>, 92 F.3d 67 (2d Cir. 1996).</li> </ul>
	<ul style="list-style-type: none"> <li>• VOLOKH 54-55, 73-81 (writing your paper)</li> <li>• Marshall Kapp, <i>Writing Research Papers: Top Ten Tips</i>, LAW TEACHER, Fall 1999, at 10-11.</li> <li>• Handout in class: Oral presentations</li> </ul>

<b>March 5</b>	<i>No class: Spring Break</i>
<b>March 12</b>	<b>Class 8: INJURY PREVENTION</b>
	DUE: Distribute reading for Student Presentation No. 1
	<ul style="list-style-type: none"> <li>• Richard J. Bonnie and B. Guyer, <i>Injury as a Field of Public Health: Achievements and Controversies</i>, 30 J. L., MED. &amp; ETHICS 267-80 (2002).</li> <li>• <i>State v. Hartog</i>, 440 N.W.2d 822 (Iowa 1989).</li> <li>• <i>Michigan Dept. State Police v. Sitz</i>, 496 U.S. 444 (1990).</li> </ul>
<b>March 19</b>	<b>Class 9: Student Presentation No. 1</b>
	DUE: Distribute reading for Student Presentation No. 2
	<ul style="list-style-type: none"> <li>• Materials distributed 3/1</li> </ul>
<b>March 26</b>	<b>Class 10: Student Presentation No. 2</b>
	DUE: Submit your substantive rough draft Distribute reading for Student Presentation No. 3
	<ul style="list-style-type: none"> <li>• Materials distributed 3/19</li> </ul>
	<ul style="list-style-type: none"> <li>• VOLOKH 81-98 (editing your paper)</li> <li>• STEPHEN V. ARMSTRONG &amp; TIMOTHY P. TERRELL, ADVANCED WRITING AND EDITING FOR LAWYERS: BEYOND TIPS TO FUNDAMENTAL PRINCIPLES 53-54 (ALI-ABA 2004).</li> <li>• Hamilton College Nesbit-Johnson Writing Center Handouts on Editing</li> </ul>
<b>April 2</b>	<b>Class 11: Student Presentation No. 3</b>
	DUE: Distribute reading for Student Presentation No. 4
	<ul style="list-style-type: none"> <li>• Materials distributed 3/26</li> </ul>
	<ul style="list-style-type: none"> <li>• VOLOKH 219-26 (polishing your paper)</li> <li>• Hamilton College Nesbit-Johnson Writing Center Handouts on Grammar/Style</li> </ul>
<b>April 9</b>	<b>Class 12: Student Presentation No. 4</b>
	DUE: Distribute reading for Student Presentation No. 5
	<ul style="list-style-type: none"> <li>• Materials distributed 4/2</li> </ul>
<b>April 16<sup>th</sup></b>	<b>Class 13: Student Presentation No. 5</b>
	DUE: Distribute reading for Student Presentation No. 6
	<ul style="list-style-type: none"> <li>• Materials distributed 4/9</li> </ul>
<b>April 23</b>	<b>Class 14: Student Presentation No. 6</b>
	<ul style="list-style-type: none"> <li>• Materials distributed 4/16</li> </ul>
<b>May 5</b>	DUE: Submit final paper via email by 11:59 p.m.