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Foreword: Public Health & the Law—A Symposium Dedicated to Professor William J. Curran

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Foreword

This double symposium issue of the American Journal of Law and Medicine is dedicated to William J. Curran. The National Law Journal said in 1981: "Name almost any controversial medical-legal topic over the last quarter of a century and Mr. Curran has been pivotal in shaping it."¹ The article described him as the father of modern health law.

Professor Curran has chaired the Harvard School of Public Health Committee on Human Research since 1972; he has directed the Program in Law and Public Health since 1977; and he was the co-director of the Harvard Interfaculty Program in Medical Ethics from 1973 to 1980. He has been an advisor to the World Health Organization from 1986 to the present and has spent two sabbatical periods in Europe with WHO organizations. He has advised and lectured in countries throughout the world, most recently in China.

At Harvard Law School and at the Harvard School of Public Health, Professor Curran has educated three generations of lawyers who have gone on to hold varied positions of influence in the field of health law—from academia to private practice, from health care delivery and management to government leadership. His textbooks² have been a bedrock of learning for students in schools of law, medicine and public health. He commands the respect of colleagues for his rigor and fairness in safeguarding the rights and dignity of human subjects. The American Society of Law and Medicine recently honored him, together with Professor Jay Katz of the Yale Law School, as the best health law teacher in the nation. The honor bestowed on Professor Curran is especially important because he has been chosen by other health law professors.

My personal reflections on William Curran began in 1976, when I was the Legal Director of the National Association for Mental Health (MIND) in Great Britain. At that time, he was on a research mission for the World Health Organization (WHO), compiling a worldwide survey of mental health legislation. I had just completed A Human Condition,³ the first full

scale analysis of the British Mental Health Act. Professor Curran and I
spent a day together, and I was instantly impressed with his intellect,
energy and compassion.

_Law and Mental Health: Harmonizing Objectives_, Professor Curran’s re-
port on the results of his mental health legislation survey for WHO, has
precipitated worldwide reform in psychiatry and law. The report dispelled
paternalistic myths about the virtues of granting unbridled discretion to
mental health professionals, and proposed legal measures to protect the
human rights and dignity of the mentally ill. In 1982, many of the propos-
als in _Harmonizing Objectives_ and _A Human Condition_ were incorporated into
the revised British Mental Health Act.

I next met William Curran in Siracusa, Italy in 1979, where we formed
part of a committee assembled by the International Commission of Jurists
and the International Institute of Higher Studies in Criminal Science. Our
task was to draft principles for the protection of persons suffering from
mental disorder. During the two week-long sessions in Siracusa, I found
that Professor Curran and I shared many views concerning the rights of
the mentally ill. We worked together at that meeting to support our mutual
goals. The document we helped craft during those sessions is now part of
the Daes Report, which is currently before the United Nations pending
approval as a Declaration of Rights for the Mentally Ill.

Professor Curran’s achievements include drafting numerous public
health laws as well as writing twelve books and over one hundred profes-
sional journal articles. He played a major role in Harvard’s 1968 report
re-defining brain death. He is most well known for the medicolegal col-
umns he has published in the _New England Journal of Medicine_ over the past
twenty-five years. In those pages, he advocated humanity in the practice of
medicine, taking on such issues as torture, the doctor’s role in capital
punishment, and human experimentation. As a follow-up to _Harmonizing
Objectives_, in 1986 Professor Curran prepared a similar survey for WHO on
alcohol and drug dependency, which resulted in the establishment of
guidelines for drafting legislation. His latest book, written with Louis

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5 Association Internationale de Droit Penal, _The Protection of Persons Suffering
from Mental Disorder_ (1980).
6 E. Daes, _Human Rights and Technological Development: Guidelines, Principles
and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill
Health or Suffering From Mental Disorder_, E/CN.4/Sub 2/1982/16; E/CH.4/Sub 2/
7 Beecher, _A Definition of Irreversible Coma, Report of the Ad Hoc Committee of the Harvard
Medical School to Examine the Definition of Brain Death_, 205 J.A.M.A. 6 (1968).
8 L. Porter, A. Arif & W.J. Curran, _The Law and the Treatment of Drug- and
9 Curran & Arif, _International Guidelines for Legislation on Treatment of Drug and Alcohol
McGarry and Saleem Shah, promises to be a standard in modern legal psychiatry and psychology.\textsuperscript{10}

Professor Curran's work has had a striking influence on such areas as death and dying, risk management, mental health and public health. Currently, he is one of the legal community's chief proponents of patient-injury risk management programs as a means of reducing malpractice liability risk. His goal is to bring together the data and experiences of major risk management programs from across the country to enlighten future policy decisions. His concern is not with reducing medical malpractice claims alone, but with reducing risk for patients as well.

The AIDS epidemic has challenged science and law more than any other contemporary health issue. In 1986 Dr. James Mason, then Acting U.S. Assistant Secretary for Health, selected Professor Curran and I to prepare a report on the legal and regulatory aspects of AIDS.\textsuperscript{11} Professor Curran was an influential member of the National Institute of Medicine/National Academy of Science task force on AIDS.\textsuperscript{12} He also played a key role in the Centers for Disease Control Conference on AIDS Confidentiality in February, 1987.\textsuperscript{13} Currently, Professor Curran and I are engaged in a worldwide survey of AIDS legislation for the World Health Organization.

This symposium issue reflects the scope of Professor Curran's distinguished career. The authors are his associates, who have assembled to pay tribute to William Curran and his achievements.

Professor Wendy Mariner was, until recently, Professor Curran's colleague at the Harvard School of Public Health. Her Article concerns elimination of financial barriers to health care. She proposes a new standard of review for fourteenth amendment equal protection claims, a new form of heightened scrutiny that considers the nature of inaccessible social goods and services rather than the composition of the excluded minority.

Professor Frank Grad, Director of the Legislative Drafting Research Fund at Columbia University, has collaborated with Professor Curran on

\textsuperscript{10} W.J. CURRAN, A.L. MCGARRY & S. SHAH, MODERN LEGAL PSYCHIATRY AND PSYCHOLOGY (1986).


\textsuperscript{12} INSTITUTE OF MEDICINE & NATIONAL ACADEMY OF SCIENCES, CONFRONTING AIDS: DIRECTIONS FOR PUBLIC HEALTH, HEALTH CARE AND RESEARCH (1986).

\textsuperscript{13} CENTERS FOR DISEASE CONTROL, RECOMMENDED ADDITIONAL GUIDELINES FOR HIV ANTIBODY COUNSELING AND TESTING IN THE PREVENTION OF HIV INFECTION AND AIDS (1987).
various public health legislation projects. His Article is excerpted from the forthcoming revised edition of the Public Health Law Manual, authored by Professor Grad in 1965. The Article examines the necessary balance between individual liberty and restrictions required by public health concerns.

Professor Angela Holder, Counsel for Medicolegal Affairs at Yale-New Haven Hospital, shares Professor Curran's concern with the appropriate use and protection of biomedical research. Her Article demonstrates the importance of confidentiality to medical research subjects, and argues that the legal need for disclosure must be secondary to the medical researcher's need for maintaining the trust and cooperation of subjects.

Harold Ginsburg is Chief of the AIDS Program at the National Institutes of Allergy and Infectious Diseases. His Article examines the usefulness and inherent limitations of epidemiologic data in mass tort litigation, contrasting legal and medical notions of causation and evidence.

Genevieve Pinet is the World Health Organization's Regional Officer for Health Legislation in Europe. Her Article outlines the WHO program in health legislation, including the geographic, political, and cultural barriers encountered in creating a unified health care system in Europe.

My Article on the future of public health law closes the symposium issue. Professor Curran and I have a common vision of reforming outdated communicable disease control laws in light of modern conceptions of due process, medical necessity, and confidentiality. My Article provides a blueprint for legislative reform of those outdated communicable disease control measures.

I recall discussing with Professor Curran his plans and dreams to establish the first World Health Organization Collaborating Center in Health Legislation at Harvard, first in Siracusa and later during his occasional visits to London. It was Professor Curran who convinced me to return to the United States to become Associate Director of the Center.

Bill Curran's dream has now been realized. The World Health Organization has just recently designated Harvard University as the first International Collaborating Center for Health Legislation. Professor Curran will be its first director.

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