Mandatory Vaccine Creates Opposition

By Matt Nelson

At the beginning of February, Texas Governor Rick Perry signed an executive order mandating that all girls entering sixth grade receive cervical cancer vaccine. According to the Wall Street Journal, bills are being drafted in some 20 U.S. states that would make a cervical-cancer vaccine mandatory for preteen girls. These efforts are sparking a backlash among parents and consumer advocates.

The bills coincide with an aggressive lobbying campaign by Merck & Co., the maker of the only such vaccine on the market. The three-shot regimen called Gardasil provides protection against the human papillomavirus, a sexually transmitted virus that is responsible for the majority of cases of cervical cancer. If most of these state bills are passed, Merck would be guaranteed billions of dollars in annual revenue.

Concerns over mandating shots:
• Some parents say a vaccine for HPV, the sexually transmitted disease that can cause cervical cancer, effectively condones premarital sex.
• Long-term efficacy and risk of side effects are unclear. There have been 82 reports of adverse events associated with the vaccine.
• Gardasil is typically covered by insurance, but is costlier than many other common vaccines.

Proposed legislation varies from state to state, but the bills generally would require girls to show proof that they have received the inoculation in order to enter school. A number of immunizations — including those for measles, chicken pox and polio — are mandatory for U.S. schoolchildren because they block highly contagious diseases that can be spread easily in a group setting. But HPV is different because it is transmitted sexually. At $360 for the three shots, Gardasil is also costlier than many vaccines (a measles-mumps-rubella shot costs about $42.85 per dose, for instance), though it is generally covered by insurance.

The Texas order contains an opt-out provision for religious objections or other “reasons of conscience.” Conservative Christian groups have long voiced opposition to the vaccine, saying it would conflict with their message of abstinence because it exposes the children to the unforeseen side effects of a new vaccine to protect them from a disease that is no longer very common in the U.S. and often doesn’t develop until much later in life. In a Wall Street Journal article, Tina Walker, the mother of an 11-year-old girl in Flower Mound, Texas, says she would prefer to wait until the vaccine has been on the market for several years before subjecting her child to it. “We are the guinea pigs here,” she says.

Many of the state bills contain opt-out clauses, but a few don’t. The bill pending in Florida would bar students ages 11 or 12 from being admitted to public or private school in the state unless they can provide proof that they have been vaccinated or that their parents opted them out after receiving information about cervical cancer and the vaccine.

Merck says cervical cancer is the second-leading cancer among women around the world, but the disease’s prevalence is actually low in the U.S. The American Cancer Society estimates that 11,150 women will be diagnosed with cervical cancer and 3,670 will die from it in the U.S. this year. That’s equivalent to 0.65% of U.S. cancer deaths each year. By comparison, the society estimates that 178,480 American women will get diagnosed with breast cancer in 2007 and 40,460 will die from it.
By Kyle Shelton

My mind lives in a loop. Some of the scenes in the loop change with my mood, some with where I am in my life. Some things stay the same. Parade observations with friends long gone. Road trip banter in the car with my feet out the window. Street vendors chatting about life. Sometimes scenes from movies and TV shows play over and over in my head, like a song I can’t shake.

In Buffy the Vampire Slayer, Buffy is in a dream-like coma where she walks through scenes of her life again and again. Willow enters Buffy’s dream and follows her through long hallways until Buffy stops in the shop. Buffy puts the book back over her head. “I’m not myself over and over. What happened here?” Willow asks.

Buffy turns to look at her, “This was when I quit.”

“You did?”

“Just for a second. I was in the magic shop, I put a book back for Giles. Nothing special about it. And then it hit me... I wanted it to happen. I would grieve, but then it would be over. And I imagined what a relief it would be. This was when I quit.”

With another deep breath, Buffy repeats putting the book on the shelf.

In Fight Club Brad Pitt sits in the bath tub under harsh neon lights while Ed Norton leans against the bed tile wall. They take turns telling childhood stories.

“My dad never went to college,” Pitt says, “so it was real important that I go. So I graduate, and I call him up long distance and I say ‘Dad, now what?’ And he says, ‘Get a job.’ Now I’m 25, and I make my yearly call again and say Dad, ‘Now what?’ And he says, ‘I don’t know, get married.’” Norton leans to face Pitt and finish the thought. “I can’t get married, I’m a 30 year old boy...”

In Rocky, a young Sylvester Stallone struggles through the darkness into his rundown apartment and sets his keys on the refrigerator. Distraught, he lies on his side next to Adrian. Slowly, his voice trembles, “I can’t do it.”

“What?” Adrian asks.

“I can’t beat him.”

“Apology?”

“I been out there walking around, thinking, I mean, who am I kidding. I ain’t even in his league. But it’s a dream, I’m a 30 year old boy...”

In The Shadow Box, an aged man sits in a dream-like coma where he walks through scenes of his life again and again. He asks:** “What happened here?” Willow asks.**

“Thank you,” Portman smiles, “But I think I’d rather die behind the chemical shield...” The shadowed figure leaves the door open as he turns and walks away into the blackness.

In Ali, Ali, Angelo Dundee, and Don King sit at a long table that overlooks a sea of reporters. Flashes go off, tape recorders are held up. Ali plays to the busy room with a rant about Foreman being in shape.

Dundee leans behind Ali because he thinks Kings has said something to him. King’s cruel response to Dundee, “Hell, I ain’t talking to you.” Ali stops cold and looks to King.

“Hey, hey man, don’t you never talk to Angelo like that, don’t you never hear you talk to Ali like that again. Something wrong with you man? You think you’re calling some shots around here? You ain’t calling nothing. They all know, all them ladies out there they know. They know I’m ready.” Ali turns to face the reporters, newly stern.

“I see fear in the eyes of his followers, I see fear. This was supposed to be the fight Muhammad Ali was ended, supposed to be the myth of Mohammad was going to fall, supposed to be my destruction. Well, they miscalculated, they judged, they got it wrong.”

The music rises and an African chant is heard, the distance. The reporters are silent. Ali has made his point. At 34 years old, he is who he was. The opening credits of True Romance. The camera pans through a snow covered, run down, inner city. A cat screeches in the distance. A car without doors or windows sits on the street. An unseen woman’s voice with a good natured southern twang says, “I kept asking Clarence why our world seemed to collaps...and everything seemed so shitty, and he’d say, ‘That’s the way it goes.’” As I hear the voiceover I imagine a wry smile passing over the speakers face.

The woman continues, “And then he says, ‘but don’t forget, it goes the other way too...’”

Lawahaha.com has great fondness for judges who live up their opinions with humor and other writing spice, but a Ninth Circuit case shows why judges need to exer- cise care in stirring in these ingredients.

In a suit brought against George W. Bush and Donald Rumsfeld on behalf of all whales, dolphins, and porpoises, the Ninth Circuit had to decide whether animals have standing to sue on their own behalf under the Endangered Species Act and other fed- eral statutes.

The plaintiff was the “the Cetacean Community,” a name chosen by the Cetaceans' self-appointed attorney for all of the world’s whales, porpoises, and dolphins. The Cete- cans challenged the U.S. Navy’s use of low frequency sonar used to detect enemy submarines because the sonar harms marine life.

Bush and Rumsfeld moved to dismiss on the ground that the animals lacked standing to bring suit. The district court agreed and dismissed the action.

The animals appealed, relying on a statement made in a previous environmental case — Palila v. Hawaii Dep't of Land and Natural Resources — in which the Ninth Circuit had indicated that an endangered member of the honeyecker family, the Ha- waian Palila bird, had standing to sue on its own behalf. The specific language was that the bird “has legal status and wings its way into federal court as a plaintiff in its own right.”

The court had to decide whether the Palila language was binding precedent or just loose dicta, it ruled it was the latter, calling the statements “little more than rhetorical flourishes.”

With respect to the substantive issue, the court added that “It is obvious that an animal cannot function as a plaintiff in the same manner as a juridically competent human being.” Hmm, not so sure about that.

Cetacean Community v. Bush, 386 F.3d 1169 (9th Cir. 2004).
Opinions and Editorials

Intellectual Diversity: ASU’s Favorite Judge?

By: Jeremy Miller

Pop Quiz! What jurist is most frequently referenced by law professors at ASU?

Oliver Wendell Holmes
Learned Hand
Thurgood Marshall
John Marshall
Benjamin Cardozo

Would it surprise you if I said that the answer is none of the above? The answer is (drum roll please) … Antonin Scalia!

“Scalia?” I hear you exclaiming, “He’s not in my top 100 judges, much less number 1.”

Before you throw down this paper in disgust and dismiss it as nothing more than extreme right-wing propaganda, go back and reread the question I asked to start this column. I did not ask who is the most popular jurist. I did not ask who the best jurist is. I asked who is the most referenced jurist.

We have all experienced the same confusion in our first year of law school when, at some point in the middle of a seemingly endless discourse on contracts, civil procedure, or constitutional law, the professor concludes his remarks with the perfunctory phrase, “… contrary to what Justice Scalia would tell you.

“What does Justice Scalia have to do with warranties of merchantability?”

Justice Scalia is the leading voice in a chorus of judges and legal authors espousing a new method of interpreting the law. Scalia’s philosophy, called textualism, minimizes or ignores legislative intent and places more of an emphasis on the text of the legislation. This idea is perhaps best summarized by Amy Gutmann, who edited Justice Scalia’s book length explanation and defense of textualism. “Laws mean what they actually say, not what legislators intended them to say but did not write into the law’s text.”

The initial basis for religious opposition to stem cell research arose from the fact that the cloning process created human embryos. When does life begin? Can one weigh in on the conflict created by these stances, many opponents have limited their rhetoric to more generic arguments about tampering with nature and God, the ageless bane of ungodly creatures created by the demonic pursuits of mad scientists. However, just as these paranoid apocalyptic visions failed to materialize over a century ago, today’s fears are just as unfounded, but for an ironically different reason. After all, the initial basis for religious opposition to stem cell research arose from the fact that the embryos were never allowed to mature into living beings. In apparent recognition of the conflict created by these stances, many opponents have limited their rhetoric to more generic arguments about tampering with nature and God, the ageless bane of medical and scientific advancement.

The fact is that as long as the knowledge and will is there, new scientific discoveries can always be developed and used for abominable purposes, regardless of governmental willingness to grant licenses. Those with such purposes would never apply for a license accompanied by strict governmental regulations even if it were available. Thus, government refusal to grant licenses does nothing more than rob those with benign purposes of the chance to help the world, while doing nothing to curtail illegal abuses.

Some opponents have looked past the hybrid aspect of the debate and argued that any truly useful embryo must be in essence human, thus returning the debate to its origins. When does life begin? Can one weigh the value of one life against another? While these may be questions for timeless debate in the annals of philosophy and theology, they play a very different role in governmental decision making. Even if one assumes (very debatably) that life begins at conception and then proceeds to the question of weighing human life, it is indisputable that our government engages in such morbid evaluations every day in this country. Every time a physician cries out, “The patient is dead,” every time a war is waged, every time a poor person is denied life-saving medical treatments based on their inability to afford the procedures our government weighs the value of human life, and in some of those instances life is outweighed by purely monetary considerations.

The real question then appears to be this: How can such a government tell its citizens that their lives and suffering are worth less than a ball of undifferentiated cells with the potential to be what they already are? For those of us with loved ones that are slipping away from us with each passing day, this question is a no-brainer, and only pure hate-fueled hypocrisy could produce opposite response. Meanwhile, those who are removed from the problem, who needn’t look into the suffering eyes of their loved ones, and who are more interested in indoctrinating the planet with their own interpretation of righteousness have no problem accepting these innocent casualties as a necessary byproduct of their holy crusade.

By Ravi Arora

In one of the most disgusting hypocritical controversies of our times, God and the governmental interest in preserving life have become weapons to strike down potentially life saving medical research, specifically embryonic stem cell research. The war has been waged ever since ignorant religious zealots first discovered that embryos from in vitro fertilization clinics, which were previously discarded at the end of the day, were being used for research to combat fatal diseases. They quickly rallied behind God’s chosen idiot (aka President Bush) and brought the sword of criminal sanctions and withdrawn funding down upon the heads of those who have devoted their existence to saving others. Meanwhile thousands of lives slip slowly and inevitably into oblivion under the weight of their fatal and deteriorating illnesses such as Alzheimer’s and Parkinson’s while doctors and loved ones can do nothing but stand by and watch as soldiers for “life” remove and loved ones can do nothing but stand by and watch as soldiers for “life” remove

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The Religious Right & Struggle to Survive

photo from lawenews.asu.edu

Justice Antonin Scalia, shown at one of his many speaking engagements, is known for his “textualist” reading of the law and his exuberance as a public speaker. He is also known for his opinions on many of the countries most controversial issues, currently prevalent theories of jurisprudence and too often upset with judges who openly admit that their rulings are at odds with the text of the statute, yet insist that it is the text that is wrong. Opponents of textualism come generally from the ranks of liberal realists that have ruled the ranks of judges for several decades. Dismissive of textualism for its alleged lack of depth, legal realists prefer focusing on legal intent to determine the meaning of statutes. The unspoken (but too often present) addendum to this is that the legislature is rarely united and some minimal amount of legislative support for any possible interpretation of a statute can be found if one digs far enough. Lawyers, professors, and others who follow the Supreme Court have been particularly aghast as those perceived as Scalia-clones join the bench. Justices Clarence Thomas and Samuel Alito, in particular, have faced venomous attacks for their perceived allegiance to Scalia. Thomas, who a former professor of mine constantly derided as “Justice Why,” is regularly attacked in transparently racist fashion for his alleged lack of legal reasoning skills in his opinions. Democratic Senate Majority Leader Harry Reid, the source of the repeated comments about Thomas’s “lack of ability,” was unable to name a single opinion by Thomas that was poorly written or reasoning.

Justice Alito was appointed to the third Circuit Court of Appeals in 1990. He quickly was hit with the nickname “Scalito,” signifying both his perceived ideological and ethnic similarities with Scalia (Both Scalia and Alito are Italian-Americans).

So why are we as law students subjected to regular assaults on judicial philosophy of Justice Antonin Scalia? My answer? The professors are scared of his philosophy and of him personally.

For decades now, the American people have been cringing as they hear tales of judges who ignore the will of the elected representatives of the people, only to issue judicial fiat declaring their own whims as law. It was easy for realist judges and professors to ignore this public outcry, since they controlled the courts where these decisions are made and the law schools, where tomorrow’s lawyers are trained.

But the tide is turning. The people can now rally around judges and a judicial philosophy that they can understand and a philosophical leader who is not afraid to be a forceful spokesman. “Laws mean what they actually say.” What a radical concept.

And so law professors have one last card to play. They have one last chance to prevent the growth of textualism. One last chance to remain relevant. One last chance to prevent the extinction of their outdated “realism.”

That is why Justice Antonin Scalia is the most referenced jurist in law school.
House Dems’ First 100 Hours Not Too Fruitful

By Jeremy Miller

On the night of November 7, 2006, Congressional Democrats celebrated the passage of both chambers by Congress. Rep. Nancy Pelosi (D-Ca.) beamed as she watched the election returns roll in, each vote giving her a chance to become the first female Speaker of the House of Representatives. By the end of the night, Pelosi was introduced as “Madame Speaker.”

House Democrats retook control that they lost in 1994, promising a new push for “their” legislation. Pelosi and her fellow Democrats later unveiled their legislative plan for the first 100 hours of session, entitled “Six for ’06.”

The six proposals included raising the minimum wage, implementing the 9/11 Commission recommendations, cutting student loan interest rates, imposing environmental and labor taxes on the oil industry, promoting embryonic stem cell research, and requiring companies to negotiate prescription drug prices.

On Thursday, January 18, 2007, the last of these legislative proposals, a bill to impose billions of dollars in taxes and fees on the oil industry, was adopted by the House and sent to the Senate for further discussion and debate. While the House has a majority, the Senate is divided, with 51 Democrats and 49 Republicans.

Speaker of the House, Nancy Pelosi, for “06” proposals. So how did the bills fare? All six have now been passed by the House. The minimum wage bill passed by the House would raise the national minimum wage to $7.25 an hour over the course of a year and a half. The 9/11 bill would improve border integration and security and provide for additional funding and measures to fight terrorism.

The stem-cell research bill would allow federal funding for embryonic stem cell research. The Medicare bill gives Medicare the option of attempting to negotiate prescription drug prices with the pharmaceutical companies.

The energy bill creates billions of dollars in taxes and fees for the oil industry, as well as providing more money for renewable energy and development alternative fuels.

The student loan bill would cut the interest rates for some student loans. The student loans bills filed in the new framework will pay 3.4% interest, instead of the current 6.8%.

As the last of the “Six for ’06” were passed by the House, Nancy Pelosi declared, “This was only the beginning.” House Republican leaders played down the feat. House Minority Leader John Boehner (R-Oh) stated that “many of the flawed 100-hours bills either face an uphill battle in the Senate or are destined for a veto pen.”

All six of the House bills have since been sent to the Senate for further discussion and debate. While the House has 51 Democrats, the Senate is divided, with 51 Democrats and 49 Republicans.

Don’t Ask Don’t Tell: Why Not?

By Amanda Pearlman

“Don’t Ask, Don’t Tell,” as set forth in 10 U.S.C. § 654, is the current policy on record that mandates the immediate firing of a person from their occupation simply because he or she is gay, lesbian, or bisexual. Last year, Representative Marty Meehan from Massachusetts introduced the Military Readiness Enhancement Act (“MREA”) to Congress in an attempt to resolve disputes over the blatantly discriminatory policy. It is likely that the MREA will be reintroduced into the 110th Congress within the next two years.

In recent years, this issue has become particularly significant to law schools nationwide. The Solomon Amendment, enacted by Congress in 1995, has compelled nearly every law school in the nation to exempt the military from their non-discrimination policies (10 U.S.C. § 983). Schools that bar military recruiters from their campus are denied equitable funding from government departments, including those of Defense, Education, Labor, and Health & Human Services. Moreover, in 2002 the Defense Department adopted regulations interpreting the law to require revocation of federal grants to an entire university if only one of its subdivisions (its law school, for example) violates the law. In 2005, Congress amended the Solomon Amendment to explicitly state that military recruiters must be given access equal to that provided to other non-military recruiters.

For Sandra Day O’Connor College of Law, for example, this means that although Career Services requires employers to comply with non-discrimination policy (which includes sexual orientation), the military can still come to ASU to recruit even though they are in blatant violation of policy. The Gay and Lesbian Alliance (GALLA) here at ASU is joining in efforts with other law schools around the country to support the MREA and the repeal of “Don’t Ask, Don’t Tell.”

GALLA is requesting that law students do their part by signing letters that will go to our senators, John McCain and John Kyl, and to our federal representatives to encourage their support. You can find out more information about MREA by going to www.mreanational.org or you can contact GALLA at gaylaw@asu.edu

The MREA is the next step in confronting one of the many injustices that gay, lesbian and bisexual people face. Challenge “Don’t Ask, Don’t Tell.” Support the MREA and take a stand for equality.

Law Student Sues Over Exam Typing Inefficiency

By Travis Meserve

After first semester grades came out, I admit to being disappointed by the results of a few of my classes. I do not believe I am the only one. If I had studied harder, or had a better outline, or maybe better text testing strategies, things would have turned out differently. If a former University of Michigan law student were to believe this, these may not have been my problems at all.

Adrian Zachariasewycz is suing his alma mater, contending that his law school exams unfairly advantaged those students with superior typing skills. (This is not a satire piece as not knowing the material) as the reasons for his low marks.

Zachariasewycz has been without work since his graduation and blames his predicament on the dismissal and subsequent poor reviews, along with his law school grades. His complaint states, “The Law School made no generally adequate accommodation for students whose typing skills that would allow them to compete on a level playing field with their manually more dexterous peers with better-developed keyboarding skills.” He contends that his marks on multiple choice tests were significantly better than his type-written essay exams. For their part, the University of Michigan says that they accommodate students with disabilities. Zachariasewycz, however, had no documented disability. Zachariasewycz further states that the University of Michigan gave him no warning upon entering law school of the need for superior typing skills as a prerequisite to earning high grades.

By way of damages, Zachariasewycz is seeking an injunction barring the law firm from giving further poor reviews to potential employers. He is also seeking for the University of Michigan to consult with typing and statistical specialists in order to determine the extent his grades are attributable to slow typing. Zachariasewycz then would require a letter explaining his poor grades to hand out to potential employers. In addition, he is seeking unspecified monetary damages relating to loss of reputation and emotional distress.

In my own case, it has been a relief to finally understand why my grades were not as high as I would have liked. Best of luck to you, Adrian Zachariasewycz.
California Dream’in on Climate Change

By Martin von Rosenberg

 Californians, like all Americans, love their cars. One of the state’s quintessential images is the red convertible driving along the Pacific coast, the California sun shining. Yet, that sun may soon be turning from warm to hot. Californi-a, like the rest of the world, is threatened by climate change. According to the UN’s Intergovernmental Panel on Climate Change 2006 report, by the end of this cen-tury the Earth’s temperature will increase by 3.2°F to 7.2°F and carbon emissions by humans are almost cer-tainly the cause. To combat expected problems from in-creasing temperatures, the state of California has spent millions of dollars on planning and infrastructure changes to address impacts in such areas as beach ero-sion, desertification, reduced snow pack, and salt water intrusion into fresh water drinking supplies. In addition, the state has taken steps to reduce carbon dioxide emis-sions within the state, including enacting a greenhouse gas trading scheme, new climate change regulations, and several lawsuits. One of the latest and most controversial salvos occurred last September when former California Attorney General Bill Lockyer filed suit against the na-tion’s largest automobile manufacturers seeking unspeci-fied damages for climate change allegedly caused by tailpipe exhaust.

The case, California v. General Motors, is a public nuisance claim filed in Federal District Court for the Northern District of California. In the suit the state al-leges that emissions from motor vehicles account for over 30% of greenhouse emissions in California, and thus they are major contributors to global warming. Cali-fornia is not seeking a curtailment in emissions, but in stead wants compensation and a declaration that the de-fendants are liable for future damages caused by green-house gas emissions from their automobiles. In their re-sponse, the auto industry has filed a motion for dismissal claiming that the issue is nonjusticiable under the politi-cal question doctrine and has been preempted by the US Congress. Jerry Brown, California’s new Attorney Gen-eral, announced last month that although he planned to press ahead with the case, he was willing to work with the automakers to address the problems.

On its face, California’s claim does seem to be on shaky legal ground. A similar case, Connecticut v. American Electric Power, was dismissed in 2005 by the U.S. District Court in the Southern District of New York. Citing the political question doctrine, the court found that policy must first be developed within the political branches of government before the courts could weigh on such controversial and difficult issues. Yet, in the New York case, the plaintiffs sought the abatement of emis-sions from the defendant’s power generation facilities. California is merely seeking damages which may dis-suade the court from applying the political question doc- trine so strictly given that the court can avoid the rather thorny issue of dictating emission reductions for automo-biles.

In the end, this case may be simply a bargaining chip in California’s larger strategy to tackle climate change. Attorney General Brown has signaled that he is willing to talk with the automakers, but only in the larger context of the auto industry’s objection to a 2002 California law requiring reductions in greenhouse gases from auto emis-sions under the Clean Air Act. Under the Act, the state of California is granted the special ability to craft emissions standards with federal approval. If the EPA approves the California plan, the Act allows other states to adopt these tighter standards. Ten states, including New York, have already declared their intention to do so. With the auto industry’s concerns about different emissions standards for different areas of the country, federal greenhouse gas standards may be the eventual outcome. Perhaps that famous California sun will not be the menace that it could be after all.
Foster Parents Finally

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In a press conference regarding the sentencing

Hurricane Katrina. Four others were injured in the shooting.

challenged man, on Danziger Bridge just days after

Seven police officers responded on Sept. 4, 2005 to a call that two officers were down under the bridge, a concrete lift bridge spanning the Industrial Canal. According to the officers involved, people were shooting at them from the base of the bridge when they arrived.

Police claim they saw two shooters running up the side of the bridge and fired. Lance Madison, charged with eight counts of attempted murder against police officers, said he was trying to seek help for himself and his brother, Ronald, who was mentally challenged. Police say both Madison’s were firing at them as they were running up the bridge.

In the chaos that followed, Ronald Madison, a 40-year-old man and 19-year-old James Brissette wound up dead. Each man had between three and seven gunshot wounds. Five Madison’s wounds were in his back.

Police claim, however, when an officer went up the bridge to confront the Madisons, Ronald reached toward his waist and turned toward the officer. The officer claims to have fired once.

Witness reports vary, but most echo one devastat- ing fact: The police never identified themselves be- fore opening fire. Other witnesses, while agreeing, say that the police had Most witnesses also claim they were unarmed at the time, a fact substantiated by later investigation.

Another family, the Bartholomews, had five of their six members injured. Police allege they saw t he group jump behind a concrete barrier then fire at officers.

The Bartholomews claim they were unarmed and were walking to a grocery store after being stranded by the storm. After they were shot, injuries including Susan Bartholomew’s arm being nearly shot off, the family alleges police stood over them with guns and warned them not to look up.

The trial will hinge on whether the victims, those dead or injured, were in fact the shooters or if they were innocent bystanders trying to get out of the way of the gun battle, the theory the prosecution is avidly pursuing.

No Death Penalty for Officers in Danziger Bridge Shooting

By Tracy Rineberg

Sergeants Kenneth Bowen and Robert Gisevius Jr., along with Officer Anothony Villavaso II and former officer Robert Faulcon Jr. can breathe a tem- porary sigh of relief — District Attorney Dustin Davis will not seek the death penalty for the shoot- ing deaths of two people, including a mentally- challenged man, on Danziger Bridge just days after Hurricane Katrina. Four others were injured in the shooting.

In a press conference regarding the sentencing recommendation said he will instead seek life in prison without parole for the officers. In a weblog dedicated to the incident, family members agreed with the Davis’ decision. “We completely support the district attorney’s office in their decision” Lorna Humphries, sister of the victim’s, said.

Franz Ziblich, defense counsel for Faulcon, added that “it would have defied all precedent had they sought the death penalty for a police officer who was in his life of duty.”

The officers charge returned to work on Monday, January 29. They are not allowed to carry their gun, wear a uniform or make arrests, but they are work- ing in their precinct. Families of the victims are out- raged, the brother of one claiming “it’s a slap in the face of justice.”

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In the chaos that followed, Ronald Madison, a 40-year-old man and 19-year-old James Brissette wound up dead. Each man had between three and seven gunshot wounds. Five Madison’s wounds were in his back.

Police claim, however, when an officer went up the bridge to confront the Madisons, Ronald reached toward his waist and turned toward the officer. The officer claims to have fired once.

Witness reports vary, but most echo one devastat- ing fact: The police never identified themselves be- fore opening fire. Other witnesses, while agreeing, say that the police had Most witnesses also claim they were unarmed at the time, a fact substantiated by later investigation.

Another family, the Bartholomews, had five of their six members injured. Police allege they saw t he group jump behind a concrete barrier then fire at officers.

The Bartholomews claim they were unarmed and were walking to a grocery store after being stranded by the storm. After they were shot, injuries including Susan Bartholomew’s arm being nearly shot off, the family alleges police stood over them with guns and warned them not to look up.

The trial will hinge on whether the victims, those dead or injured, were in fact the shooters or if they were innocent bystanders trying to get out of the way of the gun battle, the theory the prosecution is avidly pursuing.
In December 2006, the government of Thailand announced that it was going to suspend patents on several AIDS drugs and issue mandatory licenses to allow for the cheap manufacture of generic versions of the drugs. In justification of this move, the Thai government pointed to more than 82,000 citizens suffering from HIV/AIDS and the exorbitant prices charged by the drugs’ manufacturers for the treatments. The effect of the decree will be to cut the cost of effective AIDS treatments by more than 50% and allow the government to provide such treatments to affected patients under the country’s universal healthcare plan.

In response, many of the manufacturers threatened to pull their operations and investments from the country, citing fears that their intellectual property rights were not being adequately protected. The pharmaceutical companies affected include Merck, Abbott Laboratories, Novartis, and Sanofi-Aventis. The drugs in question are Kaletra, an antiretroviral drug, and Plavix, an anti-blood-clotting pill.

The companies specifically complained that the government had not declared a state of emergency before making the announcement regarding the licensing. The companies have maintained that under current WTO agreements, Thailand is required to declare a state of emergency regarding the epidemic before suspending the patents. However, the Thai government has countered, and most international analysts have agreed, that under the WTO agreements that govern the issue, the government was not required to officially declare an emergency before pursuing its current route, as long as it has recognized a legitimate emergency and is not seeking commercial gain. The drug companies have not directly challenged the end result, but rather the procedure.

Numerous health-related NGO’s and watchdogs have called for support for the Thai government and submitted letters on their behalf to the companies and the U.S. government. Public sentiment in general seems to be in support of the Thai government’s actions. In response to public outcry and academic criticism to their interpretation, some of the drug companies have opened price negotiations to avoid forfeiting production and sales of the drugs to government-sponsored laboratories.

Thailand’s progress on the matter may be under threat, however, from a similar case arising in India. There, Novartis is seeking enforcement of its patent on an anti-leukemia drug called Gleevec. If Novartis is successful in convincing the Indian government to tighten and enforce its patent restrictions, it may set a precedent that will act as an obstacle to other governments, including those of Thailand and many African nations that are trying to combat similar epidemics.

The controversy has pitted issues pertaining to the value of human life against the long-term perils of disregarding property interests. On the one hand, hundreds of thousands of lives may be saved by such governmental action, which is hardly an insignificant consideration. However, such actions raise serious and timeless questions about the virtues of protecting intellec- tual (and other) property that drive at the heart of capitalism itself. Without the assurance that one will reap the gains of his/her time and labor, what motive is there to expend said time and labor in the first place and thus make advancements in society? It is one of the classic criticisms directed at communism and state ownership, suggesting that private ownership is necessary to motivate production and stimulate growth. Critics in this instance respond that drug companies are allowed to profit disproportionately due to the monopoly that the patent provides them. Furthermore, their exploitation hampers efforts to curb widespread death and suffering.

Protecting Patients or Saving Lives?

By Ravi Arora
Harping Without Reason

Ravi Arora

Harper and Herman set to sea
One balmy summer day,
The winds were fine, the sun was bright
The atmosphere was gay.

"Let us, like our dolphin brothers,
Frolic in the waves."
Proposed the group, and so they journeyed
To Big Island’s bay.

There the captain set his anchor
And prepared for self submersion,
Unaware that his barnacle of a guest
Was an ignorant seafaring virgin.

As if his lack of hydrophilic coitus
Was not burden aplenty,
The leech of a land lubber neglected to report
That his brain meter pointed to empty.

Believing himself to be watched by angels,
Harper spread his wings to soar
And with the grace of a swan he descended,
Through the water and to the floor.

Like a proletarian hero shattering ceilings of glass,
He crashed through the watery bounds,
And triumphantly split his own spine in two
When the rocky bottom he found.

Thus defeated by nature and reason,
Both enjoying a laugh,
The young and now quadriplegic man
Sought to litigate his wrath.

Searching for the guardian angel,
That had neglected its burden of care
His concussion blurred vision, mistook a silver halo,
For Herman’s thinning grey hair.

Thus Harper harped of Herman’s bad faith,
In letting a young man fall flat on his face
Thus defeated by nature and reason,
When the rocky bottom he found.

He crashed through the watery bounds,
And triumphantly split his own spine in two
When the rocky bottom he found.

As described in the patent application, the invention is “a simple portable device which allows the dog’s owner to catch and hold the dog waste in a plastic bag before it comes in contact with the ground or grass without bending over.”

Basically, the invention sounds like kind of a lightweight lacrosse stick that you use to catch dog feces in. But just as in the real sport, you have to be quick on your toes to use this baby effectively. As the patent explains: “As soon as the dog shows a motion to excrete, this device is . . . placed underneath the dog’s bottom and catches the dog waste, thus preventing the soiling of the ground or grass.”

Is it a good invention? Darn right. As everyone knows, “[d]ogs tend to excrete while they are walked” and “[o]nce the droppings fall on the ground or grass, it is difficult to collect them completely, especially when they are loose.” That’s why 98 percent of dog owners leave it to their neighbors to deal with.

This sounds like a good invention, although I’m not sure the dogs are going to sit still for it.

Out of Context

This Section is where we quote your esteemed professors at their finest. In order to keep properly stocked, we need to keep your ears tuned to your professor’s off-key utterances and submit them for publication. The more irreverent and audacious, the better.

The problem with case law is that it’s written by judges. – Prof. Guerin

They invent a rule that isn’t in the constitution, then create a test that deliberately goes against the thing they were trying to do in inventing this rule! – Prof. Bender, referring to the AZ constitution

Everyone is silent at least some of the time — except maybe Berch. – Prof. Bartels

Abdomemewwww!

Anyone know the statute of limitations for a products liability claim in Austria? A new study says that Wolfgang Amadeus Mozart’s untimely death in Vienna in 1791 may have been caused by eating bad pork cutlets. This theory joins the more than 150 other theories offered over the years to explain the brilliant composer’s death. The major evidentiary support for the pork theory consists of a letter Mozart wrote to his wife 44 days before his death in which he said: “What do I smell? ... pork cutlets! Che Gusto. I eat to your health.”

Since the incubation period for trichinosis — caused by eating undercooked pork — is up to 50 days, Dr. Jan V. Hirschmann of the Puget Sound Veteran Affairs Medical Center in Seattle theorizes the pork may have been the cause of death.

Hirschmann’s theory raises several interesting questions, including why is an American veteran’s hospital researching Mozart’s death? Was Mozart a vet?

Even if the products liability claim failed, Mozart’s survivors might have had a good action for negligent infliction of emotional distress based on interference with a corpse. One reason the cause of Mozart’s death has never been definitively determined is because his grave was dug up seven years after his death "so it could be reused." Nice. Very nice. The AP reports that poor Wolfgang’s remains were simply “dispersed.”