

CASES

FOR THE

ELEVENTH INTERCOLLEGIATE ETHICS BOWL

AT THE

ANNUAL MEETING OF THE

ASSOCIATION FOR PRACTICAL AND PROFESSIONAL ETHICS

IN

SAN ANTONIO, TEXAS

ON FEBRUARY 24, 2005

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Case 1

In February 2004, a 44-year-old Pennsylvania man being treated at the hospital for an irregular heartbeat disclosed to doctors that he consumes six to ten 12-ounce bottles of beer daily. In April the man, Keith Emerich, received notice from the Pennsylvania Department of Transportation (PennDOT) that his driver's license was in the process of being revoked for medical reasons related to substance abuse. Apparently, the physicians who treated Mr. Emerich reported his beer consumption to the State.

Doctors in this case were strictly following a Pennsylvania law that requires physicians to inform the State when patients have conditions that might "impair the ability to control and safely operate" a motor vehicle. The statute in question, which dates to the 1970s, holds physicians liable for non-reporting if their patient is subsequently at fault for a substance-related crash. It also requires the State to suspend driving privileges until the patient successfully completes treatment for substance abuse.

Mr. Emerich told the Canada Free Press that he never drives after drinking. Furthermore, his employer of 15 years reports that Emerich has never appeared intoxicated at work nor exhibited any traits that may suggest he had been drinking before reporting for his shift. Mr. Emerich's driving record has been clean for the past 23 years, reflecting only a driving-under-the-influence (DUI) conviction from when he was 21-years-old.

Officials of the Pennsylvania Department of Transportation defended the law and their enforcement of it by stressing that driving is a privilege, not a right. If the PennDOT decision is not overturned by the courts, Mr. Emerich will be unable to legally drive until he successfully completes a substance abuse program.

Case 2

A transportation planning consultant for a growing Midwest county recently estimated that demand for a proposed light-rail transit system will be 8,221 daily passengers at the time of its planned opening. After reviewing the executive summary of her report, the chair of the county board of supervisors scheduled a meeting with the consultant to explain federal funding guidelines that require an estimated demand of 12,000 daily passengers to qualify grant applications for further consideration. Federal monies traditionally cover 80% of capital costs for such projects. Before wrapping up the meeting, the chair urged the consultant to review her analysis for possible errors and omissions. The consultant, who favors construction of the transit line regardless of demand because it promises to significantly improve accessibility for traditionally underserved groups in the county, provided a revised estimate some weeks later that exceeded the 12,000 rider threshold. Although she did not fabricate data, she subsequently gave the proposed transit system the “benefit of the doubt” by setting all assumptions at either the lower or the upper end of a range of values that seem reasonable, at least to most laypersons.

The consulting firm hired by the county provided a lengthy report to the county planning staff detailing the methodology, data sources and assumptions on which their ridership estimate was based. The county board of supervisors and other stakeholders in the process received only an executive summary that essentially only provided the official forecast as 12,103. Although the complete report was available to everyone, it was highly technical and never requested by anyone from the planning staff.

Traditional travel demand models comprise a series of mathematical equations that attempt to predict future travel behavior for a particular region based on forecasted socioeconomic variables, such as population and employment, and planned changes to the transportation system. Practitioners and scholars have formalized the travel demand modeling techniques used today over the last half-century since their introduction. In application, however, travel demand models are highly imprecise, their inputs are extremely difficult to predict, and the formulations of future travel demand are almost sure to be inaccurate to some extent. For these reasons, a planner must assess carefully the reasonableness of all underlying assumptions when using a travel demand model.

Even though the county planning staff is generally considered very competent, it did not produce the forecasts for this project for lack of in-house resources. Internally, it complained that the consultant’s forecast was deceptive because the estimate, 12,103 passengers, suggested a precision unwarranted by methodology. In fact, confidence intervals for forecasts of this sort commonly span 10-20%. Furthermore, staff planners who waded through the documentation provided by the consultant raised fundamental concerns about the reasonableness of the assumptions used to prepare the travel demand forecast. The Director of Planning refused to raise the objections of his staff with the

board because he reasoned that the documentation was available and in this case, the county board of supervisors had already made up its mind about the light rail project—probably well before the county even hired the consultant.

Case 3

Founded in 1787, New Bedford, Massachusetts, lies on the Atlantic Coast, 208 miles from New York City. Formerly a wealthy whaling and important mill community, New Bedford now has a population of just over 100,000 with high unemployment and low average income. It also has become a major entry point for heroin. New Bedford has the distinction of street heroin with nearly double the purity of that found nationwide (Boston Globe, 10/9/03), of the highest HIV infection rate in Massachusetts (Boston Globe, 2/29/04), and of very high violent crime statistics. .

The city is considering a drug testing program to be implemented in the New Bedford middle and high school. Supported by the Mayor and the Superintendent of Schools, the program would allow parents voluntarily to require their children to comply with random urine drug testing at school. The results would be sent only to parents, not to school or to law enforcement authorities. Students who test positive and their parents could attend follow-up workshops and use existing city hotlines to get counseling and treatment.

The constitutionality of the testing has not been addressed, though the US Supreme Court has upheld drug testing of students involved in extracurricular activities. Some experts feel that the voluntary permission by parents would keep the testing within constitutional bounds.

Although there is some federal money available for partial program support, critics disapprove of any use of local school funds for such a program. Other critics decry the erosion of students' civil rights in the event that drug test results were subpoenaed.

The Boston Herald quotes the response of one student, Ashleigh Pierce, 16, a junior at New Bedford High School. Ashleigh thought her parents might sign her up and she didn't like the idea, saying, "That's invading privacy." The Herald cites the agreement of Nancy Murray, spokeswoman for the American Civil Liberties Union. "We're going back to when schools were seen as an extension of the home," she said. "My sense is they shouldn't go down this road. They have enough to do in educating the kids in what the constitution says." (Boston Herald, 10/11/03)

Case 4

Lauren Melton, a professional librarian with a master's degree, was recently promoted to Assistant Head Librarian in the Wentern Public Library. She lives and works in the community of Wentern, a small suburb of a Midwestern city.

Her new position includes preparation of the library budget for presentation to the Library Board. The Library is a separate local taxing body supported by real estate taxes. Revenue has not kept pace with increased expenses for the library. As with many other taxing bodies, the budget is tight.

It is "budget season" and Lauren is agonizing over how to redistribute the funds available without cutting services. Several years of diminished acquisitions budgets and library hours have left little "fat" in the budget.

The Library Director, Morton Franz, has suggested the deletion of one particular program - Outreach Services (OS). Through OS, people with documented disabilities who request books receive them by delivery and carts of books are taken to several nursing homes. OS is very popular. It occupies part of a librarian's time to administer and supervise volunteers who pull the books and make deliveries. The Director's argument is that the OS patrons served per staff hour is very low compared to that for patrons who come into the library. He has calculated that OS costs roughly the same as keeping the library open ½ hour a day or as much as subscription to a number of periodicals.

At a brainstorming session of the Wentern Public Library Board, one board member worried that the handicapped and nursing home patrons might sue the Library District if their services were cut. Another countered that "these people probably won't have the inclination or the means to sue." Another pointed out that there would be less negative publicity from cutting OS than, for example, from having the library open its doors ½ hour later everyday.

The easiest route to solving her problem is to cut OS. Her boss advocates it. There is evidence the Board would support it. And it is easier than looking for a little here and a little there to cut from the budget. But, Lauren is troubled by taking away a service from a particularly needy population. Where, she wonders, does the "greater good" lie?

Case 5

Nathaniel Heatwole, a sophomore at Guilford College, took seriously what he learned at the Quaker college. In the name of civil disobedience, the 20 year old willingly broke the law, admitted his guilt, and was willing to accept punishment, in order to bring public attention to inadequate implementation of a law

In September 2003, Heatwole planted box cutters, bleach, modeling clay, and matches on two domestic airliners. He immediately emailed the Transportation Security Administration (TSA), identifying himself and giving exact details about dates and flight numbers. The items were not discovered for five weeks and then during routine plane maintenance. Heatwole's misplaced email was eventually found in the TSA's information system. Heatwole's contention that security screening of passengers and planes is inadequate and that the TSA is inefficient and blundering seemed to have been supported.

As expected, Heatwole was arrested. True to the tenets of civil disobedience, he admitted his deeds, acknowledging that there would be penalties. A judge in April accepted Heatwole's guilty plea to a misdemeanor charge of violating security requirements at the Baltimore Airport. Heatwole initially faced one count of carrying a concealed dangerous weapon aboard an airliner, a felony that carries up to 10 years in prison. A plea deal for two years probation and 100 hours of community service was later established.

Maryland U.S. Attorney Thomas M. DiBiagio said, "The government believes that the appropriate resolution of this case is a guilty plea to a misdemeanor rather than a felony because of the defendant's extensive cooperation with federal authorities." DiBiagio stated that Heatwole's age, clean criminal record and "motivations for the misguided conduct" were factors in the government's decision to reduce the charge against him (The Sun News, April 24, 2004). Heatwole has met with FBI agents and TSA authorities to discuss airport security and he helped produce a videotape for training airport security trainers, according to the US Attorney's office.

The legal issues aside, many still question the ethics of such behavior. Was Heatwole gaming the system and being what TSA considers a "trouble maker"? Or was he justified in exercising a sense of ethics and social responsibility by pointing out flaws in the law?

Case 6

Not too long ago, drugs like Ritalin and Adderall were used exclusively to treat children (and some adults) with Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity Disorder (ADHD). Those affected by these disorders have difficulty concentrating on particular tasks. For instance, children with ADD or ADHD are unable to stay on task in school and are often unable to complete their work at the same pace as other children. Drugs, such as Ritalin and Adderall, help such children remain focused in school. They work by increasing levels of dopamine, a neurotransmitter, in parts of the brain. Among other things, dopamine controls attention and helps maintain concentration. Children who might otherwise perform poorly in school can be benefited tremendously by such drugs.

However, in the past few years, it is not uncommon to find drugs such as Ritalin and Adderall on college and high school campuses, being used by students who are not affected by ADD or ADHD. Students use the drugs to help them study longer with greater focus and efficiency. For this purpose, Ritalin and Adderall are better than traditional stimulants, such as caffeine. According to Dr. Eric Heiligstein, director of clinical psychiatry at the University of Wisconsin, “Students are able to accumulate more information in a shorter time frame. These drugs keep you awake longer. They minimize fatigue and help maintain a high performance level.” One Yale University junior credits Adderall with allowing him to read 576-page *Crime & Punishment* and write a fifteen page paper on the novel in only thirty hours.

The practice of taking medications intended to treat ADD/ADHD has been criticized, not just because of the drugs’ risks (increased heart rate, elevated blood pressure and insomnia, to name a few), but because of its ethical implications. Dr. Heiligstein argues that using Adderall or Ritalin to improve one’s academic performance is simply cheating, just as using steroids in an athletic event is cheating.

However, many students reject the claim that using ADD drugs is cheating, arguing that Ritalin and Adderall are not at all unlike another other kinds of stimulants or study aids that students routinely use. “These drugs are study tools, just like tutors and caffeine pills,” said one Central Florida student. “We use what’s available to us. It’s not cheating.”

Aside from the cheating-related concerns, others, such as Dr. Judy Illes, senior research scholar at Stanford University’s Center for Biomedical Ethics, worry about the potential for coercion to keep up with those who enhance their ability through ADD medications or other available mind-enhancing drugs. The use of steroids in sports suggests that the pressure to remain competitive may fuel the demand for such drugs in academics

Case 7

Dr. Thomas Daley was happy to see Kelly Patterson. He had been following her budding acting career through the local community newspaper. A 17-year-old high school senior, she would be graduating in a few months and heading off to the state university to major in theatre. He recalls the shy, reclusive girl she was before her rhinoplasty some years ago. Although Kelly's mother was initially leery of a nose job for her then 11-year-old daughter, she and Kelly were desperate to put an end to the merciless teasing by other children about her nose. According to Mrs. Patterson, plastic surgery on Kelly's nose dramatically improved her self-confidence. "She just became a different person, so much more outgoing," her mother said, "it made such a big difference in her social life."

Kelly and her mother entered Dr. Daley's office and made small talk for a minute or so. Dr. Daley then asked Kelly about her reason for the appointment. Kelly looked at her mother and then said that she had been doing research on the internet about breast augmentation surgery and would like to undergo the procedure. Dr. Daley first assured Kelly that she was perfect the way she was. He then expressed some reservations about performing the procedure and sent the Pattersons away with some informational booklets that detail risks and side-effects of breast augmentation surgery.

Later that month, Dr. Daley found himself at the conference on plastic surgery, talking informally to another plastic surgeon, Dr. Sarah Carlson. He recounted to Dr. Carlson his discussion with Kelly and Mrs. Patterson, and then added that, although he does not doubt that she is sharp enough to understand the factual complexities about the breast augmentation procedure, he still, nonetheless, felt morally uncomfortable with Kelly's request. Dr. Carlson confessed that in southern California, where she practiced, it was not uncommon for girls Kelly's age to undergo breast augmentation surgery. "Besides Tom," she said, "if you're ethically uncomfortable with performing the surgery, you can just tell her that you won't do it, that she'll have to find someone else." Dr. Patterson nodded and pointed out that where he practices, most plastics surgeons refuse to do breast augmentations on adolescents.

A few weeks later, Dr. Daley met with Kelly and her mom. They discussed the procedure in detail. Kelly's remarks and questions reflected a thorough understanding of the risks and side-effects of the procedure.

Case 8

The Call to Prayer is a centuries-old tradition in Islam. A prayer is sung five times a day to invite Muslims to pray. It is often broadcast by loud speaker in predominantly Muslim countries, but seldom broadcast in the United States. However, this Islamic tradition has created a controversy in Hamtramck, MI.

According to Abdul Algazali, Muslims in Hamtramck do not wish to create ethnic or religious division in their community over a recent controversy surrounding the Muslim Call to Prayer. On the contrary, said Algazali, the president of the Hamtramck-based American Yemeni Council, "We're in this city to build bridges." Hence, Algazali encouraged the City Council to approve a noise ordinance that will allow the Al-Islah Islamic Center, a Hamtramck mosque, to broadcast the Call to Prayer over a loud speaker five times a day between the hours of 6:00 a.m. and 10:00 p.m.

Many non-Arab Hamtramck residents strongly object to the Call to Prayer. For most of its history, Hamtramck has been predominantly Polish Catholic. However, in recent years, the south suburb of Detroit has seen an influx of Arab Americans. "Where are my rights? Where are the rights of all the people who have lived in this community all of their lives?" asked Mary Urbanski, a lifelong Hamtramck resident. "I do not have a choice as to whether I hear this or not."

In response these kinds of objections, many Hamtramck Muslims argue that the call to prayer is equivalent to church bells, and that Hamtramck has several churches that ring their bells. "We hear the bells every day, every hour. We don't say anything," Algazali said last week.

However, opponents take issue with the church bell comparison, saying that church bells today are used to mark the time of day and have no religious significance. By contrast, the Call to Prayer is specifically religious. "It says that Allah is the one and only God" complained Hamtramck resident, Joanne Golen. "I am Christian. My God is Jesus Christ. That is my only objection — that I have to listen to a God other than the one I believe in praised five times a day," said Golen.

Despite petitions from non-Arabic residents, the Hamtramck City Council unanimously passed the ordinance amendment on April 27, 2004 and became law May 26, 2004.

Case 9

Bobbijean P. was placed in foster care a few days after her birth on March 23, 2003 following a petition from the Department of Health and Human Services in Rochester, NY for her determination as “a neglected child”. Bobbijean was the fourth child of her mother, Stephanie, to be the subject of neglect proceedings and was taken away from her parents on an emergency basis even before the petition had been filed. During the court proceedings the Family Court judge reaffirmed orders issued during prior neglect proceedings for the other children for the couple to attend parenting classes and receive mental health treatment.

The baby’s parents, who are not married, have struggled for years to keep steady jobs and permanent housing arrangements. Both have admitted to frequent and ongoing drug abuse, as a result of which three of the children tested positive for cocaine at birth. The mother had been referred for substance abuse treatment numerous times but she never completed one or showed particular interest in revisiting the center. Neither parent showed interest in the baby’s future nor contacted the DHHS caseworker to indicate willingness to take care of the child or get her back. Instead they agreed with the caseworker’s recommendation that she be placed in foster care just as the other three siblings had been. The father did not appear in court or show any interest in Bobbijean’s welfare while Stephanie showed up only once.

One year later, after the parents had failed to present themselves for three scheduled meetings with DHHS to discuss plans for the baby, Judge Marilyn L. O’Connor ordered the girl’s parents, in addition to the other provisions, not to have any more children until they would be able to take care of the ones they already have. The 12-page decision states “...It is the intention of the court that the mother be required not to get pregnant until all of her children are being raised by a natural parent or are no longer cared for at the expense of the public. It is similarly the intention of this court that the father be required not to father another child until all his children are being raised by a natural parent or are no longer cared for at the expense of the public. It is further the intention of this court that neither parent shall conceive another child until found capable of having custody of all their current children....”. The court made it clear that, while this was an unusual statement, it would not and did not compel the mother –should she become pregnant- to terminate her pregnancy. Instead, the parents were ordered to attend family planning sessions and, should they choose to, take advantage of publicly offered sterilization. Should the parents violate the order they could be jailed for contempt of court.

The executive director of New York Civil Liberties Union criticized the ruling as “fundamentally at odds with the ingrained constitutional right to procreate”, and other civil libertarians condemned the ruling as an unconstitutional violation of the couple’s

right to privacy. Judge O'Connor's ruling, however, explained that while the constitution provides protection of basic rights, this is not the case when the right to have a child equals the right to neglect it and commit a crime against it or force others to raise it.

In April 2004 Stephanie was charged with prostitution and a bench warrant was issued for her arrest when she failed to appear in drug court. During a hearing in May 2004 to explore whether the foster parents (relatives of the mother) of the 2-year old son could adopt him, it was revealed that Stephanie became pregnant in mid-March with her fifth child, just 2 weeks before the orders of the family court judge were issued.

Case 10

GFP Bunny is an artwork from the year 2000 by Eduardo Kac (pronounced “cats”). “GFP” stands for Green Fluorescent Protein. The protein occurs in certain jellyfish and can be inserted into mammalian genomes. Kac collaborated with scientists in France to insert the protein in a rabbit, who he and his family named Alba.

The work of art called “GFP Bunny” centers around Alba, but also includes the public dialogue surrounding Alba and Kac (so Ethics Bowl is now part of the artwork!). GFP Bunny (the artwork) also includes the life and well-being of Alba: “what is important is the completely integrated process of creating the bunny, bringing her to society at large, and providing her with a loving, caring, and nurturing environment in which she can grow safe and healthy.”

Kac is not the first to use an animal in a work of art. GFP Bunny is so striking, however, because of the way that it combines art and bioengineering. Kac says that transgenic art “must be done with great care, with acknowledgment of the complex issues thus raised and, above all, with a commitment to respect, nurture, and love the life thus created.” Nor is Kac the first to intervene with the evolution of the rabbit. Rabbits, after all, as Kac notes, were originally only wild animals. They have since been domesticated and selectively bred to create new species. In fact, Alba is an albino, a species that does not occur in the wild and stands little chance of surviving there.

Kac takes pains to emphasize his deep respect for life in general and for Alba specifically. “Transgenic art must promote awareness of and respect for the spiritual (mental) life of the transgenic animal. The word ‘aesthetics’ in the context of transgenic art must be understood to mean that creation, socialization, and domestic integration are a single process. The question is not to make the bunny meet specific requirements or whims, but to enjoy her company as an individual (all bunnies are different), appreciated for her own intrinsic virtues, in dialogical interaction.” He also emphasizes the fact that creating Alba was not risky: her creation used existing technologies, and the protein is not harmful to rabbits. (<http://www.ekac.org/gfpbunny.html#gfpbunnyanchor>)

Critics of Kac contend that “there is no way to know, they say, whether the animal is suffering, or what effect the mutant bunny would have on the ecosystem if she were to escape and reproduce.” (<http://www.ekac.org/bostong.html>)

Yet others note “But art based on genetic engineering could set a dangerous precedent regarding what kind of genetic research is acceptable.” (<http://www.ekac.org/chitrib.html>)

Some medical ethicists have called Kac “irresponsible.” One art critic states, “The purity of your intentions doesn't matter. Creating An Animal In Service of Art sure looks reckless and mean and will be used by reckless and mean people. Your art is a silent endorsement for countless others who will Do It For All The Worst Reasons.”
(http://www.viewingspace.com/genetics_culture/pages_genetics_culture/gc_w03/hoyt_alba_response.htm)

Kac sees all perspectives on his work, including disagreement, as important and significant socially: he speaks of his “concerted effort to remain truly open to the participant's choices and behaviors, to give up a substantial portion of control over the experience of the work, to accept the experience as-it-happens as a transformative field of possibilities, to learn from it, to grow with it, to be transformed along the way.”
(<http://www.ekac.org/gfpbunny.html#gfpbunnyanchor>)

Case 11

In April of 2004 Julie Lacey of Fort Worth, Texas was told by a pharmacist at her CVS local drugstore: "I personally don't believe in birth control, so I'm not going to fill your prescription. Outraged, Ms Lacey, who had come to the drugstore at night for a last-minute refill of her prescription for the Pill, immediately protested to the assistant store manager. This did not result in her getting the prescription filled, so the next day she lodged a complaint with the CVS district manager. After doing so she received a call from the pharmacy supervisor, apologizing, and assuring her he would have her prescription filled and sent to her that day.

Situations similar to the one encountered by Ms Lacey have become an increasing matter of concern to groups concerned with reproductive rights. "Refusing woman the Pill is a very disturbing trend, " said Gloria Feldt, President of Planned Parenthood Federation of America. On the other side of the issue, members of Pharmacists for Life International, an anti-abortion group, contend that they have the right to refuse to fill prescriptions for the Pill. According to the organization's President, Karen Brauer, R.Ph., "our job is to enhance life. We should not have to dispense a medication that we think takes lives."

In regard to the claim that the Pill "takes lives," many anti-abortion pharmacists (and anti-abortion physicians also) accept the idea of a "post-fertilization effect" associated with use of the Pill. This idea is developed (as well as elsewhere) in an article authored by Dr. Joseph B. Stanford, Assistant Professor of Family and Preventive Medicine at the University of Utah (Archives of Family Medicine, Feb., 2000), cited widely by anti-Pill groups. In Dr. Stanford's opinion, the Pill fails to prevent ovulation and fertilization of eggs with much greater frequency than most experts maintain. Furthermore, according to Dr. Stanford, such fertilized eggs (which anti-abortionists consider to qualify as human beings) cannot attach to the uterine wall because, he believes, the wall becomes hormonally altered when a woman uses the Pill.

The claim that the Pill hinders implantation, however, has never been confirmed scientifically, according to Dr. David Grimes, a clinical professor of Obstetrics and Gynecology at the University of North Carolina School of Medicine, and a leading authority on contraception. Even the American Association of Pro-Life Obstetricians and Gynecologists concedes that it is only speculation, says Dr. Grimes. Furthermore, reproductive rights groups point out that in addition to preventing unwanted pregnancies, oral contraceptives may be used for other important purposes. For example, they note, the Pill may reduce the risk of cervical cancer. "There are easily more than twenty non-contraceptive uses for the Pill", according to Dr. Giovanna Anthony, an attending physician in obstetrics and gynecology at Beth Israel Hospital in New York City.

At this time three states, Arkansas, Mississippi, and South Dakota, have enacted "conscience clauses" that provide legal protection specifically to pharmacists who refuse services on moral, ethical, or legal grounds. Similar legislation has been introduced recently in eleven more states. The laws of most states, however, allow drugstores to require pharmacists in their employ to sign agreements that they will dispense all lawfully prescribed medications. Recently a pharmacist in Wisconsin (allegedly) refused to fill a women's prescription for the Pill, and the State department of regulation and licensing filed a complaint against the pharmacist.

Case 12

The Fletchers, a couple in the UK recently received permission from the UK's Human Fertilisation and Embryology Authority (HFEA) to screen embryos to help their ailing toddler. The HFEA regulates and inspects all UK clinics that provide in-vitro fertilization, donor insemination, or the storage of eggs and sperm. It also licenses and monitors all human embryo research conducted in the UK.

The Fletcher's two year old son Joshua, has the potentially fatal congenital hypoplastic anemia, called diamond black anemia in the UK. This progressive anemia, of unknown cause, appeared in Joshua's first year of life and resulted in a deficiency of red blood cell precursors in an otherwise normal bone marrow. Temporary treatment consists of continuous blood transfusions, but the only cure is transplanting stem cells of a compatible donor, that could stimulate Joshua's body to make healthy red blood cells.

Joshua's parents (i.e. Mr. and Mrs. Fletcher) and his five year old brother Adam are not close enough genetic matches to donate the stem cells Joshua needs. If the Fletchers were to try having another child, the chances that any future sibling would be compatible with Joshua are only one in four. The Fletcher's thus requested, and the HFEA allowed them, to improve the odds to approximately 98% through pre-implantation genetic diagnosis (PGD). Under this process, Mrs. Fletcher's eggs and Mr. Fletcher's sperm will be mixed in a petri dish, the resulting embryos analyzed to determine compatibility with Joshua, and compatible embryos inserted into Mrs. Fletcher's womb. Umbilical cord blood from the newly born sibling, which contains bone marrow stem cells, will then be transplanted into Joshua.

The HFEA's decision to allow the use of PGD in the Fletcher's case marked a significant change in its policies. According to the head of HFEA, Suzi Leather, HFEA "...decided to relax the rules on embryo selection to enable all couples who want to be able to select an embryo, who might be a tissue match for an existing seriously ill sibling, to be able to do so." This decision has generated strong controversy throughout the world. Professor Jack Scarisbrick, the chairman of the organization Charity Life said: "We have gone yet further down the slippery slope in creating human beings to provide 'spare parts' for another." Samuel D. Hensely of the Center for Bioethics and Human Dignity wrote: "Today parents using PGD take responsibility for selecting birth children who will not be chronically sick or severely disabled; in the future, they might also bear responsibility for picking and choosing 'advantages' their children shall enjoy."

On the other side of the issue, a spokeswoman for the British Medical Association said: "If the technology to help a dying or seriously ill child exists, without involving major risks for others, then it can only be right that is used for this purpose."

Case 13

In the 1970's the U.S. Supreme Court ruled that the government was not required to fund abortions. Congress, in a bitterly hard fought compromise, enacted legislation that authorized payment for Medicaid abortions in the cases of rape, incest, and danger to the health of the woman. Congressional legislation characteristically is phrased in broad language that leaves many issues unsettled about how to put the legislation into effect. A specific governmental agency or department thus is given the responsibility of drafting, issuing, and implementing regulations for this purpose. In the case of the congressional compromise legislation relative to Medicaid funding for abortions, the Department of Health, Education and Welfare (HEW - now Health and Human Services (HHS)) had the responsibility to draft, issue, and implement regulations.

The Department's Secretary at that time, Joseph Califano, was a practicing Catholic who believed both that abortion is morally wrong, except to save the life of the mother, and that, as a matter of public policy, elective abortions should not be funded by the government. Califano had made his personal views on abortion clear for the public record during his confirmation hearings, under intense and, in some instances, adverse questions posed by members of the Senate. As a person with extensive experience in public life at the national level, however, Califano also acknowledged at his confirmation hearings that, if confirmed as HEW Secretary, he would have an obligation to carry out the law, as a public official in a democratic system of government. He thus assured the Senators that if Congress passed laws calling for funds to be provided for abortions, he would enforce them.

Shortly after the President (Jimmy Carter) signed into law the congressional compromise on Medicaid funding of abortions, Senator Edward Brooke of Massachusetts described the law as "not really acceptable to either side."^{*} In this regard, Representative Henry Hyde of Illinois, a staunch anti-abortionist, protested that it "provides for the extermination of thousands of unborn lives," and on the other side of the issue, American Civil Liberties President Norman Dorson called the law "a brutal treatment of women with medical needs for abortion." Almost immediately pro and anti abortion forces pressed HEW for regulations to further their respective opposed positions.

Under firmly established judicial precedent, a court will not overturn regulations issued by a federal agency or department to implement a congressional enactment unless the regulations conflict directly with the congressional enactment's clear intent.

^{*} Several years later, Congress voted to forbid all Medicaid funded abortions.

As Secretary of the Department of Health, Education, and Welfare, Califano was the public official ultimately responsible for the drafting, issuing, and implementing of the regulations in regard to the congressional compromise legislation on Medicaid funding for abortions.

Case 14

A controversy arose in late 2003 concerning sale in the Grand Canyon National Park's bookstore of a book entitled Grand Canyon: a Different View. The book, which includes photos of the canyon that reviewers characterize as breathtaking, contains writings by twenty-four creationists, that is, adherents to the view that the Grand Canyon was formed as a direct consequence of the great flood, recounted in the book of Genesis in the Old Testament. Creationists believe "that rocks of the Canyon were formed by deposits from the flood, and that the Canyon itself was cut when a large lake broke its natural dam and cut through the rock in a few days.

Tom Vail, who compiled Grand Canyon: a Different View, conducts tours of the canyon at river level, in which he presents the creationist point of view. "For years," says Vail, "as a Colorado river guide I told people how the Grand Canyon was formed over the evolutionary span of millions of years. Then I met the Lord. Now I have a different view of the Canyon, which, according to biblical time scale, can't possibly be more than a few thousand years old."

Grand Canyon: a Different View, went on sale in the Grand Canyon National Park's bookstore in August of 2003 (a committee of park employees approved of its sale in the bookstore). That same month, Wilfrid Elders, Emeritus Professor of Geology at the University of California, Riverside, noticed it there while visiting the canyon as a participant in the National Center for Science Education's annual whitewater rafting trip. Professor Elders, a noted geologist, wrote a scathing on-line review of the book, criticizing the creationist arguments advanced by the contributing writers, and concluded with the following words:

Grand Canyon: a Different View is not a geological treatise. It is Exhibit A of a new slick strategy to proselytize by biblical literalism. ... Allowing the sale of this book within the National park was unfortunate. I believe that the continued sale of this book within the National park will undermine the work of NPS [National Park Service] interpreters who work so hard to educate the public.

In response to Professor Elder's critique, Tom Vail protested that removal of Grand Canyon: a Different View from the National Park's bookstore would be religious discrimination aimed at creationism. All the writers who contributed to the book "have as much right to their opinion as anyone else," he said. Vail contended as well that Creationism is no less valid scientifically than the current accepted viewpoint of geological science. "What they call science is theory, just as what is in my book is theory," said Vail.

In December of 2003 the Presidents of the American Geological Institute and six of its member scientific societies sent a letter to Joseph Alston, Superintendent of the Grand

Canyon National Park, strongly reiterating Professor Elder's views. Superintendent Alston decided that Grand Canyon: a Different View should not be sold in the Park bookstore, but was overruled by officials of the National Park Service in Washington, D.C., who announced that a high level review would be undertaken, and a policy statement issued in February of 2004. As of this time, no policy statement has been issued.

Case 15

Due to the popularity of police dramas on television, the public has become aware of the deceptive practices employed in police interrogations. Indeed, according to Jerome Skolnick, Professor of Law and Director of the Center for the Study of Law and Society, "Deception is considered by police--and courts as well--to be as natural to detecting as pouncing is to a cat." In particular, it is common practice for police detectives to lie to a suspect, leading them to believe that they have incriminating evidence against her. For example, in one case an interrogating detective asked the suspect to write down something she had just said. He then told her that he had placed a powder on the pen, visible only under infrared light, which indicates whether or not there are "blow back" marks on a person's hand from firing a gun. The detective then asked the woman whether she would consent to having the pen examined. She consented, and an evidence technician then entered the room, examined the pen, and announced that it had "blow back" marks on it. All of this was pure deception undertaken to make the suspect believe the police had evidence, which, in fact, they did not have.

Other deceptive techniques are also frequently used. For instance, police detectives will often attempt to lead suspects to believe that they empathize with the suspect and that they would like to help them, but can only do so if they know the truth. A more specific application of this strategy is to lead suspects to believe that in order to be treated leniently for their offense they have a brief window of opportunity to confess and cooperate, otherwise their prospects of leniency worsen.

All of the above interrogation strategies are deceptive because they communicate or imply (in one fashion or another) false information - about the nature and amount of evidence the police have, about the true motives of the interrogators and about the nature of the relationship between the interrogators and the suspect. Because of this, some commentators have argued that confessions that are gotten through such deceptive means are not voluntary, and therefore, should not be admissible as evidence.

However, the law enforcement profession defends the use of deception during interrogations, insisting that an innocent person would not confess to a crime she did not commit. Hence, they contend, the practice only produces confessions from those who are guilty of a crime. Moreover, before suspects speak to detectives, they are routinely apprised of their "Miranda rights." *Miranda v. Arizona* 384 U.S. 436 (1966) held that arrested persons must be informed of their right to remain silent, must be warned that any statement they make may be used against them in a court of law, and must be informed of the right to legal representation, and that such representation will be provided if they cannot afford it. Hence, if a suspect continues to speak after she is informed of her rights, she does so with the awareness that her statements may be used against her.

Nevertheless, police officers can shape that way in which suspects respond to the Miranda warnings. Specifically, the monotone, perfunctory way in which the Miranda

warnings are delivered is specifically intended to communicate to the suspect that the warning is unimportant, simply a bureaucratic hoop to jump through.