

REGIONAL **ETHICS BOWL** **CASES**

FALL 2008

Prepared by:

Rhiannon Dodds Funke, Chair

Editing Board:

Brenda Dillard

Deni Elliott

Case Writers:

Susanna Flavia Boxall

Edward Carr

Sarah Carr

Raquel Diaz-Sprague

Renee England

Adam Potthast

Connie Price

Case 1: Medical Outsourcing

As the cost of U.S. health care continues to rise to stratospheric levels, Americans have begun to shop around for medical treatment in foreign countries. While medical tourism is hardly novel (for years Americans have sought discounted cosmetic surgery in places like Mexico, Thailand and India), the interest in foreign medical treatment among uninsured (or underinsured) individuals is, indeed, a burgeoning trend.

The main incentive for outsourcing health care procedures is the relatively low cost and the high quality of care. Surgical services in places like India and Thailand cost 70 to 80 percent less than in the United States. For example, “[h]eart bypass surgery, which can cost more than \$130,000 in the United States, can be performed for \$10,000 in India and \$19,000 in Turkey.”¹ Patients receive high-quality care in luxurious hospitals exclusively designed for tourists. As he recuperates from mitral valve surgery in a luxurious Indian hospital suite (fully-equipped with TV, computer, and mini-fridge), Robin Steeles can be assured that all of his needs will be catered to – from his diet and his galling skin rash to his craving for ice cream.² Furthermore, according to John Lancaster of *The Washington Post*, Indian private hospitals have a better mortality rate for heart surgery than American hospitals.³

Individual patients are not the only ones taking advantage of the overseas medical market. Some companies (like Blue Ridge Paper Products of North Carolina), faced with the hard choice between providing health coverage and staying solvent, have tried sending their employees overseas for medical treatment.⁴ And companies are not the only ones engaging in this trend. For example, a West Virginia legislator has been developing a bill that “would encourage state employees to have nonemergency medical surgeries overseas.”⁵ Concomitantly, companies in Florida, California and North Carolina have begun to specialize in selling medical insurance and services that rely on foreign hospitals.⁶

Because of its economic advantages, the outsourcing of medical procedures has been widely touted as a panacea. However, outsourced medical procedures are outside the reach of many working class Americans, and these procedures have not been shown to lower the cost of

¹ Colliver, Victoria, “More Who Need Major Surgery Are Leaving U.S.,” *The San Francisco Chronicle*, May 4, 2008. sec. C-1. <http://www.sfgate.com/cgi-bin/article.cgi?f=c/a/2008/05/04/BURS10BARG.DTL>

² Sengupta, Somini. “Royal Care for Some of India’s Patients, Neglect for Others,” *The New York Times*, June 1, 2008. sec. Week in Review. <http://www.nytimes.com/2008/06/01/weekinreview/01sengupta.html?ref=world>

³ 0.8% in India as opposed to 2.35 % in the U.S. (see John Lancaster, “Surgeries, Side Trips for ‘Medical Tourists,’” *The Washington Post*, Oct. 21 2004. Sec. A01. <http://www.washingtonpost.com/wp-dyn/articles/A49743-2004Oct20.html> >).

⁴ Rai, Saritha. “Union Disrupts Plan to Send Ailing Workers to India for Cheaper Medical Care,” *The New York Times*, October 11, 2006. Sec. Business / World Business. <http://www.nytimes.com/2006/10/11/business/worldbusiness/11health.html?pagewanted=print>.

“Employers May Sponsor Overseas Surgeries” *Day to Day with Julie Rovner*, narr. Julie Rovner, National Public Radio, Sept. 12, 2006.

⁵ Tatko-Peterson, Ann, “Going Abroad for Health Care: Medical Tourism Heads toward Robust Industry,” *The Mercury News*, Oct. 16, 2006. <http://www.mercurynews.com/mld/mercurynews/living/health/15770690.htm>.

⁶ Colliver, supra n. 1.

healthcare in the U.S. These concerns, coupled with the lack of continuity of care after patients leave the foreign hospital, have raised concern among workers and patients' advocates.⁷

Additionally, while private, for-profit hospitals offer world-class, high-tech medical procedures to foreign patients and wealthy Indian nationals, most Indians are at the mercy of an under-funded and overstretched public health care system.⁸ Urban areas cannot keep up with the demand for treatment, and rural towns often have no medical facilities whatsoever.⁹ While foreign patients pay for their care at Indian hospitals, their fee only partially funds these private institutions. In the 1990's the Indian government shifted from funding public health care institutions to supporting private health care facilities.¹⁰ Thus, foreign medical tourists may be reaping the benefits of Indian public funding that has been channeled to private medical institutions.

⁷ Rai, Saritha, "Hitches in Globalization of Health Care," *International Herald Tribune*, Oct. 10, 2006. Sec. Business. <http://www.ihf.com/articles/2006/10/10/business/health.php>.

⁸ Bajpai, Nirupam and Sangeeta Goyal, "Primary Care in India: Coverage and Quality Issues," *Center on Globalization and Sustainable Development – Earth Institute at Columbia University*, June 2004: 3 http://www.earthinstitute.columbia.edu/cgsd/documents/bajpai_primaryhealth.pdf. Pasricha, "India Offers both Best, Worst of Health Care," *Voice of America News*, May 3, 2006 <http://www.voanews.com/english/archive/2006-05/2006-05-03-voa32.cfm>.

⁹ Pasricha, Ibid. Sengupta, supra n. 2.

¹⁰ Sengupta, Amit and Samiran Nundy, "The Private Health Sector in India," *The British Journal of Medical Ethics* 331 (2005): 1157-58.

Case 2: Poverty Tours

Many Americans may never know what life without modern amenities like television, air conditioning, and indoor plumbing would be like. They now have one way to get a glimpse of such a life – poverty tours, also known as “poorism,” help those who want to see what the poor life is like, if only for a short time and second hand. While poverty tours may be found in many areas of the world, some of the most famous are those of Rio de Janeiro, South Africa, and Mumbai.¹ In a *New York Times* article, Eric Weiner notes, “Slum tourism isn’t for everyone. Critics charge that ogling the poorest of the poor isn’t tourism at all. It’s voyeurism. The tours are exploitative, these critics say, and have no place on an ethical traveler’s itinerary.”²

However, tours may expose visitors not only to the extreme poverty and dismal living conditions of the slums but to the entrepreneurial spirit and hard work of slum dwellers, the cohesive family and community structures, and other positive aspects of poor life.

Although some tourists might come to the slum tour for voyeuristic reasons, exposure to the world’s poorest people can be a transformative experience for many. The direct observation of the hard work and resilient spirit of the poor can earn the respect of the well-to-do tourist and possibly lead to charity and advocacy work.³ Harold Goodwin, director of the International Center for Responsible Tourism in Leeds, England, states “Ignoring poverty won’t make it go away. Tourism is one of the few ways that you or I are ever going to understand what poverty means. To just kind of turn a blind eye and pretend the poverty doesn’t exist seems to me a very denial of our humanity.”⁴

¹ Kendle, Amanda, “Poverty Tourism: Exploring the Slums of India, Brazil and South Africa,” *Vagabondish*. Feb. 7, 2008. <http://www.vagabondish.com/poverty-tourism-touring-the-slums-of-india-brazil-and-south-africa/>.

² Weiner, Eric, “Slum Visits: Tourism or Voyeurism?,” *The New York Times*, March 9, 2008. Sec. Travel. http://www.nytimes.com/2008/03/09/travel/09heads.html?_r=1&oref=slogin.

³ Krishnan, Deepa, “The Ethics of Slum Tours,” *Mumbai Magic* (blog of Deepa Krishnan), Sept. 29, 2007. <http://mumbai-magic.blogspot.com/2007/09/ethics-of-what-i-do.html>.

⁴ Simpson, Dave, “Slum Tourism: Pro-poor or Simple Voyeurism?,” *Commonwealth Agricultural Bureau International Blog*, March 12, 2008. http://cabiblog.typepad.com/hand_picked/2008/03/slum-tourism-pr.html.

Case 3: HOT Lanes

Civil engineers have devised a solution to traffic problems on crowded highways, converting High Occupancy Vehicle (HOV or carpool) lanes into High Occupancy/Toll Lane, or HOT lanes. HOT lanes provide a designated lane in which motorists driving alone can use if they pay a toll, allowing them to avoid traffic delays in the adjacent regular lanes. HOT lanes usually are combined with HOV lanes that have enough capacity to handle more vehicles. Toll-paying drivers and toll-free carpools/vanpools share the lane, increasing the number of total vehicles using the HOV/HOT lane.

The appeal of the HOT lane concept is three-fold. HOT lanes expand mobility options in congested urban areas by providing an opportunity for reliable travel times for HOT lane users; HOT lanes generate a new source of revenue which can be used to pay for transportation improvements, including enhanced transit service; and HOT lanes improve the efficiency of HOV resources.¹

States such as California, Texas, Minnesota, Colorado and Washington have converted under-utilized HOV lanes to HOT lanes.² A typical model for HOT lanes uses variable pricing, whereby toll prices increase as the available space during peak times decreases. The less space that is available in the HOV lane, the higher the toll for a single occupant vehicle. In this way, the optimum number of vehicles can be allowed in the lane.

Proponents of HOT lanes cite studies showing traffic flow is improved not only in the carpool lane, but in all general purpose lanes. These studies suggest that even those who choose not to pay to use the HOT lanes feel the benefit. According to a recent Minnesota Department of Transportation User Panel Survey Report, support for HOT lanes was consistent across all income groups. When asked a more specific question, “Do HOT lanes only benefit the rich?” more high-income drivers said yes (13%) than low-income drivers (11%).³

Additionally, a number of expert groups support the concept of HOT lanes. Civil engineers believe HOT lanes provide a more efficient way to allocate a limited resource. Economists believe HOT lanes are clearly an example of supply and demand. Environmentalists believe high tolls will discourage driving and that revenues from tolls can be used for more environmentally friendly public transportation options.

Critics of HOT lanes have dubbed them “Lexus Lanes.” They cite the unfairness of these Lexus Lanes to low and middle income commuters who can’t afford the cost of

¹ Gilroy, Leonard, and Amy Pelletier, “HOT Lanes: Frequently Asked Questions,” *Reason Foundation*, http://www.reason.org/pb59_hotlanes.pdf.

² Ungemah, David H. and Myron Swisher, “So You Want to Make it a Hot Lane? The Project Manager’s Guide for an HOV-to-HOT Lane Conversion,” *Transportation Research Board of the National Academies*, March 21, 2006. <http://www.trb-pricing.org/docs/06-1857.pdf>.

³ “Learning from Other HOT Lanes,” *Washington State Department of Transportation*. <http://www.wsdot.wa.gov/Operations/Tolling/OtherHOT.htm>.

tolls.⁴ They also argue that highways are paid for through public funding and therefore all tax payers have equal rights to use highways. As Don Guliford, an attorney from Mercer Island who opposes HOT lanes, stated about the recent opening of a HOT lane in Washington State, “Article I, Section 12 of our state constitution clearly states: No law shall be passed granting to any citizen, class of citizens, or corporations other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens.”⁵

⁴ Fisher, Marc, “Exalted HOT Lanes Leave the Average Joe in the Dust,” March 25, 2007.

http://www.washingtonpost.com/wp-dyn/content/article/2007/03/24/AR2007032400966_pf.html.

⁵ Guliford, Don, “One-way Ticket: Exclusive Resort to Privilege of the Purse,” Letter to the Editor, *The Seattle Times*, May 12, 2008. http://seattletimes.nwsourc.com/html/opinion/2004404179_monlets12.html.

Case 4: Protecting Pirates

Piracy may seem like a thing of the past, but in the waters surrounding Somalia, including the Gulf of Aden, Arabian Sea and Indian Ocean, piracy still runs strong.¹ A U.S. Department of State travel advisory for Somalia warns, “Merchant vessels, fishing boats, and recreational craft all risk seizure by pirates and having their crews held for ransom.... There have been numerous such incidents, highlighting the continuing danger of maritime travel near the Horn of Africa.” While piracy poses problems for individuals, governments are also faced with a difficulty in dealing with the piracy problem.

The waters off Somalia appear to be the most dangerous in the world. Last year, there were 31 attacks there and so far this year there have been 23 attacks by Somali pirates. Experts worry not only about the frequency of attacks but also about the skill and daring of the pirates, some of whom claim to be protecting the country's maritime resources from foreign exploitation.²

U.N. food shipments have been jeopardized by the attacks.³ However, the United States, France, and Great Britain have worked on a U.N. Security Council resolution to increase member state patrols of the area, which was approved in June.⁴ This measure has yet to prove effective, however. Britain has thus found itself in the midst of an ethical dilemma with regard to how to treat the pirates. According to author John S. Burnett, if British soldiers capture the pirates, this may violate their human rights. If they return the pirates to Somalia, the pirates may face death or having their hands chopped off for theft under Islamic law.⁵ And if the British fail to capture the pirates, the pirates may continue to endanger travelers.⁶ Even bringing the pirates to Britain may unfairly enable the pirates to claim asylum.

However, one way to decrease the Somali pirate attacks might be as simple as to comply with international law. “There is some truth in the pirates' claim that they are acting as a coastguard. Under international law, a country's ‘exclusive economic zone’ - where it has sole rights over marine and mineral resources - extends 200 nautical miles out to sea. Foreign ships are allowed to pass through these waters, but not to fish without a permit.”⁷

¹ “Map of Gulf of Aden (gulf), Indian Ocean,” *MSN Encarta World Atlas*, last accessed July 30, 2008. <http://encarta.msn.com/encnet/features/mapcenter/map.aspx?refid=701512823>; “Travel Warning: Somalia,” United States Department of State, Bureau of Consular Affairs, May 20, 2008. http://travel.state.gov/travel/cis_pa_tw/tw/tw_933.html.

² Xan, Rice, “How Savage Pirates Reign on the World Seas,” *The Guardian*, April 27, 2008. Sec. World News. <http://www.guardian.co.uk/world/2008/apr/27/somalia1>

³ “U.N. Warns of Somalia Pirate Threat,” *BBC News*, June 26, 2008. <http://news.bbc.co.uk/2/hi/africa/7474877.stm>.

⁴ Charbonneau, Louis, “France, U.S. Draft Somalia Piracy Resolution,” *Reuters*, April 23, 2008. <http://www.alertnet.org/thenews/newsdesk/N22324123.htm>; Kihu, Miano, “Somalia: U.N. Sanctions Action Against Pirates,” *allafrica.com*, July 1, 2008. <http://allafrica.com/stories/200807011184.html>.

⁵ Burnett, John S., “Captain Kidd, Human Rights Victim,” *The New York Times*, April 20, 2008. Sec. Op-Ed. <http://www.nytimes.com/2008/04/20/opinion/20burnett.html>.

⁶ Woolf, Marie, “Pirates Can Claim UK Asylum,” *Times Online*, April 13, 2008. <http://www.timesonline.co.uk/tol/news/uk/article3736239.ece>.

⁷ Xan, *supra* n. 2.

Despite this property right, many foreign fishing vessels end up off the coast of Somalia, taking advantage of its “rich waters.”⁸ Due to the fact that almost all of the foreign fishing boats are fishing illegally, many pirate attacks go unreported. In fact, often “the ransoms paid are regarded as legitimate fines, both by the pirates and the ship-owners.”⁹

⁸ Ibid. (citing a statement by the Seafarers' Assistance Programme)

⁹ Ibid.

Case 5: Surreptitious DNA Gathering

Law enforcement regularly seeks new methods to help locate and convict criminals, and one such method, surreptitious DNA gathering, recently has been used to solve decades-old murder cases. Journalist Jim O'Hara relates the story of Donald Sigsbee, a man convicted of raping and murdering Regina Reynolds.¹ Sigsbee's business card was found near the site where Regina Reynolds' body was dumped in 1975, but police lacked evidence to charge Sigsbee with the rape and murder of the 19-year-old college student.

Years later, in 2003, after police tested DNA found in the case, officers followed Sigsbee and his wife to a local Wendy's restaurant. The detectives retrieved Sigsbee's discarded drink cup and straw, and subsequent DNA testing linked Sigsbee to the rape and murder of Regina Reynolds. The evidence held up in court, leading to Sigsbee's conviction for murder. He is now serving a 25 year-to-life prison sentence.

The technique used to gather the DNA samples that convicted Sigsbee is an example of "surreptitious sampling," a practice gaining popularity among law enforcement. Defense lawyers argue that DNA gathered without a person's consent violates the protection against unreasonable search and seizure under the Fourth Amendment of the U.S. Constitution.²

¹ Jim O'Hara "Anything You Throw Away Can Be Used Against You," *The Post Standard*, May 3, 2008. http://www.syracuse.com/news/index.ssf/2008/05/anything_you_throw_away_can_be.html.

² Harmon, Amy, "Lawyers Fight DNA Samples Gained on the Sly," *The New York Times*, April 3, 2008. <http://www.nytimes.com/2008/04/03/science/03dna.html?pagewanted=1&r=1&hp>.

Case 6: Mosquito Teen Deterrent

A device known as the Mosquito ultrasonic teenage deterrent has offered police and business people an effective way to disperse groups of young people.¹ It emits a high pitch sound, around 17.5 to 18.5 kHz, that is only audible to those under the age of 25. All humans suffer from a loss of hearing, most notably occurring around the age of 65. However, as early as 20 years of age, nearly every human can no longer hear the 18 to 20 kHz range due to a natural loss of hearing known as presbycusis. Teens hearing sounds in this range find them annoying and generally disperse within 8 to 10 minutes. Thus, the Mosquito can target a teenage audience and cause them to leave an area rather quickly.

The technology of Mosquito has been touted as an effective way to help prevent vandalism and loitering that can lead to other crimes or to an interruption of business for retail store owners.² Since Mosquito's sounds can be broadcast as far as 40 to 60 feet, large groups can be targeted at one time. According to a brochure from the American distributor of Mosquito, Kids Be Gone, the device is not violent and does not hurt. The brochure also suggests that the device may be used to reduce vandalism and theft, and improve quality of life for those "affected by anti social behavior." The effectiveness and popularity of the product led the Wall Street Journal to list it as a "hot dividend stock."³

Some suggest, however, that the Mosquito should be banned – they argue that the Mosquito helps perpetrate unfair age discrimination. As reported by TimesOnline.com, "Sir Albert Aynsley-Green, the Children's Commissioner for England... has set up a campaign – called Buzz Off – that is calling for the Mosquito to be banned on grounds that it infringes the rights of young people."⁴ He argued that the Mosquito promoted "fear and hatred" of young people and caused greater dissention between young and old.⁵ Scottish Children's Commissioner Kathleen Marshall and other civil liberties organizations also joined the Buzz Off campaign.⁶

According to British newspaper columnist, Melanie Phillips of The Daily Mail, however, banning this product would be unconscionable considering the "random savagery and sadism"

¹ Unless otherwise noted, the descriptive information about the Mosquito derived from company websites and brochures, located at: <http://www.kidsbegone.com/>; <http://www.kidsbegone.com/Mosquito-Fact-Sheet-MK11.pdf>; and, http://www.compoundsecurity.co.uk/teenage_control_products.html.

² "High-Pitch Alarm Quietens Youths," *BBC News*, Jan. 26, 2008. <http://news.bbc.co.uk/1/hi/england/merseyside/7210923.stm>.

³ Kazek, Kelly, "New Teen Repellent Has Practical Uses," *The News Courier*, March 4, 2008. http://www.enewscourier.com/columns/local_story_064163144.html.

⁴ Naughton, Philippe, "Kids' Commissioner Calls for Ban on Mosquito, Ultrasonic Anti-Teen Device," *Times Online*, Feb. 12, 2008. Sec. UK News. <http://www.timesonline.co.uk/tol/news/uk/article3356157.ece>.

⁵ "Buzz Off! Outcry as Children's Tsar Says Ultrasonic 'Mosquito' Device Is a Breach of Teenagers' Human Rights," *thisislondon.co.uk*, Feb. 14, 2008. <http://www.thisislondon.co.uk/news/article-23437233-details/Hands+off!+Outcry+as+Children's+Tsar+says+ultrasonic+'mosquito'+device+is+a+breach+of+teenagers'+human+rights/article.do>.

⁶ Morgan, James, "Campaign to Ban the Teen Tormentor from Scotland," *The Herald*, Feb. 13, 2008. Sec. Politics. http://www.theherald.co.uk/politics/news/display.var.2039529.0.Campaign_to_ban_the_teen_tormentor_from_Scotland.php.

perpetrated by teenagers in recent days.⁷ Retail entities, police, and governmental agencies have also argued to continue use of the Mosquito.⁸ Columnist Kelly Kazek even (although admittedly offhandedly) recommends parents using the device to keep their children in line in smaller settings.⁹

The inventor of the product, Howard Stapleton, has chimed in on the debate, as well. He said hopes that government entities will regulate use of the product so that it is only used for legitimate crime prevention purposes, rather than as a means to shoo away unwanted teens.¹⁰

⁷ Phillips, Melanie, "Children's Rights? What About the Rights of Those Who Live in Fear of Young Thugs?," *The Daily Mail*, Feb. 19, 2008. <http://www.dailymail.co.uk/debate/columnists/article-515469/Childrens-rights-What-rights-live-fear-young-thugs.html>.

⁸ Kilner, Will, "Council Defends Use of Noise Devices," *Telegraph & Argus*, Feb. 13, 2008. http://www.thetelegraphandargus.co.uk/news/2039281.council_defends_use_of_noise_devices/; "No Ban on Mosquito Devices, Government Says," *talkingretail.com*, Feb. 12, 2008. <http://www.talkingretail.com/news/8551/No-ban-on-Mosquito-devices-Gov.ehtml>.

⁹ Kazek, supra n. 3.

¹⁰ "Warning from 'Teen-Repellent' Inventor," *news.com.au*, April 3, 2008. <http://www.news.com.au/story/0,23599,23476323-23109,00.html>.

Case 7: Babies Behind Bars

“The only thing that bothers me is I will have to lose her,” said Ms. Jaramillo.¹

Jaramillo lives in Santa Martha Acatitla prison with her child. In the 1990s, Mexico City determined that young children could spend the first six years of their lives in prison with their mothers rather than outside the prison with relatives or foster parents. As of December, fifty-three children lived at the prison.

The city government believes that giving the children’s biological mothers the option to raise them is more of a benefit to the children than keeping them out of prison with relatives or foster parents.

For the inmates, the benefits are clear: time passes more quickly on one’s sentence when one is attending to a loved one. The children present in the prison brighten up the place and break the monotony of prison life with momentous events like first words, first steps, learning to read, and so on. Having the responsibilities of a parent is also a powerful motive for self-improvement, leading to more productive planning for what one will do after being released.

The children receive education, as all children in Mexico City are eligible for public education, as well as checkups from the prison psychologist. They also have the opportunity to significantly bond with their biological mothers, an opportunity they would not have if staying with relatives or foster parents. There have been no reports of violence from inmates towards the children except in isolated cases of abuse by mothers with drug problems. These children were removed from their mothers’ care.

However, being raised in a prison can’t help but have its disadvantages. Prisons are drab, dreary places, and children are kept in this environment for many years. They are allowed to leave for weekends to spend time with relatives, but some women do not have a social support system outside the prison, so some children have nowhere to go. And despite the fact that, as one inmate says, “[My child] doesn’t know it is a prison...she thinks it’s her house,”² the house is a cold, drafty place. Children get sick. The city and state provide no extra support for children living with their mothers in prison, so mothers must pay for everything out of personal funds. If they lack needed funds, the children suffer.

When children turn six years of age, they are sent to live with relatives or foster parents outside the prison. Children lose daily contact with their mothers and must adjust to a life outside of prison that is very different from the one they have known. Mothers must somehow come to terms with seeing their children only during weekend visits.

¹ McKinley, James C., Jr., “In Prison, Toddlers Serve Time with Mom,” *The New York Times*, Dec. 31, 2007. Sec. International. <http://www.nytimes.com/2007/12/31/world/americas/31mexico.html>.

² Ibid.

Case 8: Biofuel

In his most recent State of the Union address, President Bush called for a five-fold increase in biofuel production over the next 10 years.¹ As oil continues to reach record-high prices, and the political landscape in the Middle East grows more violent, finding a sustainable, cheaper and cleaner alternative to fossil fuels seems imperative. Biofuels have been touted by some as a way to finally end U.S. dependence on foreign oil, and reduce our carbon foot-print.² However, this naive optimism about the future of biofuels was recently called into question as rising food prices caused riots across the globe.³

The production of corn-based ethanol in the U.S., an industry heavily subsidized by taxpayers' dollars,⁴ has caused the global price of corn and other grain commodities to rise. The devastating effect of inflated food prices on the global poor has led experts to question the wisdom of using food for fuel. Professor McKnight from University of Minnesota illustrates this tension clearly when he says, "Filling the 25-gallon tank of an SUV with pure ethanol requires over 450 pounds of corn – which contains enough calories to feed one person for a year."⁵

The environmental benefits of corn-based ethanol have also been called into question. Growing corn requires massive amounts of fuel, pesticides and fertilizers, and causes erosion and nitrate depletion of the soil – with the nitrates then contaminating coastal waters and decimating sea life⁶ – only to produce a fuel that, compared to gasoline, reduces greenhouse gas emissions by (at most) 26%. Even more worrisome is the fact that as corn becomes a coveted commodity, tropical forests are being clear-cut for its cultivation.⁷

While the U.S. has focused on corn-based biofuels, the rest of the world has been exploring non-food-based alternatives to oil. Cellulose-based biofuels (e.g., waste sugar cane and switchgrass) seem to be the new energy crop, surpassing corn in environmental benefits. It has been estimated that "cellulosic ethanol could reduce greenhouse gas emissions up to 87 percent."⁸ Yet, even if the production of cellulose-based fuels ever becomes commercially viable, it is unclear whether it will be able to satisfy the escalating world demand for fuel.⁹

¹ Mouawad, Jad, "Oil Industry Says Biofuel Push May Hurt at Pump," *The New York Times*, May 24, 2007. <http://www.nytimes.com/2007/05/24/business/24refinery.html?hp>.

² Walsh, Bryan, "Solving the Biofuels vs. Food Problem," *TIME*, Jan. 7, 2008. <http://www.time.com/time/health/article/0,8599,1701221,00.html>.

³ Martin, Andrew. "Food Report Criticizes Biofuel Policies," *The New York Times*, May 30, 2008. Sec. Business / World Business. <http://www.nytimes.com/2008/05/30/business/worldbusiness/30food.html>.

⁴ Karetnikov, Daria, Elizabeth Skane, and Abdel Abellard. "How Far Can Corn Take Us? Evaluating the Impacts of Ethanol: Final Report," *National Center for Smart Growth Research & Education, University of Maryland*. 2007. <http://www.efc.umd.edu/pdf/EthanolFinalReport010208.pdf>.

⁵ Runge, C. Ford and Benjamin Senauer, "How Biofuels Could Starve the Poor," *The New York Times*, May 7, 2007. http://www.nytimes.com/cfr/world/20070501faessay_v86n3_runge_senauer.html?pagewanted=print.

⁶ Potera, Carol, "Corn Ethanol Goal Revives Dead Zone Concerns," *Environmental Health Perspectives*, Volume 116, Number 6, June 2008. <http://www.ehponline.org/docs/2008/116-6/EHP116pa242PDF.PDF>.

⁷ Runge, supra n. 5.

⁸ Clayton, Mark, "The Race for Nonfood Biofuel," *The Christian Science Monitor*, June 4, 2008. <http://features.csmonitor.com/environment/2008/06/04/the-race-for-nonfood-biofuel/>.

⁹ Mouawad, Jad. "The Big Thirst," *The New York Times*, April 20, 2008. Sec. Week in Review. <http://www.nytimes.com/2008/04/20/weekinreview/20mouawad.html?scp=10&sq=oil%20consumption%20more%20cars%20china&st=cse>.

Case 9: Immigrants Prohibited from Public Universities

Missouri's legislature is considering a bill that would prohibit illegal immigrants from enrolling in the state's colleges and universities. The bill's sponsor, State Representative Jerry Nolte argues, "We're accountable to the people of this state to spend their tax dollars primarily to educate Missouri students and those lawfully present." He further notes that it is illegal under federal law to allow illegal immigrants to enroll in their colleges and universities. He concludes, "While we are obligated to educate children K-12 regardless of legal status, there is no requirement to provide post-secondary education." Legislators arguing against the bill say that children of immigrants should not be punished for their parents' actions, legal or not.¹

States other than Missouri have made accommodations for educating illegal immigrants. According to New York Times Columnist, Joseph Berger, "Since 2001, California, Texas, Illinois, New York, New Mexico, Oklahoma, Utah, Washington, Kansas and Nebraska have charged illegal immigrants the same in-state tuition as other residents so long as they have graduated from state schools. But three states — Colorado, Georgia and Arizona — have explicitly outlawed such benefits."²

¹ Denney, Andrew, "Missouri immigration bill could require citizenship checks to enroll in college," *The Journal*, April 3, 2008. <http://media.www.webujournal.com/media/storage/paper245/news/2008/04/03/News/Missouri.Immigration.Bill.Could.Require.Citizenship.Checks.To.Enroll.In.College-3298026.shtml>

² Berger, Joseph, "Debates Persist Over Subsidies for Immigrant College Students," *The New York Times*, Dec. 12, 2007. <http://www.nytimes.com/2007/12/12/nyregion/12education.html>.

Case 10: Client Confidentiality

Does the vow of client confidentiality extend past the client's death? The issue came up dramatically when North Carolina attorney Staples Hughes testified at a hearing for a man who may have been wrongly convicted of murder.

Hughes represented Jerry Cashwell, who pled guilty to the 1984 murders of Roland and Lisa Matthews. A second man, Lee Wayne Hunt, was thought to be an accomplice. Hunt was convicted and received a life sentence. Cashwell never publicly commented on Hunt's involvement, but soon after Hunt's conviction, Cashwell told his lawyer in confidence that he had acted alone.¹

Hughes kept his client's secret for 22 years, until Cashwell's death. Then Hughes began seeking ways to help free the man whom he believed to be innocent. In 2007, Hughes testified at Hunt's hearing for a new trial. The judge knew that Hughes planned to reveal Cashwell's secret. The judge cautioned him not to, saying that he would be compelled to report Hughes testimony as an ethics violation. Hughes testified anyway, sharing Cashwell's admission that he had acted alone in the killings and that Hunt was not involved. The judge reported Hughes to the state bar for violating client confidentiality and refused to consider Hughes' testimony in reviewing Cashwell's case.²

The U.S. Supreme Court has held that attorneys have a responsibility to keep confidentiality even after a client has died. The Model Rules of Professional Conduct, the rules promulgated by the American Bar Association to guide lawyers' behavior, also strongly urge against disclosing information unless certain criteria are met.³ Some legal experts believe that it is sometimes justifiable to violate confidentiality, even when the client is alive, but only to prevent an innocent person from being executed. In some other cases where a suspect or convicted killer had information regarding unsolved crimes, lay people have argued that attorneys should not keep clients' secrets at the expense of those hoping to find out the fate of missing loved ones.⁴

Eventually, Hughes was cleared of wrongdoing by the state bar and continues to practice law. Despite Hughes' testimony and questions regarding possible faulty analysis of evidence in the case, as of June, 2008, Hunt remains in prison.

¹ McManus, Kathy, "Freeing An Innocent Man?," *The Responsibility Project*, May 27, 2008.

<http://www.responsibilityproject.com/blog/post/freeing-an-innocent-man/>.

² Liptak, Adam, "When Law Prevents Righting a Wrong," *New York Times*, May 4, 2008. Sec. The Nation.

<http://www.nytimes.com/2008/05/04/weekinreview/04liptak.html>.

³ American Bar Association Model R. Prof. Conduct 1.6: Confidentiality of Information (2007).

⁴ Barksdale, Titan, "Confidentiality and the Dead Client," *Legal Ethics Forum*, Nov. 27, 2007.

<http://legaethicsforum.typepad.com/blog/2007/11/confidentiality.html>.

Case 11: Nutraloaf

A disciplinary technique in prisons throughout the United States is being challenged in court. At issue is a type of food called “Nutraloaf” or “Meal Loaf,” which is served to unruly prisoners in lieu of regular prison food. Nutraloaf is made of whole wheat bread, non-dairy cheese, carrots, spinach, raisins, beans, vegetable oil, tomato paste, powdered milk, and dehydrated potato flakes. It is served on a single piece of paper to eliminate the need for dishes or eating utensils that might be used against prison personnel or other prisoners.¹ Everyone involved in this controversy agrees that Nutraloaf constitutes a nutritionally complete, though unappetizing meal.

Inmates who are restricted to eating Nutraloaf believe that this constitutes a punishment over and above their sentences. They are suing the Vermont Department of Corrections for feeding Nutraloaf without allowing prisoners due process. By law, prisoners may not be punished without a disciplinary hearing process to justify the punishment. So prisoners are not (currently) asking for Nutraloaf to be banned, but for a hearing before it can be used.

In the past, subjecting prisoners to Nutraloaf-like meals has been found to be punishment by a federal court in Michigan.² In an older decision, the U.S. Supreme Court found that a meal (called “grue”) used in Arkansas prisons could be cruel and unusual punishment if continued for long periods of time.³ However, the Illinois Court of Appeals found that prisoners were not entitled to a hearing before being put on “controlled feeding status”, nor did they find that substituted food constituted cruel or unusual punishment.⁴

Prison officials insist that Nutraloaf is an effective behavior modification technique rather than punishment. According to Vermont’s Department of Corrections’ Commissioner, Nutraloaf is given to prisoners who abuse food service privileges by using trays and utensils in assaults. Nutraloaf is also fed to inmates who throw feces or urine. Officials claim that once the behavior is stopped, regular food service options and utensils are restored. Disciplinary hearings are not required before prison staff use behavior modification techniques.⁵

¹ Ring, Wilson, “Vermont Inmates Take State To Court Over Unsavory Nutraloaf,” *The Boston Globe*. March 23, 2008. Sec. Local/Vermont.
http://www.boston.com/news/local/vermont/articles/2008/03/23/vt_inmates_take_state_to_court_over_unsavory_nutraloaf/.

² *United States v. Michigan*, 680 F. Supp. 270, 277 (W.D. Mich. 1988)

³ *Hutto v. Finney*, 437 U.S. 678 (1978)

⁴ *Arnett v. Snyder*, 2001 Ill. App. LEXIS 819 (4th Dist.).

⁵ *Globe*, supra n. 1.

Case 12: Soldiers Losing Custody While Serving

The Servicemembers Civil Rights Relief Act was signed by President Bush to “help ease the economic and legal burdens on military personnel called to active duty status in Operation Iraqi Freedom.”¹ To some extent, this Act safeguards members by postponing creditor action while they are serving their country (they cannot be evicted from their homes, and their property cannot be taken from them) and reinstating civilian health benefits upon return.

The Act is very beneficial if the only person that needs protection is the service member. However, there are approximately 140,000 single parents serving in the military who need protection for their families in addition to themselves.² Single parents in the military have been forced to fight not only for their country, but their families and home life as well.

Tanya Towne is a single mother of two, Derrell, 12, and Darren, 4. Tanya divorced Derrell’s father 8 years ago when Derrell was only 4 and was granted primary custody. She has been raising him along with Darren, who is her son from a later marriage that also ended in divorce.

In 2004, Tanya was deployed with the rest of her National Guard unit to Iraq. During that time, Derrell’s father was granted temporary custody. Near the end of Tanya’s deployment, he filed a petition for permanent custody of Derrell. He was eventually granted that petition. Even though Tanya appealed, the appellate judges felt that Tanya’s second divorce along with her deployment played a part in creating an unstable environment for her son.³

¹ “Servicemembers Civil Relief Act,” *Ohio Department of Public Safety*, http://publicsafety.ohio.gov/odps_military_heroes/flash_image_library/PDF%20files/soldieract.pdf.

² Arrillaga, Pauline, “Deployed Troops Protected from Custody Fights,” *Army Times*, Jan. 31, 2008. http://www.armytimes.com/news/2008/01/ap_deployedcustody_080130/,

³ Mann, Brian, “Soldier Loses Custody of Child After Iraq Tour,” Morning Edition, Feb. 14, 2008. <http://www.npr.org/templates/sotry/story.php?storyID=18966053>

Case 13: Slow Medicine Elderly Care

Technological advances make it possible to prolong the life and of individuals who suffer terminal illness and/or are of advanced age. In some instances, these technologies have allowed individuals the opportunity to overcome severe obstacles and continue living a meaningful and enjoyable life. Some patients who reach an advanced age or who are suffering from a terminal disease, however, may not wish to prolong their suffering with unwanted surgeries and treatments.

In a an article published by The New York Times on May 5, 2008, Jane Gross wrote, “Grounded in research at the Dartmouth Medical School, slow medicine encourages physicians to put on the brakes when considering care that may have high risks and limited rewards for the elderly, and it educates patients and families how to push back against emergency room trips and hospitalizations designed for those with treatable illnesses, not the inevitable erosion of advanced age.”¹ Slow medicine can keep the elderly and terminally ill out of emergency rooms and hospital beds and offers the advantage of saving costs of unwanted treatments.

Slow medicine practitioners generally will delay treating illnesses, which helps give their patients more time to understand the procedures.² Such time can help prevent a rush into unwanted treatments, but opponents to slow medicine argue that this laid back approach can endanger the health of patients – that it is the physician’s role to treat illnesses promptly to ensure optimal results. Under such a model, slow medicine might be equated to a lesser form of euthanasia.³ Beyond the physical issues associated with slow medicine, opponents argue that it creates a defeated mindset in patients, encouraging them not to fight even when they may want to.⁴

¹ Gross, Jane, “For the Elderly, Being Heard About Life’s End,” *The New York Times*, May 5, 2008. Sec. Health. <http://www.nytimes.com/2008/05/05/health/05slow.html?th=%26emc=th%26pagewanted=print>.

² “Let’s Try Slow Medicine: An Interview with Dennis McCullough, M.D.,” *The Willowgreen Newsletter*, March 26, 2008. <http://insightnewsletter.wordpress.com/2008/03/26/lets-try-slow-medicine-an-interview-with-dennis-mccullough-md/>.

³ Connor, Ken, “Encouraging Death,” *Townhall.com*, May 26, 2008. http://www.townhall.com/columnists/KenConnor/2008/05/26/encouraging_death.

⁴ Haslanger, Phil, “Faith & Values: The Pace of Death,” *The Capital Times*, May 6, 2008. Sec. Faith Blog. <http://www.madison.com/tct/blogs/faith/285003>.

Case 14: Cherokee Freedmen

Euro-Americans are not the only group with a history of enslaving and disenfranchising African-Americans. Some Native Americans did so as well and some Native tribes are still struggling with what they owe the descendents of slaves, freed slaves and other African descendents who were living on tribal lands in the mid-1800's. Collectively, these people are known as the "Freedmen."¹

Article IX of the Treaty of 1866 between the U.S. government and Cherokee Nation states that, "all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees." This treaty was created with pressure from the U.S. Federal government.²

Prior to the Civil War, African-Americans lived on Cherokee lands as slaves or as free Blacks, or as children of bi-racial parents either through rape or consensual relationships. Cherokee slaves were emancipated in 1863. However, the first census to include African citizens of the Cherokee Nation didn't occur until 1902. In that census, individuals were categorized as freedmen, intermarried whites, or Indians by blood. Children of Indian-Anglo couples were included as "Indians by blood." Individuals who had a Black parent or grandparent were listed as Freedmen, regardless of Indian parentage, giving them no record of having Indian blood.³

While some Freedmen remained active in the tribe, others have little or no interest in staying connected to the tribe or its culture. In 2007, Cherokee tribal members voted to rescind citizenship rights initially granted to Freedmen. Freedmen are fighting this decision.⁴

Some Freedmen claim that Cherokee governmental officials have been working to disenfranchise Freedmen since the Treaty of 1866. According to legal interpretations and amendments to the Cherokee Constitution over the past 150 years, those eligible for enrollment in the Cherokee tribe must have a U.S. government "Certificate of Indian Blood Card" (CDIB). With no record of Indian blood, Freedmen descendents cannot successfully petition to be included on the tribal rolls. Other Freedmen argue that their rights were guaranteed regardless of Indian Blood. Without tribe enrollment, individuals may not vote on tribal matters or receive benefits provided through the Bureau of Indian Affairs, such as health benefits or financial reparations provided by the U.S. government. Estimates of Freedmen disenfranchised by the CDIB requirement vary from 2,500 to 25,000 people.

¹ "Cherokee freedmen controversy," *Wikipedia*, last accessed July 30, 2008.

http://en.wikipedia.org/wiki/Cherokee_Freedmen_Controversy.

² Warrior, Robert, "Cherokees flee the moral high ground over Freedmen," *News from Indian Country*, last accessed July 30, 2008. Sec. Editorial/Letters 2007/2008.

http://indiancountrynews.net/index.php?option=com_content&task=view&id=1106&Itemid=74.

³ "Historical Background of the 5 nations Indian Freedmen," *Descendants of Freedmen of the Five Civilized Tribes*. <http://www.freedmen5tribes.com/History.htm>.

⁴ "Cherokee Freedmen caught in high-level dispute," *Indians.com*, Aug. 20, 2003. <http://www.indians.com/News/archives/000930.asp>.

By summer 2008, the U.S. Congressional Black Caucus and the National Congress of Black Women had expressed support for the Freedmen in their attempt to win back their tribal rights. The National Congress of Native Americans had expressed support for the Cherokee Nation's choice to limit tribal rights to those who are Indian "by blood." And, U.S. presidential candidate Barack Obama had said that he supports the Cherokee Nation's right to determine tribal affiliation, but didn't agree with the decision to exclude Freedmen.⁵

⁵ Rep. Watson, Diane (D-Calif.), "Sen. Barack Obama and the Cherokee Freedmen: Politics as usual," *The Hill*, May 13, 2008. Sec. Op-Ed. <http://thehill.com/op-eds/sen.-barack-obama-and-the-chokeee-freedmen-politics-as-usual-2008-05-13.html>.

Case 15: Genetic Information Nondiscrimination Act

Newly passed legislation, known as the Genetic Information Nondiscrimination Act (GINA), prohibits health insurance companies from using genetic information to deny benefits or raise premiums for individual policies. Employers who use genetic information to make decisions about hiring, firing or compensation could be fined as much as \$300,000 for each violation.¹

The reason for the Act is in the title: preventing discrimination against individuals who happen to be genetically predisposed to certain diseases; but some argue that this bill prevents employers from serving the public interest. For instance, public safety might be jeopardized if we allow an individual to drive a school bus or conduct a train if they have a latent health condition that poses a direct threat, such as seizures or a heart condition.²

Additionally, we could potentially reduce the overall cost of insurance by excluding individuals with high risk conditions, and help to better allocate risk and cost. Similar to high risk insurance for drivers with high accident levels, insurers would still be required to offer policies to those with high risk genetic markers, but they would pay for the cost of their ultimate care directly, that cost would not be shared by the overall population.³

On the other hand, without anti-discriminatory measures such as GINA, some individuals might avoid the benefits that could be reaped from early detection because they fear the potential repercussions from insurers and employers.⁴

¹ “Genetic Information Nondiscrimination Act,” THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.00493>.

² Angrist, Misha, and Robert Cook-Deegan, “Stranded DNA Bill Finally Arrives,” *The News & Observer*, May 13, 2008. http://news.duke.edu/2008/05/gina_print.ht.

³ Ibid.

⁴ Ibid.